

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
 COMMISSION,)
)
 Plaintiff,)
)
 and)
)
 DONNELL ADDISON, et al.,)
)
 Intervening Plaintiffs,)
)
 vs.)
)
 TRI-STATE PLUMBING, HEATING &)
 AIR CONDITIONING CONTRACTORS, INC.,)
)
 and)
)
 UNITED ASSOCIATION OF PLUMBERS,)
 PIPEFITTERS, and SPRINKLERFITTERS,)
 PLUMBERS LOCAL UNION NO. 17,)
)
 and)
)
 UNITED ASSOCIATION OF JOURNEYMEN)
 AND APPRENTICES OF THE PLUMBING)
 AND PIPE FITTING INDUSTRY OF THE)
 UNITED STATES AND CANADA, AFL-CIO,)
)
 Defendants.)

CIVIL ACTION NO.

05-2717 A/P

CONSENT DECREE

Plaintiff, Equal Employment Opportunity Commission (Commission) instituted this lawsuit on September 29, 2005, against Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc. (Tri-State), and Defendant United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17 (the Local Union) under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. (Title VII). The

Commission's Complaint claims that Tri-State discriminated against eight charging parties and three additional alleged discriminatees by subjecting them to racial harassment, different terms and conditions of employment, denying them the opportunity to work overtime, all because of their race, and ending their employment in retaliation for their opposition to practices made unlawful by Title VII. The Commission also claimed that Tri-State denied Karen Alexander, a female laborer, the opportunity to work overtime because of her sex, and laid off Levett Robertson, an African American laborer, because of his race while allowing similarly situated and less qualified Hispanic American laborers and White laborers to work.

The Commission's Complaint claims that the Local Union failed to represent the eight charging parties and four additional alleged discriminatees because of their race, denied them job referrals because of their race, and denied them job referrals in retaliation for opposing unlawful employment practices.

Donnel Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins (Intervenors) were allowed to intervene in this lawsuit on January 6, 2006. The Intervenors' Complaint added claims under Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a, and 42 U.S.C. §1985 (3), and added the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (hereinafter "the International Union") as a defendant.

The Commission, the Intervenors, Tri-State, and the Local Union have all agreed to this Consent Decree to settle all of the claims involved in this lawsuit concerning Tri-State and the Local Union. The International Union is not a party to this Consent Decree and is in no way bound by its terms. All claims by the Intervenors concerning or against the International Union have been fully and completely released in separate documents which impose no financial or other obligations on the International Union.

The Court has reviewed the terms of this Decree in light of the applicable laws and regulations, and hereby approves this Decree. **THEREFORE**, it is hereby **ORDERED**:

I. NONADMISSIBLE CLAUSE

In the event this proposed Consent Decree is not approved or does not become final, then it shall not be admissible in evidence in any subsequent proceeding in this action. Further, this Consent Decree shall not be admissible in any other action now pending or which may be filed in the future, except as to enforcement proceedings.

II. MODIFICATION

This Consent Decree constitutes the complete and exclusive agreement between the parties with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing and signed by both parties. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Consent Decree.

III. JURISDICTION

The United States District Court for the Western District of Tennessee, Western Division, has jurisdiction over the parties and subject matter of this lawsuit, and will retain jurisdiction over this Decree for purposes of enforcement and dispute resolution.

IV. DISCLAIMER

Neither the negotiation of nor agreement to this Decree is an admission or acknowledgment by Tri-State or the Local Union that any of its employees, officers, directors, or agents have violated Title VII or the Civil Rights Act of 1991. Tri-State and the Local Union specifically deny that they have violated Title VII or the Civil Rights Act of 1991. TSP and the Local Union enter into this Decree only for the purpose of avoiding the expense and risk of further litigation in this case.

V. DURATION OF DECREE

This Decree will be binding on the Commission, the Intervenors, Tri-State, and the Local Union for three years after the date of its entry by the Court.

VI. INJUNCTIVE RELIEF

Tri-State, its supervisors, managers, officers, directors, agents, and successors are enjoined from discriminating against its employees because of their race.

Tri-State, its supervisors, managers, officers, directors, agents, and successors are enjoined from retaliating against any of the claimants in this litigation or any other employees as a result of their participation in this litigation.

The Local Union, its supervisors, managers, officers, directors, agents, and successors are enjoined from discriminating against its members because of their race.

The Local Union, its supervisors, managers, officers, directors, agents, and successors are enjoined from retaliating against any of the claimants in this litigation or any other members as a result of their participation in this litigation.

VII. INDIVIDUAL REMEDIES

To resolve this lawsuit Tri-State and the Local Union will pay a total of \$360,000 to the alleged discriminatees and Intervenors in this case, as directed by the Commission and counsel for the Intervenors. Each payment recipient shall be responsible for all taxes of any description due to any governmental agency as a result of the payment.

Before payment is made to each of the alleged discriminatees, the release attached to this agreement as Attachment A will be signed by the alleged discriminatee and received by Tri-State and the Local Union.

Before payment is made to each of the Intervenors, a release will be signed by the Intervenors and received by Tri-State and the Local Union. The content of the Intervenors' releases will be negotiated by counsel for the Intervenors, Tri-State, and the Local Union.

At the time when payments are mailed to the Intervenors and the other alleged discriminatees, a copy of each check will be mailed at the same time to:

Carson L. Owen, Senior Trial Attorney
Equal Employment Opportunity Commission
1407 Union Ave., Suite 901
Memphis, TN 38104

VIII. TRI-STATE'S POLICY PROHIBITING DISCRIMINATION

The Policy Prohibiting Discrimination which is attached to this Decree will be complied with by Tri-State. Within 30 days after receiving a copy of this Decree entered by

the Court, each Tri-State supervisory employee will be required to read and sign a copy of this policy, and will be given a copy of the policy. Within 20 days after this requirement has been complied with, Tri-State will submit a report to Carson Owen, at the address indicated above, confirming that this requirement has been complied with and including a copy of each signed policy statement. Thereafter, whenever a new supervisory employee is hired, he or she will be required to read and sign a copy of this policy, and will be given a copy of the policy.

IX. TRI-STATE'S TRAINING

Within 90 days after receiving a copy of this Decree entered by the Court, Tri-State will provide mandatory training for all of its employees concerning the responsibility of all employees not to engage in unlawful discrimination in violation of Title VII, and to report promptly any such discrimination they see or hear or hear about. The training will train Tri-State's employees thoroughly on Tri-State's Policy Prohibiting Discrimination.

The training will be conducted by a trainer to be agreed upon by the Local Union and the Commission.

The training will also address the responsibility of supervisors and managers to deal quickly, effectively, and fairly with any unlawful discrimination found to have occurred, and not to retaliate against employees for complaining about unlawful discrimination, complaining to the Local Union about discrimination, or filing charges with the Commission.

As part of the training, each Tri-State employee will be required to read and sign a copy of Tri-State's Policy Prohibiting Discrimination, and will be given a copy of the policy.

X. THE LOCAL UNION'S POLICY PROHIBITING DISCRIMINATION

The Local Union's Policy Prohibiting Discrimination which is attached to this Decree will be complied with by the Local Union.

Within 30 days after receiving a copy of this Decree entered by the Court, each Local Union employee will be required to read and sign a copy of this policy, and will be given a copy of the policy.

XI. THE LOCAL UNION'S TRAINING

Within 90 days after receiving a copy of this Decree entered by the Court, the Local Union will provide mandatory training for all of its managing employees concerning the responsibility of all employees not to engage in unlawful discrimination in violation of Title VII, and to report promptly any such discrimination they see or hear or hear about. The training will train the Local Union's employees thoroughly on the Local Union's Policy Prohibiting Discrimination.

The training will be conducted by a trainer to be agreed upon by the Local Union and the Commission.

The training will also address the responsibility of the Local Union's representatives to deal quickly, effectively, and fairly with any unlawful discrimination found to have occurred, and not to retaliate against its members for complaining to employers about unlawful discrimination, complaining to the Local Union about unlawful discrimination, or filing charges with the Commission.

Within 20 days after the completion of this training, the Local Union will submit a report to Carson Owen, at the address indicated above, confirming that the training has

occurred. The report will include a copy of the training materials used by the trainer; and a copy of a roster of attendees at the training, which will include the typed name, the job title, and the signature of each person who attended the training.

XII. TRI-STATE'S REPORTING

Reporting Concerning Training:

Within 20 days after Tri-State has been complied with part IX of this Decree, Tri-State will submit a report to Carson Owen, at the address indicated above, confirming that the training has occurred.

The report will include a copy of the training materials used by the trainer; and a copy of a roster of attendees at the training, which will include the typed or printed name, the job title, and the signature of each person who attended the training.

Reporting Concerning Complaints About Discrimination:

Tri-State will submit a report to Carson L. Owen, at the address indicated above, six months after the entry of this Decree, and every six months thereafter during the duration of this Decree, concerning complaints received about discrimination.

Each report will describe all complaints received from employees concerning discrimination prohibited by Title VII, including the name, home address, and home telephone number of each employee who complained (which shall be the name, address and telephone number in Tri-State's personnel file for such employee(s)), the nature of the complaint, what action, if any, was taken in response to the complaint, and if no action was taken an explanation of why no action was taken.

Reporting Concerning Hiring:

Tri-State will submit a report to Carson L. Owen, at the address indicated above, six months after the entry of this Decree, and every six months thereafter during the duration of this Decree, concerning hiring.

Each report will contain the name, race, job title, date of hire, and location (including full address) assigned for each person who was hired by Tri-State during the previous six months.

XIII. THE LOCAL UNION'S REPORTING

Reporting Concerning Training:

Within 20 days after the Local Union has complied with part XI of this Decree, the Local Union will submit a report to Carson Owen, at the address indicated above, confirming compliance and including a copy of each signed policy statement. Thereafter, whenever a new employee is hired by the Local Union, he or she will be required to read and sign a copy of this policy, and will be given a copy of the policy.

Reporting Concerning Complaints About Discrimination:

The Local Union will submit a report to Carson L. Owen, at the address indicated above, six months after the entry of this Decree, and every six months thereafter during the duration of this Decree, concerning complaints received about discrimination.

Each report will describe all complaints received from Local Union members concerning discrimination prohibited by Title VII, including the name, home address, and home telephone number of each employee who complained (based on the contact

information in the Local Union's membership file), the nature of the complaint, what action, if any, was taken in response to the complaint, and if no action was taken an explanation of why no action was taken.

Reporting Concerning Hiring:

The Local Union will submit a report to Carson L. Owen, at the address indicated above, six months after the entry of this Decree, and every six months thereafter during the duration of this Decree, concerning hiring.

Each report will contain a copy of documents indicating the name, race, job title (journeyman or apprentice), date of placement on the out of work list, date of referral (if referred), employer referred to (if referred), and reason for the referral (such as "name called", etc., if referred) during the previous six months.

XIV. ATTORNEY'S FEES AND COSTS

The Commission, the Intervenors, Tri-State, and the Local Union will each bear their own attorney's fees and costs incurred in this lawsuit.

XV. FINAL RESOLUTION

This Decree resolves all disputes and issues among the Commission, the Intervenors, Tri-State, and the Local Union concerning this lawsuit.

The Commission, the Intervenors, Tri-State, and the Local Union, through the undersigned, respectfully apply for and consent to entry of this Consent Decree Order.

SO ORDERED this 5th day of November, 2008.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
UNITED STATES DISTRICT JUDGE

Consented to on behalf of the respective parties:

FOR PLAINTIFF EEOC:

RONALD S. COOPER
General Counsel

JAMES LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

s/Faye A. Williams
FAYE A. WILLIAMS
Regional Attorney
Tennessee Bar No. 011730

s/Deidre Smith
DEIDRE SMITH
Supervisory Trial Attorney
Tennessee Bar No. 018499

s/Carson L. Owen
CARSON L. OWEN
Senior Trial Attorney
Tennessee Bar No. 009240

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**
1407 Union Ave., Suite 621
Memphis, TN 38104
Phone: 901-544-0133
Fax: 901-544-0111

FOR DEFENDANT TRI-STATE:

s/Nickey Shah, Sr.
NICKEY SHAH, SR.
President

**COUNSEL FOR
DEFENDANT TRI-STATE:**

s/David A. Velander
DAVID A. VELANDER

105 S. Sherrin Ave.
Louisville, KY 40207-3720
Phone: 502-896-2301
Fax: 502-893-8706

FOR DEFENDANT LOCAL UNION:

s/Frank Rodgers
FRANK RODGERS
Business Agent

**COUNSEL FOR DEFENDANT
LOCAL UNION:**

s/Timothy Taylor
TIMOTHY TAYLOR

**GODWIN, MORRIS, LAURENZI
BLOOMFIELD P.C.**
P.O. Box 3290
Memphis, TN 38173-0290
Phone: 901-528-1702
Fax: 901-528-0246

FOR PLAINTIFF INTERVENORS:

s/Donnell Addison
DONNELL ADDISON

s/Karen Alexander
KAREN ALEXANDER

s/Eddie Anderson
EDDIE ANDERSON

s/Keith Clark
KEITH CLARK

s/Billy Herring
BILLY HERRING

s/Roy Oliver
ROY OLIVER

s/Frederick Wiggins
FREDERICK WIGGINS

**COUNSEL FOR PLAINTIFF
INTERVENORS:**

s/Michael R. Marshall
MICHAEL R. MARSHALL

EVANS & PETREE PC
1000 Ridgeway Loop Rd., Suite 200
Memphis, TN 38120
Phone: 901-521-4563
Fax: 901-521-0681

s/Kevin Sharp
KEVIN SHARP

DRESCHER & SHARP, P.C.
1720 West End Ave., Suite 300
Nashville, TN 37203
Phone: 615-425-7111
Fax: 615-425-7110

Attachment A

RELEASE

In consideration for \$_____ paid to me by United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17 ("Local 17"), in connection with the resolution of Equal Employment Opportunity Commission ("EEOC"), et al. v. Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., and United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17, et al., Civil Action No. 05-2717, I, Tommy Wells, residing at _____ (address) _____, hereby release and waive my right to recover for all claims made in that lawsuit concerning me. In that lawsuit EEOC claimed that Local 17 discriminated against me and other African American employees, in violation of Title VII of the Civil Rights Act of 1964, as amended, by denying us job referrals because of our race. I understand that Local 17 affirmatively denies that any of its employees, officers, directors, or agents have violated Title VII or the Civil Rights Act of 1991.

I understand that Local 17 will issue an IRS Form 1099 for the monetary damages paid to me, and that I will be responsible for all taxes of any description due to any governmental agency as a result of the payment.

Date: _____ Signature: _____

Subscribed and sworn to before me this _____ day of _____, 2008.

Notary Public
My commission expires _____.

RELEASE

In consideration for \$_____ paid to me by United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17 ("Local 17"), in connection with the resolution of Equal Employment Opportunity Commission ("EEOC"), et al. v. Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., and United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17, et al., Civil Action No. 05-2717, I, Danny Davis, residing at _____ (address) _____, hereby release and waive my right to recover for all claims made in that lawsuit concerning me. In that lawsuit EEOC claimed that Local 17 discriminated against me and other African American employees, in violation of Title VII of the Civil Rights Act of 1964, as amended, ("Title VII") by denying us job referrals because of our race, and by denying me job referrals in retaliation for my opposition to practices made unlawful by Title VII. I understand that Local 17 affirmatively denies that any of its employees, officers, directors, or agents have violated Title VII or the Civil Rights Act of 1991.

I understand that Local 17 will issue an IRS Form 1099 for the monetary damages paid to me, and that I will be responsible for all taxes of any description due to any governmental agency as a result of the payment.

Date: _____ Signature: _____

Subscribed and sworn to before me this _____ day of _____, 2008.

Notary Public
My commission expires _____.

RELEASE

Page 1 of 2

In consideration for \$_____ paid to me by Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc. ("Tri-State"), and United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17 ("Local 17"), in connection with the resolution of Equal Employment Opportunity Commission ("EEOC"), et al. v. Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., and United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17, et al., Civil Action No. 05-2717, I, Darrell Moore, residing at _____ (address)_____, hereby release and waive my right to recover for all claims made in that lawsuit. In that lawsuit EEOC claimed that Tri-State discriminated against me and other African American employees, in violation of Title VII of the Civil Rights Act of 1964, as amended, ("Title VII") by subjecting us to racial harassment, by subjecting us to different terms and conditions of employment at the FedEx Forum work site because of our race, by assigning us to less desirable job tasks because of our race, by denying us the opportunity to work overtime at the FedEx Forum work site because of our race, and by ending our employment in retaliation for our opposition to practices made unlawful by Title VII. In that lawsuit EEOC also claimed that Local 17 discriminated against me and other African American employees, in violation of Title VII, by failing to represent us because of our race. I understand that Tri-State and Local 17 affirmatively deny that any of their employees, officers, directors, or agents have violated Title VII or the Civil Rights Act of 1991.

I understand that Tri-State and Local 17 will each issue an IRS Form 1099 for the monetary damages paid to me, and that I will be responsible for all taxes of any description due to any governmental agency as a result of the payment.

Page 2 of 2

Date: _____ Signature: _____

Subscribed and sworn to before me this _____ day of _____, 2008.

Notary Public

My commission expires _____.

RELEASE

Page 1 of 2

In consideration for \$_____ paid to me by Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc. ("Tri-State"), and United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17 ("Local 17"), in connection with the resolution of Equal Employment Opportunity Commission ("EEOC"), et al. v. Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., and United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17, et al., Civil Action No. 05-2717, I, Kevin Clark, residing at _____ (address)_____, hereby release and waive my right to recover for all claims made in that lawsuit. In that lawsuit EEOC claimed that Tri-State discriminated against me and other African American employees, in violation of Title VII of the Civil Rights Act of 1964, as amended, ("Title VII") by subjecting us to racial harassment, by subjecting us to different terms and conditions of employment at the FedEx Forum work site because of our race, by assigning us to less desirable job tasks because of our race, by denying us the opportunity to work overtime at the FedEx Forum work site because of our race, and by ending our employment in retaliation for our opposition to practices made unlawful by Title VII. In that lawsuit EEOC also claimed that Local 17 discriminated against me and other African American employees, in violation of Title VII, by failing to represent us because of our race. I understand that Tri-State and Local 17 affirmatively deny that any of their employees, officers, directors, or agents have violated Title VII or the Civil Rights Act of 1991.

I understand that Tri-State and Local 17 will each issue an IRS Form 1099 for the monetary damages paid to me, and that I will be responsible for all taxes of any description due to any governmental agency as a result of the payment.

Page 2 of 2

Date: _____ Signature: _____

Subscribed and sworn to before me this _____ day of _____, 2008.

Notary Public

My commission expires _____.

RELEASE

In consideration for \$ _____ in monetary damages paid to me by Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc. ("Tri-State") in connection with the resolution of Equal Employment Opportunity Commission ("EEOC"), et al. v. Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., and United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers Local Union No. 17, et al., Civil Action No. 05-2717, I, Levett Robertson, residing at _____ (address) _____, hereby release and waive my right to recover for all claims made in that lawsuit concerning me. In that lawsuit EEOC claimed that Tri-State discriminated against me, in violation of Title VII of the Civil Rights Act of 1964, as amended, by ending my employment because of my race while allowing similarly situated and less qualified Hispanic American laborers and White laborers to work.

I understand that Tri-State will issue an IRS Form 1099 for the monetary damages paid to me, and that I will be responsible for all taxes of any description due to any governmental agency as a result of the payment.

Date: _____ Signature: _____

Subscribed and sworn to before me this _____ day of _____, 2008.

Notary Public

My commission expires _____.