

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
<i>Plaintiff,</i>)	Civil Action No.1:06 CV 00747
)	
and)	JUDGE LESLEY WELLS
)	
PAMELA J. MOHER)	
)	
3482 West 150 th Street)	COMPLAINT on behalf of PLAINTIFF-
Cleveland, Ohio 44111)	INTERVENOR AND THE CLASS
)	
On behalf of herself and others similarly)	<u>JURY TRIAL DEMAND</u>
situated,)	
)	
<i>Plaintiff- Intervenors,</i>)	
)	
-v-)	
)	
PITT-OHIO EXPRESS, INC.)	
)	
<i>Defendant.</i>)	

NATURE OF THE ACTION - PRELIMINARY STATEMENT

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991 for injunctive and declaratory relief and money damages for Defendant's violation of the rights of Plaintiff-Intervenor and other similarly situated females. Plaintiff-Intervenor and the class also seek relief under Chapter 4112 of the Ohio Revised Code.

2. Plaintiff-Intervenor and the class have been denied terms, conditions and privileges of employment because of their sex, female, to wit: Defendant has engaged in

a pattern or practice of resistance to the enjoyment of employment opportunities available to women as a class on the same basis as opportunities which are provided to men at its terminals for Truck Drivers (local and over-the-road assignments) and/or Dockworkers.

JURISDICTION AND VENUE

3. This action is instituted and authorized by under §706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-et seq. and §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981(a) . A supplemental state claim is brought under Ohio Revised Code §4112.99.

4. Jurisdiction of this Court to hear and determine the claims is based on 28 U.S.C. §1331 (Federal question) and 28 U.S.C. §1343 (Civil rights). The Court has supplemental jurisdiction over Plaintiff-Intervenor and the class's state law claims pursuant to 28 U.S.C. §1367(a).

5. A declaratory judgment is sought pursuant to 28 U.S.C. §§2201 and 2202. A declaration on the state law claims is sought pursuant to ORC §2721.02.

6. Intervention is proper, as a matter of right, pursuant to Rule 24(a)(1), FEDERAL RULES OF CIVIL PROCEDURE and Title VII, 42 U.S.C. § 2000e-5(f)(1). Class certification is requested and appropriate pursuant to Rule 23(a) and (b)(1), (2), and (3) of the FEDERAL RULES OF CIVIL PROCEDURE.

7. Venue is proper in this Court as all the acts complained of herein occurred in the State of Ohio, within the jurisdiction of this Court.

PARTIES

Plaintiff and Plaintiff-Intervenor

8. Plaintiff EEOC is an agency of the United States authorized to bring a civil action under Title VII including §706(f)(1) and §707 of the statute. 42 U.S.C. §2000e-5(f)(1) and 6.

9. Plaintiff-Intervenor, Pamela J. Moher, (“Plaintiff-Intervenor” or “Moher”) is a female residing in Cleveland, Ohio. Moher is an applicant for employment within the meaning of Title VII and O.R.C. chapter 4112. Moher is over the age of 21.

10. Plaintiff-Intervenor is an aggrieved party within the meaning of Title VII and has exhausted the procedural prerequisites for bringing and maintaining this action. To-wit:

A. After being denied employment by Defendant, Plaintiff-Intervenor filed a timely charge of discrimination with the EEOC;

B. The EEOC investigated Plaintiff-Intervenor’s charges;

C. The EEOC filed this action based on the charge of discrimination filed by Plaintiff-Intervenor;

D. Intervention is being timely sought; and

E. Plaintiff-Intervenor, as an aggrieved person, has the right to intervene pursuant to Rule24 (a)(1), FEDERAL RULES OF CIVIL PROCEDURE and §2000e-5 of Title VII.

DEFENDANT

11. Defendant, Pitt-Ohio Express, Inc., (“Pitt-Ohio” or “Defendant”) is a

Pennsylvania Corporation doing business in Ohio. At all times relevant Pitt-Ohio has employed at least 15 or more persons, and is an employer within the meaning of Title VII and Chapter 4112 of the Ohio Revised Code.

CLASS ALLEGATIONS

12. Plaintiff-Intervenor brings this action on her own behalf and on behalf of a class of:

All females who meet or exceed Pitt-Ohio's minimum requirements for Truck Driver and/or Dockworker, who applied for employment at Pitt-Ohio in Ohio as a Truck Driver and/or Dockworker at any time during the period of liability, or who would have applied except for the futility of doing so.

13. A. Plaintiff-Intervenor meets the requirements of Rule 23(a), FEDERAL RULES OF CIVIL PROCEDURE, in that: the class is so numerous that joinder of all members is impracticable; the claims present common questions of law and fact; the Plaintiff-Intervenor's claims are typical of the claims of the class; and Plaintiff-Intervenor will fairly and adequately protect the interests of the class.

B. Plaintiff-Intervenor's counsel are qualified to be appointed class counsel by this Court. They meet the requirements of Rule 23(g): they have experience in handling class actions and other complex litigation, they have knowledge of the applicable law, they will fairly and adequately represent the interests of the class, and they have investigated and identified potential claims.

14. Plaintiff-Intervenor meets the requirements of Rule 23(b)(1), (2) and/or (3), in that: the prosecution of separate actions by member of the class would create a risk of varying adjudications with respect to members of the class or would impede their ability to protect their interests. The Defendant's conduct is applicable to the class as a whole, making injunctive and corresponding declaratory relief appropriate.

STATEMENT OF THE CLAIM

COUNT I - TITLE VII

15. On or about July 6, 2000, Plaintiff-Intervenor applied for a Truck Driver position with Defendant by applying at its Cleveland, Ohio terminal.

16. Plaintiff-Intervenor had previously applied for a Truck Driver position with Defendant in 1992, 1994, 1996 and 1998.

17. Plaintiff-Intervenor meets or exceeds the Defendant's stated minimum qualifications for a Truck Driver. Plaintiff-Intervenor's qualifications included being a qualified Class A Driver with the credentials to train Class B Drivers.

18. Plaintiff-Intervenor was interviewed by Defendant on or about August 11, 2000.

19. Defendant's ostensible formal hiring policy is to hire the most qualified Truck Drivers. Despite this policy and despite Plaintiff-Intervenor's qualifications Defendant did not hire her or offer her a position.

20. At the time Plaintiff-Intervenor applied for the position of Truck Driver with Defendant, Defendant was in desperate need of drivers. Despite Defendant's need for

drivers and despite Plaintiff-Intervenor's qualifications Defendant did not hire her or offer her a position.

21. In lieu of hiring Plaintiff-Intervenor, Defendant hired male Truck Drivers who either did not meet Defendant's minimum qualifications and/or who were less qualified than Plaintiff-Intervenor and class member applicants.

22. Defendant failed or refused to hire Plaintiff-Intervenor or the class as Truck Drivers and/or Dockworkers because of their sex, female. Defendant has a policy and practice of not hiring females, as a class, for Truck Driver and/or Dockworker positions.

23. The effect of the practice complained of herein has been to deprive Plaintiff-Intervenor and the class of equal employment opportunities, adversely affecting their status as applicants for employment because of their sex, female. Plaintiff-Intervenor and the class have suffered injuries as a result of Defendant's discriminatory conduct.

24. The unlawful employment practices committed by Defendant, as set forth herein, were intentional and were done with malice and/or reckless indifference to the federally protected rights of Plaintiff-Intervenor and the class.

COUNT II - OHIO REVISED CODE § 4112.99

25. Plaintiff-Intervenor hereby incorporates by reference, as if fully restated herein, the allegations and assertions contained in paragraphs 1 to 24, inclusive.

26. This Court has supplemental jurisdiction over the state claims asserted herein. To wit: the state claims do not raise any novel or complex issues of state law and the state claims do not predominate over the federal claims.

27. Plaintiff-Intervenor's state law claims are so related to the claims over which this court has original jurisdiction, that they form the same case.

28. Defendant failed or refused to hire Plaintiff-Intervenor as a Truck Driver and/or Dockworker because of her sex, female. Defendant has a policy or informal practice of not hiring females, as a class, for Truck Driver and/or Dockworker positions.

29. The effect of the practices complained of herein have been to deprive Plaintiff-Intervenor and the class of equal employment opportunities and to adversely affect their status as applicants for employment because of their sex, female.

30. The unlawful employment practices committed by Defendant, as set forth herein, were intentional and were done with malice and/or reckless indifference to the protections afforded Plaintiff-Intervenor and the class by ORC §4112.99.

31. Plaintiff-Intervenor and the class have suffered injury as a result of Defendant's unlawful policies and practices as set forth in paragraphs 1 to 30, inclusive. Unless restrained by this Court, Plaintiff-Intervenor and the class will continue to suffer injury and damages from the unlawful practices of Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenor respectfully requests that the Court:

- A. Certify this case pursuant to Rule 23, FEDERAL RULES OF CIVIL PROCEDURE as a class action;
- B. Appoint the undersigned as class counsel;
- C. Declare the policies and practices of Defendant, as described herein to be

unlawful and in violation of state and federal law;

D. Grant Plaintiff-Intervenor and the class a permanent injunction, prohibiting Defendant from engaging in any policy or practice which discriminates on the basis of sex, female;

E. Order Defendant to make Plaintiff-Intervenor and the class whole, with appropriate back pay, benefits and front pay in amounts to be determined at trial;

F. Order Defendant to make Plaintiff-Intervenor and the class whole by providing compensation for past and future pecuniary losses resulting from Defendant's unlawful employment practices, including compensatory and punitive damages;

G. Order Defendant to make Plaintiff-Intervenor and the class whole by providing employment, seniority, and any other affirmative relief necessary to eliminate the effects of Defendant's unlawful employment practices;

H. Award Plaintiff-Intervenor and the class pre and post judgment interest on all sums awarded;

I. Order Defendant to pay Plaintiff-Intervenor and the class punitive damages for its malicious and reckless conduct;

J. Award Plaintiff-Intervenor and the class the costs of this action, including costs and reasonable attorneys' fees; and

K. Grant such other legal and equitable relief as is necessary and proper.

Respectfully submitted,

s/ Bruce B. Elvin

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JURY TRIAL DEMANDED

Plaintiff-Intervenor and the class request a jury trial on all questions of fact and claims raised by their Complaint.

s/ Bruce B. Elvin

Bruce B. Elvin, Esq.
One of the Attorneys for Plaintiff-Intervenor
and the Class

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **COMPLAINT on behalf of PLAINTIFF-INTERVENOR AND THE CLASS** has been filed via the electronic filing system. Notice of filing will be performed by the Court's electronic filing system. Parties may access the document through the electronic filing system.

August 8, 2006

s/ Bruce B. Elfvin

Bruce B. Elfvin
One of Attorneys for Plaintiff-Intervenor
and the Class