

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LARRY R. CLINKSCALE : CIVIL ACTION
v. :
CITY OF PHILADELPHIA, et al. : NO. 97-2165

MEMORANDUM AND ORDER

FULLAM, Sr.J. JUNE , 1998

Plaintiff Larry Clinkscale, an disappointed applicant for the position of Philadelphia police officer, brought this civil rights action pursuant to Title VII (42 U.S.C. §2000e et seq.), 42 U.S.C. §1983, and various state antidiscrimination laws. Defendants have now moved for summary judgment, which will be granted for the following reasons.

The version of the facts most favorable to plaintiff is as follows: Larry Clinkscale is an African American male, currently employed by the Federal Bureau of Investigation, who desires admission to the Police Academy and eventual employment as a police officer. In the course of the application process, plaintiff disclosed to the Philadelphia Police Department that he had been arrested twice in 1991, once for assaulting a neighbor and once for assaulting a police officer. There is evidence of record to suggest that this latter arrest was baseless, and in fact it was the subject of a civil rights against brought by plaintiff against the City of

Philadelphia, which was settled for an unspecified sum. In any event, the charges relating to the neighbor's assault were dismissed, plaintiff was acquitted of assaulting the police officer, and his criminal history record was expunged. Plaintiff denies that he engaged in any criminal conduct in connection with either event; nevertheless his application to the Police Academy was rejected, at least in part, on the basis of these arrests.

Plaintiff asserts that he was denied admission to the Police Academy because of his race because defendants' policy of excluding applicants on the basis of previous arrests without convictions has a disparate impact upon African Americans, who plaintiff asserts are more likely than whites to be arrested. Plaintiff also claims that the City's failure to hire him as a police officer is in retaliation for bringing his earlier lawsuit.

A disparate impact claim arises when an employer institutes a policy or practice that while facially neutral, has a substantial adverse impact upon a protected group, and does not advance the employer's legitimate business interests. See Equal Employment Opportunity Comm'n v. Metal Service Co., 892 F.2d 341, 346 (3d Cir. 1990). I will assume for present purposes that African Americans are indeed more likely than whites to be arrested; I am even willing to assume that a higher percentage of those arrests are unjustified. Here, defendants contend that plaintiff cannot make out a prima facie case of racial discrimination under McDonnell Douglas because an African American was in fact hired for the position plaintiff sought: the Police Department operates under a consent decree which mandates that a certain number of African American officers be hired by the Department; in other words, another African American would have taken plaintiff's place on the list. Plaintiff does not dispute this fact. The complained-of policy, at least under these circumstances, has been shown to

discriminate not against black applicants per se, but only against black applicants with arrest records.

Even were I to find that plaintiff has succeeded in establishing a prima facie case of race discrimination, he could not overcome defendants' proffered business justification for their policy of excluding an applicant with a history of one or more arrests or criminal conduct. Plaintiff argues that in his case, the subsequently dismissed charges, acquittal and expungement of his record are consistent with actual innocence. However, in other cases, these outcomes may well be the result of other things-- lack of evidence, recalcitrant witnesses, participation in an accelerated rehabilitative disposition (ARD) program, or juvenile offenses, for example. Even an unjustified arrest may be indicative of character traits that would be undesirable in a police officer, such as a quick temper, poor attitude or argumentativeness.

None of the cases plaintiff cites for the proposition that a policy of screening applicants for criminal conduct is an unjustified employment practice involves the hiring of law enforcement personnel. To give someone a badge, a gun, and -- practically speaking -- almost unlimited authority over his or her fellow citizens is a grave responsibility. In light of the serious public safety concerns at issue here, I find that, as a matter of law, defendants' policy serves substantial and legitimate interests.

Plaintiff's retaliation claim must fail as well, albeit for a different reason. The record is simply devoid of even a scintilla of evidence -- aside from plaintiff's own strongly held belief -- from which a trier of fact could determine that the Police Department's failure to hire plaintiff was in retaliation for having filed a civil rights claim in the past. An Order follows.

