

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

WAUPACA COUNTY, WISCONSIN,

Defendant.

CIVIL NO. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, the United States of America, 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").

JURISDICTION AND VENUE

2. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f), 28 U.S.C. § 1331, and 28 U.S.C. § 1345, and this judicial district is an appropriate venue for this action.

3. Defendant, Waupaca County (the "County"), is a governmental body and political subdivision created pursuant to the laws of the state of Wisconsin and is located within this judicial district.

4. The County is a "person" within the meaning of 42 U.S.C. § 2000e(a) and an "employer" within the meaning of 42 U.S.C. § 2000e(b).

5. Julie Ann Thobaben ("Thobaben") lives within this judicial district, in the City of Waupaca.

6. Thobaben filed a timely charge of discrimination (Charge No. 26G-2006-01466C) against the County with the United States Equal Employment Opportunity Commission

("EEOC") on or around July 26, 2006. Per an inter-agency work-sharing agreement, the State of Wisconsin's Equal Rights Division ("ERD") investigated the charge.

7. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC reviewed the ERD's investigatory findings and record, based on those materials found reasonable cause to believe that Thobaben was discriminated against in violation of Title VII, attempted unsuccessfully to conciliate the charge, and subsequently referred the matter to the United States Department of Justice.

8. All conditions precedent to the filing of suit have been performed or have occurred.

CLAIM FOR RELIEF

9. In May 1995, Thobaben joined the Waupaca County Sheriff's Department ("WCSD") as a Dispatcher.

10. Two months later, the WCSD promoted her to Patrol Officer.

11. Thobaben is the WCSD's first female Patrol Officer and today is one of only two female Patrol Officers at the WCSD. No woman in the WCSD Patrol Division has ever been promoted to a position higher than Patrol Officer.

12. Chief Deputy Al Kraeger, the second-highest ranked official at the WCSD and the highest-ranked, non-elected official there, has characterized Thobaben as "a token."

13. In 1996, Thobaben married Clint Thobaben, who was then and is still a fellow WCSD Patrol Officer.

14. For nine years, beginning in 1997, Thobaben applied unsuccessfully for numerous promotions to vacant Patrol Sergeant and Detective Sergeant positions.

15. During that period of time, male co-workers, who were then competing with Thobaben for promotion, reportedly told the Detective Captain who oversees Detective Sergeants that they would refuse to take orders from "a skirt."

16. In or about February 2006, Thobaben applied for a vacant Detective Sergeant position.

17. She met and/or exceeded all published minimum qualifications.

18. The County's Selection Committee, which is charged with interviewing applicants for promotion and recommending to the County Sheriff which candidate should be promoted, recommended Gene Goode ("Goode").

19. Sheriff Steve Liebe vetoed Goode and requested another recommendation from the Selection Committee.

20. Of the remaining candidates, Thobaben was the most qualified.

21. The Selection Committee passed over Thobaben and put forth John Mocadlo ("Mocadlo"), a male, whom the County promoted instead.

22. To justify promoting Mocadlo over Thobaben, the County relied solely on the County's Nepotism Policy, which first took effect in the 1970's.

23. In pertinent part, the Nepotism Policy provides that: "[n]o person shall be employed, promoted or transferred to any department of Waupaca County when such employment would result in the person either directly supervising or being supervised by a member of his/her immediate family."

24. The County contended that promoting Thobaben to Detective Sergeant would violate the Nepotism Policy because, in that capacity, she would directly supervise her WCSO Patrol Officer husband.

25. Patrol Sergeants; and not Detective Sergeants, are the direct supervisors of the day-to-day work of Patrol Officers.

26. Detective Sergeants are not involved with Patrol Officer discipline, compensation, shift scheduling, performance evaluations, or anything beyond giving lead worker-type direction at crime scenes.

27. In contrast, in August 2006, to justify not allowing Detective Sergeants to leave the union to which they and Patrol Officers belonged (and still belong), the County posited that Detective Sergeants lacked sufficient supervisory control over Patrol Officers to warrant their exclusion from the bargaining unit.

28. Although the County refused to promote Thobaben based on its Nepotism Policy, the County never scrutinized the relationships of at least eight other sets of family members who arguably supervised one another at the WCSD during the relevant timeframe, including at least three relationships that WCSD managers admit clearly violated the Nepotism Policy. Also, the County never raised its Nepotism Policy as a barrier when hiring or promoting any of the individuals involved in these nepotistic relationships, which all involve a male employee in the supervisory position.

29. For a short time after the March 2006 promotion denial, Thobaben continued to apply for Sergeant vacancies despite being deemed ineligible.

30. In 2007, citing the Nepotism Policy, the County Personnel Director informed Thobaben that she was no longer permitted to apply for promotions. However, the County allowed a male employee to apply for promotions during an entire 5-year period when he was deemed ineligible for promotion due to discipline resulting from allegations that he had sexually harassed women.

31. For the foregoing reasons, *inter alia*, Defendant has discriminated against Thobaben, in violation of 42 U.S.C. § 2000e-2(a), by failing to promote her.

PRAYER FOR RELIEF

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

- (a) enjoin the County from further discriminating against Thobaben in violation of Title VII;
- (b) order the County to promote Thobaben to Detective Sergeant, together with back pay, interest, and retroactive seniority;
- (c) award compensatory damages to Thobaben to fully compensate her for the pain and suffering caused by the County's discriminatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights act of 1991, 42 U.S.C. § 1981a;
- (d) order the County to take remedial steps to ensure a nondiscriminatory workplace for all WCCSD Patrol Division personnel, including providing adequate training to all employees and officials responsible for making determinations regarding complaints of discrimination; and
- (e) award such other relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a).

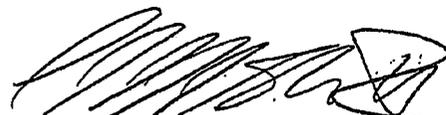
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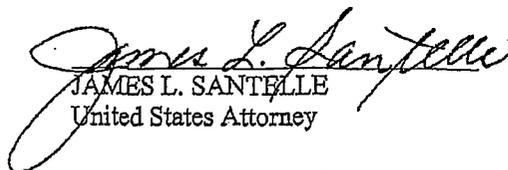
Respectfully submitted,

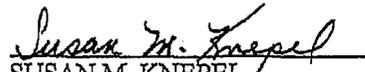
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