

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE

CIVIL ACTION NO.

96-447-MMS

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF WILMINGTON,

DELAWARE,

Defendant.

CONSENT DECREE

This action was brought by the United States against the City of Wilmington, Delaware (hereinafter referred to as "defendant" or "City") 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 a charge filed by Mr. Faheem A. Akil, an officer in the City's Police Department.

In its complaint, the United States alleges, *inter alia*, that the defendant has violated Title VII by (1) failing or refusing reasonably to accommodate Mr. Akil's religious observance, practice and belief of wearing a beard; (2) suspending Mr. Akil for 40 hours without pay because of Mr. Akil's religious observance, practice and belief of wearing a beard, beginning on or about May 23, 1992; (3) further suspending Mr. Akil for ten (10) days without pay because of Mr. Akil's religious observance, practice and belief of wearing a beard, beginning on or about September 5, 1992; and (4) failing or refusing to take appropriate action to remedy the effects of the discrimination against Mr. Akil.

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 the defendant 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 as follows:

A. GENERAL RELIEF

1. Defendant by and through its officials, agents, employees and all persons in active concert or participation with the defendant 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 or potential employee with the defendant's Police Department because of that individual's good faith religious observances, practices and/or beliefs, including the observance, practice and/or belief of wearing a beard.
2. Defendant by and through its officials, agents, employees and all persons in active concert or participation with the defendant shall not retaliate against or in any respect adversely affect Mr. Akil or any other person because that person has opposed allegedly discriminatory policies or practices, has filed a charge with the Equal Employment Opportunity Commission, or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Decree.
3. Defendant shall implement and use non-discriminatory employment policies designed reasonably to accommodate the good faith religious observances, practices and/or beliefs of employees in the defendant's Police Department.
4. Defendant shall provide training with respect to Title VII's prohibition against employment discrimination based on religion to its Police Department supervisory personnel who are involved in the hiring and selection procedure, evaluation of job performance and discipline of Police Department employees. A description of the training shall be submitted to counsel for the United States within six months from the date of entry of this Decree.
5. Within thirty (30) days after the date of entry of this Decree, the City shall post notices of the settlement of this lawsuit in the form attached hereto as Appendix A. Such notices shall be posted in a prominent and conspicuous location used for posting notices at the Wilmington Police Department. Such notices shall remain posted for a period of 90 days from the date of execution of this Decree.

B. SPECIFIC RELIEF

The United States alleges that the City failed or refused reasonably to accommodate Faheem A. Akil's sincerely held religious observance, practice and belief of wearing a beard and instead suspended and disciplined Mr. Akil because of his sincerely held religious observance, practice and belief. Without admitting the allegations of the United States, and in settlement of the claim of the United States for relief on behalf of Mr. Akil, as well as in settlement of the claim of Mr. Akil if he accepts the relief provided him by this Decree, the City agrees to the following:

1. The City shall offer to pay Mr. Akil a monetary award in the amount of \$3,055.26, which includes \$2,112.14 in back pay for the 40 hours in or about May 1992 and the ten days in or about September 1992 when the City suspended Mr. Akil without pay and \$943.12 in accumulated interest on the back pay.
2. The City shall offer to pay into Mr. Akil's pension fund the amount of \$183.32 which includes \$126.73 in principal and \$56.59 in accumulated interest.

3. The City shall offer to pay Mr. Akil a monetary award in the amount of \$750.00 which shall be considered compensatory damages.
4. The City shall offer to expunge from its records and files all documents, records or information relating to proposed or actual disciplinary action taken against Mr. Akil concerning the two suspensions without pay imposed upon Mr. Akil in or about May and September 1992 and any other disciplinary action regarding Mr. Akil's religious observance, practice or belief of wearing a beard. In order to accomplish this objective, the City shall submit to the United States, within thirty (30) days from its receipt of the executed Release from Mr. Akil pursuant to Paragraph B.7. of this Consent Decree, a copy of the personnel file of Mr. Akil and copies of any and all other relevant files and documents pertaining to Mr. Akil. Upon identification by the United States of the appropriate documents, the City shall expunge such documents from its records and files.
5. It is the parties' acknowledgement and understanding that the beard worn by Mr. Akil as of February 18, 1997, would not be in violation of the anticipated grooming policy of the City's Police Department.
6. The monetary award of \$3,055.26 (\$2,112.14 in back pay and \$943.12 in accumulated interest) and \$750.00 in compensatory damages to be offered to Mr. Akil pursuant to Paragraphs B.1. and B.3. of this Decree may be subject to income tax. The City shall issue to Mr. Akil, if he accepts the monetary award, a form 1099 or other appropriate form that reflects these monetary awards.
7. The City shall notify Mr. Akil of the terms of this Consent Decree within seven (7) days of its date of entry by mailing to him, by certified mail, return receipt requested, a copy of the letter in the form set forth in Appendix B and enclosing a copy of this Decree and a copy of the Release in the form set forth in Appendix C. The letter identified as Appendix B will advise Mr. Akil that in order to accept the relief offered to him, he must return the Appendix C Release to the defendant within thirty (30) days of his receipt of the Appendix B letter, unless he can demonstrate good cause, to be determined by the United States, for his failure to do so within a reasonable time thereafter.
8. In order to accept the specific relief to be offered by the City under this Decree, Mr. Akil must execute a Release in the manner attached as Appendix C.
9. The City shall pay to Mr. Akil the monetary awards specified in Paragraphs B.1., B.2. and B.3. of this Decree within fifteen (15) days of its receipt of the executed Appendix C Release.

C. RECORD-KEEPING AND REPORTING

1. The City shall retain during the life of this Decree records necessary to document the implementation of this Decree. The City shall furnish records and documents relevant to its compliance with the implementation of this Decree to counsel for the Department of Justice within thirty (30) days of any written request to the defendant's attorney.
2. The City shall provide written notice to counsel for the United States of any disciplinary or other adverse employment action proposed or taken against Mr. Akil during the life of this Decree promptly after such action is proposed or taken. The United States shall have the right to inspect and copy all documents related to such action upon reasonable notice to the City without further order of this Court.
3. The City shall retain all records that come into its possession relating to complaints or charges of employment discrimination based on religion filed against the City's Police Department or its employees, agents or representatives: (a) through the Police Department'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. The City 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 the City without further order of this Court.

D. DISPUTE RESOLUTION

1. The parties shall attempt to resolve informally any dispute that may occur under this Consent Decree. 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, either party may move the Court for resolution, provided that written notice is first provided to the other party.

E. 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 one (1) year 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.

DONE AND ORDERED this _____ day of _____, 1997.

MURRAY M. SCHWARTZ

United States District Judge

Agreed and Consented To:

On behalf of Plaintiff
United States of America:

ISABELLE KATZ PINZLER
Acting Assistant
Attorney General

WILLIAM B. FENTON
ALLEN W. LEVY
Attorneys
U. S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968

Washington, D.C. 20035-5968
(202) 514-2188

GREGORY M. SLEET
United States Attorney

DAVID A. GREEN
Delaware Bar I.D. No. 3457
Chase Bank Centre
1201 Market Street, Suite 1100
P.O. Box 2046
Wilmington, Delaware 19899
(302) 573-6277

On behalf of Defendant
The City of Wilmington, Delaware:

JOHN W. MORGAN
Assistant City Solicitor
City of Wilmington
800 N. French Street
Wilmington, DE 19801
(302) 571-4190