

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
Eastern Division

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|----------------------------------|---|----------------------------|
| PERCY GREEN III, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | Case No. 4:15-cv-01433-RWS |
| |) | |
| CITY OF ST. LOUIS, |) | |
| |) | |
| Defendant. |) | |

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between and among plaintiffs Percy Green III, Abram Pruitt, Jr., and The Firefighters Institute for Racial Equality (“F.I.R.E.”) as authorized agent for the remaining plaintiffs (jointly, “FIRE”) and defendant the City of St. Louis (“City”) to:

(a) Settle and resolve all claims and potential claims, counterclaims, and cross-claims that any of the parties have or might have relating to City’s 2013 promotional examinations for the ranks of Captain and Battalion Chief in the City’s Fire Department; and

(b) Put into place a set of agreed-upon future promotional examination practices intended and designed to achieve the parties’ four mutually-shared goals of:

(1) Ensuring that future promotional examinations for Captain and Battalion Chief in the City's Fire Department (hereinafter, "Exams") are valid and fair and do not unlawfully discriminate against any promotional candidate or candidates on the basis of race; and

(2) Ensuring transparency in the Exam process;

(3) Making reasonable efforts to ensure that future Exams are perceived by future promotional candidates, the City's firefighters as a whole, and by the broader community in the City as valid, fair, and non-discriminatory; and

(4) Avoiding litigation regarding future Exams.

Definitions:

"Director", as used in this Settlement Agreement, means the City's Director of Personnel or, should responsibility for the Exams be shifted in the future to some other office within the City or within a successor municipality, then "Director" means the holder of that office.

"Consultant", as used in this Settlement Agreement, means the testing consultant to be employed by the City to design and administer an Exam.

"Eligible Lists", as used in this Settlement Agreement, means the list of promotional candidates who have completed the examination for the position at issue and have received the rating required for eligibility, placed thereon in the order of such rating from highest to lowest.

1. **Current Eligible Lists.** The current Eligible Lists for Fire Captain and Fire Battalion Chief generated as a result of the disputed 2013 promotional examinations will continue to be used for promotions until such time that the Director certifies new Eligible Lists for Fire Captain and Fire Battalion Chief, respectively, based upon the results of Exams to be given under the terms and conditions agreed to herein. The City will not intentionally delay promotions from the current lists in anticipation of new lists being certified. Nor will the City intentionally delay the next Exam to extend the use of the current list.

2. **Schedule for next Exams.** The City will use its best efforts to hold the next Exams by December 2018. In any case, no new Exams will be held before July 1, 2018. The Director anticipates issuing by the end of November 2017 a Request for Proposals (“RFP”) to qualified testing Consultants to design and administer the Exams. The RFP will state that the Exams are expected to be conducted sometime between August and December 2018.

3. **Schedule for subsequent exams.** For the duration that this Settlement Agreement is in place, each subsequent Exam will be scheduled to be given approximately 36 months after certification of the prior Eligible List, provided, however, that the Director will retain the discretion to: (a) schedule an Exam within six months after a prior Exam if dissatisfied with the promotional examination process; or (b) delay an Exam beyond approximately 36

months after certification of the prior Eligible List for budgetary or similar administrative reasons. This provision is contingent upon the availability of City funds.

4. **RFPs.**

(a) The Director will promptly deliver to the lawyers for St. Louis Fire Fighters Association — International Association of Fire Fighters Local 73 (“Local 73”) and FIRE copies of the RFP issued by the City in connection with the disputed 2013 promotional examinations.

(b) A copy of this Settlement Agreement will accompany all future RFPs and all future RFPs will provide that the testing consultant selected must adhere to the terms and conditions of the Settlement Agreement pertaining to the administration of the exam and the reporting of the exam results.

(c) The Director will provide drafts of all proposed future RFPs covered by this Settlement Agreement to the presidents of Local 73 and F.I.R.E. no later than two months in advance of the dates scheduled for each RFP to be issued so that such organizations can make a detailed review of the draft RFP and provide comments and suggestions with respect to proposed changes to the RFP. The Director will schedule one or more meetings with Local 73 and F.I.R.E. to discuss their comments and suggestions. An attorney from the City Counselor’s office may attend such meetings as the Director determines would be beneficial. Following such meeting or meetings, the

Director will adopt or reject such comments and suggestions made by Local 73 and F.I.R.E. as the Director in his or her discretion may decide and issue the RFP.

(d) The ultimate selection of the Consultant remains the Director's decision, as provided by applicable law, ordinance, and the City Charter. While the Director agrees to consider the opinions of Local 73 and F.I.R.E., just as the Director would consider the opinions of other stakeholders, the Director is not obliged to accept or agree to those opinions in selecting the Consultant.

5. **Preparation to take an Exam.** The parties agree that a key step towards making the Exams fair and perceived as fair is to give all candidates for promotion to Fire Captain or Fire Battalion Chief the opportunity to thoroughly prepare to take an Exam. Towards that end, the City agrees to do the following:

(a) City will require the Consultant to provide one or more in-person sessions in the City to provide promotional candidates with an overview of the testing process and an opportunity to ask questions about the upcoming Exam.

(b) If a multiple choice test is to be a component of the Exam, the Fire Chief and his staff will prepare 50 to 75 multiple choice practice questions based on source materials relied upon by incumbents in the position for which candidates are applying and provide such questions, along

with an answer key and citations to the specific source material for each question, to the presidents of F.I.R.E. and Local 73 at least four (4) months prior to the administration of the actual multiple choice test. The president of F.I.R.E. will make good faith efforts to work collaboratively with the president of Local 73 to make whatever changes or add whatever questions they deem appropriate. F.I.R.E. will make good faith efforts to jointly, with Local 73, hold practice exams approximately three (3) months prior to the administration of the actual multiple-choice test and the Fire Chief and his staff and the Department of Personnel will provide any necessary support and assistance. It is understood that, because the actual Exam questions will be developed by the Consultant, there may be significant differences between the practice Exam questions and the actual Exam questions. Any such differences will not be a basis for challenging the actual Exam.

(c) The Exam preparation materials and activities described above are not intended to be exclusive, but are intended to be in addition to the Exam preparation materials and activities already provided by the City, Local 73, and F.I.R.E. The parties should continue to provide the Exam preparation materials and activities they would otherwise provide.

6. Pass-Fail Multiple-Choice Test.

(a) With respect to the first Exam given under this Settlement Agreement only, if a multiple-choice test is to be a component of the Exam, the results of the multiple-choice test will be used solely on a pass-fail basis.

The candidates' scores on such multiple-choice test will not be used in any way whatsoever in the ranking on the Eligible List of those candidates who passed the multiple-choice test.

(b) The cut-off score to pass the multiple-choice test, if one is used, will be set by the Director, with the advice of his Consultant, at a meaningful level high enough to ensure that each candidate who passes the multiple-choice test has the knowledge base needed to perform the job requirements of the position for which he or she is a candidate.

(c) Following the administration of the Exam and certification of the resulting Eligible List, the parties will reconvene to discuss the results of the Exam and whether the Eligible List satisfies the criteria discussed above. The discussion will focus, in part, on the use of the multiple-choice test (if used) on a pass-fail basis. If the parties agree that the use of the multiple-choice test on a pass-fail basis test was satisfactory, then the Director will cause the next Exam to also use a multiple-choice test on a pass-fail basis. The Director retains the discretion in any case to use multiple choice tests on a pass-fail basis as part of any other Exam covered by this agreement.

7. Administration of Exams.

(a) If a multiple-choice test is used, each candidate taking the test will receive his or her raw score on the test before leaving the testing site.

(b) If a multiple-choice test is used, the City will, within 30 days following the administration of such test, provide each candidate with an

explanatory letter identifying each question that the candidate answered wrong and providing for each such question the correct answer and citation to the source materials for each answer.

(c) If a multiple-choice test is used, the City will hold a review session open to all candidates at which the Consultant will discuss the multiple-choice test with interested candidates. The Consultant will bring to this review session sample tests and answer sheets, the correct answers, and source materials to facilitate the review and discussion. The review session will be held not less than 10 days and not more than 20 days after the last explanatory letter is mailed to the candidates as provided in 7(a). Candidates will not be permitted to make copies of any documents brought to the session by the Consultant.

(d) If oral board exercises are used and scored by assessment panels, each panel will have four members, two of whom will be Black. The remaining two members of each assessment panel will be non-Black. If any assessor's score awarded to a candidate on any assessed ability of an oral board exercise is more than two points higher or lower than the scores awarded by the other assessors on such assessed ability (assuming a nine-point or ten-point scale), the assessors will confer with each other, outside of the presence of any candidate, and one or more assessors will adjust their score(s) so that there is no longer a scoring difference of more than two points on any assessed ability of the oral board exercise.

(e) If oral board exercises are used and scored by assessment panels, candidates will be informed before their oral board exercises that they will have the right to immediately appeal any procedural issue with any oral board exercise, or that they may wait to make such an appeal until after the candidate is provided with his or her final test results. The Director or the Consultant, at the Director's discretion, will have personnel present at the test site during the administration of the oral board exercises to receive any immediate appeals of any procedural issues with the oral board exercises. Any such appeal will be immediately investigated by the Director of Personnel or his designee, working in conjunction with the Consultant as needed.

8. **Report to Director.** Once an Exam is completed, the Consultant will provide the Director a report sufficient to enable the Director to determine whether the Exam, or any component of the Exam, had any potential or actual disparate impact on any group protected under any law or municipal ordinance, including but not limited to race.

This report will include statistical analyses of the results of each Exam component, including an analysis by race and by such other protected groups as the Director may direct.

Once the Director has examined the report and has taken or directed to be taken any actions the Director deems necessary or prudent to achieve the dual goals, the Exam results may be released.

Once the Exam results are released, the Director will have the Consultant provide a complete copy of its report to the Director to each of the presidents of Local 73 and F.I.R.E.

9. **Exam results.** The Consultant will simultaneously send final Exam results to the City and to each promotional candidate. The results sent to each candidate will include the following Exam information:

(a) The candidate's final score on each portion of the Exam, *e.g.*, the candidate's final scores on the multiple choice and assessment portions of the Exam; a photocopy of the candidate's answer sheet (bubble sheet) for the multiple-choice test; the candidate's overall score; whether the candidate failed or passed the Exam; and the candidate's rank among all of the candidates who passed the Exam.

(b) If a multiple-choice test is used and the Consultant's post-test analysis causes the Consultant to eliminate any question from consideration in scoring the Exam, the results will identify such question and state that the question was eliminated from consideration as invalid.

(c) If oral board exercises are used, the results will state the candidate's final score; the score received for each ability on each exercise; the average score overall for each ability; the lowest and highest final score received by any candidate on the oral board overall; and the mean score for the oral board overall.

(d) The results sent to each candidate will also include pertinent information about the appeal process. The results will inform each candidate of his or her right to appeal any aspect of the Exam, including individual multiple-choice questions and any procedural problems with any component of the Exam, as well as test scores, the final Exam score, and rankings to the Director. The information provided will also explain that the appeal to the Director must be in writing and signed, and the deadline by which the appeal must be submitted, and will detail the various means by which an appeal may be submitted. The results will also explain the process for further appeal to the City's Civil Service Commission.

10. **Appeals.** All candidates who complete an Exam will have the right to appeal as provided by the City Charter and Civil Service Rules. The Director will take reasonable efforts to facilitate appeals, and will allow appeals, signed by the appellant, to be submitted in person, by mail, by email, and by any means of transmitting documents that may come into common use in the future.

Items that are mailed will be deemed submitted to the Director on the date that they are mailed. Proof of mailing may include certified mail, registered mail, certificate of mailing, and an express mail receipt issued by the United States Postal Service, or a bill of lading or similar document showing delivery by the candidate to a commercial carrier such as Federal Express for next business day delivery.

The Director's responses to appeals from an Exam, whether granting or denying an appeal, will include sufficient detail to cause a reasonable candidate filing an appeal to believe that his or her appeal was in fact read and considered and will specifically address the issues raised in each appeal.

Appeals to the City's Civil Service Commission will follow the procedures set by that Commission from time to time.

11. **Eligible list.** The Director will not certify candidates from an Eligible List until such time as the Director has adjudicated all appeals made to the Director. Candidates from an Eligible List may be certified by the Director even if appeals to the City's Civil Service Commission are pending. The Director will promptly certify candidates from an Eligible List upon completion of appeals and will not delay certifying candidates from an Eligible List to allow candidates on an existing list an opportunity to be promoted off of that existing list.

The Director will make a good-faith estimate of the total number of candidates the Director anticipates will be promoted from the Eligible List before the next promotional examination is given. This estimate will take into account historical promotional rates and the then-anticipated needs of the Fire Department.

The Director will provide each candidate placed on the Eligible List with a letter that will state, in addition to any other communications deemed appropriate by the Director, the following language: "Your ranking on the

eligible list for promotion is *X*. Upon consideration of the probable number of vacancies in the position of [Captain/Battalion Chief] to be filled before the next promotional examination is administered, the Department reasonably anticipates promoting *Y* candidates from this eligible list.”

The report referenced in paragraph 8, above, shall provide an analysis of the disparate impact of the promotional examination upon any protected class or demographic group, considering only those persons reasonably anticipated to be promoted from the Eligible List, that is, “*Y*” above, and not the entire population of the Eligible List. The report may provide such an analysis using other data, as well.

Should there be any future litigation over the alleged discriminatory impact of an Exam, the report referenced in paragraph 8 will be admissible in evidence in such litigation, but none of the parties to this agreement will be bound by or deemed to have stipulated to any of the methodologies used or conclusions reached in the report.

12. **Duration.** This Settlement Agreement will remain in force and will be binding upon the City and the other parties through the next four Exam cycles, that is, through the Exams planned for August thru December 2018 and the three Exam cycles following. If an Exam is given and then is withdrawn by the Director, either before or within six months after an Eligible List is certified, that Exam will not be counted as one of the four Exams for purposes of the duration of this Settlement Agreement.

13. **Refrain from Challenges.** FIRE will not challenge the use by the City of any procedure expressly agreed to herein during the duration of this Settlement Agreement. Nor will FIRE fund such a challenge brought by any other person or entity.


14. **Amendments.** The parties believe that testing techniques and best practices for developing valid, fair, and non-discriminatory Exams may evolve and improve over the duration of this Settlement Agreement. Therefore, the parties agree to meet and confer from time to time, as mutually agreed, to discuss the agreements contained herein, any success and problems with the Exams and the Eligible Lists resulting from the Exams, and any changes in testing techniques and best practices to consider whether any of the specific agreements contained herein should be modified or whether additional requirements and terms and conditions should be added. The parties will invite Local 73 to participate in any and all such meetings or discussions. No change to this Settlement Agreement will be made, however, unless it is made in writing and is signed by the then duly authorized representatives of the City and F.I.R.E.

15. **Dismissal of Lawsuit.** Upon execution of this Settlement Agreement by all parties hereto, the parties will cause the above-captioned lawsuit to be dismissed with prejudice, with each party paying its own costs and attorneys' fees.

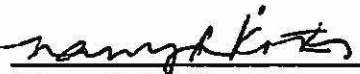
August
So agreed as of this 10th day of ~~July~~ 2017.

The City of St. Louis

The Firefighters Institute for
Racial Equality


By: 
Richard Frank
Director
Personnel Department

By: _____
Abram Pruitt, Jr.
President

By: 
Nancy R. Kistler
Deputy City Counselor

Abram Pruitt, Jr.
Individually

Percy Green III
Individually



Joe D. Jacobson
Jacobson Press & Fields P.C.
Attorney for plaintiffs

10th day of August 2017

So agreed as of this 10th day of July 2017 ~~XXXXXXXXXXXXXXXXXXXX~~

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