

FILED

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

DAVID S. BRADFORD,)

Plaintiff,)

v.)

CITY OF BIRMINGHAM, a)
municipal corporation; and)
JEFFERSON COUNTY)
PERSONNEL BOARD,)

Defendants.)

CIVIL ACTION NO.:

CV-09-J-0750-S

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW the Plaintiff, David S. Bradford, by and through his attorneys of record, and for his Complaint against the Defendants, the City of Birmingham and the Jefferson County Personnel Board, states as follows:

NATURE OF THE CASE

1. This is a lawsuit brought by the Plaintiff, David S. Bradford, who has who has been affected by the discrimination alleged in the claims set forth below, seeking permanent relief from unlawful discriminatory practices involving promotion, compensation, and other terms and conditions of employment in failing to remedy systemic employment discrimination on the basis of race.

Defendants' actions violate Ala. Code § 25-1-10, equality of treatment in affirmative action between Native Americans and other protected groups; 42 U.S.C. §§ 1981 and 1983; and Alabama common law governing civil conspiracy.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this cause of action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367, 42 U.S.C. § 1983, and Ala. Code § 6-2-38(m).

3. Plaintiff, David S. Bradford ("Mr. Bradford" or "Plaintiff"), is an adult male resident of the state of Alabama. He is a Native American of Cherokee descent. Plaintiff was an employee of Defendant City of Birmingham at all times material herein as part of the civil service system administered by Defendant Jefferson County Personnel Board.

4. Defendant City of Birmingham is a municipal corporation located and/or doing business within this judicial district and division.

5. Defendant Jefferson County Personnel Board is a local governmental authority in Jefferson County that exists to administer the civil service system for local governments within Jefferson County. It is located and operates within this judicial district and division.

6. This action is brought within the judicial district wherein the unlawful practices were committed, making venue proper under 28 U.S.C. § 1391(b).

PARTIES

7. Plaintiff, David S. Bradford (hereinafter, “Mr. Bradford” or “Plaintiff”), is a fifty-one year old adult male resident of the state of Alabama. Plaintiff was employed by Defendant City of Birmingham at all times material herein under an employment system under the control of Defendant Jefferson County Personnel Board.

8. Defendant City of Birmingham (hereinafter, “Birmingham”) is an Alabama municipality located and/or doing business within this judicial district and division.

9. Defendant Jefferson County Personnel Board (hereinafter, “Personnel Board”) is a local government authority that supervises and oversees all merit system hiring and promotion for local governments within Jefferson County. It administered the promotion process in question at all material times herein. It is located and conducts all of its activities within this judicial district and division.

10. This action is brought within the judicial district wherein the unlawful practices were committed, making venue proper under 28 U.S.C. § 1391(b).

STATEMENT OF FACTS

11. Mr. Bradford began work with the City of Birmingham as a firefighter in July, 2000.

12. Mr. Bradford is a Native American of Cherokee descent.

13. Ala. Code § 25-1-10 requires that any locality or state agency that has an affirmative action policy include Native Americans within the coverage of said affirmative action policy.

14. Both Defendant have affirmative action policies, yet neither Defendant includes Native Americans in its affirmative action policy.

15. In September, 2006, Plaintiff applied for a position as a Fire Prevention Inspector.

16. Mr. Bradford had informed both the City of Birmingham and the Personnel Board that he was Native American.

17. When he originally applied for a position with the City, Barry Jackson of the Personnel Board told Plaintiff that he should not indicate his race as being Native American because the City and the Personnel Board did not recognize Native Americans as being separate from whites.

18. Mr. Bradford took the test prescribed by the Personnel Board for the position of Fire Prevention Inspector in September, 2006.

19. Mr. Bradford passed the test and was placed on the list of eligible persons for the position.

20. Mr. Bradford was interviewed for the position in February, 2007

along with the other persons who had passed the Personnel Board examination.

21. On April 19, 2007, Mr. Bradford was informed by Birmingham Fire Prevention Chief David Brooks that Decara Washington, a black female, would receive the promotion instead of Plaintiff.

22. At the time that the Plaintiff was denied the promotion, he had served as a firefighter for seven years with the City of Birmingham. Plaintiff had also spent six years in the United States Navy, where he had been trained in shipboard firefighting.

23. At the time that the Plaintiff was denied the promotion, he had seven years experience performing pre-incident survey inspections for the Fire Department.

24. Ms. Washington had no experience as a firefighter or in performing fire inspections.

25. Plaintiff had successfully completed the Firefighter I and II courses at the State Fire College.

26. Plaintiff had also successfully completed the Fire Inspector I class at the State Fire College.

27. Ms. Washington had never taken or completed any courses in firefighting or fire inspection.

28. Plaintiff had studied blueprint reading, an essential duty of a Fire Prevention Inspector, while completing his associate's degree in welding at Bessemer State Technical College.

29. Ms. Washington had never studied blueprint reading.

30. At the time that she was hired, Ms. Washington was employed by the Alabama Department of Human Resources in a position which provided job placement assistance.

31. Plaintiff asked Brooks why he had not been hired.

32. Brooks replied that Acting Chief Carl Harper would not allow Brooks to hire Plaintiff.

33. Brooks claimed that the Fire Department was required to hire the person at the top of the examination list.

34. The City is not required to hire the person at the top of the examination list for any position. Alabama Act No. 45-248, *as amended*, §§ 16, 18.

35. Brooks further claimed that he was not allowed to hire anyone with firefighting experience for the position of fire prevention inspector.

COUNT ONE
VIOLATION OF STATUTE
(CITY OF BIRMINGHAM)

36. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.

37. Defendant City of Birmingham's failure to include Native American ancestry in its affirmative action policy violates Alabama Code § 25-1-10.

38. Defendant's breach of its statutory duty has caused Plaintiff to be damaged and injured, including, but not limited to, the fact that he was wrongfully denied a promotion to which he was entitled.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against Defendant City of Birmingham in an amount that is just and appropriate as determined by a struck jury, plus interest and costs of this proceeding, instatement to the position that he would have held had Plaintiff not violated its statutory duty to include Native Americans in its affirmative action policy, and back pay for the additional compensation that he would have earned had he received the promotion to which he was entitled.

COUNT TWO
VIOLATION OF STATUTE
(PERSONNEL BOARD)

39. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.

40. Defendant Jefferson County Personnel Board's failure to include Native American ancestry in its affirmative action policy violates Alabama Code § 25-1-10.

41. Defendant Personnel Board's breach of its statutory duty has caused Plaintiff to be damaged and injured, including, but not limited to, the fact that he was wrongfully denied a promotion to which he was entitled.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against Defendant Jefferson County Personnel Board in an amount that is just and appropriate as determined by a struck jury, plus interest and costs of this proceeding, reinstatement to the position that he would have held had Plaintiff not violated its statutory duty to include Native Americans in its affirmative action policy, and back pay for the additional compensation that he would have earned had he received the promotion to which he was entitled.

COUNT THREE
RACE DISCRIMINATION - § 1981, BY AND THROUGH § 1983
(CITY OF BIRMINGHAM)

42. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.

43. In taking the above-described actions, Defendant City of Birmingham intentionally discriminated against Plaintiff on the basis of his race in violation of

§ 1981. Native American and black employees were not treated similarly.

44. Defendant City of Birmingham condones and allows race-based discrimination. Said Defendant denied the Plaintiff the opportunity for a promotion to which he was entitled to on the basis of his race, Native American, in violation of § 1981.

45. The denial of the Plaintiff's promotion was made by the Fire Chief, who is the final policy-making official for the City of Birmingham on matters pertaining to the Fire Department.

46. As a proximate consequence of the violation of § 1981 by said Defendant, Plaintiff has suffered and will continue to suffer damages to his professional life and future career opportunities, past and future pecuniary losses, emotional pain, inconvenience, mental anguish, and non-pecuniary damages.

47. Said Defendant's violation of § 1981 constitutes a violation of § 1983.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands the following relief:

- a. Placement in the position(s) in which he would have worked absent Defendant's discriminatory treatment;
- b. Injunctive relief;

- c. Pre-judgment interest;
- d. Attorneys' fees;
- e. Costs;
- f. Compensatory damages, including, but not limited to, mental anguish, emotional distress, both past and future; and
- g. Such other legal or equitable relief as may be appropriate to effectuate the purposes of § 1981 or to which he may be entitled.

COUNT FOUR
RACE DISCRIMINATION - § 1981, BY AND THROUGH § 1983
(PERSONNEL BOARD)

48. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.

49. In taking the above-described actions, Defendant Personnel Board intentionally discriminated against Plaintiff on the basis of his race in violation of § 1981. Native American and black employees were not treated similarly.

50. Said Defendant has a policy of granting affirmative action benefits to other races, but not Native Americans.

51. Said Defendant condones and allows race-based discrimination.

52. Said Defendant denied the Plaintiff the opportunity for a promotion to

which he was entitled to on the basis of his race, Native American, in violation of § 1981.

53. As a proximate consequence of the violation of § 1981 by Defendant Personnel Board, Plaintiff has suffered and will continue to suffer damages to his professional life and future career opportunities, past and future pecuniary losses, emotional pain, inconvenience, mental anguish, and non-pecuniary damages.

54. Said Defendant's violation of § 1981 constitutes a violation of § 1983.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands the following relief:

- a. Placement in the position(s) in which he would have worked absent said Defendant's discriminatory treatment;
- b. Injunctive relief;
- c. Pre-judgment interest;
- d. Attorneys' fees;
- e. Costs;
- f. Compensatory damages, including, but not limited to, mental anguish, emotional distress, both past and future; and
- g. Such other legal or equitable relief as may be appropriate to

effectuate the purposes of § 1981 or to which he may be entitled.

COUNT FIVE
CIVIL CONSPIRACY
(CITY OF BIRMINGHAM)

55. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.

56. Defendant City of Birmingham conspired with the Personnel Board to exclude Native Americans from Affirmative Action programs for hiring and promotion within the merit system for the City of Birmingham in violation of Alabama Code § 25-1-10.

57. Defendant City of Birmingham agreed with the Personnel Board to not include Native Americans in the affirmative action program.

58. Defendant City of Birmingham overtly excluded Native Americans from the affirmative action programs that it made available to African Americans and women with the full knowledge and support of the Personnel Board.

59. The conspiracy between Defendant City of Birmingham and the Personnel Board has caused Plaintiff to be damaged and injured, including, but not limited to, the fact that he was wrongfully denied a promotion to which he was entitled.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against Defendant City of Birmingham in an amount that is just and appropriate as determined by a struck jury, plus interest and costs of this proceeding, instatement to the position that he would have held had Plaintiff not violated its statutory duty to include Native Americans in its affirmative action policy as part of its conspiracy, and back pay for the additional compensation that he would have earned had he received the promotion to which he was entitled.

COUNT SIX
CIVIL CONSPIRACY
(PERSONNEL BOARD)

60. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.

61. Defendant Personnel Board conspired with the City of Birmingham to exclude Native Americans from Affirmative Action programs for hiring and promotion within the merit system for the City of Birmingham in violation of Alabama Code § 25-1-10.

62. Defendant Personnel Board agreed with the City of Birmingham to not include Native Americans in the affirmative action program.

63. Defendant Personnel Board further overtly operated a joint hiring and promotion process with the City of Birmingham that provided affirmative action

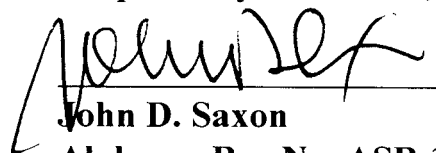
assistance to African Americans and women, but not Native Americans.

64. The conspiracy between Defendant Personnel Board and the City of Birmingham has caused Plaintiff to be damaged and injured, including, but not limited to, the fact that he was wrongfully denied a promotion to which he was entitled.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against Defendant Jefferson County Personnel Board in an amount that is just and appropriate as determined by a struck jury, plus interest and costs of this proceeding, reinstatement to the position that he would have held had Plaintiff not violated its statutory duty to include Native Americans in its affirmative action policy as part of its conspiracy with the City of Birmingham, and back pay for the additional compensation that he would have earned had he received the promotion to which he was entitled.

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,



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