

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
Civil Action No. 5:99CV189-V

UNITED STATES OF AMERICA,
Plaintiff,
&
DONALD R. STOKLEY,
Plaintiff-Intervenor,
v.
CITY OF NEWTON, NORTH CAROLINA,
Defendant.

**CONSENT DECREE BETWEEN THE UNITED STATES
AND THE CITY OF NEWTON, NORTH CAROLINA**

This action was brought by the United States of America ("United States") against the City of Newton, North Carolina, ("the City" or "Defendant") to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, et seq. ("Title VII"), following receipt by the United States Department of Justice from the Equal Employment Opportunity Commission ("EEOC") of EEOC Charge Number 140-97-1556 filed by Donald R. Stokley.

In its Complaint, the United States alleges that the City has discriminated against Mr. Stokley, a male formerly employed as a sanitation worker in the City's Department of Public Works and Utilities, 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 Mr. Stokley to racial harassment while he was employed in the City's Department of Public Works and Utilities on the basis of his race and his association with a black person;
- b. discharging Mr. Stokley from his employment as a sanitation worker on the basis of his race and his association with a black person; and
- c. failing or refusing to take appropriate action to remedy the effects of the discrimination against Mr. Stokley.

The City denies that it has discriminated in any manner against Mr. Stokley in violation of Title VII. Nonetheless, the parties, desiring that this action be settled by an 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, and hereby waive, for the purposes of this Consent Decree only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Consent Decree as final and binding among themselves as to all issues raised in the Complaint filed in this case.

This Consent 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. This Court has jurisdiction over the action under 42 U.S.C. Section 2000e-5(f) and 28 U.S.C. Sections 1331, 1345.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

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

GENERAL RELIEF

1. The City, by and through its officials, agents, employees, successors and all persons in active concert or participation with it 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 employee because of that employee's race.
2. The City shall not retaliate against or in any respect adversely affect any person because that person has opposed allegedly discriminatory employment policies or practices; filed a charge with the EEOC; or participated in or cooperated with the initiation, investigation, litigation or administration of this case or this Decree.
3. No later than July 15, 2000, the City shall issue and distribute to all current City employees the racial harassment policy statement attached hereto as Appendix A. No later than July 15, 2000, the City Manager shall issue a letter adopting Appendix A as a policy of the City. No later than August 1, 2000, the City shall provide the United States with written confirmation that it has completed issuance and distribution of the racial harassment policy statement.
4. For all future employees, the City shall issue and distribute the policy statement attached hereto as Appendix A within fifteen (15) days of hire. The City shall require all current and future employees to sign and date an acknowledgment of receipt of the Appendix A policy statement when the employee obtains a copy of the policy statement.
5. The City shall post the policy statement in a prominent, conspicuous, centrally-located place commonly used for posting notices (e.g., bulletin boards) in all City buildings and facilities and in the City's administrative offices.
6. Within sixty (60) days of the date of entry of this Decree, the City shall amend its Employee Handbook to include the following language:

HARASSMENT

The City forbids harassment of employees because of age, race, sex, color, religion, disability, national origin, political affiliation and marital status. "Harassment" is defined as behavior that offends an employee. This type of behavior is unacceptable, and even in mild forms such harassment constitutes unsatisfactory job performance and is subject to disciplinary action. More serious instances of harassment will carry more severe penalties, up to and including dismissal.

If an employee believes he or she has been subjected to harassment because of age, race, sex, color, religion, disability, national origin, political affiliation or marital status, that employee may bring a complaint to the attention of any City supervisor or administrator. If the employee contends that the supervisor committed, participated in, or allowed the alleged harassment, then the employee may bring a complaint directly to the attention of the City Manager.

The City has created specific policy statements on sexual and racial harassment. These policy statements

are posted on City departmental bulletin boards and, in addition, copies are available at employees' request.

7. The City shall forward a copy of the amendment to its Employee Handbook described in Paragraph 6 to the United States within sixty-five (65) days of the date of entry of this Consent Decree.

8. In June of each year following the date of entry of this Consent Decree, the City shall provide mandatory training regarding racial harassment to all City employees.

9. This training shall at a minimum instruct all employees on what acts may constitute racial harassment and the procedures for reporting and investigating complaints of racial. This training also shall instruct all supervisory employees concerning their duty to promptly forward any reports of racial harassment brought to their attention to the individual or individuals responsible for investigating such reports on the City's behalf. During the training, employees shall be provided a copy of the racial harassment policy attached hereto as Appendix A. All City employees shall sign and date an acknowledgment of attendance for any and all training instituted by the City concerning racial harassment.

MONITORING, RECORD KEEPING AND REPORTING

10. For the life of this Consent Decree, the City shall maintain the following:

a. all complaints of racial harassment made by City employees and all documents, notes, records, and correspondence relating to such complaints that are in the City's control or possession during the life of this Decree;

b. all notes, records, recordings, transcripts, summaries of interviews, telephone logs, correspondence or other documents describing or relating to investigations of complaints of racial harassment made by any City employee;

c. all notes, records, recordings, transcripts, summaries of interviews, telephone logs, correspondence or other documents concerning, describing or relating to any official determination as to whether discipline should be imposed on any employee as the result of a complaint of racial harassment;

d. all documents signed by City employees in acknowledgment of receipt of the racial harassment policy attached hereto as Appendix A;

e. all documents signed by City employees in acknowledgment of attendance of racial harassment training; and

f. any other documents relating to the subject matter of this Decree within the City's possession or control.

11. On or before June 30th of each year this Decree is in effect, the City shall forward to the United States a compliance report certifying that it has complied with the terms of this Decree and setting forth in detail all steps it has taken in achieving that compliance. At a minimum, the report shall state:

a. Whether the City has distributed the Appendix A policy statement to new employees within 15 days of their hire as provided in paragraph 4 of this Consent Decree, and whether the City has retained signed receipts from these employees acknowledging receipt of that policy statement.

b. Whether the City has posted the Appendix A statement in all City buildings, facilities, and administrative offices as required by paragraph 5, above.

c. Whether the City has conducted mandatory training regarding racial harassment during the most recent reporting period.

The City shall fulfill the reporting requirements contained in this paragraph without waiting for a specific written request from the United States.

12. The City shall make the materials listed in Paragraph 10 of this Decree available to the United States for inspection and copying within thirty days of receiving a written request from the United States for access to such materials.

13. 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.

SPECIFIC RELIEF

14. Because Donald R. Stokley, through his attorney, has informed the undersigned counsel for the United States that he has reached a separate settlement agreement and release with the City of Newton, resolving all claims raised in his complaint in intervention in this case, the City is not required to provide Mr. Stokley any additional specific relief under the terms of this Decree.

IMPLEMENTATION

15. The United States and the City of Newton shall attempt to resolve informally any disputes that may occur under this Decree. If the United States and the City of Newton are unable to reach agreement within thirty (30) days after informally seeking to resolve a dispute, the issue may be submitted by either party to the Court for resolution.

16. All documents required to be delivered under this Decree to the United States shall be sent to the following address: Charlotte Burrows and Barbara J. Meacham, Trial Attorneys, Employment Litigation Section, Civil Rights Division, U.S. Department of Justice, 601 D Street, N.W., Room 4500, Washington, D.C. 20004; telephone (202) 514-3862.

17. All documents required to be delivered under this Decree to the City of Newton, North Carolina, shall be sent to the following address: Teresa Laffon, Personnel Director, City of Newton, P.O. Box 550, Newton, North Carolina 28658.

RETENTION OF JURISDICTION

18. 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. Three (3) 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 Consent Decree expires, the Decree shall remain in effect while the motion is pending before the Court.

It is so ORDERED, this _____ day of _____, 2000.

UNITED STATES DISTRICT JUDGE

Western District of North Carolina

AGREED AND CONSENTED TO:

On behalf of Plaintiff
United States of America:

WILLIAM B. FENTON
CHARLOTTE BURROWS
BARBARA J. MEACHAM
Attorneys
United States Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street, N.W., Room 4500
Washington, D.C. 20035-65968
(202) 514-3862

On behalf of Defendant
City of Newton, North Carolina:

PAUL C. LAWRENCE, ESQ.
Hedrick Eatman Gardner &
Kincheloe, L.L.P.
6302 Fairview Road
Charlotte, North Carolina 28210
(704) 366-1101

LARRY PITTS, ESQ.
P.O. Box 847
Newton, North Carolina 28658
(828) 466-0032

APPENDIX A

CITY OF NEWTON, NORTH CAROLINA

STATEMENT OF POLICY REGARDING RACIAL HARASSMENT

DATE: [Month and Day], [Year]

This statement of policy sets forth the policy of the City of Newton ("the City") prohibiting racial harassment in the workplace. This policy is effective immediately and applies to all of the City's employees.

Racial harassment is defined as unwelcome racial comments; use of racial slurs; racial jokes; racially derogatory descriptions of an employee or that employee's family members, friends, or other persons with whom he or she associates; and other verbal or physical conduct of a racial nature when:

- (1) tolerating such conduct and/or comments is made either explicitly or implicitly a term or condition of an individual's employment; or
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Whether alleged conduct constitutes racial harassment is determined on a case by case basis and depends on the totality of the circumstances including the context in which the conduct occurred and the frequency and severity of the conduct. A single incident, if sufficiently severe, may constitute racial harassment.

Attached to this statement of policy is a list of examples of conduct or behavior that may constitute racial harassment if they satisfy the above definition.

Racial harassment in the workplace is illegal and will not be tolerated by the City of Newton. In addition, retaliation against any person who opposes what he or she reasonably believes to be racial harassment, or who cooperates in the investigation of a complaint of racial harassment, is also illegal and will not be tolerated by the City of Newton.

The City Manager, the City Council, its officials, agents and representatives, in recognition of their duty to combat racial harassment in the workplace, are committed to the vigorous enforcement of this policy. Employees who engage in conduct in violation of this policy shall be subject to discipline up to and including dismissal.

Employees are encouraged to bring complaints of racial harassment to the City's attention. A complaint of racial harassment may be brought to the attention of any supervisor or administrator. If the employee believes that the supervisor committed, participated in, or allowed the alleged harassment, then the employee may bring a racial harassment complaint directly to the attention of the City Manager. Complaints of racial harassment will be promptly investigated and decisions will be issued within thirty (30) days unless exceptional circumstances exist.

The performance evaluations of all City employees shall take into account compliance with this policy. In addition, when deciding whether an employee should receive a promotion, award, or other performance-related benefit, the City shall take into account the compliance of the employee with this policy.

Furthermore, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII"), prohibits discrimination in employment on the basis of race, sex, national origin and religion. It also is unlawful under the Act for an employer to take retaliatory action against any individual for

opposing employment practices that the individual reasonably believes are prohibited by Title VII or for filing discrimination charges against the employer or assisting in the investigation of such charges. Congress has designated the Equal Employment Opportunity Commission ("EEOC") as the federal agency responsible for investigating individual charges of discrimination under Title VII. If an employee believes he or she has been discriminated against in violation of Title VII, that employee may contact the nearest EEOC office to find out whether he or she is eligible to file a charge. That office is located at:

Equal Employment Opportunity Commission
Charlotte District Office
129 West Trade Street
Suite 400
Charlotte, North Carolina 28202
Telephone: 704-344-6682

Verbal Expressions That May Constitute Racial Harassment

Use of racial slurs that others may find offensive such as:

"Nigger," "coon," "spade," "spook," "Sambo," "Jemima," or "slave" to refer to black persons;

"Spic" or "wetback" to refer to Hispanic persons;

"Cracker" or "whitetrash" to refer to white persons;

"Chink," or "slant-eyes" to refer to Asian persons;

"Half-breed" to refer to persons of mixed racial ancestry;

Unwelcome reference to an adult employee as a "boy" or "girl;"

Racial jokes or stories;

Derogatory comments about a person's racial ancestry or the racial ancestry of his family members or those with whom he or she chooses to associate;

Race-specific, derogatory comments about a person's skin color, hair texture, facial features or other physical characteristics;

Stating that a person must perform certain assignments because of that person's race or racial characteristics;

Stating that a person may not perform certain assignments because he or she belongs to a particular racial group;

Obscene, lewd or sexually explicit comments, jokes or suggestions concerning or focusing on the sexuality or supposed sexual characteristics of a particular racial group.

Conduct That May Constitute Racial Harassment

Displaying racially derogatory pictures, cartoons, caricatures, or slogans on City property;

Displaying or distributing pamphlets or other printed materials on City property if those materials declare the supremacy or superiority of a particular racial group or specify that any race is inferior to any other;

Drawing or writing racial slurs or graffiti of a racial nature on City property;

Refusing to work with an employee because of that employee's race or the race of a person with whom the employee associates;

Sabotaging or interfering with an employee's work because of that employee's race or the race of a person with whom the employee associates;

Hiding, destroying or otherwise tampering with an employee's work equipment because of that employee's race or the race of a person with whom the employee associates;

Making false reports about an employee's work performance because of that employee's race or the race of a person with whom the employee associates;

Stranding or abandoning a fellow employee on the job because of that employee's race or the race of a person with whom the employee associates.