

EEOC Charge--Vulcan Society Inc. of NYFD v. Fire Department of New York

August 9, 2002

PARTIES

The Vulcan Society Inc. is a fraternal organization of the New York City Fire Department ("NYFD"), whose purpose is to promote the interests, social and cultural affairs of Black and African American firefighters.

The Vulcan Society Inc. represents Black and African American firefighters in the NYFD. They also represent the Black and African American people in the area who, but for the policies, practices and intentional acts of the New York City Fire Department, would apply for and succeed in being hired as firefighters in New York City.

The New York City Fire Department is the New York City Department charged with protecting the lives and property of the people of New York City through prevention, education, fire suppression, medical services and other related emergency and non-emergency activities.

The New York City Fire Department is part of the City of New York.

The New York City Fire Department employs approximately 12,000 firefighters, as well as many civilian employees.

FACTS

Of the 12,000 New York City Fire Department firefighters, only 2.87% (approximately 300 individuals) are Black or African-American. This is too great a disparity to be the result of chance.

The other races represented in the NYFD are represented in the following percentages:

White	92.11%
Hispanic	4.42%
Asian/Pacific Islander	0.33%
Other	0.27%

The hiring process from the last few lists of the New York City Fire Department is as follows:

- A written application
- A written test, which results in a score
- A physical test, which results in a score

(The written test score and the physical test score are combined with possible military, residency and legacy points, resulting in a score which determines where the candidate will be placed on the list. People are called in for the next steps in the order in which their names appear on the list.)

An interview and background check

A medical and psychological test

After an applicant passes all the stages, he or she is appointed to the NYFD and enrolled in the probationary school.

In the past, there were extremely few Black and African American people hired by the NYFD. In 1973, to remedy this discrimination, the Vulcan Society Inc. mounted a challenge based upon a violation of the Equal Protection Clause against the Civil Service Commission of the City of New York. This led to a judicial consent order covering appointments. The order dictated a hiring ratio of 3 majority candidates to 1 minority candidate as a method for providing appropriate relief to the plaintiffs during the years of 1973 through 1977.

Obviously, this remedy was not enough. The court decree was only in place for one list, and as a result, the percentages of Black and African Americans in the New York City Fire Department have been steadily decreasing, resulting in the whitest fire fighting force in a large urban area.

TESTING

In the last test cycle leading to the 2000 list:

- The recruitment efforts of the New York City Fire Department were ineffective leading to Blacks and African Americans accounting for only 10% of test-takers, though approximately 27% of the population and approximately 25% of qualified people in the relevant area.
- The recruitment efforts aimed at Blacks and African Americans were not designed to maximize impact among them.
- Of the written test-takers, Blacks and African Americans comprised only approximately 10% of test takers and 7% of test passers, compared to whites who were 75% of test takers and 78% of test passers. On information and belief, the percentage of eligible Black and African American people in the relevant labor pool exceed the percentages of both test takers and test passers for those groups. These results are too large a discrepancy to be the result of chance.
- There were other requirements for becoming a New York City firefighter: these included holding a first responder certificate, obtaining 30 college credits and holding a drivers license by the

date of appointment. These requirements are all likely to have had an adverse impact on the urban poor population of Black and African Americans applicants.

- There were substantial application fees, background investigation fees and medical fees associated with the hiring process. These fees are all likely to have had an adverse impact on the urban poor population of Black and African Americans applicants.

All these acts and practices led to a list that had only 5.8% Black and African American applicants, many of whom were and are unlikely to be reached, interviewed and hired, because of an invalid test and subjective barriers that are discriminatorily applied, resulting in a denial of employment opportunities on the basis of race and/or color in violation of Title VII of the Civil Rights Act of 1964, as amended.

RECRUITMENT

Recruitment efforts begin the Fire Department of New York hiring process. NYFD recruitment policies and practices for recruiting Black and African American applicants have been historically abysmal, with abysmal results, in Black and African American communities. These ineffective recruitment policies and practices have also had a discriminatory impact, reducing the number of Black and African American firefighters in the Department.

There have been decades of neglect of the Black and African American community as recruitment grounds by the NYFD. These policies and practices have been coupled with the decades of entrenched informal, but officially endorsed and encouraged, recruitment among other communities, where active firefighters serve as role models and recruiters for their families, friends, neighbors, and their communities at large. These circumstances have resulted in barriers to hiring qualified Black and African American firefighters, as compared with white applicants. The Fire Department of New York's recruitment policies and practices have not focused on or resulted in the same message being delivered effectively to eligible Black and African American applicants, in their schools, churches, homes, community centers, streets, public spaces and festivals, as those delivered to white potential applicants.

SUBJECTIVE FACTORS

The interview/background check perpetuated a policy and practice of indulging white people with blemishes or problems in their records and being overly strict with Black and African Americans.

It has been a policy and practice to unjustly rely on arrest records without convictions as a barrier for appointment of Black and African Americans to the department, to the detriment of Black and African American applicants as compared with white applicants.

There are other factors where the Fire Department of New York exercises discretion to qualify applicants that amount to subjectively applied barriers to Black and African Americans employment with the NYFD, that are not equally applied to white applicants

IMPACTS

The New York City Fire Department's testing, recruitment and entry requirements have a greater exclusionary effect on potential Black and African American applicants than on white potential applicants.

The Black and African American people in the labor pool who, but for the policies, practices and intentional acts of the New York City Fire Department, would apply for and succeed in being hired as firefighters in New York City have suffered harm in that they have been discriminatorily excluded from recruitment and selection as firefighters.

The Black and African American people in the area who, but for the policies, practices and intentional acts of the New York City Fire Department, would apply for and succeed in being hired as firefighters in New York City have suffered economic harm in that they have been denied the opportunity to earn a salary that would enable them to stimulate the Black and African American economy and build and stabilize their communities.

The Vulcan Society Inc. members and other Black and African American firefighters have suffered the severe adverse consequences of the weakening and undermining of their society as a result of the artificially depressed numbers of Black and African American firefighters in the NYFD. They have been deprived of their rightful prestige and power as an organization that represents their interests, because of the artificially depressed numbers of Black and African American firefighters in the NYFD.

As a result of the artificially depressed numbers of Black and African American firefighters in the NYFD, the Vulcan Society Inc. members and other Black and African American firefighters have suffered the adverse consequences of working in a racially discriminatory atmosphere.

The Vulcan Society Inc. has repeatedly and continuously pointed out dire discrepancies between Black and African American hires and white hires. They

have put the City on notice that the New York City Fire Department's recruitment, testing and screening processes are discriminatory.

The City knows of its policies, patterns and practices that result in discrimination, and are the result of discriminatory intent, yet it continues those discriminatory policies and practices.

The New York City Fire Department currently has a recruitment period, from June 28, 2002 to September 30, 2002. Rather than employing effective methods of recruitment, the New York City Fire Department is following its same policies, patterns and practices that have led to discrimination in the past. This perpetuation of past practices is not likely to increase the number of Black and African Americans in the New York City Fire Department proportionally as compared with white firefighters, or as compared with potential and actual applicants.

The New York City Fire Department designs and builds its own test, based upon questions formulated by active firefighters. On information and belief, it has not been independently validated on any theory of validation, and it likely would not be found to have criterion-related validity, content validity or construct validity. In this current testing cycle, the New York City Fire Department intends to use the same testing methods that have led in the past to the wide discrepancy in passing rates between whites and Black and African Americans, and are likely to do so again.

The New York City Fire Department has taken no steps to monitor or rein in the discretion that result in discrimination during the screening process to the detriment of Black and African Americans.

The New York City Fire Department's acts will lead to another list that will be effective from its date of promulgation to the 4th anniversary thereof, or to the exhaustion of the list, whichever comes first. This new list will contain only a scant number of Black and African American people, as compared with white people and in comparison with the numbers of Black and African American potential and actual applicants.

CONCLUSION

The New York City Fire Department is engaging in intentional discriminatory acts, policies and practices against Black and African Americans on the basis of race and/or color in its recruitment and hiring processes, including examinations, scoring, ranking, selection of classes off of the list, selection for participation in Firefighter school, and selection for appointment to the Department, in violation of Title VII of the Civil Rights Act of 1964, as amended.

The New York City Fire Department employs policies and practices that are discriminatory in their impact upon Black and African American potential and actual applicants on the basis of race and/or color, as compared with white potential and actual applicants, in violation of Title VII of the Civil Rights Act of 1964, as amended.

Paul Washington
President, Vulcan Society
Inc.

Sworn to before me on this
9th day of August 2002

Notary Public