

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

NATHAN CANNON	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 3:16-cv-00156-TLS-CAN
	)	
THE CITY OF SOUTH BEND, INDIANA	)	
	)	
Defendant.	)	

**PLAINTIFF'S AMENDED COMPLAINT**

On April 28, 2016, Defendants filed a Motion to Dismiss pursuant to 12(b)(6) of the Federal Rules of Civil Procedure. Federal Rule of Civil Procedure 15(a)(1)(B) provides that a party may amend its pleading once as a Matter of Course within . . . 21 days after service of a motion under Rule 12(b), (e), or (f). . . . Plaintiff, Nathan Cannon, pursuant to Rule 15, now files his Amended Complaint for Damages against The City of South Bend.

**NATURE OF THE ACTION**

1. This action is brought by Plaintiff, SERGEANT NATHAN CANNON (hereafter SGT. CANNON), employed by THE SOUTH BEND POLICE DEPARTMENT, which is organized and operated by THE CITY OF SOUTH BEND for race discrimination (Black/African American) to wit: denial of promotion, maintaining a policy and practice of racial discrimination, and retaliation.
2. This action is brought under the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq. as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII).

Plaintiff seeks back pay, front pay and compensatory damages, as well as a declaratory judgment and injunction to restrain defendant employer from committing prohibited personnel

practices, policies, customs and usages, from discriminating and retaliating against Plaintiff and other employees of THE CITY and THE DEPARTMENT based upon race and/or opposition to unlawful discrimination and retaliation.

Plaintiff seeks injunctive relief requiring defendant employer to take affirmative and effective steps to remove and otherwise discipline managers who have failed to comply with Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq. as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII). Plaintiff seeks further injunctive relief requiring the defendant employer to take specific actions designed, implemented and confirmed by qualified non-government consultants to ensure that all supervisory employees are adequately trained to identify, investigate and stop continuing violations of the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq. as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII). Such specific actions include, but are not limited to:

- a. allocation of significant funding and trained staff to implement all changes within two years;
- b. discipline managers who have violated THE DEPARTMENT's policies and failed to meet their legal responsibility to promptly investigate complaints and to take effective action to stop and deter prohibited personnel practices against employees;
- c. establishing and strictly measuring EEOC compliance as a critical element in every manager's performance standards; and
- d. mandatory and effective training for all employees and managers on discrimination and retaliation issues, investigations and appropriate corrective actions.

**II.**

**JURISDICTION AND VENUE**

3. Jurisdiction stems from the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq., 28 U.S.C. §§ 1331, 1337, 1343, 1345 and 2401(a), which grant federal district courts jurisdiction over actions alleging unlawful and discriminatory employment practices by governmental agencies and provides for judicial review of cases involving race and/or retaliation. The unlawful practices alleged in this Amended Complaint occurred in the City of South Bend, which is situated in the Northern District of Indiana.

**III.**

**PLAINTIFF**

4. Plaintiff, SGT. NATHAN CANNON, is a citizen of the United States who has been employed as an officer in THE DEPARTMENT, in South Bend, Indiana for over 30 years, and employed as Detective in the South Bend Police Department's Detective Bureau for over 15 years. Plaintiff has held the rank of Sergeant for over 20 years. His performance was satisfactory or better, at all times material to this action. SGT. CANNON has performed gang violence intervention as a collateral duty for THE DEPARTMENT for the entire time of his service.

**IV.**

**DEFENDANT**

5. THE CITY OF SOUTH BEND has organized and operates THE DEPARTMENT, which has employed Plaintiff for over 30 years. SOUTH BEND is a city organized, incorporated and located within the Northern District of Indiana.

**V.**

**EXHAUSTION OF REMEDIES**

6. Plaintiff, SGT. NATHAN CANNON, filed a timely formal complaint with the South Bend Human Rights Commission, alleging racial discrimination on June 30, 2014, Case No. 24M-2014-00210, and filed an amended complaint on July 21, 2014. The Equal Employment Opportunity Commission (EEOC) investigated the complaint for greater than 180 days. The EEOC issued a “Right to Sue Letter” to plaintiff on November 25, 2015 which provided 90 days to file a civil action in district court. Plaintiff’s EEOC Complaint has been pending for approximately two years.

**VI.**

**STATEMENT OF FACTS**

7. Plaintiff, SGT. CANNON, is a member of a protected group based on his race (Black/African-American).

8. Plaintiff has fully exhausted his administrative remedies.

9. Plaintiff has been employed by THE CITY as an officer in THE DEPARTMENT, in South Bend, Indiana for over 30 years, and employed as a Detective in the South Bend Police Department’s Detective Bureau for over 15 years. Plaintiff has held the rank of Sergeant for over 20 years.

10. At all times material to this action, Plaintiff has performed his employment duties satisfactory or better.

11. THE CITY and THE DEPARTMENT appoint one employee at a time to serve as the Chief of Police. This employee, while acting as Chief of Police, possesses the authority to take,

direct others to take, recommend, or approve personnel action within THE DEPARTMENT. As such, the acting Chief of Police has full responsibility for administration of all programs within the agency, including the employment policies and practices of the South Bend Police Department and is in a position to create and implement policies to eliminate and prevent any form of discrimination and retaliation against minorities employed by THE DEPARTMENT and to provide complete relief for Plaintiff.

12. Employment and promotion decisions, policies and practices undertaken, implemented or adopted by Chiefs of Police, such as Scott Ruskowski, Charles Hurley and Ronald Teachmen, are tantamount to the decisions, policies and practices of THE CITY.

#### **DENIAL OF PROMOTION AND EMPLOYMENT OPPORTUNITIES**

13. THE CITY through its agents, discriminated against Plaintiff in terms and conditions of employment and promotions.

14. THE CITY has promoted similarly situated, and lesser qualified employees, not in Plaintiff's protected group from the rank of Sergeant to the rank of Lieutenant instead of Plaintiff or other minority officers holding the rank of Sergeant within the department.

15. THE CITY has a long history of denying promotions for higher graded positions to qualified African-American officers, and instead promotes non-minorities to higher positions. For instance: between July 2012 to July 2014, THE CITY promoted the following white officers to the ranks of Sergeant, Lieutenant or Captain: Joseph Galea - *Lieutenant*; Timothy Lancaster - *Lieutenant*; Patrick Hechliniski - *Lieutenant*; James Maxey - *Sergeant*; Eugene Eyster - *Lieutenant*; Daniel Skibins - *Lieutenant*; Anthony Eraci - *Sergeant*; Amy Bennett - *Lieutenant*; Anthony Bontrager - *Lieutenant*; Scott Hanley - *Captain*; Dominic Zultanski - *Lieutenant*.

During this same time frame, THE CITY promoted no minorities to rank of Sergeant, Lieutenant or Captain during this period, even though qualified minority employees applied for these promotions. Promotions of minorities before and since this period have been scant.

16. Prior to hiring Ronald Teachman as the Chief of Police, THE CITY manifested its endorsement of disparate treatment by demoting former Chief of Police Daryl Boykins (African-American) due to Boykin's efforts to reduce and eliminate racism among higher ranking officials within THE DEPARTMENT. Specifically, Boykins attempted to discipline officers for making racist comments during work hours, in the work place. Instead of allowing Boykins to take corrective action to reduce racism within the Department, THE CITY demoted Boykins to the rank of Captain and financially rewarded those whom Boykins sought to discipline. THE CITY undertook measures to conceal the racism on the department uncovered by Boykins and took no corrective action. THE CITY has since denied promotions and lateral transfers to African-American officers and violated its own policies regarding transfers and promotions, intentionally resulting in disparate treatment of at least two African-American officers: Lt. Marcus Wright and Lt. Dorian Finely.

17. THE CITY has a long history of disparate treatment towards minority officers in terms of denying promotions, denying work assignments that will provide experience necessary for advancement, and denying approval for minority employees seeking approval for additional education and training that will qualify them for advancement. THE CITY provides disparate and preferential treatment to non-minority employees in each of these areas.

18. The disparate treatment described in Plaintiff's Amended Complaint along with THE CITY's disparate treatment of promoting whites over minorities discourages non-white employees from seeking promotion.

19. THE CITY placed, and continues to place, white employees in unfilled positions on a temporary basis without opening the positions to a competitive application process. The white employees gain the necessary knowledge and skills needed to enter the position and are then allowed to hold the position due to the unfair advantage bestowed upon them over Plaintiff and other African-American employees forced to apply for open positions that defendants have already unofficially filled with white employees. Specifically, THE CITY engaged in this practice and promoted Officer Dominic Zultanski to the rank of Lieutenant in this manner.

20. THE CITY violated its own policies and procedures for posting and selection of candidates for job vacancies for the purpose of preventing Plaintiff and other African-American employees the opportunity to apply for promotion and advancement within THE DEPARTMENT. Specifically, THE CITY announced an opening for a single position for Lieutenant on the day shift of THE DEPARTMENT's Detective Bureau. THE CITY denied a transfer request from Lt. Marcus Wright (African-American) to that position despite the fact that Lt. Wright already held the rank of Lieutenant in THE DEPARTMENT's Detective Bureau, afternoon shift, for six years. THE CITY then promoted three non-minority officers from the rank of Sergeant to fill the single vacancy that it had posted. This violated the long standing policies of THE CITY and THE DEPARTMENT of: 1) posting openings for positions of advancement to allow candidates to competitively apply; and 2) granting transfer for persons already holding a particular rank before considering other officers of lower rank for promotion.

These violations of THE CITY's own policies, customs and procedures resulted in disparate treatment to Plaintiff SGT. CANNON and Lt. Marcus Wright.

21. The City only requires minority officers seeking transfer to compete with lower ranking officers who seek promotion for an opening (Lt. Wright and Sgt. Dorian Finley). The City treats non-minorities differently and in all instances grants, and has granted, shift transfer requests to non-minority employees without making them apply and compete with lower ranking officers.

22. On May 21, 2014, the City promoted three non-minority officers from the rank of Sergeant to Lieutenant, all within the Detective Bureau. Plaintiff possessed greater seniority and superior qualifications to each of the non-minority employees promoted to Lieutenant. THE CITY and THE DEPARTMENT only advertised one of the positions, preventing Plaintiff and other minorities from interviewing and competing for the two promotions filled by non-minority officers.

23. Plaintiff and several other minority officers made the City aware of this and other discrimination and disparate treatment of minorities that was occurring within the department by submitting complaints and letters. Despite being placed on notice, the City has done nothing to correct past wrongs or to fix the ongoing racial discrimination.

24. By promoting three non-minorities after only opening the application process for a single position, THE CITY engaged in disparate treatment which prevented and denied Plaintiff and other minorities the opportunity to be considered for promotion.

25. On February 7, 2014, Defendants issued a notice to all Sergeants and Lieutenants in the South Bend Police Department seeking applicants for promotion or lateral transfer to the position of day-shift Lieutenant within the Detective Bureau. This opening was created by the



retirement of Lt. Sherry Taylor (an African-American).

26. Plaintiff did not apply for the opening created by the retirement of Lt. Sherry Taylor because he knew that Lieutenant Marcus Wright, an African-American and a Lieutenant within the Detective Bureau, had applied for transfer from the afternoon-shift to fill the new opening for day-shift Lieutenant. Additionally, THE DEPARTMENT only notified applicants of a single opening as day-shift Lieutenant. If THE CITY and THE DEPARTMENT had announced openings for two additional positions as Lieutenant, Plaintiff SGT. CANNON would have applied for each of the positions.

27. It has been the long-standing policy, custom, practice and formal procedure of THE DEPARTMENT to grant lateral transfers when requested before promoting from below. The THE DEPARTMENT's policies and procedures required that it grant Lt. Marcus Wright's request for transfer and then invite Sergeants seeking promotion to apply for his position as afternoon-shift Lieutenant. THE CITY did not follow this practice in this instance because of Lt. Wright's status as a minority officer. Plaintiff had no way of predicting THE CITY's disparate treatment of Lt. Wright.

28. Plaintiff intended to apply for Lt. Marcus Wright's position as afternoon-shift Lieutenant following Lt. Wright's transfer to day-shift. This position, however, never became available because instead of granting Lt. Wright's request for transfer, RONALD TEACHMAN promoted three non-minority Sergeants to positions of day-shift Lieutenant in the Detective Bureau. These promotions occurred following RONDALD TEACHMAN'S recommendation for promotion on or about May 21, 2014. Both Lt. Marcus Wright and Plaintiff SGT. CANNON had more experience and seniority than the non-minorities, two of whom were promoted to positions that

were never announced prior to the promotions.

29. Defendant prevented and deterred Plaintiff and other minorities from applying for two of the three Lieutenant positions it filled by promoting three non-minorities without announcing the positions.

30. Had Defendant disclosed that THE DEPARTMENT was seeking applicants for three positions as Lieutenant, or that the DEPARTMENT would not follow its own custom, policy, procedure and practice of granting lateral transfers before promoting from below, Plaintiff would have applied for promotion to day-shift Lieutenant.

31. RONALD TEACHMAN selected the following three white officers for promotion to Lieutenant to the fill position which Plaintiff contends should have been filled by the transfer of Lt. Marcus Wright: Sgt. Anthony Bontrager, Sgt. Dominic Zultanski and Sgt. Amy Bennett.

32. Dominic Zultanski was also appointed to a newly created position, the leader of the “Gang Violence Intervention Unit.”

33. Plaintiff had more seniority and more experience in Gang Violence Intervention than Dominic Zultanski.

34. Defendant never announced or opened the position as leader of the “Gang Violence Intervention Unit” for application or interview.

35. Defendant prevented and deterred Plaintiff and other minorities from applying for promotion to leader of the “Gang Violence Intervention Unit” by promoting a non-minority officer without announcing the position.

36. Openings for positions as day-shift Lieutenants within the Detective Bureau are rare, and are not likely occur again during Plaintiff’s career.

37. The promotion of three non-minorities to fill the spot of one Lieutenant also cuts off the opportunity for minorities to advance to the rank of Captain after serving on the police force as a Lieutenant.

38. Defendant, through its agent and employees, has retaliated against Plaintiff for voicing his concerns about racism in THE DEPARTMENT and for filing a Title VII claim against THE CITY by subjecting him to undue scrutiny, unfair criticism and open ridicule. Specifically, Defendant through its agent Amy Bennett, a newly appoint non-minority Lieutenant, has singled out Plaintiff for harassment, intimidation and ridicule. Defendant's conduct in this regard is so severe and pervasive that it has altered the conditions of SGT. CANNON's employment and created a hostile work environment.

## **VII.**

### **FIRST CLAIM**

#### **(UNLAWFUL DISCRIMINATION BASED ON RACE )**

39. Paragraphs 1 through 38 above are hereby incorporated by reference as though fully set forth in this claim.

40. THE CITY, through the actions of its agents and employees, has unlawfully discriminated, and continues to discriminate, against Plaintiff, SGT. CANNON, based on his race (African-American) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16 et seq. as amended. This discrimination comes in the form of disparate treatment by promoting non-minorities to fill positions of advancement (Lieutenant) without announcing the positions so that Plaintiff could apply and complete.

41. Plaintiff is a member of a protected group based on his race.

42. Defendant has treated, and continues to treat, Plaintiff less favorably than similarly situated employees who are not African-American.

43. Defendant has discriminated, and continues to discriminate, against Plaintiff in the terms and conditions of his employment on the basis of his protected group status (African-American), in violation of Title VII.

44. Defendant prevented Plaintiff from applying for promotion to the rank of Lieutenant by promoting two non-minorities to the rank of Lieutenant and filling the position of “Gang Violence Intervention Leader” by failing to describe, announce or otherwise make the opportunities known to Plaintiff prior to filling the positions.

45. Defendant has engaged in a pattern and practice of using and/or violating the policies and procedures governing promotions within the DEPARTMENT to deny African-American employees promotions and other employment opportunities on the basis of their race in violation of Title VII.

46. Plaintiff is now suffering and will continue to suffer injury and monetary damages as a result of Defendant's discriminatory practices unless and until the Court grants relief.

## **VIII**

### **Second Claim**

#### **Retaliation**

47. Defendant, through its agent and employees, has retaliated against Plaintiff for voicing his concerns about racism in THE DEPARTMENT and for filing a Title VII claim against THE CITY by subjecting him to undue scrutiny and unfair criticism of his work, all creating a hostile

work environment.

48. Plaintiff is now suffering and will continue to suffer injury and monetary damages as a result of Defendant's discriminatory practices unless and until the Court grants relief.

## **IX**

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, SGT. NATHAN CANNON, respectfully prays that this Honorable Court grant the following relief:

1. Issue a permanent injunction:
  - a. Requiring Defendant to abolish discrimination and reprisal;
  - b. Requiring allocation of significant funding and trained staff to implement all changes within two years;
  - c. Requiring removal or demotion of all managers who have violated the agency's policies and failed to meet their legal responsibility to promptly investigate complaints or to take effective action to stop and deter prohibited personnel practices against employees;
  - d. Establishing and strictly measuring EEO compliance as a critical element in every manager's performance standards;
  - e. Requiring mandatory and effective training for all employees and managers on discrimination and retaliation issues, investigations and appropriate corrective actions; and,
2. Issue an order requiring Defendant to retroactively restore Plaintiff to the rank of Lieutenant to which he was entitled by virtue of his seniority, experience, work history and qualifications.
3. For damages, including back pay, front pay and benefits, overtime

compensation as Plaintiff is entitled to under Title VII of the Civil Rights Act;

4. For other and further damages, including compensatory damages for Plaintiff's emotional distress, as may be proven at trial;

5. For an order commanding Defendants and each of them to cease and desist from any employment practice which discriminates against Plaintiff or others on the basis of race, national origin, disability or in retaliation against the person because he complained about such discrimination;

6. For an award of costs of suit including reasonable attorney's fees, including fees under 29 U.S.C. § 216(b); and

7. For such other and further relief as the Court may consider just and proper.

#### **DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a jury trial for each claim herein for which she has a right to a jury.

Respectfully submitted,

s/Jeffrey E. Kimmell  
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Counsel for Plaintiff, Nathan Cannon

CERTIFICATE OF SERVICE

I hereby certify that on the 9<sup>th</sup> day of May, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

**Kyra E Clark**

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*s/ Jeffrey E. Kimmell*