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DJ 170-79-298

Employment Litigation Section - PHB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
www.usdoj.gov/crt/emp/emphome.html

FEB 7 2006

By Federal Express

Mr. Leslie L. Lilley
City Attorney
Municipal Center, Bldg. 1
Virginia Beach, VA 23456

Re: Virginia Beach Police Department

Dear Mr. Lilley:

This letter is to inform you of the results of our investigation of the employment practices of the City of Virginia Beach, Virginia ("Virginia Beach"), relating to employment opportunities in its police department. Based upon the results of our investigation, as discussed below, the Assistant Attorney General for Civil Rights has authorized the filing of a complaint alleging that Virginia Beach is engaged in a pattern or practice of discrimination against African Americans and Hispanics with respect to the hiring of entry-level police officers, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

Our determination is based, in part, on the following considerations:

1. Since at least 1998, the selection process used by Virginia Beach in the screening and selection of applicants for hire into the position of entry-level police officer in its Police Department has included the administration of a written examination, the National Police Officer Selection Test ("POST");
2. The versions of the POST used by Virginia Beach consist of three or four separately timed and scored components, including a mathematics test;
3. Virginia Beach has deemed an applicant to have passed the POST only if the applicant obtained a score of at least 70% on each of the POST's component tests;

4. Thus, Virginia Beach has considered all applicants who score less than 70% on the mathematics component of the POST to have failed the POST and has not allowed such applicants to continue in the selection process;
5. Between 2002 and mid-2005, approximately 59% of the African-American applicants to whom Virginia Beach administered the POST passed the mathematics test, while approximately 85% of the white applicants passed the mathematics test;
6. Between 2002 and mid-2005, the pass rate of Hispanic applicants on the POST mathematics test was approximately 66%;
7. As used by Virginia Beach, the POST mathematics test has a significant adverse impact against both African-American applicants and Hispanic applicants; and
8. The evidence presented by Virginia Beach does not demonstrate that its use of the POST mathematics test is job-related for the entry-level police officer position and consistent with business necessity.

The evidence establishes that Virginia Beach is engaged in a pattern or practice of discrimination against African Americans and Hispanics on the bases of their race and national origin with respect to entry-level police officer positions in its Police Department, in violation of Title VII of the Civil Rights Act of 1964, as amended. Title VII provides that when a local government employer has discriminated in violation of the Act, the Attorney General may apply to the appropriate court for an order that will ensure compliance with Title VII and remedy the effects of past discrimination. Accordingly, suit has been authorized against Virginia Beach.

In order to avoid the burdens of contested litigation, we invite Virginia Beach to enter into a consent decree incorporating the kind of corrective measures we believe should be taken in order to comply with federal law. The measures which we believe should be taken include:

1. Virginia Beach should take appropriate measures to end the discrimination against African Americans and Hispanics with respect to employment opportunities in entry-level police officer positions and to overcome the effects of that discrimination; and
2. Virginia Beach should provide sufficient remedial relief to make whole applicants who have suffered a loss as a result of the discrimination against them because of their race and national origin.

Sharon Seeley, the attorney with lead responsibility for this matter, will be calling on you next week to explore with you whether Virginia Beach is willing to enter into a consent decree embodying the elements of relief described above. If you are interested in negotiating a consent decree, we will delay filing out complaint until March 7, 2006.

If you have any questions about this matter, please contact Ms. Seeley at (202) 514-4761.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Palmer", written in a cursive style.

David J. Palmer

Chief

Employment Litigation Section