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United States of America v. H.N. McElroy

Keywords

United States of America, H.N. McElroy, H-00-1617, Consent Decree, Sexual Harassment, Terms and Conditions, Sex, Female, Race, African American or Black, Other, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

PEARLENE EVANS,

Plaintiff-Intervenor,

V.

Civil Action No. *H-00-1617*

H.N. McELROY, Harris County
Justice of The Peace, Precinct 4,
Position 1 (in his official
capacity); and HARRIS COUNTY,

Defendants.

*

CONSENT DECREE

*

This action was brought by the United States against H.N. McElroy, Harris County Justice of The Peace for Precinct 4, Position 1 (in his official capacity), and Harris County, Texas ("Defendants"), to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., as amended ("Title VII"), following receipt by the United States from the Equal Employment Opportunity Commission ("EEOC") of a charge of discrimination filed by Pearlene Evans (EEOC charge No. 330-97-1057). Defendant Harris County is named as a party pursuant to Rule 19(a) of the Federal Rules of Civil Procedure. This Court has jurisdiction over this action under 42 U.S.C. 2000e-5(f) and 28 U.S.C. 1331, 1345.

In its Complaint, the United States alleges that H.N. McElroy, in his official capacity as Harris County Justice of the Peace for Precinct 4, Position 1 ("JP 4-1"), has discriminated against Pearlene Evans, a black female formerly employed as a Clerk in the office of the JP 4-1, and similarly situated present or former black female employees of the JP 4-1, on the basis of their race and sex in violation of Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-2(a), among other ways, by:

a. subjecting them to sexual harassment that adversely affected the terms, conditions and privileges of their employment; and

b. failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment.

The United States further alleges that H.N. McElroy, in his official capacity as JP 4-1, discriminated against Pearlene Evans on the basis of race and sex in violation of Title VII of Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-2(a), by constructively discharging her.

The Defendants deny that H.N. McElroy, in his official capacity as JP 4-1, has discriminated against Ms. Evans or other present or former black female employees of the JP 4-1 in violation of Title VII. The United States and the Defendants, desiring that this action be settled without the burden of protracted litigation, agree to the jurisdiction of this Court over them and the subject matter of this action. The United States and the Defendants also waive the entry of findings of fact and conclusions of law, and further agree to the entry of this Consent Decree as final and binding between them with respect to the issues raised in the Complaint of the United States.

This Consent Decree, being entered with the consent of the United States and the Defendants, shall not constitute an admission, adjudication or finding on the merits of this action.

Therefore, in resolution of this action, the United States and the Defendants hereby AGREE and the Court expressly APPROVES, ENTERS and ORDERS the following:

For the purposes of this Consent Decree, "date of entry of this Decree" shall refer to the date on which the Court signs the Decree as an order of the Court.

**

I. INDIVIDUAL RELIEF

1. The Defendants have offered or shall offer the following relief to the following individuals:

Pearlene Evans:

a. Defendants have offered Plaintiff-Intervenor Pearlene Evans the amount of \$90,000 (consisting of \$14,500 in backpay, \$500 in interest, \$60,000 as compensatory damages, and \$15,000 as attorney's fees) and other good and valuable consideration in settlement of her claims in this case, which Ms. Evans has accepted. Ms. Evans has indicated her acceptance of the Defendants' offer by executing a document styled "Release, Hold Harmless and Indemnity Agreement" and a Motion for Dismissal with Prejudice, which is being filed with the Court by Ms. Evans' counsel on behalf of Ms. Evans as Plaintiff-Intervenor. The United States does not seek any further relief for Ms. Evans.

b. The backpay portion of this monetary award will be subject to

withholding for income tax and FICA, as appropriate. The Defendants will separately pay any employer's contribution to the Social Security fund due on the backpay portion of the monetary award, /i.e./, the employer's contribution will not be deducted from the monetary award to Ms. Evans.

Ivonne Ross Thomas

c. The Defendants will offer Ms. Thomas a monetary award in the amount of \$2,500, which will be considered compensatory damages.

2. In order to accept the relief to be offered by the Defendants under this Consent Decree, Ms. Thomas must execute a release in the form set forth in Appendix C.

3. The offer to Ms. Thomas shall be made in a certified letter, return receipt requested, the contents of which will be the same as in Appendix B. The offer letter shall inform Ms. Thomas of the provisions of this Consent Decree and advise her that in order to accept the monetary offer, she must return an executed release to counsel for the Defendants within thirty (30) days of receipt of the offer letter. The contents of the release shall be the same as those contained in Appendix C. A copy of this Consent Decree shall be included with the offer letter.

4. The Defendants shall send copies of the offer letter and release to the United States when they send these documents to Ms. Thomas. If Ms. Thomas accepts the offer made to her, the Defendants shall send a copy of that executed release to the United States when the Defendants receive that document.

5. The Defendants shall pay the monetary amounts provided for by this Decree to Ms. Evans and Ms. Thomas minus any deductions for Ms. Evans allowed in Paragraph 1.b. above, within 15 days of receipt of their individual executed releases. The Defendants will notify the United States as soon as the payments to Ms. Evans and/or Ms. Thomas have been made, and shall promptly forward a copy of the canceled checks or other appropriate documentation indicating that payment has been received.

6. The Defendants will issue to Ms. Evans and Ms. Thomas, if they accept the monetary relief to be offered to them pursuant to this Decree, appropriate IRS forms to reflect that monetary relief.

II. GENERAL INJUNCTIVE RELIEF

7. The JP 4-1 and all employees, supervisors, agents and individuals in active concert or participation with the JP 4-1, are enjoined from:

a. subjecting any employee of the JP 4-1 to sexual harassment;

b. retaliating against or in any respect adversely affecting any employee of the JP 4-1 because that individual has opposed employment practices that the individual reasonably believes are discriminatory on the basis of sex and/or race, made a complaint or charge alleging discriminatory employment practices on the basis of sex and/or race, or

cooperated with the investigation of any such complaint or charge (including cooperating with the United States' investigation of EEOC Charge No. 330-97-1057 or this lawsuit).

8. No later than forty-five (45) days after the date of entry of this Consent Decree, the JP 4-1 shall adopt a JP 4-1 anti-sexual harassment and anti-retaliation policy and procedures ("anti-discrimination policy and procedures"). The anti-discrimination policy and procedures will be effective upon issuance, and cover the JP 4-1 and all of his or her employees.

9. The JP 4-1 anti-discrimination policy and procedures may incorporate the language of the Harris County non-discrimination policy in the Harris County Personnel Regulations employee handbook; however, it must additionally include:

a. the name(s) and telephone number(s) of each official designated by the JP 4-1 and Harris County to receive sexual harassment complaints.

b. a statement that JP 4-1 supervisors shall take complaints of sexual harassment and other forms of employment discrimination seriously. Supervisors shall document all complaints received and any incidents which come to their attention (either through direct observation or reports by other employees) which may reasonably be believed to constitute sexual harassment or other forms of employment discrimination. After receiving a complaint, supervisors should immediately contact the Harris County official designated for receiving and investigating complaints of employment discrimination, and shall not undertake further investigation without consulting with that official.

c. a statement that complaints of sexual harassment and other forms of discrimination by a JP 4-1 employee may be submitted by the employee either to the JP 4-1 official who will be designated to receive such complaints, as provided for in paragraph 12 below, or directly to the Harris County Director of Human Resources, the official who will be designated by the County as the official responsible for receiving, investigating and making written determinations on the merits of such complaints, as provided for in paragraph 13 below.

d. a statement that a supervisor who is aware or should have been aware of sexual harassment against an employee of the JP 4-1 but fails to report it to the Harris County official designated for receiving and investigating complaints of employment discrimination shall be subject to discipline up to and including dismissal.

10. The JP 4-1 shall ensure that a copy of the anti-discrimination policy and procedures is distributed to all of its current employees upon its implementation. Within five (5) days of receipt of the anti-discrimination policy and procedures, each employee shall sign an acknowledgment that s/he has read and understood the policy and procedures, and this acknowledgment shall be placed in each employee's personnel file.

11. The JP 4-1 shall ensure that each new employee receives a copy of the anti-discrimination policy and procedures at the time of the new employee's hire. Within five (5) days of receipt, each new employee shall sign an acknowledgment that s/he has read and understood the anti-discrimination policy and procedures, and this acknowledgment shall be placed in each employee's personnel file.

12. The JP 4-1 will designate either the Chief Clerk or Deputy Chief Clerk to receive complaints of sexual harassment, retaliation and other forms of discrimination, as defined in the County Personnel Regulations, that are made by any JP 4-1 employee.

13. Harris County will designate the County's Director of Human Resources & Risk Management as the official responsible for receiving, investigating and making written determinations on the merits of any complaints of employment discrimination he or she receives made by JP 4-1 employees. All complaints made by an employee of the JP 4-1 may be in writing or, if not made in writing, described in a written summary made by the receiving official, and shall be promptly investigated. After investigation, the Director shall issue a written "Determination" that includes a description of the information relied upon, credibility assessments made, and a finding regarding the validity of the complaint. The Determination shall be accompanied by a recommendation for disciplinary action, if any is warranted.

14. If the Director determines that the JP 4-1 has engaged in sexual harassment or other form of employment discrimination, the Director shall inform the JP 4-1 of the Determination and permit the JP 4-1 to implement an appropriate, effective remedy. If the matter is not resolved to the satisfaction of the Director within thirty (30) days, the County shall report the Director's findings to the Texas Commission on Judicial Conduct.

15. If the Director determines that a supervisor of the JP 4-1 or other employee of the JP 4-1 has engaged in sexual harassment or other form of employment discrimination, or that a supervisor of the JP 4-1 has failed to carry out his or her responsibilities under the JP 4-1 anti-discrimination policy and procedures, the Director shall inform the JP 4-1 of the Determination and the JP 4-1 will implement an appropriate remedy. The JP 4-1 and the Director shall maintain records of any investigation and any remedial or disciplinary action recommended and any remedial or disciplinary action taken with respect to the JP 4-1 or a supervisor or employee of the JP 4-1 for review by the United States at its request during the life of this Consent Decree.

16. The Defendants shall provide training with respect to Title VII's prohibition against sexual harassment to the JP 4-1 and all JP 4-1 personnel, both supervisory or non-supervisory. This training will be conducted by Katrina Grider or another person approved by the United States Department of Justice. It is acknowledged that current employees of JP 4-1 have received the required training, but that JP 4-1 agrees to provide such training to new employees.

III. DISPUTE RESOLUTION

17. If the United States believes that this Consent Decree or any portion of it has been violated, it will raise its concerns with the Defendants and the parties will attempt to resolve the concern(s) in good faith. Defendants will be given thirty (30) calendar days to cure any alleged breach of this Consent Decree prior to the institution of any enforcement action.

IV. RECORDKEEPING

18. The Defendants shall retain for the duration of this Consent Decree all records necessary to monitor the implementation of this Consent Decree. Such records shall include but not be limited to the forms acknowledging receipt of the JP 4-1 anti-discrimination policy and procedures and sign-in sheets of those who attend the anti-sexual harassment training.

19. The Defendants shall retain all records that come into their possession relating to any complaints of sexual harassment and retaliation involving the JP 4-1 or a supervisor or employee of the JP 4-1 regardless of whether made to a local, state or federal agency or through the Defendants' internal grievance process.

20. The United States Department of Justice shall have the right to inspect and copy any and all of the above documents and records upon reasonable notice to the Defendants, without further order of this Court.

21. The Defendants shall promptly make available to the United States such additional information or records relating to the subject matter of this Consent Decree as the United States requests in writing, provided such requests are not unduly burdensome.

22. Failure by the Department of Justice to enforce this entire Consent Decree or any provision thereof shall not be construed as a waiver of its right to do so.

V.* *POSTING OF CONSENT DECREE

23. Within ten (10) days after the date of entry of this Consent Decree, the Defendants shall post a copy of the notice attached hereto as Appendix A in a prominent and conspicuous location used for posting notices at the (a) Human Resources & Risk Management Office in the Harris County Government Building, and the (b) JP 4-1 office at 6831 Cypresswood Drive, Spring, Texas. Such copies shall remain posted throughout the life of this Consent Decree. In addition, the Defendants shall provide a copy of this Consent Decree, at no cost, to any employee of the JP 4-1 who so requests.

VI. EMPLOYEES' RIGHT TO REPORT TO DEPARTMENT OF JUSTICE

24. Any employee of the JP 4-1 who believes he or she has been discriminated against in violation of the Consent Decree while working

in the JP 4-1, or has information concerning any such alleged discrimination against any other employee, may contact the United States Department of Justice by writing to the following attorney:

Charles E. Leggott
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, D.C. 20035-5968

VII. EFFECTIVE DATE

25. The effective date of this Consent Decree is the date of the entry of the Consent Decree by the Court.

VIII. ATTORNEY'S FEES AND RELATED COSTS

26. The United States and the Defendants shall bear their own costs, expenses and attorneys' fees in this action.

IX. TERMINATION DATE

27. The Court shall retain jurisdiction of the matters covered by this Consent Decree for a period of one (1) year from the date of entry of this Consent Decree for such action as may be necessary or appropriate to effectuate the purposes of the Decree. This period may be extended by order of this Court for good cause shown.

X. EXECUTION OF CONSENT DECREE BY JUDGE ADAMS

28. Judge J. Kent Adams is the successor in office to H.N. McElroy as Justice of the Peace for Harris County Precinct 4, Position 1. Judge Adams has executed this Consent Decree as the current, sitting Justice of the Peace for JP 4-1. Because this Consent Decree includes provisions pertaining to the administration of that office (/i.e./, training of employees in that office, adoption of policies for that office, etc.), resolution of this lawsuit through this Consent Decree could not occur without Judge Adams' consent and agreement. None of the allegations contained in the Complaint filed in this lawsuit are lodged against Judge Adams, and he has executed this Consent Decree for the sole purpose of facilitating a settlement. Neither Judge Adams' execution of this Consent Decree nor his agreement to comply with its terms shall imply in any way that he participated in or was in any way responsible for any alleged discriminatory conduct.

DONE and ORDERED this _____ day of _____, 2002.

LYNN N. HUGHES
UNITED STATES DISTRICT JUDGE

Agreed and Consented To:

On behalf of Plaintiff
United States of America:

RALPH F. BOYD, JR.
Assistant Attorney General
for Civil Rights

WILLIAM B. FENTON
CHARLES E. LEGGOTT
Attorneys
U.S. Department of Justice
Civil Rights Division
P.O. Box 65968
Employment Litigation Section
Washington, D. C. 20035-5968
(202) 514-0548

Dated: _____, 2002

On behalf of Defendants
Harris County and Harris
County Justice of the Peace,
Precinct 4, Position 1:

J. KENT ADAMS
Harris County Justice of the
Peace, Precinct 4, Position 1
6831 Cypresswood Dr.
Suite 4
Houston, Texas 77379

NICK TURNER
Assistant County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

Attorney for Harris County and
H.N. McElroy, Harris County
Justice of the
Peace for Precinct 4, Position
1 (in his Official Capacity)

Dated: _____, 2002

APPENDIX A

NOTICE OF SETTLEMENT OF EMPLOYMENT DISCRIMINATION LAWSUIT

On May 12, 2000, the United States filed a complaint in the United
States District Court for the Southern District of Texas, against H.N.

McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity) and Harris County, Texas, ("Defendants") under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. ("Title VII"), alleging that H.N. McElroy (in his official capacity) had discriminated against the charging party, a black female, and similarly situated black females presently or formerly employed by the Justice of the Peace, Precinct 4, Position 1 ("JP 4-1") by subjecting them to sexual harassment based on their race and sex and constructively discharging the charging party. The Defendants have denied the allegations of discrimination.

This notice is being posted to announce that the United States and the Defendants 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 Defendants have agreed to do the following:

1. To provide specific relief to the charging party and another individual who was subjected to the alleged discrimination.
2. To provide training with respect to Title VII's prohibition against workplace harassment based on sex to the JP 4-1 and all JP 4-1 employees, supervisory and non-supervisory.
3. To retain all records that come into their possession relating to any complaints or charges of employment discrimination based on sexual harassment and/or any supervisor or employee of the JP 4-1.

The Defendant JP 4-1 has also agreed:

4. Not to subject any employee of the JP 4-1 to sexual harassment in the JP 4-1.
5. Not to retaliate against or in any respect adversely affect any person because that person has opposed alleged discrimination by the JP 4-1 or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this action or this Consent Decree.

If any employee of the JP 4-1 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 Texas Commission on Human Rights about filing a charge of discrimination.

The EEOC's address is:

Equal Employment Opportunity Commission
Houston District Office
7th Floor
1919 Smith Street

Houston, Texas 77002
Telephone: (713) 653-3377

The Texas Commission on Human Rights' address is:

Texas Commission on Human Rights
P.O. Box 13006
Austin, Texas 78711-3006
Telephone: (512) 437-3450
(888) 452-4778 (toll free in Texas)

If any employee of the JP 4-1 believes that any term(s) of the Consent Decree has (have) been violated, the employee should contact the following Department of Justice attorney:

Charles E. Leggott
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, D.C. 20035-5968
(202) 514-0548

APPENDIX B

OFFER LETTER FOR IVONNE ROSS THOMAS

[Date]

Ivonne Ross Thomas

address

Dear Ms. Thomas:

A Consent Decree has been entered settling a complaint of employment discrimination filed by the United States against H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity) and Harris County, Texas, based on the charge of discrimination Pearlene Evans filed with the U.S. Equal Employment Opportunity Commission (EEOC Charge No. 330-97-1057).

Under the terms of the Consent Decree entered on _____, 2002, in the case of _United States and Pearlene Evans v. H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity) and Harris County, Texas, _Civil Action No. H-00-1617 (S.D. Tex.), you are being offered a monetary award in the amount of \$2,500, which will be considered compensatory damages.

This relief is being offered to you on the following condition: if you accept the offer of relief, the Defendants will require you to release them from all employment discrimination claims you may presently have against them arising out of this case and EEOC Charge No. 330-97-1057.

If you decline the relief, the Defendants will nevertheless have satisfied their 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 form. The Release may be returned by mail or in person. If you return the Release form 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 form by mail, you should, after making copies for your own records, send them to:

Nick Turner
Harris County Attorneys Office
1019 Congress Street, 15th Floor
Houston, Texas 77002-1700

If you accept the offered relief, the Defendants will send you the appropriate monetary award within fifteen (15) days of receipt of your Release. The Defendants will also send you appropriate IRS forms with respect to the monetary 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 RIGHTS TO ANY MONETARY 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 Charles E. Leggott, attorney for the United States Department of Justice, at (202) 514-0548.

Sincerely,

Nick Turner
Assistant County Attorney for
Harris County, Texas

Enclosures

APPENDIX C

RELEASE

State of Texas }

County of _____ }

For and in consideration of the acceptance of the relief, or any part of

it, offered to me by H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity), and the successor in office to H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity) and Harris County, Texas, pursuant to the provisions of the Consent Decree entered by the Honorable Lynn N. Hughes, United States District Judge, on _____, 2002 in United States and Pearlene Evans v. >H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity) and Harris County, Texas, Civil Action H-001617 (S.D. Tex.), I, _____ hereby release and forever discharge H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity), and the successor in office to H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity) and Harris County, Texas, their current and future officials, employees and agents, of and from all legal and equitable claims of employment discrimination arising out of that action which accrued prior to _____, [date of entry of Consent Decree by the Court] and EEOC Charge No. 330-97-1057.

I understand that the relief granted to me in consideration for this Release does not constitute an admission by H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity), and the successor in office to H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity) and Harris County, Texas of the validity of any claim raised by me or on my behalf.

This Release constitutes the entire agreement between H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity), and the successor in office to H.N. McElroy, Harris County Justice of the Peace, Precinct 4, Position 1 (in his official capacity) and Harris County, Texas 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: _____, 2002 _____

[name of offeree]

Social Security Number: _____

Subscribed and sworn to before me this ____ day of _____, 2002.

Notary Public

My commission expires: _____