

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,
vs. C. A. NO. 3:98-CV-84

(BROADWATER)

THE SHERIFF OF HAMPSHIRE COUNTY;
AND THE HAMPSHIRE COUNTY COMMISSION
Defendants.

AGREEMENT

This action comes before this Court upon the filing of a Complaint by the United States alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (hereinafter "Title VII"). In its Complaint, the United States alleges that the Sheriff of Hampshire County has discriminated against Ms. Ernestine Frieria, a charging party before the Equal Employment Opportunity Commission ("EEOC") (charge no. 172931148) by failing and refusing to hire her for a jailer position because of her sex. The Complaint names the Hampshire County Commission as a Fed R. Civ. P. 19(a) defendant. The Defendants deny all allegations of unlawful discrimination.

The parties, being desirous of appropriately settling this action, agree to the jurisdiction of this Court over them and the subject matter of this action, and hereby waive the entry of findings of fact and conclusions of law. The parties, desiring to avoid protracted and unnecessary litigation, also accept this Agreement as final and binding among themselves as to all the issues raised in the Complaint. This Agreement, being entered with the consent of the parties, shall not constitute an admission, adjudication or finding on the merits of this action.

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

I. DEFINITIONS

1. "Date of entry of this Agreement" shall mean the date that the Court gives final approval to this Agreement by signing and entering the Agreement as an Order of the Court.
2. "Agreement" shall mean this Agreement and all appendices and attachments thereto.
3. "Defendants" shall mean the Hampshire County Commission ("Commission") and the Sheriff of Hampshire County ("Sheriff"), and all officers, agents, employees, predecessors, successors and all persons in active concert or participation with the Sheriff or the Commission.

II. INDIVIDUAL RELIEF

1. The Defendants shall offer Ernestine Frieria the sum of \$35,000.00 within ten (10) days of the date of

entry of this Agreement. The Defendants' offer shall not be construed as an admission of liability.

2. The offer to Ms. Frieria shall be made in a certified letter, the contents of which shall be the same as in Appendix A. The offer letter shall inform Ms. Frieria of the provisions of this Agreement and advise Ms. Frieria that in order to accept the monetary offer, she must return an executed release to counsel for the Defendants within thirty (30) days of receipt of the offer letter. The contents of the release shall be the same as those contained in Appendix B. A copy of this Agreement shall be included with the offer letter.

3. The Defendants shall send a copy of the offer letter and the release to the United States, simultaneously with sending these documents to Ms. Frieria. If Ms. Frieria accepts the offer, the Defendants shall send a copy of her executed release to the United States, simultaneously with the Defendants' receipt of the document.

4. The Defendants shall pay the sum of \$35,000.00 to Ms. Frieria, within three weeks of receipt of her executed release. The Defendants shall notify the United States as soon as payment to Ms. Frieria has been made. The Defendants shall promptly forward a copy of the canceled check or other appropriate documentation indicating that payment has been received.

III. INJUNCTIVE RELIEF

A. General Prohibitions

1. The Sheriff shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating on the basis of sex against any employee, applicant or potential applicant for employment as a jailer with the Sheriff of Hampshire County.

2. The Sheriff shall not retaliate against or in any respect adversely affect any person because that person has opposed what that person reasonably believed to be discriminatory policies or practices by the Sheriff or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this action or this Agreement.

B. Selection Procedures

1. If the Sheriff determines that he needs to hire a jailer for the Hampshire County Jail, on other than a temporary basis of six weeks or less, the Sheriff shall only consider copies of all timely applications which he receives for that position before the cutoff date set by him for receipt of Applications prior to making his selection, and shall provide copies of all of those applications to the United States if one or more females have applied. Applications shall be provided to the following individual:

U.S. Mail

Claire L. Gregory
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, DC 20035-5968
Overnight or express delivery:
Claire L. Gregory
U.S. Department of Justice

Civil Rights Division
Employment Litigation Section
Room 4918
601 D. St., NW
Washington, DC 20004
ph: 202-307-5769
fax:202-514-1005

2. The Sheriff shall not hire any individual as a jailer, on other than a temporary basis of six weeks or less, for at least two (2) days following receipt of all of the applications by the United States. If any of the applicants is female, the United States shall have the right, during that two (2) day time period, to contact the Sheriff and present its views regarding the relative qualifications of the candidates.
3. Nothing contained herein shall be construed so as to limit or restrict the right of the Sheriff to hire any individual he chooses for the position of jailer as soon as he wishes following the two (2) day review period, nor shall anything be construed so as to obligate the Sheriff to hire unnecessary personnel or persons who are not qualified by valid qualification standards for the position of jailer.
4. Nothing contained herein shall be construed to limit or restrict the right of the United States to contend within the life of this Agreement that any jailer was hired in violation of this Agreement.
5. Nothing contained herein precludes or prevents the Sheriff, at his discretion and without delays, from temporarily filling a vacancy by reassignments or the hiring of a temporary employee or contractor as long as the action is not a subterfuge for evading the Sheriff's obligations under this Agreement and so long as the period of hire is no longer than six weeks.

IV. COMPLIANCE

1. If a dispute arises concerning compliance by the Defendants or either of them with any provision of this Agreement or if the parties deem it advisable for any other reason, the parties 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, any party may move the court for resolution, provided that written notice is first provided to the other parties.
2. With respect to the obligations of the United States to monitor and to enforce compliance with this Agreement, the United States may, without further order of the Court, conduct all necessary investigations, including interviews of the Sheriff and his employees. The Defendants agree to cooperate in any investigation by the United States, and the United States agrees to inform the Defendants of the results of that investigation on an ongoing basis. The United States agrees to conduct any investigation in good faith so as to not unreasonably or unnecessarily impose upon the time and resources of the Sheriff's Department or interfere with the legitimate operations of the Sheriff's Department.
3. Failure by the Department of Justice to enforce this entire Agreement or any provision thereof shall not be construed as a waiver of its right to do so.

V. PARTIES OBLIGATION TO DEFEND AGREEMENT

1. In the event this Agreement is challenged, the Defendants and the United States shall fully defend its lawfulness. If any such collateral challenge arises in State court, the Defendants shall promptly seek to remove such action to this Court.

VI. ATTORNEYS' FEES AND RELATED COSTS

1. The parties shall bear their own costs and expenses, including attorneys' fees, in this action.

VII. JURISDICTION OF THE COURT

1. This Court shall retain jurisdiction of the matters covered by this Agreement, for such action as may be necessary or appropriate to effectuate the purposes of the Agreement, until such time as this Court is notified by the parties that the Sheriff has ceased to hire jailers or two years from the date this Order is entered, whichever is sooner.

2. The United States agrees not to withhold its consent to notify the Court that the Sheriff has ceased to hire jailers upon being so notified by the Sheriff.

3. Upon notification by the Parties that the Sheriff has ceased to hire jailers or two years from the date this Order is entered, whichever is sooner, the Court will enter a final Order dismissing the case with prejudice, each Party to bear his, her or its own costs and expenses, and ending the Court's jurisdiction over this matter except as may be necessary to enter relief from judgment as set out in Rule 60 of the Federal Rules of Civil Procedure.

DONE AND ORDERED this ___ day of September, 1999.

W. Craig Broadwater
United States District Judge
Northern District of West Virginia

Agreed and Consented To:
On behalf of the Plaintiff
United States of America
BILL LANN LEE
Acting Assistant Attorney General
Responsible local attorney:
Helen Altmeyer, AUSA
Office of the United States Attorney
Northern District of West Virginia
Horne Building, Suite 200
1100 Main Street, Box 591
Wheeling, WV 26003
(304) 234-0100 (phone)
(304) 234-0112 (fax)

William B. Fenton
Claire L. Gregory (pro hac vice)
Michael W. Johnson (pro hac vice)
Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968

Washington, DC 20035-5968
(202) 307-5769 (phone)
(202) 514-1105 (fax)

On behalf of the Defendants
The Sheriff of Hampshire County and
The Hampshire County Commission

Glenn P. Hare, Esquire
Steptoe & Johnson
126 East Burke Street
P.O. Box 2629
Martinsburg, WV 25401
(304) 262-3534 (phone)
(304) 262-3541 (fax)

September __, 1999

(304) 263-6991

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Ms. Ernestine Frieria
167 Grafton Street
Romney, WV 26757

Re: *Frieria v. Sheriff of Hampshire County, et al.*

EEOC Charge No. 172931148

Dear Ms. Frieria:

The United States and the Sheriff of Hampshire County and the Hampshire County Commission ("Defendants") have entered into an agreement settling the case of *United States v. Sheriff of Hampshire County, et al.*, Civil Action No. 3:98 CV 84 (N.D.W.Va.). A copy of the agreement, which was approved and entered by the Court on , is enclosed.

Pursuant to the agreement, the Defendants are offering you a monetary amount of thirty-five thousand dollars (\$35,000.00), in full resolution of this matter. You should be aware that all or a portion of this amount may be subject to federal, state or local income tax, for which you would be responsible.

In order to accept the Defendants' offer, you must execute the enclosed release and return it to the Defendants within thirty (30) days of your receipt of this letter. You may return the release by mail or in person to:

Glenn P. Hare, Esquire
Steptoe & Johnson

126 East Burke Street
P.O. Box 2629
Martinsburg, WV 25401

The Defendants will pay the sum of thirty-five thousand dollars (\$35,000.00) to you, as soon as possible and within the three (3) weeks of receipt of your executed release.

If you accept the relief being offered you by the Defendants pursuant to the agreement, and signify your acceptance by executing the enclosed release, you will thereby agree not to intervene in the above-referenced suit filed by the United States on EEOC charge no. 172931148 or yourself to file suit on that charge.

If you decline the relief offered by the Defendants, they will nevertheless have satisfied their obligation to the United States pursuant to the agreement and the United States will not seek additional relief on your behalf.

If you have any questions concerning the agreement or the Defendants' offer to you, you may contact the following attorney at the U.S. Department of Justice:

Claire L. Gregory
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, DC 20035
(202) 307-5769

Sincerely yours,

STEPTOE & JOHNSON

By: Glenn P. Hare

GPH: alg

Enclosures

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RELEASE OF ALL CLAIMS

For and in consideration of the acceptance of the \$35,000 offered to me by the Sheriff of Hampshire County and the Hampshire County Commission (Defendants), pursuant to the provisions of the agreement entered by the Honorable W. Craig Broadwater, United States District Judge, on . In *United States v. Sheriff of Hampshire County, et al.*, Civil Action No. 3:98 CV 84 (N.D.W.Va.): I, Ernestine Frieria, release and discharge the Sheriff of Hampshire County and the Hampshire County Commission, and all current, former and future agents, employees, officials, designees, and predecessors and successors in interest of the Sheriff of Hampshire County and the Hampshire County Commission, and their agents, sureties and insurers from all legal and equitable claims, arising out of the Complaint filed in that case and EEOC charge no. 172931148, which accrued prior to the date of this release, including

but not limited to compensatory, consequential and punitive damages, costs and expenses, attorney's fees, interests, injunctive relief and job placement. I am solely responsible for all taxes due. I further agree that I will not institute a civil action or seek to intervene against the Defendants in any pending civil action alleging employment discrimination on the basis of EEOC charge no. 172931148 or any of the facts alleged therein.

I understand that the payment to be made to me does not constitute an admission by the Defendants of the validity of any claim raised by me or on my behalf.

This release constitutes the entire agreement between the Defendants and myself, without exception or exclusion.

I acknowledge that a copy of the agreement in this action has been made available to me and that I have reviewed that document.

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 , 1999.

Ernestine Frieria
Social Security No.

Subscribed and sworn to before me this day of , 1999.

Notary Public
My commission expires: _____