

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF DAYTON, OHIO,

Defendant.

Civil Action No. 3:08-cv-348

**COMPLAINT**

Plaintiff United States of America, alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended ("Title VII").
2. This Court has jurisdiction of this action under 42 U.S.C. § 2000e-6(b), 28 U.S.C. §§ 1331 and 1343, and 28 U.S.C. § 1345.
3. Defendant City of Dayton, Ohio ("Dayton" or the "City"), is a municipal government and/or political subdivision created pursuant to the laws of the State of Ohio.
4. Dayton is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).
5. Dayton maintains a police department and a fire department, and employs police officers and firefighters who, among other things, are responsible for protecting individuals and property in the City.
6. The civilian labor force of Dayton is approximately 36.8% African American.

7. Dayton employs approximately 440 police officers of all ranks in its police department, of whom approximately 9.1% are African American. As of April 1, 2008, of the 367 employees in the police officer rank, only 33 (or 9%) were African American.

8. Dayton employs approximately 332 firefighters of all ranks in its fire department, of whom approximately 2.4% are African American. The percentage of African Americans in Dayton's fire department has been decreasing for years: from 7.0% in 1984, to 4.3% in 2001, to 2.4% in 2008. As of April 1, 2008, of the 234 employees in the firefighter rank, only six (or 2.6%) were African American.

9. Dayton is responsible for establishing the terms, conditions and other practices that bear upon the selection and employment of the City's police officers and firefighters.

10. Dayton has maintained and continues to maintain selection procedures by which applicants for appointment to the rank of police officer and firefighter are screened and selected.

11. As part of its selection process for police officer, Dayton has administered and continues to administer a written examination to applicants. Applicants who pass the written examination are placed on an eligibility list in descending rank order of their written examination scores. To fill police officer positions, the City processes applicants from the police officer eligibility list in descending rank order.

12. Dayton set the passing score for its 2006 written police officer examination – the City's most recent written police officer examination – at 70%. The pass rate of whites on that examination was 68.1%, while the pass rate of African Americans was 28.7%. While African Americans constituted 16.2% of all applicants who took that examination, African Americans

constituted only 7.6% of the applicants who passed that examination – a result that reduced the proportion of African Americans applicants under consideration by approximately 50%.

13. Those African American applicants who passed the 2006 written police officer examination had, on average, lower scores than white applicants who passed. Of the top 100 ranking applicants on that examination, only one (1) was African American. Because applicants are hired in descending rank order of their written examination scores, African Americans who passed that examination waited longer than their white counterparts to be appointed.

14. Dayton hired two classes of police officers from the eligibility list that resulted from the 2006 written police officer examination: in May 2007, the City hired a class of 33 police officers, none of whom was African American; and in January 2008, the City hired a class of 27 police officers, of whom 23 were white and four were African American. In total, Dayton appointed 60 police officers from the eligibility list that resulted from the 2006 written police officer examination, of whom 55 (or 91.7%) were white and four (or 6.7%) were African American.

15. Dayton's use of its 2006 police officer written examination has resulted in disparate impact upon African Americans.

16. Dayton's use of its 2006 police officer written examination is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k).

17. In 2004, Dayton began filling firefighter positions by hiring applicants into a new classification of "professional firefighter" rather than into the previous classification of

“firefighter recruit,” and Dayton began requiring that all applicants have Emergency Medical Technician-Basic (“EMT-Basic”) and Firefighter I and II certifications at the time of application and as a pre-condition to taking the written firefighter examination. Before 2004, applicants for firefighter were not required to have these certifications at either the time of application or the time of hire, but rather obtained them after hire through the City’s firefighter training academy.

18. As a result of Dayton’s use, beginning in 2004, of the heightened qualifications for firefighter described in Paragraph 17, *supra*, the number of African American applicants dropped substantially. African Americans constituted at least 20% of all firefighter applicants in 2000, and at least 25% of all firefighter applicants in 2002. Conversely, African Americans constituted only approximately 6% of firefighter applicants for the City’s 2005 written firefighter examination, the City’s most recent written firefighter examination.

19. Dayton’s use, beginning in 2004, of these heightened qualifications for firefighter has had a disparate impact upon African Americans.

20. Dayton’s use, since 2004, of these heightened qualifications for firefighter is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k).

21. Dayton has pursued and continues to pursue policies and practices that discriminate against African Americans and that deprive or tend to deprive African Americans of employment opportunities because of their race and/or color, in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6. Dayton has implemented these policies and practices, among other ways, through:

- a. its use of a written examination in the screening and selection of applicants for appointment to police officer that results in disparate impact upon African Americans, is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k);
- b. its use of heightened qualifications in the screening and selection of applicants for appointment to firefighter that results in disparate impact upon African Americans, is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k); and
- c. its failure or refusal to take appropriate action to correct the present effects of its discriminatory policies and practices.

22. The policies and practices of Dayton described in Paragraphs 10 through 21, *supra*, constitute a pattern or practice of resistance to the full enjoyment by African Americans of their right to equal employment opportunities without discrimination based on race, in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6. This pattern or practice is of such a nature and is intended to deny the full exercise of the rights secured by Title VII. Unless restrained by order of this Court, the City will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.

23. All conditions precedent to the filing of suit have been performed or have occurred.

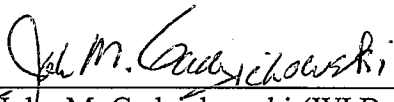
WHEREFORE, the United States prays for an order enjoining Dayton, its officers, agents, employees, successors and all persons in active concert or participation with them, from engaging in discriminatory employment practices against African Americans on the basis of race in violation of Title VII, and specifically from:


- a. the use of a written examination in the screening and selection of applicants for appointment to police officer that results in disparate impact upon African Americans, is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k);
- b. the use of heightened qualifications in the screening and selection of applicants for appointment to firefighter that results in disparate impact upon African Americans, is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k);
- c. failing or refusing to provide make-whole relief to individual African Americans who have suffered loss and/or will suffer loss as a result of the discriminatory policies and practices alleged in this Complaint;
- d. failing or refusing to take appropriate action to correct the present effects of its discriminatory policies and practices; and
- e. failing or refusing to take other appropriate non-discriminatory measures to overcome the effects of their discriminatory policies and practices.

Plaintiff United States prays for such additional relief as justice may require, together with its costs and disbursements in this action.

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