

FILED
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

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Plaintiff,

and,

Rafael March
Civil Action: CIV-01-0054 PJK/RLP

ESTHER HERRERA, MARCELLA MARTINEZ, and
LORRAINE SANCHEZ,

Plaintiffs In Intervention

-vs-

THE VILLAGE OF CUBA, NEW
MEXICO,

Defendant.

COMPLAINT IN INTERVENTION

ESTHER HERRERA, MARCELLA MARTINEZ, and LORRAINE SANCHEZ, Plaintiffs in
Intervention [hereinafter "Intervenors"] herein, state and allege:

Common Factual & Jurisdictional Allegations

1. The Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. 2000e, 28 U.S.C. 1331, 1337 and 1345, and 29 U.S.C. 215 and 216.
2. Intervenors are residents of Sandoval County, New Mexico, and seek to intervene in this matter to pursue and protect their individual remedies as provided by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et. seq., the Equal Pay Act, 29 U.S.C. 206, et. seq., and the New Mexico Human Rights Act, 28-1-1, et. seq. NMSA.
3. Intervenors are "employees" within the meaning of Title VII, 42 U.S.C. 2000e, the Equal Pay Act, 29 U.S.C. 203, and the Human Rights Act, 28-1-1, NMSA.

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4. Defendant Village of Cuba, New Mexico, is a political subdivision of the State of New Mexico created and existing under the laws of the State of New Mexico and is an employer within the meaning of Title VII, the Equal Pay Act, and the Human Rights Act.

5. Intervenors have complied with all jurisdictional prerequisites to the filing of this litigation.

Count I
Title VII Violations

6. On or about June 1, 1998, Defendant Village of Cuba improperly discriminated against Intervenors, and those similarly situated, on the basis of gender, and in violation of Section 703(a) Title VII, 42 U.S.C. 2000e, in one or more of the following ways:

a. by adopting and instituting a payroll system which provided greater percentage raises to male employees than to female employees; and

b. by refusing to increase Intervenors' compensation at the same rates as male employees upon requests from Intervenors.

7. Intervenors timely filed charges with the Equal Employment Opportunity Commission (EEOC) in July and August, 1998, alleging discrimination by the pay system. See Charge #390980831 (Herrera), Charge #390980832 (Martinez), and Charge #390980849 (Sanchez).

8. Pursuant to Section 706 of Title VII, the EEOC investigated Intervenors' charges, found reasonable cause to support said charges, and unsuccessfully sought to achieve a voluntary resolution. EEOC referred the matter to The Department of Justice which initiated this action on January 12, 2001.

9. Subsequent to the filing of the EEOC charges, Defendant Village of Cuba also violated Section 703 and 704 of Title VII, by discriminating against Intervenors in one or more of the following ways:

- a. failing or refusing to increase their hourly compensation at the same rate as the increase in hourly compensation paid to male employees;
- b. retaliating against Intervenors for their filing of the EEOC charges including use of improper disciplinary actions and write ups, refusing to consider Intervenors for promotion , and entering negative comments in Intervenors' personnel files and otherwise creating a negative and hostile environment which led to Intervenors' termination of employment;
- c. refusing to take appropriate action to remedy the effects of the discriminatory conduct towards Intervenors.

Count II
Equal Pay Act Violations

- 10. Plaintiffs in Intervention repeat and reallege each and every allegation of Count I hereof.
- 11. Defendant Village of Cuba is an employer within the meaning of the Equal Pay Act.
- 12. Plaintiffs in Intervention are females who were employed by Defendant Village of Cuba, which also employed one or more males in jobs requiring substantially equal skill, efforts, and responsibility, to the jobs performed by Intervenors, and which were performed under substantially similar conditions.
- 13. Plaintiffs in Intervention were each paid a lower hourly wage by Defendant than it paid its male employees for substantially equal same work, all in violation of the Equal Pay Act, 29 U.S.C. 206(d).
- 14. Intervenors complained to Village of Cuba officials about the pay inequalities, and Defendant Village of Cuba willfully and intentionally retaliated against Intervenors as specified above for making said complaints, ultimately resulting in Intervenors' leaving their employment.

2. For an award of liquidated damages equal to the pay and benefits differential amount as provided for by 29 U.S.C. 216(b); and
3. For an award of reasonable attorneys fees and Intervenor's costs incurred herein; and
4. For an award of both front pay and back pay as may be appropriate including the value of employee benefits, or in the alternative, reinstatement of employment to their former positions with full seniority, or to positions to which Intervenor or any one of them would have been promoted.
5. For general compensatory and/or nominal damages as may be appropriate; and,
6. For an Order of this Court enjoining Defendant Village of Cuba from engaging in the discriminatory practices complained of herein; and
7. For an Order of this Court enjoining Defendants and its employees, agents, or servants from disseminating any negative comments, referrals, references or other derogatory communications concerning Intervenor's termination of employment and, specifically, requiring any inquiry to indicate termination was voluntary; and
8. For such other and additional relief as the Court may deem proper.

Respectfully Submitted,
MALOTT LAW OFFICES

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JOHN L. HOLLIS, P.A.

A handwritten signature in black ink, appearing to read "John L. Hollis", is written over a horizontal line.

By: John L. Hollis

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