

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 465

Defendant.

Civil Action No. 2:04CV73812

Honorable Nancy G. Edmunds

AMENDED COMPLAINT
JURY TRIAL DEMAND

FILED
FEB -2 2007
U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Charging Party, Harold McKart ("McKart") and other similarly situated individuals who were adversely affected by such practices. As alleged with greater particularity in paragraph 8, the Commission alleges that Defendant, Laborers' International Union of North America, Local 465 ("Local 465" or "Union"), refused to place McKart and other similarly situated individuals on its out of work referral list at its Monroe, Michigan facility, without first submitting to pre-employment medical inquiries on the basis of their disability.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Sections

706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, as amended, 42 U.S.C. §1981(a).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of Michigan, Southern Division.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f) (1) and (3).

4. At all relevant times, Defendant Union has been doing business in the State of Michigan and the City of Monroe, and has continuously had at least fifteen (15) members.

5. At all relevant times the Defendant Union has continuously been engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 107(7) of the ADA, 42 U.S.C. § 12117(7), which incorporates by reference Section 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g) and (h).

6. At all relevant times, Defendant Union has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than thirty (30) days prior to the institution of this lawsuit, Charging Party

McKart filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Union. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least February 2001, Defendant Union has engaged in unlawful employment practices at its Monroe, Michigan facility in violation of ADA Sections 102(a), 102(b)(1), and 102(d)(2)(A), 42 U.S.C. §§ 12112(a), 12112(b)(1), and 12112(d)(2)(A). These practices include, but are not limited to, Defendant Union's refusal to place McKart and other similarly situated individuals on its "out-of-work" referral list without first submitting to pre-employment medical inquiries and physical examinations and providing medical information.

9. The effect of the unlawful practices complained of in paragraph 8 has been to deprive McKart and other similarly situated individuals of equal employment opportunities and to otherwise adversely affect their status as employees because of their disability.

10. The above-mentioned, unlawful employment practices were intentional.

11. The unlawful employment practices complained of in paragraph 8 above were done with malice or with reckless indifference to the federally protected rights of McKart and other similarly situated individuals.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Union, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any unlawful employment practice which discriminates on the basis of disability;

B. Order Defendant Union to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals with disabilities, and which eradicate

the effects of its past and present unlawful employment practices;

C. Order Defendant Union to make whole McKart and other similarly situated individuals by providing them with appropriate lost earnings and benefits, with pre-judgment interest, in amounts to be proven at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including immediate placement on the "out-of-work" referral list;

D. Order Defendant Union to make whole McKart and other similarly situated individuals by providing compensation for past non-pecuniary losses resulting from the unlawful practices complained of in paragraph 8 above, including but not limited to, emotional pain, suffering, inconvenience and loss of enjoyment of life, in amounts to be determined at trial;

E. Order Defendant Union to provide ADA training to all of its members and officers;

F. Order Defendant Union to pay McKart and other similarly situated individuals punitive damages for its malicious or reckless conduct, as described in paragraph 8 above, in amounts to be determined at trial.

G. Order Defendant Union to cease and desist its practice of making pre-employment inquiries and requiring medical examinations prior to placement on the out of work referral list;

H. Order Defendant Union to pay McKart nominal damages;

I. Grant the Commission its costs in this action;

J. Grant such further relief as the Court deems necessary and proper in the public interest.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised in this lawsuit.

Respectfully submitted,

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