



City of New York Parks & Recreation

New York City Council
Committee on Parks & Recreation

**Oversight- Going Forward After Wright v. Stern:
How to Ensure No Future Discrimination in the Parks Department**

October 24, 2008

**Testimony by
Robert Garafola, Deputy Commissioner for Management and Budget**

INTRODUCTION

This past spring, the Law Department and Parks & Recreation concluded a lengthy employment litigation which began in 2001. In resolving this litigation, Parks has codified a number of employment personnel practices that were initiated under Commissioner Benepe's tenure. We have also developed a variety of other human resource initiatives that we believe foster improved communication, better morale, enhanced training and advancement opportunities for staff. I look forward to discussing this with you this morning.

CONSENT DECREE

Parks has established a comprehensive policy for recruitment and an interview process that ensures a level and widespread field of candidates. We believe this process fosters a level playing field for those seeking advancement at Parks. Indeed, shortly after Parks voluntarily adopted a written posting and interview policy in 2004, the federal government proposed settling its lawsuit against Parks. Parks and the federal government subsequently entered into a settlement agreement, known as the Consent Decree, in 2005. The key provision of that Consent Decree, which ended the federal government's lawsuit, was Parks' agreement to maintain its posting and interview policy for three years. Our current policy is essentially the same as the one initially approved by the federal government, and we are pleased with the results it has yielded

Let me now describe the critical aspects of the policy:

- a. Each job posting describes the essential job functions of the position, including the minimum qualifications necessary, the application deadline and anticipated salary range.
- b. Vacancies are posted internally for a reasonable period of time intended to maximize employees' ability to learn about job vacancies at Parks. A protocol has been established for extending the time frame for internal postings when

- internal postings are followed by citywide or external postings or other appropriate circumstances.
- c. Parks continues the practice of filling jobs whenever it can from within the agency through internal postings.
 - d. Parks posts for jobs internally at the following locations
 - i. Parks Intranet Website
 - ii. Bulletin boards at all the borough headquarters, plus other significant Parks administrative locations, including district offices.
 - iii. Via email to all employees
 - e. Parks advertises for positions internally and externally when a wider recruitment pool is sought. Ads are run in New York City newspapers such as the *Amsterdam News*, *New York Times*, *the Daily News*, *Hoy*, *Newsday*, *amNY* and *Metro*. In addition, Parks utilizes a number of websites to reach potential candidates, including Monster.com, CareerBuilder.com, ecojobs.com, CityJobs as well as college recruitment through the websites Experience and Nacelink. We also attend job fairs.
 - f. An interview panel is designated for each vacancy and Parks makes a best effort to diversify its panels. The panel reviews the applications, interviews the applicants and recommends the panel's top choices to the selecting official. Furthermore, the EEO Officer or his Deputy serves as an EEO Advisor for each posting and signs off on the interview process and panel selection and reviews all relevant documents.
 - g. Parks has also partnered with City University of New York (CUNY) to identify candidates who qualify and would benefit from the Continuing Worker Education Program (CWE). We believe that the initiative will have an impact on diversity across the agency.

TRAINING

I would now like to talk to you about Parks' innovations in training. Parks believes that training is a critical to human resource development and advancement. Historically, Parks has offered an array of training programs at the in-house Parks Academy, as well as at various job sites. As part of the Consent Decree, Parks offers 15 additional supervisory and managerial courses annually. We have exceeded this requirement in each year of the consent decree by offering more than the required number of classes, holding classes even if the minimum attendance has not been met and allowing anyone who wishes to take a Parks managerial course to do so, regardless of their title or rank. Moreover, the Parks Academy offers innovative and necessary training opportunities for all our Parks staff, and this year we are reintroducing a year-long leadership training program to employees interested in becoming managers at Parks, called the Parks Leadership Development Program. It will begin in January 2009 with selections made by the end of November 2008. It will be conducted annually for non entry level positions and we are committed to recruiting and selecting a diverse class.

In addition, external Training Programs are offered, such as Leadership Institute and Management Academy at DCAS. We are also offering Back to College Workshops and are publicized these programs through broadcast messages, Parks' website, posters and flyers. A

good example of that collaborative learning effort is our partnerships with the Brooklyn Botanic Garden for the last seven years on the Master Gardener class, as well as the New York Botanical Garden course on the Principles of Urban Tree Care.

Additionally, over the past few years, we've hosted one-day summits with our City Parks Workers and Park Supervisors to get their input on a number of maintenance, operations, and other Parks-related functions that impact their performance. These helpful summits have shaped the way management now works to improve and enhance the efficient management of parks and playgrounds.

CAREER COUNSELING

In response to requests for more career guidance, Parks designated career counselors, one in each borough, who are available to meet or speak with all employees regarding career paths at Parks. The career counselors are trained and must be able to provide employees with information such as dates of civil service exams, policies on transfers, training and educational opportunities, just to name a few. David Terhune, our Personnel Director, is the central coordinator of the program.

OTHER BEST PRACTICES

As discussed earlier, Parks has formalized some of the best practices already in place at the agency, as well as adopting some new processes. New practices include posting organizational charts on the Intranet so Parks employees have a good understanding of the organization of the agency. Parks also created and is providing civil service career ladders showing the lines of progression for civil service titles at Parks to help make advancement opportunities clearer for those who wish to seek promotion at the Agency.

Parks has also strengthened its panel interview process, with training for panel interviewers conducted by the Parks Personnel Director, Director of Training, Deputy Director of Recruitment and an outside expert in the field. Ricardo Granderson, our EEO officer, is also involved in this process. This training will professionalize the panels, promote objective decision-making and reinforce the importance of consistent scoring among panel members. Trainings will be held monthly for approximately 25 people per session. The first session is scheduled for October 27, 2008.

THE STIPULATION

The class action lawsuit, settled after seven years in 2008, resulted in a stipulation. Entered into on May 15, 2008, the stipulation memorializes Parks' ongoing efforts to ensure that we continue to implement the best personnel practices in our overall agency business, specific areas of recruitment, the interview process, compensation and staff development. The result is greater transparency. Let me describe some of the interesting initiatives we have implemented.

Parks established an Advisory Committee to address discrimination and retaliation concerns. The committee is chaired by Parks' General Counsel Alessandro Olivieri. The other Committee members are Parks' EEO Officer Ricardo Granderson and three current employees who were named plaintiffs in the Wright v. Stern class action. The Committee holds at least quarterly

meetings, the first of which was held on September 19, 2008. Among other things, we hope that the committee will make recommendations that will foster diversity in our workplace and preempt issues before they become complaints.

In order to make our compensation structures more uniform, Parks has established an additional mechanism for addressing individual complaints of salary disparities. That mechanism provides that when an individual files an internal complaint of salary disparity, Parks will conduct a study of the alleged disparity by examining, among other things, the pay rates of similarly situated employees. We have also closed the differential between salaries of the Chiefs and Deputy Chiefs in the Maintenance and Operations division and the salaries of Chiefs and Deputy Chiefs in the Recreation division.

Parks has implemented a thorough and robust EEO monitoring process from the drafting of the posting, through to the hiring. EEO reviews and approves the interview panels, the candidate questions, monitors the interviews, reviews the rating sheets, and reviews the final documents.

CONCLUSION

Overall, I am here to say today that we have accomplished a lot and continue to develop many innovative and forward-thinking initiatives in the many areas of hiring, promoting and recruiting staff to Parks & Recreation. Under Commissioner Adrian Benepe's leadership, we are fully committed to equal opportunity in hiring, promotions, access, and service to the public. We thank the Parks and Civil Rights committees for giving us the opportunity to discuss and talk about all we have accomplished over the last few years, and we look forward to working with the Council and receiving your continuing support in these efforts.

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**Testimony by John Payton
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NAACP Legal Defense & Educational Fund, Inc.
(Co-counsel for the plaintiffs in *Wright v. Stern*)**

**Oversight Hearing:
“Going Forward After *Wright v. Stern*:
How To Ensure No Future Discrimination in the Parks Department.”**

**Before the Committee on Civil Rights and the
Committee on Parks and Recreation**

**Friday, October 24, 2008
10:00 a.m.
City Hall, New York, NY**

Good morning, Chairman Seabrook, Chairwoman Foster, and members of the Committee on Civil Rights and the Committee on Parks and Recreation. Thank you for the invitation to testify here today. My name is John Payton, and I am the President and Director-Counsel of the NAACP Legal Defense & Educational Fund, Inc.

The Legal Defense Fund is the nation's oldest civil rights law firm. We were founded by Thurgood Marshall here in New York City, and have challenged racial discrimination against African Americans and other people of color for over sixty years. Along with our co-counsel – Lewis Steel of Outten & Golden, and Cynthia Rollings and Jody Yetzer of Beldock Levine & Hoffman – the Legal Defense Fund represents the plaintiffs in the *Wright v. Stern* lawsuit.

New York City is among the most diverse cities in the world, and is a leader in many ways. New York should also be a leader in providing equal employment opportunity to the hundreds of thousands of city workers who perform critical jobs every day. As the *Wright v. Stern* lawsuit has revealed, however, the reality for City workers often falls far short of what federal and City law require in terms of employment rights. I am pleased to have the opportunity to testify today about ways to eliminate racial discrimination in the Parks Department in the future, and also to discuss more generally the importance of eliminating employment discrimination across all City agencies.

The *Wright v. Stern* settlement is an important first step toward reducing discrimination within the Parks Department.

The *Wright v. Stern* lawsuit was originally filed in 2001, alleging that the Parks Department engaged in widespread employment discrimination and retaliation against its African American and Hispanic employees. In support of our claims, we presented evidence of systemic pay disparities; widespread failure to follow basic personnel practices such as posting of vacancies; racially segregated job assignments; and routine retaliation against class members who complained of discrimination.

The settlement of the Plaintiffs' pay, promotion, and retaliation claims was the product of an intensive, fourteen-month mediation process that began in December 2006 and ended in January 2008. The settlement was approved by the federal court a few months later, in May 2008.

Of course, a critical first step toward ensuring the elimination of race discrimination within the Parks Department is the effective implementation of the *Wright v. Stern* settlement. The settlement agreement requires significant changes in Parks Department personnel practices, including changes in pay, promotion, and EEO investigation processes at the Parks Department. The settlement increases the pay for certain job titles to enhance opportunities for class members in disproportionately African American or Hispanic job titles. It requires an annual review of promotions into managerial titles, and remedial action if the promotion rate of class members falls below eighty percent of the white promotion rate. The settlement also creates an opportunity for black and Hispanic employees to obtain review of their pay if they believe they are being paid less than their white counterparts. If such reviews show unjustified pay disparities, those disparities will be removed.

The settlement also requires the Parks Department to establish rigorous training for interviewers to ensure that employees who apply for promotions are treated in a more fair and objective manner. The Department is required to examine the process by which managers are selected in the future to safeguard against discrimination. The Department will also conduct its own review of the experience of individuals who file charges of discrimination, to determine whether they experienced any retaliation after they filed charges.

Finally, the settlement includes nearly \$12 million in back pay and compensatory damages as a remedy for past discrimination in promotion and pay, and for retaliation against employees who filed charges of race, color or national origin discrimination.

The Department is required to file ongoing compliance reports to permit monitoring of the implementation process. Any efforts to reduce race discrimination in the Parks Department must include careful scrutiny of the Department's compliance reports, and careful monitoring of each of the remedial provisions included in the settlement.

Additional steps are needed to eliminate inequities that are not addressed by the *Wright v. Stern* settlement.

In addition to effectively implementing the *Wright v. Stern* settlement agreement, it is also critical that the Parks Department address key inequities that were not part of the settlement but that threaten to perpetuate dual employment systems within the agency.

For example, there is a near-absence of African Americans and Hispanics from high-level management jobs. Even though nearly 60% of the agency's workforce is African American and Hispanic, the Parks Department's highest-ranking and middle-management employees – including deputy commissioners, borough commissioners, assistant commissioners, and chiefs – have long been virtually all-white. This disparity is not limited only to high-level management positions: the data we analyzed for the lawsuit show that black and Hispanic employees represented only about 18% to 25% of the entire managerial workforce – well below the representation of blacks and Hispanics in non-managerial positions. And for those black and Hispanic employees who do attain managerial positions, they are typically limited to the lowest levels of in-house job titles.

Additionally, virtually all blacks and Hispanics who have moved into mid-level managerial ranks have been restricted to the Recreation division. Mid-level managers in the large and critically important Maintenance and Operations division have long been, and continue to be, nearly all white. The data that we analyzed show that this disparity has nothing to do with educational level, experience, or any other objective factor.

While the *Wright v. Stern* settlement includes a number of provisions that aim to improve these distressing patterns over time – including modifications to the promotions process and the implementation of career development programs – the Department must go beyond the settlement if it hopes to eliminate what is essentially a racial glass ceiling.

In addition to focusing on racial disparities in high-level and mid-level management positions, the Department must also address disturbing patterns of geographic segregation among the Parks Department workforce. Senior Parks officials – including the Commissioner and the Deputy Commissioner – acknowledged during the litigation that employee work assignments were sometimes made on the basis of race. In particular, Parks assigned minority employees to minority neighborhoods, often in response to perceived preferences from the community.

The plaintiffs were not able to successfully pursue this claim in our lawsuit. Judge Chin acknowledged the admission of Parks management that employees were on occasion assigned to work locations because of race, but dismissed the claim because the plaintiffs did not show that geographic segregation was the Department's "standard operating procedure." Whether or not we were able to show a "standard operating procedure," however, the Parks Department should revisit its policies and eradicate any practice of assigning African American and Hispanic employees only to minority neighborhoods in the City. Race-based work assignments, and racial segregation in the workplace, are illegal.

Other geographic disparities exist, in addition to work assignments, that are not addressed by the *Wright v. Stern* settlement. Parks and facilities in predominantly minority neighborhoods are under-staffed and under-funded compared to the staffing and resources allocated to facilities in predominantly white neighborhoods. Employees working in white neighborhoods have access to better maintenance equipment, and repair requests are addressed faster in white neighborhoods than in black and Hispanic neighborhoods. Playground and recreation equipment in white neighborhoods is newer than that in black and Hispanic neighborhoods. Any serious effort to eliminate discrimination in the Parks Department must include a thorough analysis of these disparities, and the development of a comprehensive strategy to eliminate them.

The City Council should examine the occurrence of employment discrimination across other City agencies.

Finally, it is important for the City Council to consider broader patterns of employment discrimination within other City agencies, not just the Parks Department. All too often, the City has failed to enforce fair employment practices across all municipal jobs, and instead has vigorously opposed employment discrimination lawsuits, even when those suits have obvious merit.

As one example, the Legal Defense Fund represents a group of African American and Hispanic school custodians in a lawsuit that was originally filed by the United States Justice Department against the New York City Department of Education. In that case, the City settled the lawsuit and provided important job benefits to minority custodians who had been excluded by unfair hiring practices. To its credit, the City has defended that settlement against challenges of reverse discrimination, but the underlying employment disparities among the custodial workforce remain troubling. The most recent available data show that blacks and Hispanics each represent only about 4% of custodian engineers in the City's schools, even though those groups make up nearly 50% of the qualified labor pool. This is a longstanding disparity: as of the early 1970s, blacks represented only about 2% of all custodian engineers.

To give just one other example, the United States Justice Department sued the City last year for hiring discrimination in the New York Fire Department. The complaint in that lawsuit alleges that of the 11,000 uniformed firefighters in New York, only 7% are black or Hispanic.

In both the school custodians lawsuit and the firefighter hiring lawsuit, the use of discriminatory civil service exams has resulted in the broad exclusion of blacks and Hispanics from entry-level and managerial jobs in city agencies. For New York to make real progress in eradicating employment discrimination from City agencies, it must seriously reevaluate its civil service hiring process, and stop using poorly-designed written exams that do little to predict success on the job. While the scope of this hearing does not permit a full discussion of ways to reform the City's civil service exams, a key starting point is to use to use exams that have been carefully screened to eliminate racial disparate impact, and then to closely monitor test results to avoid perpetuating racial disparities in the City's workforce.

The Council should also consider investigating whether the pervasive employment problems at the Parks Department, which the *Wright v. Stern* settlement is meant to address, are taking place at other agencies as well. We believe that many of the discriminatory practices uncovered at the Parks Department – including the failure to post openings for job vacancies, the use of in-house titles, the lack of a consistent and fairly-applied interview process, the absence of regular performance evaluations, and the failure to follow the requirements of the civil service hiring and promotion system – are not in fact limited to the Parks Department, but are instead occurring City-wide.

With regard to job postings and in-house titles in particular, there are monitoring and reporting mechanisms that could easily be put in place across all City agencies to address some of the more obvious promotion and compensation disparities. More generally, we believe that all City agencies should be required to maintain and report

uniform and transparent workforce statistics on hiring, promotions, and pay so that illegal disparities can more easily be identified, and progress toward equal treatment can more easily be tracked.

In addition, the Council should consider revising the role of Equal Employment Opportunity offices within each City agency. Presently, all City agencies – including the Parks Department – enforce their EEO policies through an internal EEO office that reports to each agency's commissioner. This reporting method, however, strips the EEO office of any real independence and effectively converts it into a rubber stamp of the agency's discriminatory or retaliatory practices. All agency EEO officers should instead report to the central EEO office, which should be given an expanded oversight and enforcement role over agency employment practices.

Finally, in terms of enforcement, the City's Corporation Counsel should reconsider his office's role in the enforcement of equal employment and anti-discrimination laws. Corporation counsel's current apparent policy is to defend against all discrimination claims with no consideration as to whether the City's agencies are violating federal law or the City's own very strong employment discrimination law. As a result, cases like *Wright v. Stern* against the Parks Department last years from the EEOC charge-filing date to resolution, costing the City millions of dollars in litigation expenses while allowing obviously discriminatory practices to fester. In LDF's view, Corporation Counsel should have an oversight role to prevent discrimination and to resolve pattern-and-practice issues when they arise. Continuing to engage in a no-holds-barred, aggressive defense of meritorious discrimination claims serves the City – and all of its employees – poorly.

Thank you for the opportunity to testify before you today. The City owes its workers, at the least, a fair and equal opportunity to perform and advance in their jobs without regard to their race. While aggressively implementing the provisions of the *Wright v. Stern* settlement is an important first step in addressing discrimination in the Parks Department, I hope the Council is willing to pursue the additional measures I have suggested to confront race discrimination not only in the Parks Department but across all City agencies.

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