

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

v

ERIE COUNTY, NEW YORK,

Defendant.

CONSENT DECREE

This action was brought by the United States against Erie County, New York, ("Erie") 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 of charges filed by four correctional officers employed at the Erie County Correctional Facility ("ECCF").

The correctional officers -- one man and three women --alleged that the ECCF improperly used gender as a basis for choosing correctional officers to escort inmates on trips away from the ECCF. For example, if a female prisoner was sent to the eye doctor, ECCF policy required her to be escorted by at least one female correctional officer. Similarly, all male inmates had to be escorted by at least one male correctional officer, regardless of whether or not the inmate was likely to need to undress during the trip.

In its complaint, the United States alleges that Erie, in the ECCF, violated Title VII by assigning only men to guard male inmates and only women to guard female inmates during trips outside the ECCF, when such gender-based assignments were not reasonably necessary as bona fide occupational qualifications.

The parties, desiring that this action be settled by 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. Subject to the Court's approval of this Consent Decree, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between themselves as to the issues raised in the United States' complaint filed in this case and the matters resolved in this Decree.

This 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 Erie or a finding of any wrongdoing or violation of any applicable federal or state law or regulation.

As used in this Decree, the term "date of entry of this Decree" is defined as the date on which the Court grants final approval to and enters this Consent Decree as a final order of the Court.

It is therefore, ORDERED, ADJUDGED AND DECREED:

A. GENERAL RELIEF

1. Erie shall implement and follow non-discriminatory employment policies and practices that treat female and male employees in the ECCF in the same way. In particular, when selecting officers to transport inmates off-site, Erie, in the ECCF, shall not choose officers on the basis of sex, unless otherwise allowed in paragraphs 2-4 of this Decree.

2. When selecting officers to transport inmates to any hospital, medical office or clinic within Erie County, Erie, in the ECCF, may choose corrections officers based on sex, if the number of inmates being transported who are likely to expose their genitals and, in the case of female inmates, their breasts, as part of or during the course of any medical examination, treatment or procedure, is greater than the number of corrections officers of the same sex assigned to the transportation detail.

However, Erie, in the ECCF, shall make as few sex-based decisions as necessary to handle the specific situation. In addition, Erie, in the ECCF, will not choose officers based on sex solely because an inmate may have to use a rest room while at a hospital, medical office or clinic in Erie County.

This paragraph shall not apply whenever an inmate is scheduled to see a doctor for a medical or dental problem involving his or her head (including eye, ear/nose, mouth and throat), arms and/or legs or is due to receive x-rays, dialysis or other similar medical treatments.

3. When an inmate is being transported off-site for a death bed visit, and all accompanying officers would otherwise be of the opposite sex of the inmate, Erie may choose one officer on the basis of sex.

4. When an inmate is being transported off-site to a location outside of Erie County, and it is likely, due to the estimated length of the trip, that the inmate will need to visit a public rest room, Erie may choose one officer on the basis of sex.

5. Within thirty (30) days after the date of entry of this Decree, Erie shall post notices of the settlement of this lawsuit in the form attached hereto as Appendix A, as well as copies of this Consent Decree. Such notices and consent decrees shall be posted in prominent and conspicuous locations used for posting notices in the ECCF. Such notices and consent decrees shall remain posted for a period of 90 days from the date of entry of this Decree. Also, an appropriate official from the ECCF shall sign a notarized affidavit affirming that the proper notices were posted, stating where they were posted and for what period of

time they were posted. That affidavit shall be provided to the Department of Justice within 14 days after the 90-day posting period has ended.

6. Erie, by and through its officials, agents, employees and all persons in active concert or participation with Erie in the performance of employment or personnel functions shall not retaliate against or in any respect adversely affect any person because that person formally or informally has complained of or otherwise opposed an allegedly discriminatory employment policy or practice, filed a charge with the EEOC or any state or local fair employment practices agency, or participated or cooperated in any proceeding under Title VII, including, but not limited to, the initiation, investigation, litigation, or administration of this case or this Consent Decree.

B. RECORD-KEEPING AND REPORTING

1. Erie shall retain during the life of this Decree records necessary to document the implementation of this Decree. Erie shall furnish records and documents relevant to its compliance with this Decree to counsel for the Department of Justice within thirty (30) days of any written request from counsel for the

Department of Justice to Erie's attorney.

2. Erie shall retain during the life of this Decree all records that come into its possession relating to complaints or charges of employment discrimination in the ECCF based on gender, filed against Erie (or the ECCF) or its employees, agents or representatives: (a) through Erie's internal grievance procedure; (b) with the United States Equal Employment Opportunity Commission; or (c) through or with any other federal, state or local agency authorized to receive such complaints. Erie 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 Erie without further order of this Court.

C. DISPUTE RESOLUTION

The parties shall attempt to resolve informally any dispute that may occur under this Consent Decree and 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.

D. JURISDICTION OF THE COURT

1. During the life of this Decree, the Court shall retain jurisdiction over this Decree 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 Decree shall terminate five (5) years from the date of its entry. Prior to its termination any party may move, for good cause shown, to extend the duration of the Decree.

3. Each party shall bear its own costs and expenses, including attorney's fees.

SO ORDERED this day of , 1999.

United States District Judge

Agreed and Consented To:

On behalf of Plaintiff
United States of America:

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ALLEN W. LEVY
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Employment Litigation Section
P.O. Box 65968
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On behalf of Defendants

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APPENDIX A

NOTICE OF SETTLEMENT OF EMPLOYMENT DISCRIMINATION LAWSUIT

On , 1999, the United States filed a complaint in the United States District Court for the Western of New York against Erie County ("Erie") under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.* ("Title VII"). The complaint alleged that Erie had discriminated against employees in the Erie County Correctional Facility ("ECCF") on the basis of their gender. Specifically, the United States alleged that Erie, in the ECCF, improperly used gender as a basis for choosing correctional officers to escort inmates on trips away from the ECCF. For example, if a female prisoner was sent to the eye doctor, ECCF policy required her to be escorted by at least one female correctional officer. Similarly, all male inmates had to be escorted by at least one male correctional officer, regardless of the reason for the trip or the likelihood that the inmate would have to undress during the trip. Erie admits that this policy was gender-based, but denies that it was in violation of Title VII.

This notice is being posted to announce that the United States and Erie have resolved this lawsuit by entering into a settlement agreement, called a "Consent Decree," which was approved by the Court on .

Under the terms of the Consent Decree, Erie has agreed to:

1. implement and use nondiscriminatory employment policies and practices designed reasonably to prevent discrimination against employees based on their gender in the ECCF. The new policies and practices will allow Erie, in the ECCF, to select correctional officers based on gender only in certain limited circumstances.
2. retain all records that come into its possession relating to complaints or charges of employment discrimination based on gender in the ECCF filed against Erie in the ECCF or its employees, agents or representatives: (a) through Erie's internal grievance procedure; (b) with the United States Equal Employment Opportunity Commission; or (c) through or with any other federal, state or local agency authorized to receive such complaints.

If any ECCF employee in the believes that he or she has been discriminated against in violation of Title VII, the employee should contact the U.S. Equal Employment Opportunity Commission ("EEOC") about filing a charge of discrimination.

The EEOC's address is:
Equal Employment Opportunity Commission

Buffalo Local Office
6 Fountain Plaza, Suite 350

Buffalo, New York 14202
(716) 551-4441

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

Allen W. Levy
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, D.C. 20035-5968
(202) 514-2188