

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION) CASE NO. 1:00 CV 2497)) JUDGE: GAUGHAN
Plaintiff)
~VS~) INTERVENOR STOWERS) COMPLAINT
THE ESAB GROUP, INC. dba ESAB WELDING AND CUTTING PRODUCTS))
Defendant) MAG. JUDGE PERELMAN)
and	
UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW). LOCAL 1834)))))
IVAN H. STOWERS, JR. 746 Union Avenue Ashtabula, Ohio 44004))
Intervening Plaintiff)))
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NOW COMES the Intervening Plaintiff, by and through his undersigned counsel, W. E. Gerstenslager, and for his cause of action against the Defendants states as follows:

NATURE OF THE ACTION

This is an action brought under Title 1 of the Americans with Disabilities Act of 1990 and Title 1 of the Civil Rights Act of 1991 to correct continuing unlawful employment practices based upon the disability of Ivan H. Stowers, Jr., who was adversely affected by the aforementioned practices. The unlawful practices include, but are not limited to, breach of the applicable collective bargaining agreement, the continuing publication and failure to keep confidential the medical condition and history of Ivan H. Stowers, Jr.

JURISDICTION AND VENUE

- 1. The Jurisdiction of this Court is invoked pursuant to 28 U. S. C. §§ 4541, 1331, 1337, 1343, 1345 and 1367. 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 Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title II"), 42 U. S. C. § 2000(e)-5(f)(1) and (3) and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U. S. C. §1981(A).
- 2. The employment practices alleged to be unlawful herein were and continue to be committed within the jurisdiction of the United States District Court for the Northern District of Ohio, Eastern Division.

PARTIES

- 3. Plaintiff, Intervenor, Ivan H. Stowers, Jr. is a citizen who works and resides within the jurisdiction of this Court and is the subject of the EEOC's Complaint in this action.
- 4. The Plaintiff EEOC is the Agency of the United States of America charged with the enforcement of the ADA and Title VII, as above.
- 5. The Defendant, The ESAB Group, Inc., dba ESAB Welding & Cutting Products ("Employer") has at all relevant times hereto, been a valid Ohio Corporation doing business within the jurisdiction of this Court and subject to the provisions of the ADA and Title VII, as above.
- 6. The Defendant United Automobile Aerospace and Agricultural Implement Workers of America (UAW), Local 1834 (the "Union") is a party to a collective bargaining agreement with the Defendant Employer and is named as a Party pursuant to Rule 19(a) of the F. R. Civ. P. in that in its absence, complete relief cannot be accorded among those already parties and it has an interest in the subject of this action.

STATEMENT OF CLAIMS

- 7. Plaintiff Ivan H. Stowers, Jr. filed a charge with the EEOC more than thirty days prior to the institution of this lawsuit by the EEOC alleging violations of the ADA. All conditions precedent to the institution of this lawsuit have been met.
- 8. Plaintiff Ivan H. Stowers, Jr. is, and has been at all times relevant hereto, a member of UAW Local 1834, the Union, and has formally and informally requested that the Union protect his contractual rights consistent with the collective bargaining agreement with Defendant Employer and the Union has failed to do so.
- 9. Since at least May 1, 1996, Defendant Employer has engaged in continuing unlawful employment practices at its Ashtabula, Ohio facility, in violation of

Section 102 (d) of Title 1 of the ADA, 42 U. S. C.§ 12112(a). The practices included but are not limited to breach of the applicable collective bargaining agreement, publishing and failing to confidentially maintain the medical condition or history of the Plaintiff Stowers by:

- (A) Failing to maintain information obtained regarding the medical history of the Plaintiff Stowers on separate and confidential forms and medical files;
- (B) Failing to treat medical information obtained regarding the medical condition or history of the Plaintiff Stowers as a confidential medical record;
- (C) Failing to use information obtained regarding the medical condition or history of the Plaintiff Stowers only in accordance with \$102 of the ADA.
- (D) Failing to allow the Plaintiff the opportunity to work overtime based upon his disability and in violation of the bargaining agreement.
- 10. The effect of the practices complained of in paragraphs 8 and 9, above, has been to deprive the Plaintiff Stowers of equal employment opportunities and to otherwise adversely affect his status as an employee because of his disability.
- 11. The unlawful employment practices complained of in paragraphs 8 and 9, above, were intentional.
- 12. The unlawful employment practices complained of in paragraphs 8 and 9, above, were done with malice, or with reckless indifference to the Plaintiff's federally protected rights.

SUPPLENENTAL STATE CLAIMS

- 13. The Plaintiff incorporates the allegations in paragraphs 1 to 12 above as if fully rewritten herein.
- 14. This Court has Supplemental Jurisdiction over the State claims arising under O. R. C. § 4112.01, et seq. pursuant to 28 U. S. C. § 1367 (a).
- 15. The Defendant Employer has discriminated against the Plaintiff based upon his disability and failed to provide him with the opportunity to work overtime in a manner in accord with the prevailing collective bargaining agreement and in violation of O. R. C. § 4112.02,et seq.

PRAYER FOR RELIEF

Wherefore the Plaintiff Stowers respectfully prays that this Court:

A. Grant a permanent injunction enjoining the Employer, its officers, agents, successors, assigns and all persons in active concert or participation with said Employer, from engaging in (1) the publication and failure to confidentially maintain the medical condition and/or history of the Plaintiff, (2) the failure to treat information obtained regarding the medical condition or history of the Plaintiff Stowers as a confidential medical record, (3) the failure to use information obtained regarding the medical condition or history of the Plaintiff Stowers only in accordance with § 102 of the ADA and any other employment practice which discriminates on the basis of disability,

- and (4) any practice and/or procedure denying Plaintiff the opportunity to work overtime in a manner consistent with the applicable collective bargaining agreement and O. R. C. § 4112. 01, et. seq.
- B. Order the Defendant Employer to make whole the Plaintiff Ivan H. Stowers, Jr. by providing appropriate affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- C. Order the Defendant Employer to make whole the Plaintiff Ivan H. Stowers, Jr. by providing compensation for past, present and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 8, 9 and 15, above, in amounts to be determined at trial of this matter.
- D. Order the Defendant Employer to make whole the Plaintiff Ivan H. Stowers, Jr. by providing compensation for past, present and future nonpecuniary losses resulting from the unlawful employment practices described in paragraphs 8 and 9, above, including emotional pain, suffering, inconvenience, loss of enjoyment of life and humiliation in amounts to be determined at trial of this matter.
- E. Order the Defendant Employer to pay the Plaintiff Ivan H. Stowers, Jr. punitive damages for its intentional, malicious and/or reckless conduct resulting from the unlawful employment practices described in paragraphs 8 and 9, above, in amounts to be determined at trial of this matter.
- F. Order the Defendant Union to comply with the collective bargaining agreement and guarantee Plaintiff's rights thereunder.
 - G. Award the Plaintiff his costs of this action.
- H. Award the Plaintiff whatever other relief this Court finds just and equitable.

JURY DEMAND

The Plaintiff hereby requests a trial by jury on all questions of fact raised by this Complaint.

Respectfully submitted,

W. E. Gerstenslager (0020756)

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CERTIFICATE OF SERVICE

A copy of the foregoing Complaint has been mailed to the following by regular United States Mail this the 29% day of January, 2001.

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