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Judge William T. Moore Jr.

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United States of America v. City of Alma, Georgia and Bacon County, Georgia

Keywords

United States of America, City of Alma, Georgia, Bacon County, Georgia, CV599-68, Consent Decree, Disparate Treatment, Hiring, Sex, Female, Other, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

PAMELA F. STARLING, GAIL R. BERRY, JACKIE EMBRY, and JANICE WATERS,

Plaintiff-Intervenors, Civil Action No.
CV599-68

CITY OF ALMA, GEORGIA; and
BACON COUNTY, GEORGIA, Defendants.

 CONSENT DECREE

 This action was brought on behalf of the United States of America ("United States") against the City of Alma, Georgia and Bacon County, Georgia ("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 Department of Justice from the Equal Employment Opportunity Commission ("EEOC") of a charge of discrimination filed by Pamela F. Starling (Charge Number 115-96-0501). This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.

In its complaint, the United States alleges that Defendants, through the Alma-Bacon County Fire and Emergency Medical Service ("Alma-Bacon County Fire and EMS"), an entity operated for the citizens of the City of Alma and Bacon County, have discriminated against Pamela F. Starling and similarly-situated women on the basis of their sex in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), by, _inter_ _alia_ :

a. Failing or refusing to hire these women or to consider them for hire into full-time Firefighter/Emergency Medical Technician and/or Firefighter/Paramedic positions; and

b. Failing or refusing to take appropriate action to correct the effects of these discriminatory policies and practices.

Their motion for intervention having been granted by the Court, in their Complaints in Intervention, plaintiff-intervenors allege similar claims of discrimination to those alleged by the United States.

The Defendants specifically deny the United States' allegations and the allegations of plaintiff-intervenors, and further deny that they engage in or have engaged in any unlawful discrimination in employment in violation of Title VII. The Defendants assert that they have been and remain committed to a policy of equal employment opportunity and voluntarily enter into this Decree.

The parties have resolved amicably all issues raised in the complaints

of the United States and the plaintiff-intervenors. Accordingly, desiring that this action be settled by an appropriate consent decree and without the burden of protracted litigation, the parties agree to this Court's jurisdiction over them and the subject matter of this action. Furthermore, the parties hereby waive, for the purposes of this Decree, hearings and findings of fact and conclusions of law. This Decree resolves all issues raised in the complaints of the United States and of the plaintiff-intervenors, and the parties accept this Decree as final and binding among themselves as to the issues resolved herein.

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

I. DEFINITIONS

1. As used herein, the term "Alma-Bacon County Fire and EMS" shall refer to the entity which currently provides firefighting and emergency medical services to the citizens of Bacon County and the City of Alma, Georgia, as well as any and all future entities, departments, and/or subdivisions of either or both Defendants, operated by either Defendant or by both Defendants, for the purpose of providing firefighting and/or emergency medical services.

2. As used herein, the terms "Firefighter/Emergency Medical Technician" and "Firefighter/Paramedic" shall refer to the full-time job positions in the Alma-Bacon County Fire and EMS as they currently exist, as well as any and all future full-time job positions with either or both Defendants in which employees serve in any capacity as firefighters, emergency medical technicians, and/or paramedics.

II. GENERAL INJUNCTIVE PROVISIONS

3. The Defendants and their officials, agents, employees and successors will not engage in any act or practice that has the purpose or effect of unlawfully discriminating on the basis of sex against any individual employed, seeking employment, or seeking information about employment as a Firefighter/Emergency Medical Technician and/or Firefighter/Paramedic.

4. The Defendants and their officials, agents, employees and successors will not retaliate against or in any respect adversely affect any person because that person has opposed the policies and practices which have been alleged to be discriminatory in the complaints of the United States or of the plaintiff-intervenors, or because that person has filed a charge, given testimony, or assisted or participated in any way in any investigation, proceeding or hearing under Title VII leading to this action or to this Decree, or to its implementation.

III. SPECIFIC INJUNCTIVE RELIEF

5. By virtue of a contract now existing between Bacon County, Georgia and the City of Alma, Georgia, the City of Alma is responsible for the day-to-day operations of the Alma-Bacon County Fire and EMS. As long as this arrangement remains in place, whether contractual or otherwise, the Defendants agree that the City of Alma shall be responsible for assuring

compliance with all aspects of the specific injunctive relief provided under Section III of this Decree, as well as the record-keeping requirements under Section IV of this Decree. To the extent there is a cancellation or revocation of these contractual obligations which results in Bacon County assuming operations responsibility for any of the services now provided by the Alma-Bacon County Fire and EMS, it is specifically agreed that the injunctive provisions contained within this Decree shall remain intact and with full force and effect with respect to any future entity and/or job position as defined in Section I, paragraphs 1 and 2, of this Decree.

6. The Defendants agree to adopt, implement, and maintain standardized application and hiring processes for Firefighter/Emergency Medical Technician and Firefighter/Paramedic positions in the Alma-Bacon County Fire and EMS. Such processes shall include an application-based hiring process under which:

a. Defendants shall set an application deadline for any vacancy in a Firefighter/Emergency Medical Technician or Firefighter/Paramedic position that provides for at least three (3) weeks for submission of applications for the positions;

b. Defendants shall designate a single location for the acceptance of such applications; and

c. Defendants shall ensure that all applications for Firefighter/Emergency Medical Technician and Firefighter/Paramedic positions are appropriately maintained, shall take affirmative steps to ensure that applications are not lost or destroyed, and shall ensure that all applications are reviewed, considered, and evaluated by the appropriate hiring decision maker(s) before any proposed hiring decision is made.

7. The Defendants agree to adopt, implement and maintain a program designed to recruit qualified female applicants for Firefighter/Emergency Medical Technician and Firefighter/ Paramedic positions in the Alma-Bacon County Fire and EMS. Compliance with the recruitment obligations created by this Decree shall be judged by the Defendants' good faith implementation and administration of the recruitment program described in paragraphs 8-11, infra.

8. The Defendants agree to advertise all vacancies for the positions of Firefighter/Emergency Medical Technician and Firefighter/Paramedic in The Alma Times-Statesman, The Waycross Journal-Herald, The Florida Times Union (South Georgia Edition), and The Brunswick Times, in the employment section of such newspapers (if such sections exist), but not in the legal notices section of such papers, at least three (3) times during the two (2) week period immediately preceding any application deadline (including at least one (1) advertisement in a weekend edition of such newspapers, if such editions exist), unless the newspaper is a weekly publication, in which case Defendants shall advertise all vacancies at least two (2) times during the two (2) week period immediately preceding any application deadline.

9. The Defendants shall post announcements of all Firefighter/Emergency Medical Technician and Firefighter/Paramedic vacancies in a conspicuous location in the Alma City Hall and the Bacon County Building. Such announcements will be posted at least two (2) weeks prior to any application deadline for any vacancy in a Firefighter/Emergency Medical Technician or Firefighter/Paramedic position.

10. At least three (3) weeks prior to the application deadline for any vacancy in a Firefighter/Emergency Medical Technician or Firefighter/Paramedic position, the Defendants shall send and/or distribute job vacancy announcements (including application forms) for the positions to the following recruitment sources:

a. all community and technical colleges providing emergency medical technician or paramedic training in Bacon, Coffee, Ware, Pierce, Appling, and Jeff Davis Counties; and

b. all Georgia Department of Labor unemployment offices in the counties identified in subsection (a), *supra*.

11. Each job advertisement and announcement for a Firefighter/Emergency Medical Technician or Firefighter/Paramedic position shall:

a. emphasize that the Defendants are equal opportunity employers (not to be abbreviated as "EOE" or "EEO") and are specifically seeking to recruit qualified men and women for Firefighter/Emergency Medical Technician and Firefighter/Paramedic positions;

b. summarize the minimum qualifications required for the Firefighter/Emergency Medical Technician and/or Firefighter/Paramedic position for which applicants are sought;

c. specify the application procedures;

d. specify the starting salaries or salary ranges;

e. state where the job is located;

f. specify the application deadline for the position;

g. state the name, address and telephone number of the office to which inquiries and requests for applications may be made and where applications are to be submitted; and

h. state how long applications will remain on file and how an application may be updated. 12. Defendants shall bear all advertising and other costs associated with the recruitment program described above in paragraphs 8-11 of this Decree.

IV. RECORD-KEEPING AND REPORTING PROVISIONS

13. Throughout the term of this Decree, the Defendants shall maintain

all records related to the filling of vacancies for Firefighter/Emergency Medical Technician and Firefighter/Paramedic positions, including, but not limited to: all vacancy announcements and advertisements; applications; interview questions and notes; records relating to any applicant's references; the names and sex, if known, of all persons who contact the office referenced in subparagraph 11(g), *_supra_*, either in person, by mail, or by telephone, regarding job opportunities as Firefighter/Emergency Medical Technicians or Firefighter/Paramedics; and all other documents obtained and/or used to select Firefighter/Emergency Medical Technicians and Firefighter/Paramedics. The Defendants shall make these records and information available for inspection and/or production upon written request of the United States.

14. For purposes of this Decree, reporting periods shall run from January 1 through June 30 and July 1 through December 31 of each year, the first of which ends on December 31, 1999. Within 30 days after the close of each reporting period, the Defendants shall provide to the United States a compliance report with the following information:

a. the names and sex of all persons who applied and/or were selected for Firefighter/Emergency Medical Technician and Firefighter/Paramedic positions during the most recent reporting period, along with the dates of application and/or selection;

b. the names and sex, if known, of all persons who contacted the office referenced in subparagraph 11(g), *_supra_*, either in person, by mail, or by telephone, regarding job opportunities as Firefighter/Emergency Medical Technicians or Firefighter/Paramedics during the most recent reporting period, along with the dates of such contacts;

c. (1) the names, positions, ranks, sex, dates of hire, and dates of appointment to their current positions for all persons holding Firefighter/Emergency Medical Technician and Firefighter/Paramedic positions in the Alma-Bacon County Fire and EMS at the end of the most recent reporting period, as well as a statement as to whether there are any vacancies for such positions at the time of the report and whether vacancies and/or additional hiring are expected within the next reporting period;

(2) If any employee in the Alma-Bacon County Fire and EMS has more than one date of hire because he or she temporarily left employment in the Alma-Bacon County Fire and EMS and then returned, each date of hire for that employee should be included in the list described in subparagraph 14(c)(1), *_supra_*;

d. a statement regarding the status of the July 1999 "Emergency Medical Services, Fire Protection and Civil Defense Agreement" ("Agreement") between the City of Alma and Bacon County, or any succeeding agreement, including:

(1) whether the Agreement is in effect at the time of the report;

(2) whether a notice of intent to cancel the Agreement has been sent to Bacon County by the City of Alma or vice-versa within the reporting period, and, if so, whether mediation, negotiation, or arbitration is scheduled or has occurred between the City of Alma and Bacon County regarding the Agreement and the results of such mediation, negotiation, or arbitration; and

(3) whether either Defendant has notified the other of a decision to terminate the Agreement.

15. During the term of this Decree, before extending any offer of employment to any applicant for any full-time Firefighter/Emergency Medical Technician or Firefighter/Paramedic position, the Defendants shall provide the following information to the United States, by telefax or overnight express mail:

- a. the qualifications of the applicant who was selected to fill the vacancy;
- b. copies of all applications on file when the decision to hire the applicant was made;
- c. the names of all applicants interviewed;
- d. if no interviews were conducted, the reasons why interviews were deemed unnecessary;
- e. all notes, recordings, interview questions or other materials relating to interviews for the Firefighter/Paramedic or Firefighter/Emergency Medical Technician position;
- f. the identities, addresses, and telephone numbers of any references contacted during the application or hiring process, and, for each reference contacted, the date of the contact, the identity of the contacting official, the name of the prospective employee whose reference was contacted, a brief summary of the information received from such reference, and all notes, recordings, or other materials relating to such reference contacts;
- g. a detailed explanation as to why the applicant has been proposed for hire rather than each of the other applicants for the position;
- h. a list of all individuals involved in the hiring process and a detailed description of their roles in the hiring process;
- i. a detailed explanation of each step taken by Defendants in the application and hiring process that led to the selection of the proposed applicant; and
- j. copies of all advertisements and announcements and other documentation reflecting Defendants' pre-hiring recruitment pursuant to paragraphs 8-11 of this Decree.

16. Following receipt of information described in paragraph 15, *supra*, the United States shall have seven (7) days to inform the Defendants, by telefax or overnight express mail, of any objections to the proposed hire of the selected applicant, during which time the Defendants shall not extend an offer of full-time employment as a Firefighter/Paramedic or Firefighter/Emergency Medical Technician to any individual. If the United States objects to a proposed hire, the parties shall meet and confer within seven (7) days after the objection(s) are received by the Defendants in order to resolve the objection(s). The Defendants shall not extend an offer of full-time employment as a Firefighter/Paramedic or Firefighter/Emergency Medical Technician to any individual before the parties have met and conferred. If the parties cannot resolve the objection(s), the issue shall be submitted to the Court in accordance with paragraph 24, *infra*. If such issue is submitted to the Court for resolution, Defendants shall not extend an offer of full-time employment as a Firefighter/Paramedic or Firefighter/Emergency Medical Technician to any individual before the Court has resolved such issue.

17. Twelve (12) months from the date of entry of this Decree, and annually thereafter during the term of this Decree, the parties shall confer to review the Defendants' progress in complying with the terms of this Decree.

18. If at any time during the term of this Decree Defendant City of Alma and/or Defendant Bacon County issues notice of intent to cancel, modify or terminate the Defendants' Agreement, the Defendants agree to inform the United States in writing of such notice within seven (7) days of issuance of such notice. The parties to this Decree agree promptly to meet and confer in the event of such an occurrence to ensure proper operation of the terms of this Decree. If the parties are unable to reach an agreement regarding the operation of this Decree in the event of a modification or cancellation of Defendants' Agreement, the issue shall be submitted to the Court in accordance with paragraph 24, *infra*.

***V. PROVISIONS RELATING TO INDIVIDUAL RELIEF ***

Without admitting the contentions of the United States and of the plaintiff-intervenors as set forth in their Complaints, in settlement of the claims of the United States for relief on behalf of Pamela F. Starling, Gail R. Berry, Jackie Embry, Rebecca L. Tyler, Janice E. Waters, and LaDonna Lorraine Spikes; and in settlement of the individual claims of Pamela F. Starling, Gail R. Berry, Jackie Embry, and Janice E. Waters; the Defendants agree to do the following:

***A. INDIVIDUAL RELIEF FOR PAMELA F. STARLING, *
*GAIL R. BERRY, JACKIE EMBRY, AND JANICE WATERS***

19. Within seven (7) days after entry of this Decree, the Defendants shall provide notice to Pamela F. Starling, Gail R. Berry, Jackie Embry, and Janice Waters, in care of their attorney, Michael P. Boggs, of the monetary relief being offered to them in the amounts set forth in Exhibit A hereto, which totals \$130,000.00 for these four individuals. Such notices shall be substantially in the form set forth in Exhibit B

hereto, and copies of such notices shall be delivered to the United States. Subsequently, the Defendants shall pay Pamela F. Starling, Gail R. Berry, Jackie Embry, and Janice Waters, in care of their attorney, Michael P. Boggs, the amounts set forth in Exhibit B hereto upon receipt of an executed Release of All Claims ("Release"), which shall be substantially in the form set forth in Exhibit C hereto, from each such individual. The Release shall be delivered to each such individual in care of their attorney, Michael P. Boggs, within seven (7) days of the entry of this Decree and each such individual shall have fourteen (14) days, absent good cause shown, within which to execute the Release. The Defendants shall pay the monetary awards set forth in Exhibit A hereto to the individuals to which this provision applies, in care of their attorney, Michael P. Boggs, within seven (7) days of receipt of that individual's executed Release.

***B. INDIVIDUAL RELIEF FOR REBECCA L. TYLER AND *
*LADONNA LORRAINE SPIKES***

20. Within seven (7) days after entry of this Decree, the Defendants shall provide notice to Rebecca L. Tyler and LaDonna Lorraine Spikes of the monetary relief being offered to them in the amounts set forth in Exhibit A hereto, which totals

\$50,000.00 for these two individuals. Such notices shall be substantially in the form set forth in Exhibit D hereto, and copies of such notices shall be delivered to the United States. Subsequently, the Defendants shall pay Rebecca L. Tyler and LaDonna Lorraine Spikes the amounts set forth in Exhibit A hereto upon receipt of an executed Release from each such individual. The Release shall be delivered to each such individual within seven (7) days of the entry of this Decree and each such individual shall have fourteen (14) days, absent good cause shown, within which to execute the Release. The Defendants shall pay the monetary awards set forth in Exhibit A hereto to the individuals to which this provision applies within seven (7) days of receipt of that individual's executed Release.

C. GENERAL PROVISIONS APPLICABLE TO INDIVIDUAL RELIEF

21. The Defendants shall provide the United States with a copy of any and all executed Releases within fourteen (14) days after receipt of them. The Defendants also shall provide the United States with a copy of any and all checks issued in payment of the monetary awards provided for by this Decree within fourteen (14) days after such checks are issued.

22. Pamela F. Starling, Gail R. Berry, Jackie Embry, Janice E. Waters, Rebecca Tyler, and LaDonna Lorraine Spikes have informed the United States that they do not presently desire employment in the Alma-Bacon County Fire and EMS. Accordingly, the Defendants are not required to offer Pamela F. Starling, Gail R. Berry, Jackie Embry, Janice E. Waters, Rebecca Tyler, or LaDonna Lorraine Spikes job opportunity relief as part of the offers of settlement under this Decree. However, if in the future any of these individuals seek employment as Firefighter/Paramedics or Firefighter/Emergency Medical Technicians in the Alma-Bacon County Fire

and EMS, the Defendants will consider their applications in a fair and nondiscriminatory manner, and without regard to the monetary relief offered to them or accepted by them pursuant to the terms of this Decree.

VI. DISPUTES

23. Insofar as any of the provisions of this Decree or any actions taken pursuant to such provisions may be inconsistent with any state law or regulation, the provisions of this Decree shall prevail in accordance with the supremacy of federal law under the United States Constitution.

24. The parties shall attempt in good faith to resolve informally any disputes that may occur under this Decree. If the parties are unable to reach agreement after a matter has been brought to the attention of one of the parties by another party, the issue may be submitted to the Court for resolution.

VII. DELIVERY

25. All documents required to be delivered under this Decree to the United States shall be sent to the attention of:

Aaron D. Schuham, Esq.
Charlotte Burrows, Esq.
Janie Allison Sitton, Esq.
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street NW, Room 4500
Washington, D.C. 20004

26. All documents required to be delivered under this Decree to the plaintiff-intervenors shall be sent to the attention of:

Michael P. Boggs, Esq.
214 Screven Avenue
Waycross, Georgia 31501

27. All documents required to be delivered under this Decree to the Defendant City of Alma, Georgia, shall be sent to the attention of:

Jimmy J. Boatright, Esq.
1808 Seminole Trail
Waycross, Georgia 31501

28. All documents required to be delivered under this Decree to the Defendant Bacon County, Georgia, shall be sent to the attention of:

George Hoyt, Esq.
412 West Fifteenth Street
Alma, Georgia 31510

VIII. RETENTION OF JURISDICTION

29. The Clerk's Office is hereby ***DIRECTED*** to Close this case. However, the Court shall retain jurisdiction over this action for the purpose of resolving disputes or entering any orders or judgments that may be

necessary to implement the relief provided herein. Five (5) years after the date of entry of this Decree by the Court, this matter shall be dismissed unless the United States moves, for good cause shown, for its continuation. If such a motion is filed by the United States before the Decree expires, the Decree shall remain in effect while the motion is pending before the Court.

ENTERED this ___ day of ___, 1999.

—

— WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT JUDGE__ SOUTHERN DISTRICT OF GEORGIA__

AGREED TO:

For the Plaintiff,
United States of America:
BILL LANN LEE
Acting Assistant
Attorney General
Civil Rights Division

WILLIAM B. FENTON
D.C. Bar No. 414990
AARON D. SCHUHAM
D.C. Bar No. 461285
CHARLOTTE BURROWS
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214 Screven Avenue
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Waycross, Georgia 31501
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AGREED TO:

For the Defendant,
City of Alma, Georgia:

For the Defendant,
Bacon County, Georgia:

**
