

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	<u>RESPONSE TO JOINT MOTION TO</u>
CITY OF CLEVELAND)	<u>MODIFY PARAGRAPH 178 OF THE</u>
)	<u>SETTLEMENT AGREEMENT</u>
Defendant.)	
)	
)	

The Monitoring Team has carefully reviewed the Joint Motion to Modify Paragraph 178 of the Settlement Agreement, Dkt. # 172, filed by the United States of America and the City of Cleveland (collectively, the “Parties”) on December 27, 2017. The Team agrees with the Parties’ request to modify Paragraph 178 of the Settlement Agreement (“Agreement”) for the reasons set forth below and recommends that the Court amend the Agreement consistent with that request.

DISCUSSION

The facts laid out by the Parties in their Joint Motion, Dkt. # 172, are accurate. The City and Cleveland Division of Police (“CDP” or “Division”) made significant, good faith efforts to comply with Paragraph 178 of the Agreement. In early February 2016, the City and CDP began the process to select a civilian Superintendent of the Division’s Internal Affairs Unit (“IA”). Despite posting the position on three separate occasions across a noteworthy range of platforms

and channels, the City could not identify a suitable candidate with the requisite experience conducting complex investigations.

Since June 2017, and with the support of the United States and the Monitoring Team, the City advertised a new posting for the IA Superintendent position, now not expressly precluding current or former law enforcement officers from applying. The City has now identified, and would like to offer the position to, a candidate who has experience as a county prosecutor and assistant U.S. attorney.

It remains an open question as to whether experience as a prosecutor entails serving as a law enforcement officer for purposes of the Consent Decree as originally drafted and ratified by this Court. All else equal, the Monitor would prefer that the selected IA candidate satisfy the terms of the Consent Decree. Nonetheless, the Monitoring Team is not oblivious to the practical realities at hand. The City attempted to hire an individual without any experience related to law enforcement; those efforts have, by no fault of the Parties, borne no fruit. The failure to consider changing approaches in light of the facts as they have developed risks further delay in implementing major portions of the Agreement. It is critical to hire an IA Superintendent—even one with former prosecutorial experience—to begin overseeing reform of the Division's IA Unit.

Importantly, the Monitoring Team has concluded that the desired candidate—a former prosecutor—is still sufficiently independent because the candidate is a civilian. The candidate has not worked as a police officer in Cleveland or any other jurisdiction. As such, the Monitoring Team hopes that the candidate will bring sufficiently independent experience and voice to the position (a quality that the Team has heard from the Parties to constitute the underlying intent of the qualifications as set forth in the Consent Decree).

This Court, the Monitoring Team, and the United States all have independent roles in ensuring that the head of IA fully implement and adhere to all of the Consent Decree's requirements related to internal investigations of officer misconduct. Thus, going forward, there will be regular occasion to assess the performance of IA to ensure that the head of IA's prior experience is not hampering Consent Decree compliance.

PROPOSED CHANGE

The Monitoring Team approves of the Parties' proposed modification to Paragraph 178 of the Settlement Agreement:

Internal Affairs will be headed by a qualified civilian who is not a current or former employee of CDP, ~~and who is not a current or retired law enforcement officer.~~ The civilian head of Internal Affairs will report directly to the Chief of Police.

CONCLUSION

Having carefully reviewed the Parties' Joint Motion, Dkt. # 172, the Monitoring Team concurs with the United States and the City of Cleveland and respectfully requests that the Court enter an order approving the proposed modification of Paragraph 178 of the Settlement Agreement, which will permit the City to hire a qualified civilian who is a current or retired law enforcement officer as Superintendent of CDP's Internal Affairs Unit.

Respectfully submitted,

/s/ Matthew Barge

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2018, I served the foregoing document entitled Response to Joint Motion to Modify Paragraph 178 of the Settlement Agreement via the court's ECF system to all counsel of record.

/s/ Matthew Barge
MATTHEW BARGE