

RAYMOND J. WEITZ v. CITY OF MILWAUKEE

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release is made and entered into for and in consideration of the commitments set forth herein on this 30 day of November, 2011, by and between Raymond J. Weitz (hereinafter referred to as "Complainant"), and the City of Milwaukee and the Health Department (hereinafter referred to as "Respondent" or "City").

WHEREAS, Complainant filed three Complaints with the Equal Rights Division of the State of Wisconsin Department of Workforce Development, Case Numbers CR201000477 and CR201100045, and with the Equal Employment Opportunity Commission, Case Numbers 26G201000643C and 26G201100651C alleging discrimination based on age, and sex and retaliation from having opposed discrimination in the workplace, and he has also has filed and withdrawn a complaint of disability discrimination in ERD Case No. CR201102927 and EEOC Case No. 26G201101513C ; and

WHEREAS, Respondent responded to the complaints and denies any and all liability or wrongdoing; and

WHEREAS, the parties wish to resolve the expense and disruption of litigation between them by amicably entering into this full and final settlement.

NOW, THEREFORE, in consideration of their mutual promises as set forth herein with their intention to be mutually and legally bound hereby, the parties covenant and agree as follows:

1. Approval. This agreement is subject to approval by the Common Council of the City of Milwaukee, and shall not become effective until the Common Council has passed a resolution authorizing this settlement, and the ten-day period for Mayoral veto has expired, following

passage of the resolution. It shall be deemed null and void, and have no force or effect, nor shall it be admissible for any purpose, in the event it is not so approved, and made effective. The City agrees to submit this Agreement to the Common Council as soon as possible, after it is signed by Complainant.

2. Full Release. Complainant, for himself, his heirs, personal representatives, executors, administrators, successors, agents and assigns, does hereby release and forever discharge the Respondent, and all departments, officers, employees or agents thereof, and their successors, from any and all manner of action or actions, cause or causes of action, suits, debts, covenants, contracts, agreements, judgments, execution, claims, demands and expenses (including attorneys' fees and costs) whatsoever in law or equity, which he has had, now has or may have against the City for or by reason of any transaction, matter, cause or thing whatsoever up to the date of this Agreement, whether based on tort, express or implied contract, or any federal, state or local law, statute or regulation, specifically including, but not limited to, any and all claims under the Wisconsin Fair Employment Act, Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.*; the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*; 29 U.S.C. § 621, *et seq.*, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1101, *et seq.*; the Federal Rehabilitation Act of 1973, as amended, the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, *et seq.*; the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, including the protections of the Older Workers Benefit Protection Act, the federal and state Family and Medical Leave Act, the Municipal Employment Relations Act, the Federal Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. § 651, *et seq.*; 42 U.S.C. § 1981; 42 U.S.C. § 1983; the First or Fourteenth Amendments to the United States

Constitution; and any other applicable statute or authority of law providing a cause of action as to his employment with the City that concern any claims which have arisen or could arise out of or be connected to the facts, issues or allegations made or referred to in *Weitz v. City of Milwaukee*, ERD Case Numbers CR201000477, CR201100045, CR201102927, EEOC Case Numbers 26G201000643C, 26G201100651C and 26G201101513C or any other claims concerning the terms and conditions of his employment or his resignation or termination of employment. Complainant acknowledges that he has been advised that he has the right to consult with an attorney representing him in this matter and that he has in fact consulted with his own attorney. Complainant acknowledges that he has been provided with an opportunity to consider this release and waiver for a period of at least twenty-one (21) days and that he shall have a period of seven (7) days after it becomes effective to revoke this settlement agreement and release. Complainant agrees to execute a general release of all claims in the form approved by the City Attorney, as described in the attached Exhibit A, upon approval of this settlement by the Common Council (and expiration of the ten-day Mayoral veto period), at least seven days prior to, and as a condition precedent to his receipt of any settlement funds herein.

3. Dismissal. Complainant agrees to execute a stipulation to dismiss all of his ERD and EEOC complaints with prejudice and without further costs upon approval of this settlement by the Common Council, and expiration of the ten-day Mayoral veto period. Complainant further agrees to execute any other document such as a request for withdrawal of complaint or charge that may be required to completely dismiss his claims, complaints or actions against the Respondent concerning the allegations raised in the pending complaints.

4. Resignation. Complainant agrees to voluntarily resign his position as an employee of the City of Milwaukee and designate his last date on payroll to be effective the first date

following the expiration of the ten-day period for mayoral veto after the Common Council's approval of a resolution authorizing this settlement agreement. Complainant acknowledges and agrees that he will not seek and will not be eligible for re-employment with the City of Milwaukee following his resignation. Complainant also acknowledges and agrees that he is entering into a voluntary quit of his employment for purposes of unemployment compensation and that he may not be qualified to receive unemployment compensation based upon his employment with the City of Milwaukee as a result.

5. Payment. In consideration of the general release, the resignation and the dismissal of the complaints, the City of Milwaukee will pay the sum of Fifteen thousand and no/100 dollars (\$15,000) to Complainant as damages, and the sum of Four thousand five hundred and no/100 dollars (\$4,500) as attorney fees to Attorney Jeffrey Hynes, for a total payment of Nineteen thousand five hundred and no/100 dollars (\$19,500) within fifteen business days following expiration of the ten-day period for mayoral veto after the Common Council's approval of a resolution authorizing this settlement agreement. Complainant acknowledges that the City has made no representation to him, and has not advised him regarding the tax consequences, if any, that may apply to the payment called for herein, and that he will be solely responsible for tax consequences, if any, that may result to him due to this payment. The payments referred to in this Paragraph shall be delivered to the law offices of Jeffrey S. Hynes & Associates, S.C., 2300 N. Mayfair Road, Suite 390, Wauwatosa, WI 53226, so as to be received no later than 15 business days following the expiration of the 10-day period for mayoral veto after the Common Council's approval of a resolution authorizing this settlement agreement.

6. The parties further agree that Complainant will be paid any and all accrued, but unused vacation (currently 101.7 hours), which Complainant has accumulated through the effective date of his resignation. Complainant agrees that the payment of accrued, unused

vacation will be paid to him in his final payroll check, subject to the usual payroll deductions, which will be due him following his last day on the payroll system, which will also be the effective date of his resignation pursuant to Paragraph 4 of this Agreement.

7. Full and Final Settlement. With respect to the payments referred to in paragraph 5, the parties acknowledge and agree that said payments are in full and final settlement of all damages which Complainant has, or could have claimed in this matter, including without limitation compensatory damages, punitive damages, attorney fees, costs, wage loss, back pay, front pay, pension loss or other economic damages. Nothing in this agreement releases any of Complainant's claims or interests to vested benefits or pension rights, if any, which Complainant may have with the Employee Retirement System for the City of Milwaukee.

8. Letters of Reference. The City agrees to forward to the law offices of Jeffrey S. Hynes & Associates, 2300 N. Mayfair Road, Suite 390, Wauwatosa, WI 53226, three signed originals of the letter of reference attached hereto as Exhibit B on the first date following the expiration of the ten-day period for mayoral veto after the Common Council's approval of a resolution authorizing this settlement agreement. The signed originals shall be on City of Milwaukee-Health Department letterhead, signed and dated by Commissioner Baker, with the appropriate date of resignation filled in, pursuant to Paragraph 4 of this Settlement Agreement, and shall not contain the "Exhibit B" notation. The Respondent further agrees that, in the event it is contacted by a prospective employer, or other third party seeking information regarding Complainant, that it shall respond by making statements consistent with the attached letter of reference (identified as Exhibit B). In addition, if questioned concerning the reasons for Complainant's separation from employment with the City, it shall respond by stating that "Mr. Weitz resigned to pursue other employment opportunities." The Respondent shall provide no

additional information, and shall make no negative statements regarding Complainant or his employment with the City.

The Respondent also agrees that it will remove and segregate from Complainant's personnel file/record the following documents: the written warning issued to Mr. Weitz on December 22, 2010, the letter referencing a need for a performance improvement plan dated August 23, 2011, and any and all documents which reference Complainant's filings, correspondence, or other matters relating to his claims with the Department of Workforce Development-Equal Rights Division or the Equal Employment Opportunity Commission. The documents removed and segregated from the personnel file/record shall be maintained in the City Attorneys Office, or other such office, so as to be permanently maintained at a location separate from Complainant's personnel file/record, and such documents shall not be referred to, accessed or relied on in responding to any employment reference requests/inquiries, or any other matter relating to Complainant or his employment with the City. The Respondent shall effectuate the terms of this paragraph on the same date it provides the letters of reference referred to above.

Nothing in this paragraph, or in this agreement, prevents the City from complying with Wisconsin Open Records law, Sec. 19.21, et seq. or with other legal process which would require the production of records.

9. Compromise. It is expressly understood and agreed between the parties that by entering into this Agreement, the Respondent in no way admits that it has violated any federal, state, local statute or ordinance, or contractual provision, or was otherwise liable. It is further understood and agreed that this is a compromise settlement of disputed claims and that neither this Agreement nor the furnishing of the consideration provided for in this Agreement shall be

deemed or construed at any time or for any purpose as an admission of liability by the Respondent. Liability for any and all claims for relief is expressly denied by the Respondent.

10. Non-Disparagement. In exchange for the agreements and payment called for herein, the parties further agree to not disparage each other, and to refrain from causing any harm of any nature to the physical property or security interests of the other.

11. Return of Property and Cooperation. Complainant agrees that prior to the effective date of his resignation, he will return all city property, of any nature (including without limitation, all personnel records or data, all computers, hardware, software, files, applications or information of any kind, and any and all copies thereof), which he may have in or under his possession or control. Complainant further agrees to reasonably cooperate with management by providing, upon reasonable request, any and all information necessary to inform or instruct new or remaining employees in the continued work or processes associated with his employment.

Complainant further agrees that he will reasonably cooperate with Respondent in regard to responding to and/or defending any personnel matter or issue, regardless of whether it is currently known or whether it becomes known after his resignation. The term "cooperate" includes, but is not limited to the following: Complainant agrees to (a) keep personnel matters and issues of the Milwaukee Health Department confidential; (b) refrain from discussing any personnel matter or issue with anyone other than current upper level managers of the Milwaukee Health Department or attorneys or paralegal assistants for the City Attorney; (c) notify the City Attorney for the Respondent and the Commissioner of Health as soon as possible upon being served with a subpoena in regard to any personnel matter or issue; (d) voluntarily admit service of subpoenas to appear on behalf of the City of Milwaukee at hearings, arbitrations, depositions or other proceedings; (e) review documents to refresh his recollection and provide verbal and

written information (including affidavits) to respond to personnel matters or issues, and (f) provide Respondent with Complainant's current telephone number, email address and home address for a period of six years subsequent to his resignation.

12. Voluntary Agreement. Complainant represents and certifies that he has carefully read and fully understands all of the provision and effects of this Settlement Agreement and General Release. Complainant understands that he is voluntarily resigning his employment in connection with this agreement, and that he is not under any threat of discharge or retaliation that would cause him to resign his employment; and, that there will be no repercussions if he chooses not to enter into this agreement and instead continue his current employment. Complainant acknowledges that he has had a sufficient opportunity to consult an attorney, and that he has in fact consulted with an attorney and he is voluntarily entering into this Agreement. Further, Complainant acknowledges that neither the Respondent nor the Respondent's attorney(s) have made any representation concerning the terms or effects of this Agreement other than those contained herein.

13. Governing Law. This Settlement Agreement and General Release shall in all respects be interpreted, enforced and governed under the laws of the State of Wisconsin.

14. Entire Agreement. This Settlement Agreement and General Release sets forth the entire Agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

The parties hereby agree that an email (scanned) or faxed signature on this Settlement

Agreement shall have the same binding effect on the parties, as an original signature.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Complainant and the Respondent (through their attorneys) have executed the foregoing Settlement Agreement and General Release.

Dated: November 30, 2011

Raymond J. Weitz
Raymond J. Weitz, Complainant

Dated: 12/2/11

Jeffrey S. Hynes
Jeffrey S. Hynes
Attorney for Complainant, approved as to form

Dated: 12/1/11

Grant F. Langley
Grant F. Langley, City Attorney
Miriam R. Horwitz, Assistant City Attorney
Attorneys for Respondents

[CITY OF MILWAUKEE – HEALTH DEPARTMENT LETTERHEAD]

[Date]

Re: Letter of Reference for Raymond Weitz

To Whom It May Concern:

We are pleased to provide this letter of reference for our former employee, Raymond Weitz. Mr. Weitz served as the Personal Officer for the Milwaukee Health Department (MHD) from May, 2008 to _____. As Health Personal Officer, Mr. Weitz was responsible for a long list of management and administrative duties that relate to all aspects of human resources for the Health Department. Mr. Weitz served as an advisor to the MHD Executive Leadership Team, advising the Commissioner of Health and other senior-level management on HR-related issues related to policy development. He was responsible for identifying legal requirements and government reporting regulations, advising management in appropriate resolution of employee relations issues and responding to inquiries regarding policies, and procedures, including the interpretation of labor agreements.

During Mr. Weitz's employment, the MHD had approximately 250 employees, and although changes in Wisconsin law have eliminated collective bargaining rights, except for base wages, for all MHD employees, over the years of his employment, Mr. Weitz had been responsible to help administer labor contracts with four separate collective bargaining units.

Mr. Weitz's attendance was exceptional. He performed especially well in providing training for managers related to working in a union environment, and at new employee orientations. He has also attained a Labor Relations Academy Certificate from the National Public Employer Labor Relations Association. I believe you will find Mr. Weitz to be well credentialed, and experienced in the area of human resources and personnel management.

Very truly yours,

Bevan Baker, FACHE
Commissioner of Health