

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

EBON BONNETTE, KHALID BOSTON,  
DONNA COX, M. DIANE DIXON,  
ODESSA DIXON, ROBERT ELLIS,  
MICHAEL FOSTER, JEREL GRIFFIN,  
MARK HALE, JEAN HOWARD, BERTHA  
JOHNSON, ELLEN JOHNSON,  
STEPHANIE JOHNSON, JOHNNY  
KEGLER, MARY LALOR-TIMMONS,  
MARCIA LANE, ROBERT LANE, GAIL  
MARSHALL-JOHNSON, THOMAS  
MOORE, DELRAY MORGAN, DELORES  
PRAD, TONEY PROCTOR, WILLIE  
SANDERS, LOLITA SMITH, BRETT  
STEVENSON, EVERLENE THOMPSON,  
OPHELIA TISDALE, RICHARD  
WALFORD, WANDA WEBB, PATRICIA  
WHITE, ROBERT WILLIAMS and BONNIE  
WRIGHT, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ROCHESTER GAS & ELECTRIC CO.,

Defendant.

CIVIL ACTION NO.:

**COMPLAINT**

**[CLASS ACTION]**

**JURY TRIAL DEMANDED**

**I. INTRODUCTION**

Plaintiffs Ebon Bonnette, Khalid Boston, Donna Cox, M. Diane Dixon, Odessa Dixon, Robert Ellis, Michael Foster, Jerel Griffin, Mark Hale, Jean Howard, Bertha Johnson, Ellen Johnson, Stephanie Johnson, Johnny Kegler, Mary Lalor-Timmons, Marcia Lane, Robert Lane, Gail Marshall-Johnson, Thomas Moore, Delray Morgan, Delores Prad, Toney Proctor, Willie Sanders, Lolita Smith, Brett Stevenson, Everlene Thompson, Ophelia Tisdale, Richard Walford,

Wanda Webb, Patricia White, Robert Williams and Bonnie Wright (the "Plaintiffs"), individually and on behalf of the class they seek to represent, by and through their counsel of record, bring this Class Action Complaint (the "Complaint"), against Defendant Rochester Gas & Electric Co. ("RGE"), and allege upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon the investigation made by and through their attorneys, as follows:

## **II. NATURE OF THE ACTION**

1. Plaintiffs bring this action as representatives of a class of all African American employees who have worked for Defendant RGE from May 24, 2002 to October 1, 2006 (the "Class").
2. Plaintiffs bring this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981(a) ("Title VII"), the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981"), and the New York Human Rights Law, 15 N.Y. Exec. Law §§ 291 *et seq.*, for injunctive relief, compensatory damages and punitive damages arising from the terms and conditions of employment imposed by RGE on the Class.
3. RGE has engaged in a pattern and practice of discrimination against its African American employees with respect to compensation, promotions, job assignments, and discipline. RGE has also created and maintained a hostile work environment for African American employees, and has retaliated against employees who have complained about Defendant's discriminatory practices.

4. The racial disparities identified by Plaintiffs in compensation, promotions, job assignments, and discipline result from, *inter alia*, RGE's company-wide policy of delegating excessive discretionary authority to managers and department supervisors to make these employment decisions. RGE's managers and department supervisors have exercised their subjective discretion in a racially discriminatory manner that has had a disparate impact on African American employees. RGE is aware of this practice but has failed to remedy its effects.

5. The discrimination alleged herein constitutes a continuing violation of the rights of Plaintiffs and the Class.

### **III. PARTIES**

6. Plaintiff Ebon Bonnette is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a current employee of RGE.

7. Plaintiff Khalid Boston is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a former employee of RGE.

8. Plaintiff Donna Cox is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

9. Plaintiff M. Diane Dixon is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

10. Plaintiff Odessa Dixon is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

11. Plaintiff Robert Ellis is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a former employee of RGE.

12. Plaintiff Michael Foster is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a current employee of RGE.

13. Plaintiff Jerel Griffin is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a former employee of RGE.

14. Plaintiff Mark Hale is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a current employee of RGE.

15. Plaintiff Jean Howard is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a former employee of RGE.

16. Plaintiff Bertha Johnson is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a former employee of RGE.

17. Plaintiff Ellen Johnson is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a former employee of RGE.

18. Plaintiff Stephanie Johnson is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a former employee of RGE.

19. Plaintiff Johnny Kegler is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a current employee of RGE.

20. Plaintiff Mary Lalor-Timmons is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

21. Plaintiff Marcia Lane is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

22. Plaintiff Robert Lane is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a former employee of RGE.

23. Plaintiff Gail Marshall-Johnson is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

24. Plaintiff Thomas Moore is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a current employee of RGE.

25. Plaintiff Delray Morgan is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a former employee of RGE.

26. Plaintiff Delores Prad is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

27. Plaintiff Toney Proctor is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a current employee of RGE.

28. Plaintiff Willie Sanders is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a current employee of RGE.

29. Lolita Smith is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

30. Brett Stevenson is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a current employee of RGE.

31. Everlene Thompson is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

32. Ophelia Tisdale is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a former employee of RGE.

33. Richard Walford is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a former employee of RGE.

34. Wanda Webb is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

35. Patricia White is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a former employee of RGE.

36. Robert Williams is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a former employee of RGE.

37. Bonnie Wright is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of RGE.

38. Defendant Rochester Gas and Electric Co. (“RGE”) is a public utility organized under the laws of the State of New York, with a principal place of business located at 89 East Avenue, Rochester, New York 14649.

#### **IV. JURISDICTION AND VENUE**

39. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 2000e-5. The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over claims under the New York Human Rights Law, 15. N.Y. Exec. Law §§ 291 *et seq.*

40. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because RGE has its corporate headquarters, can be found and conducts business in the Western District of New York, and because the acts and omissions giving rise to this action occurred in the Western District of New York.

#### **V. CLASS ACTION ALLEGATIONS**

41. Plaintiffs bring this action individually, and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class consisting of all African American employees of RGE from May 24, 2002 to October 1, 2006 (the “Class”). Plaintiffs are all members of the Class they seek to represent.

42. The members of the Class are so numerous that joinder of all members is impracticable. RGE has informed Plaintiffs that the Class contains 151 members.

43. There are questions of law or fact common to the Class, including, without limitation:

a. whether RGE’s common operating practices and procedures discriminate against African American employees;



- b. whether RGE's policies or practices have an adverse impact upon the Class, and, if so, whether this impact is justified by business necessity;
- c. whether RGE's policy or practice of granting excessive discretionary authority to its managers and department supervisors to make decisions concerning compensation, promotions, job assignments and discipline negatively affected Class members;
- d. whether RGE has a policy or practice of paying African American employees less than Caucasian employees for the same work;
- e. whether RGE has a policy or practice of grooming Caucasian employees for advancement, while denying these same opportunities to African American employees;
- f. whether RGE has a policy or practice of failing to promote qualified African American employees to higher positions within the Company;
- g. whether RGE has a policy or practice of assigning lesser job classifications or wage grades to African American employees than are assigned to similarly situated Caucasian employees;
- h. whether RGE has a policy or practice of assigning less desirable work assignments to African American employees than are assigned to Caucasian employees;
- i. whether African American employees at RGE are subject to a pattern and practice of racial harassment;
- j. whether RGE's conduct alleged herein constitutes a hostile work environment for the Class;
- k. whether RGE has a policy and practice of retaliating against Class members who oppose RGE's unlawful and discriminatory employment practices;

- l. whether equitable relief is warranted and the nature of such relief;
- m. whether class-wide compensatory damages are warranted; and
- n. whether RGE's conduct warrants an award of punitive damages.

44. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs collectively have been subjected to each form of the discriminatory common operating policies and practices and hostile work environment caused by RGE. The policies and practices complained of in this Complaint affect the entire Class.

45. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no conflict with the Class members and have retained counsel who are experienced in class action litigation and cases of this nature.

46. This action is properly maintainable under Rules 23(b)(2) and/or (b)(3) because:  
a) RGE has maintained an ongoing pattern and practice of discrimination on the basis of race and a hostile work environment, thereby acting or refusing to act on grounds generally applicable to the Class, making appropriate final injunctive or declaratory relief with respect to the Class as a whole; and b) questions of law and fact common to the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of this case.

## **VI. FACTUAL ALLEGATIONS**

47. RGE's pattern or practice of discrimination and harassment has created, and continues to create, a hostile and abusive work environment for African American employees.

48. RGE's written and unwritten employment policies and practices concerning compensation, promotions, job assignments and discipline are not applied uniformly or fairly and

have had a disparate impact on African American employees. Job decisions are regularly based on managers' subjective and racially-biased decision-making. RGE's conduct toward the Class has also been intentional and constitutes disparate treatment.

49. Internally, RGE has acknowledged that it has had an ongoing problem with promoting African Americans.

50. Throughout the relevant time period, RGE has engaged in employment policies, practices and procedures which have resulted in African Americans's job opportunities being limited, for example:

- a. RGE has placed African Americans in "dead-end" jobs and failed to provide them with advancement opportunities;
- b. RGE has segregated job assignments by race;
- c. RGE has assigned the least desirable jobs to African American employees;
- d. RGE has paid African Americans less than similarly situated Caucasian employees for the same work; and
- e. RGE has failed to effectively utilize objective criteria in making job-related decisions concerning compensation, promotions, job assignments, discipline and terminations.

51. RGE has also created a hostile work environment for its African American employees and has followed a policy or practice of retaliating against African American employees who have complained about its discriminatory policies and practices.

52. Plaintiffs have collectively suffered each of the forms of discrimination alleged herein on behalf of the Class.

**VII. TOLLING OF RELEVANT STATUTES OF LIMITATION**

53. By prior written agreements, RGE agreed to toll the relevant statutes of limitation applicable to this Complaint, with respect to all of the claims of Plaintiffs and the Class, from May 24, 2006 to December 21, 2007.

**COUNT I  
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964  
42 U.S.C. § 2000e *et seq.*  
(By Plaintiffs Mark Hale, Jean Howard, Ellen Johnson,  
Johnnie Kegler, Thomas Moore, and Delores Prad)**

54. Plaintiffs reallege and incorporate by reference, all preceding paragraphs.

55. Plaintiffs Mark Hale, Jean Howard, Ellen Johnson, Johnnie Kegler, Thomas Moore, and Delores Prad have filed Charges of Discrimination with the United States Equal Employment Opportunity Commission ("EEOC"), and have received notices of their right to sue.

56. RGE has discriminated against Plaintiffs and the Class with respect to the terms and conditions of employment because of their race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended by the Civil Rights Act of 1991.

57. RGE's conduct has been intentional and/or has had disparate impact on Plaintiffs and the Class with respect to the terms and conditions of their employment.

58. By virtue of RGE's conduct as alleged herein, Plaintiffs and the Class have been injured.

**COUNT II  
THE CIVIL RIGHTS ACT OF 1866  
42 U.S.C. § 1981  
(By All Plaintiffs)**

59. Plaintiffs reallege and incorporate by reference, all preceding paragraphs.

60. RGE has discriminated against Plaintiffs and the Class by denying them the same rights as enjoyed by Caucasian employees with regard to the making, performance, modification and termination of their employment relationship with RGE and with regard to the enjoyment of all benefits, privileges, terms and conditions of that relationship in violation of the Civil Rights Act of 1866 as amended, 42 U.S.C. § 1981.

61. RGE's conduct has been intentional, deliberate, willful and conducted in callous disregard of the rights of Plaintiffs and the Class under the law.

62. By virtue of RGE's conduct as alleged herein, Plaintiffs and the Class have been injured.

**COUNT III**  
**THE NEW YORK HUMAN RIGHTS LAW**  
**15 N.Y. Exec. Law §§ 291 et seq.**  
**(By Plaintiffs Mark Hale, Jean Howard, Ellen Johnson,**  
**Johnnie Kegler, Thomas Moore, and Delores Prad)**

63. Plaintiffs reallege and incorporate by reference, all preceding paragraphs.

64. Plaintiffs Mark Hale, Jean Howard, Ellen Johnson, Johnnie Kegler, Thomas Moore, and Delores Prad have filed Charges of Discrimination with the EEOC that were dual-filed by that agency with the New York Division of Human Rights, and have received notices of their right to sue.

65. RGE has discriminated against Plaintiffs and the Class by denying them the same rights as enjoyed by Caucasian employees with regard to the terms and conditions of their employment in violation of 15 N.Y. Exec. Law §§ 291 *et seq.*

66. RGE's conduct has been intentional and/or has had disparate impact on Plaintiffs and the Class with respect to the terms and conditions of their employment.

67. By virtue of RGE's conduct as alleged herein, Plaintiffs and the Class have been injured.

### **JURY DEMAND**

Plaintiffs hereby demand a trial by jury as to all issues so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court enter an order:

- a. Certifying this action as a class action, with Plaintiffs as the Class Representatives and their counsel of record as Class Counsel;
- b. Adjudicating and declaring that RGE's conduct as set forth above is in violation of Title VII, Section 1981 and the New York Human Rights Law;
- c. Permanently enjoining and prohibiting RGE and its officers, agents, employees and successors from continuing to engage in the practices complained of herein;
- d. Awarding Plaintiffs and the Class such equitable remedies, including, without limitation, back pay and front pay, necessary to provide the Plaintiffs and the Class with full relief from the discrimination they have suffered;
- e. Awarding the Individual Plaintiffs and the Class compensatory damages justified under the circumstances;
- f. Awarding the Individual Plaintiffs and the Class punitive damages justified under the circumstances;
- g. Awarding attorneys' fees and reimbursement of costs associated with this action to Plaintiffs' Counsel;

h. Retaining jurisdiction to ensure that RGE fully complies with the equitable relief ordered; and

i. Awarding Plaintiffs and the Class such other and further legal and equitable relief as may be appropriate in the interest of justice.

Dated: December 21, 2007

GARWIN, GERSTEIN & FISHER L.L.P.

By:

/s/

  
BRUCE E. GERSTEIN, ESQ.  
JAN BARTELLI, ESQ.  
GARWIN, GERSTEIN & FISHER, L.L.P.  
1501 Broadway, Suite 1416  
New York, New York 10036  
Tel.: 212-398-0055  
Email: [bgerstein@gbgf-law.com](mailto:bgerstein@gbgf-law.com)

SHANON J. CARSON, ESQ.  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
Tel: (215) 875-3000  
Email: [swhinston@bm.net](mailto:swhinston@bm.net)

CLAYBORNE E. CHAVERS, ESQ.  
THE CHAVERS LAW FIRM, P.C.  
1250 Connecticut Avenue, NW  
Suite 200  
Washington, DC 20036  
Tel: (202) 835-1800  
Email: [chavlaw@comcast.net](mailto:chavlaw@comcast.net)

Attorneys for Plaintiffs