



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION

Chris Christie  
*Governor*  
Kim Guadagno  
*Lt. Governor*

Robert M. Czech  
*Chair/Chief Executive Officer*

September 21, 2011

The Honorable Jerramiah Healy  
Mayor, City of Jersey City  
280 Grove Street  
Jersey City, New Jersey 07302

Dear Mayor Healy:

The purpose of this letter is to provide you with additional information concerning the proposed settlement between the State of New Jersey and the Civil Service Commission, and the United States Department of Justice and the anticipated impact of this agreement on the police Sergeant promotional selection process. The terms of this settlement will be contained in the form of a Consent Decree. As I stated in my earlier correspondence dated August 1, 2011, part of this Consent Decree will require that priority will be given to certain minority candidates in thirteen specific jurisdictions until a fixed number of such candidates are promoted to the rank of Police Sergeant. As one of the thirteen affected jurisdictions, the specific number and racial/ethnic make-up of these priority promotions was included on your town's Police Sergeant Promotional Announcement which was issued September 1, 2011.

Although the Consent Decree is still subject to final approval by the Court, it has recently been determined that certain jurisdictions should be prohibited from making permanent appointments from their current eligible list. Again, your town is one these affected jurisdictions. For this reason, we are unable to certify or approve appointments from certifications issued from your current eligible list for Police Sergeant. All permanent appointments should be made from eligible lists resulting from the 2011 Police testing process. We expect these results to be issued in the Spring/Summer 2012. In the interim, should you find that you have an urgent need to fill Police Sergeant vacancies, you may appoint individuals on a provisional basis pending the outcome of the 2011 testing process.

When the final form of the Consent Decree is agreed upon by the State and the Department of Justice and preliminarily approved by the Court, a detailed notice of the complete terms of the settlement and the rights of affected persons will be issued.

c: William Matsikoudis, Attorney  
Kevin R. Jespersen, Assistant Attorney General  
Daniel Hill, Director, Division of Selection Services

## SERGEANT CONSENT DECREE SUMMARY AND CIVIL SERVICE RESPONSE

### **1) What is the Consent Decree?**

The Consent Decree is the proposed settlement of a lawsuit by the United States against New Jersey and the Civil Service Commission. In the lawsuit, the United States alleged that, since 2000, the use of the written exam for Police Sergeant and the certification of candidates based on the written test scores and seniority credits resulted in a disparate impact upon African-American and Hispanic candidates. The United States further alleged that the use of the written exam has not been shown to be job-related. The State denied all allegations.

The parties agreed to settle this case without protracted litigation. The Consent Decree is the proposed settlement agreement between the United States and New Jersey and the Civil Service Commission.

### **2) Is the Consent Decree final?**

No. The Consent Decree is a proposed settlement at this point. It must be approved by the Federal Court. All comments below about the terms of the proposed Consent Decree are contingent on it being approved in its present form.

### **3) What is the procedure for approval of the Consent Decree?**

The Federal Court will determine whether the terms of the Consent Decree are “fair, reasonable, equitable and otherwise consistent with federal law.” The Consent Decree specifies the procedure for notifying “interested parties” of the terms of the Consent Decree. “Interested parties” include those African-American and Hispanic individuals who may be entitled to a remedy under the Consent Decree and who are named in Attachments B and C of the Consent Decree, the unions representing the Sergeants in each local jurisdiction affected by the Consent Decree, each Sergeant in the affected jurisdictions, and each Civil Service appointing authority. All persons affected by the Consent Decree will have an opportunity to submit objections.

The Federal Court will conduct a hearing before the Consent Decree is approved. The Court will give no less than 90 days notice of the time and date of the hearing, called an “Initial Fairness Hearing” (IFH). Copies of the hearing

notice will be sent to the “Interested Parties” described above no less than 75 days before the hearing. At the same time, the State will post the hearing notice and the form for submitting objections on the Civil Service Commission’s website. It will also be published in newspapers. Any objections must be submitted at least 45 days before the IFH. At the time that this summary was prepared, the Court had not yet scheduled the IFH.

#### **4) Who is eligible for a remedy under the Consent Decree?**

The lists of African-American and Hispanic officers who may be entitled to either to a back pay and/or priority promotion are listed in the Consent Decree. There are over 1,700 names listed. These are generally the individuals who took the test between 2000 and 2009 and either failed it and an appointment was made from the resulting list, or passed it but were ranked below the lowest ranking candidate who was appointed. There are 43 local jurisdictions listed which claimants will be eligible for either back pay and/or priority promotion.

#### **5) What types of remedies are available under the Consent Decree?**

There are two possible forms of relief available to African-American and Hispanic candidates who are eligible. First, there are 302 individuals eligible for back pay. Back pay will be paid from two escrow accounts established by the State.

Second, there are over 1,300 who are eligible for back pay and/or priority promotions. However, not everyone eligible for a priority promotion is entitled to such a promotion. Certain individuals who may be entitled to priority promotion must still take and pass whatever “selection device” is developed under the terms of the Consent Decree. There are also 68 slots (48 for African-American candidates; 20 for Hispanic candidates) set aside for the priority promotions in a certain 13 local jurisdictions (the numbers in parentheses are the slots available for African-American/Hispanic candidates): Atlantic City (5/2); Bridgeton (2/1); Camden (3/1); East Orange (2/1); Elizabeth (3/3); Hoboken (0/3); Jersey City (6/3); New Brunswick (1/2); Newark (14/1); Passaic (2/1); Paterson (5/1); Teaneck (2/1); and Trenton (3/0). Candidates who get priority promotions will also get retroactive seniority but only for promotional purposes.

Candidates on the priority promotions lists in these jurisdictions will be certified before all other eligible candidates on any other exiting list. The only exception is if there is a special reemployment list for any of the 13 jurisdictions. If there is,

the State must certify claimants eligible for priority promotions on at least a one to one ratio with candidates on existing special reemployment lists for the next Police Sergeant positions. Once the local jurisdiction has made all the priority promotions allocated to it, or the group of eligible claimants for that jurisdiction has been exhausted, the State and local jurisdiction may discontinue use of the priority promotions list.

## **6) What happens if the Consent Decree is approved?**

Within 30 days after the Federal Court's approval of the Consent Decree, the State will deposit one million dollars (\$1,000,000.00) into two interest bearing escrow accounts – one for African-American claimants, the other for Hispanic claimants. Back pay will be paid directly to the eligible claimants directly from these accounts.

Also within 30 days, the State will send notice of the approval to all individual claimants. Claimants must return the completed form no later than 360 days from the approval of the Consent Decree. Within 120 days from the approval, the United States will prepare a list of those preliminarily determined to be eligible (or not eligible) for back pay and/or priority promotions. The State will have an opportunity to provide written objections to the eligibility of any of the claimants to compete for priority promotions on the basis that the claimant is not qualified for the position of Sergeant using the appointment criteria in use by the State at that time. Any dispute that cannot be resolved by the United States and New Jersey will be resolved by the Federal Court in a separate hearing.

No later than 180 days after approval, the United States will file with the Federal Court a list of those claimants it has determined are eligible for a back pay and/or priority promotion remedy. The Federal Court will then schedule a hearing on individual relief. At least 80 days before that hearing, the United States will send a letter to all claimants with notice of the hearing, information about their eligibility for relief under the Consent Decree, and the procedure for filing any objections. The individual claimants must file any objections no later than 70 days before the hearing date.

At the hearing, the Federal Court will determine whether claimants are entitled to the relief recommended by the United States and will also determine whether any objections are well-founded. No later than 30 days after the Federal Court makes its determination, the United States will mail a notice of the awards to all claimants determined by the Court to be entitled to relief. Claimants will then have to return an acceptance form no later than 60 days after the Court approves

the list of relief awards. The United States will then notify the State of the final relief awards and within 30 days after that notification, the State will send checks to those claimants deemed eligible for the back pay awards.

With respect to the priority promotions, the State will certify claimants eligible for priority promotions over all other eligible candidates until no more than 68 (40 to African-American candidates; 20 to Hispanic candidates) offers have been made to eligible candidates who pass the new selection procedure developed under the Consent Decree. This affects only the 13 municipalities listed above in #5. If there is an existing list in any of those municipalities, it will be replaced with a list generated by the new selection process. In order to be eligible for a priority promotion the claimant must pass the new test and be certified to a local jurisdiction by the State. Once a local jurisdiction has made all of the priority promotions allocated to it or the group of claimants has been exhausted, the State and the local jurisdiction may discontinue use of the priority promotion list.

#### **7) What happens to existing Sergeant's lists or scheduled tests for Sergeants?**

If it is approved by the Federal Court, the Consent Decree prohibits any further testing for police sergeant until a new "selection device" is developed. If approved, the Consent Decree bars the following 10 jurisdictions from using any existing promotional lists: Atlantic City, Camden, Irvington, Jersey City, Passaic, Paterson, Pleasantville, Salem City, Teaneck, and Trenton. In all other local jurisdictions, the existing list can be used where it is not likely to result in a disparate impact upon African-American or Hispanic candidates. If used, an existing list is only an interim measure until a new testing device is developed. Once a new "selection device" is developed, it will replace any list in existence at that time. The State cannot extend any existing Sergeant's lists without the approval of the United States.

In September 2010, the Commission issued over 40 promotional announcements for Police Sergeant with a closing date of November 30, 2010. The testing process was delayed as result of the litigation and discussions over the terms of the Consent Decree. On August 22, 2011, the Commission issued a decision extending the application filing date to September 21, 2011, and the closing date to November 30, 2011. It is our understanding that any testing administered for this exam will be based on the new process developed under the Consent Decree. As a result of this decision, any officers in the jurisdictions involved in these promotional announcements who are eligible for the Sergeant's exam now based on the new dates, may apply to take the test.

**8) What is the new exam that the State will develop?**

The State is charged with the responsibility, in consultation with the United States, to develop a new selection procedure for the Police Sergeant exam. There is very detailed process in the Consent Decree which provides for two administrations of the new exam with oversight and approval by the United States. The State is required to provide specified information to the United States about the two exams. Once the two exams have been administered, the State does not have to obtain the approval of the United States before offering another Sergeant's exam. It may administer the exam without waiting for agreement from the United States. With the third and fourth administration, the State must provide the United States with the gender, race, national origin, exam scores, seniority scores and rank of each candidate and the eligibility list resulting from the exam administration(s).

**9) Does the Consent Decree affect every Civil Service jurisdiction?**

Yes although some to a lesser degree than others. The Consent Decree, if approved by the Federal Court, does not permit any further testing in any jurisdiction for Police Sergeant until a new "selection device" is developed. However, only the 10 municipalities listed above in #7 are barred from using existing Sergeants' lists. And, only the 43 municipalities listed in the Consent Decree will be affected by the remedial portions of the Consent Decree (either back pay and/or priority promotions).

**10) How long will the Consent Decree last?**

The Consent Decree will expire on the latest of the following dates: a) three (3) years from approval of the Consent Decree; b) upon completion of awarding the remedies to those determined to be eligible; or, c) once the administration of the second exam is completed.