

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Circuit
IN THE ST. JOSEPH ~~SUPERIOR~~ COURT
CAUSE NO. 71C01 -1602-CT-000117

NATHAN CANNON)
Plaintiff,)
)
vs.)

) COMPLAINT - EMPLOYMENT
) DISCRIMINATION BASED ON RACE
) AND RETALIATION

THE CITY OF SOUTH BEND, INDIANA,)
THE SOUTH BEND POLICE DEPARTMENT,)
RONALD TEACHMAN,)
CHIEF OF POLICE SCOTT RUZKOWSKI)
Defendants.)

) JURY TRIAL REQUESTED

- FILED -
FEB 23 2016

Clerk
St. Joseph Circuit Court

I.

NATURE OF THE ACTION

1. This action is brought by Plaintiff, SERGEANT NATHAN CANNON (hereafter SGT. CANNON), employed by THE SOUTH BEND POLICE DEPARTMENT, which is organized and operated by THE CITY OF SOUTH BEND, former South Bend Chief of Police RONALD TEACHMAN, or current Chief of Police, SCOTT RUZKOWSKI (hereafter "Defendant", "TEACHMAN", "THE CITY", "THE DEPARTMENT", or "RUZKOWSKI") for race discrimination (Black/African American), and retaliation to wit: denial of promotions, creating a hostile work environment, and benefits and retaliation in violation of the Whistleblower Protection Act, 5 U.S.C. 2301, et seq. as amended.

2. This action is brought under the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq. as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII) and the Civil Service Reform Act, 5 U.S.C. §2101, et seq. as amended by the Whistleblower Protection Act.

judgment and injunction to restrain defendant employer from committing prohibited personnel practices, policies, customs and usages, from discriminating and retaliating against plaintiff and other employees of the THE DEPARTMENT based upon race and/or opposition to unlawful discrimination and retaliation.

Plaintiff seeks injunctive relief requiring defendant employer to take affirmative and effective steps to remove and otherwise discipline managers who have failed to comply with Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq. as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII). Plaintiff seeks further injunctive relief requiring the defendant employer to take specific actions designed, implemented and confirmed by qualified non-government consultants to ensure that all supervisory employees are adequately trained to identify, investigate and stop continuing violations of the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq. as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Title VII). Such specific actions, include, but are not limited to:

- a. allocation of significant funding and trained staff to implement all changes within two years;
- b. discipline managers who have violated the DEPARTMENT's policies and failed to meet their legal responsibility to promptly investigate complaints and to take effective action to stop and deter prohibited personnel practices against employees;
- c. establishing and strictly measuring EEO compliance as a critical element in every manager's performance standards; and
- d. mandatory and effective training for all employees and managers on discrimination and retaliation issues, investigations and appropriate corrective actions.

II.

JURISDICTION AND VENUE

3. Jurisdiction stems from the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 et seq., 28 U.S.C. §§ 1331, 1337, 1343, 1345 and 2401(a), which grant federal district courts jurisdiction over actions alleging unlawful and discriminatory employment practices by governmental agencies and provides for judicial review of cases involving race and/or retaliation. State courts have the inherent authority, and are competent, to adjudicate federal claims. Thus, the courts of the State of Indiana have concurrent jurisdiction to hear Title VII claims. *Yellow Freight Syst. v. Donnelly*, 494 U.S. 820 (1990). The unlawful practices alleged in this complaint occurred in the Saint Joseph County, which is situated in the Northern District of Indiana.

III.

PLAINTIFF

4. Plaintiff, SGT. NATHAN CANNON, is a citizen of the United States who has been employed as an officer in THE DEPARTMENT, in South Bend, Indiana for over 30 years, and employed as Detective in the South Bend Police Department's Detective Bureau for over 15 years. Plaintiff has held the rank of Sergeant for over 20 years. His performance was rated satisfactory or better, at all times material to this action.

IV.

DEFENDANTS

5. Defendant, former South Bend chief of Police, RONALD TEACHMAN, was the head of an executive agency (THE DEPARTMENT) within the meaning of the Civil Service Reform Act, 5 U.S.C. 1065 and the Civil Rights Act, as amended, 42 U.S.C. 2000e-16. RONALD

TEACHMAN was also an employee possessing the authority to take, direct others to take, recommend, or approve personnel action within THE DEPARTMENT. As such, defendant has the full responsibility for administration of all programs within the agency, including the employment policies and practices of the South Bend Police Department and was in a position to create and implement a policy to eliminate and prevent any form of discrimination and retaliation and to provide complete relief for plaintiff. Defendant is sued in his official capacity. Defendant, THE SOUTH BEND POLICE DEPARTMENT, is organized and operated by THE CITY OF SOUTH BEND, which have employed plaintiff for over 30 years. Defendant, RUZKOWSKI, is the head of an executive agency (THE DEPARTMENT) within the meaning of the Civil Service Reform Act, 5 U.S.C. 1065 and the Civil Rights Act, as amended, 42 U.S.C. 2000e-16. RUZKOWSKI is currently an employee possessing the authority to take, direct others to take, recommend, or approve personnel action within THE DEPARTMENT.

V.

EXHAUSTION OF REMEDIES

6. Plaintiff, SGT. NATHAN CANNON, filed a timely formal complaint with the South Bend Human Rights Commission, alleging racial discrimination on June 30, 2014, Case No. 24M-2014-00210, and filed an amended complaint on July 21, 2014. The Equal Employment Opportunity Commission (EEOC) investigated the complaint for greater than 180 days. The EEOC issued a "Right to Sue Letter" to plaintiff on November 25, 2015 which provided 90 days to file a civil action in district court. Plaintiff's EEOC Complaint has been pending for approximately two years.

VI.

STATEMENT OF FACTS

7. Plaintiff, SGT. CANNON, is a member of a protected group based on his race (Black/African-American).
8. Plaintiff has fully exhausted his administrative remedies.
9. Plaintiff has been employed as an officer in THE DEPARTMENT, in South Bend, Indiana for over 30 years, and employed as Detective in the South Bend Police Department's Detective Bureau for over 15 years. Plaintiff has held the rank of Sergeant for over 20 years.
10. At all times material to this action, Plaintiff has received performance ratings of satisfactory or better.

DENIAL OF PROMOTION AND EMPLOYMENT OPPORTUNITIES

11. Defendants TEACHMAN, THE CITY, AND THE DEPARTMENT through his/its agents, discriminated against Plaintiff in terms and conditions of employment and promotions.
12. While TEACHMAN served as Chief of Police, similarly situated, and lesser qualified employees, not in Plaintiff's protected group were promoted from the rank of Sergeant to the rank of Lieutenant instead of Plaintiff or other minority officers holding the rank of Sergeant within the department.
13. THE CITY and THE DEPARTMENT have a long history of denying promotions for higher graded positions to qualified African-American officers.
14. THE CITY and THE DEPARTMENT also have a long history of disparate treatment towards Black officers in terms of denying promotions to qualified African-American officers.
15. Defendants routinely placed, and continue to place, white employees in unfilled positions

on a temporary basis without opening the positions to a competitive application process. The white employees gain the necessary knowledge and skills needed to enter the position and then allowed to hold the position due to the unfair advantage bestowed upon them over Plaintiff and other African-American employees forced to apply for open positions that defendants have already unofficially filled with white employees.

16. Defendants violated, their own policies and procedures for posting and selection of candidates for job vacancies for the purpose of preventing African-American employees the opportunity to seek promotion and advancement within the DEPARTMENT.

17. During the tenure of defendant Chief of Police, RONALD TEACHMAN, four non-minority officers were promoted to the rank of Sergeant to Lieutenant within the Detective Bureau. Plaintiff possessed greater seniority and superior qualifications to each of the non-minority employees promoted to Lieutenant.

18. On February 7, 2014, defendants issued a notice to all Sergeants and Lieutenants in the South Bend Police Department seeking applicants for promotion or lateral transfer to the position of day-shift Lieutenant within the Detective Bureau. This opening was created by the retirement of Lt. Sherry Taylor (an African-American).

19. Plaintiff did not apply for the opening created by the retirement of Sherry Taylor because he knew that Lieutenant Marcus Wright, an African-American and a Lieutenant within the Detective Bureau, had applied for transfer from the afternoon-shift to fill the new opening for day-shift Lieutenant. Additionally, the DEPARTMENT only notified applicants of a single opening as day-shift Lieutenant. If Defendant had known that the DEPARTMENT intended on promoting three people to the rank of Lieutenant, he would have applied for one of the positions.

20. It has been the long standing policy, custom and practice of THE DEPARTMENT to grant lateral transfers when requested before promoting from below. The ordinary custom and practice would have been for THE DEPARTMENT to grant Lt. Wright's request for transfer and then invite Sergeants seeking promotion to apply for his old position as afternoon-shift Lieutenant.

21. Plaintiff intended to apply for Lt. Wright's position as afternoon-shift Lieutenant following Lt. Wright's transfer to day-shift. This position, however, never became available because instead of granting Lt. Wright's request for transfer, RONALD TEACHMAN promoted three non-minority Sergeants to positions of day-shift Lieutenant in the Detective Bureau. These promotions occurred following RONALD TEACHMAN'S recommendation for promotion on or about May 21, 2014. Both Lt. Wright and Plaintiff SGT. CANNON had more experience and seniority than the non-minorities who were promoted.

22. By promoting three non-minorities to fill one opening created by the retirement of an African-American employee, defendants eliminated future opportunities for minority candidates to competitively seek promotion to Lieutenant.

23. Had Plaintiff known that the department was seeking applicants for three positions as Lieutenant, or that the DEPARTMENT would not follow the long standing custom, policy and practice of granting lateral transfers before promoting, he would have applied for promotion to day-shift Lietenant.

24. Defendant TEACHMAN selected the following three Caucasian-white, officers for promotion to Lieutenant to the fill position which plaintiff contends should have been filled by the transfer of Lt. Wright: Anthony Bontrager, Dominic Zultanski and Amy Bennett.

25. Dominic Zultanski was also appointed to a newly created position, the leader of the “Gang Violence Intervention Unit.”

26. Plaintiff had more seniority than Dominic Zultanski and vastly superior experience in Gang Violence Intervention.

27. Defendants never announced or opened the position leader of the “Gang Violence Intervention Unit.”

28. By hiring a Caucasian-white officer to lead efforts to curtail area gang violence, defendants denied Plaintiff and other minorities the opportunity to competitively seek the position as leader of the “Gang Violence Intervention Unit.”

29. Openings for positions as day-shift Lieutenants within the Detective Beareau are rare, and are not likely occur again during Plaintiff’s career.

30. The promotion of three non-minorities to fill the spot of one Lieutenant also unfairly cut off the opportunity for minorities to advance to the rank of Captain after serving on the police force as a Lieutenant.

VII.

FIRST CLAIM

(UNLAWFUL DISCRIMINATION BASED ON RACE/NATIONAL ORIGIN)

31. Paragraphs 1 through 30 above are hereby incorporated by reference as though fully set forth in this claim.

32. Defendants have unlawfully discriminated, and continue to discriminate, against plaintiff SGT. CANNON based on his race (African-American) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16 et seq. as amended.

33. Plaintiff is a member of a protected group based on his race.

34. Defendants have treated, and continue to treat, Plaintiff less favorably than similarly situated employees who are not African-American.

35. Defendants have discriminated, and continue to discriminate, against plaintiff in the terms and conditions of his employment on the basis of his protected group status (African-American), in violation of Title VII.

36. Defendants have engaged in a pattern and practice of using and or violating the policies and procedures governing promotions within the DEPARTMENT to deny African-American employees promotions and other employment opportunities on the basis of their race, in violation of Title VII.

37. Plaintiff is now suffering and will continue to suffer injury and monetary damages as a result of defendant's discriminatory practices unless and until the Court grants relief.

VIII

SECOND CLAIM

(RETALIATION - WHISTLEBLOWER PROTECTION ACT)

38. Paragraphs 1 through 37 above are hereby incorporated by reference as though fully set forth in this claim.

39. Defendants, through their agents have retaliated against Plaintiff, *inter alia*, by denying him opportunities for employment on the basis of his having opposed unlawful practices and by filing a complaint alleging prohibited personnel practices as well as violations of laws, rules and regulations were being committed by managers in the DEPARTMENT, in violation of the Whistleblower Protection Act, 5 U.S.C. 2301, et seq. as amended.

40. Defendants, through their agents, were aware of Plaintiff's opposition to illegal practices.

41. Defendants, took adverse employment actions against Plaintiff, including failing to make promotions available to him.

42. Defendants have a pattern and practice of using departmental procedures to deny employees who engage in protected activities assignments, promotions, benefits and other employment opportunities in reprisal, in violation of Whistleblower Protection Act, 5 U.S.C. §2301, et seq. as amended.

43. Plaintiff is now suffering and will continue to suffer injury and monetary damages as a result of defendants retaliatory practices unless and until the Court grants relief.

IX

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SGT. NATHAN CANNON, respectfully prays that this Honorable Court grant the following relief:

1. Issue a permanent injunction:
 - a. Requiring defendants to abolish discrimination and reprisal;
 - b. Requiring allocation of significant funding and trained staff to implement all changes within two years;
 - c. Requiring removal or demotion of all managers who have violated the agency's policies and failed to meet their legal responsibility to promptly investigate complaints or to take effective action to stop and deter prohibited personnel practices against employees;
 - d. Establishing and strictly measuring EEO compliance as a critical element in every manager's performance standards;

e. Requiring mandatory and effective training for all employees and managers on discrimination and retaliation issues, investigations and appropriate corrective actions; and,

2. Issue an order requiring Defendant to retroactively restore Plaintiff to the rank of Lieutenant to which he was entitled by virtue of his seniority, experience, work history and qualifications.

3. For damages, including back pay, front pay and benefits, overtime compensation as plaintiff is entitled to under Title VII of the Civil Rights Act and the Rehabilitation Act;

4. For other and further damages, including compensatory damages for plaintiff emotional distress, as may be proven at trial;

5. For an order commanding defendants and each of them to cease and desist from any employment practice which discriminates against plaintiff or others on the basis of race, national origin, disability or in retaliation against the person because he complained about such discrimination;


6. For an award of costs of suit including reasonable attorney's fees, including fees under 29 U.S.C. § 216(b); and

7. For such other and further relief as the Court may consider just and proper.

Respectfully submitted,

Law Office of Jeffrey E. Kimmell

DATED: February 22, 2016 By:
23


Jeffrey E. Kimmell, Atty. #18734-71
218 W. Washington St., Suite 600
South Bend, IN 46601
Attorney for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a jury trial for each claim herein for which she has a right to a jury.


Jeffrey E. Kimmell