

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	5:12-cv-287
)	Civil Action No. _____
v.)	
)	
CITY OF SELMA, TEXAS,)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, the United States of America, alleges:

1. This action is brought on behalf of the United States 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”).

JURISDICTION AND VENUE

2. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f), 28 U.S.C. § 1331 and 28 U.S.C. § 1345. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391(b) because it is where a substantial part of the events or omissions giving rise to the cause of action herein occurred.

3. Defendant City of Selma, Texas (“City”) is a corporate, governmental body and a political subdivision of the State of Texas, established pursuant to the laws of Texas.

4. Defendant is a “person” within the meaning of 42 U.S.C. § 2000e(a) and an “employer” within the meaning of 42 U.S.C. § 2000e(b).

5. The Equal Employment Opportunity Commission (“EEOC”) received a timely charge (EEOC Charge No. 451-2010-1494) filed by Adam E. Sadler, who lives within this judicial district, on or about August 2, 2010. In his charge, Sadler alleged, *inter alia*, that he had been demoted from Lieutenant to Firefighter on or about August 2, 2010, because he engaged in activity protected under Title VII. Pursuant to Section 706 of Title VII, the EEOC investigated the charge, found reasonable cause to believe that Sadler was subjected to retaliation in violation of Title VII, attempted unsuccessfully to achieve through conciliation a voluntary resolution of the charge, and subsequently referred the matter to the Department of Justice.

6. All conditions precedent to the filing of suit have been performed or have occurred.

CAUSE OF ACTION

7. Sadler was hired by the City as a Firefighter in the Selma Fire Department (“SFD”) in August 2005. In or about October 2009, Sadler was promoted to Lieutenant.

8. The SFD is headed by Fire Chief Ric Braun. Braun reports to City Administrator Ken Roberts. Roberts has ultimate employment decision making authority over the City’s personnel, including employees in the SFD.

9. In February or March 2010, Sadler and Braun were discussing SFD personnel “yard duties.” During the conversation, Braun told Sadler in sum or substance that SFD personnel would now be required to pull weeds because the SFD no longer had “wetbacks” to perform that type of work. Immediately following his conversation with Braun, Sadler reported Braun’s remarks to Captain Jeff Moczygemba, who then asked Braun to clarify his remarks with respect to yard duties. During the conversation between Moczygemba and Braun, Braun again

used the ethnic slur, “wetbacks,” to describe the yard work firefighters would now be required to perform.

10. On or about June 17, 2010, Sadler, who had regularly heard racial and ethnic slurs used at the SFD station by Braun (and other SFD personnel), submitted a written complaint to the City’s Human Resource Officer Rebecca Del Torro. Sadler’s complaint recounted the conversation during which Braun used the term “wetbacks” to describe yard duties to be performed by SFD personnel. Sadler also recounted derogatory comments made by Braun about “Mexican nurses.” Written complaints about Braun’s offensive language also were submitted to Del Torro by Moczygamba and Firefighter Mathew Carr.

11. On or about June 17, 2010, Braun was informed that Sadler had submitted a written complaint to Del Torro regarding Braun’s use of ethnic slurs. Braun also was informed of the complaints submitted by Moczygamba and Carr. At Roberts’s direction, Del Torro investigated the allegations regarding Braun’s use of racial and ethnic slurs and profanity in the workplace.

12. On or about July 7, 2010, Del Torro’s investigation into the written complaints by Sadler, Moczygamba and Carr was complete, and she submitted a report to Roberts stating that some witnesses interviewed confirmed that Braun used racial slurs. One witness interviewed by Del Torro reported that he and Braun exchanged racial jokes.

13. On or about July 7, 2010, Sadler received a letter from Roberts regarding Del Torro’s investigation which explained that Roberts requested that Braun attend sensitivity classes and that Roberts instructed Braun to “weigh his words carefully to the three members of the Fire Department that were offended.”

14. On July 8, 2010, Sadler and the crew to which he was assigned were working in the SFD station bay. Carr borrowed a level from George Runge, a supervisor in the City's Public Works Department. At some point, the level was damaged. Carr immediately went to buy the Public Works Department a new level. Carr explained to Runge what happened to the level, apologized to Runge for damaging the borrowed level, and provided Runge with the new level.

15. The damaged level was left in plain sight in the SFD fire station. Captain David Owens found the damaged level leaning against a locker in the SFD bunk room and took the level to Braun. Owens did not indicate to Braun that Owens found the level "hidden."

16. Braun subsequently asked Runge what happened to the level. Runge reported to Braun how the level was damaged, and that he was pleased with the new replacement level provided by Carr. Runge did not say anything to Braun suggesting that Carr, or any other SFD member, tried to cover up the damaged-level incident.

17. On July 12 or 13, 2010, *less than one month after Sadler submitted a complaint to the City regarding Braun's use of ethnic slurs in the workplace*, Braun sought permission from Roberts to demote Sadler from Lieutenant to Firefighter and to suspend Carr without pay. In seeking permission from Roberts to demote Sadler, Braun informed Roberts that Sadler tried to conceal the July 8, 2010 damaged-level incident.

18. On or about August 20, 2010, Roberts, without conducting any independent investigation of the circumstances surrounding Braun's request to demote Sadler from Lieutenant to Firefighter, approved Braun's request. The facts upon which Roberts approved Braun's request to demote Sadler came solely from Braun.

19. In a letter dated July 20, 2010 (but drafted by Braun almost seven days earlier and submitted to Roberts for approval), Braun informed Sadler that he was being demoted from Lieutenant to Firefighter. Braun's letter stated that Sadler was being demoted because Sadler failed to report to Braun that City-issued equipment was damaged by a crew supervised by Sadler. As part of the demotion, Sadler's annual salary was reduced from \$43,126 to \$39,723. Braun's letter was delivered to Sadler on or about August 2, 2010.

20. The City's stated reasons for Sadler's demotion have shifted over time and, in any event, are not credible. Among other reasons, there is no evidence to support the City's allegation that Sadler attempted to cover up the damaged-level incident. Moreover, prior to his August 2, 2010 demotion, Sadler was never subjected to discipline by any official beyond a verbal reprimand.

21. The City's personnel handbook includes a policy on employee discipline, and sets out seven different disciplinary actions that can be taken against an employee including: verbal warning, written reprimand and meeting, probation, remedial training, unpaid suspension, demotion, and termination of employment. Roberts has stated that the City's discipline policy was progressive in nature. In demoting Sadler from Lieutenant to Firefighter, the City failed to follow the progressive nature of its discipline policy.

22. The City, through the acts of Braun and Roberts, has subjected Sadler to discrimination in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), among other ways, by retaliating against Sadler because he engaged in activity protected under Title VII. Specifically, Sadler was demoted from Lieutenant to Firefighter on August 2, 2010 because he complained on June 17, 2010 to the City of Braun's use of ethnic slurs in the workplace.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court grant the following relief:

- (a) Enjoin the City from discriminating and retaliating against applicants and employees who engage in activity protected under Title VII;
- (b) Order the City to develop and implement appropriate and effective measures designed to prevent discrimination and retaliation, including but not limited to policies and training for employees and managers;
- (c) Order the City to reinstate Sadler to the rank of Lieutenant together with the appropriate salary and seniority;
- (d) Award make-whole remedial relief to Sadler, including back pay with interest, to compensate him for the loss he suffered as a result of the City's discriminatory and retaliatory conduct as alleged in this Complaint;
- (e) Award compensatory damages to Sadler to fully compensate him for the injuries caused by the City's discriminatory and retaliatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a; and
- (f) Award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a).

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

By:

/s/ Delora L. Kennebrew

DELORA L. KENNEBREW (GA Bar No. 414320)
Chief
Employment Litigation Section
Civil Rights Division

/s/ Hector F. Ruiz, Jr.

LOUIS LOPEZ (DC Bar No. 461662)
Deputy Chief
HECTOR F. RUIZ, JR. (TX Bar No. 24029814)
Senior Trial Attorney
Employment Litigation Section
Civil Rights Division
United States Department of Justice
950 Constitution Avenue, NW
Patrick Henry Building, Room 4034
Washington, DC 20530
(202) 514-9694
(202) 514-1005 (fax)

Attorneys for the United States of America

ROBERT PITMAN
United States Attorney
Western District of Texas

By:

/s/ John Paniszczyn

JOHN PANISZCZYN
(TX Bar No. 15443855)
Assistant United States Attorney
United States Attorney's Office
Western District of Texas
601 NW Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7100