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United States of America v. The City of Newark, New Jersey

Keywords

United States of America, The City of Newark, New Jersey, 00-2368, Consent Decree, Failure to Accommodate, Assignment, Religion, Other, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

CIVIL ACTION NO. 00-2368

(Lifland, J.)

v.

THE CITY OF NEWARK, NEW JERSEY,

Defendant.

CONSENT DECREE

This action was brought by the United States against the City of Newark, New Jersey (hereinafter referred to as "defendant" or "City") to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"), following receipt by the Department of Justice from the Equal Employment Opportunity Commission of charges filed by Anthony Kerr and Kevin Rhodes, officers in the City's Police Department.

In its complaint, the United States alleges, inter alia, that the defendant has violated Title VII by (1) failing or refusing reasonably to accommodate the religious observance, practice and belief of Mr. Rhodes, Mr. Kerr and similarly-situated present or former Muslim police officers of wearing a beard; (2) threatening Mr. Rhodes, Mr. Kerr and similarly-situated police officers with termination because of their religious observance, practice and belief of wearing a beard; (3) transferring Mr. Rhodes and similarly-situated police officers to undesirable assignments because of their religious observance, practice and belief of wearing a beard; (4) denying Mr. Kerr and similarly-situated police officers opportunities to work special overtime events because of their religious observance, practice and belief of wearing a beard; and (5) failing or refusing to take appropriate action to remedy the effects of the discrimination against them. In its Answer, the City denies these allegations.

The parties, desiring that this action be settled by appropriate consent decree and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties, and the subject matter of this action. Subject to the Court's approval of this Consent Decree, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between themselves as to the issues raised in the United States' complaint filed in this case and the matters resolved in this Decree,

pertaining to Mr. Rhodes, Mr. Kerr, Mr. Abdul-Aziz, Mr. Mustafa, Mr. Jones, Mr. Simmons, Mr. Muhammad, Mr. Parkman, Mr. Williams and the estate of Mr. Morrison .

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the defendant or a finding of any wrongdoing or violation of any applicable federal or state law or regulation.

As used in this Decree, the term "date of entry of this Decree" is defined as the date on which the Court grants final approval to and enters this Consent Decree as a final order of the Court.

It is therefore, ORDERED, ADJUDGED AND DECREED as follows:

A. GENERAL RELIEF

1. Defendant by and through its officials, agents, employees and all persons in active concert or participation with the defendant in the performance of employment or personnel functions shall not engage in any act or practice that unlawfully discriminates against any employee or potential employee with the defendant's Police Department because of that individual's religion, as this term is defined in Title VII, including the religious observance, practice and/or belief of wearing a beard.

2. Defendant by and through its officials, agents, employees and all persons in active concert or participation with the defendant shall not retaliate against or in any respect adversely affect Mr. Rhodes, Mr. Kerr or any other person because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Decree.

3. Defendant shall implement and use non-discriminatory employment policies designed reasonably to accommodate the religion, as this term is defined in Title VII, of employees in the defendant's Police Department.

4. Within thirty (30) days after the date of entry of this Decree, the City shall post notices of the settlement of this lawsuit in the form attached hereto as Appendix A. Such notices shall be posted in prominent and conspicuous locations used for posting notices at the Newark Police Department. Such notices shall remain posted for a period of 90 days from the date of execution of this Decree.

B. SPECIFIC RELIEF

Without admitting the allegations of the United States, and in settlement of the claims of the United States for individual relief, the City agrees to offer claimants the total sum of \$53,600, which the United States has determined should be distributed, and the City has no objection in offering to pay, as follows:

5. The City shall offer to pay Kevin Rhodes a monetary award in the amount of \$5,000, which shall be considered compensatory damages.

6. The City shall offer to pay Anthony Kerr a monetary award in the amount of \$5,900, of which \$900 shall be considered back pay, plus interest, for the denial of special overtime work in 1995 and \$5,000 shall be considered compensatory damages.

7. The City shall offer to pay Farouq Abdul-Aziz a monetary award in the amount of \$5,000, which shall be considered compensatory damages.

8. The City shall offer to pay Shakoor Mustafa a monetary award in the amount of \$5,000, which shall be considered compensatory damages.

9. The City shall offer to pay Calvin Parkman a monetary award in the amount of \$5,900, of which \$900 shall be considered back pay, plus interest, for the denial of special overtime work in 1995 and \$5,000 shall be considered compensatory damages.

10. The City shall offer to pay Edward Simmons a monetary award in the amount of \$5,900, of which \$900 shall be considered back pay, plus interest, for the denial of special overtime work in 1995 and \$5,000 shall be considered compensatory damages.

11.The City shall offer to pay to Andrew Maurice Jones**a monetary award in the amount of \$5,900, of which \$900 shall be considered back pay, plus interest, for the denial of special overtime work in 1995 and \$5,000 shall be considered compensatory damages.

12. The City shall offer to pay to the executor of the estate of Michael Morrison a monetary award in the amount of \$5,000, which shall be considered compensatory damages.

13. The City shall offer to pay to Eugene Muhammad a monetary award of \$5,000, which shall be considered compensatory damages.

14. The City shall offer to pay to Richard Williams a monetary award of \$5,000, which shall be considered compensatory damages.

15. The City shall offer to expunge from the claimants' disciplinary records any

reference to proposed or actual disciplinary action taken against Mr. Rhodes, Mr. Kerr, Mr. Abdul-Aziz, Mr. Mustafa, Mr. Parkman, Mr. Muhammad, Mr. Simmons, Mr. Jones, Mr. Williams, and Mr. Morrison concerning their religious observance, practice and/or belief of wearing a beard. In order to accomplish this objective, the City shall submit to the United States, within forty-five (45) days from its receipt of the executed Release from the claimants pursuant to Paragraph B.17 of this Consent Decree, a copy of the claimants' disciplinary records.

16. The United States shall notify the claimants of the terms of this Consent Decree within seven (7) days of its date of entry by mailing to

each of them, by certified mail, return receipt requested, copies of the letter in the form set forth in Appendix B and enclosing copies of this Decree and copies of the Release in the form set forth in Appendix C. The letter identified in Appendix B will advise the claimants that in order to accept the relief offered to them, they must return the Appendix C Release to the defendant within thirty (30) days of their receipt of the Appendix B letter, unless they can demonstrate good cause, to be determined by the United States, for their failure to do so within a reasonable time thereafter.

17. In order to accept the specific relief to be offered to each of them by the City under this Decree, Mr. Rhodes, Mr. Kerr, Mr. Abdul-Aziz, Mr. Mustafa, Mr. Parkman, Mr. Muhammad, Mr. Simmons, Mr. Jones, Mr. Williams, and the executor of Mr. Morrison's estate must execute a Release in the manner attached as Appendix C.

18. The City shall pay to Mr. Rhodes, Mr. Kerr, Mr. Abdul-Aziz, Mr. Mustafa, Mr.

Parkman, Mr. Muhammad, Mr. Simmons, Mr. Jones, Mr. Williams, and the executor of Mr. Morrison's estate the monetary award specified in Paragraph B of this Decree for that individual within sixty (60) days of its receipt of that individual's executed Appendix C Release. The City also will send to those claimants who have accepted a monetary award an IRS Form 1099 or other appropriate form or forms with respect to those awards.

C. RECORD-KEEPING AND REPORTING

1. The City shall retain during the life of this Decree, in the City's Personnel Department, any and all records that it generates to document the implementation of this Decree. The City shall furnish records and documents relevant to its compliance with the implementation of this Decree to counsel for the Department of Justice within thirty (30) days of any written request to the defendant's attorney.

2. The United States shall have the right to inspect and copy all documents related to disciplinary or other adverse employment action proposed or taken against Mr. Rhodes, Mr. Kerr, Mr. Abdul-Aziz, Mr. Mustafa, Mr. Parkman, Mr. Muhammad, Mr. Simmons, Mr. Williams during the life of this Decree upon reasonable notice to the City without further order of this Court. Such records shall include, the following:

- a. Complaint Against Personnel (C.A.P.);
- b. Determination and Recommendation for Discipline form;
- c. Warning Notices;
- d. Preliminary Notice of Disciplinary Action;
- e. Final Notice of Disciplinary Action;

f. Disciplinary Record Cards;

g. any other document prepared by the City for use in a disciplinary proceeding or other adverse employment action.

3. The City shall retain all records that come into its possession relating to complaints or charges of employment discrimination based on religion filed against the City with respect to the City's Police Department or Police Department employees, agents or representatives: (a) through the Police Department's internal grievance procedure; (b) with the United States Equal Employment Opportunity Commission; or (c) through or with any other federal, state or local agency authorized to receive such complaints or charges. The City shall provide copies of such complaints or charges to counsel for the United States within twenty (20) days of its receipt of such complaints or charges. In addition, the United States shall have the right to inspect and copy all documents related to such complaints or charges upon reasonable notice to the City without further order of this Court. These records shall be maintained in the City's Personnel Department.

* *DISPUTE RESOLUTION*

* The parties shall attempt to resolve informally any dispute that may occur under

this Consent Decree. The parties shall attempt to resolve any dispute in an informal manner on their own and are not required to use a dispute resolution service. The parties shall engage in good faith efforts to resolve the issue before seeking action by the Court. If the parties are unable to resolve the issue within 30 days, either party may move the Court for resolution, provided that written notice is first provided to the other party.

* *JURISDICTION OF THE COURT*

1. During the life of this Decree, the Court shall retain jurisdiction over this Decree for the

purposes of enforcing its provisions, resolving any disputes that may arise between the parties under it and entering such orders as may be appropriate.

2. This Decree shall terminate two (2) years from the date of its entry. Prior to its termination any party may move, for good cause shown, to extend the duration of the Decree.

3. Each party shall bear its own costs and expenses, including attorney's fees.

DONE AND ORDERED this _____ day of _____, 2002.

United States District Judge

Agreed and Consented To:

On behalf of Plaintiff United States of America:

WILLIAM B. FENTON
ABEL GOMEZ
DERRICK BRENT
Attorneys
U. S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
(202) 305-1582

On behalf of Defendant
JOANNE Y. WATSON
Corporation Counsel
City of Newark
Department of Law
920 Broad Street
Newark, New Jersey 07102
(973) 733-3880

APPENDIX A

NOTICE OF SETTLEMENT OF EMPLOYMENT DISCRIMINATION LAWSUIT

On May 16, 2000, the United States filed a complaint in the United States District Court for the District of New Jersey, against the City of Newark, New Jersey ("City") under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"), alleging that the City had discriminated against certain employees in the City's Police Department on the basis of their religion by failing or refusing reasonably to accommodate the employees' sincerely held religious observance, practice and belief of wearing a beard. The City has denied the allegations of discrimination.

This notice is being posted to announce that the United States and the City have resolved this lawsuit by entering into a settlement agreement, called a "Consent Decree," which was approved by the Court on _____, 2002.

Under the terms of the Consent Decree, the City has agreed to the following:

1. not to engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee or potential employee with the Police Department because of that individual's religion, as this term is defined in Title VII.
2. not to retaliate against or in any respect adversely affect any

person because that person has opposed alleged discriminatory policies or practices by the City or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this action or this Decree.

3. to implement and use nondiscriminatory employment policies designed reasonably to accommodate the religion, as this term is defined in Title VII, of employees in the Police Department.

4. to provide specific relief to certain individuals who were subjected to the alleged discrimination.

5. to retain all records that come into its possession relating to complaints or charges of employment discrimination based on religion filed against the City with respect to its Police Department or Police Department employees, agents or representatives: (a) through the Police Department's internal grievance procedure; (b) with the United States Equal Employment Opportunity Commission; or (c) through or with any other federal, state or local agency authorized to receive such complaints.

If any employee in the City's Police Department believes that he or she has been discriminated against in violation of Title VII, the employee should contact the U.S. Equal Employment Opportunity Commission ("EEOC") and/or the New Jersey Department of Law and Public Safety Division of Civil Rights ("NJDCR") about filing a charge of discrimination.

The EEOC's address is:

Equal Employment Opportunity Commission
Newark Area Office
1 Newark Center, 21st Floor
Newark, NJ 07102-5233
(973) 645-6383

The NJDCR's address is:

New Jersey Department of Law and Public Safety
Division of Civil Rights
31 Clinton Street, 3rd Floor
P.O. Box 46001
Newark, NJ 07102
(973) 648-2700

If any employee believes that any term(s) of the Consent Decree has (have) been violated, the employee should contact the following Department of Justice attorney:

Abel Gomez
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

(202) 305-1582

APPENDIX B

NOTICE LETTER

United States v. The City of Newark, New Jersey

[Date]

Dear [Claimant]:

A Consent Decree has been entered settling a complaint of employment discrimination filed by the United States against the City of Newark, New Jersey ("City") based on charges of discrimination filed with the U.S. Equal Employment Opportunity Commission, Charge No. 171-970-396 (Kevin Rhodes) and Charge No. 171-970-408 (Anthony Kerr).

Under the terms of the Consent Decree entered on _____, 2002, in the case of the United States v. The City of Newark, New Jersey, Civil Action No. 00-2368 (D.N.J.), you are being offered certain relief as settlement for your claim of employment discrimination against the City of Newark, New Jersey.

First, you are being offered [for Mr. Kerr, Mr. Parkman, Mr. Simmons, and Mr. Jones only: "\$900 which shall be considered back pay and interest and"] [for Mr. Kerr, Mr. Jones, Mr. Rhodes, Mr. Abdul-Aziz, Mr. Mustafa, Mr. Parkman, Mr. Muhammad, Mr. Simmons and the executor of the estate of Mr. Morrison] \$5,000 which shall be considered compensatory damages.

Second, the City is offering to expunge from your disciplinary records references relating to proposed or actual disciplinary action taken against you concerning any discipline based on your religious observance, practice and belief of wearing a beard. In order to accomplish this objective, the City will submit to the United States, within forty-five (45) days from its receipt of your executed Release, a copy of your modified disciplinary record.

This relief is being offered to you on the following condition: if you accept the relief, the City of Newark, New Jersey, will require you to release it from any and all claims you may presently have against it arising out of this case and the two underlying EEOC charges, Charge Nos. 171-970-396 and 171-970-408. If you decline the relief, the City of Newark, New Jersey, will nevertheless have satisfied its obligation to the United States pursuant to the Consent Decree in the above-captioned case and the United States will not seek additional relief on your behalf.

In order to obtain the offered relief, you must complete and return the enclosed Release. The Release may be returned by mail or in person. If you return the Release in person, please bring your social security card or other identification with you. You will at that time be asked to sign the Release before a notary public. If you return the Release by mail,

the Release must be signed in the presence of a notary public and thereafter notarized before you mail it. If you return the Release by mail, you should send it to:

Joanne Y. Watson
Corporation Counsel
City of Newark
Department of Law
920 Broad Street, Room 316
Newark, New Jersey 07102
Tel: (973) 733-3880

If you accept the offered relief, the City of Newark, New Jersey will send you the appropriate monetary award within sixty (60) days of its receipt of your Release. The City will also send you an IRS Form 1099 or other appropriate form or forms with respect to this award.

IF YOU FAIL TO SUBMIT THE RELEASE, AS DIRECTED IN THIS LETTER, WITHIN THIRTY (30) DAYS FROM YOUR RECEIPT OF THIS LETTER, YOU WILL FORFEIT YOUR RIGHT TO ANY MONETARY OR OTHER RELIEF UNDER THE CONSENT DECREE, UNLESS YOU CAN SHOW GOOD CAUSE, TO BE DETERMINED BY THE UNITED STATES, FOR YOUR FAILURE TO DO SO WITHIN A REASONABLE TIME THEREAFTER.

A copy of the Consent Decree is enclosed. If you have any questions concerning this settlement, you may contact Abel Gomez, trial attorney for the United States Department of Justice, at (202) 305-1582.

Enclosures

APPENDIX C

RELEASE

United States v. The City of Newark, New Jersey

State of New Jersey

}

County of _____

}

For and in consideration of the acceptance of the relief offered to me by the City of Newark, New Jersey pursuant to the provisions of the Consent Decree entered by the Honorable John C. Lifland, United States District Judge, on _____, 2002 in United States v. The City of Newark, New Jersey, Civil Action No. 00-2368 (D.N.J.), I, [Name of Claimant], hereby release and forever discharge the City of Newark, New Jersey, its current and future officials, employees and agents, of and from all legal and equitable claims of employment discrimination arising out of that action and EEOC Charge Nos. 171-970-396 and 171-970-408 which accrued prior to _____, [date of entry of Consent

Decree by the Court.]

I understand that the relief granted to me in consideration for this Release does not constitute an admission by the City of Newark, New Jersey of the validity of any claim raised by me or on my behalf.

This Release constitutes the entire agreement between the City of Newark, New Jersey and me, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action has been made available to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Date: _____

[Claimant]

Social Security Number _____ - _____ - _____

Subscribed and sworn to before me this ____ day of _____.

Notary Public

My commission expires: _____