

10-1-20 A 915

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

MARYLAND CLASSIFIED EMPLOYEES
ASSOCIATION, INC.,

Defendant.

Case No. WDQ-03-CV-2792

CONSENT DECREE

Plaintiff, the U.S. Equal Employment Opportunity Commission (the "Commission" or "EEOC"), commenced this action on September 30, 2003, in the United States District Court for the District of Maryland (Northern Division) against Defendant Maryland Classified Employees Association, Inc. ("MCEA"). In its Complaint, the Commission alleged that Defendant engaged in unlawful employment practices by subjecting Charging Party Lisa Haynes to sexual and retaliatory harassment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"), and by subjecting Charging Party Rosemary Wertz to retaliatory harassment in violation of Title VII.

As a result of settlement discussions, the Commission and Defendant desire to resolve this action and all issues raised by the Complaint without the time and expense of contested litigation.

For the purpose of resolving this action, the parties acknowledge the jurisdiction of the United States District Court for the District of Maryland (Northern Division) over the subject matter and over the parties to this case for the purpose of entering this Consent Decree and, if necessary, enforcing this Decree.

The Court, having examined the terms and provisions of the Consent Decree, finds that it is reasonable and just in accordance with the Federal Rules of Civil Procedure and Title VII. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of the parties and those for whom the EEOC seeks relief.

This Decree constitutes a full discharge and satisfaction of any and all claims which have been alleged in the Complaint filed in this Title VII action by the EEOC based on the EEOC's determinations of discrimination for the charges filed by Lisa Haynes and Rosemary Wertz (EEOC administrative charge numbers 120-2002-00552 and 120-2002-00553).

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

NON-DISCRIMINATION

1. Defendant, its officers, directors, agents, employees, successors, assigns, and all persons in active concert or participation with them or any of them shall comply with all provisions of Title VII and are enjoined from any present or future violations of Title VII. Prohibited discrimination includes, but is not limited to, any harassing conduct or other discrimination because of sex or because of conduct protected under Section 704(a) of Title VII and/or failure to take prompt and reasonable action to correct and prevent harassing conduct prohibited by Title VII.

NON-RETALIATION

2. Defendant, its officers, directors, agents, employees, successors, assigns, and all persons in active concert or participation with them or any of them shall not engage in reprisal or retaliation of any kind against any person because such person, either in the past or in the future: (a) opposed any practice made unlawful or reasonably believed to be unlawful under Title VII; (b) filed a charge of discrimination with the Commission or any fair employment practices agency; (c) was identified as a potential witness for the EEOC in an action; (d) requested and/or received relief in accordance with this Decree; (e) participated in any manner in an action under Title VII or in any investigation giving rise to such action; or (f) asserted any rights under this Decree. In this regard, Defendants shall not take any action against any person(s) which constitutes intimidation, coercion, retaliation, harassment, or interference with the exercise of such person's rights under Title VII because of the filing of Charge Nos. 120-2002-00552 or 120-2002-00553 with the EEOC, which form the basis for this case, or because such person(s) gave testimony or assistance, or participated in any manner in any investigation or proceeding in connection with this case under Title VII.

RECORD-KEEPING

3. Defendant shall comply with all applicable record-keeping requirements of Title VII and the Commission's regulations, including but not limited to, 29 C.F.R. § 1602.14.

ADA COMPLIANCE REGARDING PRE-OFFER MEDICAL INQUIRIES/EXAMINATIONS

4. Defendant shall comply with the provisions of Title I of the Americans with Disabilities Act of 1990, as amended ("ADA"), and the Commission's ADA Regulations prohibiting medical and disability-related inquiries and examinations prior to a bona fide offer of employment.

In accordance with this provision, Defendant shall remove from its employment application, and shall not use in the future, the five (5) questions previously identified by the Commission that constitute medical or disability-related inquiries. In addition, Defendant shall modify the non-discrimination language in the introduction to its employment application by changing the reference to "the presence of non-job-related condition or handicap" to "disability."

COVERED FACILITIES

5. The provisions of this Consent Decree shall apply to all of Defendant's facilities.

DURATION OF DECREE

6. This Consent Decree shall be in effect for a period of twenty-one (21) months from the date it is entered by the Court.

MONETARY RELIEF

7. Defendant shall pay compensatory damages to Lisa Haynes in the amount of \$24,000.00 (twenty-four thousand dollars). Of this monetary relief, \$4,000.00 shall be paid by Defendant within thirty (30) days after this Consent Decree has been entered by the Court. The remaining balance, \$20,000.00, shall be paid by Defendant in five (5) payments of \$4,000.00 each at 5 months, 9 months, 13 months, 17 months and 21 months after the entry of this Decree. All six payments of monetary relief required by this Paragraph shall be performed by check made payable to Lisa Haynes and mailed to Ms. Haynes by Certified Mail at an address to be provided by the EEOC. Within fourteen (14) days of each payment, Defendant shall send a photocopy of the check sent to Lisa Haynes, along with a photocopy of the Certified Mail receipt, to the Regional Attorney of the EEOC's Baltimore District

Office. Failure to make this payment within the time set for payment in this subparagraph shall constitute a material breach of the parties' agreement and noncompliance with this Decree for which Defendant shall pay additional damages and penalty in the amount of two hundred dollars (\$200) per day to Lisa Haynes for each day Defendant is late in making payment to Lisa Haynes, plus interest compounded at the IRS quarterly rate for unpaid taxes, for all payment in arrears by Defendant.

8. Defendant shall pay compensatory damages to Rosemary Wertz in the amount of \$5,000.00 (five thousand dollars). The \$5000.00 shall be paid by Defendant within thirty (30) days after this Consent Decree has been entered by the Court. The payment of monetary relief required by this Paragraph shall be performed by check made payable to Rosemary Wertz and hand-delivered to Ms. Wertz or mailed to her by Certified Mail. Within fourteen (14) days of said payment, Defendant shall send a photocopy of the check delivered or sent to Rosemary Wertz, along with a photocopy of the Certified Mail receipt, to the Regional Attorney of the EEOC's Baltimore District Office. Failure to make this payment within the time set for payment in this subparagraph shall constitute a material breach of the parties' agreement and noncompliance with this Decree for which Defendant shall pay additional damages and penalty in the amount of two hundred dollars (\$200) per day to Rosemary Wertz for each day Defendant is late in making payment to Rosemary Wertz, plus interest compounded at the IRS quarterly rate for unpaid taxes, for all payment in arrears by Defendant.
9. An IRS Form 1099-Misc shall be issued to Lisa Haynes and Rosemary Wertz for each calendar year in which they receive payment and reflecting the amount of payment received

in that year.

EQUITABLE RELIEF: EXPUNGEMENT OF RECORDS
REGARDING ROSEMARY WERTZ

10. Defendant shall, within ten (10) days after entry of this Consent Decree by the Court, permanently expunge from any and all employment, disciplinary or other files any and all records of disciplinary action or unfavorable performance evaluation regarding Rosemary Wertz that occurred during the period August 1, 2001 until the date of entry of this Consent Decree by the Court. A copy of each such record shall be provided to both the Commission and Rosemary Wertz. Defendant shall not use the aforementioned records, disciplinary actions, or unfavorable performance evaluations as the basis for any current or future actions regarding Rosemary Wertz's employment, nor shall they be used to affect her status as an employee or any of the terms, conditions and privileges of her employment.

EQUITABLE RELIEF: REPORTS TO EEOC OF DISCRIMINATION
ALLEGATIONS AND WITNESSED CONDUCT

11. Defendant shall submit written notification to the Commission regarding any and all complaints or reports of sex/sexual and/or retaliatory harassment or other sex/sexual and/or retaliatory discrimination and any action taken by Defendant in response to the complaints or reports, as well as all documentation related to the allegations, investigation and disposition of the complaint or report. Defendant's notification to the Commission must be sent to the Commission's Baltimore District Office, to the attention of the Regional Attorney, within thirty (30) days of any complaints or reports to managers, supervisors or person designated by Defendant. Such notifications must be updated and sent to the Commission's Baltimore District Office every thirty (30) days thereafter until final action is taken by

designated to receive and/or investigate complaints of harassment and/or discrimination to attend training regarding the requirements of Title VII, with particular emphasis on (a) sex/sexual and retaliatory harassment and other forms of sex/sexual and retaliatory discrimination and (b) taking prompt and effective action to prevent, investigate and correct such harassment and discrimination. Such training is to be not less than four (4) hours in duration and provided by a third-party at the expense of Defendant, with format and content of training subject to review by the Commission. The training must be conducted within three (3) months after entry of this Decree and six (6) months after the commencement of employment for all new hires in such positions. The EEOC must be notified, in writing, as to the identity and qualifications of the trainer, all content of such training (including training manuals and handout materials), method of presentation, length of training course(s) and the names and job titles of attendees within one (1) month of such training. Defendant shall have the option of videotaping the first four-hour training session and then fulfilling its duty to provide any subsequent training sessions required by this Decree by requiring attendance of trainees at a viewing of the videotape. Any trainee who receives training by viewing a videotape of a previous session shall be given the name and telephone number of a Defendant contact person and instructed to direct any questions regarding the content of the training to that contact person.

14. Defendant shall provide a one (1) hour training session to all current and future employees regarding the anti-harassment/anti-discrimination policy set forth in Attachment A on each such employee's first day of work, or in the case of current employees, within thirty (30) days of entry of this Decree.

EQUITABLE RELIEF: POSTING OF NOTICE

15. Defendants shall post copies of the Notice attached as Attachment B in a conspicuous location at all of their facilities and at all places where employee notices are posted. The Notice shall be posted for a period of twenty-one (21) months, with such period commencing upon entry of this Decree. Such Notice shall be typed legibly using not less than twenty-four (24) point font. If multiple pages are used for each such Notice, they shall not be displayed one page behind another but must be posted so that all pages are in order and simultaneously visible (i.e., in horizontal row or vertical column configuration). In addition, Defendant shall post notice of all applicable federal equal employment opportunity laws and all other notices required by law. In the event that any of aforementioned notices becomes defaced, marred or otherwise made unreadable, Defendant shall immediately post a readable copy of such notice(s).

DISPUTE RESOLUTION AND COMPLIANCE

16. This Court shall retain jurisdiction to enforce the terms of this Decree and will have all available powers to enforce this Decree, including but not limited to monetary sanctions and injunctive relief.
17. Upon motion of the Commission, this Court may schedule a hearing for the purpose of reviewing compliance with this Consent Decree. Prior to such motion, the Commission shall notify the Defendant, in writing, of the alleged non-compliance. Upon receipt of written notice, Defendant shall have fifteen (15) days to either correct the alleged violation, and so inform the other party, or deny the alleged violation, in writing;
 - A. If the parties remain in dispute they shall attempt in good faith to resolve their

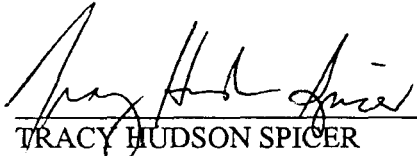
dispute;

B. If the parties can not in good faith resolve their dispute, the Commission may file with the Court a motion to correct and remedy the breach;

C. Each party shall bear its own costs, expenses and attorney's fees incurred in connection with such action; and

D. Jurisdiction to resolve any dispute arising under this Decree resides in the United States District Court for the District of Maryland.

18. The Commission, its agents and employees shall in their discretion have the legal right to enter any of Defendant's facilities, without any prior notice to the Defendant, and conduct an on-site inspection to ensure compliance with Title VII and any of the terms of this Decree. Such inspections may, at the discretion of the Commission, include access to any and all documents for the purposes of inspection and duplication; interviews or depositions of any persons; inspection of any area within the facility; and any other investigatory technique or procedure permitted by Title VII or the Commission's regulations. The Commission may at any time move the Court for a hearing for the purpose of compelling Defendant to cooperate in any aspect of on-site inspection under the terms of this Decree. Neither the Commission's right to conduct on-site inspections nor any other provisions of this Decree shall be construed to limit or impair in any manner any other Commission right to conduct investigations of the Defendant that is provided by law, including, but not limited to, investigating charges of discrimination filed under Title VII, the Equal Pay Act ("EPA"), the Age Discrimination in Employment Act ("ADEA"), Title I of the Americans with Disabilities Act, and any statute over which the Commission is given jurisdiction in the

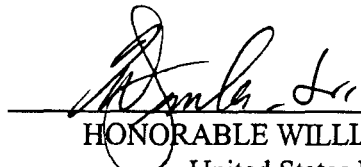


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Dated: 4/16/04

IT IS SO ORDERED:

DATE: 4/22/04


HONORABLE WILLIAM D. QUARLES, JR.
United States District Judge

ATTACHMENT A

MARYLAND CLASSIFIED EMPLOYEES ASSOCIATION, INC. POLICY PROHIBITING HARASSMENT AND DISCRIMINATION

MCEA has zero tolerance for harassment and discrimination. It is the policy of MCEA to maintain a work environment that is free from harassment and discrimination based on (1) sex (whether or not of a sexual nature), (2) national origin, (3) color, (4) race, (5) religion, (6) age, (7) disability, and (8) pregnancy, childbirth or related medical conditions, and from (9) retaliatory harassment and discrimination based on opposition to harassment/discrimination or participation in harassment/discrimination complaint proceedings. In addition, it is MCEA policy that no retaliation will be tolerated against any employee for reporting harassment or discrimination under this or any other policy or procedure, or for assisting in any investigation. **Harassment and discrimination violates both federal and state law and will not be tolerated.**

WHAT IS DISCRIMINATION?

The types of discrimination prohibited by this policy, and by federal and state law, include actions that relate to hiring, layoff, recall, firing, promotion, suspension and other discipline, pay, leave and other benefits, breaks, and all other aspects of the employment relationship. Decisions regarding these matters are not allowed to be based upon sex, national origin, color, race, religion, age, disability, pregnancy, childbirth or related medical conditions, or because someone has opposed harassment/discrimination or participated in harassment/discrimination complaint proceedings.

WHAT IS HARASSMENT?

Generally speaking, "harassment" is defined as **any unwelcome** verbal or physical conduct **based on** someone's sex (whether or not of a sexual nature), national origin, color, race, religion, age, disability, pregnancy, childbirth or related medical conditions, or because someone opposed harassment/discrimination or participated in harassment/discrimination complaint proceedings **when**: (1) the conduct negatively affects the work environment or (2) an employment decision affecting the employee is based on the employee's acceptance or rejection of such conduct. While there are many different kinds of acts that can constitute harassment (because there are many different ways a person may be mistreated for illegal reasons), **some examples include:**

- (a) sexual advances, sexual comments and innuendo, requests or demands for sex, offensive touching, sex-related jokes, etc.;
- (b) unwelcome comments about a person's attractiveness or her/his body, unwelcome statements expressing romantic interest in another person;
- (c) name calling, teasing, slurs, offensive visual displays/pictures/gestures, or any negative comments or jokes about a person's race, national origin, color, sex, religion, age, disability, pregnancy, childbirth or related medical conditions, actions in opposition to discrimination or participation in a discrimination complaint process;
- (d) acts of physical violence, threats of violence, or other acts that are physically threatening

in nature such as using one's body to "corner" another employee;
(e) destruction or theft of another person's property;
(f) interference with another person's work or attempts to interfere with that work;
(g) disciplinary actions, threats of disciplinary actions and any other discriminatory acts; and
(h) negative comments or offensive actions toward or about another person when the reason is the other person's race, national origin, color, sex, religion, age, disability, pregnancy, childbirth or related medical conditions, actions opposing harassment/discrimination or participation in a harassment/discrimination complaint process. This is harassment even if the victim's sex, national origin, etc. are not mentioned by the person doing the harassment. An example of this would be treating a person of sex or ethnic group differently from persons of another sex or ethnic group by calling him/her vulgar or insulting names or cursing at him/her.

WHO IS PROTECTED BY THIS POLICY?

Both federal and state law and this policy protects **all** employees and job applicants from harassment or discrimination by **any** person, including directors, officers, managers, supervisors, co-workers of any rank or position, contractors, vendors and members.

WHAT ARE THE CONSEQUENCES FOR VIOLATING THIS POLICY?

Any person who engages in harassment or discrimination will be subject to appropriate disciplinary action, up to and including immediate firing. Furthermore, failure of a supervisor or manager to perform any of their responsibilities under this policy will result in appropriate disciplinary action, up to and including immediate firing.

WHAT SHOULD I DO IF I BELIEVE THAT I AM BEING HARASSED OR DISCRIMINATED AGAINST?

Persons who believe that they are being harassed or discriminated against should report it to any supervisor, any management official, any MCEA officer, the President, Bryron Johnson or to the Executive Director, Robert Stephens at 410-298-8800 extension 235. In addition, you have a right under the law to report harassment or discrimination to (A) the U.S. Equal Employment Opportunity Commission ("EEOC"), which is a U.S. Government agency that enforces the federal laws that prohibit harassment and discrimination, or (B) the Maryland Commission on Human Relations ("MCHR"), which is the State of Maryland agency that enforces state laws prohibiting harassment and discrimination. MCEA respects your right to contact the EEOC and MCHR and will not take any action against you because you have contacted either agency or have filed a written complaint (called a "Charge of Discrimination") with them. The EEOC can be reached at (410) 962-3932 or toll free at 1-800-669-4000. For the hearing impaired, TTY numbers are (410) 962-6065 and 1-800-669-6820. MCHR can be contacted at (410) 767-8600.

WHAT HAPPENS AFTER THERE IS A REPORT OF HARASSMENT OR DISCRIMINATION?

After a report of harassment or discrimination made by an employee, either about her/himself or about another person who may be harassed or discriminated against, MCEA will conduct a prompt, fair, and complete investigation. Until it completes the investigation, MCEA will also take necessary steps to make sure that there is no further harassment or discrimination against you. When the investigation is completed, MCEA will take appropriate corrective action as warranted. Reports made by employees and investigations of those reports will be kept confidential unless disclosure is required to complete the investigation or by law. **There will be absolutely no retaliation or negative action taken against you for reporting harassment or discrimination.**

WHO IS RESPONSIBLE FOR ENFORCING THE POLICY?

MCEA and its officers, directors, managers, and supervisors are responsible for enforcing this policy. We take that responsibility very seriously. All employees of whatever rank are also responsible for obeying the policy and for cooperating fully in its enforcement.

WHAT RESPONSIBILITIES DO MANAGERS AND SUPERVISORS HAVE UNDER THIS POLICY?

First and foremost, it is the duty of all MCEA supervisors and managers to obey this policy, including refraining from harassment and discrimination. You are expected to lead by example. The success of the MCEA depends on this. Also, it is the duty of all supervisors and management officials to monitor the workplace for harassment and discrimination. If you suspect that harassment or discrimination has taken place, even if no one has reported it to you, it is your duty to promptly report your observations and suspicions to the President, Bryron Johnson or to the Executive Director, Robert Stephens at 410-298-8800 extension 235. Furthermore, it is the duty of all supervisors and all management officials who receive a complaint of harassment or discrimination to promptly report the complaint to the President, Bryron Johnson or to the Executive Director, Robert Stephens at 410-298-8800 extension 235. Moreover, it is the duty of all supervisors and managers to know and understand this policy, and to provide answers to questions that employees may ask about the policy.

WHAT RESPONSIBILITIES DO ALL EMPLOYEES HAVE UNDER THIS POLICY?

All employees must refrain from engaging in any harassment or discrimination. In addition, all employees should promptly report any incidents of harassment or discrimination that they witness and fully cooperate with any investigations.

WHAT DO I DO IF I HAVE ANY QUESTIONS ABOUT THIS POLICY?

If you have questions about this policy, you may ask any supervisor, any management official, any MCEA officer, the President, Bryron Johnson or to the Executive Director, Robert Stephens at 410-

298-8800 extension 235.

ATTACHMENT B

NOTICE TO EMPLOYEES POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, AN AGENCY OF THE UNITED STATES GOVERNMENT AND MARYLAND CLASSIFIED EMPLOYEES ASSOCIATION

Under Section 703 of Title VII of the Civil Rights Act of 1964, as amended:

It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his/her compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . .

Sexual harassment constitutes a type of sex discrimination under Section 703 of Title VII of the Civil Rights Act of 1964, as amended. The Equal Employment Opportunity Commission Guidelines provide in part the following:

Harassment on the basis of sex is a violation of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) submission to such conduct is made either explicitly or implicitly a condition of an individual's employment,

(2) submission or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

29 C.F.R. Section 1604.11(a) (1985).

Under Section 704 of Title VII of the Civil Rights Act of 1964, as amended it is an unlawful employment practice for an employer to discriminate or retaliate in any manner against any person because of opposition to any practice declared unlawful under Title VII or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding, or hearing under Title VII.

WE WILL NOT engage in any acts or practices made unlawful by the above sections.

WE WILL NOT engage in any harassment of employees based on sex.

WE WILL NOT discriminate or retaliate in any manner against any person because of opposition to any practice declared unlawful under Title VII or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding, or hearing under Title VII.

MARYLAND CLASSIFIED EMPLOYEES ASSOCIATION
BYRON JOHNSON, PRESIDENT

Dated: _____ By: _____

Date posting expires: _____