

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

V.

ZUNI PUBLIC SCHOOL DISTRICT,

Civil Action No.

Defendant.

CONSENT DECREE

This action was brought by the United States against the Zuni Public School District ("School District") 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 Donna Patty-Hart (EEOC Charge No. 390-97-1049). 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 the School District discriminated against Donna Patty-Hart, a female formerly employed by the School District, because of her sex in violation of Section 703 (a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-2(a), among other ways, by:

- a. subjecting Ms. Patty-Hart to sexual harassment which created an intimidating, hostile or offensive work environment and which adversely affected the terms, conditions and privileges of Ms. Patty-Hart's employment; and
- b. failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment.

The School District denies that it has discriminated against Ms. Patty-Hart in violation of Title VII. Nevertheless, the United States and the School District, 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. The parties also hereby waive, for 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 between them with regard to the issues raised in the complaint filed by the United States in this case.

This Consent Decree, being entered into with the consent of the United States and the School District, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the School District or a finding of any wrongdoing or violation of any applicable federal law or regulation.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

For purposes of this Consent Decree, the date of entry of the Consent Decree shall be the date on which the Court approves and signs this Consent Decree as an order of the Court.

GENERAL RELIEF

1. The School District, by and through its officials, agents, employees and all persons in active concert or participation with the School District in the performance of employment or personnel functions, shall not engage in any act or practice that unlawfully discriminates against any employee because of that employee's sex.
2. The School District shall not retaliate against or in any way adversely affect the terms and conditions of employment of any person because that person has opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*, filed a charge with the EEOC, or testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII, including this case or this Consent Decree.
3. The School District shall revise its sexual harassment policy to make clear that sexual harassment activity is forbidden regardless of whether directed at persons of the opposite sex or persons of the same sex.
4. The School District shall revise its sexual harassment policy to provide that employees may submit complaints of sexual harassment of any kind to an administrator or supervisor or directly to the superintendent of schools, and that if an administrator or supervisor receives a complaint of sexual harassment, (s)he will promptly refer that complaint to the superintendent of schools for investigation. The School District shall also provide that all complaints of sexual harassment, including those made to or about administrators or supervisors, will be promptly and objectively investigated by the superintendent of schools, and that the results of the investigation will be provided to the complaining party and the alleged harasser no later than thirty (30) days after the complaint is made.
5. No later than sixty (60) days after the entry of this Consent Decree, the School District shall ensure that a copy of its revised policy on sexual harassment is distributed to all of its current employees.
6. No later than sixty (60) days after the entry of this Consent Decree, the School District shall publicize its revised policy prohibiting sexual harassment by, *inter alia*, posting it in all buildings and facilities of the School District which are commonly used for posting notices.
7. The School District shall ensure that each new employee receives a copy of its revised sexual harassment policy at the time of the new employee's hire. Each new employee shall sign an acknowledgment that she or he has read and understood the sexual harassment policy, and this acknowledgment shall be placed in each employee's personnel file.
8. The School District shall provide training to all of its employees regarding Title VII's prohibition against sexual harassment. The training shall be conducted within six months after the date this Consent Decree takes effect and shall be provided by the United States Department of Justice or its designee.
9. The School District shall retain the following records during the life of this Consent Decree or as otherwise required by applicable federal record retention requirements:
 - a. the provisions of any policy on sexual harassment then in effect, and a record of the effective date or dates of those provisions;

- b. any posted notices or poster(s) displayed in School District work areas intended to convey information regarding the prohibition of sexual harassment in the workplace, as provided for in Paragraph 6 above.
- c. a copy of the School District's sexual harassment policy made available to new employees, as provided for in Paragraph Seven above.
- d. all documents that come into the School District's possession involving written complaints against the School District or any of its employees of (i) discrimination in employment on the basis of sex; (ii) retaliation as defined in Paragraph 2 above, and (iii) the School District's investigation and resolution of any such complaints.
10. The United States shall have the right to inspect and copy any documents that are relevant and necessary to monitor the School District's compliance with this Consent Decree, upon thirty (30) days notice to the School District, without further order of this Court.

SPECIFIC RELIEF

Without admitting the contentions of the United States as set forth in its complaint, and in settlement of the claims of the United States for relief on behalf of Donna Patty-Hart; and, if Ms. Patty-Hart accepts the relief to be offered to her pursuant to this Consent Decree in settlement of her individual claims, the School District agrees to do the following:

11. The School District shall offer to pay Donna Patty-Hart a monetary amount of \$75,000. This amount shall be considered to be compensatory damages. No withholdings will be made by the School District from the monetary amount, although the School District shall issue an Internal Revenue Service (IRS) 1099-Misc Form to Ms. Patty-Hart and report this award to the IRS and any other applicable taxing authority.
12. No later than twenty (20) days after the date of entry of this Consent Decree, the School District shall notify Ms. Patty-Hart of the terms of this Consent Decree by mailing to her, by certified mail, return receipt requested, a notice letter, similar to Appendix A hereto, a copy of this Consent Decree and a copy of a release in the form set forth in Appendix B hereto. The notice letter shall advise Ms. Patty-Hart that in order to accept the relief offered to her, she must return the executed release form to the School District within thirty (30) days of her receipt of the notice letter unless she shows good cause within a reasonable time for her failure to do so.
13. The School District shall also send a copy of the notice letter referred to in paragraph 12 above to the United States at the same time it sends the notice letter to Ms. Patty-Hart.
14. To accept the relief offered her by the School District under this Consent Decree, Ms. Patty-Hart must execute the release form provided with the notice letter, and return it to the School District within thirty (30) days after the date she receives the notice letter unless she can show good cause, to be determined by the United States, within a reasonable time thereafter for her failure to do so.
15. The School District shall provide the United States with a copy of Ms. Patty-Hart's executed release form within ten (10) days after its receipt. Within fifteen (15) days from the date of its receipt of Ms. Patty-Hart's executed release form, the School District shall mail to Ms. Patty-Hart a check made payable to Donna Patty-Hart in the amount of \$75,000.

DISPUTES

16. The parties to this Consent Decree shall attempt to resolve informally any disputes that may occur under this Consent Decree. If the United States and the School District are unable to reach agreement after informally seeking to resolve a dispute, the issue may be submitted by either party to the Court for resolution.

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

Larry G. Ward, Esq.
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Room 4916 PHB
Washington, D.C. 20530

18. All documents required to be delivered under this Consent Decree to the School District shall be sent to the attention of:

Kevin D. Sovereign
Carl Warren & Co.
9016-A Washington St., NE
Albuquerque, New Mexico 87113

RETENTION OF JURISDICTION

19. The Court shall retain jurisdiction over this Consent Decree for the purpose of resolving any disputes or entering any orders that may be necessary to implement the relief provided in the Consent Decree.

20. This Decree shall terminate one (1) year from the date of its entry. Prior to its termination, any party may move, upon notice to the other party and for good cause shown, for an extension of the terms of the Consent Decree.

21. The parties should bear their own costs in this action, including attorney's fees, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise from this Decree and require resolution by the Court.

IT is so ORDERED, this ____ day of _____, 2002.

UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO:

For Plaintiff the United States of America

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

For Defendant Zuni Public School District

Dr. David L. Cockerham
Superintendent of Schools
Zuni Public School District

BY:

Larry G. Ward

Member, D.C. Bar 419105
Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
Room 4916 PHB
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
(202) 514-6341

BY:

Dr. David L. Cockerham
P.O. Box Drawer A
Zuni, New Mexico 87327
(505)782-5511

APPENDIX A

(NOTICE LETTER)

[Date]

Ms. Donna Patty-Hart
43 Yucca Circle
Alamogordo, New Mexico 88310

Dear Ms. Patty-Hart:

On [date], the Court approved the terms of and entered a Consent Decree settling a complaint of employment discrimination filed by the United States against the Zuni Public School District ("the School District"), United States v. Zuni School District, Civil Action No. (D.N.M.).

Under the terms of the Consent Decree, you are being offered a monetary amount of \$75,000.00, as settlement for any claims that you may have against the School District arising out of the above referenced action and EEOC Charge No. 390-97-1049.

You may accept the \$75,000.00 monetary amount by completing and signing the enclosed release form before a notary public and returning the original of the executed release form to the representative for the School District at the following address:

Kevin D. Sovereign
Carl Warren & Co.
9016-A Washington St., NE
Albuquerque, New Mexico 87113

In order to accept the monetary amount offered to you, you must complete and return the enclosed release form within thirty (30) days of your receipt of this letter and the enclosed release.

This relief is being offered to you on the following condition: if you accept the relief you will be required to release the School District, and its current and former officials and agents, from all employment discrimination claims which you may have against them arising out of this action and EEOC Charge No. 390-97-1049. If you decline the relief, the School District will nevertheless have satisfied its 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.

If you accept the monetary amount offered to you, the School District will send you the monetary amount within thirty (30) days of its receipt of your completed and notarized release form. The School District will issue you an Internal Revenue Service Form 1099 or an equivalent form, and you will have sole responsibility for paying any taxes, including federal income tax and any applicable state or local taxes, due on the monetary amount. You should consult with a tax advisor if you have questions regarding the taxability of this monetary amount.

IF YOU FAIL TO SUBMIT THE RELEASE FORM, AS DIRECTED IN THIS LETTER, WITHIN THIRTY (30) DAYS FROM YOUR RECEIPT OF THIS LETTER, YOU WILL FORFEIT YOUR RIGHTS TO ANY RELIEF UNDER THE SETTLEMENT AGREEMENT, UNLESS YOU CAN SHOW GOOD CAUSE 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 Larry G. Ward, the attorney representing the Department of Justice in this matter at 202-514-6341.

Sincerely,

Kevin D. Sovereign
Carl Warren & Co.
9016-A Washington St., NE
Albuquerque, New Mexico 87113
Representative for the Zuni Public School District

Enclosures

cc: Larry G. Ward

APPENDIX B

RELEASE

United States v. Zuni Public School District

Civil Action No. (D.N.M.)

STATE OF _____

COUNTY OF _____

For and in consideration of the payment of a monetary amount of \$75,000.00 pursuant to the provisions of the Consent Decree in United States v. Zuni Public School District, Civil Action No.

(D.N.M.), I, Donna Patty-Hart, hereby release and forever discharge the Zuni Public School District, its current and future officials, employees and agents, of and from all legal and equitable claims arising out of that action and EEOC Charge Nos. 390-97-1049.

I understand that the monetary payment to be provided to me in consideration for this Release does not constitute an admission by any of the parties released of the validity of any claim raised by me or on my behalf.

This Release constitutes the entire agreement between the Defendant Zuni Public School District and myself 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.

Signed this ____ day of _____, 2002.

Donna Patty-Hart

Social Security Number _____

Sworn and subscribed to before me this ____ day of _____, 2002

NOTARY PUBLIC

My commission expires: _____