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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Peabody Western Coal Company d/b/a
Peabody Coal Company,

Defendant,

Navajo Nation,

Rule 19 Defendant.

Case No.: No. CIV-01-01050-MHM

SECOND AMENDED COMPLAINT

NATURE OF THE ACTION

1. This is an action pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”), against Peabody Coal Company (“Peabody”) seeking redress for unlawful discrimination against a class of non-Navajo Native Americans. Plaintiff, the Equal Employment Opportunity Commission (“EEOC” or “Commission”) contends that Peabody has discriminated

1 against and continues to discriminate against non-Navajo Native Americans on the basis
2 of their national origin by failing to hire qualified non-Navajo Native Americans. The
3 Commission further contends that Peabody has failed to retain employment applications
4 as required by 42 U.S.C. § 2000e-8(c).

5
6 **JURISDICTION AND VENUE**

7 2. This Court’s jurisdiction is invoked pursuant to 28 U.S.C. §§ 451, 1331,
8 1337, 1343 and 1345. This action is authorized and instituted pursuant to 42 U.S.C. §
9 2000e-5(f)(1) and (3).

10
11 3. Peabody’s unlawful employment practices were committed in Kayenta and
12 Black Mesa, Arizona and, accordingly, venue is proper in this Court.

13
14 4. The unlawful employment practices occurred on the property of the Navajo
15 Nation located in Kayenta and Black Mesa, Arizona and, accordingly, venue is proper in
16 this Court.

17
18 **PARTIES**

19 5. The Commission is the agency of the United States of America charged
20 with the administration, interpretation and enforcement of Title VII and is expressly
21 authorized to bring this action by 42 U.S.C. § 2000e-5(f)(1) and (3).

22
23 6. More than thirty days prior to the institution of this lawsuit, Delbert
24 Mariano (“Mariano”), Thomas Sahu (“Sahu”) and Robert Koshiway (“Koshiway”)
25 (collectively referred to as the “Charging Parties”) filed charges of discrimination with
26 the Commission alleging that Peabody had violated Title VII by refusing to hire them
27
28

1 because they were Native Americans who were not members of the Navajo Nation. All
2 conditions precedent to the institution of this lawsuit have been fulfilled.

3 7. Peabody operates a coal mining business on land which is located in
4 Arizona and has, at all relevant times, employed in excess of seven hundred (700)
5 employees.
6

7 8. At all relevant times, Peabody has continuously been an employer engaged
8 in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of
9 Title VII, 42 U.S.C. § 2000e-(b), (g) and (h).
10

11 9. Defendant Navajo Nation is a party to a lease agreement with the
12 Defendant employer, Peabody Coal Company, and is therefore named as a party pursuant
13 to Rule 19(a) of the Federal Rules of Civil Procedure, in that, in its absence, complete
14 relief cannot be accorded among those already parties, and it has an interest in the subject
15 of this action.
16

17 CONCILIATION

18 10. Prior to institution of this lawsuit, the Commission's representatives
19 attempted to eliminate the unlawful employment practices alleged below and to effect
20 voluntary compliance with Title VII through informal methods of conciliation,
21 conference and persuasion within the meaning of Section 706(b) of Title VII, 42 U.S.C. §
22 2000e-5(b).
23
24

25 STATEMENT OF CLAIMS

26 11. Charging Parties are all Native Americans who are not members of the
27 Navajo Nation. Charging Party Mariano is a member of the Hopi Tribe. Charging Party
28

1 Sahu was a member of the Hopi Tribe, and Charging Party Koshiway was a member of
2 the Otoe Tribe.¹

3 12. Peabody operates a mine which is located on land owned, in part, by the
4 Navajo Nation and Hopi Tribe.

5
6 13. Charging Parties and a class of qualified non-Navajo Native Americans
7 applied for open positions with Peabody for which they were qualified. Peabody did not
8 hire Charging Parties and the class of qualified non-Navajo Native Americans, but
9 instead hired members of the Navajo Nation for the open positions.
10

11 14. Peabody has a history of refusing to hire non-Navajo Native Americans for
12 open positions at its mine. The effect of this reputation is that qualified non-Navajo
13 Native Americans have been discouraged from applying for open positions at Peabody
14 and have accordingly failed to apply for open positions with Peabody.
15

16 15. The effect of Peabody's practices outlined above has been to deprive non-
17 Navajo Native Americans of equal employment opportunities because of their national
18 origin.
19

20 **FIRST CLAIM FOR RELIEF**

21 **(Discrimination in violation of Title VII based on national origin)**

22
23 16. The Commission incorporates by this reference paragraphs one through
24 fifteen outlined above.
25
26
27

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¹ Charging Party Sahu passed away in 2006, and Charging Party Koshiway died in September, 1999.

1 17. Peabody has engaged in, and continues to engage in, unlawful employment
2 practices by discriminating against Charging Parties and a class of qualified non-Navajo
3 Native Americans on the basis of their national origin in violation of Section 703(a) of
4 Title VII, 42 U.S.C. § 2000e-2(a) by refusing to hire qualified non-Navajo Native
5 American individuals.
6

7 18. The unlawful employment practices complained of above were intentional.
8

9 **SECOND CLAIM FOR RELIEF**

10 **(Record-keeping violation)**

11 19. Peabody has failed, in violation of Section 709(c) of Title VII, 42 U.S.C. §
12 2000e-8(c), to make and preserve records relevant to the determination of whether
13 unlawful employment practices have been or are being committed.
14

15 **PRAYER FOR RELIEF**

16 Wherefore, the Commission respectfully requests that this Court:

17 A. Grant a permanent injunction enjoining Peabody, its officers, successors,
18 assigns, and all persons in active concert or participation with it, from engaging in
19 discrimination on the basis of national origin.
20

21 B. Order Peabody to institute and carry out policies, practices, and programs
22 which provide equal employment opportunities for non-Navajo Native Americans and
23 which eradicate the effects of its past and present unlawful employment practices.
24

25 C. Order Peabody to provide Charging Parties and a class of similarly situated
26 non-Navajo Native Americans the affirmative relief necessary to eradicate the effects of
27 Peabody's unlawful employment practices on them, including instatement.
28

1 D. Order Peabody to make and preserve all records, in accordance with the
2 provisions of Section 709(c) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §
3 2000e-8(c), relevant to the determination of whether unlawful employment practices have
4 been or are being committed.
5

6 E. Grant such further relief as the Court deems necessary and proper in the
7 public interest.
8

9 F. Award the Commission its costs of this action.
10

11 DATED this 27th day of December, 2010.
12

13
14 Respectfully Submitted,

15 MARY JO O'NEILL
16 Regional Attorney

17 ANDREA G. BARAN
18 Supervisory Trial Attorney

19 */s/ James Driscoll-MacEachron*
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CERTIFICATE OF SERVICE

I certify that on this 27th day of December, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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