

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF ARKANSAS

PINE BLUFF DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARKANSAS DEPARTMENT OF CORRECTION,

an Agency of the State of Arkansas,

Defendant.

Civil Action No.

SETTLEMENT AGREEMENT

This action was brought by the United States against the Arkansas Department of Correction ("ADC") 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 ("EEOC") of charges filed by Vickie R. Finley and Linda S. Finley.

The United States alleges that the ADC discriminated against Linda S. Finley, a Seventh-day Adventist who applied for a correctional officer position with the ADC, on the basis of her religion in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), among other ways, by: (1) failing or refusing to hire Linda S. Finley; and (2) failing or refusing to take appropriate action to remedy the effects of the discrimination against Linda S. Finley.

The United States alleges that the ADC discriminated against Vickie R. Finley, a Seventh-day Adventist who worked as a correctional officer for the ADC, on the basis of her religion in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), among other ways, by: (1) terminating Vickie R. Finley; and (2) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Vickie R. Finley.

The ADC denies that it has discriminated against either Linda S. Finley or Vickie R. Finley in violation of Title VII. Nevertheless, the parties desire that this action be settled by this Settlement Agreement and without the burden of protracted litigation.

This Agreement, 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 ADC or a finding of any wrongdoing or violation of any applicable federal or state law or regulation.

This Agreement shall become final as to all signatories upon favorable review by the Arkansas Department of Finance and Administration and by the Arkansas Legislative Council if this Agreement is referred to that body pursuant to Arkansas Code Annotated Section 19-4-1614. The United States will

tender this Settlement Agreement to the Court, together with the United States' and ADC's Joint Motion for Entry of Settlement Agreement, a copy of which is attached hereto as Appendix C, simultaneously with the filing of the complaint in this case, provided that the Agreement becomes final on or before October 23, 2000. If this Agreement does not become final as to all signatories by October 23, 2000, nothing in this Agreement will prevent the United States from filing the complaint in this case before the Agreement is tendered to the Court. If the United States files a complaint in this case prior to the time that this Agreement becomes final as to all signatories, the Agreement will automatically become null and void.

As used in this Agreement, the term "execution" is defined as the date this Agreement is approved by the Court.

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

A. GENERAL RELIEF

1. The ADC, by and through its officials, agents, employees and all persons in active concert or participation with the ADC in the performance of employment or personnel functions shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any ADC employee or job applicant because of that individual's religious observances, practices and/or beliefs.

2. The ADC, by and through its officials, agents, employees and all persons in active concert or participation with the ADC shall not retaliate against or in any respect adversely affect Linda S. Finley, Vickie R. Finley or any other person because that person has opposed allegedly discriminatory policies or practices, has filed a charge with the EEOC, or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this case, the charges at issue in this Agreement or this Agreement.

3. The ADC shall implement and use non-discriminatory employment policies designed reasonably to accommodate the religious observances, practices and/or beliefs of ADC employees and job applicants. Such policies shall include the following provisions:

(a) Seventh-day Adventist employees and job applicants shall have the opportunity to pursue a voluntary "shift swap" with a co-worker in order to observe their Sabbath, and the ADC shall notify Seventh-day Adventist employees and job applicants of this opportunity. Because of scheduling constraints, the ADC is not required to permit an employee or applicant who holds or applies for a correctional officer position on the neutral rotating shift system to engage in more than one shift swap at any given time.

(b) If a Seventh-day Adventist informs the ADC that he or she does not wish to work during his or her Sabbath, the ADC Unit Personnel Office or, in the case of a Seventh-day Adventist applicant, an ADC hiring official, shall provide the Seventh-day Adventist with a pre-printed form that shall be an application for a shift swap. The Seventh-day Adventist will be required to complete the form and submit it to the ADC Human Resources Office in Pine Bluff for dissemination to the Correctional Unit Personnel and Training Officer at each unit for posting on that unit's bulletin board and on ADC's internet site used for posting personnel notices to employees, and that office of the ADC will ensure that the form is properly disseminated. The ADC will notify the Seventh-day Adventist that he or she will be required to work on his or her Sabbath if a voluntary shift swap or voluntary transfer cannot be arranged, and if the Seventh-day Adventist has not been selected for a position that does not require work on his or her Sabbath. A Seventh-day Adventist job applicant will have the option: (1) to start work immediately under these conditions, or (2) to not be enrolled in training academy or placed on the payroll until such

time that a voluntary swap can be arranged, or he or she is selected for a position that does not require work on the Sabbath.

(c) The ADC may inform Seventh-day Adventist employees and job applicants that while they will have the opportunity to seek voluntary shift swaps with co-workers, the ADC cannot guarantee that there will be co-workers willing to engage in such arrangements, or that there will not be emergencies that may include escapes, riots, or staff shortages during which the Seventh-day Adventist will be required to work on his or her Sabbath.

(d) The ADC also will provide the Seventh-day Adventist with a list of both security and non-security ADC jobs for which he or she may qualify that do not require Saturday work, and will notify the Seventh-day Adventist of the sources to which he or she can refer to learn which of these positions are vacant.

4. Shift swapping will be limited to situations in which both parties to the swap perform like duties and have substantially similar duties and qualifications. If an inter-unit transfer is necessary in order to facilitate the swap, the ADC's lateral transfer procedure will apply, including the provision that both the Warden losing an employee and the Warden receiving an employee must approve the transfer, except that the limitation on transfer during the employee's initial (i.e., "new hire") one-year probationary period would be waived in these circumstances. If any Warden refuses to approve an inter-unit transfer that has been requested as a religious accommodation, that Warden shall provide in writing his or her reasons for such refusal, and a copy of this document shall be provided to the individual requesting the religious accommodation.

5. Once a Seventh-day Adventist and another ADC employee agree to a shift swap, that swap will be continuous and completely regular until one of the parties withdraws from the swap for any reason. Upon a withdrawal of one participant in the swap, the other participant will be placed back on the ADC's neutral shift rotation. Upon the Seventh-day Adventist's request, the ADC will take those steps set forth in A.3(b) of this Agreement in an attempt to effectuate another shift swap, except that the Seventh-day Adventist whose current shift schedule requires work on his or her Sabbath will be required to work on the Sabbath day until another voluntary swap can be arranged, or until the Seventh-day Adventist applies for and receives an ADC position that does not require work on his or her Sabbath. The Seventh-day Adventist will not be given preferential consideration over other applicants for such position because of his or her religion.

6. Due to scheduling constraints, in those institutions in which employees' work schedules are divided into A, B, C, and D shifts, the ADC may limit the opportunity for employees to swap shifts so that shift swapping is permitted only between ADC employees on the A and C shifts, as well as between employees on the B and D shifts (e.g., an employee assigned to the A shift need not be permitted to swap with an employee assigned to the B or D shifts).

7. The ADC shall provide training and/or written guidelines with respect to the provisions in Paragraph A.3. of this Agreement and with respect to Title VII's prohibition against employment discrimination based on religion to all Wardens and Assistant Wardens and to all Correctional Unit Personnel and Training Officers. The ADC shall submit the written guidelines to the United States for approval pursuant to the provisions of the Consent Decree in Case No. LR-C-95-543 (E.D. Ark.) no later than thirty (30) days after the date this Agreement is entered by the Court. Once the United States notifies the ADC that it has approved the written guidelines, the ADC will provide these guidelines to the Wardens, Assistant Wardens, and Personnel and Training Officers within 60 days of the approval notification. The ADC shall furnish a description of the training and/or written guidelines provided or established by the ADC, as well as certification that such training and/or guidelines have been provided, including the

names and positions of all employees to whom the training and/or guidelines have been provided, to counsel for the United States within thirty (30) days after such training and/or guidelines have been provided.

8. Within thirty (30) days after the date of execution of this Agreement, the ADC 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 ADC. Such notices shall remain posted for a period of ninety (90) days from the date of execution of this Agreement.

B. SPECIFIC RELIEF

Without admitting the allegations of the United States, and in settlement of the United States' claim for relief on behalf of Linda S. Finley and Vickie R. Finley ("the Finleys"), as well as in settlement of the Finleys' individual claims arising from this case and EEOC Charges Nos. 251-98-0160 and 251-98-0161, the Finleys, by their signatures to this Agreement and the Releases attached as Appendix B having signified their acceptance of this relief, the ADC agrees to do the following:

1. The ADC shall pay to Linda S. Finley a monetary award in the amount of \$9,000. The ADC shall issue to Linda S. Finley a Form 1099 or other appropriate form reflecting the amount of this monetary award. Linda S. Finley shall have sole responsibility for paying any taxes due on this monetary award, including applicable federal and state income taxes.
2. The ADC shall pay to Vickie R. Finley a monetary award in the amount of \$9,000, which the parties agree represents a reasonable settlement for the claim for back pay for Vickie R. Finley. The back pay portion of the monetary award to Vickie R. Finley shall be subject to withholding for income taxes and social security taxes ("FICA"), if applicable. The back pay portion of the monetary award does not include the ADC's share of social security ("FICA"), if applicable, which shall be paid separately by the ADC and shall not be deducted from the monetary award.
3. The ADC shall offer to expunge from its records and files all documents, records or information relating to proposed or actual disciplinary action taken against Vickie R. Finley. In order to accomplish this objective, the ADC shall submit to the United States, within thirty (30) days from the date of the execution of this Agreement, a copy of the personnel file of Vickie R. Finley and copies of any and all other relevant files and documents pertaining to Ms. Finley. Upon identification by the United States of the appropriate documents, the ADC shall expunge such documents from its records and files.
4. Each of the Finleys has informed the undersigned counsel for the United States that she does not presently desire a correctional officer position with the ADC. Accordingly, the ADC is not required to offer either of the Finleys job opportunity relief under the Agreement. If, however, either of the Finleys seeks a correctional officer position with the ADC in the future, the ADC will consider them for employment in such a position in a fair and non-discriminatory manner.
5. The ADC shall pay to each of the Finleys the monetary awards specified in Paragraphs B.1. and B.2. of this Agreement within thirty (30) days of the date of the execution of this Agreement. If, however, Linda Finley does not provide the ADC with a completed W-9 form (Request for Taxpayer Identification Number and Certification) within thirty (30) days after execution of this Agreement, the ADC shall have thirty (30) days from the date it receives Ms. Finley's completed Form W-9 in which to pay Linda Finley the \$9,000 monetary award specified in Paragraph B.1.

C. RECORD-KEEPING AND REPORTING

1. The ADC shall retain during the life of this Settlement Agreement records necessary to document the implementation of this Agreement, including records regarding employees' application for a shift swap for religious reasons, and any reasons for a Warden's decision not to permit an employee's lateral transfer when such transfer is requested as a religious accommodation. The ADC shall furnish records and documents relevant to its compliance with the implementation of this Agreement to counsel for the Department of Justice within thirty (30) days of any written request to the ADC's attorney.
2. The ADC shall retain all records that come into its possession relating to complaints or charges of employment discrimination based on religion filed against the ADC or its employees, agents or representatives: (a) through the ADC's internal grievance procedure; (b) with the EEOC or (c) through or with any other federal, state or local agency authorized to receive such complaints or charges. The ADC shall provide copies of such complaints or charges to counsel for the United States within ten (10) 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 ADC without further order of this Court.

D. DISPUTE RESOLUTION

The parties shall attempt to resolve informally any dispute that may occur under this Settlement Agreement. The parties shall engage in good faith efforts to resolve the issue before seeking action by the Court. If the parties are unable expeditiously to resolve the issue, either party may move the Court for resolution, provided that written notice is first provided to the other party.

E. JURISDICTION OF THE COURT

1. During the life of this Agreement, the parties agree that the United States District Court for the Eastern District of Arkansas shall have jurisdiction over this Agreement 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 Agreement shall terminate eighteen (18) months from the date of its entry. Prior to its termination either the United States or the ADC may move the Court, for good cause shown, to extend the duration of the Agreement.
3. Each party shall bear its own costs and expenses, including attorney's fees.

DONE AND ORDERED this _____ day of _____, 2000.

UNITED STATES DISTRICT JUDGE

Agreed and Consented to:

On behalf of Plaintiff
UNITED STATES OF AMERICA:
BILL LANN LEE
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

PAULA J. CASEY
United States Attorney
Eastern District of Arkansas

WILLIAM B. FENTON
CHARLOTTE BURROWS
Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, D.C. 20035-5968
(202) 514-3862

For the Charging Parties:

VICKIE R. FINLEY, Charging Party

LINDA S. FINLEY, Charging Party

On behalf of Defendant

ARKANSAS DEPARTMENT OF
CORRECTION: _____

LORI L. FRENO
Assistant Attorney General
Civil Division
State of Arkansas
200 Tower Building
323 Center Street
Little Rock, Arkansas 72201
(501) 682-1314

APPENDIX A

NOTICE OF SETTLEMENT OF EMPLOYMENT DISCRIMINATION LAWSUIT

This notice is being posted as part of the remedy agreed to pursuant to a Settlement Agreement between the Arkansas Department of Correction ("ADC") and the United States Department of Justice in a suit filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"), alleging that the ADC discriminated against a former ADC employee and an ADC job applicant on the basis of their religion. The ADC has denied the allegations of discrimination. The Settlement Agreement has been approved by the United States District Court for the Eastern District of Arkansas.

Federal law requires that there be no discrimination against any employee or applicant for employment because of the individual's religion with respect to hiring, firing, promotion, compensation, or other

terms, conditions, or privileges of employment. The ADC supports and will comply with such federal law in all aspects and will not take any action against employees because they have filed discrimination charges, complained about discrimination, or participated in the investigation of a charge of discrimination.

Under the terms of the Settlement Agreement, among other things, the ADC has agreed to do 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 ADC because of that individual's religion including, but not limited to, failing or refusing reasonably to accommodate an employee's religious observance, practice and/or belief.
2. Not to retaliate against or in any respect adversely affect any person because that person has opposed alleged discriminatory policies or practices or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this action or this Agreement.
3. To implement and use nondiscriminatory employment policies designed reasonably to accommodate the religious observances, practices and beliefs of ADC employees and job applicants.
4. To provide training and/or written guidelines with respect to Title VII's prohibition against employment discrimination based on religion to ADC supervisory employees.
5. To retain all records that come into its possession relating to complaints or charges of employment discrimination based on religion that may be filed against the ADC or its employees, agents or representatives: (a) through the ADC's internal grievance procedure; (b) with the U.S. Equal Employment Opportunity Commission ("EEOC"); or (c) through or with any other federal, state or local agency authorized to receive such complaints.

If any ADC employee or job applicant believes that he or she has been discriminated against in violation of Title VII, the employee may contact the EEOC to find out whether he or she is eligible to file a charge of discrimination. The EEOC's address is:

Equal Employment Opportunity Commission
 Little Rock Area Office
 320 West Capitol Avenue, Suite 621
 Little Rock, Arkansas 72201
 (501) 324-5060.

To be timely, a charge of discrimination under Title VII must be filed within a certain period after the alleged act of discrimination occurred.

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

Charlotte Burrows
 U.S. Department of Justice
 Civil Rights Division
 Employment Litigation Section
 P.O. Box 65968

Washington, D.C. 20035-5968
(202) 514-3862.

APPENDIX B

RELEASE

United States v. Arkansas Department of Correction

For and in consideration of the acceptance of the relief to be given to me by the Arkansas Department of Correction pursuant to the provisions of the Settlement Agreement in United States v. Arkansas Department of Correction (E.D. Ark.), Civ. No. _____ i.e., the monetary amount of \$9,000, and expungement from the Arkansas Department of Correction's records all information relating to proposed or actual disciplinary action taken against me, which by my signature I have agreed to, I, Vickie R. Finley, hereby release and forever discharge the Arkansas Department of Correction, its current and future officials, employees and agents, of and from all legal and equitable claims of employment discrimination based on religion arising out of that action and EEOC Charges Nos. 251-98-0160 and 251-98-0161, which have accrued prior to the date of this release.

I further agree that I will not institute a civil action or seek to intervene against the Defendant in the above-referenced action or in any civil action alleging employment discrimination on the basis of EEOC Charges Nos. 251-98-0160 and 251-98-0161 or any of the facts alleged therein.

I understand the \$9,000 award may be subject to withholding for income taxes and social security taxes ("FICA"), and that the relief granted to me in consideration for this Release does not constitute an admission by the Arkansas Department of Correction of the validity of any claim raised by me or on my behalf.

This Release and the Settlement Agreement referred to above constitute the entire agreement between the Arkansas Department of Correction and me, without exception or exclusion. I acknowledge that a copy of the Settlement Agreement 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: _____

Vickie R. Finley

Subscribed and sworn to before me this ____ day of _____, 2000.

_____ Notary Public

My commission expires: _____

RELEASE

United States v. Arkansas Department of Correction

For and in consideration of the acceptance of the relief to be given to me by the Arkansas Department of

Correction pursuant to the provisions of the Settlement Agreement in United States v. Arkansas Department of Correction (E.D. Ark.), Civ. No. _____, i.e., a monetary award in the amount of \$9,000, which by my signature I have agreed to, I, Linda S. Finley, hereby release and forever discharge the Arkansas Department of Correction, its current and future officials, employees and agents, of and from all legal and equitable claims of employment discrimination based on religion arising out of that action and EEOC Charges Nos. 251-98-0160 and 251-98-0161, which have accrued prior to the date of this release.

I further agree that I will not institute a civil action or seek to intervene against the Defendant in the above-referenced action or in any civil action alleging employment discrimination on the basis of EEOC Charges Nos. 251-98-0160 and 251-98-0161 or any of the facts alleged therein.

I understand that the relief granted to me in consideration for this Release does not constitute an admission by the Arkansas Department of Correction of the validity of any claim raised by me or on my behalf.

This Release and the Settlement Agreement referred to above constitute the entire agreement between the Arkansas Department of Correction and me, without exception or exclusion.

I acknowledge that a copy of the Settlement Agreement 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: _____

Linda S. Finley

Subscribed and sworn to before me this ____ day of _____, 2000.

Notary Public

My commission expires: _____

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF ARKANSAS

PINE BLUFF DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No.

v.

ARKANSAS DEPARTMENT OF CORRECTION,

an Agency of the State of Arkansas,

Defendant.

JOINT MOTION FOR ENTRY OF SETTLEMENT AGREEMENT

Plaintiff United States and Defendant Arkansas Department of Correction ("the ADC") jointly move the Court to approve and enter the attached Settlement Agreement between the ADC and the United States and to administratively close the present case. The attached proposed Settlement Agreement, if approved and entered by the Court, will resolve all issues raised in the United States' complaint.

This action was brought on behalf of the United States against the ADC 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 of charges filed by Vickie R. Finley (Charge Number 251-98-0160) and Linda S. Finley (Charge Number 251-98-0161) alleging that the ADC had discriminated against them in employment on the basis of their religion.

If the proposed Settlement Agreement is approved and entered by the Court, the Court will retain jurisdiction over this case for a period of eighteen (18) months from the date the Settlement Agreement is entered, but will close this case for administrative purposes. As required in the Settlement Agreement, the parties will attempt in good faith to resolve between themselves any dispute that may occur under the Agreement before moving the Court for resolution.

AGREED AND CONSENTED TO:

On behalf of Plaintiff
UNITED STATES OF AMERICA:
BILL LANN LEE
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

PAULA J. CASEY
United States Attorney
Eastern District of Arkansas

WILLIAM B. FENTON
CHARLOTTE BURROWS
Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, D.C. 20035-5968

(202) 514-3862

On behalf of Defendant

ARKANSAS DEPARTMENT OF
CORRECTION: _____

LORI L. FRENO

Assistant Attorney General

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