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EEOC v. BCI Coca-Cola Bottling Company

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EEOC v. BCI Coca-Cola Bottling Company

Keywords

EEOC, BCI Coca-Cola Bottling Company, 02-1644 JB/RHS, Consent Decree, Disparate Treatment, Termination, Terms and Conditions, Race, African American or Black, Manufacturing, Employment Law, Consent Decree

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

BCI COCA-COLA BOTTLING COMPANY
OF LOS ANGELES,
d/b/a PHOENIX COCA-COLA BOTTLING
COMPANY and COCA-COLA BOTTLING
COMPANY OF ALBUQUERQUE,

Defendant.

No. CIV 02-1644 JB/RHS

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the “Commission” or “EEOC”) filed this action against BCI Coca-Cola Bottling Company of Los Angeles, which does business under the names of Phoenix Coca-Cola Bottling Company and Coca-Cola Bottling Company of Albuquerque (“Defendant”) to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* (Title VII). In the Complaint the Commission alleged that defendant subjected Stephen B. Peters to disparate treatment in the terms, conditions and privileges of employment because of his race, African American, in violation of Title VII. The Commission also alleges that Defendant discharged Mr. Peters because of his race, African American, in violation of Title VII.

Defendant denies that it engaged in any discriminatory practice with respect to Mr. Peters and denies all of the allegations contained in the Complaint. The Court previously dismissed the Commission’s claims that it subjected Stephen B. Peters to disparate treatment in the terms, conditions and privileges of employment because of his race, African American, in violation of Title VII. The parties now enter this Decree in order to resolve the remaining disputed claim that Defendant discharged Mr. Peters because of his race, African American, in violation of Title VII and avoid continued litigation.

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the Entry of Findings of Fact and Conclusions of Law.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Decree resolves all claims of the Commission against the Defendant, including back pay, interest, injunctive relief, attorney's fees and costs arising out of the issues in this lawsuit.

2. The Defendant and its managing agents at its Albuquerque facility (hereinafter referred to as "Albuquerque facility") are enjoined for the duration of the decree from discriminating against any employee based on his or her race, and from retaliating against any employee who: (a) opposes practices made unlawful by Title VII or a state equal employment statute, (b) makes a charge of discrimination or assists or participates in an investigation or proceeding under Title VII or a state equal employment statute, or (c) files an internal complaint of discrimination. This injunction will remain in effect for the duration of the decree at Defendant's Albuquerque facility.

3. Within fifteen (15) days of the entry of this Consent Decree, Defendant shall pay Stephen B. Peters the total sum of \$250,000. Defendant will make this payment directly to Mr. Peters via certified mail at the address provided by EEOC. Of this amount ten thousand dollars (\$10,000.00) will be designated as back wages and the remainder will be compensatory damages. Within ten days of issuance of the settlement funds to Mr. Peters, Defendant will submit a copy of the check and any related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, Albuquerque District Office, 505 Marquette NW, Suite 900, Albuquerque, NM 87102-2189. For amounts designated as back pay, Defendant shall be responsible for paying the employer's share of FUTA and FICA and will not be taken from the settlement amount. For the amount designated as compensatory damages, Defendant will issue a United States Internal Revenue Service Form 1099 to Mr. Peters as required by law.

4. Employment inquiries or reference checks concerning Stephen B. Peters will be handled consistent with Defendant's practice as follows: Prospective employers requesting a reference for Peters should contact The Work Number. The Work Number will provide Peters' actual dates of employment, total time with the Company, and job title. If verification of

employment and income is requested regarding Peters, The Work Number will confirm, in addition to the foregoing, rate of pay, pay frequency, gross year-to-date earnings, and past two years income history.

5. Defendant shall convert Stephen Peters' involuntary termination to a voluntary resignation and shall expunge from the personnel file of Charging Party all references to the charge of discrimination filed against Defendant and to any involuntary termination.

6. The Defendant shall not take any retaliatory action against Stephen B. Peters or any witness in this case for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

7. Defendant shall not condition the receipt of this individual relief on Stephen B. Peters' agreement to keep the terms of the recovery or the allegations raised in this lawsuit confidential or waive his statutory right to file a charge with any federal or state anti-discrimination agency in the future.

8. Defendant will carry out policies and practices at its Albuquerque facility that promote a work environment free from race discrimination, including policies and practices to prevent race discrimination of its employees, and that allow employees and other individuals to raise concerns or complaints about matters made unlawful by Title VII, whether alleged, perceived or actual without retaliation. To assist Defendant in its effort to promote a work environment free of race discrimination and retaliation, defendant shall take the actions provided for in Paragraphs 11 through 13.

9. Within fifteen (15) days of entry of the Decree, Defendant shall review its existing policies on race discrimination for its Albuquerque facility, and make any changes necessary so that its policies comply with Title VII. Within fifteen days of reviewing and making any necessary revisions to its policies, defendant shall distribute a copy of its policy(s) to each of its current full and part-time employees of its Albuquerque facility, and to each new employee hired for its Albuquerque facility for the duration of this decree. Defendant shall distribute a copy of its policy(s) to each new employee hired for its Albuquerque facility within ten days of hire.

10. Within fifteen (15) days of entry of the Decree, Defendant shall provide its employees of its Albuquerque facility with written policy statements and procedures regarding reporting and

prevention of race discrimination. The policy and procedure statements that are provided to Defendant's employees should be designed to present easily understood, convenient, confidential and reliable procedures for reporting incidents of race discrimination in Defendant's Albuquerque facility.

11. Defendant shall post within ten (10) days of the entry of this Consent Decree, and continuously for a period of twenty- four months, in a prominent place frequented by employees in Defendant's Albuquerque facility, the Notice attached to this decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A.

12. Defendant shall provide training on race discrimination and retaliation according to the following terms:

A. Defendant shall provide four training sessions training session during the term of this decree. All managers, supervisors and employees of Defendant's Albuquerque facility will attend the training. Duplicative sessions may be held to accommodate staffing needs. Defendant shall be responsible for all costs associated with this training;

B. Defendant shall select a qualified trainer and shall submit the trainer's name, resume, training agenda and the date(s) of the proposed training to the Regional Attorney of the Albuquerque Area Office of the Equal Employment Opportunity Commission within forty-five days of the entry of this decree. The Commission shall have thirty days from the date of receipt of the information described above to accept or reject the proposed consultant/lecturer and/or the contents of the seminar. In the event the Commission does not approve Defendant's designated consultant/lecturer, Defendant shall, within forty-five days, submit an alternative consultant/lecturer to the Commission which will have thirty days from the date of receipt of the information to, in good faith, accept or reject the proposed alternative consultant/lecturer. In the event the Commission does not, *in good faith*, approve Defendant's designated consultant/lecturer, the Commission shall designate the consultant/lecturer at a cost not to exceed \$3,000.00 per seminar-training session which shall be paid by Defendant.

C. The training session shall include a minimum of three hours of instruction. All

personnel designated in Paragraph A shall both register and attend the training. The registry of attendance shall be retained by Defendant at least for the duration of the decree;

D. The training, at a minimum, shall include the subjects of:

1. that race discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment and retaliation violates Title VII;
2. how to prevent race discrimination and retaliation;
3. how to provide a work environment free race discrimination and retaliation; and
4. to whom and by what means employees may complain, including the EEOC, if they feel they have been subjected to race discrimination and retaliation.

E. Immediately following the training sessions, Defendant's highest ranking managerial official for its Albuquerque facility shall speak to the employees about: (1) potential discipline that can be taken against supervisors, managers and employees who commit acts of race discrimination or retaliation, or who allow race discrimination or retaliation to occur in the workplace; (2) the importance of maintaining an environment free of race discrimination and retaliation; and (3) the employer's policies regarding race discrimination and retaliation. This time shall not be counted toward the training required in paragraph 12C.

F. For the duration of this decree, at or around the time of hire, employees hired for its Albuquerque facility after the training is presented, shall view a video tape of the training and/or a professional training tape which covers the topics set forth in paragraph 12D and shall be given any written material disseminated at the training.

13. Defendant shall report in affidavit form to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189 beginning six months from the date of the entry of this decree, and thereafter every six months for the duration of the decree the following information:

A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of race discrimination and retaliation.

B. The registry of persons attending each of the seminar-training sessions required in paragraph 12 of this decree and a list of current employees on the day of the seminar-training session.

C. An affidavit by Defendant stating the Notice required in paragraph 11 of this decree was posted and the location where it was posted.

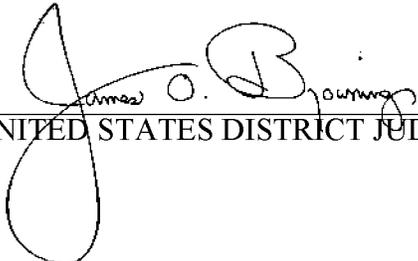
14. Each party shall bear its costs and attorney's fees incurred as a result of this action through the filing of this decree.

15. The duration of this decree shall be two (2) years from its entry. This Court shall retain jurisdiction of this action for the duration of the decree, during which the Commission may petition this Court for non-compliance with this decree. Should the Court determine that Defendant has not complied with this decree, appropriate relief, including extension of this decree for such period as may be necessary to remedy its non-compliance, may be ordered.

16. This decree shall expire by its own terms at the end of two (2) year after entry, without further action by the parties.

17. The parties agree to entry of this decree and judgment subject to final approval by the Court.

ENTERED AND ORDERED this 11th day of April, 2008.


UNITED STATES DISTRICT JUDGE

APPROVED AND CONSENTED TO:

/s/ Mary Jo O'Neill by Loretta Medina

Mary Jo O'Neill
Regional Attorney

/s/ Sally C. Shanley by Loretta Medina

Sally C. Shanley
Supervisory Trial Attorney

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EQUAL EMPLOYMENT OPPORTUNITY
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For BCI Coca-Cola Bottling Company of
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/s/ Robbin Dodson

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NOTICE TO ALL EMPLOYEES OF
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES,
d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and
COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE

This Notice is posted pursuant to a Consent Decree entered into between BCI Coca-Cola Bottling Company of Los Angeles, d/b/a Phoenix Coca-Cola Bottling Company and Coca-Cola Bottling Company of Albuquerque (“BCI Coca-Cola”) and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under the federal law (Title VII of the Civil Rights Act of 1964 and state law to discriminate against an employee on the basis of race in hiring, firing, compensation or other terms, and conditions or privileges of employment.

BCI Coca-Cola prohibits all forms of race discrimination. BCI Coca-Cola also prohibits any form of harassment of persons because of race.

BCI Coca-Cola shall not discriminate on the basis of race and shall not retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII, or who files a grievance alleging discrimination.

If you believe you have been discriminated against because of race or retaliated against in your workplace, you always have the right to seek assistance from:

Equal Employment Opportunity Commission (EEOC)
[505 Marquette, Suite 900, Albuquerque, New Mexico 87102]
1-800-669-4000

or

**[New Mexico Department of Labor, Human Rights Division, 1596 Pacheco St.,
Suite 300, Santa Fe, New Mexico 87505(505) 827-6838]**

**You have the right to file a charge with the EEOC or the Department of Labor
if you believe you are being discriminated against.**

Exhibit A