

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 11 - CV- 839
v.)	
)	Jury Trial Demanded
TOWN OF ROME, WISCONSIN,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

This action was brought by the United States against the Town of Rome, Wisconsin ("Rome"), to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), ("Title VII"), following receipt by the Department of Justice from the Equal Employment Opportunity Commission ("EEOC") of a charge timely filed by Jolene Orłowski, a former employee of Rome.

In its Complaint, the United States alleges that, because Orłowski complained of sexually discriminatory treatment against her while she was employed in Rome's Police Department, Rome retaliated against her, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), by terminating her employment with Rome.

Rome has denied this allegation.

The parties, desiring that this action be settled by appropriate consent decree and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. Subject to the Court's approval of this Consent Decree ("Decree"),

the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between themselves as to the issues raised in the United States' Complaint filed in this case and the matters resolved in this Decree.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by Rome of a finding of any wrongdoing or violation of any applicable federal or state law or regulation.

As used in this Decree, the term "date of entry of this Decree" is defined as the date on which the Court grants final approval to and enters this Decree as a final order of the Court.

It is therefore, ORDERED, ADJUDGED AND DECREED as follows:

A. GENERAL RELIEF

1. Rome, by and through its officials, agents, employees and all persons in active concert or participation with Rome in the performance of employment or personnel functions, shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee or potential employee in Rome because of that individual's sex.

2. Rome, by and through its officials, agents, employees and all persons in active concert or participation with Rome, shall not retaliate against or in any respect adversely affect Orlowski or any other person because that person has opposed policies or practices that allegedly violate Title VII, has filed a charge with the EEOC, or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Decree.

3. Within ninety (90) calendar days from the date of entry of this Decree, Rome shall review and, to the extent necessary, adopt or amend its written policies and procedures that

prohibit discrimination on the basis of sex and retaliation, to ensure the following provisions are included therein:

- (a) A description of the manner in which an employee or potential employee of Rome may make a complaint of discrimination based on sex or retaliation, including the name and contact information for the Equal Employment Opportunity ("EEO") Officer;
- (b) The identification, by job title and telephone contact information, of all individuals who are authorized to accept complaints of discrimination on the basis of sex or retaliation against Rome;
- (c) A statement that all complaints of discrimination based on sex or retaliation will be promptly and objectively investigated;
- (d) A description of the procedures which will be used to investigate complaints of discrimination based on sex or retaliation, and identification of the person or persons by position title in Rome, who will conduct the investigation and make conclusions about the results of the investigation; and
- (e) A statement that Rome will provide the results of an investigation of a complaint of discrimination on the basis of sex or retaliation to the complaining party in writing no later than thirty (30) calendar days from the date the complaint is received, or, for a complaint alleging harassment, as soon as possible to comply with its obligations under Title VII to investigate such complaints promptly (but in no event later than thirty (30) calendar days).

Rome shall present to the United States for its review a draft of the proposed new or revised policies fourteen (14) calendar days prior to their adoption.

4. Within ten (10) calendar days from the date upon which Rome implements the written policies and procedures set forth in Paragraph 3, above, Rome shall take the following steps:

- (a) Rome shall distribute copies of such policies and procedures to all of its employees, supervisors and agents and shall provide a copy to the United States. Each individual (other than the United States) who receives a copy shall sign an acknowledgment that it has been received and read. The signed acknowledgment by each employee shall be placed in the employee's personnel file, and the signed acknowledgment by each supervisor also shall be maintained by the EEO Officer.
- (b) Rome shall publicize such policies and procedures by, *inter alia*, posting them in all buildings and facilities used for posting EEO information, by email to all employees, and on any internet or intranet website used for posting notices or policy changes for or concerning Rome.
- (c) Rome shall ensure that each new employee or supervisor receives a copy of the written policies and procedures implemented pursuant to Paragraph 3, above, at the time of the new employee's hire or at the time of the supervisor's election or appointment. Each new Rome employee or supervisor shall sign an acknowledgment that she or he has read and understands such policies. The signed acknowledgment by a new employee shall be placed in the employee's

personnel file, and the signed acknowledgment by a new supervisor also shall be maintained by the EEO Officer.

5. Within sixty (60) calendar days from the date upon which Rome implements the written policies and procedures set forth in Paragraph 3, above, Rome shall provide training with respect to Title VII's prohibitions against employment discrimination based on sex and retaliation to all supervisory personnel who are involved in the hiring and selection procedure, evaluation of job performance and discipline of Rome employees. Rome shall also provide separate training with respect to Title VII's prohibitions against employment discrimination based on sex and retaliation to all non-supervisory employees in the Rome Police Department. Each training session shall last at least three hours. A description of each of the proposed training programs including copies of all proposed training materials, shall be submitted to counsel for the United States for review within sixty (60) calendar days from the date upon which Rome implements the written policies and procedures set forth in Paragraph 3, above.

B. SPECIFIC RELIEF

1. In settlement of the claim of the United States for relief on behalf of Orlowski, as well as in settlement of the claim of Orlowski if she accepts the relief provided her by this Decree, Rome agrees to the following and it is hereby ordered by the Court that within seven (7) calendar days of the date of entry of this Decree:

(a) Rome has already reinstated Orlowski in the full-time position as a police officer. Orlowski's reemployment shall include a remedial seniority date in that position for all purposes of January 30, 2006 (the date she was first hired by Rome). Rome shall provide Orlowski with all requisite training, including paying for her to attend any necessary police

academy training, to obtain full certification as a law enforcement officer with Wisconsin and full qualifications required to maintain the position of police officer with Rome.

(b) Rome shall offer to pay Orlowski a monetary award in the amount of \$351,891. This amount includes \$224,890 in back pay, \$67,001 in accumulated interest on the back pay, \$15,000 in tuition reimbursement, together with \$45,000 in compensatory damages to fully compensate her for the pain and suffering caused by Rome's alleged retaliatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981. The portion of this amount attributable to back pay shall be subject to income tax withholding and FICA. Rome shall separately pay the appropriate employer's contribution to the Social Security fund due on the back pay portion of the monetary award; *i.e.*, the employer's contribution shall not be deducted from the monetary award to Orlowski. If Orlowski accepts this offer, Rome must pay the entire award within fourteen (14) calendar days of receiving the Release and Election forms contained in Appendix B. Rome shall issue an IRS Form 1099, and any other appropriate IRS forms, to Orlowski to reflect this payment, and shall not deduct any employer or employee taxes from that amount. Orlowski shall be responsible for paying any income taxes due. The payment shall be made payable to Orlowski and sent to her in care of her counsel, at the following address:

Ms. Jolene Orlowski
In care of Katy Lounsbury, Esq.
Ehlke, Bero-Lehmann & Lounsbury
6502 Grand Teton Plaza, Suite 202
Madison, WI 53719

(c) Rome shall offer to expunge from Orlowski's personnel files and any other Rome files any negative references pertaining to Orlowski's complaints of discrimination

based on sex or retaliation. In order to accomplish this objective, Rome shall submit to the United States, within thirty (30) calendar days from its receipt of the executed Release and Election forms from Orłowski pursuant to Paragraph B.5. of this Decree, a complete copy of the personnel file of Orłowski and complete copies of any and all other relevant files and documents pertaining to Orłowski. Upon identification by the United States of the appropriate documents, Rome shall expunge such documents from its records and files.

2. Rome shall notify Orłowski of the terms of this Decree within seven (7) calendar days of its date of entry by mailing to her in care of her counsel, by certified mail, return receipt requested, a copy of the letter in the form set forth in Appendix A and enclosing a copy of this Decree and a copy of the Release and Election forms as set forth in Appendix B. The letter identified as Appendix A will inform Orłowski that in order to accept the relief offered to her, she must return the Release and Election forms to Rome within forty-five (45) calendar days of her receipt of the letter in Appendix A.

3. Orłowski need not accept reemployment with Rome in order to obtain the monetary award defined in paragraph B.1.b. above.

C. RECORD KEEPING AND REPORTING

1. Rome shall retain during the life of this Decree records necessary to document the implementation of this Decree. Rome 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 Rome's attorney.

2. Rome shall provide written notice to counsel for the United States of any disciplinary or other adverse employment action proposed or taken against Orłowski during the

life of this Decree promptly after such action is proposed or taken. The United States shall have the right to inspect and copy all documents related to such action upon reasonable notice to Rome without further order of this Court.

3. Rome 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 Rome or an employee, agent or representative of Rome and pertaining to an employee or applicant for employment with Rome: (a) through any informal channels of complaint; (b) through Rome's internal grievance procedure; (c) with the EEOC; or (d) through or with any other federal, state or local agency authorized to receive such complaints. Rome shall provide copies of documents reflecting such complaints or charges to counsel for the United States within ten (10) calendar days of its receipt of such complaints or charges. In addition, the United States shall have the right to inspect and copy all documents related to such complaints or charges upon reasonable notice to Rome without further order of this Court.

D. DISPUTE RESOLUTION

The parties shall attempt to resolve informally any dispute that may occur under this Decree. The parties shall engage in good faith efforts to resolve the issue before seeking action by the Court. If the parties are unable expeditiously to 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.

E. JURISDICTION OF THE COURT

1. Having examined the provisions of this Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and provisions of this Decree are lawful, fair, reasonable and just. The rights of the Parties are adequately protected by this Decree.
- c. This Decree conforms with the Federal Rules of Civil Procedure and Title VII, and is not in derogation of the rights and privileges of any person. The entry of the Decree will further the objectives of Title VII and will be in the best interest of the Parties.

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.

2. This Decree shall terminate two (2) years from the date of its entry without further order of the Court.

3. 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.

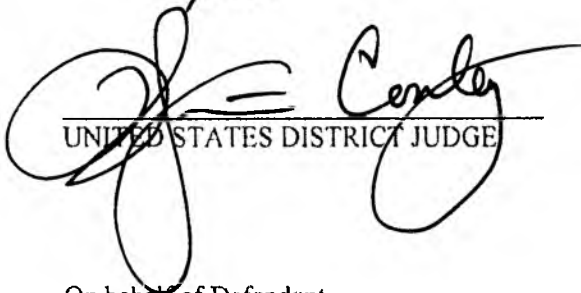
F. COSTS

The parties shall bear their own costs in this action, including attorney's fees.

G. SCOPE OF THE DECREE

This Decree sets forth the entire agreement between the United States and Rome, and supercedes all other negotiations, representations or agreements, either written or oral, between the United States and Rome.

DONE AND ORDERED this 31st day of January, 2012.

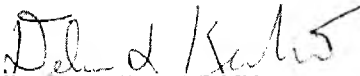


UNITED STATES DISTRICT JUDGE

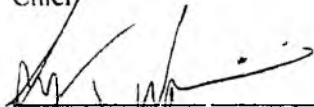
Agreed and Consented To:

On behalf of Plaintiff
The United States of America:

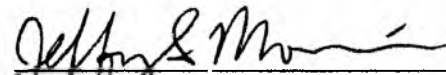
THOMAS E. PEFEZ
Assistant Attorney General
Civil Rights Division

BY: 

DELORA L. KENNEBREW (GA Bar No. 414320)
Chief



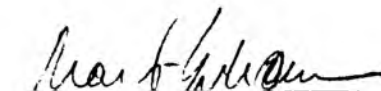
AUDREY WIGGINS (DC Bar No. 461662)
Deputy Chief



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Senior Trial Attorney
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Telephone: (202) 353-1845
Facsimile: (202) 353-8961
jeffrev.morrison@usdoj.gov

On behalf of Defendant
The Town of Rome, Wisconsin:

MARK F. YOKOM
Counsel for the Town of Rome, Wisconsin



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Oshkosh, WI 54903
Telephone: (920) 233-6050
Facsimile: (920) 233-8528
myokom@dkattorneys.com

APPENDIX A
NOTICE LETTER

[Date]
Ms. Jolene Orłowski
In Care of Ka' y Lounsbury, Esq.
Ehlke, Bero-Lehmann & Lounsbury
6502 Grand Teton Plaza, Suite 202
Madison, WI 53719

Re: *United States of America v. Town of Rome, Wisconsin*

Dear Ms. Orłowski:

A Consent Decree has been entered settling a complaint of employment retaliation filed by the United States against the Town of Rome Wisconsin ("Rome") based on the charge of sex discrimination and retaliation you filed with the U.S. Equal Employment Opportunity Commission ("EEOC").

Under the terms of the Consent Decree entered on _____, 2012, in the case of *United States of America v. Town of Rome, Wisconsin*, Civil Action No. _____ (W.D. Wis.), you are being offered certain relief as settlement for your claim of sex discrimination and retaliation against Rome based on your EEOC charge.

First, as a monetary award, you are being offered \$351,891. This amount includes \$224,890 in back pay, \$67,001 in accumulated interest on the back pay, \$15,000 in tuition reimbursement, together with \$45,000 in compensatory damages.

Second, you have already accepted reinstatement and began working as a police officer with Rome. Per this consent decree, this reinstatement is offered to you with full remedial seniority, and Rome will also provide you with all requisite training, including paying for you to attend any necessary police academy training, to obtain full certification as a law enforcement officer with Wisconsin and full qualifications required to maintain the position of police officer with Rome.

Third, Rome is offering to expunge from your personnel files and any other Rome files any negative references pertaining to your complaint of sex discrimination and retaliation.

This relief is being offered to you on the following condition: if you accept the relief, Rome will require you to release it from all employment discrimination claims you may presently have against it on the basis of sex discrimination or retaliation arising out of this case and EEOC Charge No. 26G-2006-01506. If you decline the relief, Rome will nevertheless have satisfied its obligation to the United States pursuant to the Consent Decree in the above-captioned case and the United States will not seek additional relief for you.

In order to obtain the offered relief, or any part of it, you must complete and return the enclosed Release and Election form. The Release must be signed in the presence of a notary public and thereafter notarized.

If you accept the offered relief, Rome will send you in care of your counsel the appropriate monetary award within 14 calendar days of its receipt of your Release. Rome will also send you appropriate IRS forms with respect to the monetary award.

IF YOU FAIL TO SUBMIT THE RELEASE AND ELECTION FORM, AS DIRECTED IN THIS LETTER, WITHIN 45 CALENDAR DAYS FROM YOUR RECEIPT OF THIS LETTER IN CARE OF YOUR COUNSEL, YOU WILL FORFEIT YOUR RIGHTS TO ANY MONETARY OR OTHER RELIEF UNDER THE CONSENT DECREE.

A copy of the Consent Decree is enclosed. If you have any questions concerning this settlement, you may contact Jeffrey Morrison, attorney for the United States Department of Justice, at (202) 353-1845.

Sincerely,

Mark F. Yokom
Attorney for the Town of Rome, Wisconsin

Enclosures

APPENDIX B

RELEASE

The United States of America v. Town of Rome, Wisconsin

For and in consideration of the acceptance of the relief, or any part of it, offered to me by the Town of Rome, Wisconsin pursuant to the provisions of the Consent Decree entered by the Honorable _____, United States District Judge, on _____, 2012 in *United States of America v. Town of Rome, Wisconsin*, Civil Action _____, I, Jolene Orłowski, hereby release and forever discharge the Town of Rome, Wisconsin, its current, future, and past officials, employees and agents, of and from all legal and equitable claims of employment discrimination based on sex or retaliation arising out of that action which accrued prior to _____, [date of entry of Consent Decree by the Court] and EEOC Charge No. 26G-2006-01506.

I understand that the relief granted to me in consideration for this Release does not constitute an admission by the Town of Rome, Wisconsin of the validity of any claim raised by me or on my behalf.

This Release constitutes the entire agreement between the Town of Rome, Wisconsin and me, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action has been made available to me.

I HAVE READ THIS RELEASE WITH THE ASSISTANCE OF COUNSEL OF MY OWN CHOOSING AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Date: _____
Jolene Orłowski

Social Security Number _____-_____-_____

Subscribed and sworn to before me this ___ day of _____, 2008.

Notary Public

My commission expires: _____

ELECTION FORM

Please complete by checking the appropriate response to each of the following:

A. Monetary Award

_____ I hereby accept the monetary award totaling \$354,891 contained in the Consent Decree in *United States of America v. Town of Rome, Wisconsin*. Civil Action No.

_____ (W.D. Wis).

B. Job Offer Award

_____ I hereby accept the offer of reinstatement to a position as a police officer with the Town of Rome, Wisconsin with all remedial seniority and rights to additional training and certification as provided for in the Consent Decree in *United States of America v.*

Town of Rome, Wisconsin, Civil Action No. _____ (W.D. Wis).

Date _____ Signature: _____

Social Security Number: _____

TO RECEIVE EITHER AWARD, YOU ALSO MUST COMPLETE AND RETURN THE ENCLOSED RELEASE. FAILURE TO RETURN BOTH FORMS WITHIN 45 CALENDAR DAYS MAY RESULT IN YOUR FORFEITURE OF THE AWARDS UNLESS GOOD CAUSE IS SHOWN FOR YOUR FAILURE TO DO SO.

RETURN THE COMPLETED FORMS IN THE ENCLOSED ENVELOPE ADDRESSED TO:

Mark F. Yokom
Davis & Kuelthau SC
219 Washington Ave., Ste 200
PO Box 1278
Oshkosh, WI 54903