

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

UNITED STATES OF AMERICA,

Plaintiff,

ESTHER V. HERRERA,
MARCELLA MARTINEZ
and LORRAINE SANCHEZ,

Plaintiffs In Intervention,

v. Civil Action No. 01-54 PJK/RLP

THE VILLAGE OF CUBA,
NEW MEXICO,

Defendant.

SETTLEMENT AGREEMENT

This action was brought on behalf of the United States of America ("United States") against the Village of Cuba, New Mexico (the "Village" or "Defendant") 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 of discrimination filed by Esther V. Herrera, Marcella Martinez and Lorraine Sanchez, EEOC Charge Numbers, 390980831, 390980832 and 390980849.

In its Complaint, the United States alleges that the Village has discriminated against Esther V. Herrera, Marcella Martinez and Lorraine Sanchez, females formerly employed by Defendant, and others similarly situated, because of their sex in violation of Section 703(a) of Title VII by failing or refusing to increase their hourly compensation at the same rate as the increase in hourly compensation given to male hourly employees in or about June 1998, and by failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment. The Complaint also alleges that Defendant has discriminated against Lorraine Sanchez in violation of Section 704(a) of Title VII, among other ways, by failing or refusing to promote or consider for promotion Ms. Sanchez to a deputy clerk or clerk assistant position in or about April 2000, because she filed a charge with the EEOC and/or because she complained to Village officials regarding the aforementioned differential in the rate of increase in pay, and by failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Ms. Sanchez.

Subsequent to the filing of the Complaint by the United States, Plaintiff-Intervenors Esther Herrera, Marcella Martinez and Lorraine Sanchez moved to intervene. The Motion was granted and the Intervenor-Plaintiffs filed a Complaint in Intervention.

The Village denies that it has discriminated against the charging parties or other similarly situated

employees in violation of Title VII. Nevertheless, the parties, desiring that this action be settled by an appropriate Settlement Agreement ("Agreement") 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 Agreement only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Agreement as final and binding among themselves as to the issues raised in the Complaints filed in this case.

This Agreement, being entered with the consent of the parties, shall in no way constitute an adjudication or finding of any wrongdoing or violation of any applicable federal or state law or regulation, nor be construed as an admission by Defendant.

In resolution of this action, the parties hereby AGREE and the Court expressly APPROVES, ENTERS and ORDERS the following:

SPECIFIC RELIEF

1. Within ten (10) days of the date of entry of this Agreement, the Village will pay Esther V. Herrera a monetary award of \$1,900.
2. Within ten (10) days of the date of entry of this Agreement, the Village will pay Marcella Martinez a monetary award of \$900.
3. Within ten (10) days of the date of entry of this Agreement, the Village will pay Lorraine Sanchez a monetary award of \$3,900.
4. The Village will pay Alan Malott, Esq., counsel for Plaintiff-Intervenors Esther V. Herrera and Marcella Martinez, attorney's fees of \$6,000. The Village will pay this amount in four equal installments, the first one within ten (10) days of the date of entry of this Agreement, and the three remaining payments on a monthly basis thereafter.
5. The Village will pay John L. Hollis, Esq., counsel for Plaintiff-Intervenor Lorraine Sanchez, attorney's fees of \$4,000. The Village will pay this amount in four equal installments, the first one within ten (10) days of the date of entry of this Agreement, and the three remaining payments on a monthly basis thereafter.
6. Within ten (10) days of the date of entry of this Agreement, the Village will pay \$2,438.12 in costs, split evenly among the three Plaintiff-Intervenors, to be paid to Alan Malott, Esq., in trust, for disbursement of the monies.
7. The Village shall ensure that if an inquiry is made by prospective employers or third parties concerning Ms. Herrera, Ms. Martinez or Ms. Sanchez's employment with Defendant, or upon request of Ms. Herrera, Ms. Martinez or Ms. Sanchez, the Village will provide an employment letter that provides the Plaintiff-Intervenor's length of employment and states that the Plaintiff-Intervenor would be eligible for rehire with the Village.

GENERAL RELIEF

8. The Village will propose a budget change for approval by the New Mexico Department of Finance and Administration to increase the wage rate for new hires to \$7.50 per hour for the following positions: deputy or assistant Village Clerk; water clerk; motor vehicle clerk; general clerk; librarian; and part-time

custodian/janitor. The Village also will propose a budget change for approval by the New Mexico Department of Finance and Administration to adjust the new hire rate upward from \$7.50 per hour for all persons currently holding the above positions to reflect general cost of living increases, if any, given by the Village between June 1, 1998, and the date of execution of this Agreement. It is noted that the Village currently considers general cost of living increases for employees on the first anniversary date of hire and each successive hire date anniversary. The Village will work in good faith with the New Mexico Department of Finance and Administration in order to receive its approval of the new hourly wage rates.

9. The Village agrees not to engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee in that employee's compensation, terms, conditions or privileges of employment because of such employee's sex.

10. The Village agrees not to retaliate against any person because that person has opposed allegedly discriminatory policies or practices; filed a complaint, either formal or informal, with the Defendant; filed a charge of discrimination with the EEOC or the New Mexico Human Rights Division; or participated in or cooperated with the initiation, investigation, litigation or administration of this case or this Agreement.

11. No later than sixty (60) days after the entry of this Agreement all members of the Village Council shall be provided with training on the law of equal employment opportunity, including discrimination based on gender and retaliation, lasting at least four (4) hours. The United States shall review and approve any proposed training program prior to its administration. The Village shall provide the United States with written confirmation that all members of the Council attended this training no later than ten (10) days after it is provided.

IMPLEMENTATION

12. The parties shall attempt to resolve informally any disputes that may occur under this Agreement. If the parties are unable to reach agreement after a matter has been brought to the attention of one of the parties by the other party, the issue may be submitted by either party to the Court for resolution.

13. The Village shall retain during the life of this Agreement records necessary to document the implementation of the Agreement. The Village shall make those records and all other documents relevant to its compliance with and implementation of this Agreement available for inspection and copying within thirty (30) days of any written request sent by the Department of Justice to the Village's attorney.

14. The Court shall retain jurisdiction of this action for six (6) months from the date of entry of this Agreement for the purpose of enforcing the Agreement as may be necessary. After six months, this matter shall be dismissed unless the United States moves, for good cause shown upon notice to the Defendant, for its continuation to carry out the purpose or provisions of this Agreement. In the event that the United States moves to extend this Agreement, this Agreement shall remain in effect until the motion is resolved.

For the Defendant:

WAYNE E. BINGHAM, ESQ.
Crider, Bingham & Hurst, P.C.

3908 Carlisle Boulevard, NE
Albuquerque, New Mexico 87107
505-881-4545

Dated: _____

For the Plaintiff United
States of America:

WILLIAM B. FENTON
DAWN HENRY
MARIA H. RIOS
U. S. Department of Justice
Civil Rights Division
Employment Litigation Section
P. O. Box 65968
Washington, D.C. 20035-5968
202-514-7013

Dated: _____

David C. Iglesias
United States Attorney
201 3rd Street, NW
Suite 900
Albuquerque, New Mexico 87102
505-346-7274

Dated: _____

For the Plaintiff-Intervenors

Esther V. Herrera and
Marcella Martinez:

ALAN MALOTT, ESQ.
Malott Law Offices
Post Office Box 8305
Albuquerque, New Mexico 87198

Dated: _____

For the Plaintiff-Intervenor
Lorraine Sanchez:

JOHN L. HOLLIS, ESQ.

6020 Constitution, NE, #4
Albuquerque, New Mexico 87110

Dated: _____

DONE and ORDERED this _____ day of _____, 2001.

Honorable Paul Kelly, Jr.
United States Circuit Judge
Sitting by Designation