

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF WADSWORTH, a municipal)	CIVIL ACTION NO.
corporation organized pursuant to)	C83-5160A
the laws of the State of Ohio;)	
CITY OF WADSWORTH POLICE)	
DEPARTMENT, a municipal agency;)	(Judge Krenzler)
and MICHAEL KING, Chief of Police,)	
City of Wadsworth Police)	
Department,)	
)	
Defendants.)	
)	

RESPONSE OF PLAINTIFF UNITED STATES TO MOTION
TO INTERVENE BY LENORA TAYLOR

On May 28, 1986, Lenora Taylor filed a Motion to Intervene as a third-party intervenor. On June 3, 1986, the United States filed a motion requesting a ten-day enlargement of time from the date of receipt of the motion to intervene; the intervention motion was received by the United States on June 4, 1986.

Taylor has moved this Court pursuant to Rule 24(a)(2) F.R. Civ. P., to intervene as a matter of right. Plaintiff United States opposes intervention under Rule 24(a); however, the United States has no objection to intervention on a limited basis under Rule 24(b), F.R. Civ. P., provided that the challenge asserted is restricted to events subsequent to the entry of the 1984 Consent Decree and provided that there is jurisdiction under Title VII to grant such intervention.

BACKGROUND

The first Consent Decree in this action was entered by this Court on March 16, 1984. 1/ In addition to the 1984 Consent Decree's stated purpose of ensuring equal employment opportunities for women in the Wadsworth Police Department (the "WPD"), the Decree also provided Petitioner Taylor with an offer of remedial relief, including a position as an entry-level patrol officer. Taylor accepted this relief, and signed a release attached to the Decree in which she released the Wadsworth defendants from any and all claims against them based upon discrimination with respect to job opportunities in the WPD occurring prior to the date of entry of the Decree. Taylor was subsequently terminated from her employment in the WPD before completing her probationary period.

1/ The procedural history of this action has been fully set forth in the Memorandum of Plaintiff United States in Response to Petitioner's Notice, served March 19, 1986.

Consistent with its monitoring responsibilities under the 1984 Consent Decree, the United States investigated Taylor's termination from the WPD and thereafter entered into extended settlement negotiations with the Wadsworth defendants; Petitioner Taylor, through her counsel, was kept informed of the details of these negotiations.

The negotiations between the United States and the Wadsworth defendants resulted in an agreement between the parties that is embodied in the Consent Decree tendered to this Court on March 12, 1986. This Decree resolves all issues between Plaintiff United States and the Wadsworth defendants. The Consent Decree contains relief that we believe is highly advantageous to Petitioner Taylor, including a monetary award of \$17,000.00, which would fully compensate her for any monetary loss in terms of back pay that she may have had, and provisions prohibiting the Wadsworth defendants from retaliating against her.

Petitioner Taylor has filed a Notice with this Court expressing dissatisfaction with the terms of the 1986 proposal Consent Decree, and she is now moving to intervene in this action. She has also filed a separate action against the

Wadsworth defendants under 42 U.S.C. §1981, alleging race discrimination.

ARGUMENT

Petitioner Taylor's motion for intervention as of right under Rule 24(a)(2), F.R. Civ. P., should be denied because the entry by the Court of the 1986 proposed Consent Decree will not impair or impede her ability to protect any interest that she may have relating to the transaction which is the subject of this action. The settlement of issues between the United States and the Wadsworth defendants has never impeded Taylor from seeking relief or protecting her interests through other avenues, 2/ and the present settlement can in no way impede her similarly from seeking relief or protecting her interests through other means if she chooses to pursue those means, rather than take relief under the settlement. Under the terms of the 1986 proposed Consent Decree, Taylor is entirely free either to accept the relief provided to her in that decree or to reject that relief and seek a remedy that she may deem more appropriate through other means, such as the lawsuit that she

2/ In this respect, we have been informed that Taylor earlier filed a discrimination charge with the Ohio Civil Rights Commission against the Wadsworth defendants following her termination from the WPD, but that she later withdrew that charge. See, attached Affidavit of Melissa P. Marshall.

herself has already filed. Taylor is under no coercion whatsoever to accept the relief that would be offered to her under the 1986 proposed Consent Decree; therefore, she cannot claim that entry of the Decree will somehow impair or impede her ability to protect her interests.

Permissive intervention under Rule 24(b)(2) may, however, be appropriate in that Taylor, in alleging in her proposed Complaint in Intervention both Title VII (42 U.S.C. §2000e, et seq.) and 42 U.S.C. §1983 causes of action, appears to have raised questions of law or fact, some of which may be in common with matters covered in the instant action. However, even if Taylor is granted permissive intervention in the present case, which was brought only under Title VII, the United States would point out that most of the relief sought by Taylor in her proposed Complaint in Intervention is unavailable under Title VII.

In her Complaint, Taylor demands, in addition to back pay, compensatory damages, consequential damages, punitive damages, damages for pain and suffering, and damages for intentional infliction of emotional distress. The relief provisions of Title VII contained in Section 706(g), 42 U.S.C. §2000e-5(g), do not provide for the legal remedy of damages, whether in the

form of compensatory or punitive damages. Rather, Title VII provides for equitable remedies only, such as back pay. Shah v. Mt. Zion Hospital and Medical Center, 642 F.2d 268, 272 (9th Cir. 1981); EEOC v. Detroit Edison Co., 515 F.2d 501, 308-10 (6th Cir. 1975), vacated and remanded on other grounds, 431 U.S. 951 (1977) for reconsideration in light of U.S. v. Int'l. Brotherhood of Teamsters, 431 U.S. 324 (1977). Because Title VII provides for equitable remedies only, jury trials are not available in Title VII actions. Shah, supra; Detroit Edison, supra.

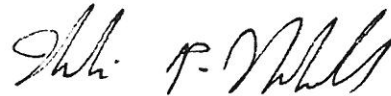
The United States would further note that although back pay is an available remedy under Title VII, it is a make whole award calculated, as was done here in arriving at the monetary amount that would be offered to Taylor under the 1986 proposed Consent Decree, by determining the salary an individual would have received but for the alleged discrimination, offset by any mitigating amounts. Rasimas v. Michigan Dept. of Mental Health, 714 F.2d 614, 626-28 (6th Cir.), cert. denied, 104 S.Ct. 2151 (1983). Although in her Complaint Taylor demands \$50,000.00 in back pay, our calculations indicate that her back pay may come to approximately \$13,300.00. See, attached Affidavit of Melissa P. Marshall.

The United States and the Wadsworth defendants have, after much effort, achieved an agreement, memorialized in the 1986 proposed Consent Decree, which would fully compensate Taylor for any back pay claim she may have. The 1986 proposed Consent Decree is not coercive: Taylor is entirely free either to accept its terms or not to accept them. Therefore, the Court should enter the 1986 proposed Consent Decree even if it grants Taylor permissive intervention. If Taylor is granted permissive intervention in this case, that intervention should appropriately be limited to matters concerning whether the defendants have complied with their obligations not to discriminate against Taylor after entry of and pursuant to the terms of the 1984 Consent Decree.

Further, since the United States has, in the 1986 proposed Consent Decree, reached an agreement with the defendants on this matter that we believe is fair to all concerned, including Ms. Taylor, who would be fully compensated for any back pay claim she has, and since this agreement in no way coerces Ms. Taylor to either accept or reject the relief that it would provide to her, the United States has no intention of litigating this matter any further. Additionally, the United

States does not intend to participate in any litigation which
Ms. Taylor may pursue on this matter.

Respectfully submitted,



JOHN M. GADZICHOWSKI

MELISSA P. MARSHALL

Attorneys

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CERTIFICATE OF SERVICE

I, MELISSA PAGE MARSHALL, hereby certify that on June 16, 1986, copies of the foregoing Response of Plaintiff United States to Motion to Intervene by Lenora Taylor and Affidavit of Melissa P. Marshall, attached thereto, were served by DHL Express upon the following counsel:

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