

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JACQUETTA HAWKINS, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Proposed Plaintiff-Intervenor,

v.

SUMMIT COUNTY, OHIO, et al.,

Defendants.

CASE NO. 5:11CV2753

JUDGE SARA LIOI

MAGISTRATE JUDGE
KATHLEEN B. BURKE

Jury Trial Demanded

**MEMORANDUM IN SUPPORT OF
UNITED STATES' MOTION TO INTERVENE**

Pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, the United States of America (“United States”) respectfully submits this memorandum in support of its motion to intervene as a party plaintiff in *Hawkins, et al. v. Summit County, Ohio, et al.*

I. INTRODUCTION

On December 20, 2011, Plaintiffs Jacquetta Hawkins, Meredith Wade, Stacy Clark, Deidre Heatwall, Bethanne Scruggs, Patricia Bennett, Cynthia Wood, Lyn Watters, Angela Molea, Elaine George-Pickett, Cathy Phillips, Heather Stewart, Peggy Starr, Shawntell Kennedy, Debra McMasters, Heather McPherson-Danner, Melissa House, Angela Berg, Cynthia Young, Angela Dent and Tracy Braziel (“Plaintiffs”) filed a Complaint in this action (“*Hawkins Complaint*”) against Defendants Summit County, Ohio, Summit County Sheriff’s Department

Sheriff Drew Alexander, in his individual and official capacity, and Chief Gary James, in his individual and official capacity (“Summit County” or “Defendants”).¹

In the *Hawkins* Complaint, Plaintiffs allege that Summit County discriminated against them, on the basis of sex, in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”). Specifically, Plaintiffs, who are Deputy Sheriffs at the Summit County Jail, allege that the County segregated all or most positions at the Jail by sex, designating as exclusively for male deputies some positions that were previously available to both male and female deputies. Plaintiffs further allege that Summit County’s application for and enforcement of a bona fide occupational qualification (“BFOQ”) from the Ohio Civil Rights Commission to make assignments at the Summit County Jail is unlawful. Plaintiffs seek injunctive relief, back pay, compensatory damages, and other appropriate forms of relief as remedies for the County’s discriminatory acts.

Intervention in this case by the United States is warranted. First, Title VII authorizes the United States to intervene in Title VII cases to protect the public interest. Specifically, Title VII “permit[s] . . . the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in [a private] civil action upon certification that the case is of general public importance.” 42 U.S.C. § 2000e-5(f)(1); 28 C.F.R. § 0.50(a). Here, such a certification has been made and is attached to the United States’ Motion to Intervene as Exhibit 1.

Second, the United States’ proposed Complaint in Intervention, which alleges that Summit County violated Title VII when it implemented a sex-segregated job assignment system

¹ Plaintiffs subsequently amended their Complaint twice, once on December 27, 2011 (First Amended Complaint, Dkt. No. 11) and on April 6, 2012 (Second Amended Complaint, Dkt. No. 40).

at the Summit County Jail, plainly shares common questions of law and fact with the *Hawkins* Complaint, including whether the County's job assignment system violates Title VII; whether Summit County can establish a BFOQ defense; and the damages, if any, to which the Plaintiffs are entitled.

Finally, the United States' motion is timely. Although Plaintiffs have issued written discovery in this case, Defendants have sought an extension to respond until July 6, 2012. *See* Dkt. No. 52. Furthermore, granting intervention at this early stage will not disturb the scheduling order entered by the Court or otherwise prejudice any of the parties.

II. PROCEDURAL HISTORY

Between December 2010 and April 2011, eighteen of the Plaintiffs in this action filed timely charges of discrimination with the Equal Employment Opportunity Commission ("EEOC"). *See* Dkt. No. 48-1. In their charges of discrimination, these eighteen plaintiffs allege that Defendants discriminated against them, on the basis of sex, in violation of Title VII. *Id.* Pursuant to Section 706 of Title VII, the EEOC investigated the charges filed by these plaintiffs and found reasonable cause to believe that plaintiffs and other similarly-situated female deputies were subject to an unlawful sex-segregated job assignment system, in violation of Title VII. *See, e.g.*, EEOC's Letter of Determination (Feb. 2, 2012) (attached as Exhibit A). On or about April 4, 2012, the EEOC formally referred this matter to the United States after an unsuccessful attempt to conciliate the charges. *See, e.g.*, Letter from EEOC (March 28, 2012) (attached as Exhibit B).

As noted above, the *Hawkins* lawsuit was filed on December 20, 2011 alleging, among other things, that the County's implementation of a gender-segregated assignment system violates Title VII. *See* Dkt. No. 1. On April 20, 2012, Summit County filed a motion to dismiss

and/or a motion on the pleadings, which it supplemented on May 14, 2012. *See* Dkt. Nos. 42, 50. Plaintiffs' response to this motion is due by June 14, 2012, and Plaintiffs have sought to extend its time to respond to July 6, 2012. *See* Dkt. No. 52. According to the Case Management Plan and Trial Order entered in this action, the deadline for completion of fact and expert discovery is January 14, 2013. *See* Dkt. No. 47. No party has yet responded to written discovery issued or conducted any depositions in this action.

III. THE UNITED STATES' COMPLAINT IN INTERVENTION

The United States' Complaint in Intervention alleges that Summit County has pursued, and continues to pursue, policies and practices that discriminate against women and that deprive or tend to deprive women of employment opportunities because of their sex. *See* U.S. Complaint, attached to the U.S. Motion for Intervention as Exhibit 2. Specifically, and similar to the *Hawkins* Complaint, the United States alleges that Summit County has discriminated against female deputies at the Summit County Jail in violation of Title VII by implementing a sex-segregated job assignment system that is broader than required to safely and efficiently operate the Summit County Jail; and, by failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment. *See id.* The United States further alleges that the acts and practices of Summit County constitute a pattern or practice of discrimination on the basis of sex in violation of Section 707 of Title VII. The United States' Complaint in Intervention seeks primarily the same remedies as the *Hawkins* Complaint, namely, the implementation of a lawful job assignment system and appropriate monetary relief. *See id.* In addition, the United States seeks an order requiring Summit County to institute policies and practice to ensure a non-discriminatory workplace, including providing adequate training to all employees and officials regarding discrimination and retaliation.

IV. ARGUMENT

A. The United States Motion to Intervene Should be Granted Pursuant to Fed. R. Civ. P. 24(b)

Pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, the Court should permit the United States, as the agency charged with enforcement of Title VII against public employers, to intervene in this case. Rule 24(b) provides for intervention by a federal agency in lawsuits concerning federal statutes or regulations within its administrative purview. This rule provides that where, as here, a party rests a claim or defense on a federal statute or regulation, the federal officer or agency “upon timely motion” may be permitted to intervene in the action. Fed. R. Civ. P. 24(b)(2)(A). Rule 24(b)(1)(B) also provides that permissive intervention may be granted upon timely motion when the moving party “has a claim or defense that shares with the main action a common question of law or fact.” The United States has filed a timely motion to intervene and satisfies both of these alternate requirements for permissive intervention.

1. Title VII expressly authorizes intervention by the United States

The United States satisfies the standard for permissive intervention under Rule 24(b)(2)(A) because the Department of Justice is the federal agency tasked with enforcing Title VII against local government employers, such as Summit County, and is expressly authorized to intervene in Title VII cases. Section 706(f)(1) of Title VII authorizes the district court, at its discretion, to “permit ... the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in [a private] civil action upon certification that the case is of general public importance.” 42 U.S.C. § 2000e-5(f)(1); 28 C.F.R. § 0.50(a). Among other claims, Plaintiffs allege a violation of Title VII by a governmental actor, against whom the Department of Justice has responsibility for enforcing Title VII claims. *See Gen'l Telephone Co. v. EEOC*, 446 U.S. 318 (1980) (general discussion of the Attorney General’s right to enforce

Title VII against public employers). As the agency with this primary Title VII enforcement authority, the United States has a substantial interest in ensuring that appropriate relief is granted for the alleged violations of Title VII. Pursuant to the requirements for intervention under Section 706(f)(1), the Attorney General's designee, the Assistant Attorney General for Civil Rights, has certified that this is a matter of public importance. *See* Exh. 1 to U.S. Motion to Intervene.

2. The United States' and Plaintiffs' claims share common questions of law and fact with the Plaintiffs' claims

Permissive intervention is warranted when the moving party "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Here, the claims of the United States and Plaintiffs are based on substantially the same facts, and involve common questions of law. Both Plaintiffs and the United States allege violations of Title VII on the basis of sex in that Summit County discriminated against Plaintiffs and other female deputies by implementing a sex-segregated job assignment system that is broader than required to safely and efficiently operate the Summit County Jail. Both claims will also turn upon the same legal determination, namely, the viability of Summit County's "BFOQ" defense. Factual determinations regarding damages and remedies are also common to both cases, making intervention far more appropriate than the United States filing a separate action.

B. The United States' Motion is Timely and Will Not Unduly Delay or Prejudice the Adjudication of the Parties' Rights

In accordance with Rule 24(b), the United States has filed a timely motion to intervene. The United States' intervention at this early stage of litigation will not disturb the scheduling order entered by the Court or otherwise prejudice either party. As stated above, no responses to written discovery or depositions have yet occurred, nor have the parties completed their briefing

of the motion to dismiss. Thus, there will be little or no delay to existing parties if the United States is allowed to intervene. Moreover, whether an application for intervention is timely is evaluated in light of the purpose for which intervention is sought, the length of time that the intervenor has known about the interest in the litigation, whether any of the original parties to the litigation would be prejudiced and the stage to which the lawsuit has progressed when intervention is sought. *Mills v. Tekni-Plex*, Civ. No. 1:10-1354, 2011 WL 2076469, at *2 (N. D. Ohio Apr. 29, 2011) (citing *Bradley v. Milliken*, 828 F.2d 1186 (6th Cir.1987)). Each of these factors militates in favor of intervention. The United States seeks intervention as the primary enforcement agency of Title VII against public employers, has moved promptly after receiving referral of these charges from the EEOC, and has done so before the parties have responded to written discovery or taken any depositions.

V. CONCLUSION

For the foregoing reasons, the Court should grant the United States' intervention motion and order its intervention in this action permissively pursuant to Rule 24(b). A Complaint in Intervention is attached as Exhibit 2 to the accompanying motion.

Date: June 7, 2012

Respectfully submitted,

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Chief

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Counsel for Plaintiff United States

NOTICE OF CERTIFICATE OF SERVICE

I hereby certify that Proposed Plaintiff Intervenor United States' Memorandum in Support of its Motion to Intervene and accompanying exhibits were served upon the following counsel of record via electronic filing on June 7, 2012:

Barbara Kaye Besser
Bruce B. Elfvin
Stuart G. Torch
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Cleveland, Ohio 44121

Counsel for Plaintiffs

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*Counsel for Fraternal Order of Police,
OLC, Inc., FOP Lodge #139*

Date: June 7, 2012

s/ Barbara Schwabauer
BARBARA SCHWABAUER

Counsel for United States

Exhibit A



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Cleveland Field Office

AJC Federal Building
1240 East Ninth Street, Suite 3001
Cleveland, OH 44199
(216) 522-7416 (Main Number)
1-866-408-8075 (Charge Status/Pending Business)
1-800-669-4000 (General Info/New Charge Filing)
FAX (216) 522-7395 * TTY (216) 522-8441

Charge No. 532-2011-00525

Angela Berg
[REDACTED]

Charging Party

Summit County, Ohio Sheriff's Department
53 University Avenue
Akron, Ohio 44308

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII).

All requirements for coverage have been met. Charging Party is employed as a Sheriff's Deputy for the Summit County Jail (hereinafter referred to as the Respondent). Charging Party alleged that through a policy implemented on January 2, 2012, the Respondent has prohibited her and a class of protected females from bidding on jobs for all shifts because of their sex, female, in violation of Title VII.

Respondent denies the allegations and contends its policy is justified based on an alleged bona fide occupational qualification (hereinafter referred to as policy) approved by the Ohio Civil Rights Commission in January of 2011.

As the evidence of record reveals, as a result of the implementation of this policy the Respondent has subsequently segregated the Intake job classification into Male Intake and Female Intake positions. Prior to the implementation of this policy there were nine Female Deputies working First Shift Intake and three Male Deputies working First Shift Intake. Each Deputy had bid on and been awarded these shift preferences as a result of their collective bargaining seniority rights. The file reflects that as a result of the implementation of this policy there are now eight positions on the Day Shift Intake available to men only and two positions on the Day Shift Intake for women. Thus, in the Intake Area alone seven female Deputies were impacted by the policy implementation. In response to the Charge filed by Charging Party, the file reflects that the Respondent asserted that the male/female distribution is necessary because by law, only a male Deputy may strip search and shower male inmates, and Respondent's inmate population is roughly eighty percent male. However, during interviews, current female Deputies stated the strip search/shower is a minor component of that job and only one man is needed on Intake to perform that particular function. The file reflects that the strip search is not a cavity type search and is only conducted via a visual inspection searching for obvious contraband. The file further reflects that the Respondent's administrator agreed that only a minimum of one man is needed to be on Intake at any given time.

Nevertheless, the Respondent is asserting that the male sex is a bona fide occupational qualification as to eight male positions on Intake during the Day shift, which is eight times the number needed. Evidence of record reveals that upon implementation of the policy that the Respondent prohibited women from bidding for jobs in Male Security, which was formerly called General Security, on all shifts, whereas prior to the implementation of the alleged bona fide occupational qualification on January 2, 2012, women had an equal opportunity to work in General Security supervising male living areas. Under the new system, the Respondent created a job classification called Female Float which females are allowed to bid for. The Shift Commanders can assign Floats to any assignment that needs additional staffing including Female Intake, Female Security as well as Male Security. The Respondent is therefore still staffing male living areas with female Deputies, demonstrating that the Respondent does not have privacy or security concerns about female Deputies supervising males in their living areas. The Respondent also previously informed the Ohio Civil Rights Commission, in a bona fide occupation qualification application to that agency, that General/Male Security is not a gender-specific position and therefore, the bona fide occupational defense cannot justify these sex segregated assignments. Furthermore, the Charging Party and class members have successfully demonstrated they are able to perform the essential functions of the positions.

Testimonial evidence establishes that the Respondent's new system has an adverse affect on female Deputies. Interviews of female Deputies established that under the new system, women with enough seniority to successfully bid for jobs on the Day Shift in their preferred job assignments in the past are now not able to get their previously bargained for options under the collective bargaining agreement in shift and assignment selections. As the file reflects, female Deputies are also now prevented from selecting the days off that they previously had because they are no longer allowed to bid for jobs in General Security which has the biggest pool of employees and therefore provides the most opportunity to choose a work schedule. Under the new system, some female Deputies have been replaced on their preferred assignments and shifts with men and sometimes several men junior to them.

Based on the evidence obtained during the investigation, there is reasonable cause to believe that violations of Title VII have occurred. I find there is reasonable cause to conclude that, since January 2, 2012 and continuing through the present date, Respondent has violated Title VII. The evidence reveals the Respondent has engaged in class-wide sex discrimination, and/or a pattern or practice of sex discrimination, when it engaged in disparate treatment regarding the assignments and terms and conditions of employment for the female Deputies. Respondent's violations adversely affect females.

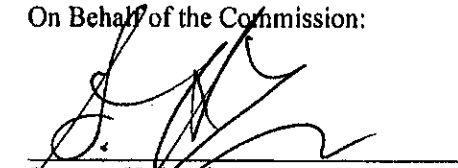
Upon finding that there are reasons to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. Please advise EEOC Investigator Sabrina Shifman whether you agree to participate in conciliation no later than ten days from the date of this Letter of Determination.

The confidentiality provisions of Title VII and the Commission Regulations apply to information obtained during conciliation.

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the Office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to the Charging Party and the Commission.

On Behalf of the Commission:

02/02/2012
Date



Spencer H. Lewis
District Director

Enclosure: Conciliation Agreement

cc: Bruce Elvin, counsel for Charging Party
Elvin & Besser
4070 Mayfield Road
Cleveland, Ohio 44121

cc: Randy Briggs, counsel for Respondent
Director of Administration/Legal
Summit County Sheriff's Office
53 University Avenue
Akron, Ohio 44308

Exhibit B

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION TRANSMITTAL OF EEOC CASE TO THE DEPARTMENT OF JUSTICE (The attached charge involves state/local government or political subdivisions, including public educational institutions.)			
TO: U.S. DEPT. OF JUSTICE CIVIL RIGHTS DIVISION - EMPLOYMENT LITIGATION SECTION, PHB 950 PENNSYLVANIA AVE., NW WASHINGTON, D.C. 20530		FROM: <i>(District name/address)</i> Philadelphia District Office 801 Market Street Suite 1300 Philadelphia, PA 19107	
THE ATTACHED <input type="checkbox"/> CHARGE		<input checked="" type="checkbox"/> THIRD PARTY CHARGE	
IS REFERRED FOR A DETERMINATION TO SUE PURSUANT TO: <input type="checkbox"/> Section 706 (f)(1) or Section 706		<input type="checkbox"/> Section 706 (f)(2)	
EEOC CHARGE NUMBER 532-2011-00525, ET AL			
NAME/ADDRESS OF CHARGING PARTY TO WHOM NOTICE IS TO BE ADDRESSED Angela Berg 		NAME/ADDRESS OF AGGRIEVED PERSON TO WHOM NOTICE IS TO BE SENT	
NAME/ADDRESS OF RESPONDENT(S) SUMMIT COUNTY, OHIO SHERIFF'S DEPARTMENT 53 University Avenue, Akron, OH 44308			
DISTRICT DIRECTOR/REGIONAL ATTORNEY RECOMMENDATIONS/REMARKS TRANSFER TO DOJ AFTER CASES REACHED AN IMPASSE			
DATE 4-4-12	TELEPHONE NUMBER <i>(Use FTS number)</i> (215) 440-2602	DISTRICT DIRECTOR (Typed Name) DANIEL CABOT	SIGNATURE
FOR DEPARTMENT OF JUSTICE USE			
DATE EEOC FORM 256 RECEIVED		DATE NOTICE ISSUED TO PARTIES	
STATUS <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>			