

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROY C. JOHNSON, PAULA ANDERSON,)
MARVIN BLADES, WALTER BUSBY,)
DEBBIE CRISP, DEBRA DICKENS,)
CORNELIUS DEAN FINLEY,)
DEBORAH J. DANIELS FLEAK, STEVEN GIBBS,)
DWIGHT JACKSON, DEREK LEWIS,)
TYRONE LYNN, MARK MOORE, RAY NELSON,)
RUFUS NEWSOME, TAMMARA MCKINNEY OLDEN,)
GARY PITTS, NANCY REED, and ALBERT YOUNG,)
for themselves and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

THE CITY OF TULSA, a municipal corporation)
of the State of Oklahoma,)

Defendant.)

FILED
SEP 17 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 94-C-39-H

FIRST AMENDED CLASS ACTION COMPLAINT

INTRODUCTION

1. Plaintiffs bring this action for themselves, and on behalf of all others similarly situated, against the City of Tulsa, Oklahoma.

2. This is an action for injunctive relief arising from violations of the rights, privileges, and immunities guaranteed by the First, Thirteenth and Fourteenth Amendments to the United States Constitution, as well as the rights to equal employment opportunity guaranteed under the Constitution and laws of the United States.

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JURISDICTION AND VENUE

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343 to secure protection of and to redress deprivations of rights secured by:

(A) The First, Thirteenth, and Fourteenth Amendments to the United States Constitution which provide for the rights of all persons within the jurisdiction of the United States to enjoy freedom of speech, movement, association and assembly, to petition their government for redress of their grievances, to be free from the badges and incidents of slavery, and from deprivations of liberty and property without due process of law, as enforced by the Civil Rights Act of 1871, 42 U.S.C. § 1983, which provides for the protection of all persons in their civil rights and the redress of deprivation of rights under color of law.

(B) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e - 2000e-17 (Title VII) which provides for injunctive and other relief against discrimination in employment on the basis of race, religion, sex, and national origin, and against retaliation for opposing unlawful employment practices or participating in proceedings to enforce rights under Title VII.

4. The jurisdiction of this Court also is invoked under 28 U.S.C. § 1331 to resolve a controversy arising under the Constitution and laws of the United States, particularly the First, Thirteenth, and Fourteenth Amendments to the United States Constitution, Title VII

of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e - 2000e-17, and 42 U.S.C. §§ 1983 and 1988.

5. Monetary damages are inadequate and plaintiffs have suffered, now suffer, and will suffer irreparable harm from defendant's violations of the Constitution and laws of the United States. Accordingly, injunctive relief is necessary and appropriate.

6. Venue is appropriate in the United States District Court for the Northern District of Oklahoma pursuant to 28 U.S.C. § 1391(b).

PLAINTIFFS

7. The named plaintiffs are United States citizens, are blacks of African descent and color (African-American), and are present or former sworn personnel of the Tulsa Police Department (TPD).

CLASS ACTION ALLEGATIONS

8. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23 for themselves and on behalf of all other African-American persons similarly situated with respect to employment with the Tulsa Police Department.

9. The members of the plaintiff class include: (a) all African-American persons who now or in the future are sworn personnel of the TPD; (b) all African-American persons who are former sworn personnel of the TPD and whose employment terminated within 300 days of the first filing of a charge of discrimination by one of the plaintiffs; and (c) all African-American persons who made application for but were denied admission to the TPD

academy. Plaintiffs seek for themselves and the members of the class injunctive relief to require defendant to eliminate the official policy and custom of retaliation against plaintiffs for plaintiffs' exercise of their First Amendment rights, to eliminate racial discrimination from the actions, policies, and practices of the TPD with respect to employment, to require defendant to remedy the effects of past racial discrimination upon the terms and conditions of employment within the TPD and, to require defendant to establish and enforce standards and procedures which promote a workplace free of racial discrimination and harassment.

10. This action is properly maintained as a class action pursuant to Fed. R. Civ. P. 23: (a) the class is so numerous that joinder of all members is impracticable; (b) substantial questions of law and fact are common to the entire class; (c) the claims of the named plaintiffs are typical of the claims of the classmembers; (d) counsel for the named plaintiffs possess sufficient legal resources and experience to fairly and adequately represent the interests of all classmembers; (e) defendant has acted on grounds generally applicable to the class as a whole, making final injunctive relief appropriate; (f) the prosecution of separate actions by individual classmembers would create a risk of varying adjudications for individual classmembers and the concomitant risk that separate and incompatible standards of conduct will be imposed upon this defendant; and (g) the prosecution and adjudication of common, or similar, claims through separate actions would, as a practical matter, dispose of the claims of the classmembers without affording them the ability to protect their interests.

11. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other

available methods for the fair and efficient adjudication of this controversy, inasmuch as the individual members are deprived of essentially the same rights by defendant's policies, practices, customs and actions, and differ only in collateral aspects of their factual circumstances.

12. The questions of law and fact common to the class and the named plaintiffs include, without limitation:

A. Whether defendant City of Tulsa, while acting under color of state law, has established, encouraged, adopted, ratified or otherwise sanctioned employment policies, practices, customs, and actions which deny plaintiffs' the free exercise of their First Amendment rights;

B. Whether defendant City of Tulsa has established, encouraged, adopted, ratified or otherwise sanctioned employment policies, practices, customs, and actions which discriminate against African-Americans on the basis of race in the terms and conditions of employment within the TPD;

C. Whether defendant City of Tulsa has established, encouraged, adopted, ratified or otherwise sanctioned employment policies, practices or customs which have a disparate impact upon African-Americans in the terms and conditions of employment within the TPD;

D. Whether defendant City of Tulsa, while acting under color of state law, has established, encouraged, adopted, ratified or otherwise sanctioned policies, practices,

customs and actions which have substantially deprived African-American sworn personnel of the TPD of their Thirteenth and Fourteenth Amendment rights;

E. Whether defendant City of Tulsa, as a public employer and while acting under color of state law, has deprived African-Americans of the full and equal enjoyment of the rights and privileges and the full and equal benefit of all laws because of plaintiffs' race.

DEFENDANT

13. Defendant City of Tulsa is a municipality incorporated as a city under the laws of the State of Oklahoma and is located in Tulsa County, in the State of Oklahoma.

14. Defendant is authorized, pursuant to Oklahoma statutory law and the charter of the City of Tulsa, to establish, maintain and supervise the operations of the Tulsa Police Department. Okla. Stat. tit. 11, § 22-101 (1991).

15. The policies, procedures, customs and actions of defendant which are alleged herein were promulgated, implemented, ratified or otherwise sanctioned under color of the ordinances of the City of Tulsa and the State of Oklahoma and therefore constitute acts of the State within the meaning of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

FACTUAL ALLEGATIONS

16. The history of the Tulsa Police Department reflects the City's long-standing patterns and practices, as well as the conditions and concomitant tensions, of racial segregation and discrimination.

17. That history remains unabated in the TPD. The TPD continues the long-standing patterns and practices which treat citizens of color more harshly than white citizens. Harsh and disparate treatment is not reserved for citizens of color, however, but also is meted out to poor citizens and other disfavored minorities. Defendant has failed and refused to take steps reasonably calculated to abate the patterns and practices of disparate treatment of these citizens by the TPD.

18. Defendant also attempts to restrain plaintiffs from reporting or disclosing in any fashion incidents manifesting the patterns and practices of TPD mistreatment of such citizens and, has retaliated against plaintiffs for reporting and disclosing such mistreatment. Defendant's retaliation includes, without limitation: (a) refusing and failing to provide backup to officers who report or disclose the mistreatment of citizens; (b) taking adverse employment action against plaintiffs as a pretext for retaliation, and; (c) harassing plaintiffs and creating an abusive work environment for plaintiffs.

19. Defendant also has failed and refused to abate the historical patterns and practices of racial discrimination in employment in the TPD and, continues to follow official policies, patterns and practices of racial discrimination against plaintiffs with respect to the terms, conditions, and privileges of employment:

A. Plaintiffs have been subjected to a racially hostile work environment within the TPD throughout their employment and continuing to the present. The TPD work environment is permeated by an atmosphere of racial harassment, ridicule and disrespect. The racially hostile work environment has and continues to be severe and it so permeates the

workplace that it has altered the terms and conditions of plaintiff's employment and created an abusive work environment. African-Americans are confronted in the workplace with anonymous drawings, messages and other expressions of racial animus, racial stereotypes, suspicion and ridicule. It is a common practice for white officers in the field to fail or refuse to provide backup to African-American officers, despite TPD regulations which require officers to respond to requests for backup. Defendant has long known of this pattern of conduct but, defendant has failed to take steps to eliminate it.

B. Defendant knows or should know of the racially hostile work environment and has repeatedly, continuously and systematically failed and refused to take reasonable steps designed to remedy the racially hostile work environment.

C. Defendant has failed to fully implement its affirmative action policies, failed to meet its affirmative action goals, and has failed reasonably to train its employees to implement or follow these policies.

D. Defendant fails to provide new African-American sworn personnel the training on the job that defendant provides to new white officers.

E. Defendant excludes all, or substantially all, African-American sworn personnel from preferred assignments within the TPD. Preferred assignments are those, such as the Support Division, that offer specialized training and attractive work hours. Preferred assignments are extended by invitation only from the higher ranks, which remain predominately white, to white members of the lower ranks.

F. Promotion procedures have relied upon subjective performance evaluations which were impermissibly influenced by considerations of race; African-Americans received lower performance evaluations than similarly situated whites. Those evaluations operated as headwinds against African-Americans in the promotional process. When defendant has promoted African-Americans, it has done so in a manner calculated to stigmatize those African-American officers as inferior and unqualified and, as having received preferential treatment because of their race. Despite defendant's purported current reliance upon facially objective promotional processes, defendant's promotional policies simply have frozen the status quo of prior discriminatory practices. Further, the promotional procedures are inconsistent with federal law and regulations applicable to defendant.

G. African-American officers are subjected to harsher discipline and are more likely to be discharged than similarly-situated white officers. White officers found to have committed intentional violations of criminal laws--both misdemeanors and felonies--have been treated more favorably than African-Americans who have been declared by the TPD to merely have committed errors in judgment in the performance of their duties.

20. As a result of defendant's unlawful employment policies and practices, plaintiffs have become increasingly dissatisfied with their jobs and have made complaints and filed, or have attempted to file, grievances pursuant to established departmental policies. Defendant has failed and refused to fairly consider the grievances and complaints by African-American sworn personnel.

21. Defendant also has attempted to restrain, coerce, and intimidate plaintiffs from opposing racial discrimination in employment, from making complaints and filing grievances, and from cooperating, participating, and testifying in proceedings to enforce the laws prohibiting race discrimination in employment.

22. Defendant has and continues to utilize, adopt, ratify, and otherwise sanction employment procedures which adversely impact the recruitment, selection, training, assignment, promotion, discipline, and discharge, as well as other employment and membership opportunities of African-Americans because of their race. These procedures are inconsistent with federal law and regulations applicable to defendant.

23. As a result of defendant's procedures, plaintiffs, because of their race, have been denied the same employment, promotion, membership, and other employment opportunities as have been available to white officers and applicants.

24. Defendant has and continues to encourage, condone, ratify, and otherwise sanction restraint, interference, and discrimination against plaintiffs because plaintiffs have testified, assisted, and participated in investigations, proceedings, and hearings regarding complaints of unlawful employment practices.

FIRST CLAIM FOR RELIEF
(42 U.S.C. § 1983)

25. The TPD's mistreatment of racial minority and poor citizens is a matter of public concern. Plaintiffs' disclosure of incidents of the TPD's mistreatment of citizens, as well as plaintiffs' expressions of concern and opposition to such mistreatment, constitutes speech on matters of public concern. Public interest and policy regarding police treatment of citizens substantially outweighs any legitimate interest defendants may claim in regulating or suppressing such speech. Accordingly, plaintiffs' speech is protected by the First Amendment. Defendant's discrimination and harassment of plaintiffs because of these actions constitutes a substantial deprivation of plaintiffs' rights, privileges and immunities guaranteed by the First and Fourteenth Amendments to the Constitution of the United States as enforced by 42 U.S.C. § 1983.

26. Plaintiffs' filing of this discrimination lawsuit constitutes speech protected by the First, Thirteenth, and Fourteenth Amendments. Defendant's discrimination and harassment of plaintiffs because of this action constitutes a substantial deprivation of plaintiffs' rights, privileges and immunities guaranteed by the First, Thirteenth, and Fourteenth Amendments to the Constitution of the United States as enforced by 42 U.S.C. § 1983.

27. The policies and practices of racial discrimination and harassment adopted, ratified, perpetuated or otherwise sanctioned by defendant, have deprived plaintiffs of equal

protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

28. The conduct of defendant in depriving plaintiffs of rights, privileges and immunities guaranteed by the Constitution of the United States because of plaintiffs' race has caused plaintiffs to suffer the badges and incidents of slavery in violation of the Thirteenth and Fourteenth Amendments to the Constitution,

29. The conduct of defendant has deprived plaintiffs of their liberty and property interests without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 2000e-2(a), (d), (h) and (m) and § 2000e-3)

30. Plaintiffs are "employees" of the City of Tulsa within the meaning of Section 701 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-(f).

31. Defendant City of Tulsa is an "employer" within the meaning of Section 701 of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e-(b).

32. The policies, practices, customs, actions, and omissions of the City of Tulsa violate of 703 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)(1) and (2), 2000e-2(d), 2000e(h), and 2000e(m).

33. The policies, practices, customs, actions, and omissions of the City of Tulsa violate Section 704 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3.

34. Defendant's employment practices and policies have adversely affected plaintiffs' employment, have failed to remedy the lingering effects of past discrimination, and have, in fact, perpetuated the history of racial discrimination and segregation.

35. Plaintiffs have complied with the procedural requirements of Section 706 of Title VII § 2000e-5(e) and are entitled to bring this action.

36. Defendant's violations of Title VII are intentional and have and will continue to adversely affect plaintiffs. Accordingly, it is necessary and appropriate to enjoin defendant from engaging in these unlawful employment practices and to order other affirmative equitable relief as may be appropriate including, without limitation, reinstatement, hiring, promotion, and/or the opportunity to qualify under valid and non-discriminatory selection procedures, retesting, reconsideration, back pay and front pay.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment:

A. Granting plaintiffs and the class they represent a preliminary and permanent injunction enjoining defendant, its agents, employees, and those acting in concert with them, from maintaining policies and practices of discrimination and harassment against plaintiffs and the class they represent on the ground of race or color.

B. Granting plaintiffs and the class they represent a preliminary and permanent injunction enjoining defendant, its agents, employees, and those acting in concert with them, from retaliating, discriminating, or otherwise harassing plaintiffs, under color of state law,

because of plaintiffs' exercise of their First, Thirteenth, and Fourteenth Amendment rights and for exercising their rights under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e - 2000e-17.

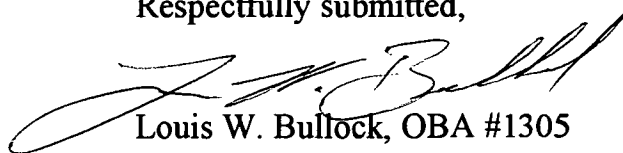
C. Granting plaintiffs and the class they represent a preliminary and permanent injunction enjoining defendant, its agents, employees, and those acting in concert with them, from denying plaintiffs the right to the full and equal enjoyment of the rights and privileges of all laws and proceedings for the security of persons and property.

D. Granting plaintiffs and the class they represent all equitable relief available under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e - 2000e-17; and available under 42 U.S.C. §§ 1983 and 1988.

E. Awarding plaintiffs and the class they represent reasonable costs and expenses, including attorneys' fees, pursuant to 42 U.S.C. § 1988 and 2000e-5(k).

F. Granting plaintiffs and the class they represent such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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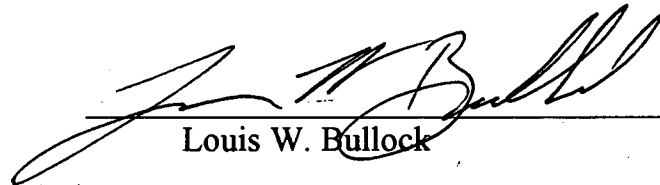
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 17th day of September, 1997, a true and correct copy of the above and foregoing document was mailed, postage prepaid, to:

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