

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 83-0094
)	
JAY GREGORY, SHERIFF OF)	
PATRICK COUNTY, a Constitu-)	
tional Officer of the)	
Commonwealth of Virginia and)	
Elected under the Laws of)	
the Commonwealth,)	
)	
Defendant.)	
)	

REPLY BRIEF FOR THE UNITED STATES

Defendant argues that among the employees of the Patrick County Sheriff's Department ("PCSD"), road deputies come within the "personal staff" exemption of Section 701(f) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e(f). This argument cannot be supported. 1/

1/ In this respect, Defendant has misstated this Court's decision. In its March 21, 1984 Memorandum Opinion, this Court did not exclude only road deputies in the PCSD from Title VII coverage, but held that all of the deputies in the PCSD are exempt. United States v. Gregory, 582 F. Supp. 1319, 1325 (W.D. Va. 1984). Indeed, since the secretary-matron and the clerk-matron are deputized employees in the PCSD, they arguably are also exempt from Title VII coverage under this Court's holding.

1. Defendant argues (Def. Br. p. 2) that although the Fourth Circuit in Curl v. Reavis, 740 F.2d 1323, 1330-1331 (4th Cir. 1984), held that a deputy sheriff in the Iredell, North Carolina Sheriff's Department ("ICSD") did not fall within the "personal staff" exemption of Section 701(f), a similar finding is inappropriate in the instant case. In support of its contention, defendant avers that the plaintiff deputy in Curl was, at the time of her applications for road deputy and detective positions, serving in essentially a clerical capacity.

In point of fact, however, the Fourth Circuit not only affirmed the lower court's decision that Deputy Curl had been denied a road deputy position in violation of Title VII, but also remanded with instructions to afford Deputy Curl additional relief in the form of a road deputy position, that included retroactive pay and time-in-grade toward promotion to a detective position. Id. at 1330-1331. Implicit in the Fourth Circuit's holding in Curl that Deputy Curl was unlawfully denied road deputy and detective positions was the determination that those jobs are not exempt from Title VII coverage. To read the Court of Appeals' decision in any other manner would drain it of all meaning. Defendant's suggestion here is that under Curl this Court should look, not at the position being sought, but rather only at the position which an individual occupies at the time of his or her application,

noting that Deputy Curl was an incumbent in the ICSD at the times she was denied consideration for road deputy and detective positions. Employing this rationale, neither Ms. Scales nor Ms. Ressel could begin to complain of unlawful discrimination by the Sheriff, since neither has ever been employed in the PCSD in any position. Such rationale not only is inconsistent with Title VII but also defies logic.

2. As demonstrated in our initial Memorandum, the record before this Court clearly demonstrates that there is a "chain of command" within the PCSD, such that not all deputies in the PCSD are "first line advisors," Curl, supra, 750 F.2d at 1328, having working relationships with the Sheriff which are "highly intimate and sensitive" Id..

The only two deputies in the PCSD who arguably might hold "high position[s] in the chain of command" and thus might have a "highly intimate and sensitive" working relationship with the Sheriff are the two shift supervisors. They, and they alone, are responsible for the operation of the PCSD in the absence of the Sheriff, as well as the supervision and performance evaluations of all of the other deputies and non-deputy employees of the PCSD (U.S. Memorandum, pp. 9, 11-13, 35). Indeed, the record before this Court reflects that although line or non-supervisory deputies are classified as Grade 6 employees on the State pay scale (Trible Dep. 10/26/83, p.24), Shift Supervisors

Boyd and Baliles were classified as Grade 8 lieutenants (Gov't. Ex. 113, pp. 3, 22-23, 33, 48, 73 and 75, attached to Tribble Dep. 10/26/83, copies of which are attached hereto as Attachment A, for the Court's convenience). Furthermore, from 1981 through 1984, the Sheriff represented to the Compensation Board, using charts of the organizational structure of the PCSD, that the rest of his employees (including the deputy assigned as Chief Corrections Officer) were supervised by the Shift Supervisors Boyd and Baliles (Gov't Ex. 113, pp. 1, 33; Govt. Ex. 114, pp. 1, 15; and Govt. Ex. 115, pp. 1, 28, attached to Tribble Dep. 10/26/83, copies of which are attached hereto as Attachment B for the Court's convenience).


Of course, Ms. Ressel, Ms. Scales, Ms. Hylton and Ms. Shepperd did not seek to fill these Shift Supervisor jobs in the PCSD; they sought non-supervisory deputy and dispatcher positions (See, Post-Trial Brief of Plaintiff United States, pp. 22-24, 31-35, 64-69, 93-94). Those positions are clearly covered by Title VII, as demonstrated in the United States' initial Memorandum.

CONCLUSION

For the foregoing reasons, as well as those set forth in our initial Memorandum, this Court should grant the United States' Motion for Entry of Judgment and for Relief.

Respectfully submitted,

WM. BRADFORD REYNOLDS
Assistant Attorney General
Civil Rights Division

By: 


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CERTIFICATE OF SERVICE

I, JOHN M. GADZICHOWSKI, hereby certify that on November 8, 1985, I served by Federal Express a copy of the foregoing Reply Brief for the United States, and its Attachments, upon the following counsel:

Anthony P. Giorno, Esquire
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ATTACHMENT A

GEORGE F. BARNES
CHAIRMAN
JOHN M. RASNICK, JR.
EXECUTIVE SECRETARY

COMMONWEALTH of VIRGINIA

COMPENSATION BOARD

P.O. BOX 31
RICHMOND, VIRGINIA 23206

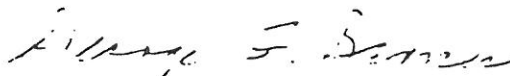
W. H. FORST
CHARLES K. TRIBLE
EX OFFICIO MEMBERS

May 15, 1981

TO THE BOARD OF SUPERVISORS OF THE COUNTY OF PATRICK:

You are hereby notified that the Compensation Board, in accordance with §14.1-51, Code of Virginia (1950), as amended, has fixed the salaries and expenses of office of the Sheriff for the fiscal year ending June 30, 1982, as listed below.

Very truly yours,



Chairman

4000.11
Hourly
OFFICE EXPENSES

100.53
570.44
\$ 14,155

MILEAGE

62,934

CAPITAL OUTLAY

2,300

SALARIES:

Sheriff

\$ 24,500

2 - Baliles, Larry W., Sgt.

17,484

2 - Tatum, S. Jr., Disp. *1. D. Sheriff*

~~8,513~~ *872*

2 - Boyd, Clifford, Sgt. *also 1981*

14,628 ~~15,293~~ *15,991*

also 2 - Bridges, Michael R., Chief Corr. *1. D. 10-2-2 R.L.D.R. Pro. 7/1*

~~13,386~~ *15,293*

Gregory, Jay E., Investigator

15,293

Joyce, Douglas W., Disp.

8,512 *8900*

Martin, Betty O., Secty.-Matron.

12,746

2 - Hylton, W. K., Disp.

8,513

Runge, D. J., Inv.

15,293

Sheppard, Kathy H., Disp.

~~8,513~~ *8900*

Pilson, Naomi M., Clk. Steno.

9,080

156,461

Scale Deputies - Schedule A

138,696

Total

\$374,546

Number of Part-time Deputies authorized - None

Scale Deputies - Schedule A

Res Chg	Day, Robert J., Deputy	P. A. FERRINGTON 8/1	\$ 15,293	11,195
	Gray, Roger C., Courtroom Security		11,977	
	Gregory, Thomas D., Corr. Off.		14,848	
	Isaacs, Owen, Deputy		11,707	
Res Chg	Morse, David L., Deputy	J. H. SEHEN	11,707	14,628
	Nicholson, Raymond H., Corr. Off.		12,333	
Res Chg	Perdue, Lester W., Deputy	T. J. JONES 10/1	11,977	11,195
Res Chg	Rogers, T. L., Corr. Off.	S. J. TATUM 8/1	11,324	11,195
Res Chg	Sehen, John H., Corr. Off.	M. R. BAKER 8/1	14,628	11,195
	Stacy, Danny, Deputy		11,707	
	* New Pos. Correctional Off. - Move to P. 1		11,195	
	* C. J. ROSS - D. L. MORSE PSCK		11,707	
			<u>\$138,696</u>	

* Name to be furnished Compensation Board - Use C.B. Form 10

cc: Jesse W. Williams
Sheriff

PATRICK COUNTY SHERIFF'S OFFICE

P O Box 128 Stuart, Virginia 24171



Jesse W. Williams, Sheriff

Phone (703) 694-3161

Residence (703) 694-3502

DEPUTIES

Larry W. Baliles
Clifford Boyd
Robert J. Day, Jr.
Roger Gray
Owen Isaacs
David Morse
Lester W. Perdue
John Sehen
Danny Stacy

May 26, 1981

INVESTIGATORS

Jay E. Gregory
D. J. Runge

Mr. John M. Rasnick, Jr.
Executive Secretary
Compensation Board
P. O. Box 3-F
Richmond, Virginia 23206

80-81
13034
1
13.5% = 14791
Rec'd
8-1-81
11410
14648 Scale 7

Dear Mr. Rasnick:

I would like to express my sincere appreciation to the Board members for the budget approved for Patrick County Sheriff's Department.

I respectfully request that you reconsider the salary for this employee and make an upward adjustment. Justification for this request is as follows.

Clifford Boyd, Shift Supervisor, is responsible for supervising eleven employees, including the investigators. Clifford Boyd is a very capable supervisor and well-qualified for the position. He had five years supervisory experience in the United State Air Force, and has completed the following schools since January, 1980. Supervisory In-Service February 15, 1980; Basic Law Enforcement Training October 31, 1980; Basic Criminal Investigation March 30, 1981 and the Firearms Instructor Course April 17, 1981. Clifford Boyd, along with his supervisory responsibilities, will be teaching the Firearms Course at the Training Academy in the months ahead.

At the present time Clifford's salary is \$13,032.00. Clifford's salary is the same as Correctional Officer Thomas Gregory's; however, you approved a higher salary for Thomas Gregory beginning July 1, 1981 \$14,848.00 or 13.5% increase than you did for a supervisory officer, Clifford Boyd. Clifford's approved salary beginning July 1, 1981 is \$14,628.00 or 12.5%. I feel that this is a mistake that the Board made unintentionally.

I know the Board considers the length of service when making the decisions; however, I would like to point out some other comparisons in length of service. Investigator D. J. Runge has 2 years and 2 months service with the Patrick County Sheriff's Department and his salary was set at \$15,293.00 and he does not have the responsibilities that Clifford Boyd has. Investigator Runge gets the same salary as Investigator Gregory gets and Investigator Gregory has 6 years and 2 months service. Clifford Boyd

Mr. John M. Rasnick, Jr.

Page 2

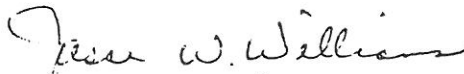
May 26, 1981

has 3 years and 8 months service with the Patrick County Sheriff's Department and he supervises the investigators and his salary is less than one of the investigators. I feel that this is an unfair practice and discrimination against Clifford Boyd.

I respectfully request the Board to take this matter into consideration and make an upward adjustment to render fair and equal consideration to Clifford Boyd.

I am personally thanking you in advance. Thank you.

Sincerely,



Jesse W. Williams
Sheriff of Patrick County

JWW:bom

cc: Patrick County Board of Supervisors

June 15, 1981

Mr. Jesse W. Williams
Sheriff, Patrick County
Stuart, Virginia

Dear Mr. Williams:

The Compensation Board has considered your three letters dated May 26, 1981, and approved the following salary changes for the fiscal year beginning July 1, 1981, subject to concurrence of your Board of Supervisors.

Sgt. Clifford Boyd from \$14,628 to \$15,293

Douglas W. Joyce from \$8,512 to \$8,900

Kathy H. Sheppard from \$8,513 to \$8,900

Depty. Lester W. Perdue from \$11,977 to \$11,752

Very truly yours,

George F. Barnes, Chairman

(signed) John M. Rasnick, Jr.

Executive Secretary

JMRJr:vk

cc: Board of Supervisors