

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	NO. 2:09-cv-06
)	
CITY OF GARY, INDIANA)	
)	
Defendant.)	

CONSENT DECREE

This action was brought by the United States against the City of Gary, Indiana (the “City”) 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”), following receipt by the Department of Justice from the Equal Employment Opportunity Commission (“EEOC”) of charges of discrimination filed by James Meinert, Richard Hurst, Timothy Sierazy, Nathan Bogner, Christopher Ferrand and Tina Bruks (“Charging Parties”).

In its complaint, the United States alleges that the City has discriminated against the Charging Parties on the basis of their race (white), in violation of Title VII, by failing or refusing to offer them employment as an Emergency Medical Technician (“EMT”) with the City.

The City denies that it has discriminated in any manner against the Charging Parties in violation of Title VII. Nevertheless, the parties to this case, desiring that the case be settled by appropriate Consent Decree (“Decree”) and without the risks and burdens of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. The parties hereby waive, for purposes of this Decree only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and

binding among themselves as to the issues raised in the complaint filed in this case.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the City or a finding of any wrongdoing or violation of any applicable federal or state law or regulation.

For purposes of this Decree only, the following facts are stipulated to between the parties:

1. In or around February 2006, the City created a hiring list of 25 applicants for EMT positions. The Charging Parties, all of whom are white, ranked 2nd (Meinert), 3rd (Hurst), 4th (Sierazy), 6th (Bogner), 7th (Ferrand) and 8th (Bruks) on the hiring list.
2. On or around October 10, 2006, the City offered employment as EMTs to six of the applicants on the EMT hiring list, all of whom are black. These applicants were ranked 1st, 5th, 9th, 10th, 11th, and 12th on the hiring list. All six accepted employment with the City.
3. In or around November 2006, the City offered employment as an EMT to a seventh individual (black) who was not on the hiring list. This person also accepted employment as an EMT with the City.
4. None of the Charging Parties received an offer of employment from the City before the EMT hiring list created by the City in or around February 2006 expired on February 1, 2007; nor did any of the Charging Parties receive an offer of employment as an EMT from the City at any time thereafter.
5. All of the Charging Parties ranked higher on the hiring list than the lowest-ranked individual to receive an offer of employment from the City.

In resolution of the United States' Complaint, the Parties hereby AGREE to, and the Court expressly **APPROVES**, **ENTERS**, and **ORDERS**, the following:

I. SCOPE OF THE DECREE

This Decree resolves all legal and equitable claims arising out of the Complaint filed by the United States against the City in this action.

II. GENERAL INJUNCTIVE RELIEF

1. The City, its employees, supervisors, agents and all individuals in active concert or participation with it, are enjoined from:

(a) engaging in any act or practice that unlawfully discriminates against any person with regard to employment as an EMT with the City on the basis of race in violation of Title VII; and

(b) retaliating against, or in any way adversely affecting the terms and conditions of employment of, any person in the position of EMT with the City because that person has engaged in practices protected under 42 U.S.C. §2000e-3(a), including, but not limited to, cooperating with the United States' investigation or litigation of this case or filing an EEOC charge.

III. EMT SELECTION PROCEDURES

1. Within sixty (60) calendar days from the date of entry of this Decree by the Court, the City shall adopt in writing and implement a selection process for EMTs that complies fully with Title VII.

2. The City's selection process shall, at a minimum, include the following:

(a) Each EMT vacancy in the City shall be advertised in a newspaper of general circulation in the City at least three (3) times during the three (3) week period before any applicable closing date for acceptance of applications. Each vacancy shall also be posted in a prominent place at the City's Fire Department for a period of at least three (3) weeks. The

advertisements and posting shall:

- (i) emphasize that the City is an equal opportunity employer;
- (ii) summarize the minimum qualifications required for the position;
- (iii) specify the application procedures;
- (iv) specify the starting salary or salary range;
- (v) specify the closing date for applications; and
- (vi) state the name and address of the office to which applications must be submitted.

(b) In selecting a person for an EMT position, the selecting officials shall review, at a minimum, all resumes and applications received in the previous six (6) months and any additional resumes and applications received in response to the vacancy announcement at issue.

(c) There shall be no written test requirements for EMT positions.

(d) If the City determines that interviews should be part of the selection process for EMT positions, all applicants interviewed as part of such process shall be asked the same job-related questions prepared by the selecting officials in addition to whatever other related follow-up questions the selecting officials deem appropriate.

(e) In filling any EMT position, the selecting officials shall utilize non-discriminatory selection procedures that do not unlawfully discriminate on the basis of race.

3. The City may require employees in its EMT positions to reside within the City limits. In the event that the City institutes such a requirement, it shall allow an applicant six (6) months from the date of his/her hire in a EMT position to move within the City limits, as

specified in the City's Personnel Manual Policy for Residency.

4. The City shall not prohibit non-City residents from applying for employment in a EMT position, nor fail to consider applicants for EMT positions solely based on their non-residency status at the time of application and/or offer of employment.

IV. SPECIFIC RELIEF

Without admitting the allegations of the United States, and in settlement of the claims of the United States for relief on behalf of the Charging Parties, as well as in settlement of the claim of each Charging Party who accepts the relief provided him/her by this Decree, the City shall:

1. If any Charging Party accepts the City's offer of employment as an EMT provided for in paragraph IV. 2 below, the City will change to October 29, 2006 the competitive seniority dates as EMTs for James Morris and Anthony Summers, blacks who ranked 1st and 5th respectively on the EMT hiring list created by the City in or around February 2006.

2. Offer full-time EMT positions in its Fire Department, Emergency Medical Services Division, to Charging Parties Hurst, Sierazy, Bogner, Ferrand, and Bruks, with a pay rate, any back contributions and credits to his/her pension and other benefit plans, and non-competitive benefits commensurate with what he/she would be earning had he/she been continuously employed by the City since October 29, 2006, and competitive seniority status as of October 29, 2006 for all purposes, with the exception of time served as an EMT for the purpose of determining promotion to a higher position (to the extent time served as an EMT is a relevant consideration).

(a) With respect to each Charging Party who accepts the City's offer of employment as an EMT made pursuant to this Decree, the City shall make an EMT position available to that Charging Party no later than twelve (12) months from the effective date of this

Decree. A Charging Party who accepts the City's offer of employment as an EMT made pursuant to this Decree shall be offered an EMT position before any EMT who is on layoff with a competitive seniority status date more recent than October 29, 2006 is recalled.

(b) In the event that any of the Charging Parties have allowed their State of Indiana EMT certifications to expire, the City shall provide such a Charging Party a period of sixty (60) calendar days to become re-certified.

3. Offer Charging Party Bogner a monetary sum of \$5,680.

4. Offer Charging Party Ferrand a monetary sum of \$7,575.

5. Offer Charging Party Bruks a monetary sum of \$12,160.

6. To obtain the relief provided them in paragraphs IV. 2-4, above, Charging Parties Bogner, Ferrand and Bruks must each execute a copy of the Release set forth in Appendix C and execute a copy of the Election Form set forth in Appendix D within forty-five (45) calendar days upon receiving notice from the City, a copy of which is attached hereto as Appendix A.

7. To obtain the relief provided them in paragraph IV. 2, above, Charging Parties Hurst and Sierazy must execute a copy of the Release set forth in Appendix C within forty-five (45) calendar days upon receiving notice from the City, a copy of which is attached hereto as Appendix B.

8. The City shall send the appropriate notice, release and election form to each of the above named Charging Parties within twenty-one (21) calendar days from the date of entry of this Decree by the Court. In the event that Bogner, Ferrand and/or Bruks accept the monetary sum to be offered to him or her pursuant to this Decree, photocopies of check(s) evidencing the payment of such award to these Charging Parties shall be sent to the United States within twenty-one calendar (21) days of receipt of their respective release and election forms by the

City. The City shall also issue the appropriate Internal Revenue Service tax form(s) reflecting the amount paid to each Charging Party who accepts the City's offer of a monetary award.

V. RECORD RETENTION AND COMPLIANCE MONITORING

1. The City shall retain the following records during the term of this Decree or for the period of time required by the Indiana public records law or applicable federal retention requirements, whichever is longer:

(a) the provisions and effective date of all written procedures implemented pursuant to Section III above;

(b) all vacancy announcements, advertisements, employment applications, personnel files, interview questions, interview notes, eligibility lists, correspondence, memoranda, and any other records pertaining to hiring for EMT positions; and

(c) all documents that come into its possession relating to written or oral complaints of employment discrimination against the City on the basis of race with respect to the position of EMT, from any individual, including documents relating to the City's investigation and resolution of any such complaints.

2. The United States shall have the right to review compliance with this Decree at any time, and shall have the right to inspect and copy any documents it deems necessary to monitor the City's compliance with this Decree, upon thirty (30) calendar days written notice to the City, without further order of this Court.

3. The City shall report to the United States any complaint of race discrimination made by any individual with respect to the position of EMT, within thirty (30) calendar days of receiving such complaint. This includes any complaint made to the EEOC, the Indiana Civil Rights Commission, any City EEO officer, or any other state or local agency charged with

enforcement of anti-discrimination laws related to employment.

VI. DISPUTE RESOLUTION

The parties shall attempt to resolve informally any dispute that may arise under this Decree. If the parties are unable to resolve the dispute expeditiously, either party may move the Court for a resolution of the issue.

VII. GENERAL PROVISIONS

1. The parties shall bear their own costs in this action, including attorney's fees, incurred by them until the entry of this Decree by the Court. However, the parties shall retain the right to seek costs for any matter that, after the entry of the Decree, in the future, may arise under this Decree and require resolution by the Court.

2. A signatory to this document in a representative capacity for either party represents that he/she is authorized to bind that party to this Decree.

3. Failure of the United States to enforce any provision herein shall not be construed as a waiver of its right to do so with regard to other provisions of this Decree.

4. All documents required to be delivered under this Decree to the United States shall be sent overnight mail to the attention of:

Chief
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
601 D Street, N.W.
Patrick Henry Building, Fourth Floor
Room 4040
Washington, DC 20004

5. All documents required to be delivered under this Decree to the City shall be sent overnight mail to the attention of:

Charles Brooks, Esq.

City of Gary Law Department
401 Broadway, 4th Floor
Gary, IN 46402

VIII. JURISDICTION

The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be necessary to implement the relief provided in the Decree. At the end of three (3) years from the date of entry of this Decree, the Decree shall be dissolved and this action shall be dismissed without further order of the Court.

SO ORDERED.

ENTERED: August 4, 2009

s/ Philip P. Simon
Philip P. Simon, Judge
United States District Court

APPENDIX A
NOTICE LETTER FOR BOGNER, FERRAND AND BRUKS

[Date]
Charging Party
Address
City, State ZIP

Dear Sir or Madam:

A Consent Decree has been entered settling a complaint of employment discrimination filed by the United States against the City of Gary, Indiana (“City”) based on a charge of discrimination you and other Charging Parties filed with the U.S. Equal Employment Opportunity Commission (“EEOC”).

Under the terms of the Consent Decree entered on _____, in the case of *United States of America v. City of Gary, Indiana*, Civil Action No. 2:09-cv-06 (N.D. Ind.), you are being offered certain relief as settlement for your claim of employment discrimination against the City based on your EEOC charge.

First, you are being offered a position of full-time Emergency Medical Technician (“EMT”) in the City’s Fire Department, Emergency Medical Services Division with a remedial seniority date for all purposes of October 29, 2006. If you accept this offer, the City shall make such a position available to you no later than twelve (12) months from the date of entry of the Consent Decree. The remedial seniority date of October 29, 2006 shall apply to wage increases (such that you will be instated at the wage rate you would be entitled to had you been hired on your remedial seniority date), all non-competitive job benefits that are based on time served in the position, and your competitive seniority status for all purposes, with the exception of time served as an EMT for the purpose of determining promotion to a higher position (to the extent that time served as an EMT is a relevant consideration). By accepting this offer, you acknowledge that maintaining your Emergency Medical Technician position is contingent upon moving to the City of Gary, Indiana within six (6) months of your report date to the Fire Department, Emergency Medical Services Division. Second, you are being offered a monetary award of \$_____.

This relief is being offered to you on the following condition: if you accept the relief, the City will require you to release it from all employment discrimination claims you may presently have arising out of this case and EEOC Charge No. _____. If you decline the relief, the City will nevertheless have satisfied its obligation to the United States pursuant to the Consent Decree in the above-captioned case and the United States will not seek additional relief for you.

You do not have to accept the job opportunity relief in order to accept the monetary award. However, in order to obtain the offered relief, or any part of it, you must execute the enclosed Release before a notary public, fill out and sign the enclosed Election Form, and return both documents **within forty-five (45) days from your receipt of this letter**. The Release and

Election Form may be returned by mail or in person. If you return the Release and Election Form in person, please bring your social security card or other identification with you. You will at that time be asked to execute the Release before a notary public. If you return the Release and Election Form by mail, the Release must be signed in the presence of a notary public and thereafter notarized before you mail it. If you return the Release and Election Form by mail, you should, after making copies for your own records, send them to:

Charles Brooks, Esq.
City of Gary Law Department
401 Broadway, 4th Floor
Gary, IN 46402

If you accept the monetary relief, the City will send you the appropriate monetary award by check within fifteen (15) days of its receipt of your Release. The City will also send you appropriate tax forms with respect to the monetary award. You will have sole responsibility for paying any taxes, including federal income tax and any applicable state or local taxes, due on the monetary amount. You should consult with a tax advisor if you have any questions regarding the taxability of this monetary amount.

IF YOU FAIL TO SUBMIT THE RELEASE, AS DIRECTED IN THIS LETTER, WITHIN FORTY-FIVE (45) DAYS FROM YOUR RECEIPT OF THIS LETTER, YOU WILL FORFEIT YOUR RIGHTS TO ANY RELIEF UNDER THE CONSENT DECREE.

A copy of the Consent Decree is enclosed. If you have any questions concerning this settlement, your attorney may contact Brian McEntire, attorney for the United States Department of Justice, at (202) 305-1470.

Sincerely,

Charles Brooks
Attorney for City of Gary, Indiana

Enclosures

APPENDIX B
NOTICE LETTER FOR HURST AND SIERAZY

[Date]
Charging Party
Address
City, State ZIP

Dear Sir or Madam:

A Consent Decree has been entered settling a complaint of employment discrimination filed by the United States against the City of Gary, Indiana (“City”) based on a charge of discrimination you and other Charging Parties filed with the U.S. Equal Employment Opportunity Commission (“EEOC”).

Under the terms of the Consent Decree entered on _____, in the case of *United States of America v. City of Gary, Indiana*, Civil Action No. 2:09-cv-06 (N.D. Ind.), you are being offered certain relief as settlement for your claim of employment discrimination against the City based on your EEOC charge.

You are being offered a position of full-time Emergency Medical Technician (“EMT”) in the City’s Fire Department, Emergency Medical Services Division with a remedial seniority date for all purposes of October 29, 2006. If you accept this offer, the City shall make such a position available to you no later than twelve (12) months from the date of entry of the Consent Decree. The remedial seniority date of October 29, 2006 shall apply to wage increases (such that you will be instated at the wage rate you would be entitled to had you been hired on your remedial seniority date), all non-competitive job benefits that are based on time served in the position, and your competitive seniority status for all purposes, with the exception of time served as an EMT for the purpose of determining promotion to a higher position (to the extent that time served as an EMT is a relevant consideration). By accepting this offer, you acknowledge that maintaining your Emergency Medical Technician position is contingent upon moving to the City of Gary, Indiana within six (6) months of your report date to the Fire Department, Emergency Medical Services Division.

This relief is being offered to you on the following condition: if you accept the relief, the City will require you to release it from all employment discrimination claims you may presently have arising out of this case and EEOC Charge No. _____. If you decline the relief, the City will nevertheless have satisfied its obligation to the United States pursuant to the Consent Decree in the above-captioned case and the United States will not seek additional relief for you.

In order to obtain the offered relief, you must execute the enclosed Release before a notary public and return the document **within forty-five (45) days from your receipt of this letter**. The Release may be returned by mail or in person. If you return the Release in person, please bring your social security card or other identification with you. You will at that time be asked to execute the Release before a notary public. If you return the Release by mail, the Release must be signed in the presence of a notary public and thereafter notarized before you

mail it. If you return the Release by mail, you should, after making copies for your own records, send them to:

Charles Brooks, Esq.
City of Gary Law Department
401 Broadway, 4th Floor
Gary, IN 46402

IF YOU FAIL TO SUBMIT THE RELEASE, AS DIRECTED IN THIS LETTER, WITHIN FORTY-FIVE (45) DAYS FROM YOUR RECEIPT OF THIS LETTER , YOU WILL FORFEIT YOUR RIGHTS TO ANY RELIEF UNDER THE CONSENT DECREE.

A copy of the Consent Decree is enclosed. If you have any questions concerning this settlement, your attorney may contact Brian McEntire, attorney for the United States Department of Justice, at (202) 305-1470.

Sincerely,

Charles Brooks
Attorney for City of Gary, Indiana

Enclosures

**APPENDIX C
RELEASE FOR ALL CHARGING PARTIES**

State of Indiana

County of _____

For and in consideration of the acceptance of the relief, or any part of it, offered to me pursuant to the provisions of the Consent Decree entered in *United States v. City of Gary, Indiana*, Civil Action No. 2:09-cv-06 (N.D. Ind.) by the Honorable Philip P. Simon on _____, I release and discharge the City of Gary, Indiana and its current, former and future officials, employees and agents, from all legal and equitable claims arising out of the complaint filed in that case and EEOC Charge No. _____ occurring prior to the date of this Release.

I understand that the relief to be given to me does not constitute an admission by the City of Gary, Indiana of the validity of any claim raised by me, or on my behalf.

This Release constitutes the entire agreement between the City of Gary, Indiana and myself, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action was provided to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this __ day of _____.

Charging Party

Subscribed and sworn to before me this __ day of _____.

Notary Public
My Commission expires:

**APPENDIX D
ELECTION FORM
FOR BOGNER, FERRAND AND BRUKS**

Please complete by checking the appropriate response to each of the following:

A. Job and Remedial Seniority

_____ I hereby accept the offer of a full-time Emergency Medical Technician position with the City of Gary, Indiana in its Fire Department, Emergency Medical Services Division, with a remedial seniority date of October 29, 2006, contained in the Consent Decree entered in *United States v. City of Gary, Indiana*, Civil Action No. 2:09-cv-06 (N.D. Ind.).

_____ I decline the job award.

B. Monetary Amount

_____ I hereby accept the offer of \$_____ contained in the Consent Decree entered in *United States v. City of Gary, Indiana*, Civil Action No. 2:09-cv-06 (N.D. Ind.).