

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF WILLIS, TEXAS,

Defendant.

CIVIL ACTION NO.H-98-0280

CONSENT DECREE IN SETTLEMENT OF CLAIMS

This action was brought by the United States against the City of Willis 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 EEOC Charge Nos. 330-93-3446 and 330-93-3639, filed by Jimmy D. Fletcher, and EEOC Charge No. 330-93-3640, filed by Daniel S. Byerly, against the City of Willis, Texas ("the City").

In its complaint, the United States alleges that the City has engaged in unlawful employment practices in violation of Title VII in its Police Department by subjecting Jimmy D. Fletcher to racial harassment during his employment in the Defendant's Police Department, which adversely affected the terms, conditions and privileges of his employment and by failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Jimmy D. Fletcher. The complaint also alleges that the City has engaged in unlawful employment practices in violation of Title VII by retaliating against Daniel S. Byerly by constructively discharging him because he assisted Jimmy D. Fletcher with his complaints of racial harassment and retaliation and by failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Daniel S. Byerly.

The City specifically denies all of the allegations lodged by the United States and further denies that it engages or has engaged in any unlawful discrimination in employment on the basis of race involving Jimmy D. Fletcher or any other employee and denies that it has retaliated against Daniel S. Byerly or any other employee in violation of Title VII of the Civil Rights Act of 1964. The City asserts that it has been and remains committed to a policy of equal employment opportunity and voluntarily enters into this Consent Decree.

The parties have resolved amicably all issues raised in the complaint of the United States. Accordingly, the parties, desiring to avoid protracted, expensive and unnecessary litigation, and sharing the goal of ensuring equal employment opportunity within the work force of the City, agree to the jurisdiction of this Court over the parties and the subject matter of this action. The parties hereby waive entry of findings of fact and conclusions of law.

This Consent Decree in Settlement of Claims resolves all issues raised in the complaint of the United States and the parties accept this Consent Decree in Settlement of Claims as final and binding among themselves as to the issues resolved herein. This Consent Decree in Settlement of Claims, being entered with the consent of City, shall not constitute an admission, an adjudication or a finding on the merits of the case. It is therefore ORDERED, ADJUDGED AND DECREED as follows:

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 person'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. Within seven days after entry of the Consent Decree in Settlement of Claims, the City shall expunge from Jimmy D. Fletcher's personnel records, or any record which the City and any department of the City maintains by any other name, any document which refers to or reveals that Jimmy D. Fletcher complained about racial harassment or retaliation to any official of the City or that Jimmy D. Fletcher filed charges of discrimination with the EEOC. This provision does not apply to the minutes of public or executive sessions of the Willis City Council that may refer to Jimmy D. Fletcher's charges of racial discrimination and retaliation.
4. Within seven days after entry of the Consent Decree in Settlement of Claims, the City shall expunge from Daniel S. Byerly's personnel records, or any record which the City and any department of the City maintains by any other name, any document which refers to or reveals that Daniel S. Byerly complained about retaliation to any employee or official of the City or that Daniel S. Byerly filed a charge of discrimination with the EEOC. This provision does not apply to the minutes of public or executive sessions of the Willis City Council that may refer to Daniel S. Byerly's charge of retaliation.
5. The City has agreed to amend its current grievance procedure to clearly identify the employee(s) or official(s) of the City to whom a complaint alleging a violation of Title VII should be lodged if the complaining employee chooses to seek an internal remedy. A copy of the revised policy has been provided to the United States and agreed upon by the parties.

INDIVIDUAL RELIEF

Without admitting the contentions of the United States as set forth in its complaint, in settlement of the claims of the United States for relief on behalf of Jimmy D. Fletcher and Daniel S. Byerly, and in settlement of Jimmy D. Fletcher's and Daniel S. Byerly's individual claims if each of them accepts the relief provided him by this Consent Decree, the City agrees to do the following:

6. The City shall offer Jimmy D. Fletcher 320 hours of sick leave and 320 hours of compensatory time, in addition to any sick leave and any compensatory time that he may have accrued prior to entry of this Decree. The City shall also offer Jimmy D. Fletcher \$25,000 as compensatory damages for the pain and suffering that Jimmy D. Fletcher allegedly suffered as a consequence of the alleged racial harassment. The parties agree that this sum represents a reasonable settlement of the claim of pain and suffering resulting from the alleged discrimination made by the United States on behalf of Jimmy D. Fletcher and is not tied to a claim for back pay. The monetary award is mutually understood to be payment on account of personal injury. The City agrees to issue Internal Revenue Service ("IRS") Form 1099 or an equivalent form to Jimmy D. Fletcher, who has the sole responsibility for paying any federal, state or local taxes, including federal income tax, that may be due on the aforementioned monetary award.
7. The United States agrees to notify Jimmy D. Fletcher of the terms of this Consent Decree in Settlement of Claims within 14 days of its entry by mailing to him, by Federal Express mail, a copy of

the letter in the form set forth in Appendix A and enclosing a copy of this Decree and a copy of the Release Form attached as Appendix B. The letter identified as Appendix A will advise Jimmy D. Fletcher that to accept the relief offered to him or any part of it, he must return the appropriate executed Appendix B Release form to the United States within *45 days* of his receipt of the appropriate Appendix A letter unless he shows good cause for failing to do so.

8. The United States shall provide the City with the original of Jimmy D. Fletcher's executed Appendix B Release form within 10 days after receipt of it.

9. Within 14 days from the date of the receipt of Jimmy D. Fletcher's executed Appendix B Release form, the City shall mail to the United States a certified check made payable to Jimmy D. Fletcher in the amount of the monetary award of \$25,000. Within 14 days from the date of the receipt of Jimmy D. Fletcher's executed Appendix B Release form, the City shall also direct the appropriate City official to restore 320 hours of sick leave and 320 hours of compensatory time to Jimmy D. Fletcher's leave balance. These hours shall be in addition to any sick leave and any compensatory time that Jimmy D. Fletcher may have accrued as of the date of the entry of this Decree. A copy of the correspondence directing the appropriate City official to provide Jimmy D. Fletcher with the aforementioned hours shall be sent to the United States.

10. The City shall offer Daniel S. Byerly the total amount of \$35,000.00 in settlement of his individual claim for damages as a consequence of the alleged retaliation. The parties agree that of the total amount, \$25,000.00 represents a reasonable settlement of the claim for alleged back pay and that \$10,000.00 of the total amount represents a reasonable settlement of the claim for alleged pain and suffering resulting from the alleged retaliation made by the United States on behalf of Daniel S. Byerly. The amount of \$25,000.00 of Mr. Byerly's monetary award shall be subject to federal or state income tax and any required FICA withholding.

11. The parties further agree that the monetary award of \$10,000.00 is not tied to a claim for back pay and is mutually understood to be payment on account of personal injury. The City agrees to issue Internal Revenue Service ("IRS") Form 1099 or an equivalent form to Daniel S. Byerly, who has the sole responsibility for paying any federal, state or local taxes, including federal income tax, that may be due on the aforementioned \$10,000.00 monetary award.

12. The United States agrees to notify Daniel S. Byerly of the terms of this Consent Decree in Settlement of Claims within 14 days of its entry by mailing to him, by Federal Express mail, a copy of the letter in the form set forth in Appendix C and enclosing a copy of this Decree and a copy of the Release Form attached as Appendix D. The letter identified as Appendix C will advise Daniel S. Byerly that to accept the relief offered to him or any part of it, he must return the appropriate executed Appendix D Release form to the United States within 45 days of his receipt of the appropriate Appendix C letter unless he shows good cause for failing to do so.

13. The United States shall provide the City with the original of Daniel S. Byerly's executed Appendix D Release form within 10 days after receipt of it.

14. Within 14 days from the date of the receipt of Daniel S. Byerly's executed Appendix D Release form, the City shall mail to the United States a certified check made payable to Daniel S. Byerly in the amount of the monetary award of \$35,000.00, minus any required deductions as described in paragraph 10 above, and including \$10,000.00 in settlement of the claim for pain and suffering resulting from the alleged retaliation made by the United States as described in paragraphs 10 and 11 above.

DISPUTES

15. Insofar as any of the provisions of this Consent Decree in Settlement of Claims or any actions taken pursuant to such provisions may be inconsistent with any state law or regulation, the provisions of this Consent Decree in Settlement of Claims shall prevail in accordance with the supremacy of federal law under the U. S. Constitution.

16. The parties shall attempt to resolve informally any disputes that may occur under this Consent Decree in Settlement of Claims. If the parties are unable to reach agreement within 30 days after a matter has been brought to the attention of one of the parties by another party, the issue may be submitted by either party to the Court for resolution.

DELIVERY

17. All documents required to be delivered under this Decree to the United States shall be sent to the following address: Barbara J. Meacham, Senior Trial Attorney, Employment Litigation Section, Civil Rights Division, U. S. Department of Justice, 601 D Street NW, Room 4500, Washington, D. C. 20004.

18. All documents required to be delivered under this Decree to the City of Willis shall be sent to the following address: Barbara L. Johnson, Wickliff & Hall, P.C., 1000 Louisiana, Suite 5400, Houston, Texas 77002-5013.

RETENTION OF JURISDICTION

19. The Court shall retain jurisdiction of this Decree for one year from the date of entry of this Consent Decree in Settlement of Claims.

ENTERED this day of 1999.

Melinda Harmon
United States District Judge

AGREED AND CONSENTED TO:

For the United States,
Plaintiff
Bill Lann Lee
Acting Assistant Attorney
General
BY: Barbara J. Meacham,
Attorney in Charge,
Ohio Bar Number 0027844
Michael Zubrensky
United States Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street NW, Room 4500
Washington, D.C. 20004
(202) 616-9614

For the City of Willis,
Defendant
Wickliff & Hall
BY: Barbara L. Johnson
Attorney in Charge
Texas Bar Number 10682820
First Interstate Bank Plaza
1000 Louisiana, Suite 5400
Houston, Texas 77002-5013
(713) 750-3100

APPENDIX A

(NOTICE LETTER)

[Date]

[Jimmy D. Fletcher's address]
RE: United States v. City of Willis, Texas
Civil Action No. H-98-0280 (S.D. Tex.)

Mr. Fletcher:

A Consent Decree in Settlement of Claims has been entered settling the complaint of employment discrimination filed by the United States against the City of Willis, Texas ("the City").

Under the terms of the Consent Decree in Settlement of Claims entered on [date], in the case of the United States v. City of Willis, Texas, Civil Action No. H-98-0280 (S.D. Tex.), the City is offering a monetary payment, expungement of the City's records of or reference(s) to your charges of racial harassment and retaliation, and restoration of 320 hours of sick leave and 320 hours of compensatory time in addition to any hours that you may have accrued since the entry of the Decree, as settlement for any claims of race discrimination and retaliation in employment that you may have against the City of Willis.

As a monetary payment, you are being offered a total of \$25,000. The City 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, due on the award.

The monetary payment, expungement of your records, and restoration of sick leave and compensatory time as described above are being offered to you on the following condition: if you accept these offers, or any of them, the City will require you to release it from all race discrimination and retaliation claims arising out of this case and EEOC Charge Nos. 330-93-3446 and 330-93-3639.

You may obtain the relief offered you by signing the enclosed Release Form before a notary public and returning the original of the executed form to the undersigned at the following address: 601 D Street NW, Room 4500, Washington, D.C. 20004. A self-addressed envelope is enclosed.

If you accept the monetary payment, the City of Willis will send me a check made payable to you in the amount of \$25,000 within 14 days of its receipt of your Release. I will then send the check to you.

If you fail to submit the Release Form, as directed in this letter, within 45 days from your receipt of this letter, you will forfeit your right to any relief under the Decree, unless you can show good cause for your failure to do so within a reasonable time thereafter.

A copy of the Consent Decree in Settlement of Claims is enclosed. If you have any questions concerning this settlement, you may call me at (202) 616-9614.

Yours truly,
Katherine A. Baldwin, Chief
Employment Litigation Section
Civil Rights Division

By:
Barbara J. Meacham
Senior Trial Attorney

Enclosures

APPENDIX B

RELEASE

STATE OF TEXAS
COUNTY _____

In consideration for the acceptance of any of the relief being offered to me, *i.e.*, a monetary amount of \$25,000, expungement of the City of Willis' record(s) of any reference(s) to my charges of racial harassment and retaliation, restoration of 320 hours of sick leave, and restoration of 320 hours of compensatory time under the provisions of the Consent Decree in Settlement of Claims entered by the Honorable Melinda Harmon, United States District Judge, on _____ in United States v. City of Willis, Texas, Civil Action No. H-98-0280 (S.D. Tex.), I, Jimmy D. Fletcher, release and discharge the defendant in this case, the City of Willis, and its current, former and future officials, employees and agents from all legal and equitable claims arising out of the complaint filed in this action and EEOC Charge Nos. 330-93-3446 and 330-93-3639.

I understand that the City will issue me an IRS Form 1099 or an equivalent form for the monetary amount of \$25,000, and that it is my responsibility to pay any taxes, including federal income tax, due on the monetary amount paid to me.

I understand that the payment to be made to me and the other relief to be given me do not constitute an admission by any of the parties released of the validity of any claim raised by me, or on my behalf.

I acknowledge that a copy of the Consent Decree in Settlement of Claims in this action has been made available to me.

I have read this release and understand the terms of this release and I freely agree and sign this release.

Signature: _____ Social Security No.: - - Jimmy D. Fletcher

Subscribed and sworn to before me this day of

1999.

Notary Public
My Commission expires:

APPENDIX C
(NOTICE LETTER)

[Date]

[Daniel S. Byerly's address]

RE: United States v. City of Willis, Texas
Civil Action No. H-98-0280 (S.D. Tex.)

Dear Mr. Byerly:

A Consent Decree in Settlement of Claims has been entered settling the complaint of employment discrimination filed by the United States against the City of Willis, Texas ("the City").

Under the terms of the Consent Decree in Settlement of Claims entered on [date], in the case of the United States v. City of Willis, Texas, Civil Action No. H-98-0280 (S.D. Tex.), the City is offering a monetary payment and expungement of the City's records of or reference(s) to your charge of retaliation as settlement for any claims of retaliation in employment that you may have against the City of Willis.

As a monetary payment, you are being offered a total of \$35,000.00, of which \$10,000.00 represents a settlement of the claim for pain and suffering resulting from the alleged retaliation. The City 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 and state income tax, due on \$10,000.00 of the monetary award. The City will deduct the appropriate amount of federal and state income tax, FICA withholding from \$25,000.00 of the monetary award.

The monetary payment and expungement of your records as described above are being offered to you on the following condition: if you accept these offers, or any of them, the City will require you to release it from all retaliation claims arising out of this case and EEOC Charge No. 330-93-3640.

You may obtain the relief offered you by signing the enclosed Release Form before a notary public and returning the original of the executed form to the undersigned at the following address: 601 D Street NW, Room 4500, Washington, D.C. 20004. A self-addressed envelope is enclosed.

If you accept the monetary payment, the City of Willis will send me a check made payable to you in the amount of \$35,000.00 minus any required deductions as described above in this letter, and including \$10,000.00, within 14 days of its receipt of your Release. I will then send the check to you.

If you fail to submit the Release Form, as directed in this letter, within 45 days from your receipt of this letter, you will forfeit your right to any relief under the Decree, unless you can show good cause for your failure to do so within a reasonable time thereafter.

A copy of the Consent Decree in Settlement of Claims is enclosed. If you have any questions concerning

this settlement, you may call me at (202) 616-9614.

Yours truly,

Katherine A. Baldwin, Chief
Employment Litigation Section
Civil Rights Division

By:

Barbara J. Meacham
Senior Trial Attorney

Enclosures

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APPENDIX D

RELEASE

STATE OF TEXAS

COUNTY _____

In consideration for the acceptance of any of the relief being offered to me, i.e., a monetary amount of \$35,000.00, which includes \$10,000.00 for my claim for pain and suffering, and expungement of the City of Willis' record(s) of any reference(s) to my charge of retaliation under the provisions of the Consent Decree in Settlement of Claims entered by the Honorable Melinda Harmon, United States District Judge, on _____ in United States v. City of Willis, Texas, Civil Action No. H-98-0280 (S.D. Tex.), I, Daniel S. Byerly, release and discharge the defendant in this case, the City of Willis, and its current, former and future officials, employees and agents from all legal and equitable claims arising out of the complaint filed in this action and Charge No. 330-93-3640.

I understand that \$25,000 of the total monetary award shall be subject to taxes, including federal income tax, and any required FICA withholding. I understand that the City will issue me an IRS Form 1099 or an equivalent form for the monetary amount of \$10,000.00 for my claim for pain and suffering, and that it is my responsibility to pay any taxes, including federal income tax, due on \$10,000.00 of the total monetary amount paid to me.

I understand that the payment to be made to me and the other relief to be given me do not constitute an admission by any of the parties released of the validity of any claim raised by me, or on my behalf.

I acknowledge that a copy of the Consent Decree in Settlement of Claims in this action has been made available to me.

I have read this release and understand the terms of this release and I freely agree and sign this release.

Signature: _____ Social Security No.: - - Daniel S. Byerly

Subscribed and sworn to before me this day of

1999.

Notary Public
My Commission expires: