

ORIGINAL 8

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

 UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF PONTIAC, MICHIGAN,)
)
 Defendant,)
)
 and)
)
 LOCAL #376 FIRE FIGHTERS UNION,)
 INTERNATIONAL ASSOCIATION)
 OF FIRE FIGHTERS,)
)
 FRCP 19(a) Defendant.)

Civil Action No.

JUDGE : Feikens, John
 DECK : S. Division Civil Deck
 DATE : 07/26/2005 @ 10:45:04
 CASE NUMBER : 2:05CV72913
 CMP USA V. CITY OF PONTIAC (SI)
 TAM
 MAGISTRATE JUDGE CAPEL

MAGISTRATE JUDGE

U.S. DIST. COURT OF
 EAST DISTRICT
 SOUTHERN DIVISION

05 JUL 26 10:57

FILED

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, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII").
2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-6(b), 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1345.
3. Defendant City of Pontiac is a corporate, governmental body and a political subdivision of the State of Michigan, established pursuant to the laws of the State of Michigan. The City of Pontiac provides fire and rescue services to its citizens through its agency, the Pontiac Fire Department ("PFD").

4. The City of Pontiac is a person within the meaning of 42 U.S.C. § 2000c(a), and an employer within the meaning of 42 U.S.C. § 2000c(b).
5. Defendant Local #376 Fire Fighters Union, International Association of Fire Fighters ("Local #376") is a local chapter of the International Association of Fire Fighters, a union of professional fire fighters and paramedics. Local #376 is a labor organization within the meaning of 42 U.S.C. § 2000c(d). Local #376 is named as a party pursuant to Federal Rule of Civil Procedure 19(a).
6. The City of Pontiac and Local #376 have entered into and maintained collective bargaining agreements ("CBAs") regarding various aspects of work and terms and conditions of employment at the PFD. Since 1984, these CBAs have contained a dual system for both hire and promotion based upon race and sex.
7. The CBA currently in force requires that hiring in the PFD be subject to the following race and sex-based criteria:

Dual lists will be established with one list being all candidates in total score order and the second list a special list of the minorities, including women, in total score order. Hiring will be made from the first list in order except that at least one (1) minority must be hired of every three (3) hires. In order to achieve this, the second list will be used if there is not at least one (1) minority for every three (3) hires from the first list. This dual list procedure will be in effect through the duration of the contract.

8. The CBA currently in force requires that various promotions in the PFD be subject to the following race and sex-based criteria:

Dual lists will be established with one being in score order for all the candidates and the second list being the minorities, including

women, in score order. Promotions are to be made from the first list except that at least one (1) minority will be promoted out of every three (3) promotionals. The second list will be used to accomplish this if the first list does not result in at least one (1) minority promoted out of every three (3) promotions. The dual list will be in effect though the duration of the contract.

9. The City of Pontiac, through the PFD, has pursued and continues to pursue policies and practices that discriminate against applicants for employment and employees based on race and sex in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), by explicitly creating and maintaining a dual system for hire and promotion requiring that one out of every three hires or promotions be given to a "minority." As set forth above, the term "minority" includes women as used in the CBA.
10. The acts, omissions, policies and practices of the City of Pontiac described in paragraphs 6-9, *supra*, constitute a pattern or practice of: (a) resistance to the full enjoyment by non-minorities of their rights to equal employment opportunities in the PFD without discrimination based on race; and (b) resistance to the full enjoyment by men of their rights to equal employment opportunities in the PFD without discrimination based on sex, 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 of the Civil Rights Act of 1964, as amended. Unless enjoined by order of this Court, the City of Pontiac will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.
11. All conditions precedent to the filing of suit have been performed or have occurred.

WHEREFORE, the United States prays that this Court issue an Order enjoining the City of Pontiac, its officers, agents, employees, successors and all persons in active concert or participation with it, and Local #376 as appropriate, from engaging in discriminatory employment policies and practices against applicants for employment and employees in the PFD based on race or sex, and specifically from:

(a) basing hiring opportunities in the PFD on dual lists requiring every third hire to be made to a minority;

(b) basing promotion opportunities in the PFD on dual lists requiring every third promotion to be made to a minority;

(c) failing or refusing to award make whole relief to individuals who have suffered loss as a result of the discriminatory policies and practices alleged in this Complaint; and

(d) failing or refusing to take other appropriate nondiscriminatory measures to overcome the effects of the discriminatory practices.

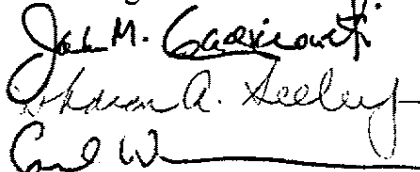
Plaintiff United States prays for such additional relief as justice may require, including equitable relief, together with its costs and disbursements in this action.

BRADLEY J. SCHLOZMAN
Acting Assistant Attorney General
Civil Rights Division

By:



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ORIGINAL

CIVIL COVER SHEET County in which this action arose Oakland 26/25

Use JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Sharon Seeley, Esquire and Carl Wasserman, Esquire, U.S. Dept. of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530

DEFENDANTS

City of Pontiac, Michigan and Local #376 Fire Fighters Union, International Association of Fire Fighters, 19(a)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, LIST THE LOCATION OF THE LAND INVOLVED. 05-72913

Attorneys (If Known)

Eric S. Goldstein, Esquire (Attorney for City of Pontiac, Michigan)
JOHN FEIKENS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

MAGISTRATE JUDGE CAPEL

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 447 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deception <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 861 HHA (1395H) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(c))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sec 2000e, et seq
 (Brief description of cause):
Employment discrimination based on race and sex

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____
 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Honorable George Carran Stebb DOCKET NUMBER 04-72904

DATE: July 26, 2005
 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____