

United States District Court, Northern District of Illinois

5/2

Name of Assigned Judge or Magistrate Judge	John W. Darrah	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 6589	DATE	12/19/2003
CASE TITLE	EEOC vs. United Fence Co, et. al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] For the reasons stated in the attached consent decree by the parties, this decree fully and finally resolves any and all issues and claims arising out of the complaint filed by the EEOC. Enter Consent Decree. Case closed. Any pending dates or motions are terminated as moot.
- (11) [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.	U.S. DISTRICT COURT CLERK 03 DEC 19 AM 1:39 FILED 10 Date/time received in central Clerk's Office	number of notices	Document Number <i>22</i>
<input type="checkbox"/> No notices required.		<i>02 22 943</i>	
<input type="checkbox"/> Notices mailed by judge's staff.		<i>gm</i>	
<input type="checkbox"/> Notified counsel by telephone.		docketing deputy initials	
<input checked="" type="checkbox"/> Docketing to mail notices.		date mailed notice	
<input type="checkbox"/> Mail AO 450 form.		mailing deputy initials	
<input type="checkbox"/> Copy to judge/magistrate judge.			
MF	courtroom deputy's initials		

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
UNITED FENCE COMPANY, AND)
WOR-MAC, INC.)
)
Defendants.)

CIVIL ACTION NO. 02 C 6589
Judge Darrah
Magistrate Judge Denlow

DOCKETED
DEC 22 2003

CONSENT DECREE

THE LITIGATION

1. Plaintiff Equal Employment Opportunity Commission (the "EEOC") filed this action alleging that Defendant United Fence Company ("United Fence") and Defendant Wor-Mac, Inc. ("Wor-Mac") each violated Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e-2(a), by engaging in national origin discrimination against Hispanic employees and race discrimination against African- American employees.

2. In the interest of resolving this matter, the parties have agreed that this action should be finally resolved by entry of this Consent Decree (hereafter "Decree"). This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by the EEOC.

FINDINGS

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

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a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of EEOC, Defendants, the charging party (Daniel Diaz), the claimants and the public interest are adequately protected by this Decree.

c. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the parties, the claimants, and the public. The claimants no longer work for Defendants.

d. Neither the negotiations concerning this consent decree, nor the actual provision of consideration set forth in this document, nor the execution of this document shall be construed as an admission by either United Fence Company or Wor-Mac, Inc. of any liability or of any wrongdoing under federal, state or local law. Nor shall they be construed as an admission by the EEOC that it lacks valid claims of discrimination. Nor does the execution of this document imply that United Fence Company or Wor-Mac, Inc. currently have or does not have 15 employees.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

INJUNCTION AGAINST DISCRIMINATION

4. a) United Fence and Wor Mac, and their officers, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them, are hereby enjoined from:

i) unlawfully discriminating against employees on the basis of their national origin;

ii) preventing employees from speaking Spanish a) during lunch breaks and other breaks;

and b) during work hours unless a particular employee is required to speak English to customer, coworker, or supervisor who speaks only English.

iii) unlawfully creating, facilitating or permitting, including through a policy or practice, the existence of a work environment that is hostile to employees on the basis of their national origin; and

iv) unlawfully paying Hispanic employees less than non-Hispanic employees who perform substantially the same work, and who have similar abilities.

b) United Fence and Wor Mac, and their officers, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them, are hereby enjoined from:

i) unlawfully discriminating against employees on the basis of their race;

ii) unlawfully creating, facilitating or permitting, including through a policy or practice, the existence of a work environment that is hostile to employees on the basis of their race; and

iii) unlawfully paying African-American employees less than other employees who perform substantially the same work, and who have similar abilities.

NON-RETALIATION

5. Defendants and their officers, agents, employees, successors, assigns and all persons acting in concert with them shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

MONETARY RELIEF

6. Defendants collectively shall pay a total of \$50,000 to the 14 claimants in this case,

who are Santiago Brisenio, Jose A. Cortez, Daniel Diaz, Roberto Gonzalez, Antonio Hernandez Edward Hernandez, Alex Iniquez, James Jackson, Antonio Martinez, Joaquin Mendez, Noe Mercado, Jesus Monreal, Jose Rodriguez, Ernesto Vega. The division of the lump sum among the claimants shall be at the discretion of the EEOC. The EEOC shall advise Defendants of each claimant's share within three days of the entry of the Consent Decree by the Court. There shall be no deduction from the amounts paid to each claimant. United Fence Company and/or Wor Mac, Inc. will issue IRS 1099 Forms to each claimant reflecting the EEOC's allocation to that claimant.

7. Within fifteen (15) business days after its counsel receives a signed Release Agreement, attached as Exhibit A, and a signed W9 IRS form from a claimant, United Fence and/or Wor-Mac shall issue and mail by certified mail to such claimant a check in the amount of the allocation for that claimant as established by the EEOC. A copy of each check shall be mailed on the same date to the EEOC.

POSTING OF NOTICE

8. Within thirty (30) business days after entry of this Decree, Defendants shall post copies of the Notice attached as Exhibit B, on the bulletin boards usually used for communicating with employees. Copies in both English and Spanish shall be posted. Each notice shall remain posted for the term of this Decree. Defendants shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Defendants shall certify to the EEOC in writing within thirty (30) business days after entry of the Decree that the Notice has been properly posted. Defendants shall permit a representative of the EEOC to enter their premises to verify compliance with this Paragraph at any time during normal business hours without prior notice.

RECORD KEEPING

9. For the duration of this Decree, Defendants shall maintain and make available for inspection and copying by the EEOC records (including names, social security numbers, addresses, telephone numbers, race and national origin) of each employee, including temporary employees, who complains of national origin or race discrimination. Such reports shall indicate the date the complaint was made, who made it, what was alleged, and what actions the Defendant(s) took to resolve the matter.

10. Defendants shall make all documents or records referred to in Paragraph 9 above, available for inspection and copying within fifteen (15) business days after the EEOC makes a written request for such information. In addition, Defendants shall make available on fifteen (15) business days notice their supervisory personnel whom the EEOC requests to interview for purposes of verifying compliance with this Paragraph.

REPORTING

11. Defendants shall furnish to the EEOC the following written reports every six months for the term of this Decree. The first report shall be due six (6) months after entry of the Decree.

Each such report shall contain the name and address of each employee (including temporary employees) who complained of national origin or race discrimination and the nature of the complaint. If no employee made such a complaint, an officer of Defendants shall submit a signed statement so stating. Each report shall also contain a statement signed by an officer of Defendants that the Notice required to be posted in 8, above, remained posted during the entire six (6) month period preceding the report.

ADOPTION AND DISTRIBUTION OF POLICY
AGAINST NATIONAL ORIGIN AND RACE DISCRIMINATION

12. Defendants shall adopt a policy against national origin and race discrimination within thirty (30) days after the entry of this Consent Decree, which shall at a minimum provide as follows:

(a) Within thirty (30) days after the entry of this Consent Decree Defendants shall distribute a copy of said Policy to each current employee. After that 30 day period, Defendants shall give a copy of said policy to each new employee on the first day of employment. If the employee's primary language is Spanish, the copy shall be in Spanish.

(b) The policy shall specifically prohibit all unlawful conduct on the basis of race and national origin by employees, managers, and owners, and shall prohibit any unlawful discrimination in the terms and conditions of employment based on national origin and race. The policy shall state that English shall not be required to be spoken during lunch or other breaks, and shall not be required during work hours without a business necessity as defined by case law under Title VII.

(c) The policy shall state that employees, including temporary employees, are not required to complain of harassment to a person against whom they allege harassment.

(d) The policy shall inform employees that complaints will be investigated thoroughly and promptly and shall provide that employees who violate the policy are subject to discipline up to and including discharge.

(e) Defendants shall forward a copy of the Policy to the EEOC within thirty (30)

business days after entry of this Decree. This Paragraph does not mean that EEOC or the Court approves of Defendants' anti-discrimination or anti-harassment policy.

13. Defendants shall post a copy of the Policy in English and Spanish on the bulletin boards customarily used for posting notices from management to employees.

TRAINING

14. Within ninety (90) days of entry of this Decree, Robert Hill, Sr., Jerry Horton and any other person with power to hire, terminate or discipline on behalf of Defendants shall receive training by a trainer paid for by Defendants regarding race and national origin discrimination, including enforcement of the Policy implemented pursuant to Paragraph 12 above.

15. Defendants shall obtain the EEOC's approval of the proposed trainer prior to the training session. Defendants shall submit the name, address, telephone number, resume and training proposal of the proposed trainer to the EEOC at least fifteen (15) days prior to the proposed date(s) of the training. The EEOC shall have five (5) calendar days from the date of receipt of the information described above to accept or reject the proposed trainer. If the parties cannot through this process agree on a trainer, then they may seek the Court's assistance under Paragraph 18.

16. Defendants shall certify to the EEOC in writing within fifteen (15) business days after the training has occurred that the training has taken place and that the required personnel have attended. Such certification shall include: (i) the date, location and duration of the training; and (ii) the name and position of each person in attendance.

DISPUTE RESOLUTION

17. If any party to this Decree believes that another party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-

compliance in writing and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

DURATION OF THE DECREE AND RETENTION OF JURISDICTION

18. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction to enforce this Decree) for a period of eighteen months immediately following entry of the Decree, provided, however, that if, at the end of the eighteen month period, any disputes under Paragraph 18, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

19. Each party to this Decree and each individual claimant for whom the EEOC seeks relief shall bear its (his) own expenses, costs, and attorneys' fees. Each claimant shall be responsible for any taxes that he may owe on the settlement amount paid to him. This Consent Decree shall not be construed to render the EEOC or any of the named claimants in the above-captioned action as a "prevailing party" within the meaning of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000 *et seq.*, or under any law, statute or ordinance allowing attorneys' fees and/or costs to a party who "prevails" in any manner or sense, nor shall this Agreement be deemed to constitute a factor supporting an award of attorneys' fees and/or costs under any law, statute or ordinance.

20. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of Defendants in their capacities

as representatives, agents, directors and officers of each Defendant, and not in their individual capacities, except that paragraph 6 in regard to monetary relief shall also be binding on Robert Hill Sr., and his estate, should he die without full payment having been made.

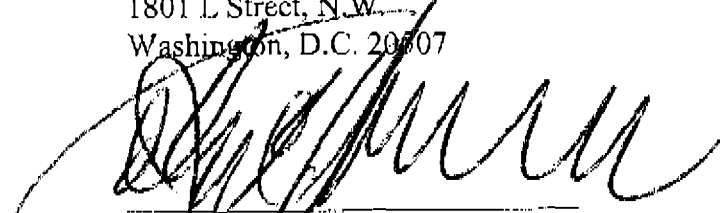
23. When this Decree requires the submission by Defendants of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to Gordon Waldron, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois, 60661. When this Decree requires submission by the EEOC of materials to Defendants, it shall be mailed to Robert Hill, Sr., United Fence Company, 722 West 49th Place, Chicago, Illinois 60609 and Ted Kavooras, Kavooras and Bouzios, P.C., 801 West Burlington Avenue, Western Springs, Illinois 60558. When this Decree requires the submission by claimants of releases to Defendants, those releases shall be mailed to Ken Barrish, Litchfield Cavo, 303 West Madison Street, Suite 300, Chicago, Illinois 60606.

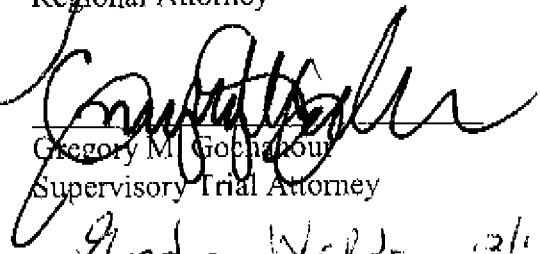
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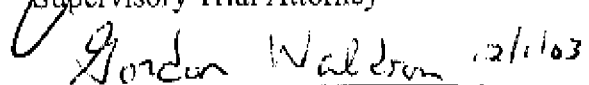
ERIC S. DREIBAND, GENERAL COUNSEL
JAMES L. LEE, DEPUTY GENERAL
COUNSEL

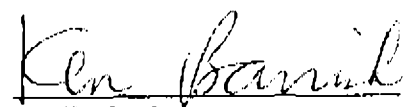
GWENDOLYN YOUNG REAMS
ASSOCIATE GENERAL COUNSEL

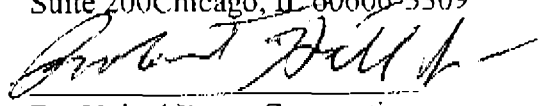
Equal Employment
Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

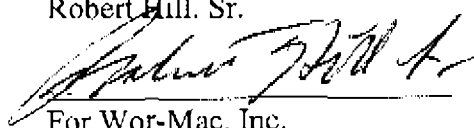

John C. Hendrickson
Regional Attorney

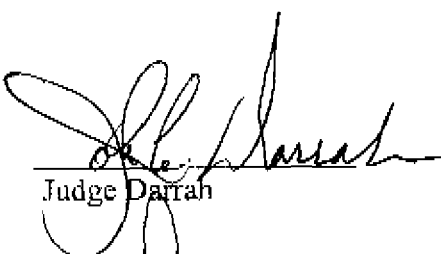

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For Defendants
Ken Barrish, Litchfield Cavo 303 W. Madison,
Suite 200 Chicago, IL 60606-3309


For United Fence Corporation
Robert Hill, Sr.


For Wor-Mac, Inc.
Robert Hill Sr.


Judge Darrah

Date: December 19, 2003

EXHIBIT A

RELEASE AGREEMENT

I, _____, for and in consideration of the sum of \$ _____ payable to me pursuant to the terms of the Consent Decree entered by the Court in EEOC et al. v. United Fence Company and Wor-Mac, Inc., No. 02 C 6589 (N.D. Ill.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit, and discharge United Fence Company and Wor-Mac, Inc. and all past and present shareholders, officers, agents, employees, and representatives of them, as well as all successors and assignees of them, from any and all claims and causes of action of any kind which I now have or ever have had under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC et al. v. United Fence Company and Wor-Mac, Inc., No. 02 C 6589 (N.D. Ill.). I agree to pay any and all taxes that I may owe on this amount, including my share of FICA.

Date

When signed, this release shall be mailed to:

Ken Barrish
Litchfield Cavo
303 West Madison, Suite 300
Chicago, Illinois 60606

EXHIBIT B
NOTICE TO ALL UNITED FENCE COMPANY AND WOR-MAC, INC. EMPLOYEES
(INCLUDING TEMPORARY EMPLOYEES)

This Notice is being posted pursuant to a Consent Decree entered by the federal court resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC").

To resolve the case, Defendants and the EEOC have entered into a Consent Decree (without any admission of liability by Defendants and without any waiver of claims by the EEOC) which provides for monetary relief and also provides that:

- 1) Defendants will not require employees (including temporary employees) to speak English lunch or breaks, nor during work hours without a business necessity as defined by case law under Title VII, and will not foster or tolerate harassment on the basis of national origin or race, or otherwise unlawfully discriminate against any employee on the basis of national origin or race;
- 2) Defendants will not retaliate against any person because (s)he opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree;
- 3) Defendants will adopt and distribute to all employees a policy against unlawful national origin and race discrimination and will train all its managers regarding unlawful national origin and race discrimination, and its policy;
- 4) Defendants shall not discriminate on the basis of race or national origin in regard to the payment of wages, salary or other compensation.

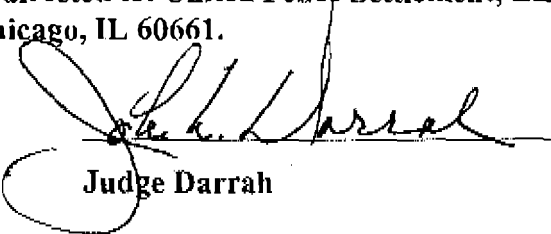
The EEOC enforces the federal laws against discrimination in employment on the basis of race, color, religion, national origin, sex, age or disability. If you believe you have been discriminated against, you may follow the complaint procedure in Defendants' non-discrimination and anti-harassment policy and you may contact the EEOC at (312) 353-2713. The EEOC charges no fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for eighteen months from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: United Fence Settlement, EEOC, 500 West Madison Street, Suite 2800, Chicago, IL 60661.

12-19-03

Date


Judge Darrah