IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CORPORAL WILLIAM BULLEN and, CORPORAL JEFFREY GILES,	:	
Plaintiffs,	:	
v.	:	
COLONEL L. AARON CHAFFINCH, individually and in his official capacity as Superintendent of the Delaware State Police; JAMES L. FORD, JR., individually and in his official capacity as Secretary of the Department of Safety and Homeland Security of the State of Delaware, and DIVISION OF STATE POLICE DEPARTMENT OF PUBLIC SAFETY AND HOMELAND SECURITY, STATE OF DELAWARE,	:	Civil Action No. 02-1315-JJF
Defendants.	:	

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Attorney for Plaintiffs.

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Of Counsel: Edward T. Ellis, Esquire and Robert J. Fitzgerald, Esquire of MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, Philadelphia, Pennsylvania.
Attorneys for Defendants.

MEMORANDUM OPINION

December 5, 2003

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion For Full And/Or Partial Summary Judgment (D.I. 66) filed by Plaintiffs, Corporal William Bullen and Corporal Jeffrey Giles against Defendants, Colonel L. Aaron Chaffinch, James L. Ford, Jr. and the Division of State Police, Department of Safety and Homeland Security of the State of Delaware. For the reasons set forth below, the Court will deny Plaintiffs' Motion.

BACKGROUND

I. Procedural Background

Plaintiffs filed the instant action pursuant to 42 U.S.C. §§ 1981 and 1983 and the Fourteenth Amendment of the United States Constitution alleging that they were illegally denied promotions on the basis of reverse race discrimination. (D.I. 1). Plaintiffs assert that Defendants declined to promote them from the rank of corporal to the rank of sergeant between October 1, 2001 and December 31, 2001, because they are white. Plaintiffs seek an award of compensatory damages, punitive damages and injunctive relief.

Discovery has been completed, and Defendants have voluntarily dismissed their counterclaim. The Motion For Full And/Or Partial Summary Judgment has been fully briefed by the parties, and therefore, this matter is ripe for the Court's review.

II. Factual Background

A. The Parties

Plaintiffs William Bullen and Jeffrey Giles are white males who are Master Corporals with the Delaware State Police ("DSP"). Plaintiff Bullen has been employed with the DSP since 1981 and Plaintiff Giles has been employed with the DSP since 1986. (D.I. 1, Bullen Dep. 3; Giles Dep. 2; A33, 510, 533, 296). Both Plaintiffs Bullen and Giles were eligible for promotion between October 1, 2001 and December 31, 2001 (the "relevant time period").

Defendant James L. Ford, Jr. is the Secretary of the Department of Safety and Homeland Security, which was formerly known as the Department of Public Safety. Defendant Ford assumed this position in early 2001 after Ruth Ann Minner was inaugurated as Governor of the State of Delaware.

Defendant Colonel L. Aaron Chaffinch was Lieutenant Colonel of the DSP from May 2001 to September 30, 2001 under Superintendent Gerald R. Pepper. Upon the retirement of Superintendent Pepper, Defendant Chaffinch became acting Superintendent on October 1, 2001. On February 8, 2002, Governor Minner promoted Defendant Chaffinch to the rank of colonel and appointed him as the Superintendent of the DSP.

B. The Promotion Process At The DSP

The parties agree that for at least ten years prior to 2001,

the DSP had a testing system for promotions that did not implicate race. (D.I. 67 at 3). Defendants contend that this system has not changed since 1991, but Plaintiffs contend that on September 5, 2001, Governor Minner ordered an unprecedented total freeze on promotions within the DSP and that the DSP began to use an illegal quota system for promotion and hiring decisions.[1]

The promotion testing system used by the DSP involves a three step process. (Chambers Ex. 8; A142-143). The first step in the promotion process is the testing step, which is comprised of two parts: (a) a written examination, and (b) oral boards. The dates and subject matters of the written examination are typically announced in the spring of the test year so that testing can occur in September. Textbooks are issued to the corporals in advance so that they can study throughout the summer. (Bullen Dep. 11; A035). The DSP Human Resources Department fixes a passing score, and those candidates who pass the written examination are eligible for the oral boards in October or November. (D.I. 74, Ex. A at 9). Those who fail the written examination are not eligible for promotion.

The oral boards, which Plaintiffs refer to as the interview

[1] Although Plaintiffs assert in one section of their Opening Brief that the DSP used a promotion system for ten years prior to 2001 which did not implicate a candidate's race (D.I. 67 at 3), Plaintiffs assert in another section of their brief that the DSP began to use racial quotas and suspect classifications in their hiring and promotion decisions in 1998 or earlier. (D.I. 67 at 5).

stage, are conducted by a group of out-of-state troopers or police officers who question the troopers and score their answers. (D.I. 74, Ex. A at 8). The scores for the oral and written boards are then combined into a single number which is the candidates final score for the promotion process.

The second step of the promotion process is referred to by Defendants as "banding." The Human Resources Department ("HR") creates bands based on a standard statistical analysis of the scores. Prior to 1991, HR grouped the scores within one standard deviation above the mean into one band, and then grouped the scores within one standard deviation below the mean into a separate band. (Chambers Ex. 8; A142). Next, each group of scores within a standard deviation above and below the bands became another band until all the scores were banded.[2]

Beginning in 1991, HR changed the banding system so that the mean was straddled with the first standard deviation. (Chambers Ex. 8; A142). In other words, the band surrounding the mean included all scores within one-half of a standard deviation above and below the mean. HR then grouped the scores above and below the middle band into bands of one standard deviation each.[3]

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[2] By way of example, if the mean score was 85 and the standard deviation was 5, one band would be above 85 and one band would be below 85. The result would be an A-Band of 96-100, a B-Band of 91-95, a C-Band of 86-90, a D-Band of 81-85 and so forth.

[3] By way of example, if the mean was 85 and the standard deviation was 5, the DSP would place one band around 85 which

After banding, the Superintendent publishes a list of the troopers eligible for promotion identifying them by promotion band. (Ford Ex. 5 at ¶ 2; A218-219). John Dillman was the HR Director responsible for banding from 1980 until April 12, 2002.

The third step of the promotion process is the promotion decision step. At this step, the Superintendent must promote members of the highest available band before moving to the next highest band. (Ford Ex. 5; A218). For example, as positions become available for promotion, the Superintendent has to use all of the candidates from the A-Band before proceeding to the B-Band.

Plaintiffs contend that it is the standing practice and stated policy of the DSP to use these promotional bands for two years. (Ford Dep. 39-40; Yeomans Ex. 1; Ford Ex. 4-6; A162, 215-216, 443). At the end of the two year period, new testing begins and then new promotional bands are produced which are then used for the next two years. (Ford Dep. 37-38; Ford Ex. 4-5; A161-162, 215, 218).

Defendants do not dispute that bands are typically used for two year periods. However, Defendants contend that it is normal practice for promotions in the DSP to occur in waves. According

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would include scores of 82.5-87.5. Other bands would be created by one standard deviation, so the A band would encompass scores above 92.5, the B-Band would be scores of 87.5-92.4, the C-Band would be scores of 82.5-87.5, the D-Band would be scores between 77.6 and 82.4, and so forth.

to Defendants, promotions usually arise from retirements, resignations or transfers and not the creation of new jobs. Because promotions and transfers cause disruptions within the DSP, Defendants contend that the Superintendent usually accumulates several vacancies and then makes the promotions in a single announcement instead of filling each vacancy as it occurs. Thus, Defendants contend that it is not unusual for a year to elapse between waves of promotions. By way of example, Defendants point out that there were no promotions between June 15, 2000 and August 1, 2001. (Ford Ex. 6; A221).

The parties also agree that the Superintendent has the final authority over promotions. As a matter of courtesy and tradition, the Superintendent passes the promotion list to the Secretary of Public Safety, who then passes the list to the Governor. (Ford Dep. 176-177; A196). The Governor does not have the authority to veto the Superintendent's promotions.

C. Plaintiffs' Allegations Regarding The DSP's Use Of Racial Quotas

Plaintiffs contend that, beginning in 1998 or earlier, former Governor Carper and his Secretary of the Department of Public Safety, Brian Bushweller, began to use racial quotas and suspect racial classifications in all hiring and promotion decisions for troopers. Based on the testimony of John Dillman[4],

[4] Mr. Dillman was terminated on April 12, 2002 and is currently suing the DSP over the circumstances of his

the former Director of HR for the DSP, Plaintiffs contend that Secretary Bushweller had a standing order requiring recruit classes to have a particular percentage of minority recruits. Dillman Dep. 71-72; Ford Ex. 1, 3; Seifert Dep. 41; A609-610, 211, 214, 407). For example, Plaintiffs contend that in September 1998, Secretary Bushweller ordered that 30% of the trooper recruit class be comprised of black recruits. To substantiate their contention, Plaintiffs point to, among other things, an e-mail that Mr. Dillman sent to the Superintendent, which states that "Secretary Bushweller has directed that 30% of the class be African-Americans." (Ford Ex. 1; Seifert Dep. 26-28; Dillman Dep. 71-72; A211, 404, 609-610). In addition, Plaintiffs contend that lists were compiled for minority recruits indicating their name, race and sex. (Ford Ex. 1; A211).

Plaintiffs contend that the DSP also attempted to hide its use of racial quotas from the public eye. According to Plaintiffs, Captain Seifert advised the Superintendent in writing that because of repeated public inquiries, written references should not be made to Secretary Bushweller's "direction to hire a class of 30% African-American." (Ford Ex. 3; Seifert Dep. 35; A214, 406).

Plaintiffs contend that racial quotas were also a factor in all State Police promotion decisions from 1997 onward.

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termination.

Plaintiffs contend that Secretary Bushweller ordered the DSP to maintain lists of the race of candidates for promotion. Mr. Dillman communicated the racial ratio for promotions to the Superintendent in writing. (A672-675).

Plaintiffs contend that the use of racial quotas became enhanced under the administration of Governor Minner. Governor Minner issued Executive Order 10 and announced a plan to aggressively increase the number of women and minorities in state government so that the "workforce . . . reflects the diversity of the State's population." (Ford Ex. 9; Ford Dep. 46-59; Blunt-Bradley 40-41; A12, 164-167, 228-235). Plaintiffs contend that Defendants implemented Governor Minner's policies and crossed the line into illegality by refusing to promote Plaintiffs because of their race.

Defendants acknowledge that the DSP was under pressure from government, media and political forces with regard to their personnel practices. At the time Governor Minner issued Executive Order No. 10, the DSP was the subject of an investigation by the U.S. Department of Justice for its recruiting and hiring practices.[5]

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[5] The Department of Justice filed suit against the DSP in January 2001 in this Court. Before trial, the Honorable Kent A. Jordan found that the DSP's testing process for recruits had an adverse impact on minority recruits. United States v. Delaware, 2003 WL 21183614 (D. Del. May 20, 2003). In August 2003, Judge Jordan held a bench trial in this case, and his decision is currently pending.

Defendants also acknowledge that between 1998 and 2001, several minority troopers filed charges of discrimination with the Equal Employment Opportunity Commission against the DSP challenging its promotion and disciplinary practices. By mid-2001, the recruitment, promotion, firing and disciplinary practices of the DSP garnered the attention of the state legislature, and hearings (the "Henry Hearings") were held before the Senate Public Safety Commission in June, 2001. (Decl. of Sen. Margaret Rose Henry; A464-477). During these hearings, Defendant Ford and then Colonel Pepper were required to appear and answer questions raised by the Senate Public Safety Commission. Plaintiffs contend that the pressure of the minority community coupled with the threat of further hearings deterred Defendants from promoting Plaintiffs.

A few months after this hearing, the State announced the retirement of DSP Superintendent Gerald Pepper. (Ford Ex. 20 at 1, A261). On the same day, the Governor issued Executive Order 19, appointing the Director of the State Personnel Office, Lisa Blunt-Bradley, to conduct an investigation into the recruitment, promotion, termination and discipline practices within the DSP. (Ford Ex. 21; A263-264). Ms. Bradley retained outside consultants and examined all aspects of the DSP human resources operation. (Blunt-Bradley Dep. 70-71; A020). Her findings were issued in December 2001, in a document known as the "Bradley

Report."

Shortly after Ms. Bradley began her investigation, Plaintiffs contend that Governor Minner froze the promotion process within the DSP as a result of political pressure from elected minorities, the United Troopers Alliance, an organization which Plaintiffs describe as consisting of predominantly African-American troopers, and the media. Plaintiffs contend that contrary to DSP policy, no written record of the freeze was created. (Ford Dep. 189; Pepper Dep. 27, 31-32, 34, 38-39, 92; A199, 372-375, 388). Plaintiffs contend that this freeze effectively precluded Plaintiffs from being promoted during the relevant time frame. Plaintiffs also contend that once promotions resumed, seven months later, Defendant Chaffinch used a new list for promotions which immediately allowed him to promote a woman and an African-American male.

To support their allegations of reverse race discrimination, Plaintiffs also advance the testimony of Gregory Chambers, the Equal Employment Opportunity/Affirmative Action officer for the State of Delaware. Plaintiffs contend that Mr. Chambers admitted that it was improper for the DSP to collect data about the race, ethnicity and gender of applicants. (Chambers Dep. 35-36; A114). Plaintiffs also point to additional memos and e-mails from former Human Resources Director Dillman describing efforts to increase minority representation on the DSP, as well as the testimony of

Defendant Chaffinch that he made changes in the promotion process, at least in part, as a result of the claims of racial discrimination against the DSP. (Chaffinch Dep. 88; A66).

Plaintiffs also direct the Court to promotion sheets and lists used by the DSP. (Chambers Ex. 8; A145-148). Plaintiffs contend that these documents are "smoking gun" evidence, because they contains handwritten notes in the margins of calculations, broken down by race of what the promotion results would be using the traditional standard deviation. Plaintiffs contend that the author of these documents was counting how many blacks he could promote. Plaintiffs also contend that these documents show a side-by-side comparison, demonstrating how altering the standard deviation would result in more blacks being promoted than by using the traditional standard deviation.

D. Promotions Within The DSP During The Relevant Time

As a threshold matter, it is not disputed that Plaintiffs' eligibility for promotion ended on December 31, 2001, because Plaintiffs did not pass the written test required to be eligible for the next promotion cycle. (Chambers Ex. 3, 5; A137, 126-129). Between September 5, 2001 and December 31, 2001, Plaintiffs contend that there were five vacancies at the DSP and three corporals, all white males including Plaintiffs, who were left on the "B" band of the promotion list. According to Plaintiffs, the DSP was required to fill these positions with the

corporals remaining on the "B" band under the DSP's existing rules. However, Plaintiffs contend that Defendants "dragged their feet" and delayed filling these positions for months, in order to avoid promoting Plaintiffs because of their race, before their eligibility expired. Plaintiffs contend that these delays were the result of the promotion "freeze" ordered into effect by Governor Minner.

In response to these allegations, Defendants contend that they were not under a promotion "freeze," but that they did not promote anyone during this time frame as a result of legitimate, nondiscriminatory reasons. Although Defendants acknowledge that Governor Minner temporarily suspended promotions after Colonel Pepper made two promotions before his retirement, Defendants contend that this was a temporary suspension aimed at preventing the lame-duck Superintendent from filling all the available vacancies and preserving the incoming Superintendent's ability to fill those positions with his own people. Defendants contend that this promotion suspension period lasted only three weeks, from September 6 to September 30, and did not prevent Plaintiffs from being promoted. (Chaffinch Dep. 105-107, 114-115; A70-73).

Defendants further contend that there were legitimate, non-discriminatory reasons why the DSP did not make any promotions in the period between September 10, 2001 and December 31, 2001. Defendants contend that the DSP did not announce any promotions

until February 25, 2002, and that this delay was not unusual. Defendants contend that there were not enough vacancies during the relevant times to justify the disruption that would be caused by a wave of promotions. Defendants contend that filling a vacancy at the DSP is not simply a matter of moving an available trooper into a new position. Rather, Defendants contend that promotions require a review of the operational needs of the force, the personnel available, and an assessment of the type and amount of disruption a series of transfers would cause. (Chaffinch Ex. 5; A101-102).

Defendants also dispute Plaintiffs' assertions regarding the number of vacancies at the DSP. Defendants contend that there was only one sergeant opening in the DSP during the relevant time, and that was the Troop 2 position vacated on September 10, 2001, when Colonel Pepper announced the last of his promotions. Defendants contend that this position was not filled, because the DSP was confronted with more pressing matters, and not as a result of any reverse racial discrimination. (Chaffinch Dep. 106-109; A71). Defendants contend that the DSP was required to spend a great deal of time setting the record straight regarding its anti-discrimination policies and complying with Ms. Bradley's investigation and the Henry Hearings. (Chaffinch Dep. 99; A69). Defendants also contend that the September 11 terrorist attacks disrupted the law enforcement community, and that the combined

effect of these events was simply more important than filling a single open sergeant position in a platoon that was working effectively with a temporary replacement. (Marcin Dep. 67-68, 91, 97; A332, 338, 339).

With regard to the other openings to which Plaintiffs refer, Defendants contend that Plaintiffs distort the record and engage in "wishful thinking" to create these positions. Defendants contend that these positions were either not actually available, or that they legitimately delayed filling these positions based on operational decisions. For example, Plaintiffs refer to a vacancy after the terrorist attacks to expand the counter terrorism unit. However, Defendants contend that this vacancy did not actually exist until February 2002 when the position was created by Defendant Chaffinch. Thus, while this position may have been contemplated after the terrorist attacks, Defendants contend that it did not actually become available during the relevant time frame.

In response, Plaintiffs attack Defendants proffered legitimate, non-discriminatory reasons for declining to promote Plaintiffs. Plaintiffs contend that Defendants reasons are riddled with implausibilities, inconsistencies and weaknesses. As such, Plaintiffs maintain that they are entitled, at a minimum, to a jury trial on the question of whether Defendants proffered reasons are a pretext for reverse racial

discrimination.

DISCUSSION

I. Standard Of Review

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 120 S. Ct. 2097, 2110 (2000). Thus, to properly consider all of the evidence without making credibility determinations or weighing the evidence the "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses." Id.

To defeat a motion for summary judgment, Rule 56(c) requires

the non-moving party to:

> do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is "no genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

II. Whether Plaintiffs Are Entitled To Summary Judgment

By their Motion, Plaintiffs contend that they are entitled to summary judgment for two reasons. First, Plaintiffs contend that Defendants' used illegal racial quotas in the DSP's promotion process in order to have the DSP workforce reflect a mirror image of the racial composition of the citizens of the State of Delaware. Plaintiffs contend that there is no compelling state interest which would justify the use of quotas, and therefore, they are entitled to summary judgment. Second, Plaintiffs contend that under Price-Waterhouse v. Hopkins, Defendants have admitted that race played a motivating role in their promotions decisions, and Defendants cannot prove that they had no other reasons not to promote Plaintiffs.

In response, Defendants contend that there is no evidence

that the DSP made promotions on the basis of a quota. Defendants contend that numerous governors around the country have made declarations encouraging state agencies to develop a diverse workforce reflecting the diversity of the population, and that such policies or goals are not per se illegal. Defendants also contend that Chaffinch's desire to "mirror" the state's population represents a hope or goal, and not a hard requirement of a statistical quota.

With respect to Plaintiffs' argument under Price-Waterhouse, Defendants contend that Plaintiffs are not entitled to summary judgment for two reasons. First, Defendants contend that Plaintiffs have not presented uncontroverted evidence that the DSP did not promote them because of race. Defendants contend that genuine issues of material fact preclude summary judgment on this issue. Second, Defendants contend that Price-Waterhouse is not applicable to this case, because Plaintiffs have not advanced a Title VII claim. According to Defendants, the Court should apply the standard created in Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977) for Plaintiffs' constitutional claims.

After reviewing the record evidence in light of the standard of review for summary judgment, the Court finds that genuine issues of material fact exist which preclude the Court from granting summary judgment in favor of Plaintiffs. A quota has

been defined as a "program in which a certain fixed number or proportion of opportunities are 'reserved exclusively for certain minority groups.'" Richmond v. J.A. Croson Co., 488 U.S. 469, 496 (1989). The Supreme Court has examined the alleged use of racial quotas in the context of college admissions programs and concluded that these college admissions programs do not operate as quota systems because they do not "insulate the individual from comparison with all other candidates for the available seats." Grutter v. Bollinger, 123 S. Ct. 2325, 2342 (2003). Construing the evidence in the light most favorable to Defendants as the non-moving party, the Court finds that Plaintiffs have not established by undisputed evidence and as a matter of law that the DSP used illegal racial quotas in its promotion process or that its promotion process amounted to a quota system. Further, the Court finds that Plaintiffs have not, at this juncture, established that Executive Order No. 10 alone establishes a quota system, or that the promotion practices of the DSP were aimed at garnering a fixed percentage of minority candidates for promotion. In addition, Defendants have proffered evidence to rebut Plaintiffs' assertions that Defendants knew of and used fixed racial percentages in their promotion decisions, and therefore, the Court finds that genuine issues of material fact exist which preclude the Court from finding, as a matter of law, that the DSP used illegal racial quotas in their promotion

process.

To the extent that Plaintiffs advance claims of reverse racial discrimination under the framework of the Price-Waterhouse decision and other related cases, the Court likewise concludes that genuine issues of material fact exist which preclude the Court from granting summary judgment in favor of Plaintiffs. Defendants have offered evidence rebutting Plaintiffs' assertion that Defendants were impermissibly motivated by race in their promotion decisions. Defendants have also offered evidence to rebut Plaintiffs' assertion that Defendant Chaffinch was precluded from promoting Plaintiffs due to a racially motivated promotions freeze. In addition, Defendants have advanced evidence supporting their contention that there were not enough openings to justify promoting Plaintiffs and that when sufficient openings did arise, legitimate operational needs drove the decisions not to fill those openings with permanent replacements. Because the evidence, taken in the light most favorable to Defendants, creates genuine issues of material fact on both the question of whether Plaintiffs can create a prima facie case of reverse racial discrimination and on the question of whether Defendants proffered legitimate non-discriminatory reasons are pretextual, the Court concludes that Plaintiffs are not entitled to summary judgment. Accordingly, Plaintiffs' Motion For Full And/Or Partial Summary Judgment will be denied.

CONCLUSION

For the reasons discussed, the Court will deny Plaintiffs' Motion For Full And/Or Partial Summary Judgment.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

CORPORAL WILLIAM BULLEN and, CORPORAL JEFFREY GILES,	:	
Plaintiffs,	:	
v.	:	
COLONEL L. AARON CHAFFINCH, individually and in his official capacity as Superintendent of the Delaware State Police; JAMES L. FORD, JR., individually and in his official capacity as Secretary of the Department of Safety and Homeland Security of the State of Delaware, and DIVISION OF STATE POLICE DEPARTMENT OF PUBLIC SAFETY AND HOMELAND SECURITY, STATE OF DELAWARE,	:	Civil Action No. 02-1315-JJF
Defendants.	:	

O R D E R

At Wilmington, this 5th day of December 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Plaintiffs' Motion For Full And/Or Partial Summary Judgment (D.I. 66) is DENIED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE