

# City settles civil service suit filed in 1994

Has paid \$325,000,  
agrees to do testing

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*Plain Dealer Reporter*

Cleveland has paid \$325,000 to settle a lawsuit over the city's hiring and promotion practices, wrapping up a case that began 17 years ago.

The suit by the Cleveland Civil Service Employees Association challenged the city's habit of making "temporary" appointments and not administering competitive tests for the positions within three months as then required by the city's charter.

While the court case dragged on, mayors made thousands of hires — from clerk to commissioner — under a practice that association lawyer Kevin Prendergast said was ripe for political patronage.

They justified many of the appointments with noncompetitive exams, which the charter reserves for special circumstances. At other times, officials would simply change the job title or minimum requirements, restarting the clock.

The city even got voters to change the charter in 2008 to extend the grace period to a year, waive tests for employees already in place and expand the number of unskilled or semiskilled positions not subject to testing. The revisions restricted opportunity even more, according to a judge who eventually presided over the settlement.

Jacobs Field (now Progressive Field) was 2½ months from its first Opening Day when the Civil Service Employees Association took its complaint to Cuyahoga County Common Pleas Court in January 1994.

The Rock and Roll Hall of Fame and Museum wouldn't welcome its first visitors for another year.

Michael R. White was mayor. The Browns had yet to leave town, and the reborn team's stadium had not been built.

A state appellate court twice ruled against the city; the Ohio Supreme Court refused to hear the case. Judges found city officials in contempt of court three times and levied a \$900,750 fine that was dropped with November's settlement.

The \$325,000 check, cut this month, will pay the plaintiffs' legal costs.

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The city also agreed to test within the prescribed one-year period.

The Ohio Constitution calls for appointing and promoting civil service employees based on merit and fitness and says those qualities should be determined by competitive testing "as far as practicable." But the city can make temporary appointments until it gives a test and develops an eligibility list.

The Civil Service Employees Association raised questions after the number of temporary appointees soared to 2,000 under then-Mayor George Voinovich in the 1980s, said Prendergast, who handled the suit from start to finish.

Voinovich responded with a massive testing program that filled the City Hall rotunda daily and cut the rolls of untested employees to fewer than 200 in a year and half, Prendergast said. But appointments rose to about 2,000 again under White and ebbed and flowed after that.

"They were making promises — 'We'll do this, we'll do that,'" said Prendergast. "It never panned out."

Mayor Frank Jackson, who has been in office since 2006, has aggressively pushed testing, interim Law Director Barbara Langerhenny said. She estimated that fewer than 50 employees have yet to take examinations.

"The mayor has been committed to following his obligations under the civil service laws and will continue to do so," she said.

But Cuyahoga County Common Pleas Judge Peter Corrigan took a different view when he issued the third contempt citation in 2009.

Corrigan's ruling belittled the Civil Service Commission as a rubber stamp and accused the city of having no plan for complying with court rulings. He said that instead of following orders, the city merely changed the charter, "substantially limiting employee rights further."

"Abuse of the hiring system has opened the city, this administration and the two prior administrations to allegations of cronyism, corruption and political payback," Corrigan wrote.

The judge issued the \$900,750 fine, roughly \$1,000 for each of the appointees then on the payroll. He also ordered a temporary hiring freeze and appointed a special master who kept watch over the Civil Service Commission until the settlement was reached. The civil service employees won a separate lawsuit contesting the charter changes but lost in appellate court on a technicality.

Association President Patrick Madigan does not rule out refileing. But for now, the group will watch closely for expansion of noncompetitive tests and other violations. "They've said they're going to comply," Madigan said. "We're going to give them the benefit of the doubt."