

Background on *Foster v. City of Pittsburgh*

Foster, et al., v. City of Pittsburgh, 2:12-cv-1207 (W.D. Pa.), is a class action lawsuit filed on August 23, 2012, alleging that the city of Pittsburgh has a longstanding pattern and practice of racial discrimination against African-Americans in the screening and hiring of applicants for entry-level police officer positions, in violation of Title VII of the Civil Rights Act of 1964. Since 2001, 23 out of about 530 police officers hired by Pittsburgh have been African-American, or about 4%. The city's African-American population is about 26%. The lawsuit requested injunctive relief to correct the city's discriminatory hiring system and damages for class members.

In spring 2013, the parties agreed to suspend the litigation and invite an independent, jointly retained expert to review the city's hiring system for the Pittsburgh Bureau of Police (BOP). The parties jointly hired Dr. Leaetta M. Hough, an industrial organization psychologist from St. Paul, Minnesota, who is a past president of the Society for Industrial and Organizational Psychology (SIOP). She is recognized as one of the country's leaders in developing and implementing staffing and performance management systems. Her clients include NASA and the U. S. Departments of Justice and State. Under the parties' agreement, Dr. Hough was given full access to documents and personnel relating to the city's police selection system. Over the course of about six months, Dr. Hough completed her investigation.

In a confidential and previously unreleased report issued in February 2014, Dr. Hough concluded that, "The Pittsburgh BOP entry-level police officer selection system lacks evidence of validity for predicting job performance of police officers. Given the evidence presented in Chapter 4 that the overall system has an adverse impact on African-American applicants, the system should be revised and improved." Pittsburgh's newly elected leadership, under Mayor Bill Peduto, agreed to try to resolve the dispute.

In April 2014, U.S. District Judge David Cercone appointed U.S. Magistrate Judge Lisa Pupo Lenihan to mediate the dispute. In the course of the mediation last summer, Judge Lenihan directed the city to make available for plaintiffs' lawyers the background files of all successful applicants and all unsuccessful African-American applicants since 2009. After reviewing over 200 files, plaintiffs' counsel presented the city's lawyers and the magistrate judge with evidence that rejected African-American applicants were rejected for long-ago marijuana use, minor crimes or traffic infractions that did not disqualify similarly situated white applicants.

After more than a dozen in-person meetings and countless other communications, the parties announced on May 7, 2015, that the case has been settled. The settlement agreement provides for both a process to reform the hiring system and payments to class members who attempted to obtain jobs with the BOP. The city has agreed to pay Dr. Hough and the city's pre-existing private contractor to work on making changes to the selection process, and already has budgeted \$250,000 for this fiscal year.

The agreement establishes a “special committee” to work on revising the selection process to correct the problems identified in Dr. Hough’s report. The committee includes Dr. Hough, the director of the Department of Personnel and Civil Service, the chief of police, the director of the Office of Municipal Investigations, the solicitor and lawyers who represent the plaintiff class members.

The reform process, which began with a series of meetings this past February, will assess every significant step in the selection process, including the written test (LEAB, or Law Enforcement Aptitude Battery test), the oral boards, the conduct of the background investigation and how that information is presented to the decision makers, the actual selection of candidates (a process known as the “Chief’s Roundtable,” which includes a review by the chief, assistant chiefs and commanders who are available), appeals by rejected applicants to the Civil Service Commission, and the psychological review process.

During the mediation last fall, the city agreed to eliminate the controversial “Rule of Three,” under which the Chief’s Roundtable considered candidates in groups of three based on their civil service ranking, and required that chiefs select one in each group of three and that any candidate not selected in three rounds was disqualified from consideration. The city also added an appeal to the Civil Service Commission from a decision not to hire the applicant.

The settlement also provides for payments totaling \$985,000 to African-American applicants who took the civil service written test or were considered by the Chief’s Roundtable between 2008 and 2014. Plaintiffs’ lawyers estimate that there are about 360 class members eligible for compensation. The agreement also provides for a separate payment of fees and costs to plaintiffs’ attorneys, in an amount to be determined by the court. In all, the city has agreed to pay up to \$1,585,000, plus the cost of experts to help reform the hiring process.

Plaintiffs in the case are James M. Foster, Mike J. Sharp, Timothy Christian, Tariq Jamal-Francis, and Darrick Payton. Lawyers on the case are Edward Feinstein, Ellen Doyle and Pamina Ewing, from the law firm Feinstein, Doyle, Payne & Kravec, LLC, and Witold Walczak, Sara Rose and Paloma Wu of the ACLU of Pennsylvania.