

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LARRY D. STEWART, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 ROBERT RUBIN, Secretary,)
 Department of the Treasury,)
)
 Defendant.)
 _____)

Civil Action 90-2841 (RCL)

FILED

JUL 1 1999

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

MEMORANDUM OPINION

This matter comes before the Court on plaintiffs' motion for an order enforcing the terms of the settlement agreement in this action, which was approved by the Court on November 21, 1996. See Stewart v. Rubin, 948 F. Supp. 1077 (D.D.C. 1996). Upon consideration of the motion, defendant's opposition, plaintiff's reply, and the record in this case, the plaintiffs' motion will be denied.

I. BACKGROUND

The factual background of this case is set forth in the Court's memorandum opinion of November 21, 1996. See id. In brief summary, plaintiffs brought an action against defendant alleging race discrimination and retaliation by the Bureau of Alcohol, Tobacco, and Firearms (ATF) with regard to a variety of personnel practices. The parties settled the case out of court, and the Court approved the settlement agreement.

Part of the class-wide equitable relief provided for in the

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settlement agreement was the development and implementation of a new promotion assessment system. In the time period between approval of the settlement and implementation of the new promotion assessment system, however, the settlement agreement set forth an interim promotion procedure to be followed "when one or more African-American GS-1811 series special agents apply for a promotion, and is one of the applicants on the best qualified list." See Settlement Agreement at IV.C.6.a. The settlement agreement expressly stated: "Nothing herein shall limit ATF's discretion to reassign special agents." See id. The agreement further required that "[d]uring the interim period..., vacancies under the Law Enforcement Career Development Plan will be physically posted and, to the extent feasible, be timely posted through an electronic bulletin board that is accessible to every special agent...." See id. at IV.C.6.h.

On June 12, 1998, the Director of the ATF issued a memorandum to all GS-13 and GS-14 special agents and inspectors setting forth a change in the ATF's policy for filling vacancies in certain headquarters positions. The Director wrote: "At the heart of these changes will be the use of directed lateral reassignments of existing GS-13 and 14 agents and inspectors in the field to fill vacant GS-13 and GS-14 positions in HQ. While the competitive promotion process for HQ positions may be used in some instances, in general we will not rely on this process to fill most HQ vacancies."

According to plaintiffs, several positions have been filled

using this noncompetitive selection process since June of 1998. Plaintiffs claim that such noncompetitive selection for the HQ positions at issue constitutes a breach of the settlement agreement. Plaintiffs also allege a breach of the agreement's requirement that the position of Competitive Promotions Consultant, created by the settlement agreement, be filled by an official "at least at the Deputy Associate/Assistant Director level." See id. at IV.C.6.c.

Upon consideration of the parties' positions and the settlement agreement provisions at issue, the Court finds that the defendant has not breached the settlement agreement. Plaintiffs' motion will be denied.

II. LAW AND APPLICATION

Resolution of plaintiff's motion depends, almost exclusively, on the proper interpretation of the settlement agreement approved by the Court on November 21, 1996. As defendant correctly notes in his opposition to plaintiffs' motion, the enforceability of the settlement agreement is governed by ordinary principles of contract law. See Village of Kaktovik v. Watt, 689 F.2d 222, 230 (D.C. Cir. 1982). Where, as here, the language of a contract is clear and unambiguous, the Court will assume that the terms of the contract carry their ordinary meaning. See NRM Corp. v. Hercules, Inc., 758 F.2d 676, 681 (D.C. Cir. 1985). The Court is of the opinion that the clear language of the settlement agreement requires denial of the

plaintiffs' motion.

Plaintiffs' first contention is that the ATF may not fill the headquarters vacancies at issue by noncompetitive selection processes. Plaintiffs allege that such selection processes violate the ATF's Law Enforcement Career Development Plan (LECDP), which plaintiffs further argue is incorporated into the settlement agreement at section IV.C.6.h. This interpretation of section IV.C.6.h, however, cannot withstand even minimal scrutiny. Section IV.C.6.h merely states that "vacancies under the Law Enforcement Career Development Plan will be physically posted and, to the extent feasible, be timely posted through an electronic bulletin board that is accessible to every special agent at each Field Office, Field Division and Headquarters Division." This reference to the LECDP cannot reasonably be read to incorporate the entirety of the LECDP into the settlement agreement. Consequently, the question of whether the ATF's change in policy violates the LECDP is not before the Court.

One issue that is properly before the Court is whether the ATF has breached the requirement that "vacancies under the [LECDP] be posted." The record shows that the vacancies at issue here were in fact "posted" both by memorandum and by email and other electronic means. Contrary to plaintiffs' suggestion, the settlement agreement's language requiring that LECDP positions be "posted" cannot be fairly read to imply a requirement that all such positions be filled by competitive selection. "Posting" and competitive selection procedures are simply not synonymous terms.

Putting aside plaintiffs' unavailing arguments as to the incorporation of the LECDP, plaintiffs' essential allegation is that the ATF's change in policy violates the interim promotion procedure set forth at section IV.C.6. of the settlement agreement. However, the plaintiffs are incorrect in their assertion that reassignments to headquarters positions are promotions within the meaning of section IV.C.6. While defendant concedes that headquarters experience is an asset to ATF employees, and that headquarters experience may provide an advantage for future competitive actions, defendant is also correct to note that these aspects of a headquarters position are irrelevant to determining whether a personnel action is a promotion.

The term "promotion" has a generally understood and accepted meaning in the governmental context. A promotion is a change either to a higher grade level or to a higher pay scale. See 5 C.F.R. § 210.102; 5 C.F.R. § 531.202. Subtle qualitative distinctions between the experiential value of one position in comparison with another position are extraneous to the definition of what constitutes a promotion for purposes of the settlement agreement. Because the reassignments to headquarters were not promotions, the interim promotion procedure does not apply, and the defendant has not breached that provision of the settlement agreement.¹

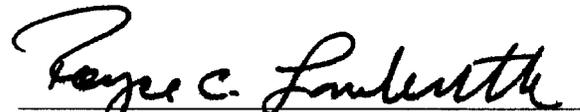
¹This is entirely consistent with the provision in IV.C.6.a stating that the settlement agreement shall not limit ATF's

Plaintiffs' final contention is that defendant is in breach of section IV.C.6.c's requirement that the Competitive Promotions Consultant (CPC) be "at least at the Deputy Associate/Assistant Director level." The current CPC is a Deputy Assistant Director temporarily detailed as Chairman of the ATF's Professional Review Board. He continues at the same Senior Executive Service level as before his detail to the Professional Review Board. He is "at least at the Deputy Associate/Assistant Director level" within the plain meaning of the settlement agreement. Therefore, the Court finds that the defendant is not in breach of this provision, either.

III. CONCLUSION

In conclusion, the Court finds that the defendant has not breached any provision of section IV.C.6 as alleged by the plaintiffs. Plaintiffs' motion will be denied.

A separate order will issue this date.



Royce C. Lamberth
United States District Judge

DATE: 6-30-99

discretion to reassign special agents.