

**UNITED STATES v. CITY OF
PHILADELPHIA**

499 F.Supp. 1196 (1980)

UNITED STATES of America, Plaintiff,
Rhona Green et al., Applicants for Plaintiff Intervention,

v.

CITY OF PHILADELPHIA et al., Defendants,
Fraternal Order of Police, Defendant-Intervenor.
Penelope BRACE, Plaintiff,

v.

Joseph F. O'NEILL, Police Commissioner et al., Defendants.
Lucy SANFORD, Shirley Black, Mari Pritchard, Patricia Sullivan, Carolyn Carter, Brenda Williams
and Ernestine McCullough, Plaintiffs,

v.

Joseph F. O'NEILL et al., Defendants.

Civ. A. Nos. 74-400, 74-339 and 78-1154.

**United States District Court, E. D.
Pennsylvania.**

September 30, 1980.

William B. Fenton, John M. Gadzichowski, Cathy S. Surace, Dept. of Justice, Civ. Rights Div.,
Washington, D. C., for plaintiff United States of America.

Alan J. Davis, City Sol., John M. Myers, Deputy City Sol., Philadelphia, Pa., for defendants City of
Philadelphia, et al.

Helen T. M. McCaffrey, Philadelphia, Pa., for plaintiffs Patricia Sullivan, Carolyn Carter and
Ernestine McCullough.

Frank Finch, III, Philadelphia, Pa., for Penelope Brace.

Burton Rose, Philadelphia, Pa., for Fraternal Order of Police.

Judith E. Harris, Philadelphia, Pa., for objectors to proposed order.

MEMORANDUM OPINION AND ORDER

WEINER, District Judge.

These actions originated on February 12, 1974, with Penelope Brace's lawsuit, (*Brace v. O'Neill et al*, C.A. No. 74-339), in which Brace sought reinstatement to her employment as a policewoman,¹ to restrain discrimination in police assignments and denial of the opportunity for promotion because of sex.

The United States filed its suit on February 19, 1974 (*U.S.A. v. City of Philadelphia et al*, C.A. No. 74-400) alleging that the City discriminated against females with respect to job opportunities in the Philadelphia Police Department, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, the Fourteenth Amendment to the Constitution of the United States, and the guidelines of the Department of Justice and the Law Enforcement Assistance Administration which provide for equal employment opportunity in federally funded programs and activities, 28 C.F.R. § 42.201, *et seq.* On December 18, 1974, the *United States* action was consolidated with the *Brace* action.

On April 13, 1978 Lucy Sanford, Shirley Black, Mari Pritchard, Patricia Sullivan, Carolyn Carter, Brenda Williams, and Ernestine McCullough filed an action against the City of Philadelphia and Police Commissioner Joseph F. O'Neill alleging that the police department had unlawfully rejected them for appointment as police officers, (*Sanford et al. v. O'Neill et al*, C.A. No. 78-1154). On February 27, 1979, that action was consolidated with the *Brace* and the *United States* actions.

On February 19, 1980, Rhona Green, Patsy Matthews, Harriett L. Farr, and Julie Schrant, individually and on behalf of all other similarly situated Philadelphia female police officers, filed a motion to intervene in the *United States* action, a motion for designation as a class action, and a motion to enjoin the City's contemplated layoff of police officers on the ground that such layoff would have a disproportionate impact upon female police officers.

On July 15, 1980, the plaintiffs United States, Patricia Sullivan, Carolyn Carter, and Ernestine McCullough, and the defendant City of Philadelphia filed a joint motion for entry of a consent order. The terms of the proposed consent order were agreed to by plaintiffs Rhona Green, et al, Mari Pritchard, Lucy Sanford, Rose Waters, and Shirley Black.

The proposed consent order provides prospective and remedial relief for females. The central provisions require that the City:

1. Cease discriminating against females with respect to job opportunities in the Philadelphia Police Department and, in particular, that the City comply with the Federal Executive Agencies' *Uniform Guidelines on Employee Selection Procedures*, 43 F.R.

38290, *et seq.* (August 25, 1978), and with the Equal Employment Opportunity Commission's *Employment Policies Relating to Pregnancy and Childbirth*, 44 F.R. 23804, *et seq.* (April 20, 1979) (Order, para. 1);

2. Adopt and seek to achieve a thirty percent (30%) annual hiring goal for females in the hire of the next 2,670 police officers (Order, para. 4);

3. Adopt and put into effect a recruitment program on behalf of females to ensure that the City meets the thirty percent (30%) annual hiring goal for females set forth in paragraph 2, *supra* (Order, para. 5);

4. Undertake sufficient affirmative action in the filling, by transfers, of police officer vacancies which hereafter occur in the Police Department's special units to ensure that female police officers are fully integrated in such units within twelve (12) months from the date of entry of the Order, and remain so integrated throughout the life of the Order (Order, para. 8);

5. Promote thirty-three (33) of the Police Department's current 186 female police officers to the next vacancies which occur in the ranks of detective (16) and sergeant (17) (Order, paras. 12 and 13);

6. Provide the sum of \$700,000.00 in back pay, as well as retroactive seniority credit, pension benefits and, where applicable, job offers and promotion, to those incumbent female police officers, rejected applicants and futility claimants who the United States contends have been the victims of the City's unlawful practices (Order, Part V); and

7. Provide the sum of \$37,328.56 to the United States for the costs it has incurred in this action (Order, Part VIII).

Objections to the proposed consent order have been made by Penelope Brace and numerous other female police officers. Approximately nine female police officers filed affidavits setting forth their grounds for objecting to the proposed consent order, that they were not included in the list of officers for whom relief was being provided in the proposed consent order.

On August 11 and 13, 1980, this Court conducted a hearing on the joint motion for entry of a consent order and the objections thereto. Oral argument in support of their respective positions was made by counsel for the United States, the City of Philadelphia, the Fraternal Order of Police, Penelope Brace, and the other incumbent policewomen and female police officers who had filed objections to the proposed consent order. The court heard testimony of six incumbent female police officers who had filed objections, and of the attorney with the Department of Justice who had interviewed the female police officers and who had participated in the Department's determination not to seek relief on their behalf.

Counsel for the United States and for the City argue that this Court should enter the proposed consent order and accompanying stipulation because the proposed consent order provides both prospective and remedial relief on behalf of females which is necessary and proper to eradicate

the effects of the City's pattern or practice of discrimination against females with respect to job opportunities in the Police Department.

Counsel for the individual objectors, other than Penelope Brace, argues that the Court should disapprove the settlement because the peculiar set of circumstances in these cases weigh against the entry of the proposed decree. Counsel argues that the entry of the proposed consent order will preclude the objectors from bringing their own individual lawsuits to redress their grievances, since the time for filing them has passed.

Counsel for Penelope Brace argues that the settlement should be disapproved because the settlement does not provide Brace with 100% of the total sum of back pay; and, further, that Brace is required to sign a waiver if she accepts the money offered. The United States and the City have agreed to provide Brace with a statement in the notice letter stating:

"... you will not be deemed to have waived *any* relief to which you may be entitled in your own case, *Brace v. O'Neill, et al*, civil action no. 74-339 (E.D. Pa.)"

After careful review of all of the pleadings and of the testimony offered, we shall approve the settlement, and we shall enter the proposed consent order.

A proposed consent decree in a Title VII case is entitled to a presumption of validity, and we need only determine that the proposed settlement is not unconstitutional, unlawful, contrary to public policy, or unreasonable before granting approval. *United States v. City of Miami et al*, [614 F.2d 1322](#), 1333 (5th Cir. 1980),²*United States v. City of Alexandria*, [614 F.2d 1358](#), 1361 (5th Cir. 1980), *EEOC v. American Tel. & Tel. Co.*, [556 F.2d 167](#) (3rd Cir. 1977), *cert. denied*, 438 U.S. 915, 98 S.Ct. 3145, 57 L.Ed.2d 1161 (1978). No objector has presented this Court with any evidence to overcome the presumption of validity.

This presumption of validity means that we must have a principled reason for refusing to sign the consent decree presented here. A refusal to sign a consent decree based on generalized notions of unfairness is unacceptable. *United States v. City of Miami, supra*.

As noted by the *Miami* court, Congress has put an extremely high premium on voluntary settlement of Title VII suits. 614 F.2d at 1322. The Court, at page 1331 cited the case of *Alexander v. Gardner-Denver Co.*, [415 U.S. 36](#), 44, 94 S.Ct. 1011, 1017, 39 L.Ed.2d 147 (1974) where the Supreme Court said:

"Cooperation and voluntary compliance were selected [by Congress] as the preferred means for achieving [the goal of elimination of unlawful employment discrimination]."

When objections to the settlement are presented, the burden must be on the objectant to convince the Court to disapprove the proposed settlement, and the trial court's reasoned approval of the

settlement will be entitled to much deference. Otherwise, the policy of voluntary compliance with Title VII could be severely thwarted by the interposition of objections to the settlement. *United States v. City of Miami*, 614 F.2d at 1334.

We shall examine the objections which have been filed.

The United States argues that the objections of Penelope Brace should be overruled because they were not timely filed under local rule 36 of the United States District Court for the Eastern District of Pennsylvania.³ On July 10, 1980, counsel for Brace was personally served with a copy of the proposed consent order along with written notification that the United States and the City intended to file on July 15, 1980, a joint motion for its entry. The joint motion was filed on July 15, 1980 and a hearing was scheduled by this court for August 11, 1980. Brace failed to file her objections on July 15, 1980. It was not until August 7, 1980, 29 days after her counsel was served and 4 days before the August 11, 1980 hearing, that Brace filed her objections.

The United States further argues that neither Penelope Brace nor the other fourteen policewomen and female police officers have standing to object because they are not parties to the *United States* action, nor have they sought to intervene in the *United States* action pursuant to Rule 24, F.R.C.P.

Congress in enacting Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, gave the Attorney General the authority to bring independent "pattern or practice" causes of action against public employers under Section 707 of Title VII (42 U.S.C. § 2000e-6), and authorized private litigants to bring their own separate causes of action under Section 706 of Title VII (42 U.S.C. § 2000e-5). Where a statute provides for both Government and private suits, they may proceed simultaneously or in disregard of each other, since different policy considerations govern each of these. *Sam Fox Publishing Co., Inc. v. United States*, [366 U.S. 683](#), 689, 81 S.Ct. 1309, 1312, 6 L.Ed.2d 604 (1961). A private individual or association does not have an unconditional right of intervention in a "pattern or practice" action brought by the Government under § 707. *United States v. Allegheny-Ludlum Industries, Inc.*, [517 F.2d 826](#), 843 (5th Cir. 1975). That court went on to say at page 843:

"It was unquestionably the design of Congress in the enactment of § 707 to provide the government with a swift and effective weapon to vindicate the broad public interest in eliminating unlawful practices, at a level which may or may not address the grievances of particular individuals. See *Rodriguez v. East Texas Motor Freight*, 5 Cir. 1974, [505 F.2d 40](#), at p. 66; *United States v. International Ass'n. of Bridge, Structural, and Ornamental Iron Workers*, 7 Cir. 1971, [438 F.2d 679](#), *cert. denied* 404 U.S. 830, 92 S.Ct. 75, 30 L.Ed.2d 60 (1971). Rather, it is to those individual grievances that Congress addressed § 706, with its attendant requirements that charges be filed, investigations conducted, and an opportunity to conciliate afforded the respondent when "reasonable cause" has been found. On the other hand, the mere fact that some charges were filed, or that efforts were

made toward conciliation, does not in our view transform what the government may properly bring and does bring as a § 707 'pattern or practice' action into a § 706 action. See *United States v. Ironworkers Local 86*, 9 Cir. 1971, [443 F.2d 544](#), 551-52, cert. denied, 404 U.S. 984, 92 S.Ct. 447, 30 L.Ed.2d 367 (1971)."

The proposed consent decree provides comprehensive relief for females in the Philadelphia Police Department. The objectors focus on the back pay which they claim is due them. Each objector, other than Brace, testified in person or by affidavit that she would have joined the police department prior to 1975 but did not do so because either she applied and was not accepted, or did not apply because it would have been futile because of the police department's practice of discrimination against females at that time. The witness for the Government, Cathy S. Surace, an attorney with the Justice Department, testified that she interviewed, by telephone, approximately 180 out of a total of 186 incumbent female Philadelphia police department police officers, which included the objectors to the proposed consent decree. Surace further testified that she asked each officer whether she had applied for the job of policeman or police officer prior to her application for the 1975 or 1978 examination for policemen or police officer, and whether the officer had been interested in the job of policeman or police officer prior to the date she actually applied but had not done so because she thought it would have been futile.

Surace testified that each of the objectors interviewed told her that she, the objector, either had not applied prior to 1975 or was not interested in the job of policeman or police officer prior to 1975. She therefore recommended that these females not be included in the group for whom relief was sought.

The Court was impressed with the testimony of Surace, and there is no reason to reject it. Surace is an attorney with the United States Department of Justice. She has neither personal nor pecuniary interest in the outcome of this litigation and the Court places credence in her testimony, whereas the objectors who do have a personal and pecuniary interest, affirmed Ms. Surace's testimony. In some instances, at the hearing by the Court on August 11, and 13, 1980, they contradicted their own previously filed affidavits.

We therefore reject the contentions filed by the objectors.

The Fraternal Order of Police (FOP) have suggested modifications to the proposed consent decree. The FOP states it takes a neutral stance to the proposed consent decree. It is in a peculiar situation since its membership is composed of both male and female police officers. It cannot oppose the proposed settlement because that would offend the female members, and it cannot consent to the proposed settlement since that would offend the male members who would be affected by the promotion relief set forth in Part IV of the settlement agreement. They do suggest that additional positions be authorized so that more appointments can be made.

The modifications suggested are opposed by the Government and the City. The FOP suggests a modification to provide that if any male officer has "demonstrably superior qualifications" as compared to any female officer who would be promoted under Part IV of the settlement agreement, that the promotion should go to the male officer. This the Court rejects as this would defeat the relief agreed to by the City and Government and would create more problems than it would solve.

Since Penelope Brace retains her rights and is not prejudiced by the proposed consent decree, the Court will overrule her objections.

ORDER

1. All objections and proposed modifications to the proposed consent decree are overruled.
2. The proposed consent decree which is attached hereto is approved.

IT IS SO ORDERED.