

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO.: 2:13-CV-205-TLS
)	
GRIFFITH POLICE DEPARTMENT,)	
)	
Defendant.)	

ORDER ADOPTING CONSENT DECREE

On June 11, 2013, the United States filed a Complaint [ECF No. 1] and Notice of Consent Decree [ECF No. 2]. The instant action was instituted by the United States under Title VII of the Civil Rights Act of 1964 to correct unlawful employment practices on the basis of sex and to provide appropriate relief to Marlene Starceвич who had been adversely affected by such practices. In its Complaint, the United States claims that the Department discriminated against Starceвич by denying her assignment as Shift Commander because of her sex in violation of Title VII, 42 U.S.C. § 2000e-2(a).

According to the parties, they wish to resolve this matter by consent decree to avoid the burden of further litigating this case. Further, the parties maintain that the proposed consent decree is consistent with the intent of Title VII and that the consent decree is “a final and binding agreement between [the parties] with regard to the issues raised in the complaint.” (Notice of Consent Decree 2, ECF No. 2.) The Consent Decree provides as follows:

CONSENT DECREE

GENERAL RELIEF

1. The Department, including its present and future officials, Safety Board members, agents acting in active concert or participation with the Department in matters related to its capacity as an employer, and employees shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee of the Department because of that individual's sex.

2. The Department, including its present and future officials, Safety Board members, agents acting in active concert or participation with the Department in matters related to its capacity as an employer, and employees, shall not retaliate against, or in any respect adversely affect, Ms. Starcevich or any other person because that person has: (i) opposed, or in the future does oppose, policies or practices that allegedly violate Title VII, (ii) filed a charge of discrimination with the EEOC, the Indiana Civil Rights Commission ("ICRC"), or any other federal, state, or local court or agency authorized to receive such complaints, or (iii) participated, or in the future does participate, in any way as to the initiation, investigation, litigation, administration, or effectuation of this case or this Decree.

3. Within sixty (60) calendar days from the date of entry of this Decree, the Department shall: (i) draft new or amended proposed written policies and procedures regarding the prohibition of employment-related discrimination on the basis of sex, to ensure that they are consistent with the goals of Title VII; and (ii) present to the United States for its review and

approval a draft of each of the proposed new or revised policies. The United States will then have thirty (30) calendar days to, in writing to the Department, approve or object to the proposed and/or existing policies. If the United States objects to the proposed and/or existing policies, the United States shall state the basis for its objection(s) and propose alternative language for the policies. If the United States and the Department cannot reach an agreement regarding the policies' language, either may use the dispute resolution procedure set forth below to seek judicial resolution of the issue. Within thirty (30) calendar days of receiving approval from the United States or the Court to implement new or revised policies and procedures referenced in this Paragraph, the Department must take all the necessary steps to formally implement such policies and procedures.

4. Within ten (10) calendar days from the date upon which the Department implements the newly adopted or newly amended written policies and procedures referenced in Paragraph 3 above, the Department shall take the following steps:

- a. The Department shall distribute such policies and procedures to all Department employees, Safety Board members, and other officials.
- b. The Department shall provide a copy of the policies and procedures to the United States. Upon receipt, each individual who receives a copy shall sign an acknowledgment that it has been received and read. Employees' signed acknowledgments shall be placed in their personnel files. The

Department shall designate an official (such as the Human Resources Director) to retain all other signed acknowledgments. The Department also must inform the United States of the title of the official designated to maintain the signed acknowledgements referenced this paragraph.

- c. The Department shall publicize such policies and procedures by, *inter alia*, posting them on any bulletin board, internet or intranet website used for posting notices or policy changes for or concerning the Department.
- d. The Department shall ensure, at least during the life of the Decree, that all new employees, new supervisors, new managers, and new Safety Board members receive copies of the written policies and procedures implemented pursuant to Paragraph 3 above, at the time of hire, appointment, or assumption of position/office. Upon receipt, each new Department employee, supervisor, manager, or Safety Board member shall sign an acknowledgment that she or he has read and understands such policies. Employees' signed acknowledgments shall be placed in their personnel files. The official designated in Paragraph 4(b) above must also retain all other signed acknowledgments.

5. The Department shall provide, at its own cost, mandatory training with respect to Title VII's prohibitions against employment discrimination based on sex to all supervisory personnel, Safety Board members, and any other officials who are involved in any way in the

hiring, promotion selection, evaluation of job performance, and discipline of Department employees (including all individuals responsible for merit-based or non-merit based hiring, promotion, or appointment of Department employees). The Department shall also provide separate training regarding Title VII's prohibitions against employment discrimination based on sex to all non-supervisory employees in the Department. The foregoing trainings shall include, at a minimum, an explanation of the Department's discrimination-related policies and procedures, including those described in Paragraph 3. The Department will select, with the approval of the United States, a qualified individual or group of individuals to conduct the training outlined in this Paragraph. Within ninety (90) calendar days of the entry of this Decree, the Department shall submit to the United States for review and approval: the name(s) and *curriculum vitae* of the individual(s) selected to conduct the trainings, and descriptions of the proposed training programs, including the materials to be used during the trainings. The Department shall complete the training described in this paragraph for existing personnel within one hundred fifty (150) calendar days of the entry of this decree.

6. All individuals who are required by Paragraph 5 of this Decree to attend training shall sign acknowledgments of attendance. Within ten (10) calendar days of the completion of all such training, the Department shall provide the United States with written confirmation that all individuals required by Paragraph 5 to attend training did so. For the duration of this Decree, the Department will keep on file all signed acknowledgments of the training attendance.

SPECIFIC RELIEF

7. Without admitting the allegations of the United States, in settlement of the claim of the United States for relief on behalf of Ms. Starcevich as set forth in the United States' complaint, as well as the claims of Ms. Starcevich, who by her signature on the attached Release, accepts the relief provided to her by this Decree, the Department shall provide Ms. Starcevich the following:

- a. The Department will not at any time deny, or effectively deny, Ms. Starcevich a Shift Commander assignment, or require Ms. Starcevich to share a Shift Commander assignment, because of her sex, nor discriminate against her because of her sex in any other way.

- b. The Department will pay to Ms. Starcevich a monetary award of compensatory damages in the amount of \$5,000, within fourteen (14) calendar days of the Court's entry of this Decree. The Department will issue Ms. Starcevich the appropriate Internal Revenue Service (IRS) tax forms at the time prescribed by law. This payment for compensatory damages will not be subject to withholding or deductions by the Department and shall be made payable to Marlene Starcevich and sent to the following address:

Marlene Starcevich
[Redacted]

8. In settlement of her claims against the Department as set forth in the Charge of Discrimination filed with the EEOC, Charge No. 470-2010-02618, Ms. Starcevich has executed a release attached to this Decree.

9. Ms. Starcevich agrees that she is solely responsible for the taxes, if any, to be paid on the payments listed in Paragraph 7 of this Decree, and that she agrees to pay any and all such taxes.

10. Within fourteen (14) calendar days of satisfying the requirements of Paragraph 7(b), the Department shall provide the United States with documentary evidence of having paid Ms. Starcevich, by mailing proof of payment to the address specified in Paragraph 14 below.

RECORD-KEEPING AND REPORTING

11. The Department shall retain during the life of this Decree all records necessary to document the implementation of this Decree. The Department shall furnish records and documents relevant to its compliance with the implementation of this Decree to counsel for the United States within thirty (30) calendar days of any written request to the Department's attorney. The United States may review compliance with this Decree at any time, with thirty (30) calendar days' written notice to the Department's attorney, and, accordingly, shall have the right to inspect and copy the documents necessary to monitor the Department's compliance with this Decree without further order of this Court.

12. The Department shall provide written notice to counsel for the United States of any written or more severe disciplinary action taken against Ms. Starceвич during the life of this Decree within seven (7) calendar days after such action is taken. The United States shall have the right to inspect and copy all documents related to such action upon reasonable notice to the Department without further order of this Court.

13. The Department shall retain all records that come into its possession relating to complaints or charges of employment discrimination based on sex or retaliation that may be filed against the Department or a Department employee, official, or Safety Board member, and pertaining to a Department employee: (a) with the EEOC or ICRC, or (b) through or with any other federal, state, or local court or agency authorized to receive such complaints. Within ten (10) calendar days of its receipt of such complaints or charges, the Department shall provide counsel for the United States a copy of the complaint or charges. The United States shall have the right to inspect and copy all documents related to such complaints or charges upon reasonable notice to the Department without further order of this Court.

14. Any documents required to be delivered under this Decree to the United States by the Department shall be sent by e-mail or an express mail service (such as FedEx or United Parcel Service (UPS)), *but not via United States mail*, to the attention of:

Kathryn Ladewski, Esquire
United States Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street, NW- PHB 4035
Washington, DC 20579

Kathryn.Ladewski@usdoj.gov

15. Any documents required to be delivered under this Decree to the Department by the United States shall be sent by e-mail or an express mail service (such as FedEx or United Parcel Service (UPS), *but not via United States mail*, to the attention of:

Robert Schwerd
Schwerd, Fryman & Torrenga LLP
825 E Lincolnway
Valparaiso, IN 46383
RMS@sftlawyers.com

DISPUTE RESOLUTION

16. Before seeking action by the Court, the United States and the Department shall attempt to resolve, informally and in good faith, any dispute that may occur under this Decree. If the Parties are unable to expeditiously resolve the issue, either Party may move the Court for resolution, provided that written notice is first provided to the other Party at least seven (7) calendar days in advance of taking such action.

JURISDICTION OF THE COURT

17. 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.

EXPIRATION

18. This Decree shall expire, and this action shall be dismissed with prejudice without further order of this Court, upon the later of the following occurrences: (i) twenty-four (24) months from the date of entry of this Decree or (ii) the fulfillment of all of the Department's obligations to Ms. Starceвич under this Decree. The United States may move, for good cause, to extend the Decree. The Decree will not be extended, however, unless the Court grants the United States' motion. Any such extension may be granted by the Court only for such time as is necessary to effectuate the terms set forth in this Decree.

GENERAL PROVISIONS

19. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected, and the other provisions shall remain in full force and effect.

20. Through the date of this Decree, except as provided for above, the Parties shall bear their own costs in this action, including attorneys' fees.

Public policy favors the settlement of disputes without litigation. *Donovan v. Robbins*, 752 F.2d 1170, 1177 (7th Cir. 1985). In reviewing a consent decree, a "trial court must defer to the expertise of the agency and to the federal policy encouraging settlement." *United States v. George A. Whiting Paper Co.*, 644 F.3d 368, 372 (7th Cir. 2011) (citing *In re Tutu Water Wells CERCLA Litigation*, 326 F.3d 201, 207 (3d Cir. 2003)). A district court "must approve a consent decree if it is reasonable," consistent with the applicable statute's intent, "and substantively and

procedurally fair.” *Id.* While district courts retain discretion to approve a consent decree, *Madison Cnty. Jail Inmates v. Thompson*, 773 F.2d 834, 845 (7th Cir. 1985), courts should exercise restraint when reviewing proposed decrees because the fairness of a settlement “is . . . a matter best left to negotiation between the parties,” *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust Co. of Chi.*, 834 F.2d 677, 681 (7th Cir. 1987).

Having reviewed the proposed consent decree, the Court finds that it is reasonable and fair. Here, the proposed consent decree deals specifically with sex discrimination in violation of Title VII. Under Title VII, employers may not “fail or refuse to hire or to discharge any individual, or otherwise [] discriminate against any individual with respect to his compensation, terms, condition, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e2(a)(1). The proposed consent decree is the result of negotiations between the parties and no third party has objected to its contents. It provides for compensation to the affected victim and establishes a supervisory framework to prevent future Title VII violations on the part of the Defendant and to ensure the Defendant’s compliance with the terms of the consent decree. Consistent with Title VII’s intent, the proposed decree includes remedial action to prevent the Defendant from subjecting its employees to sex discrimination in violation of Title VII.

The parties request that the Court retain jurisdiction throughout the duration of this decree for purposes of monitoring compliance with this decree and entry of such further orders as may be necessary or appropriate. A consent decree is “an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.” *Rufo v. Inmates of Suffolk Cnty. Jail*, 502

U.S. 367, 378 (1992). District courts typically retain jurisdiction to enforce a consent decree. *O'Sullivan v. City of Chi.*, 396 F.3d 843, 860 (7th Cir. 2005) (citing *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932)); *Lynch, Inc. v. SamataMason, Inc.*, 279 F.3d 487, 489 (7th Cir. 2002) (citing *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 380–81 (1994) and *Jessup v. Luther*, 277 F.3d 926, 929 (7th Cir. 2002)). Courts treat consent decrees like contracts for purposes of interpretation and enforcement. *Rufo*, 502 U.S. at 378; *United States v. Alshabkhoun*, 277 F.3d 930, 934 (7th Cir. 2002) (citing *United States v. City of Northlake, Ill.*, 942 F.2d 1164, 1167 (7th Cir. 1991)). The proposed consent decree provides that the Court retains jurisdiction throughout the term of the decree to monitor the Defendant's compliance with the decree and issue orders to enforce the terms of the decree. As the parties have agreed that the Court should retain jurisdiction to enforce the consent decree, the Court will exercise its power to do so.

Accordingly, the Court now ADOPTS the parties' Proposed Consent Decree [ECF No. 2], and RETAINS JURISDICTION to enforce the terms of the Consent Decree.

SO ORDERED on June 25, 2013.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT
FORT WAYNE DIVISION