

March 20, 1978

find?

SUBJECT: Conciliation Agreement Between PHRC and the City of
Harrisburg

TO: All Commissioners

FROM: Homer C. Floyd
Executive Director *Homer C. Floyd*

Please find attached a copy of the Conciliation Agreement in E-12249, PHRC v. City of Harrisburg, Department of Public Safety, Police Civil Service Board.

We believe this to be an agreement of great significance to the Commission as well as to the City of Harrisburg (see attached letter from Mayor Paul E. Doutrich, Jr., dated March 14, 1978).

This agreement encompasses terms of settlement which could be a model for classic police hiring and selection cases. A number of the terms are perhaps more than we would have secured with a final order after public hearing.

The key points of the agreement include:

- 1) 2 to 1 hiring ratio - for every 3 persons hired over the next 5 years, 2 will be Black;
- 2) 30% overall goal of Blacks in workforce (City's population approximately 40%);
- 3) Current written test which had discriminatory impact on Black applicants eliminated;
- 4) "Alternate selection device" to be developed for selection of trainees until a valid written test is developed;
- 5) Existing Certification List of eligibles to be abolished immediately;
- 6) Oral interviews to be job-related and questions to be consistent for applicants, with 1/3 of Interview Board to be Black;

- 7) City will establish a Police Officer Trainee class of 5 Blacks, 3 others within 180 days; retention of 4 in paid City jobs until vacancies occur. (There are 2 vacancies currently, and 2 retirements due.)
- 8) Preference to past rejected Black applicants for consideration of appointment;
- 9) Training and assistance to trainees as required; and
- 10) Continual reporting to Commission.

The goals and timetables are as strong as any police department has had to meet in our knowledge. In addition, the paid retention of trainees by the City until positions on the force open up is a unique aspect of this agreement.

In this agreement we tried to take into consideration a possible challenge on the basis of reverse discrimination. (See whereas clauses, pages 2 and 3.)

For Pennsylvania, this may be the first major police department case resolved by settlement rather than litigation.

The case took slightly more than 9 months from start to finish. We took the initiative in responding to a discriminatory situation and moved quickly and strongly almost immediately - first with the filing of the Complaint and probable cause within a month; then on to pre-hearing conferences; the public hearing; petitions for request for injunction, enforcement of subpoenas, objection to FOP intervention, acting decisively and quickly with the excellent assistance of AEP Director Ehrlich, Counsels Keeney, Feldman and Hackett planning strategy and taking action each step of the way.

The Mayor, Paul Doutrich, took the leadership role for the City in negotiating this agreement and enthusiastically endorsed its content.

Harriet Ehrlich and Jim Keeney did an outstanding job in processing this case and are to be congratulated for the excellent resolution achieved.

Conciliation Agreement
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March 20, 1978

We respectfully request approval of the Conciliation Agreement and recommend that the Commission withdraw its approval for public hearing.

HCF/glo

Attachments



City of Harrisburg
Pennsylvania

Office of the Mayor
March 14, 1978

Mr. Homer W. Floyd, Executive Director
Pennsylvania Human Relations Commission
100 N. Cameron Street
Harrisburg, Pennsylvania 17101

Dear Homer:

Friday, March 10th, was in my opinion and I am sure yours, an historic day in the history of Harrisburg. It is now up to us to see to it that this Agreement works and that racial understanding is increased as tension decrease. Certainly this is the goal of your Commission and also of the City.

Apparently there has been some lack of understanding on the part of some members of Council. This may have come about since they were not a part of the negotiations since the first of the year and therefor may be a bit unfamiliar with the rationale behind our understanding.

With this in mind, I thought it might be to all our advantage to have a meeting with you and any of your representatives you would suggest, myself and Mr. Goldstein to review the terms with Council so that as we implement this pact, we will all be working together. If you would suggest several alternate dates on which you would be available, I will try to set such a meeting with Mr. Stabinski, President of City Council. The best time would probably be around 4:00 P.M., as it is difficult for at least one (1) Council Member to be here prior to that time.

I will be looking forward to hearing from you and even more will be looking forward to working together in the future as well as the present.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim", is written over the printed name.

Paul E. Doutrich, Jr.
Mayor

cc: Mr. Richard B. Stabinski, President of City Council
Bruce D. Foreman, Esq.
Herbert C. Goldstein, Esq.

PED:efm

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS :
COMMISSION :

v. :

Docket No. 12249

CITY OF HARRISBURG, :
DEPARTMENT OF PUBLIC SAFETY, :
CITY OF HARRISBURG, :
POLICE CIVIL SERVICE BOARD :

AMENDMENT TO THE COMPLAINT

9a. On information and belief it is alleged that the Respondent, Civil Service Board, has engaged since 1973 or earlier in a pattern or practice of systematically excluding Blacks from the lists of persons eligible for appointment as Police Officer Trainees which it has certified to the Respondent employer, by means of the same or similar selection techniques, and that such pattern is continuing up to the present time, with the most recent incident being the certification of persons on the basis of the March 25, 1977 written examination.

10a. On information and belief, it is alleged that each of the Black persons who failed such similar previous tests were qualified, able and available for employment as Police Officers.

Date: July 14, 1977

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS
COMMISSION,

Complainant

vs.

Docket No. E-12249

CITY OF HARRISBURG
DEPARTMENT OF PUBLIC SAFETY,
CITY OF HARRISBURG
POLICE CIVIL SERVICE BOARD,
Respondents

TERMS OF SETTLEMENT

1. Respondent, City of Harrisburg, Police Civil Service Board, shall cease and desist from using the results of any test or examination which has a statistically significant impact adverse to Blacks for purposes of certifying persons as eligible for employment by the City of Harrisburg, Bureau of Police unless and until such test is demonstrated to be a valid, fair, and job-related predictor of job performance to the satisfaction of the Pennsylvania Human Relations Commission.

2. Respondents shall work in good faith to develop a valid, fair, and job-related selection procedure for police officer trainees. In the interim, Respondents shall develop

and use a temporary alternate selection procedure which has no significant discriminatory impact adverse to Black applicants. Such procedure may use random selection among qualified applicants, alternate selection from separate lists of Black and White qualified applicants, or any other technique or combination of techniques Respondents may propose which are acceptable to the Commission. The Commission staff shall assist Respondents to a reasonable extent in developing these selection procedures.

3. Any and all existing lists of persons certified as eligible for appointment to police officer trainee positions shall be abolished on or before the effective date of this agreement, and no persons shall be appointed from any such list.

4. Any oral interviews for police officer trainee applicants conducted in the future shall be conducted in such a way that each applicant is asked substantially the same topics, and all topics shall be job-related. In addition, the Oral Interview Board shall consist of at least one-third Black interviewers. These persons may be chosen by the Respondents, or at their request, the Commission shall suggest suitable persons.

5. Within one hundred eighty (180) days after the effective date of this agreement, Respondents shall select a class of eight (8) persons, at least five (5) of whom shall be Black, for police officer trainee positions. Any larger class shall be selected in the same ratio. These persons shall begin training in the first available class at the Harrisburg Community College or the Pennsylvania State Police Barracks within approximately ninety (90) days thereafter, and upon completion of training shall be sworn in as police officers to the extent that vacancies

exist. Up to a total of four of those not immediately sworn in due to lack of sufficient vacancies shall be placed in other City jobs until such time as police officer vacancies become available, at which time they shall automatically be appointed to fill such vacancies. Selection among the trainees for police officer positions shall be by lot.

6. Future appointments to police officer trainee positions shall be in the ratio of two (2) qualified Blacks for every one (1) qualified White until such time as 30% of all police officers employed by the City are Black, or until the expiration date of this agreement, whichever occurs first.

7. Respondents shall make a good-faith effort to contact each Black person who applied for the position of police officer trainee from 1972 to the present and shall give such applicants a reasonable degree of preference over subsequent Black applicants, provided they are qualified to serve as police officer trainees, until the list of prior Black applicants qualified, available, and still interested in the positions is exhausted. For this purpose, no applicant shall be considered unqualified by reason of age, provided the applicant met the age qualifications in effect at the time of his or her initial application. This preference shall not be absolute, but shall be sufficient to ensure that at least half of those Blacks hired under the terms of this agreement are prior applicants until the list of qualified prior applicants is exhausted. All such applicants shall be subject to the present City residency ordinance.

8. Respondents shall develop and implement a long-range minority recruitment program and shall provide copies of that program to the Commission staff for review and approval.

9. Once trainees have been appointed as police officer trainees, Respondents shall make every reasonable effort to see that they successfully complete the training program and are retained as sworn police officers, including provision of additional assistance and training, if and when required.

10. Respondents shall report to the Pennsylvania Human Relations Commission on or before January 1st of each year regarding their progress in minority recruitment and hiring. Such reports shall include a listing of the names and addresses of all applicants for police officer trainee positions, by race, and a similar list of persons (a) certified as eligible for appointment, (b) appointed as trainees, and (c) sworn in as officers. Such reports shall also include narrative descriptions of recruitment efforts and other information Respondents deem relevant.

In addition, Respondents shall keep the Commission informed of their performance of the terms of this agreement on a continuing basis. The Commission shall be informed within ten (10) days after any new trainee is selected; during training should any problems develop regarding a trainee's progress; after his or her training is completed; after any trainee is sworn in as a police officer, and after any adverse personnel action involving a Black officer or trainee is taken.

11. This agreement shall be in effect for a period of five (5) years from its effective date.

12. Within ten (10) days after this agreement becomes effective, the Commission shall discontinue all pending court actions arising out of this matter, and shall return to the Prothonotary of the Court of Common Pleas of Dauphin County, the written test booklet which it earlier obtained by enforcement of its subpoena in said Court.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS	:	
COMMISSION,	:	
Complainant	:	
	:	
v.	:	Docket No. E-12249
	:	
CITY OF HARRISBURG	:	
DEPARTMENT OF PUBLIC SAFETY,	:	
CITY OF HARRISBURG	:	
POLICE CIVIL SERVICE BOARD,	:	
Respondents	:	

FINAL ORDER AND DECREE

AND NOW, this day of , 1978,
upon consideration of the Conciliation Agreement submitted in
the above-captioned case it is hereby ORDERED and DECREED
that said Conciliation Agreement be entered into the official
record of the Pennsylvania Human Relations Commission as a
Final Order, to be given the same force and effect as if entered
after a Public Hearing.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

By: _____
 JOSEPH X. YAFFE
 Chairperson

ATTEST:

ELIZABETH M. SCOTT
Secretary

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS	:	
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DEPARTMENT OF PUBLIC SAFETY,	:	
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POLICE CIVIL SERVICE BOARD,	:	
Respondents	:	

CONCILIATION AGREEMENT

WHEREAS, on the 27th day of May, 1977, a verified Complaint was filed with the Pennsylvania Human Relations Commission ("Commission") against the City of Harrisburg, Department of Public Safety, City of Harrisburg, Police Civil Service Board, ("Respondents") by the Pennsylvania Human Relations Commission ("Complainant"). This Complaint alleged that Respondents had violated Sections 5(a) and (e) of the Pennsylvania Human Relations Act, 43 P.S. §955 et seq., as amended ("Act"), in that Respondents committed or caused to be committed certain acts set out in said Complaint, a copy of which is attached as Appendix "A" hereof; and

WHEREAS, on July 14, 1977, the Complaint was amended, as set forth in Appendix "B" hereof; and

WHEREAS, the Commission has advised Respondents after investigation that it has found probable cause to credit the allegations of the aforementioned Complaint, as amended; and

WHEREAS, the Commission contends that from 1972 through 1977, the City of Harrisburg has hired a total of 54 new police officers, only one of whom was Black. During this period of time, the population of Harrisburg has ranged from approximately 30% to approximately 40% Black. Thus, absent discriminatory recruitment and hiring practices, the Commission contends that approximately 18 to 22 of those hired should have been Black; and

WHEREAS, the Commission contends that one of the reasons that Blacks have not been hired is that each of the various written tests administered under the auspices of the City of Harrisburg, Police Civil Service Commission from 1972 through 1977 has had a statistically significant discriminatory impact adverse to the Black applicants who sat for said tests. The Commission contends that the pass rate for White test takers has been at least four times as high as the pass rate for Black test takers in each instance, and that in 1977 the pass rate for Whites was 16 times as high as the pass rate for Blacks; and that none of the above written tests has been demonstrated to be a valid, fair, and job-related selection technique pursuant to the relevant guidelines and regulations of the Pennsylvania Human Relations Commission, the United States Equal Employment Opportunity Commission, the Law Enforcement Assistance Administration, or the Federal executive agencies, and that such a demonstration cannot be made; and

WHEREAS, there is a considerable likelihood that many Blacks who applied in prior years but were not chosen due to their scores on these written tests have left the area or are no longer interested in employment as police officers; and

WHEREAS, it is impractical to locate, identify, and restore immediately to his or her rightful place, each Black person who wanted to become a police officer but did not bother to apply because of the reasonable belief that in light of the selection and hiring procedures then in effect, such application would have been unsuccessful; and

WHEREAS, a number of practical and equitable considerations, including the rights of persons presently serving as police officers, would make it difficult to restore each individual victim of alleged discrimination immediately to his or her rightful place with full retroactive seniority and back-pay; and

WHEREAS, the rights of both Blacks and others who will apply for police officer employment for the first time during the next five years must also be considered; and

WHEREAS, both Respondents and the Commission wish to avoid further litigation and to remedy past hiring patterns as quickly as possible; and

WHEREAS, Respondents do hereby consent to the entry of this Conciliation Agreement as a Consent Order and Decree of

the Commission, which shall have the same force and effect as a Commission Order and Decree following a public hearing by the Commission and shall be enforceable as such under Section 10 of the Act.

NOW THEREFORE, Respondents and Commission hereby agree to be legally bound as follows:

1. The foregoing preambles shall be included herein as if fully set forth.

2. The Respondents admit the jurisdiction of the Commission in this matter and hereby waive all objections thereto.

3. All appendices annexed hereto are incorporated into this Agreement as integral parts hereof, as if fully set forth.

4. The term "Respondents" as used herein shall mean the Department of Public Safety of the City of Harrisburg, and the Police Civil Service Board of the City of Harrisburg, and shall include all agents, servants and employees thereof, in addition to the principals.

5. Notwithstanding the provisions of Section 9 of the Act, this Agreement shall be a matter of public record and may be publicized.

6. The execution and implementation of this Agreement shall not constitute any waiver of powers and duties conferred upon the Commission, nor shall this Agreement be deemed a declaration of policy or precedent by the Commission. This

Agreement shall in no way affect the intake, processing, adjudication or disposition of future complaints involving the Respondents, except that the Respondents may in the course of any proceedings refer to this Agreement and to their performance hereunder to the extent relevant to such proceedings.

7. Respondents shall hereafter fully comply with all of the provisions of the Act and the Regulations promulgated by the Commission and shall fully comply with each of the terms of settlement set forth in Appendix "C" hereof.

8. If any portion of this Agreement, or the application thereof to any person or circumstance, should for any reason be adjudged by any court of competent jurisdiction to be invalid or ^{unenforceable} enforceable, in whole or in part, such judgment shall not affect, impair or invalidate any other portion of this Agreement.

9. The Commission and Respondents, being duly authorized to do so, enter into this Agreement with the intent to be legally bound hereby. This Agreement shall become final when approved and ratified by the Commission; and thereafter shall be binding upon and inure to the benefit of each of the parties hereto, and each of their respective heirs, successors and assigns, effective immediately from the date of such approval. If not so approved and ratified, it shall be null and void from its inception.

IN WITNESS WHEREOF, the undersigned, being duly authorized to do so, have executed the foregoing on the 10th day of March, 1978.

FOR THE RESPONDENTS

Paul E. Doutrich, Jr.

PAUL E. DOUTRICH, JR.
Mayor, City of Harrisburg

Date: March 10th, 1978

ATTEST:

Herbert C. Goldstein

Date: March 10th, 1978

Stuart J. Magdole

Date: March 10th, 1978

(SEAL OF CITY OF HARRISBURG)

Paul D. Bucher City Clerk

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF DAUPHIN) SS

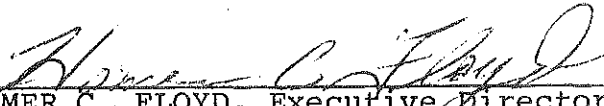
On the 10th day of March, 1978, each of the persons who have signed their names above personally appeared before me and, if not already known to me, satisfactorily proved identity as the persons whose names are signed above. Each of them signed this Agreement freely and with full intent to be legally bound thereby, and clearly understanding that they are waiving their rights to a hearing by signing this Agreement.

In testimony whereof, I have hereunto set my hand and seal on the day last above written.

Rockwell M. Kinney
NOTARY PUBLIC

My Commission Expires:

RECOMMENDED FOR APPROVAL BY THE COMMISSION



HOMER C. FLOYD, Executive Director
Pennsylvania Human Relations Commission

APPROVED AND RATIFIED at a meeting of the Pennsylvania
Human Relations Commission on the _____ day of _____,
1978.

JOSEPH X. YAFFE, Chairperson
Pennsylvania Human Relations Commission

ATTEST:

ELIZABETH M. SCOTT, Secretary
Pennsylvania Human Relations Commission

3. Respondent herein, City of Harrisburg, Police Civil Service Board, is an employment agency within the meaning of Section 4(e) of the Act, 43 P.S. §954(e). The Respondent Employment Agency is a board of the City of Harrisburg, a Pennsylvania third-class city, with its principal offices at 423 Walnut Street, Harrisburg, Pennsylvania 17101.

II. JURISDICTION

4. This Complaint is brought by the Commission upon its own initiative pursuant to the statutory authorization in Section 9 of the Pennsylvania Human Relations Act, 43 P.S. §959, and the procedure established in 16 Pa. Code §42.31(b).

5. It is alleged that the acts and practices complained of herein constitute violations of Sections 5(a) and 5(e) of the Pennsylvania Human Relations Act, 43 P.S. §955(a) and 955(e). The Commission has original jurisdiction over such allegations pursuant to Section 7 of the Act, 43 P.S. §957.

6. No other action based upon the allegations herein has been instituted by the Commission in any court or before any other Commission within the Commonwealth of Pennsylvania.

III. CHALLENGED ACTS OR PRACTICES

7. During or about the month of April, 1977, the Respondent Employment Agency administered to 163 applicants for employment as police officers, a multi-jurisdictional police examination JA-1M of the International Personnel Management Association. Of the 68 applicants whom the Respondent Employment Agency certified as having passed the test, only one was Black, 2 Spanish, and 65 were White. Of the 95 applicants whom the Respondent Employment Agency certified as having failed the test, 27 were Black, 65 were White, and 3 were Spanish. Accordingly, there was a statistically significant disparity between the percentage of Black persons certified to have passed the test and the percentage of Black persons among the applicants who were administered the examination, compared to the relative numbers of White persons taking and passing the examination.

8. The Respondent Employer has subsequently established a list of 28 eligible persons from which to appoint police officers. There are no Black persons on this eligibility list. The Respondent employer has subsequently appointed from the list of those so certified as having passed the aforementioned examination, nine (9) White persons and zero (0) Black persons to be employed as police officers effective June 6, 1977.

9. On information and belief, it is alleged that the aforementioned examination discriminates on the basis of race and is not a valid, job-related test, and that said examination

has not been properly validated consistent with the Commission's guidelines on Employee Selection Procedures, Pa. B. Docket No. 71-2019, (October 15, 1971). Further, it is alleged that there is no business necessity for the Respondents to utilize the aforementioned examination.

10. On information and belief, it is alleged that each of the 25 Black persons who failed the said test is qualified, able and available for employment as a police officer.

IV. AFFECTED CLASS

11. The class of persons aggrieved by the foregoing acts and practices and for whom appropriate relief is sought consists of all Black persons who applied for police officer employment with the Respondent Department and were certified as having failed the aforementioned examination.


RELIEF REQUESTED

WHEREFORE, Complainant requests that Respondents be required to cease and desist from the aforesaid unlawful acts and practices, to take affirmative action necessary and appropriate to remedy the violations complained of herein, to make whole each of those persons who have been injured and aggrieved by the above practices, by award of full backpay and other appropriate relief as required and that the Commission order such further relief as it deems necessary and appropriate, including but not limited to the abolishment of existing certification lists; the abolishment of or revision of any and all selection criteria which may be discriminatory, and the appointment of Black persons to the Police Force as officers.

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF DAUPHIN :

HOMER C. FLOYD, being duly sworn according to
law deposes and says:

1. That he is Executive Director of the Penn-
sylvania Human Relations Commission.
2. That he is authorized to make this Affidavit
and sign this Complaint on its behalf.
3. That he has read the foregoing Complaint and
that each of the allegations contained herein is true
and correct to the best of his knowledge, information,
and belief.



HOMER C. FLOYD, Executive Director
Pennsylvania Human Relations Comm.

SWORN to and subscribed
before me this 17th day
of July, 1977.



NOTARY PUBLIC

My Commission Expires: NOTARY PUBLIC
 Commission Expires Sept. 6, 1978
 Pottsville, Pa. Dauphin Cou

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Rule 13.92 (relating to service by a participant).

Dated at this _____ day of _____, 19__

[Handwritten Signature]

(Signature)

Counsel for

[Faint handwritten notes, possibly describing a case or legal proceedings]