



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Dawn Murrel v. CSJ, et al.,
Settlement Agreement

DATE: September 22 , 2011

RECOMMENDATION

Approve settlement in the case of *Dawn Murrel v. City of San José, et al.*, and authorize the City Attorney to execute a Settlement Agreement and Release with Dawn Murrel in the amount of \$137,500.

OUTCOME

Approve settlement to resolve a lawsuit brought by Dawn Murrel against the City of San José alleging employment discrimination, harassment and retaliation.

BACKGROUND

Dawn Murrel was hired by the City of San José in December of 2005 to work as a Plant Operator at the Water Pollution Control Plant. During her tenure, she was the only African American woman employed at the Plant. Starting in 2008, Ms. Murrel claims to have encountered a variety of alleged "hate symbols" at the workplace. She personally observed a small souvenir confederate flag that a coworker had placed in his workspace. She was told about, and received pictures of, a length of rope that was knotted at both ends in a fashion that resembled nooses. Another coworker saw a swastika scratched into a section of piping surrounding one of the collection tanks, and sent a photograph of the swastika to Ms. Murrel. When Ms. Murrel advised her supervisors about these items, the items were quickly removed or painted over.

Ms. Murrel also observed a coworker's Playboy magazine in the lunch room, and saw a drawing of male genitalia on a large pipe in an underground section of the Plant. Again, when Ms. Murrel complained about these items, they were quickly discarded or painted over.

In December 2008, Ms. Murrel received a performance evaluation containing a section in which she was criticized for leaving the Plant without authorization. She contended that the criticism was untrue. The Plant Manager discussed the evaluation with the supervisor who had written it and determined that the unauthorized absence could not be confirmed, was not documented, and was not discussed beforehand with Ms.

Murrel. For these reasons, the criticism was removed from the evaluation, which when finally issued, contained only "meets standards" ratings.

However, Ms. Murrel continued to believe that the supervisor who had written the evaluation harbored animosity toward her because of her race. Although no hostile contact occurred between these two employees, when Ms. Murrel was temporarily assigned to work on the other employee's shift in March of 2009, she was fearful, encountered stress, and went home sick. Later, in September of 2009, Ms. Murrel was again scheduled to work on the shift of the supervisor who had issued the critical evaluation, and again Ms. Murrel left the workplace due to stress.

Although management offered to work with Ms. Murrel to attempt to avoid contact between her and the supervisor, and also offered mediation between the two employees, Ms. Murrel could not be guaranteed that she would never have contact with the supervisor. As a result, Ms. Murrel obtained a doctor's evaluation that she was unable to continue working. Ms. Murrel has been on unpaid leave of absence since October 2009.

Ms. Murrel filed the subject lawsuit in May of 2010, alleging discrimination, harassment and retaliation.

ANALYSIS

The existence of the various symbols and objects in the workplace raises the possibility that a jury could conclude that the atmosphere at the Wastewater Plant was insensitive to minorities. Additionally, Ms. Murrel's assignment to work with the supervisor who criticized her could be interpreted negatively considering that management had not performed an investigation into the events surrounding the critical evaluation. There were also concerns relating to the availability and reliability of an important witness.

The parties participated in a mediation after which they reached a settlement in the amount of \$137,500.00, subject to City Council approval. In association with this settlement, Ms. Murrel will also tender her resignation from City employment and agrees not to seek City employment in the future.

In light of the risks and costs inherent in litigation, including exposure to substantial attorneys' fees should Plaintiff prevail in this lawsuit, the City Attorney's Office recommends settlement of this lawsuit for a total payment of \$137,500.00 to Plaintiff and her attorneys.

PUBLIC OUTREACH/INTEREST

This memorandum and settlement agreement have been posted on the City's website for the October 4, 2011 City Council agenda.

COORDINATION

The City Attorney's Office has discussed the terms of the proposed settlement with the Environmental Services Department, Employee Relations, and the City Manager.

COST SUMMARY/IMPLICATIONS

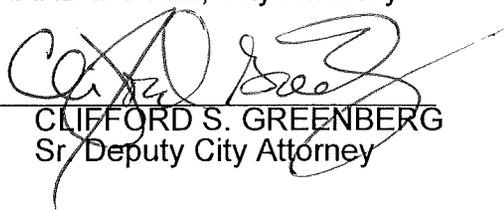
The settlement will be paid out of the City's General Liability Claims reserve fund, Appropriation 0018.

CEQA

CEQA: Not a Project; File No. PP10-066h, Settlement Agreements.

RICHARD DOYLE, City Attorney

By


CLIFFORD S. GREENBERG
Sr Deputy City Attorney

cc: Debra Figone, City Manager

For questions please contact RICHARD DOYLE, City Attorney, at (408) 535-1900.