



**PARTIES**

2.

Plaintiff Freddie Mitchell is a U.S. citizen who resides in Walker County in the State of Georgia.

3.

Plaintiff Richard Brooks is a U.S. citizen who resides in Walker County in the State of Georgia.

4.

Plaintiff Johnetta McSears is a U.S. citizen who resides in Walker County in the State of Georgia.

5.

Defendant City of LaFayette is a municipality in the State of Georgia and is subject to an action under the ADEA. It can be served with summons and complaint upon its City Manager, Johnnie Arnold, at 207 South Duke Street, LaFayette, Georgia, 30728.

## **JURISDICTION AND VENUE**

6.

The claims brought in this lawsuit present federal questions and jurisdiction in this Court is proper under 29 U.S.C. § 626, 28 U.S.C. §§ 1331, 1337, and 1343(a)(4).

7.

Venue of this suit is proper in the Northern District of Georgia, Rome Division under 28 U.S.C. § 1391(b). The unlawful termination and other discriminatory or unlawful acts against Plaintiffs occurred in this judicial district and division. In addition, Plaintiffs reside in and the Defendant is in this judicial district and division.

8.

Plaintiffs all filed a timely charge of discrimination against the Defendants at the Atlanta District Office of the Equal Employment Opportunity Commission (“EEOC”). Mitchell received a notice of right to sue from the EEOC on May 13, 2010. The EEOC is still investigating the EEOC Charges of Brooks and McSears, but over 60 days have passed since they first filed their EEOC Charges.

## FACTUAL ALLEGATIONS

9.

Mitchell was hired as a laborer by the City on September 28, 1970.

10.

In 1999, Mitchell was promoted to Assistant Supervisor.

11.

As an Assistant Supervisor, Mitchell was in charge of streets, sanitation, and the cemetery.

12.

Sometime in 1999, Richard Moore became Mitchell's supervisor.

13.

During his entire time at the City of LaFayette, Mitchell was never written up for discipline.

14.

In November, 2009, without any explanation, Moore announced that Mitchell would no longer be in charge of streets and sanitation. His job title and pay did not change.

15.

For just a few weeks, Tracy Brown was placed in charge of Mitchell's non-cemetery duties, but Moore had already hired Vanessa Gilliam to take over these duties, which she did at or around December 2009.

16.

Gilliam was much younger than Mitchell and not near as experienced.

17.

Mitchell was assisted in his cemetery duties by Andy Frick, who was much younger than Mitchell.

18.

On July 17, 2009, Mitchell was terminated. At the time of his termination, Mitchell was 57 years old.

19.

The only reason given for the termination was that Mitchell's position was abolished because of the "economy."

20.

Mitchell's duties in the cemetery were still necessary. Frick still worked in the cemetery and Phil Chapman was assigned to help.

21.

Gilliam took over Mitchell's remaining duties of supervising the cemetery and was promoted from Public Works Street Supervisor to Public Works Supervisor.

22.

Brooks was hired as a Technician in the Natural Gas Department in July 1980.

23.

Brooks was later transferred to the Code Division.

24.

Over the years, Brooks became in charge of locating sewer, water, cable, and other utility lines. Over nine years ago, his title became "Utility Locator."

25.

During his entire time at the City of LaFayette, Brooks was never written up for discipline.

26.

In July 2009, Brooks was given the decision to apply for retirement benefits or be fired.

27.

On July 17, 2009, the payroll department informed him that he had been terminated. At the time of his termination, Brooks was 57 years old.

28.

The only reason given Brooks for the termination was that his position was eliminated due to "budget concerns."

29.

Brooks' job duties are still necessary, but are now spread among younger employees.

30.

Since he was terminated, Brooks has applied for open City positions.

31.

Brooks could not apply for some positions, however, because they were not posted.

32.

Brooks has not been selected for any of these positions.

33.

McSears was hired as a Building Supervisor in the Parks and Recreation Department by the City in August 1980.

33.

During her entire time at the City of LaFayette, McSears was never written up for discipline.

34.

On July 17, 2009, McSears was terminated. At the time of her termination, McSears was 55 years old.

35.

The only reason given for the termination was that her position was eliminated due to “economic reasons.”

36.

McSears duties were still necessary, but are now performed by younger employees.

37.

McSears’ supervisor, Patty Scott, wanted to retain her instead of a much younger Building Supervisor.

38.

Plaintiffs’ terminations were not done in accordance with any Reduction in Force (RIF) plan.

39.

Rather, the terminations were made based on subjective criteria.

40.

As a result, Plaintiffs, as well as another older City employee, Johnny Stevens, all of whom were over 55 and among the oldest employees in their departments , were selected at the same time for dismissal.

41.

The only real criteria used to select Plaintiffs and Stevens was their age.

42.

To the extent any other neutral criteria was used, it had a disparate impact upon Plaintiffs and Stevens and was not based on reasonable factors other than age.

43.

The City made public pronouncements that it would bring back these employees if the budget increased.

44.

Within the year, the City was hiring other younger and less-qualified employees in each of Plaintiff's departments.

45.

Plaintiffs were not considered for any of these positions.

**COUNT ONE**  
**DISPARATE TREATMENT UNDER THE ADEA**

46.

Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs of this Amended Complaint as if fully set forth herein.

47.

Defendant discriminated against Plaintiff Mitchell by stripping him of his duties in supervising and hiring a younger employee to assume them.

48.

Defendant discriminated against Plaintiffs because of their age by terminating them.

49.

Defendant discriminated against Plaintiffs who applied for later open positions by failing to hire them because of their age.

50.

As a result of Defendant's discriminatory acts, Plaintiffs are entitled to recover the relief requested below.

**COUNT TWO  
DISPARATE IMPACT UNDER THE ADEA**

51.

Plaintiffs incorporates by reference the allegations set forth in the preceding paragraphs of the Amended Complaint as if fully set forth herein.

52.

To the extent Defendant used any neutral criteria to terminate Plaintiffs and others, it had a disparate impact because of their age and was not based on reasonable factors other than age.

53.

As a result of Defendant's discriminatory acts, Plaintiffs are entitled to recover the relief requested below.

**COUNT THREE  
RETALIATION UNDER THE ADEA**

54.

Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs of this Amended Complaint as if fully set forth herein.

55.

Defendant retaliated against Plaintiffs by not offering them positions once the budget allowed further hiring in their departments. These openings were available after Plaintiffs filed EEOC Charges.

56.

Defendant retaliated against Plaintiffs who applied for positions by not hiring them because they had filed an EEOC Charge complaining of age discrimination.

57.

As a result of Defendant's retaliatory acts, Plaintiffs are entitled to recover the relief requested below.

WHEREFORE, Plaintiffs pray:

- a. That Summons issue requiring Defendant to answer the Complaint within the time provided by law;
- b. That Plaintiffs be awarded a declaratory judgment that Defendant discriminated against them in violation of the ADEA;
- c. That Plaintiffs recover from Defendant back pay and benefits with pre-judgment interest;

- d. That this Court either order Defendant to reinstate Plaintiffs or award them front pay and benefits in an amount sufficient to compensate Plaintiffs;
- e. That Plaintiffs recover compensatory damages against Defendant in an amount to be determined by a jury;
- f. That Plaintiffs recover liquidated damages under the ADEA;
- h. That Plaintiffs recover attorney's fees and costs of litigation under the ADEA and other applicable federal law;
- j. That the Court award Plaintiffs any other or further relief as it deems necessary and proper, or equitable and just.

**PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL COUNTS**

**Local Rule 7.1.D Certification:**

By signature below, counsel certifies that the foregoing pleading was prepared in Century Schoolbook, 13 point font in compliance with Local Rule 5.1B.

Respectfully submitted this 28th day of December, 2010.

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s/ Tilden Robert Reid, II

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