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EEOC v. Macnab Manufacturing Inc.

Judge Robert S. Lasnik

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EEOC v. Macnab Manufacturing Inc.

Keywords

EEOC, Christine Huestis, Beverly Campbell Geraci, Maureen Bendixen, Julie Stroh, Macnab Manufacturing Inc., 2:99-cv-00733, Consent Decree, Retaliation, Sexual Harassment, Sex, Female, Information Technology, Employment Law, Title VII

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

No. C99-0733L

Plaintiff,

v.

CONSENT DECREE AND
(PROPOSED) ORDER OF
DISMISSAL

MACNAB MANUFACTURING, INC.

Defendant.

MAUREEN BENDIXEN and CALVIN
BENDIXEN; and BEVERLY CAMPBELL;
CHRISTINE HUESTIS and JAMES HUESTIS;
and JULIE STROH;

Plaintiff-Intervenors,

v.

MACNAB MANUFACTURING, INC., a
domestic corporation in the State of Washington,

Defendant.

I. INTRODUCTION

1. This action originated with a discrimination charge Beverly Campbell and Christine Huestis filed with the Equal Employment Opportunity Commission on December 30, 1998. Campbell and Huestis alleged Macnab Manufacturing, Inc. ("Macnab") discriminated against them on the bases of sex and retaliation, in violation of Title VII of the Civil Rights Act of 1964, as

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1 amended ("Title VII"), 42 U.S.C. § 2000e et seq. A copy of the charge is attached to this consent
2 decree as Exhibit 1.

3 2. On April 8, 1999, the EEOC sent Macnab a Letter of Determination with a finding of
4 reasonable cause that Macnab violated Title VII. A copy of the Letter of Determination is attached
5 to this consent decree as Exhibit 2. The EEOC issued Notices of Right to Sue to Maureen Bendixen
6 and Julie Stroh, plaintiffs herein.

7 3. The Commission filed this lawsuit on May 10, 1999, in the United States District
8 Court for the Western District of Washington. The complaint alleges sexual harassment and
9 retaliation.

10 4. Christine Huestis, Beverly Campbell Geraci, Maureen Bendixen and Julie Stroh
11 ("Plaintiff-Intervenors") filed a motion to intervene in the lawsuit filed by EEOC and the court
12 entered an order granting limited intervention on July 8, 1999.

13 5. The EEOC, Plaintiff-Intervenors and Macnab want to conclude all claims arising out
14 of the above charge without expending further resources in contested litigation.

15 **II. SETTLEMENT SCOPE**

16 6. This consent decree is the final and complete resolution of all Title VII allegations of
17 unlawful employment practices contained in: (1) Beverly Campbell and Christine Huestis'
18 discrimination charge; (2) the EEOC's administrative determination; and (3) the complaint filed
19 herein, including all claims by the parties for attorney fees and costs.

20 **III. JURISDICTION AND VENUE**

21 7. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343
22 and 1345. Plaintiff EEOC's action is authorized pursuant to Sections 705(g)(6), 706(f)(1) and (3)
23 and Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e-
24 4(f)(6), 2000e-5(f)(1) and (3) and 2000e-6 ("Title VII") and Section 102 of the Civil Rights Act of

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1 1991, 42 U.S.C. §1981a. The employment practices alleged to be unlawful in the EEOC's and
2 Intervenor's Complaints filed herein occurred within the jurisdiction of the United States District
3 Court for the Western District of Washington.

4 **IV. NON ADMISSION OF LIABILITY**

5 8. This Consent Decree is not an adjudication or finding on the merits of this case and
6 shall not be construed as an admission by the Defendant of a violation of Title VII or any other law.
7 Macnab denies all wrongdoing alleged.

8 **V. PURPOSE OF THE AGREEMENT**

9 9. The parties are entering into this Consent Decree in order to achieve the following
10 purposes:

11 a. To assure the implementation of policies and procedures which prohibit
12 Macnab from discriminating or retaliating against employees on the basis of sex, and from retaliating
13 against employees who complain about sex discrimination or participate in the investigation of a
14 complaint.

15 b. To assure that Macnab implements a policy and enforcement program to
16 effectively prevent discrimination and sex harassment and to address and correct situations in which
17 such discrimination or harassment is alleged.

18 c. To assure that the Applicants in Intervention are fully compensated for lost
19 wages and damages suffered in connection with their employment by Macnab.

20 d. To avoid the time, expense and uncertainty of further litigation.

21 **VI. GENERAL PROVISIONS**

22 10. This Consent Decree is intended to and does effectuate the full, final, and complete
23 resolution of all allegations of unlawful employment practices and discrimination encompassed by
24 the original discrimination charges and the Complaints filed in EEOC v. Macnab Manufacturing,

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1 Inc., Civil No. 99-0733L.

2 11. This Consent Decree constitutes the complete understanding between the EEOC and
3 Macnab with respect to matters herein. No waiver, modification or amendment to any provisions of
4 this Consent Decree will be effective unless it is agreed to in accordance with provisions of Section
5 XI, Consent Decree Amendment Procedures.

6 12. This Consent Decree in no way affects EEOC's right to process, in accordance with
7 standard Commission procedures, charges filed by individuals against Macnab alleging violations of
8 Title VII. Charges include those pending as of the effective date of the Agreement and filed in the
9 future. Processing includes the administrative investigation and conciliation and commencement of
10 civil actions on the basis of such charges.

11 13. It is expressly agreed that if EEOC concludes that Macnab has failed to comply with
12 this Consent Decree, the Commission may bring an action in the United States District Court for the
13 Western District of Washington to enforce the Agreement after compliance with the terms in Section
14 X, Dispute Resolution Procedures.

15 **VII. DEFINITION OF TERMS**

16 For the purposes of this Consent Decree, the following definitions shall apply:

17 14. "The Effective Date of the Consent Decree" is the date the United States District
18 Court for the Western District of Washington enters the Consent Decree and (Proposed) Order of
19 Dismissal.

20 15. Unless otherwise indicated, the word "days" refers to calendar days.

21 16. "Formal or Informal Complaints" includes any complaint, whether written or oral,
22 made to a supervisory employee of Macnab.

23 **VII. MONETARY RELIEF**

24 17. In settlement of the EEOC's Complaint and the federal and state claims of all
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1 Plaintiff-Intervenors', Macnab agrees to pay \$330,000. Distribution of settlement funds will be
2 handled by the Plaintiff-Intervenors' private counsel.

3 **IX. INJUNCTIVE RELIEF**

4 **A. COMPLIANCE WITH TITLE VII**

5 18. Defendant reaffirms its commitment to comply with Title VII and other federal anti-
6 discrimination statutes. In furtherance of this commitment, Macnab will monitor the affirmative
7 obligations of this Consent Decree. Macnab specifically agrees that it will not discriminate against
8 employees on the basis of sex in any employment decisions, including decisions regarding the terms
9 and conditions of employment.

10 19. Defendant will not retaliate against any employee for making a charge of
11 discrimination or for testifying, assisting, or participating in any investigation, proceeding, or hearing
12 associated with this lawsuit.

13 20. In recognition of its obligations under Title VII, Macnab will institute the policies
14 and practices set forth below.

15 21. Macnab will collect and share with the EEOC data concerning the impact of the new
16 policy and procedures as set forth in Section IX, Reporting, Record Keeping and Compliance
17 Review.

18 **B. RETENTION OF SEXUAL HARASSMENT CONSULTANT TO DEVELOP POLICY
19 AGAINST SEXUAL HARASSMENT**

20 22. With the assistance of an independent sexual harassment consultant, Macnab will
21 adopt a new written equal employment opportunity policy which sets forth the requirements of
22 federal laws against employment discrimination and specifically those provisions which make sexual
23 harassment unlawful and which make it unlawful to retaliate against any current or former employee
24 for opposing any practice made unlawful by Title VII. The sexual harassment consultant will be
25 retained, at Macnab's expense, to conduct an internal review and audit of the company's sexual

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1 harassment policy and complaint procedure. The sexual harassment consultant will be subject to the
2 prior approval of the EEOC and the policy to be developed will include the following, at a
3 minimum:

4 a. A statement of Macnab's commitment to insuring that the practices and the
5 conduct of its employees will comply with the requirements of the federal laws against employment
6 discrimination, including a provision stating that those who violate the policy will be subject to
7 appropriate discipline, up to and including termination, and that all employees are protected from
8 retaliation should they complain about discrimination or participate in an investigation of a
9 complaint.

10 b. A clear and easily understood explanation of the kind of conduct which
11 constitutes illegal sex harassment.

12 c. An internal complaint procedure for employees to report suspected incidents
13 of discrimination and retaliation so that the Defendant can investigate and take appropriate action if
14 there is a complaint that any employee has violated its EEO policy. The internal complaint
15 procedure will include the following provisions:

16 (1) A list of the appropriate persons to whom an individual should report
17 allegations of discrimination in the workplace, including allegations of sex
18 harassment. The list shall not be limited to an employee's immediate
19 supervisor or management in the employee's own chain of authority.

20 (2) An explanation of how to make a complaint and what an investigation
21 will involve, including informing the affected individuals of the outcome of
22 the investigation. Employees making such complaints will be given written
23 assurance that their complaint will be investigated within 48 hours and that
24 their confidentiality will be protected to the extent possible.

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1 28. For the duration of this Agreement, the training will be conducted (1) within six (6)
2 months of the date of execution of this Consent Decree for all current employees; (2) at the
3 orientation program for all new hires thereafter; and (3) training shall be conducted at least annually
4 thereafter, starting in July, 2001 until July 2004.

5 29. The persons conducting the training shall be subject to review and approval by the
6 Commission.

7 **E. POLICIES DESIGNED TO PROMOTE SUPERVISOR ACCOUNTABILITY.**

8 30. Macnab's agrees that it shall impose substantial discipline -- up to and including
9 termination, suspension without pay or demotion -- upon any supervisor or manager who engages in
10 sex harassment or sexually-based harassment or with active or constructive knowledge permits any
11 such conduct to occur in his or her work area or among employees under his or her supervision, or
12 who retaliates against any person who complains or participates in any investigation or proceeding
13 concerning any such conduct. Macnab shall communicate this policy to all of its supervisors and
14 managers. Employees who have been disciplined for sexual harassment in the past shall receive
15 progressively more severe discipline.

16 31. Macnab agrees that it shall continue to advise all managers and supervisors of their
17 duty to actively monitor their work areas to ensure employees' compliance with the company's sex
18 discrimination and harassment policy, and to report any incidents and/or complaints of sex
19 harassment, sexually-based harassment and/or retaliation of which they become aware to the
20 department charged with handling such complaints.

21 32. Macnab agrees that it will complete its current revision of the supervisor appraisal
22 process to include performance evaluations for the handling of equal employment opportunity
23 ("EEO") issues as an element in supervisor appraisals, and to link such evaluations directly to
24 supervisor salary/bonus structure.

1 33. Macnab agrees that it shall include “commitment to equal employment opportunity”
2 as a criterion for qualification for supervisory positions.

3
4 **F. REPORTING, RECORD KEEPING AND COMPLIANCE REVIEW**

5 34. The reports to be submitted by Macnab on a periodic basis as provided in this Section
6 will be forwarded so as to arrive at the Commission within thirty (30) days after the close of the
7 reporting period.

8 35. Within one hundred fifty (150) days after the Effective Date of this Consent Decree,
9 Macnab will provide the Commission with a report confirming the date of the distribution of copies
10 of the Macnab Anti-Harassment Policy to all employees. (Report A)

11 36. Within six months after adoption of the sexual harassment policy referenced above,
12 the independent sexual harassment consultant shall prepare a report to the EEOC regarding the
13 development, adoption and compliance with the policy. Thereafter, the independent sexual
14 harassment expert shall report to the EEOC on a yearly basis regarding Macnab’s compliance with
15 the terms of this consent decree.

16 37. On a semi-annual basis beginning within one hundred fifty (150) days of the Effective
17 Date of this Consent Decree, for a period of five (5) years, Macnab will prepare and submit the
18 reports described below:

19 a. A report on any oral or written complaints of sexual harassment and/or
20 retaliation made by any employee or applicant. This report will provide for each such formal or
21 informal complaint filed and/or resolved during the period, the name and sex of the person making
22 the complaint, the date the complaint was made, a description of the complaint, and resolution or
23 status of each complaint. Copies of any complaint made during the reporting period will be provided
24 along with the report. (Report B)

1 b. A report of all training activities conducted pursuant to this Consent Decree
2 during the period. (Report C)

3 38. All records required by this Consent Decree will be retained by Macnab for the
4 duration of this Consent Decree. Macnab will also maintain records necessary to demonstrate
5 compliance with the provisions of this Consent Decree and to verify reports submitted, which
6 records shall include, but are not limited to:

7 a. Records concerning sexual harassment and/or retaliation incidents or
8 complaints, including documentary evidence and summaries of interviews conducted during the
9 investigations, and the findings, resolutions and/or conclusions reached;

10 b. Documents relating to any disciplinary action taken by Macnab against any
11 employee resulting from inappropriate conduct which could be construed as harassment of another
12 employee on the basis of sex.

13 c. Documentation on individual and group training materials used during the
14 training sessions outlined above.

15 d. It is understood that Macnab will provide a description of any documents
16 withheld from the EEOC under these provisions where such documents are asserted to be covered by
17 the attorney/client or work product privilege, or which are deemed confidential pursuant to court
18 order. If there is any dispute as to whether a particular document is subject to being withheld under a
19 privilege or court order, the parties shall resort to the Alternative Dispute Resolution Procedures
20 outlined in Section X.

21 39. For the duration of this Consent Decree, the Commission shall have the right to
22 conduct two (2) on-site reviews within any twelve (12) month period, including conducting
23 interviews, attending training held pursuant to the Consent Decree, and examining documents and
24 data maintained by Macnab pursuant to this Consent Decree and Commission regulations for the
25

1 purpose of confirming compliance with this Consent Decree Order. The Commission agrees that it
2 will provide reasonable notice to Macnab's attorney prior to conducting any review.

3 40. After the expiration of this Consent Decree, records will be maintained by Macnab as
4 required by law and Commission regulations.

5 G. SETTLEMENT NOTICE

6 41. Within one hundred twenty (120) days after the Effective Date of this Consent
7 Decree, Macnab will post a copy of the Notice of Settlement (Attachment 1) in all areas where the
8 Company posts information on Company Policies and other pertinent Company information, and
9 will maintain this posting for the life of the Consent Decree.

10 X. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

11 42. Either party shall have the right to initiate an action pursuant to the Court's
12 continuing jurisdiction for an unresolved dispute or for non-compliance with any provision of the
13 Consent Decree, as follows:

14 a. If one party believes that there is an issue to resolve, it shall promptly give
15 notice, in writing, to the other party regarding (1) the specific provision, which it believes has not
16 been met, and (2) a complete factual statement of the issue.

17 b. The parties shall promptly undertake efforts to resolve the areas of dispute or
18 alleged non-compliance, through meetings, mediation or other appropriate means.

19 c. If one party determines that efforts to resolve the matter have failed, the party
20 so finding shall notify the other party in writing of such failure to resolve the matter and provide a
21 description of the facts and circumstances surrounding the matter.

22 d. The parties shall select a mutually agreeable mediator or request that the Court
23 appoint a mediator within thirty (30) days of receipt in writing of the notice of impasse. Discussions
24 will be engaged in with the assistance of the Court appointed mediator until the mediator determines

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1 that discussions are no longer productive.

2 **XI. CONSENT DECREE AMENDMENT PROCEDURES**

3 43. This Consent Decree may be modified by mutual written agreement between the
4 Commission, Plaintiff-Intervenors and Macnab, or by motion to the Court.

5 44. Any modification to the Consent Decree is subject to approval by the Court.

6 **XII. DURATION OF THE AGREEMENT**

7 45. This Agreement will be in effect for five (5) years commencing with the date the
8 Agreement is approved by the Court. The United States District Court Western District of
9 Washington will have jurisdiction to enforce the Consent Decree. If either party petitions the Court
10 for breach of the Agreement, and the Court finds a violation of the terms of the Agreement, the Court
11 may extend the duration of the Agreement and award the petitioning party its costs in bringing an
12 enforcement action.

13 DATED this 10th day of August, 2000.

14 A. LUIS LUCERO, JR.
15 Regional Attorney

C. GREGORY STEWART
General Counsel

16 CLAIRE CORDON
17 Supervisory Trial Attorney

GWENDOLYN YOUNG REAMS
Associate General Counsel

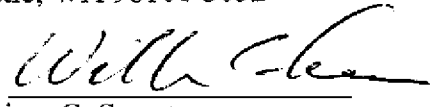
18 BY: *A. Luis Lucero Jr.*

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ORDER APPROVING CONSENT DECREE AND DISMISSING ACTION

The Court having considered the foregoing stipulated agreement of the parties, HEREBY ORDERS THAT the foregoing Consent Decree is approved and this lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees to either the EEOC or Defendant Macnab Inc. The Court retains jurisdiction of this matter solely for purposes of enforcing the Consent Decree as provided by the parties.

DATED this 3rd day of August, 2000.

M. S. Larsvik
UNITED STATES DISTRICT JUDGE

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