

COMMON COUNCIL - SPECIAL MEETING  
FEBRUARY 24, 1983

Meeting is called to order at 7:30 O'Clock P.M. by the Honorable Mayor James E. Dyer.

PLEDGE OF ALLEGIANCE TO THE FLAG

PRAYER

ROLL CALL

Council Members - Elder, Gallo, McGarry, Foti, Torcaso, Eriquez, Esposito, Repole, Zotos, Eppoliti, McManus, DaSilva, Torian, White, Cassano, Charles, Boynton, Butera, Evans, Farah.

~~45~~ 17 Present 43 Absent. 1 Vac

NOTICE OF SPECIAL MEETING to be held on the 24th day of February, 1983, at 7:30 O'Clock P.M. for the purpose of acting upon the following:

- ✓ 01 - Appointment of Councilman at Large.
- ✓ 02 - Repeal of Section 8-18(9) of the Code of Ordinances concerning points for Volunteer Firefighters.
- ✓ 03 - Funds for establishing a new list for Firefighters.

RETURN OF SERVICE - Notices delivered by Police Officers of the City of Danbury.

A motion was made by \_\_\_\_\_ & seconded by \_\_\_\_\_ for the Call & Return of Service to be accepted.

01

COMMUNICATION - Appointment of a Councilman At Large.

The Communication was accepted and appointment confirmed.

02

ORDINANCE

Repeal of Section 8-18(9) of the Code of Ordinances concerning points for Volunteer Firefighters.

The Section was

03

COMMUNICATION

- Certification of funds for establishing a new list for Firefighters.

The Communication was

PUBLIC SPEAKING SESSION

There being no further business to come before the Council, a motion was made by \_\_\_\_\_ & seconded by \_\_\_\_\_ for the meeting to be adjourned at \_\_\_\_\_ O'Clock P.M.

NOTE: Please return this form to Office of City Clerk after all envelopes have been delivered. Thank you!

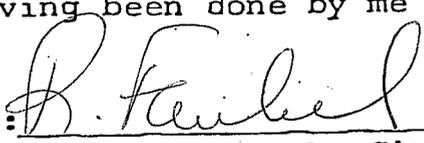
RETURN OF SERVICE

By virtue of the within warning, I have served Notice on each of the members of the Common Council of the City of Danbury, of the Special Meeting of said Board, each Notice duly signed by the Mayor and City Clerk, by leaving such written Notice with each of the following members of said Common Council, to-wit:

<u>NAME</u>	<u>TIME</u>
1. CONSTANCE McMANUS	1412
2. RICHARD B. ELDER	1445
3. BERNARD P. GALLO	1340
4. JOHN A. McGARRY	1405
5. RUSSELL M. FOTI	1355
6. CAROLE A. TORCASO	1335
7. GENE ERIQUEZ	11:40
8. JOHN ESPOSITO	11:45
9. NICHOLAS ZOTOS	1100 AM
10. FRANK REPOLE	11:35
11. DIANE EPPOLITI	1510
12. RICHARD M. WHITE	1505
13. ANTHONY J. CASSANO	1450
14. LOUIS T. CHARLES, JR.	11:05
15. ERNEST M. BOYNTON	11:50
16. JOSEPH DaSILVA	1435
17. <del>JAMES P. DURKE, JR.</del> Vacancy	
18. THOMAS E. EVANS	1500
19. JANET A. BUTERA	1130
20. EDWARD T. TORIAN	1425
21. MOUNIR FARAH	1345

Each Notice so served upon each member, all having been done by me on this date 2-24-83.

Attest:

  
Policemen of the City of  
Danbury



# DEMOCRATIC TOWN COMMITTEE

P. O. BOX 164

DANBURY, CONNECTICUT 06810

February 10, 1983

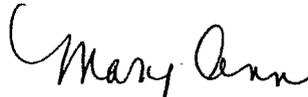
Constance A. McManus, Council President  
East Gate Road  
Danbury, Connecticut 06810

Dear Connie and Council Members:

The Democratic Town Committee is pleased to submit the name of John A. Leopold, 63 Long Ridge Road, Danbury to fill the Common Council vacancy at large. Jack, who received his Phd. from Catholic University, is Chairman of the History Department at WCSC, a member of the American Historical Association, a published author, and currently serving as an alternate member of the Zoning Commission.

The Town Committee is confident that Jack Leopold will be a valuable asset to the Common Council.

Sincerely,



Mary Ann Doran  
Chairperson



# CITY OF DANBURY

155 DEER HILL AVENUE

DANBURY, CONNECTICUT 06810

THEODORE H. GOLDSTEIN,  
CORPORATION COUNSEL

ERIC L. GOTTSCHALK  
SANDRA VILARDI LEHENY  
THOMAS G. WEST  
ASSISTANT CORPORATION  
COUNSEL

PLEASE REPLY TO:  
P. O. Box 1261  
DANBURY, CT 06810

February 22, 1983

Nicholas A. Nero, Chairman  
Civil Service Commission  
Danbury, CT. 06810

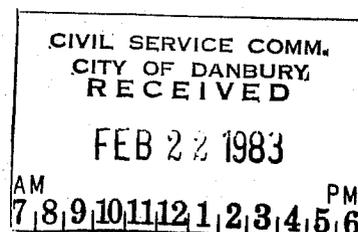
Re: Gavagan et al vs. Danbury Civil Service  
Commission et al

Dear Mr. Nero:

Please be advised that on February 4, 1983 Chief Judge  
T. F. Gilroy Daly of the U.S. District Court for the State  
of Connecticut issued a preliminary injunction whereby he  
stated:

Defendants are, therefore, enjoined, pending final  
determination of the merits, from making any  
appointments to the rank of firefighter in the  
Danbury Fire Department on the basis of the current  
eligibility list or any other list which is or  
has been compiled on the basis of the addition of  
volunteer preference points to members of volunteer  
fire companies.

Accordingly, when, as and if this case is decided on the  
merits, the examination of February, 1982 cannot be utilized  
for the purpose of appointments to the paid Fire Department of  
the City of Danbury.



Nicholas A. Nero, Chairman

February 22, 1983

Page 2

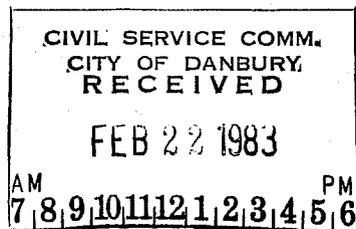
When considering any procedure for new testing to be given by the Civil Service Department, upon reflection, I do feel that any steps in the procedure should be not less than those associated with said test of February, 1982.

Very cordially yours,

*THG*  
Theodore H. Goldstein,  
Corporation Counsel

THG/sn

cc: Hon. James E. Dyer, Mayor



made by him, in accordance with his powers, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100.00), unless state statute provides for a greater punishment. (Ord. No. 57, 1-4-66)

**Sec. 8-18. Appointments to regular fire department.**

(1) No person shall be appointed as a permanent member of the regular fire department unless he shall be a resident of the City of Danbury and a United States citizen.

(2) Each applicant must have a high school diploma or an equivalent education certified by the state board of education.

(3) Each applicant shall have reached his eighteenth but not his thirty-sixth birthday.

(4) Each applicant's vision shall be at least 20/50 in each eye, correctable to 20/20 in each eye.

(5) Each applicant shall have normal hearing without the use of any hearing aid or other device.

(6) Applications shall not be accepted from any person who has ever been convicted of a crime involving moral turpitude.

(7) Each applicant must pass a thorough physical examination, including an examination of physical agility as well as a psychiatric examination conducted by a physician or physicians or other qualified persons as designated by the City of Danbury.

(8) All appointments shall be for a probationary period of one (1) year, during which time every man so appointed shall successfully pass a course of training established by the fire chief of the City of Danbury, or such course of training as may be required by the statutes or regulations of the State of Connecticut. If any person fails to pass the course of training, he or she shall not be appointed a regular firefighter and shall be dismissed as a probationary firefighter.

(9) All appointments shall be based on merit as the result of competitive written and oral examinations conducted under Supp. No. 65

the auspices of the civil service commission of the City of Danbury. The civil service commission shall avail itself of professional testing services for the written portion of the examinations. Any applicant who:

- (a) Is a member in good standing in one of the Danbury volunteer fire companies;
- (b) Has answered twenty (20) per cent of his company's fire alarms as certified by the secretary and chief line officer of his company;
- (c) Attended a majority of the fire drills of his company in the twelve months previous to his application also as certified by said secretary and chief line officer of his company, shall receive after attaining a passing grade on the civil service examination, an additional ten points to his grade if he has completed two or more years of service in one or more of the said volunteer fire companies, but shall receive only five additional points if he has completed one year or more, but less than two years of service.

(10) All applicants for civilian clerk (typist-clerk-stenographer) shall comply with paragraphs (1), (2), (4) and (5) herein. Such clerk shall be on a probationary period of six months.

(11) All applicants for permanent assignment to the ambulance and rescue division shall first comply with all of the requirements of this section.

No person shall be permanently assigned to the ambulance and rescue division until he has completed his probationary period as a regular firefighter.

All appointments of regular firefighters to the ambulance and rescue division shall be for a probationary period of six months during which time every person so appointed shall successfully pass the Advanced Course of First Aid Training of the Red Cross and any other course of training that may be required by law for ambulance attendants. If any person so appointed fails to pass such a course of training, he shall be dismissed from, and shall not be permanently assigned to the

Supp. No. 65



# CITY OF DANBURY

155 DEER HILL AVENUE

DANBURY, CONNECTICUT 06810

THEODORE H. GOLDSTEIN,  
CORPORATION COUNSEL

ERIC L. GOTTSCHALK  
THOMAS G. WEST  
SANDRA V. LEHENY  
ASSISTANT CORPORATION  
COUNSEL

February 18, 1983

PLEASE REPLY TO:  
P.O. Box 1261  
DANBURY, CT 06810

Hon. Members of the Common Council  
City of Danbury  
155 Deer Hill Avenue  
Danbury, Connecticut

Re: Gavagan et al vs. Danbury Civil Service Commission et al

Dear Councilperson:

In order that you may be more aware of the nature of the ruling in the above-captioned matter, I have prepared and enclose herewith copy of quoted portions of the ruling issued by Chief Judge Daly of the United States District Court on February 4, 1983. These are set forth in the same manner as appear in the ruling itself including the language underlined by Judge Daly. It does not include the numerous case citations which he uses in support of his findings.

In the interests of accuracy, I wish to also advise that this case was instituted by Bonnie Gavagan alone, subsequently joined in by the Danbury Chapter of N.O.W., and further joined in by one Patricia Delong during the course of the two-day hearing in Bridgeport. The Danbury Chapter of the N.A.A.C.P. also sought to join in the matter during the course of the hearing, but the judge has yet to officially rule on its petition. All four existing or proposed plaintiffs are represented by the same law firm.

Prior to the hearing, conferences were held with members of the paid Fire Department as well as certain members of Volunteer Companies. At the hearing itself the then Chief of the Volunteer Firemen's Council, who was also an officer in the Germantown Hose Company, as well as the Chief of the Miry Brook Company, of which two women became members in 1978-79, testified for the City.

The hearing before Judge Daly was limited only to the plaintiffs' Motion for a Preliminary Injunction which prevents us from using the current list. We are in a position to go to a full trial on the matter. I estimate that the case would not be reached for such full trial for approximately two years and the likelihood is very good that

the same judge who ruled on the injunction motion would be the judge who would hear the case upon a full trial. You will note that Judge Daly has already found the likelihood of success for the plaintiffs on the basis of two federal claims. We would also become subject to dollar damages and additional attorneys' fees for plaintiff counsel.

You will also note that among his facts, Judge Daly has concluded that women and members of other minorities were deterred from taking the February 8, 1982 examination by reason of their alleged knowledge that volunteers received ten points, and thus, in his Conclusion has enjoined us from making any appointments on the basis of the current eligibility list, or on any other list on which volunteer preference points have been given.

You should also be aware that we are under pressure from the Connecticut Commission on Human Rights and Opportunities with whom the parties mentioned above had initially filed complaints.

Very cordially yours,



Theodore H. Goldstein  
Corporation Counsel

THG:cr

Attachment

c: Hon. James E. Dyer, Mayor

1/5/83

BONNIE GAVAGAN ET AL VS. DANBURY CIVIL SERVICE COMMISSION ET AL

QUOTED PORTIONS OF RULING ON MOTION FOR PRELIMINARY INJUNCTION  
MADE BY T. F. GILROY DALY, CHIEF, UNITED STATES DISTRICT  
JUDGE, FEBRUARY 4, 1983 AT 3:35 P.M.

The complaint alleges that the Danbury Fire Department, which has never included any women, blacks, or Hispanics in its fire-fighter ranks, has unlawfully denied employment to members of those groups by using hiring procedures which have a disparate impact on female and minority applicants. Specifically, the complaint alleges that defendants' awarding of preference points to persons who have been members of volunteer fire companies results in exclusion of female and minority applicants because membership in the private volunteer fire companies has been all but entirely restricted to white males and denied to females and minorities.

The case is presently before the Court on plaintiffs' motion for a preliminary injunction prohibiting defendants from making appointments to the Danbury Fire Department from a list of eligible individuals, which list was compiled based on the results of February 1982 civil service examination and the addition of the allegedly discriminatory preference points.

The standard for issuance of a preliminary injunction in the Second Circuit is well-settled: "(T)here must be a showing of possible irreparable injury and either (1) probable success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting relief." Calfield v. Board of Education of the City of New York, 583 F. 2d 605, 610 (2d Cir. 1978).

POSSIBLE IRREPARABLE INJURY

The Fifth Circuit has adopted a rule that in Title VII actions in which preliminary injunctive relief is sought irreparable harm need not be proved but will be presumed if all administrative remedies have been exhausted and, presumably, if plaintiffs have shown, preliminarily at least, that the statute has been violated. It appears to the Court that such a rule makes eminent good sense, at least in those cases where the injury threatened (or effectuated, e.g. retaliation) is of the type that Title VII is intended to prevent as well as redress, and plaintiff is able to make a strong showing of probable success on the merits, i.e. that the statute has been or will be violated, absent an injunction. As discussed infra, the plaintiff here has made such a showing and administrative remedies have been exhausted. Like the Fifth Circuit, this Court believes that irreparable injury may properly be presumed from the very fact that the practice -- i.e., here the awarding of preference points to members of volunteer fire departments -- constitutes a violation of Title VII.

OF DANBURY  
OFFICE OF THE  
CORPORATION  
COUNSEL

However, even without the presumption of irreparable harm, the injury which is threatened in this case -- the loss of presently existing employment opportunities, with the concomitant loss of possible on-the-job experience and seniority, as well as the possibility that plaintiffs and others in the class, if forced to wait until the present list expires in one or possibly two years (see, infra), will be unable to pass the physical agility test in the future, all constitute irreparable injury of the sort that Title VII is intended to prevent.

#### PROBABLE SUCCESS ON THE MERITS

(The court made 37 findings of fact which it felt were established at the hearings on the preliminary injunction motion, of which the following are the most salient).

2. No blacks, women, or Hispanics are currently employed as firefighters by the Danbury Fire Department. Indeed, it appears that there have never been any black, female or Hispanic firefighters in the Danbury Fire Department.

9. According to a study conducted by Mr. Arthur LaRoche, the Director of Danbury's Commission on Equal Rights, in 1978, the 350-400 volunteer firefighters in all 12 companies, may have included one woman -- who was never identified; no blacks; and two hispanics.

11. To become a member of any of the volunteer fire companies, an applicant must be sponsored by at least two present members of the particular company and approved by a vote of the entire membership of the company. Equal Rights Commission Director LaRoche concluded, based on his experience, that such a system has an adverse impact on women and minorities who are less likely to be among the friends and acquaintances of the overwhelmingly predominant group of white male members than are other white males. This conclusion is hardly startling.

12. In addition, in most, if not all, the volunteer companies, membership applications are available only in the volunteer fire houses, which are private property from which nonmembers are excluded except for fundraising events. Equal Rights Commission Director LaRoche concluded, again, not surprisingly given the makeup of the volunteer companies, that this practice deterred applications from women and minorities.

14. Equal Rights Commission Director Arthur LaRoche determined from his investigation and from conversations with volunteer company members that there was enormous hostility to the idea of women and minorities becoming members in the companies. And, according to the undisputed testimony of Lynn Taborsak, the volunteer companies are perceived, by at least some members of the community,

as "all-male bastions" or male social clubs inhospitable to female or minority membership.

15. It is clear that women and minorities have been excluded from membership in the volunteer fire companies, and that, by virtue of the membership process, as well as the attitude of the members, they have been discouraged from even applying for admission to those companies.

16. Because membership in the volunteer fire companies has been almost completely a white male privilege, the awarding of preference points toward appointment to the Danbury Fire Department to those who have been members inevitably impacts adversely on women and minorities who have been excluded from the volunteer companies and who, therefore are ineligible for such preference points.

20. Membership in the volunteer fire companies has never been validated as an accurate prediction of job performance.

21. Defendants presented no evidence that the awarding of preference points for membership in the volunteer companies was justified by any business necessity. Indeed, all appointees to Danbury's paid Fire Department must undergo the same training program regardless of whether or not they have been members of volunteer companies.

34. Use of the volunteer preference point system is determinative in most cases in receiving appointment to the paid Danbury Fire Department. If the present 1982 eligibility list is used, and if all candidates are selected in rank order for the 22 vacancies, 20 of the 22 vacancies would be filled by persons afforded preference points for membership in volunteer companies.

35. It is clear that women and minorities have been excluded from membership in the volunteer fire companies, and, hence, are ineligible for awards of volunteer preference points. Thus, defendants' use of the preference point system in making appointments to the paid Danbury Fire Department has an enormously adverse impact on women and minorities seeking positions in the Danbury Fire Department.

37. The defendants did, in January of 1982, sponsor a well-publicized pre-test training program in an effort to attract women and minority applicants to the Danbury Fire Department. However, the volunteer preference point system set forth in Ordinance Sec. 8-18(9) was maintained as part of the hiring process. Indeed, notices about the upcoming exam included instructions regarding the awarding of preference points to members of volunteer companies. Defendants' outreach program thus did nothing to mitigate the adverse effect of the use of the volunteer preference point system, nor did it eliminate the deterrent effect of that system. Anyone who might have contemplated responding to the proffered pre-exam training program would know that despite such program, they would

start out five to ten points behind members of the volunteer companies who would also be taking the examination.

DISCUSSION

To establish a prima facie claim of disparate impact, such as is alleged here, under Title VII of the Civil Rights Act, plaintiffs must show that the challenged policy or practice has a discriminatory effect. Once a discriminatory effect is demonstrated, the burden shifts to the employer to demonstrate that the practice or policy has a "manifest relationship to the employment in question," or that it is otherwise justified by business necessity.

Plaintiffs here have clearly met their prima facie burden for establishing their disparate impact claim. The un rebutted evidence adduced at the hearing establishes that there have never been any female, black or Hispanic firefighters on the Danbury Fire Department; that the granting of volunteer preference points virtually determines firefighter appointments; that prior to the February 1982 exam, the volunteer fire companies all but totally excluded women and minorities from their ranks and precluded applications from such "outsiders"; . . . Plaintiffs have also shown the probable deterrent effect of the volunteer preference point system on women and minorities who would compete for firefighter positions but for the preference points.

The volunteer preference point system has been shown to operate as a "built-in headwind," ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ for women and minorities seeking equal job opportunities. Plaintiffs have thus established a prima facie claim of disparate impact under Title VII.

Defendants failed to show that membership in volunteer companies was either a valid predictor of job performance or justified by any other business necessity. Indeed, plaintiffs established that all firefighter appointees must undergo the same training program, regardless of whether they are members in the volunteer companies or not. Defendants failed to show that membership in the volunteer companies has any relationship -- "manifest" or otherwise -- to the position of paid firefighter.

Defendants' emphasis on the pre-exam training program is misplaced, since that program did nothing to eliminate the discriminatory effect of the preference point system.

Plaintiffs have thus established a likelihood of success on the merits of their Title VII claims.

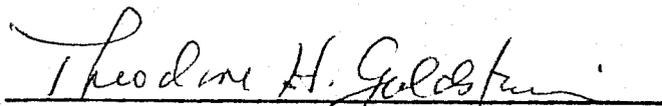
Plaintiffs have also demonstrated probable success on the merits of their Section 1983 claims, which require proof of discriminatory intent as well as effect. As the facts set forth, supra, indicate, the application process of the volunteer companies and the hostility of the members themselves to women and minorities indicate that those groups have been intentionally excluded from membership in the companies.

DANBURY  
OF THE  
ORATION  
UNSEL

CONCLUSION

The requisite showing of irreparable harm and probable success on the merits having been made, plaintiffs are entitled to a preliminary injunction.

Defendants are, therefore, enjoined, pending final determination of the merits, from making any appointments to the rank of fire-fighter in the Danbury Fire Department on the basis of the current eligibility list or any other list which is or has been compiled on the basis of the addition of volunteer preference points to members of volunteer fire companies.

  
THEODORE H. GOLDSTEIN,  
CORPORATION COUNSEL

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

FILED  
FEB 4 3 35 PM '83  
CLERK  
U.S. DISTRICT COURT  
BRIDGEPORT, CONN.

BONNIE GAVAGAN, et al,  
Plaintiffs,

v.  
DANBURY CIVIL SERVICE  
COMMISSION, et al,

Defendants.

CIVIL B-82-307 *ff*

RULING ON MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs in this action seek relief from defendants' alleged violations of Title VI and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. <sup>1/</sup> and § 2000e et seq. <sup>2/</sup> (hereinafter "Title VI" and "Title VII"), 42 U.S.C. § 1983, <sup>3/</sup> and the Federal Revenue Sharing Act, 31 U.S.C. § 1242. <sup>4/</sup> The complaint alleges that the Danbury Fire Department, which has never included any women, blacks, or Hispanics in its firefighter ranks, has unlawfully denied employment to members of those groups by using hiring procedures which have a disparate impact on female and minority applicants. Specifically, the complaint alleges that defendants' awarding of preference points to persons who have been members of volunteer fire companies results in exclusion of female and minority applicants because membership in the private volunteer fire companies has been all but entirely restricted to white males and denied to females and minorities.

The case is presently before the Court on plaintiffs' motion for a preliminary injunction prohibiting defendants from making appointments to the Danbury Fire Department from a list of eligible individuals, which list was compiled based on the results of February 1982 civil service examination and the addition of the allegedly discriminatory preference points.

Although administrative charges were filed on behalf of plaintiffs with appropriate federal and state agencies, at the time of the hearing on the preliminary injunction, plaintiffs had not yet received a "right-to-sue" letter from the federal Equal Employment Opportunity Commission ("E.E.O.C.") nor had the combined state-federal administrative waiting period mandated by Title VII expired. See 42 U.S.C. §§ 2000e-5(c) and (f) (1). Following the hearing, and after briefs on the preliminary injunction motion were filed, the Court requested the parties to submit additional briefs on the issue of whether this Court had subject matter jurisdiction to entertain plaintiffs' motion in the absence of a right-to-sue letter and before the administrative waiting period had expired. These additional briefs were originally due on December 22, 1982, but at defendants' request, an extension until January 10, 1983, was granted. On January 14, 1983, the Court was notified that an E.E.O.C. right-to-sue letter had been received by plaintiffs' counsel on or about January 14, 1983. Any jurisdictional problems which may have existed (the Court makes no determination on that issue) because of the absence of a right-to-sue letter have now been cured. The Court thus turns to the merits of plaintiffs' preliminary injunction motion.

The standard for issuance of a preliminary injunction in the Second Circuit is well-settled: "[T]here must be a showing of possible irreparable injury and either (1) probable success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting relief." Caulfield v. Board of Education of the City of New York, 583 F. 2d 605, 610 (2d Cir. 1978).

#### POSSIBLE IRREPARABLE INJURY

The Fifth Circuit has adopted a rule that in Title VII actions in which preliminary injunctive relief is sought irreparable harm need not be proved but will be presumed if all administrative remedies have been exhausted and, presumably, if plaintiffs have shown, preliminarily at least, that the statute has been violated. Middleton-Keirn v. Stone, 665 F. 2d 609 (5th Cir. 1981); Murry v. American Standard, Inc., 488 F. 2d 529 (5th Cir. 1973); Culpepper v. Reynolds Metal Co., 421 F.2d 888 (5th Cir. 1970); United States v. Hayes International Corp., 415 F. 2d 1038 (5th Cir. 1969). See also Gilson v. U.S. Immigration and Naturalization Service, 541 F. Supp. 131 (S.D.N.Y. 1982); Manhart v. Los Angeles, 387 F. Supp 980 (C.D. Cal.), Aff'd, 553 F. 2d 581 (9th Cir. 1976) and 435 U.S. 702 (1978). Cf. Porter v. Adams, 639 F. 2d 273, 278 (5th Cir. 1981) (ruling that in cases where administrative remedies have not been exhausted, irreparable harm must be proved). It appears to the Court that such a rule makes eminent good sense, at least in those cases where the injury threatened (or effectuated, e.g. retaliation) is of the type that Title VII is intended to prevent as well as redress, and plaintiff is able to make a strong showing of probable success on the merits, i.e. that the statute has been or will be violated, absent an injunction.

As discussed infra, the plaintiff here has made such a showing and administrative remedies have been exhausted. Like the Fifth Circuit, this Court believes that irreparable injury may properly be presumed from the very fact that the practice -- i.e., here the awarding of preference points to members of volunteer fire departments-- constitutes a violation of Title VII.<sup>5/</sup>

However, even without the presumption of irreparable harm, the injury which is threatened in this case -- the loss of presently existing employment opportunities, with the concomitant loss of possible on-the-job experience and seniority, as well as the possibility that plaintiffs and others in the class, if forced to wait until the present list expires in one or possibly two years (see, infra), will be unable to pass the physical agility test in the future, all constitute irreparable injury of the sort that Title VII is intended to prevent. See I.M.A.G.E. v. Bailar, 518 F. Supp. 800 (N.D. Cal. 1981) Savage v. McAvory, 26 FEP Cases 114 (S.D. Ohio 1980).

#### PROBABLE SUCCESS ON THE MERITS

The following facts were established at the hearing on the preliminary injunction motion:

1. The Danbury Fire Department currently employs approximately 66 persons in the rank of firefighter, and, at present, there are 12 budgeted-for vacancies for a total compliment of 78 firefighters. It is expected that within one year approximately 10 additional vacancies will be created through promotions, adding up to a total of 22 vacancies to be filled in the coming year.
2. No blacks, women, or Hispanics are currently employed as firefighters by the Danbury Fire Department.

Indeed, it appears that there have never been any black, female or Hispanic firefighters in the Danbury Fire Department.

3. Applicants for firefighter positions are selected on the basis of their scores on a civil service examination which is 50% written and 50% oral. Those who achieve passing scores must also take and pass a physical agility test as well as a physical and psychological examination.

4. Pursuant to §8-18(9) of the Code of Ordinances of the City of Danbury, 5 to 10 "preference points" are awarded to those applicants who are members in good standing of one of the 12 Danbury volunteer fire companies.<sup>6/</sup> Such "points" are added to the eligible applicants' scores on the civil service examination. Once the preference points have been added to the civil service examination scores of those eligible to receive them, an "eligibility list" of firefighter candidates is compiled, ranking those candidates who achieved a passing score in the order of their final score--which includes the additional preference points--with the person with the highest score ranked first. The eligibility list remains in effect for at least one year and defendants have discretion to maintain its effectiveness for an additional year.

5. All candidates on the eligibility list are permitted to take the physical agility test and those who fail this portion of the procedure are dropped from the list.

6. Finally, as openings in the Fire Department occur, candidates are invited, in the order in which they appear on the eligibility list, to take the psychological and physical tests. Anyone who fails that portion of the selection procedure is also dropped from the list.

Appointment to firefighter positions are then made by the Mayor of Danbury from the pared-down eligibility list. The Mayor has the option of selecting the first appointee from among the top six persons on the list, the second appointee from among the top seven, and so on.

7. Danbury has 12 volunteer fire companies, private, nonprofit corporations, which receive financial and some supervisory support from the City of Danbury.

8. Each company has between 30 to 35 members, for a total volunteer fire company membership of about 350 to 400 individuals.

9. According to a study conducted by Mr. Arthur LaRoche, the Director of Danbury's Commission on Equal Rights, in 1978, the 350-400 volunteer firefighters in all 12 companies, may have included one woman -- who was never identified; no blacks; and two Hispanics.

10. By the time of the hearing in November, 1982, as far as could be ascertained from the testimony of Arthur Leach, the President of the Volunteer Firefighters Association, there were, at most, five women in only two of the 12 volunteer companies: One of those women is the plaintiff Bonnie Gavagan, who was admitted to membership in the King Street Volunteer Fire Company only after she brought this suit; three of the remaining four women who are allegedly members of the Miry Brook Volunteer Company are married or otherwise related to male members of Miry Brook's company; the fifth woman had been admitted to membership in Miry Brook just one week before the hearing on plaintiffs' motion was held. None of the other 10 volunteer companies have any women members.

At present, according to the testimony of Arthur Leach, there are two Hispanic and five black members in four of the volunteer fire companies. The remaining eight companies have no black or Hispanic members. The Court notes that Mr. Leach was unable to identify any of those he claimed were presently minority members of the volunteer companies.

11. To become a member of any of the volunteer fire companies, an applicant must be sponsored by at least two present members of the particular company and approved by a vote of the entire membership of the company. Equal Rights Commission Director LaRoche concluded, based on his experience, that such a system has an adverse impact on women and minorities who are less likely to be among the friends and acquaintances of the overwhelmingly predominant group of white male members than are other white males. This conclusion is hardly startling.

12. In addition, in most, if not all, the volunteer companies, membership applications are available only in the volunteer fire houses, which are private property from which nonmembers are excluded except for fundraising events. Equal Rights Commission Director LaRoche concluded, again, not surprisingly given the makeup of the volunteer companies, that this practice deterred applications from women and minorities.

13. Plaintiff Patricia DeLong attempted to obtain an application from her local volunteer company in 1975 and again in 1982. On both occasions, her requests were

met with laughter and derision. Only after a story about the pending suit appeared in the local newspaper in July of 1982 was she sent an application form.

14. Equal Rights Commission Director Arthur LaRoche determined from his investigation and from conversations with volunteer company members that there was enormous hostility to the idea of women and minorities becoming members in the companies. And, according to the undisputed testimony of Lynn Taborsak, the volunteer companies are perceived, by at least some members of the community, as "all-male bastions" or male social clubs inhospitable to female or minority membership.

15. It is clear that women and minorities have been excluded from membership in the volunteer fire companies, and that, by virtue of the membership process, as well as the attitude of the members, they have been discouraged from even applying for admission to those companies.

16. Because membership in the volunteer fire companies has been almost completely a white male privilege, the awarding of preference points toward appointment to the Danbury Fire Department to those who have been members inevitably impacts adversely on women and minorities who have been excluded from the volunteer companies and who, therefore are ineligible for such preference points.

17. The adverse effect of the volunteer fire company preference point system has been known to the Danbury Civil Service Commission since at least 1978. The City's 1978 affirmative action plan, formulated in compliance with federal law, establishes as a goal the

elimination of the "5 to 10 points given acc. to Local Ordinance Sec. 8-18 to persons who have been members of Volunteer Fire Departments as this has a discriminatory effect on women and minorities. . . ." Despite this acknowledgement of the adverse effect on women and minorities in Danbury's own affirmative action plan, no steps have been taken to remedy the situation. Indeed, in the summer of 1982, after this action had commenced, a committee of the Common Council, Danbury's legislative body, considered repealing the preference point ordinance. Equal Rights Commission Director LaRoche presented evidence of the ordinance's adverse impact to the committee and recommended that volunteer preference points be abolished. Still no action was taken.

18. The current eligibility list for appointment to Danbury's Fire Department, as previously noted, was compiled based on the results of a civil service examination administered in February, 1982, with 5 to 10 preference points added to the scores of those applicants whom the chiefs of various volunteer fire companies represented were members in good standing of those companies. All applicants who received preference points are white males.

19. The defendants have done nothing to verify that the individuals to whom volunteer preference points have been awarded are, in fact, active members of volunteer companies or that they have fulfilled the other requirements of Ordinance Sec. 8-19(9). (See note 6, *supra*.) Even assuming the representations of the fire companies are true and accurate, it appears from evidence

adduced at the hearing that some of the individuals who were afforded the full 10 preference points did not meet Sec. 8-18(9)'s requirements for the award of that many points.<sup>7/</sup>

20. Membership in the volunteer fire companies has never been validated as an accurate prediction of job performance.

21. Defendants presented no evidence that the awarding of preference points for membership in the volunteer companies was justified by any business necessity. Indeed, all appointees to Danbury's paid Fire Department must undergo the same training program regardless of whether or not they have been members of volunteer companies.

22. The 1982 eligibility list includes 79 names, and will remain in effect for at least one year, and possibly two years. As noted, there are presently 12 budgeted vacancies in the Danbury Fire Department, and it is expected that 10 additional vacancies will be created because of promotions over the first year of the eligibility list's effective life. Thus, at least 22 appointments to the Danbury Fire Department will have to be made during the expected life of the 1982 eligibility list.

23. The most recent eligibility list before the one at issue here was compiled in 1978 and was used as the basis for appointments to Danbury's Fire Department between August 15, 1978 and August 15, 1980. Twenty-two appointments were made from that list, with

the candidate who was ranked thirty-fourth receiving the last appointment. Based on this history, it can be assumed that a similar number of preliminarily eligible candidates from the present list will have an opportunity to compete for the 22 current and expected future vacancies.

A total of 23 individuals on the 1982 eligibility list were awarded volunteer preference points: twenty-one persons received 10 volunteer preference points; the remaining two received five volunteer preference points. All 23 individuals who were afforded volunteer preference points are white males.

25. Of the top 25 names on the 1982 list, 20 are recipients of volunteer preference points.

26. In many cases, the addition of preference points has resulted in a candidate's moving from a rank-ordered position lower than the 22 vacancies to be filled to a rank-ordered position within that number. For example, the individual who is ranked number 8 on the present eligibility list would have ranked twenty-third were it not for the additional 10 volunteer preference points he was awarded. Similarly, the individual who is currently ranked number 9 on the list, would have been number 28 without the addition of 10 volunteer preference points; the individual ranked fifteenth on the 1982 eligibility list would have been number 45 absent the addition of 10 volunteer preference points; number 18 on the current list would have ranked number 54 without his 10 additional volunteer preference points; number 20 on the current list would have ranked sixty-third without his 10 additional preference points.

The Court notes that the last three individuals, were it not for the addition of the volunteer preference points would, most likely, not have had an opportunity to compete for the 22 vacancies at all based on the experience with the 1978 list when number 34 on that list was reached to fill 22 vacancies.<sup>8/</sup>

27. The 1982 eligibility list included the names of six women, including plaintiffs Gavagan and Delong.

28. Plaintiff Gavagan is ranked number 37 on the current eligibility list, but, absent the use of the volunteer preference points, she would be ranked twenty-first on the list,<sup>9/</sup> which would have placed her within the number of vacancies to be filled.

29. Plaintiff Delong is ranked number 43 on the current list, but, absent the use of volunteer preference points, would be number 32 on the list and within the range for appointment which had been reached in 1978.

30. As is shown in the following table, plaintiffs Delong and/or Gavagan achieved higher scores on the civil service examination than 15 males who outranked either or both the named plaintiffs on the eligibility list only by virtue of the volunteer preference points they received:

<u>Final Score With Preference Points Added</u>	<u>Final Score W/O Preference Points</u>	<u>Rank on Current List</u>	<u>Rank W/O Preference Points</u>
Bonnie Gavagan	81.71	37	21
Patricia DeLong	80.41	43	32
Carmen Rao	91.68	7	22
Michael Tyskiewicz	91.58	8	23
Glen Lake	90.55	10	30
George Rahmsdorf	89.93	12	36
Robert Vosburgh	89.85	13	37
John Grant	89.16	14	42
Robert Arconti	88.88	15	45
Gary Arconti	88.83	16	46
Joseph Mannion	87.96	18	54
Richard Gavell	86.38	19	24
Robert Beers	86.28	20	63
John Hrabsack	85.85	21	66
Stanley Massena	84.63	23	70
Vincent Miller	82.63	31	78
Donald Basso	82.55	32	79

31. The remaining women on the list were also adversely affected by the use of volunteer preference points: Joan Piskura ranked number 52 on the current list, but, absent the use of volunteer preference points, would have been number 43; Carol Ferreri is number 56 on the present list, but without the use of volunteer preference points, would be number 49; Lisa Lesage is number 68 on the current list, but without the addition of volunteer preference points would be number 62.

32. Stephen Johnson, who is the only known black male on the eligibility list is ranked number but absent the use of volunteer preference points would be number 39.

33. George Garcia, the only male Hispanic on the eligibility list, is ranked number 33, but would be number 15 absent the use of preference points.

34. Use of the volunteer preference point system is determinative in most cases in receiving appointment to the paid Danbury Fire Department. If present 1982 eligibility list is used, and if all candidates are selected in rank order for the 22 vacancies, 20 of the 22 vacancies would be filled by persons afforded preference points for membership in volunteer companies.

35. It is clear that women and minorities have been excluded from membership in the volunteer fire companies, and, hence, are ineligible for awards of volunteer preference points. Thus, defendants' us

of the preference point system in making appointments to the paid Danbury Fire Department has an enormously adverse impact on women and minorities seeking positions in the Danbury Fire Department.

36. Kathleen Zuris, one of plaintiffs' witnesses, testified that she was deterred from even applying to compete for a position in the Danbury Fire Department because of the volunteer preference point system, which was described in full in the City's announcement of the February 1982 examination. It is certainly likely that many more women and minorities who are not members of volunteer fire companies were equally deterred from taking the qualifying exam by the knowledge that they would have to start 5 to 10 points (and many more ranking slots) behind those white males who are members of volunteer companies and who would achieve the same score but for the volunteer preference points.

37. The defendants did, in January of 1982, sponsor a well-publicized pre-test training program in an effort to attract women and minority applicants to the Danbury Fire Department. However, the volunteer preference point system set forth in Ordinance Sec. 8-18(9) was maintained as part of the hiring process. Indeed, notices about the upcoming exam included instructions regarding the awarding of preference points to members of volunteer companies. Defendants' outreach program thus did nothing to mitigate the adverse effect of the use of the volunteer preference point system, nor did it eliminate the deterrent effect of that system. Anyone who might

have contemplated responding to the proffered pre-exam training program would know that despite such program, they would start out five to ten points behind members of the volunteer companies who would also be taking the examination.

#### DISCUSSION

To establish a prima facie claim of disparate impact, such as is alleged here, under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., plaintiffs must show that the challenged policy or practice has a discriminatory effect. Once a discriminatory effect is demonstrated, the burden shifts to the employer to demonstrate that the practice or policy has a "manifest relationship to the employment in question," or that it is otherwise justified by business necessity. Griggs v. Duke Power Co., 401 U.S. 424 (1971). See also, Bridgeport Guardians, Inc. v. DelMonte, No. B-78-175 (D.Conn. Nov. 23, 1982).

Plaintiffs here have clearly met their prima facie burden for establishing their disparate impact claim. The un rebutted evidence adduced at the hearing establishes that there have never been any female, black or Hispanic firefighters on the Danbury Fire Department; that the granting of volunteer preference points virtually determines firefighter appointments; that prior to the February 1982 exam, the volunteer fire companies all but totally excluded women and minorities from their ranks and precluded applications from such "outsiders";

and that, but for the awarding of volunteer preference points, plaintiffs Gavagan and Delong, at least, would have been among the top 34 people on the present eligibility list for firefighter appointments, and thus within the number which history shows would have been reached for the 22 current and expected vacancies. Plaintiffs have also shown the probable deterrent effect of the volunteer preference point system on women and minorities who would compete for firefighter positions but for the preference points. Finally, plaintiffs have shown that defendants have been aware of the discriminatory impact of the preference point system since at least 1978, but that they have failed to take any action to remedy that impact.

The volunteer preference point system has been shown to operate as a "built-in headwind," Griggs, supra, 401 U.S. at 432, for women and minorities seeking equal job opportunities. Plaintiffs have thus established a prima facie claim of disparate impact under Title VII.

Defendants failed to show that membership in volunteer companies was either a valid predictor of job performance or justified by any other business necessity. Indeed, plaintiffs established that all firefighter appointees must undergo the same training program, regardless of whether they are members in the volunteer companies or not. Defendants failed to show that membership in the volunteer companies has any relationship -- "manifest" or otherwise -- to the position of paid firefighter.

Defendants' emphasis on the pre-exam training program is misplaced, since that program did nothing to eliminate the discriminatory effect of the preference point system.

Plaintiffs have thus established a likelihood of success on the merits of their Title VII claims.

Plaintiffs have also demonstrated probable success on the merits of their § 1983 claims, which require proof of discriminatory intent as well as effect. See, Washington v. Davis, 426 U.S. 229 (1976); Personnel Administrator v. Feeney, 442 U.S. 256 (1979); Lora v. Board of Education, 623 F.2d 248 (2d Cir. 1980). As the facts set forth, supra, indicate, the application process of the volunteer companies and the hostility of the members themselves to women and minorities indicate that those groups have been intentionally excluded from membership in the companies. In addition, the facts clearly show that defendants were made aware of the discriminatory impact of the preference points on women and minorities as long ago as 1978. Defendants' failure to take any action to remedy the discriminatory effects of the preference point system set forth in Ordinance Sec. 8-18(9) in the face of such awareness, leads to an almost inescapable inference of intentional discrimination. See, Ridgefield Women's Political Caucus v. Fossi, No. B-79-145 (D.Conn., Dec. 2, 1982).

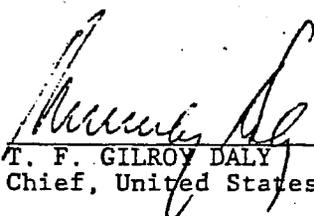
CONCLUSION

The requisite showing of irreparable harm and probable success on the merits having been made, plaintiffs are entitled to a preliminary injunction.

Defendants are, therefore, enjoined, pending final determination of the merits, from making any appointments to the rank of firefighter in the Danbury Fire Department on the basis of the current eligibility list or any other list which is or has been compiled on the basis of the addition of volunteer preference points to members of volunteer fire companies. 11/

SO ORDERED.

Dated this 4th day of February, 1983,  
at Bridgeport, Connecticut.

  
\_\_\_\_\_  
T. F. GILROY DALY  
Chief, United States District Judge

FOOTNOTES

1. The pertinent provision of Title VI provides as follows:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

2. Title VII provides in pertinent part:

"It shall be unlawful employment practice for an employer-

- (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual or employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

3. This statute, one of the Civil War Civil Rights statutes, provides that:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

4. The antidiscrimination provision of the Federal Revenue Sharing Act provides as follows:

"No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under subchapter I of this chapter."

5. In this case, the number and identity of the plaintiffs, as well as the potential classes they seek to represent, is as yet, undetermined. The record shows that some women were deterred by the preference point system from even applying for firefighter positions. If Danbury is permitted to make appointments from a list which was compiled in part on the basis of a preference point system which, based on the record thus far, is likely to ultimately be declared unlawful, any resulting remedy would, of necessity, require that the practice be enjoined, possible awarding of back pay, as well as adjustment in seniority, with the result that not only will plaintiffs have suffered, but those persons who would be appointed from the present list could very well have their own job security and/or seniority expectations dashed. The essential purpose of a preliminary injunction is to "preserve a state of affairs such that the court will be able, upon conclusion of the full trial, to render a

meaningful decision for either party." Chappell & Co. V. Franckel, 367 F.2d 197 (2d Cir. 1966), quoting, Developments in the Law -- Injunctions, 78 HARV. L. REV. 994, 1056 (1965). In the Court's view, it is far more sensible to temporarily enjoin the use of the suspect list now, before any injury or disruption is caused to plaintiffs, the classes they seek to represent, or those possibly unwitting and innocent individuals on the present eligibility list.

6. Ordinance Sec. 8-18(9) provides as follows:

"Any applicant who:

- (a) Is a Member in good standing in one of the Danbury volunteer fire companies;
- (b) Has answered twenty (20) percent of his company's fire alarms as certified by the secretary and chief line officer of his company;
- (c) Attended a majority of the fire drills of his company in the twelve months previous to his application also as certified by said secretary and chief line officer of his company, shall receive after attaining a passing grade on the civil service examination, an additional ten points to his grade if he has completed two or more years in one or more of said volunteer fire companies, but shall receive only five additional points if he has completed one year or more, but less than two years of service.

7. See Plaintiffs' Exhibits 3, 4, 5, 10, 11, 12, 13, 14 (the latter five attached to Plaintiffs' Proposed Findings of Fact and Conclusions of Law).

8. The Court also notes that each of the men on the present list who leapfrogged to the top 34 positions because of the award of volunteer preference points were awarded the full 10 points without even a representation, let alone proof, that he had fulfilled all the requirements set forth in Ord. Sec. 8-18(9) for the award of that many points.
9. Ms. Gavagan has claimed that she attempted to apply for membership in the Germantown Volunteer Fire Company in 1975 but was refused. Plaintiffs did not present evidence at the hearing to prove that claim. However, the Court notes that, if Ms. Gavagan had become a member of the company in 1975 and if she fulfilled the other requirements of Ordinance Sec. 8-18(9), she would have been eligible to receive 10 preference points and her rank would have jumped to number 7 on the present list.
10. The Court specifically notes that plaintiffs do not contest the granting of veterans' preference points, which practice the Supreme Court upheld in Personnel Administration v. Feeney, 442 U.S. 256 (1978), and which practice is specifically exempted from the coverage of Title VII. Moreover, as the Supreme Court noted in Feeney, the U. S. Military is and has been open, at least to some degree, to women as well as men. The same cannot be said of the volunteer fire companies.
11. The Court has not addressed plaintiffs' claims under Title VI or the Federal Revenue Sharing Act, which both require proof that defendants are recipients of Federal funds. No evidence of that fact was produced. None-

theless, plaintiffs need only show the likelihood of success on just one of their claims to be entitled to a preliminary injunction. They have, in fact, shown probable success on their Title VII and their § 1983 claims.

In addition, while defendants are preliminarily enjoined from making any firefighter appointments from the current eligibility list, they are free to advertise for and to conduct a new exam and to compile a new eligibility list without the use of the discriminatory voluntary preference points.



# CITY OF DANBURY

## CIVIL SERVICE COMMISSION

155 Deer Hill Avenue

DANBURY, CONNECTICUT 06810

797-4548 797-4549

NICHOLAS NERO, ~~XXXXXX~~  
WILLIAM A. HEALY  
CARMINE BUTERA  
JOHN M. HANNA, ~~Chief Examiner~~

TO: MAYOR JAMES E. DYER

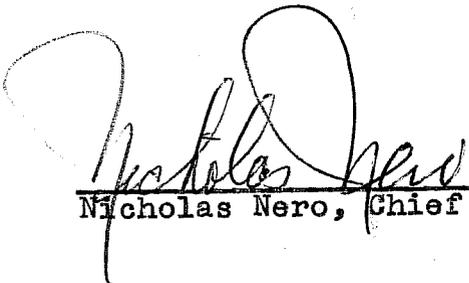
FEBRUARY 23, 1983

FROM: CIVIL SERVICE COMMISSION

RE: ADDITIONAL FUNDS

In view of the present problem regarding the Firefighter's list, we are requesting additional funds to prepare for a new examination. Attached is a copy of Corporation Counsel's letter dated February 22, 1983 in regards to the judge's ruling which is self-explanatory.

Development of Pre-test training program	\$4500.00
Development of exam for Firefighter candidates	1500.00
Administration of Firefighter exam	225.00
	<hr/>
	\$6225.00

  
\_\_\_\_\_  
Nicholas Nero, Chief Examiner

NN/fk  
c: John Edwards  
attach.



# CITY OF DANBURY

155 DEER HILL AVENUE

DANBURY, CONNECTICUT 06810

DEPARTMENT  
OF FINANCE

February 23, 1983

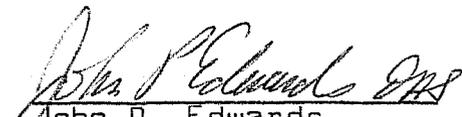
TO: Common Council via  
Mayor James Dyer

Certification #127

FROM: John P. Edwards

We hereby certify to the availability of \$6,225.00 in the Contingency Account to be transferred to the Civil Service Professional Service Fees Account #02-01-183-020100.

Previous balance of Contingency Account	\$ 280,440.90
Less pending requests	10,300.00
Less this request	6,225.00
	<u>\$263,915.90</u>

  
 John P. Edwards  
 Comptroller

/af