

RESOLUTION NO. R05-11 CMS

A RESOLUTION AUTHORIZING AND DIRECTING THE LAW DIRECTOR TO REPRESENT THE CITY OF OBERLIN IN REGARD TO A COMPLAINT OF DISCRIMINATION PRESENTLY PENDING BEFORE THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND DECLARING AN EMERGENCY

BE IT RESOLVED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the Law Director is hereby authorized and directed to represent the City of Oberlin in a discrimination complaint presently pending before the United States Equal Employment Opportunity Commission, being Charge No. 220-2005-00770, and to conduct any and all investigations, discovery and other proceedings in said matter as he deems appropriate, all to be charged as extraordinary expense to the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipality, to wit:

"to provide for the immediate defense of a pending complaint"

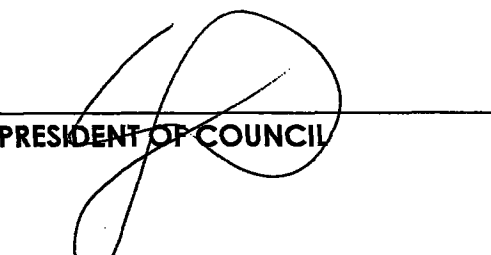
and shall take effect immediately upon passage.

PASSED: 1st Reading – March 21, 2005 (E)
2nd Reading –
3rd Reading –

ATTEST:



CLERK OF COUNCIL



PRESIDENT OF COUNCIL

POSTED: March 22, 2005

EFFECTIVE DATE: March 22, 2005

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Lewis Johnson,

Charging Party,

v.

City of Oberlin,

Charged Party.

Case Number: 06-ULP-01-0036

DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE

Before Chairman Mayton, Vice Chairman Gillmor, and Board Member Verich: April 20, 2006.

Lewis Johnson (Charging Party) filed an unfair labor practice charge against the City of Oberlin (Charged Party) on January 31, 2006. The charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (8) by unjustly terminating the Charging Party and encouraging the Union not to take his grievance to arbitration.

Pursuant to Ohio Revised Code § 4117.12, the Board has conducted an investigation of this charge. The investigation reveals no probable cause exists to believe the Charged Party has violated Ohio Revised Code § 4117.11. Information gathered during the investigation reveals the Charging Party was not engaged in protected activities when he was terminated. Insufficient information was provided to support Ohio Revised Code § 4117.11(A)(1) and (8) allegations. Additionally, knowledge of the alleged violation prior to November 1, 2005, occurred more than 90 days before the charge was filed with the Board. No mitigating circumstances exist that warrant equitable tolling of the statute of limitations. Accordingly, the charge is dismissed with prejudice for lack of probable cause to believe the statute has been violated, and as untimely filed for events occurring prior to November 1, 2005.

It is so directed.

MAYTON, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



CRAIG R. MAYTON, CHAIRMAN

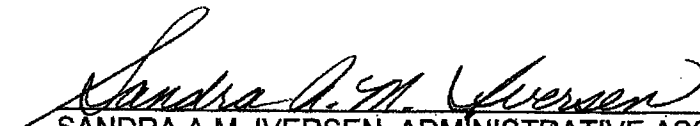
DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE

Case No. 06-ULP-01-0036

April 20, 2006

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I certify that this document was filed and a copy served upon each party and the representative of each party by certified mail, return receipt requested, on this 4th day of May, 2006.


SANDRA A.M. IVERSEN, ADMINISTRATIVE ASSISTANT

dm&uf/060036:042006:9

030605

City of
Oberlin

Telephone
440-774-8519

Office of the Law Director
85 South Main Street Oberlin, Ohio 44074

Eric R. Severs
Law Director

Facsimile
440-776-2210

March 7, 2005

James Leo Walsh
Asst. Law Director & Prosecutor

Oberlin Municipal Building
Attn: Robert DiSpirito, City Manager
85 South Main Street
Oberlin, Ohio 44074

Re: EEOC Charge; Charge No. 220-2005-00770

Dear Mr. DiSpirito:

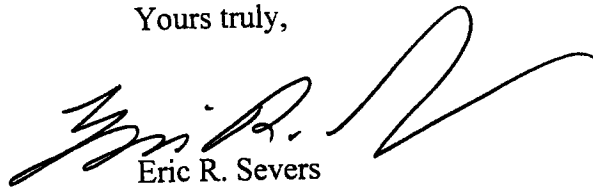
Electric Director Dupee provided my office with a copy of a EEOC Complaint of Discrimination filed by city employee Lewis Johnson. I received that material on March 4, 2005.

The City must respond to the Complaint no later than April 1, 2005. If you do not have it, attached is a copy of the Charge.

You and I need to discuss this matter and determine whether the City is going to participate in Mediation or file a formal response to the Charge. Please note that if the City is going participate in the Mediation Program, we must so indicate by March 15.

The defense of a matter such as this has historically been considered an extraordinary expense in regard to the office of the Law Director. Accordingly, there should appear on the agenda of the City Council Meeting of March 21 an ordinance authorizing me to defend the City with such to be charged as extraordinary expense. Thank you.

Yours truly,



Eric R. Severs
Law Director

ERS:kcf

Enclosure

cc: Steve Dupee, Electric Director, w/o encl.

Dan Gardner, President, Oberlin City Council, w/encl.



rec'd
3-4-05
wd

OBERLIN MUNICIPAL LIGHT AND POWER SYSTEM ♦ 289 SOUTH PROFESSOR STREET ♦ OBERLIN, OHIO 44074

Phone (440)775-7260

Fax (440)775-1546

MEMORANDUM

To: Eric Severs, Law Director

Re: Equal Employment Opportunity Commission - Charge of Discrimination

From: Steve Dupee, Electric Director

Date: March 4, 2005

A handwritten signature in black ink, appearing to read "Steve Dupee", is written over the "From:" line.

Attached is a Charge of Discrimination filed with the Equal Employment Opportunity Commission by Mr. Lewis Johnson. The charge states that Mr. Johnson was intimidated and harassed for not submitting to a random drug test.

Please advise what our next course of action should be.

cc: Rob DiSpirito, City Manager
Joe Lencewicz, City's Labor/Management Representative
John Egan, IBEW Business Manager

U. S. Equal Employment Opportunity Commission

Mr Rob Dispirito
City Manager
CITY OF OBERLIN
85 South Main St.
Oberlin, OH 44074

PERSON FILING CHARGE

Lewis Johnson

THIS PERSON (check one or both)

Claims To Be Aggrieved

Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

220-2005-00770

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

Title VII of the Civil Rights Act

The Americans with Disabilities Act

The Age Discrimination in Employment Act

The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.

2. Please call the EEOC Representative listed below concerning the further handling of this charge.

3. Please provide by **01-APR-05** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

Please respond fully by _____ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

5. EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **15-MAR-05** to **Loretta Feller, ADR Coordinator, at (216) 522-7678**. If you **DO NOT** wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Daniel Cabot,
Enforcement Manager

EEOC Representative

Telephone: **(216) 522-4813**

Cleveland District Office
1660 West Second Street
Suite 850
Cleveland, OH 44113

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

RACE COLOR SEX RELIGION NATIONAL ORIGIN AGE DISABILITY RETALIATION OTHER

See enclosed copy of charge of discrimination.

Date
Mar 01, 2005

Name / Title of Authorized Official
Jacqueline D. Rosemond,
Intake Supervisor

Signature
J. Rosemond

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

FEPA
 EEOC

220-2005-00770

Ohio Civil Rights Commission

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Mr. Lewis Johnson

Home Phone No. (Incl Area Code)

(440) 774-2392

Date of Birth

08-19-1954

Street Address

City, State and ZIP Code

386 South Pleasant St. Oberlin, OH 44074

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

CITY OF OBERLIN/OMLPS

No. Employees, Members

15 - 100

Phone No. (Include Area Code)

(440) 775-7260

Street Address

City, State and ZIP Code

South Professor, Oberlin, OH 44074

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

12-16-2004

01-24-2005

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

had been employed by Respondent since June 1992. My last job classification is Inventory Specialist.

On December 16, 2004 I was intimidated and harassed for not submitting to a random drug test. On December 17, 2004 I was scheduled to a pre-disciplinary hearing for violation of City's policy. I was put on administrative leave until the results of the hearing are completed.

I was admitted to the Employee Assistance Program on January 24, 2005. I participated in the lowest level of treatment. I have completed the treatment program.

I believe that I was discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended. I also believe that I was discriminated against in violation of Title I of the Americans with Disabilities Act of 1990, as amended.

EEOC
CLDO-CART UNIT
FEB 28 2005
RECEIVED

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

12-28-05 Mr. Lewis Johnson
Date Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.