

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN E. HOWARD, GREGORY W. SCOTT,
JOHNNY L. SMITH, TOMAS VAZQUEZ,
JOHN WYCHE, HENRY ROUSE, ARCHIE
ROUSE, AFRO-AMERICAN POLICE
ASSOCIATION, Individually and on
behalf of all other persons simi-
larly situated,

Plaintiffs,

-vs-

ELISHA FREEDMAN, CITY MANAGER OF
THE CITY OF ROCHESTER, NEW YORK,
THOMAS HASTINGS, CHIEF OF POLICE
OF THE CITY OF ROCHESTER POLICE
DEPARTMENT, MEMBERS OF THE COUNTY
OF MONROE CIVIL SERVICE COMMISSION,
EXECUTIVE DIRECTOR OF THE COUNTY
OF MONROE CIVIL SERVICE COMMISSION,

Defendants.

ORDER AND JUDGMENT

74 Civ. 234

The parties hereto having entered into a Stipulation for Settlement of the issues raised in this action; and the Court having ordered that notice of a hearing on the advisability of the settlement be given to the members of the class; and the Court, after said notice and hearing, having approved the terms of the said Stipulation for Settlement,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. All written examinations which the Monroe County Civil Service Commission, its agents, employees, and successors, hereinafter use to determine eligibility for entry level positions in the Rochester Police Department shall be validated in accordance with the Equal Employment Opportunity Commission's Guidelines on Employee Selection Procedures, 29 C.F.R. §1607.

2. Until such time as twenty-five percent (25%) of the Rochester Police Department's officers are minority persons, defen-

ants, their agents, employees, and successors, shall make appointments to the entry level position of police officer in the following manner:

- a. After each examination process, the Monroe County Civil Service Commission, its agents, employees, and successors, shall establish an eligibility list of qualified candidates which includes two sublists:
 - (1) The first sublist shall consist of all qualified minority candidates, ranked in order of their relative standing on said examination.
 - (2) The second sublist shall consist of all qualified nonminority candidates, ranked in order of their relative standing on said examination.
- b. The City of Rochester shall make appointments by selecting two persons from the sublist of qualified minority candidates for every three persons selected from the sublist of qualified nonminority candidates.
- c. In the event that all names of persons on the sublist of qualified minority candidates are exhausted, defendants, their agents, employees, and successors, shall make no further appointments until such time as an examination process is conducted and new eligibility lists and sublists are established, except that upon the exhaustion of the first sublist, the City of Rochester may make up to six appointments from the second sublist, provided that upon the establishment of a new first sublist the first four appointments to the Rochester Police Department thereafter shall be made from said new first sublist, and thereafter appointments shall be made in accordance with paragraph 2(b).
- d. In the event the contingency specified in paragraph 2(c) occurs, all the persons remaining on the second sublist shall be given the option of submitting to the new examination process or of having their total score resulting from the prior examination process carried over and integrated into a new second sublist by being ranked in order of their relative standing with those persons having taken the new examination process. In no event shall a person be carried over more than once, and in no event shall any sublist be effective for more than two years from the date of its original establishment.

3. Until such time as twenty-five percent (25%) of the Rochester Police Department's police officers are minority persons, defendants, their agents, employees, and successors, shall make appointments to any and all training programs including, but not limited to, the Police Cadet Program, in the manner described in paragraphs 2(a) - 2(c) herein; provided that the thirteen (13) individuals who were appointed to the Cadet Program on February 20, 1975, shall be appointed to the Rochester Police Department without regard to the requirements of paragraphs 2(a) - (c).

4. Defendants, their agents, employees, and successors shall make appointments based on the 1974 examination for police officer in the manner described in paragraphs 2(a) - 2(c) herein.

5. Within one hundred and twenty (120) days after entry of an order approving this stipulation, the City of Rochester, its agents, employees, and successors, after consultation with plaintiffs' representatives, shall develop and implement a program for recruitment of minority persons for positions in the Rochester Police Department. The City shall pay the reasonable and necessary expenses of plaintiffs' consultant for travel, accommodation, and meals for one week.

6. Defendants, their agents, employees, and successors shall not reject a minority applicant for a position as police officer in the Rochester Police Department on the basis of a record of arrest or conviction, a background investigation, a psychological test and/or psychiatric interview unless said applicant is informed in writing of the specific reason(s) for the rejection and his right to review. A decision to reject said applicant on the basis of a background investigation, psychological test and/or psychiatric interview shall be subject to review if --

the applicant files a written request with the Monroe County Civil Service Commission within thirty (30) days after mailing of the notice of rejection and his right to review. The review shall be conducted by a Review Panel comprised of a representative of the Civil Service Commission, a representative of the Rochester Police Department, and the Affirmative Action Officer of the City of Rochester or his representative.

7. Until such time as twenty-five percent (25%) of the Rochester Police Department's officers are minority persons, the Monroe County Civil Service Commission, its agents, employees, and successors shall file the following documents with the Clerk of the United States District Court for the Western District of New York on or before June 1 of each year:

- (a) the written examinations which are used to determine eligibility for a position of police officer; and
- (b) the validation studies of the written examinations described in paragraph 1; and
- (c) an annual report describing:
 - (1) the number of nonminority and minority applicants for the position of police officer;
 - (2) the number of nonminority and minority persons appointed to the position of police officer;
 - (3) the number of nonminority and minority persons who are rejected at each step in the selection process for the position of police officer; and
 - (4) new selection procedures or devices.

8. The City of Rochester and the County of Monroe shall each pay plaintiffs, John E. Howard, Gregory W. Scott, Johnny L. Smith, Tomás Vazquez, John Wyche, and Henry Rouse, the sum of two hundred fifty dollars (\$250.00) each upon receipt from

each plaintiff of a release in full and complete satisfaction and settlement of any and all claims of said plaintiffs arising from defendants' past employment practices relating to employment of persons in the Rochester Police Department.

9. The City of Rochester and the County of Monroe shall each pay plaintiffs' attorneys, the Monroe County Legal Assistance Corporation, the sum of three thousand dollars (\$3,000.00) as reimbursement for the costs and attorneys' fees for this litigation.

10. (a) The term "minority" as used herein shall refer to a person who is black, Spanish-surnamed, or a member of some other nonwhite minority group. (b) The term "nonminority" as used herein shall refer to a person who is not a minority person as defined in paragraph 10(a).

11. The hiring mechanism set forth in paragraphs 2 and 3 is a temporary measure pursuant to federal law designed to remedy the racially disproportionate impact of prior employment practices. The hiring mechanism set forth in paragraphs 2 and 3 shall remain in effect only until such time as twenty-five percent (25%) of the Rochester Police Department's officers are minority persons.

12. The United States District Court for the Western District of New York shall continue to have jurisdiction of this matter to entertain an application by any party hereto, made upon papers served upon the other parties hereto at least 10 days prior to the return date thereof, seeking relief in the form of interpretation, application, adjustment or termination of any of the terms of this Stipulation on the grounds of inequity or impracticability.

13. Immediately after the Court has made and entered its Order approving the terms of this Stipulation, the parties hereto shall join in an appropriate application to the New York State Division of Human Rights to dismiss with prejudice all proceedings pending before it regarding the same subject matter brought by any or all of the named plaintiffs herein.

14. This action is hereby dismissed with prejudice to the named plaintiffs and the class of persons consisting of all black, Spanish-surnamed, and other nonwhite persons who, prior to the date of this Order have applied for employment as a police officer in the Rochester Police Department and have been rejected for any reason at any step of the examination process.

Dated: May 12, 1975

W. Edward P. Beahm
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MAY 16

JOHN E. HOWARD, GREGORY W. SCOTT,
et al.

-vs-

Civ-74-234

ELISHA FREEDMAN, City Manager of
the City of Rochester, New York, et al.

and JUDGMENT

SIR: Take notice of an ORDER / of which the within is a copy,
duly granted in the within entitled action on the 12th day of
May, 1975, and entered in the Office of the
Clerk of the United States District Court, Western District of
New York, on the 12th day of May, 1975.

Dated: Buffalo, New York

May 15, 1975

JOHN K. ADAMS, Clerk
U.S. District Court
U.S. Courthouse
Buffalo, New York 14202

TO: Daan Braveman, Esq.
Attorney for Plaintiff

TO: Charles Valenza, Esq.
John D. Doyle, Esq.
Attorney for Defendant

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN E. HOWARD, GREGORY W. SCOTT,
JOHNNY L. SMITH, TOMAS VAZQUEZ, JOHN
WYCHE, HENRY ROUSE, ARCHIE ROUSE,
AFRO-AMERICAN POLICE ASSOCIATION,
Individually and on behalf of all other
persons similarly situated,

Plaintiffs,

-vs-

ORDER

74 Civ. 234

ELISHA FREEDMAN, CITY MANAGER OF THE
CITY OF ROCHESTER, NEW YORK, THOMAS
HASTINGS, CHIEF OF POLICE OF THE CITY
OF ROCHESTER POLICE DEPARTMENT, MEMBERS
OF THE COUNTY OF MONROE CIVIL SERVICE
COMMISSION, EXECUTIVE DIRECTOR OF THE
COUNTY OF MONROE CIVIL SERVICE COMMISSION,

Defendants.

Louis N. Kash, Corporation Counsel of the City of Rochester, on behalf of Thomas P. Ryan, Jr., Mayor of the City of Rochester, Roy A. Irving, Chief of Police of the City of Rochester, the members of the Rochester Civil Service Commission, and Wendell Bellamy, Executive Secretary of the Rochester Civil Service Commission, as successors in authority and jurisdiction to all the original Defendants herein, has moved this Court for modification and extension of an Order and Judgment of this Court dated May 12, 1975.

NOW, THEREFORE, upon the Affidavits of Louis N. Kash, Roy A. Irving and Wendell Bellamy, and the exhibits attached thereto, and the responding affidavit of Lawrence J. Andolina, and this matter having been heard at a motion term of this Court before the Hon. Michael A. Telesca, United States District Judge, on the 29th day of April, 1992, at 9:00 A.M., at the Federal Courthouse, 100 State Street, Rochester, New York and proof of service and

publication in accordance with the Order to Show Cause herein having previously been filed with the Court Clerk, and Louis N. Kash, Corporation Counsel, having appeared for the moving parties and Steven L. Brown, Project Director of the Greater Upstate Law Project, having appeared on behalf of the plaintiff class that was certified in this action and Lawrence J. Andolina having appeared for the Rochester Police Locust Club, Inc., and upon consent of the parties hereto, it is

ORDERED that the Order and Judgment of the Hon. Harold P. Burke, United States District Judge, dated May 12, 1975 (hereinafter referred to as the "Consent Decree"), is hereby modified as follows:

1. The introductory phrase "Until such time as twenty-five percent (25%) of the Rochester Police Department's officers are minority persons," is hereby deleted from Paragraphs 2, 3 and 7 of the Consent Decree, and the second sentence of Paragraph 11 of the Consent Decree is hereby deleted.

2. Paragraphs 2(b) and 2(c) are hereby amended to read in their entirety as follows:

b. The City of Rochester shall make appointments of recruits and lateral transfers to the Rochester Police Department by selecting one qualified minority candidate for every three qualified nonminority candidates. In addition, the number of minority candidates selected for each recruit class shall be increased to make up the difference, if any, between the number of minority candidates selected for the last recruit class who attrited prior to permanent appointment minus the number of minority candidates who would have attrited if the attrition rate of nonminority candidates for that last class had applied to the entering number of minority candidates for

that last class. For the purposes of this paragraph, the phrase "last recruit class" shall mean the most recent recruit class that has proceeded to permanent appointment. For the purposes of this paragraph, the phrase "the number of minority candidates who would have attrited" shall mean the whole number derived by rounding up any number containing a fraction that is equal to or greater than five-tenths and by rounding down any number containing a fraction that is less than five-tenths. If the number of minority candidates selected for any recruit class is less than the number required in this paragraph, for any reason other than exhaustion of the minority sublist, the deficiency shall be made up in the next ensuing recruit class, or within twelve months, whichever is later. If the number of minority candidates selected for any exclusively lateral class is less than the number required in the first sentence of this paragraph, the deficiency shall be made up in the next ensuing recruit class.

- c. In the event that all names of persons on the sublist of qualified minority candidates are exhausted prior to the time a new examination process is conducted and new eligibility lists and sublists are established, the City of Rochester may make up to six (6) appointments from the nonminority sublist, provided that upon the establishment of a new minority sublist the first two (2) appointments to the Rochester Police Department thereafter shall be made from said new minority sublist, and thereafter appointments shall be made in

accordance with paragraph 2(b). Should the City require that more than six (6) appointments be made when there are no qualified candidates left on the minority sublist, application therefor to this Court upon notice to all parties shall be made.

3. The Consent Decree is hereby amended by deleting the words "Monroe County Civil Service Commission" in each place they appear therein and by inserting in their place the words "Rochester Civil Service Commission".

4. Paragraph 10(a) of said Consent Decree is hereby amended by deleting the words "Spanish-surnamed" where they appear in the definition of the term "minority" contained therein, and by inserting in their place the word "hispanic".

5. The hiring mechanism set forth herein is a temporary measure pursuant to Federal Law designed to remedy the disproportionately low representation of minorities in the Rochester Police Department due to prior employment practices. This hiring mechanism shall take effect with respect to the first class of police officer candidates hired after the time that twenty-five percent (25%) of the Rochester Police Department's police officers are minority persons, and shall remain in effect until further order of this Court. Upon the fifth anniversary of this Order, this Order shall be re-evaluated by the parties and shall be subject to review by the Court upon motion by any of the parties and notice to each of the other parties, at which time a determination shall be made as to whether the Order should be modified, continued or terminated.

6. The City shall continue to submit the annual reports required in paragraph 7 of the Consent Decree. In addition, within sixty (60) days of the date of this Order, the City shall submit to this Court a report which identifies, to the extent feasible, the reasons for the attrition rate of minority candidates during the academy, field training and probationary periods.

OK as to
form
5/20/92

OK
as to form
5/14/92
LJA

OK as to
form
LJK
5/22/92

DATED: Rochester, New York
May 23, 1992


MICHAEL A. TELESKA
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN E. HOWARD, et al,

Plaintiffs,

- vs -

74-CV-234

ELISHA FREEDMAN, et al.,

Defendants.

Take notice of an Order, of which the within is a copy, duly granted in the within entitled action on the 27th day of May, 1992 and entered in the office of the Clerk of the United States District Court, Western District of New York, on the 28th day of May, 1992.

Dated: Rochester, New York

May 29, 1992

Clerk
United States District Court
Western District of New York
282 U.S. Courthouse
Rochester, New York 14614

TO: L. Andolina, Esq.
J. Eichner, Esq.
S. Brown, Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN E. HOWARD, GREGORY W. SCOTT,
JOHNNY L. SMITH, THOMAS VAZQUEZ,
JOHN WYCHE, HENRY ROUSE, ARCHIE
ROUSE, AFRO-AMERICAN POLICE ASSOCIATION,
Individually and on behalf of
all other persons similarly situated,

Plaintiffs,

v.

ELISHA FREEDMAN, CITY MANAGER OF THE
CITY OF ROCHESTER, NEW YORK, THOMAS
HASTINGS, CHIEF OF POLICE OF THE CITY
OF ROCHESTER POLICE DEPARTMENT,
MEMBERS OF THE COUNTY COMMISSION,
EXECUTIVE DIRECTOR OF THE COUNTY OF
MONROE CIVIL SERVICE COMMISSION,

Defendants.

INTRODUCTION

In May, 1974, the plaintiffs in this case filed suit against the City Manager for the City of Rochester, and various other City officials seeking increased minority representation within the Rochester City Police Department. On May 12, 1975, the late Honorable Harold P. Burke of this court issued a Consent Decree under which the defendants agreed to increase and maintain the number of minority police officers serving in the Rochester City Police Department ("RPD" or "Department"). On May 27, 1992, I modified (in part) and extended the duration of the Consent Decree.

FILED

U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
74-CV-234T

DECISION
and ORDER

Under the terms of the Decree, the RPD is to ensure that one-quarter of each incoming class of police recruits is comprised of minority candidates. While the RPD has generally maintained that standard throughout the duration of the modified Consent Decree, it now moves for an Order waiving, on a temporary, one-time basis, the hiring ratio required under the Decree. According to the Honorable William Johnson, Mayor of the City of Rochester, and Rochester Chief of Police Robert Duffy, the Department anticipates that despite targeted recruiting efforts, it will be unable to comply with the requirements of the Decree with respect to the pending class of 25 police recruits, currently scheduled to be admitted in February, 2004. The Department contends that because of the serious and immediate need for additional police officers at this time, it would unduly burden the Department and the City of Rochester to wait until additional minority candidates can be recruited before admitting the current class of candidates into the ranks of the RPD.

On January 9, 2004, I issued an Order to Show Cause why the hiring provisions of the Consent Decree should not be waived on a one-time basis to allow the RPD to admit a new class of 25 police officers, in which less than 6 recruits are members of a minority group. On January 15, 2004, I heard argument on defendants' motion for a waiver. Based on the parties written submissions and

comments made during argument of defendants' motion, the following constitutes my findings and conclusions.

DISCUSSION

The Consent Decree in place in this action has been effective. The Decree requires that 25 percent of the police force be comprised of minority officers, and currently, according to the Affidavit of Rochester Chief of Police Robert Duffy, the Police Department consists of 28.5 percent minority police officers. Moreover, the RPD is taking aggressive steps to comply with the spirit and the letter of the Decree. Specifically, according to the Affidavit of Rochester Police Department Police Officer Adrian Smalls (one of the officers in charge of minority recruiting), Department recruiters have visited local high schools and colleges seeking minority candidates. Additionally, the Department regularly advertises for minority candidates on local radio and television stations, and the Department has reached out to minority applicants outside the local metro area by seeking recruits at job fairs in Pittsburgh, Pennsylvania, Buffalo, New York, and New York City.

Much of the campaign to attract minority applicants has been successful. Almost one third of 1,700 persons who applied to take the December 2003 Police Officer Examination were members of a minority group. However, while 152 minority candidates passed the written examination, 64 candidates failed to proceed to the second

step of the selection process, and an additional 29 candidates withdrew from the recruiting process at a latter stage. Also, 34 candidates failed an agility test, and an additional 19 candidates were deselected after a background check. Thus of the 152 candidates who passed the written examination, only six candidates were eligible to be considered for employment as police officers.

Based on the attrition rate of minority candidates during the examination process, it is clear that recruiting alone is not the answer to the Department's recent difficulty in meeting the goals of the Consent Decree. The fact that 64 of the 152 minority candidates that passed the written examination failed to proceed to the second step of the testing process should be of concern to the Department, and the Department should attempt to determine why the recruits disengaged from the selection process, and how to prevent that from recurring in the future.

Additionally, the Department should continue to develop new strategies to attract and retain qualified minority candidates. The Department's recruiting of local high school and college students is commendable, and should remain aggressive, focusing on the lucrative compensation and benefits packages available to career police officers. During oral argument, counsel for the plaintiff class suggested looking to the military as a potential source of qualified police officer candidates. Counsel also

suggested the possibility of hiring qualified potential candidates who do not meet the minimum age requirement of 20 and placing them in administrative positions until such time as they become eligible for consideration by the RPD. The Department should also explore the possibility of offering continuing education to interim candidates who have not met the minimum age requirement. These suggestions are worthy of serious consideration by the RPD as the Department continues its efforts to develop innovative strategies to attract qualified minority candidates.

I note that the Police Department has for years complied with the terms of the Decree, and indeed, has exceeded many of the Decree's goals. Therefore, I grant the defendants' motion for a one-time waiver of the Consent Decree's hiring requirement, on the condition that the RPD will use its best efforts to attract a higher percentage of minority recruits over the next three to four recruiting classes to compensate for the decrease in minority recruits in the February 2004 class.

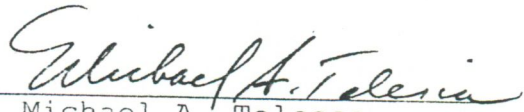
However, I direct the defendants to submit biannual reports to the court and opposing counsel, starting in June 2004, detailing the steps taken to attract and ensure increased minority participation in the recruiting process. Once the Department has accounted for the deficit of minority candidates in this recruiting class by hiring additional minority candidates beyond the ratio required under the Decree, the Department may request this Court to

discontinue the biannual reporting, and report on its efforts and progress on an annual basis, as contemplated in the Consent Decree.

CONCLUSION

For the reasons set forth above, I grant defendants' motion for a temporary waiver of the hiring requirement of the 1975 Consent Decree, as modified in 1992. The Consent Decree otherwise remains in full force and effect, and indeed, despite the RPD's historic compliance with the terms of the Decree, none of the parties have requested nor even suggested that the Decree be terminated. The parties and the court are in agreement that the Decree serves a beneficial purpose in encouraging and mandating a highly qualified, diverse, and professional police force. Accordingly, the parties are charged with the continued adherence to the terms of the Decree, subject only to the limited, one-time waiver granted herein.

ALL OF THE ABOVE IS SO ORDERED.


Michael A. Telesca
United States District Judge

DATED: Rochester, New York
January 20, 2004

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN E. HOWARD, GREGORY W. SCOTT,
JOHNNY L. SMITH, THOMAS VAZQUEZ,
JOHN WYCHE, HENRY ROUSE, ARCHIE
ROUSE, AFRO-AMERICAN POLICE ASSOCIATION,
Individually and on behalf of
all other persons similarly situated,

Plaintiff(s),

- vs -

74-CV-234 T

ELISHA FREEDMAN, CITY MANAGER OF THE
CITY OF ROCHESTER, NEW YORK, THOMAS
HASTINGS, CHIEF OF POLICE OF THE CITY
OF ROCHESTER POLICE DEPARTMENT,
MEMBERS OF THE COUNTY COMMISSION,
EXECUTIVE DIRECTOR OF THE COUNTY OF
MONROE CIVIL SERVICE COMMISSION,

Defendant(s).

Take notice of an Order, of which the within is a copy,
duly granted in the within entitled action on the 20th of
January, 2004 and entered in the office of the Clerk of the
United States District Court, Western District of New York, on
the 23rd, of January, 2004.

Dated: Rochester, New York
January 23, 2004

RODNEY C. EARLY, Clerk
U. S. District Court
Western District of New York
282 U. S. Courthouse
Rochester, New York 14614

TO:

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JOHN E. HOWARD, GREGORY W. SCOTT, JOHNNY L. SMITH, TOMAS VAZQUEZ, JOHN WYCHE, HENRY ROUSE, ARCHIE ROUSE, AFRO-AMERICAN POLICE ASSOCIATION, Individually and on behalf of all other persons similarly situated,

Plaintiffs,

-vs-

ORDER

ELISHA FREEDMAN, CITY MANAGER OF THE CITY OF ROCHESTER, NEW YORK, THOMAS HASTINGS, CHIEF OF POLICE OF THE CITY OF ROCHESTER POLICE DEPARTMENT, MEMBERS OF THE COUNTY OF MONROE CIVIL SERVICE COMMISSION, EXECUTIVE DIRECTOR OF THE COUNTY OF MONROE CIVIL SERVICE COMMISSION,

74-CV-234

Defendants.

On August 29, 2006, the Court issued an Order to Show Cause based upon the Affidavit of David T. Moore, Chief of Police of the City of Rochester, sworn to July 20, 2006, directing that plaintiffs show cause why an Order should not be made herein modifying the Order and Judgment of the Honorable Harold P. Burke, United States District Judge, dated May 12, 1975, as modified by the Orders of the Honorable Michael A. Telesca, United States District Judge, dated May 28, 1992 and January 20, 2004 (hereinafter referred to as the "Consent Decree"), by amending Paragraph 6 of the 1975 Order relating to a review of a rejection on the basis of a record of arrest or conviction, a background investigation, a psychological test and/or psychiatric interview.

Thomas S. Richards, Corporation Counsel of the City of Rochester, Jeffrey Eichner, of counsel, appeared on behalf of the moving party, and Bryan D. Hetherington, Chief Counsel, Empire Justice Center, appeared on behalf of the Plaintiff class that was certified in this action, and Trevett Cristo Salzer & Andolina P.C., Lawrence J. Andolina, of counsel, appeared on behalf of the Rochester Police Locust Club, Inc. A Hearing was held at the United States Courthouse, 100 State Street, Rochester, New York, on October 4, 2006, at which there was no opposition to the motion.

IT IS HEREBY ORDERED that the Order and Judgment of the Honorable Harold P. Burke, United States District Judge, dated May 12, 1975, as amended by Orders of the

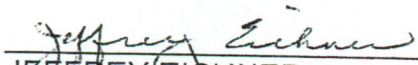
Honorable Michael A. Telesca dated May 28, 1992, and January 20, 2004, is hereby further amended by amending Paragraph 6 thereof to read in its entirety as follows:

"6. Defendants, their agents, employees, and successors shall not reject a minority applicant for a position as police officer in the Rochester Police Department on the basis of a record of arrest or conviction, a background investigation, a psychological test and/or psychiatric interview unless said applicant is informed in writing of the specific reason(s) for the rejection and his or her right to review. A decision to reject said applicant on the basis of a background investigation, psychological test and/or psychiatric interview shall be subject to review if the applicant files a written request with the Civil Service Commission of the City of Rochester within ten (10) calendar days after mailing of the notice of rejection and right to review. The review shall be conducted by a Review Panel comprised of a representative of the Civil Service Commission, a representative of the Rochester Police Department, and the Affirmative Action Officer of the City of Rochester or a diversity representative of the City, or the Civil Service Commission may conduct the review."

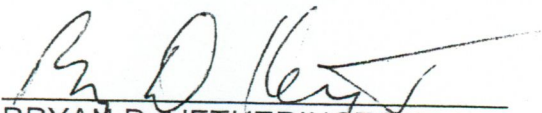
Rochester, New York
October 23, 2006


MICHAEL A. TELESKA
United States District Judge


Approved as to content and form:


JEFFREY EICHNER
Municipal Attorney, City of Rochester

Dated: October 11, 2006


BRYAN D. HETHERINGTON
Empire Justice Center
Attorney for Plaintiff Class

Dated: October 17, 2006


LAWRENCE J. ANDOLINA
Trevett Cristo Salzer & Andolina P.C.
Attorney for Rochester Police Locust Club, Inc.

Dated: October 12, 2006