

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY FLORIDA

CITY OF WEST PALM BEACH,

Petitioner,

v.

RICK M. CURTIS,

Respondent.

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APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 502010CA023598XXXXMB

Opinion filed: **JUL 01 2011**

**Amended Petition for Writ of Certiorari from the Equal Employment Board of Palm Beach County.**

For Petitioner: Zoe Panarites, Esq., 401 Clematis St., P.O. Box 3366, West Palm Beach, FL 33402

For Respondent: Frank J. McKeown, Jr., Esq., 2000 Palm Beach Lakes Blvd., Ste. 701, West Palm Beach, FL 33409

PER CURIAM.

Petitioner City of West Palm Beach seeks review of a Final Order of the Palm Beach County Equal Employment Board that found the city in violation of the Palm Beach County Equal Employment Ordinance and Title VII of the Civil Rights Act of 1964 for race/color discrimination against the Respondent related to two promotional opportunities.

I. Background

The City of West Palm Beach ("City") and Palm Beach County ("County") each have enacted an ordinance on the subject of employment discrimination. In 1994, the City adopted an equal opportunity ordinance ("City Ordinance") that covers the subject of employment discrimination.<sup>1</sup> West Palm Beach, Fla., Code, §§ 42-31 to -46 (2010) (effective September 12,

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<sup>1</sup> It also covers discrimination in public accommodations and housing.

1994). Just less than one year later, the County adopted the Palm Beach County Equal Employment Ordinance ("County Ordinance"). Palm Beach County, Fla., Code §§ 2-261 to - 313 (2010) (effective on August 15, 1995). Each of these ordinances prohibits employers in their respective jurisdictions from discriminating in employment based on race or color.<sup>2</sup>

Each of the ordinances has procedures by which charges of employment discrimination are investigated. Under the City Ordinance, the mayor, or the mayor's designee is responsible for administering the provisions thereof. West Palm Beach, Fla., Code, § 42-33 (2010). Under the County Ordinance, the Office of Equal Opportunity ("OEO") is responsible for investigating and resolving charges of employment discrimination. Palm Beach County, Fla., Code § 2-271 (2010). The OEO is also a fair employment practices agency ("FEPA") authorized by a "Worksharing Agreement" with the U.S. Equal Employment Opportunity Commission to investigate charges brought under Title VII of the Civil Rights Act of 1964 ("Title VII").<sup>3</sup> 29 C.F.R. § 1601.74(a). Under certain circumstances, the Palm Beach County Equal Employment Board ("County Board") may review the OEO's findings and conclusions *de novo*. Palm Beach County, Fla., Code § 2-310 (2010).

The Respondent, Rick M. Curtis, is a black employee of the City's Fire Rescue Department. Curtis filed a complaint of race/color discrimination with the City, alleging that it

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<sup>2</sup>The general purpose of the ordinances is to ensure that all persons regardless of race, color, sex, national origin, religion, age, disability, familial status, marital status, sexual orientation or gender identity or expression are afforded equal opportunity to all terms and conditions of employment. However, the City Ordinance is broader in that the list of classification categories includes "genetic information." See Palm Beach County, Fla., Code § 2-262 (2010); West Palm Beach, Fla., Code, § 42-31 (2010).

<sup>3</sup>The U.S. Equal Employment Opportunity Commission is the agency established by Congress to administer, interpret and enforce Title VII and other federal employment discrimination laws. 42 U.S.C. § 2000e(4) (2006).

violated the City Ordinance. The City determined that the allegations were unfounded.<sup>4</sup> Thereafter, based on the same facts, Curtis filed a charge with the OEO alleging that the City violated the County Ordinance and Title VII. Unlike the City, the OEO determined that the charges were based on reasonable grounds, and attempted to conciliate the matter. After conciliation efforts failed, Curtis requested an administrative hearing before the County Board as provided for by section 2-310 of the County Ordinance.

The hearing before the County Board began on July 21, 2010, and continued on August 18, 2010. It determined that the City was in violation of the County Ordinance and Title VII, and ordered the City to (1) prohibit discrimination against Curtis, (2) promote Curtis to the next available position of Battalion Chief or Assistant Fire Chief, (3) pay damages to Curtis in the amount of \$56,506.75, and (4) pay attorneys fees and costs in the amount of \$24,000.

## II. Standard of Review

This Court must determine (1) whether procedural due process was accorded, (2) whether the essential requirements of law have been observed, and (3) whether the administrative agency's findings and judgment were supported by competent, substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982); *Haines City Community Development v. Heggs*, 658 So. 2d 523 (Fla. 1995).

## III. Argument and Analysis

The City contends that the OEO's jurisdiction over violations of the County Ordinance did not extend to the City, because the City had "opted out" by establishing the City Ordinance.

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<sup>4</sup> On April 24, 2008, Curtis filed with the City a charge that contained five allegations of race/color discrimination, including retaliation for reporting a hostile work environment. In a Notice of Findings dated July 3, 2008, the City announced its determination that three allegations were unfounded, one was previously addressed, and one was time barred. Each of the three claims on which the City made determinations related to the appointment of a white male to Assistant Fire Chief in July of 2007, and the promotion of a white female to Battalion Fire Chief in April of 2008. The circumstances surrounding these two promotional opportunities are the subject of this case.

The City also contends that it did not receive proper notice of the County Board's intention to determine the Title VII charge at the adjudicatory hearing. We agree.

1. Whether the County Board had Jurisdiction over the County Ordinance Complaint

The County Ordinance prohibits employment discrimination by any "employer" – a term it defines as follows:

*Employer* means a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of four (4) or more calendar weeks in the current or preceding calendar year, and any agent of such person; including, but not limited to, all state and local governments, governmental agencies, and political subdivisions *unless opted out*.

Palm Beach, Fla., Code § 2.263 (2010) (second emphasis added). Thus, to come within the purview of the County Ordinance, the City must meet this definition of "employer." Because the City is a local government with greater than fifteen employees, the County Ordinance applies to it, *unless* the City "opted out."

The County Ordinance does not define the term "opt out." Because municipal ordinances are subject to the same rules of construction as are state statutes, the Court must look to the term's plain and ordinary meaning. *Rinker Materials Corp. v. City of North Miami*, 286 So. 2d 552 (Fla. 1973). The plain and ordinary meaning of the term is clear. The Merriam-Webster's Collegiate Dictionary defines "opt out" as "to choose not to participate in something." Merriam-Webster's Collegiate Dictionary 817 (10th ed.1996).

The means by which a municipality chooses not to participate in a county ordinance is to adopt its own ordinance on the subject.<sup>5</sup> The timing of the enactment is inconsequential.<sup>6</sup>

The City Ordinance operates within the municipal boundaries to the exclusion of the County Ordinance, and the OEO, and the County Board, did not have jurisdiction over the complaint brought under the County Ordinance. In hearing the complaint, the County Board did not apply the correct law, and, thus, did not follow the essential requirements of law. *Haines City Community Development v. Heggs*, 658 So. 2d 523, 529 (Fla. 1995).

2. Whether the County Board Provided Proper Notice to the City of the Title VII Charge

First, it should be noted that the City does not challenge the jurisdiction of the OEO, as a FEPA, over the Title VII charge.<sup>7</sup> Rather, the City challenges the sufficiency of the notice given.

Consistent with section 2-310(p) of the County Ordinance, the OEO made certain that the Notice of Administrative Hearing contained a “statement of the legal authority and jurisdiction under which the hearing is to be held,” and a “reference to the statutes, ordinances and rules involved”:

The nature of this hearing is a formal administrative hearing to be held before the Palm Beach County Equal Employment Board to consider the allegations raised by the Charge of Employment Discrimination, filed in this case, and to determine whether an unlawful employment practice has been committed, within the meaning and intent of Palm Beach County’s Equal Employment Ordinance (Article VI, Palm Beach County Code, §§ 2-261, et seq.).

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<sup>5</sup> See *City of Fort Lauderdale v. Broward County*, 458 So. 2d 783, 785 (Fla. 4th DCA 1984) (noting that absent county preemption, the city would have the power to opt out of a county ordinance by enacting its own city ordinance).

<sup>6</sup> Curtis’s argument that the City did not opt out of the County Ordinance, because the City Ordinance was enacted before the County Ordinance is flawed. If anything, this argument works to the City’s benefit. Because the City Ordinance was enacted before the County Ordinance, the County should have been on notice that it had to act to preempt it. The fact that it did not so act, and specifically allowed opt out language in its ordinance, suggests the County did not want to preempt, or even operate concurrently with, the city in this area.

<sup>7</sup> The City does challenge the County Board’s authority to award damages inconsistent with what the U.S. Equal Employment Opportunity Commission could award under federal law. While this argument may have merit, this Court finds it unnecessary to reach this issue, because it is clear that the County Board’s notice regarding the Title VII charges was legally insufficient.

Palm Beach County, Fla., Code § 2-310(p) (2010). Unfortunately, the notice refers only to the Palm Beach County Code; there is no mention of Title VII.

Inasmuch as the notice did not state that the administrative hearing would cover the Title VII charge, the notice did not comport with the clear requirements of section 2-310(p) of the County Ordinance. Thus, the County Board failed to comport with the essential requirements of the law.

We decline to address the other issues raised in the petition. Accordingly, the Petition for Writ of Certiorari is GRANTED, the County Board's Final Order is QUASHED, and the matter is remanded for further proceedings consistent with this opinion. Respondent's Motion for Attorney's Fees is DENIED.

HOY, McCARTHY, KELLEY, JJ., concur.