

FILED
JAMES BONINI
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

2005 AUG 26 A 11: 08

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF OHIO; OHIO
ENVIRONMENTAL PROTECTION
AGENCY; OHIO DEPARTMENT OF
ADMINISTRATIVE SERVICES,

Defendants,

and

OHIO STATE EMPLOYMENT
RELATIONS BOARD; and OHIO CIVIL
SERVICE EMPLOYEES ASSOCIATION,
AFSCME, LOCAL 11, AFL-CIO,

FRCP 19(a) Defendants.

Civil Action No. **2:05-cv-799**

JUDGE FROST

MAGISTRATE JUDGE KING

COMPLAINT

Plaintiff United States of America ("United States") 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"), and stems in part from a referral made to the United States Department of Justice by the United States Equal Employment Opportunity Commission ("EEOC").

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C.

§§ 2000e-5(f)(3), 2000e-6(a),(b); 28 U.S.C. § 1343(a)(3); and 28 U.S.C. § 1345.

3. Defendant State of Ohio (“State” or “Ohio”) is a State of the United States of America.
4. Defendant Ohio Environmental Protection Agency (“Ohio EPA” or “EPA”) is a state governmental agency, created pursuant to the laws of Ohio.
5. Defendant Ohio Department of Administrative Services (“Ohio DAS” or “DAS”) is a state governmental agency, created pursuant to the laws of Ohio.
6. Defendant Ohio State Employment Relations Board (“SERB”) is a state executive agency created under Ohio’s Public Employees’ Collective Bargaining Act (“Collective Bargaining Act” or “Act”). OHIO REV. CODE ANN. § 4117.02. SERB is named as a party pursuant to Rule 19(a) of the Federal Rules of Civil Procedure.
7. Defendant Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO (“OCSEA”) is an employee organization that represents State employees. OCSEA is named as a party pursuant to Rule 19(a) of the Federal Rules of Civil Procedure.
8. Defendants Ohio, EPA, DAS, and SERB are “person[s]” within the meaning of 42 U.S.C. § 2000e(a), and are “employer[s],” or agents of an employer, within the meaning of 42 U.S.C. § 2000e(b).
9. Defendant OCSEA is a “person” within the meaning of 42 U.S.C. § 2000e(a), and is a “labor organization” within the meaning of 42 U.S.C. § 2000e(d).
10. Since March 1, 2000, Ohio has been a party to two collective bargaining agreements with OCSEA; the earlier agreement was effective from March 1, 2000 to February 28, 2003, while the current agreement became effective on March 1, 2003 and runs through February 28, 2006.

11. Both agreements contain a provision requiring that State employees who are subject to them, but choose not to become OCSEA members, pay OCSEA a representation service fee (“fair share fee” or “fee”).

12. In its capacity as an employer, Ohio, through its EPA and DAS, has declared that State employees who seek a religious accommodation allowing them to redirect their fair share fees to nonreligious charities must apply to SERB.

13. The Collective Bargaining Act provides in part:

Any public employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization and which is exempt from taxation under the provisions of the Internal Revenue Code shall not be required to join or financially support any employee organization as a condition of employment. Upon submission of proper proof of religious conviction to [SERB], [SERB] shall declare the employee exempt from becoming a member of or financially supporting an employee organization. The employee shall be required, in lieu of the fair share fee, to pay an amount of money equal to the fair share fee to a nonreligious charitable fund exempt from taxation under section 501(c)(3) of the Internal Revenue Code mutually agreed upon by the employee and the representative of the employee organization to which the employee would otherwise be required to pay the fair share fee.

OHIO REV. CODE ANN. § 4117.09(C). SERB has declared that it will not grant the religious accommodation with respect to the payment of fair share fees provided for in the Collective Bargaining Act to public employees who hold sincere religious objections to joining or financially supporting an employee organization but are not members and adherents of religions that historically have held conscientious objections to joining or financially supporting employee organizations.

14. Glen A. Greenwood ("Greenwood") is employed by the Ohio EPA as an Environmental Specialist III. Greenwood was subject to Ohio's 2000-2003 collective bargaining agreement with OCSEA, and currently is subject to the State's and OCSEA's 2003-2006 collective bargaining agreement.

15. In June 2002, Greenwood notified OCSEA that he holds sincere religious objections to associating with it, and therefore to paying it his fair share fees. Greenwood's religious objections are based on his understanding that the American Federation of State, County and Municipal Employees, AFL-CIO, a larger union with which OCSEA is affiliated, supports and promotes same-sex unions and abortion. Greenwood requested that, as a religious accommodation under Title VII, OCSEA redirect his fees to a mutually agreeable charity. OCSEA failed to grant Greenwood's request, responding that he should make his request to SERB and that this was the proper procedure for pursuing the accommodation he sought.

16. In July 2002, Greenwood submitted to SERB an application for a religious exemption that would allow him to redirect his fair share fees from OCSEA to a nonreligious charity. On the SERB application form, Greenwood stated he was a member of the First Presbyterian Church in Lancaster, Ohio. In an attachment to the application form, Greenwood explained that while the Presbyterian Church has no historically held conscientious objections to joining or financially supporting an employee organization, Greenwood's personal religious observances, practices, and beliefs prohibit him from associating with or financially supporting an employee organization such as OCSEA. SERB denied Greenwood's request for a religious exemption. In its ruling, SERB observed that Greenwood had stated that the basis of his request for a religious exemption was personal and that he had failed to file verification of his Church's historically held conscientious objections to joining or financially supporting an employee organization.

17. Subsequently, Greenwood, through an attorney, notified the EPA and DAS that he holds sincere religious objections to joining or financially supporting OCSEA, and requested that, as a religious accommodation, his fair share fees not be directed to OCSEA.

18. The EPA and DAS both declared that they did not have the authority to grant Greenwood's requested accommodation, and that the proper procedure for obtaining the religious accommodation Greenwood sought was through application to SERB. Greenwood did not reapply to SERB, however, because SERB previously had denied him this religious accommodation.

19. Defendants Ohio, EPA, and DAS (collectively, "State Defendants") have continued to require that Greenwood pay to OCSEA his fair share fees, while, upon information and belief, State employees who are members and adherents of religions that historically have held conscientious objections to joining or financially supporting employee organizations such as OCSEA are granted an accommodation allowing them to redirect their fees to nonreligious charities.

20. State Defendants, by themselves and through SERB, have pursued and continue to pursue policies and practices that discriminate against employees on the basis of religion, in violation of Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-6, among other ways, by:

a. failing or refusing to reasonably accommodate the religious observances, practices, and beliefs of those State employees who hold sincere religious objections to associating with and financially supporting employee organizations such as OCSEA, but who are not members and adherents of religions that historically have held conscientious objections to joining or financially supporting employee organizations; and

b. subjecting State employees to disparate treatment on the basis of religion by allowing employees who are members and adherents of religions that historically have held conscientious objections to joining or financially supporting employee organizations to redirect their fair share fees to nonreligious charities, but denying the same accommodation to employees who are not members and adherents of such religions, even if they hold sincere religious objections to associating with and financially supporting employee organizations such as OCSEA.

21. State Defendants, by themselves and through SERB, have discriminated against Greenwood on the basis of his religion in violation of Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), among other ways, by:

a. failing or refusing to reasonably accommodate Greenwood's religious observances, practices, and beliefs; and

b. subjecting Greenwood to disparate treatment on the basis of his religious observances, practices, and beliefs by allowing employees who are members and adherents of religions that historically have held conscientious objections to joining or financially supporting employee organizations to redirect their fair share fees to nonreligious charities, but denying Greenwood the same accommodation because he is not a member and adherent of such a religion, even though he holds sincere religious objections to associating with and financially supporting OCSEA.

22. The policies and practices of State Defendants, described in paragraphs 16-21 above, constitute a pattern or practice of resistance to the full enjoyment of the rights of certain State employees to equal employment opportunities without discrimination based on religion, in violation of Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-6. This pattern or practice is of such a nature and is intended to deny the full exercise of

the rights secured by Title VII. Unless enjoined by this Court, State Defendants will continue to pursue policies and practices that are the same as, or similar to, those alleged in this Complaint.

23. The EEOC received a timely charge filed by Greenwood against the EPA and DAS (Charge No. 221-2004-01913), in which he alleged those respondents had discriminated against him on the basis of his religion. The EEOC investigated the charge, pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, found reasonable cause to believe the allegations of discrimination were true, attempted to achieve through conciliation a voluntary resolution of the charge, and, when conciliation efforts proved unsuccessful, subsequently referred the matter to the United States Department of Justice.

24. In accordance with Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-6, the United States, through the Department of Justice, has investigated State Defendants' policies and practices, has notified State Defendants of the investigation and of the policies and practices described in paragraphs 16-21 above, and has attempted to resolve this matter through negotiation and settlement.

25. All conditions precedent to the filing of this suit have been satisfied.

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

Enjoin State Defendants (and Defendants SERB and OCSEA, as appropriate), their officers, agents, employees, successors and all persons in active concert or participation with them, from:

a. subjecting any State employee to a policy or practice that discriminates on the basis of religion in providing religious accommodations with regard to a collective bargaining agreement's fair share fees requirement;

b. engaging in any policy or practice that denies religious accommodations to State employees who are not members and adherents of religions that historically have held conscientious objections to joining or financially supporting employee organizations, but who nonetheless hold sincere religious objections to associating with and financially supporting employee organizations such as OCSEA;

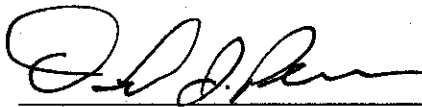
c. failing or refusing to provide make whole relief, including, but not limited to, redirecting to a mutually agreeable, nonreligious charity an amount equal to the fair share fees Greenwood has been required to pay OCSEA, as a result of the discrimination alleged in this Complaint; and

d. failing or refusing to provide make whole relief to any other State employees who, like Greenwood, have been denied a religious accommodation with respect to the payment of fair share fees, despite having sincere, personal religious objections to associating with and financially supporting an employee organization such as OCSEA.

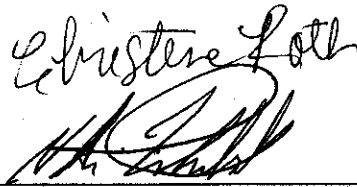
Plaintiff United States prays for such further relief as the Court may deem just, together with its costs and disbursements in this action.

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