

1 WILLIAM R. TAMAYO, REGIONAL ATTORNEY
2 EQUAL EMPLOYMENT OPPORTUNITY
3 COMMISSION
4 SAN FRANCISCO DISTRICT OFFICE
5 350 THE EMBARCADERO, SUITE 500
6 SAN FRANCISCO, CA 94105-1260

7 TERI HEALY, SENIOR TRIAL ATTORNEY
8 KATHRYN OLSON, SUPERVISORY TRIAL ATTORNEY
9 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
10 909 FIRST AVENUE, SUITE 400
11 SEATTLE, WA 98104
12 TEL: (206) 220-6916

13 ATTORNEYS FOR PLAINTIFF

14
15
16
17
18
19
20
21
22
23
24
25
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

and

Shotsay Posciri

Plaintiff in Intervention,

v.

UNITED FREIGHT AND TRANSPORT,
INC.,

Defendant.

CIVIL ACTION NO. A05-00122 CV (JWS)

CONSENT DECREE

///

I. INTRODUCTION

EEOC v. United Freight and Transport, Inc.
[Proposed] CONSENT DECREE
Page 1 of 8

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Seattle Field Office
909 First Avenue, Suite 400
Seattle, Washington 98104-1061
Telephone: (206) 220-6883
Facsimile: (206) 220-6911
TDD: (206) 220-6882

1 1. This action originated when Shotsay Posciri filed a charge with the Equal
2 Employment Opportunity Commission (“EEOC” or “Commission”) on July 14, 2004. Posciri
3 alleged that United Freight and Transport, Inc., in Anchorage, Alaska (“United Freight”)
4 discriminated against her based upon her sex in violation of Title VII of the Civil Rights Act of
5 1964, 42 U.S.C. § 2000e, et seq. (“Title VII”) when she was denied employment as a Freight
6 Truck Driver.

7 2. On January 27, 2005, the EEOC issued a letter of determination with a finding of
8 reasonable cause that United Freight violated Title VII when Ms. Posciri was not hired for the
9 Freight Truck Driver position. Thereafter, the EEOC attempted to conciliate the charge, but was
10 unsuccessful.
11

12 3. The Commission filed its Complaint on May 27, 2005, in the United States District
13 Court for the District of Alaska. The complaint alleges that United Freight violated Title VII by
14 failing to hire Ms. Posciri because of her sex. Ms. Posciri filed a complaint in intervention on
15 November 1, 2005 bringing additional state law claims against United Freight.
16

17 4. Defendant denied the allegations of discrimination in the EEOC’s complaint and Ms.
18 Posciri’s complaint in intervention and asserted several affirmative defenses.

19 5. The parties want to conclude fully and finally all claims arising out of the EEOC’s
20 complaint, the charge of discrimination filed with the EEOC by Shotsay Posciri, and the
21 complaints filed by the EEOC and Shotsay Posciri. The EEOC, Shotsay Posciri and United
22 Freight enter into this Consent Decree to further the objectives of equal employment as set forth
23 in Title VII and the Alaska state law.
24
25

II. NONADMISSION OF LIABILITY AND NONDETERMINATION BY THE COURT

1 6. The Consent Decree is not an adjudication or finding on the merits of this case and
2 shall not be construed as an admission by Defendant of a violation of Federal or Alaska state
3 law.

4 III. JURISDICTION AND VENUE

5 7. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343
6 and 1345. This action is authorized pursuant to Sections 706(f)(1) and (3) of Title VII of the
7 Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and Section 102 of
8 the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The employment practices alleged to be
9 unlawful in the complaints filed herein occurred within in the jurisdiction of the United States
10 District Court for the District of Alaska.

11 IV. SETTLEMENT SCOPE

12 8. This Consent Decree is the final and complete resolution of all allegations of unlawful
13 employment practices contained in Posciri's discrimination charge, in the EEOC's administrative
14 determinations, and in the complaints filed herein, including all claims by Ms. Posciri for
15 attorney fees and costs.

16 9. Nothing in this Consent Decree shall be constructed to limit or reduce United
17 Freight's obligation to fully comply with Title VI of the 1964 Civil Rights Act, as amended, the
18 Equal Pay Act, the Age Discrimination Act, and the Americans with Disabilities Act, or the
19 regulations promulgated pursuant thereto.

20 V. PURPOSE OF THE AGREEMENT

21 10. The parties have entered into this Consent Decree in order to achieve the following
22 purposes:

1 a. To assure the implementation of a policy which prohibits United Freight from
2 giving preference to applicants based on sex.

3 b. To assure that females are considered for and provided driver employment
4 opportunities on an equal basis as males.

5 c. To assure that United Freight implements a policy and enforcement program to
6 effectively prevent sex based discrimination.

7
8 VI. MONETARY RELIEF

9 11. In settlement of this lawsuit, United Freight agrees to pay Shotsay Posciri
10 \$95,000.00.¹

11 VII. AFFIRMATIVE AND OTHER RELIEF

12 A. General Provisions

13 12. United Freight, its officers, agents, and employees will refrain from engaging in
14 practices which unlawfully discriminate against applicants and/or employees on the basis of sex.
15 In recognition of its obligation under Title VII, United Freight will institute the policies and
16 practices set forth below.

17 B. Anti-Discrimination Policies and Procedures

18 13. United Freight shall institute and carry out anti-discrimination policies, procedures
19 and training for employees, supervisors and management personnel, to the extent not already
20 established, and will provide equal employment opportunities for all employees. United Freight
21 will evaluate and, where appropriate, modify the practices of its managers and supervisors in
22 order to prevent discrimination in employment. United Freight will ensure that its managers and
23
24

25

¹ A payment of \$50,000.00 is to be made to Ms. Posciri within forty-five (45) calendar days of the date this Consent Decree is entered by the Court. The remaining \$45,000.00 will be paid in equal installments thirty (30) calendar days after the first payment for a duration of six (6) months.

1 supervisors understand its Equal Employment Opportunity (“EEO”) policies and how those
2 policies define and identify what constitutes employment discrimination.

3 14. Within ninety (90) days of the date of the effective date of this Consent Decree,
4 United Freight will: (a) Create an EEO policy to ensure that it adequately prohibits unlawful
5 discrimination against potential employees in the hiring process and against employees on the
6 basis of sex and addresses United Freight’s obligation to provide a discrimination-free work
7 environment for its employees; and (b) distribute this written EEO policy to all present and
8 future employees, both management and non-management. United Freight will provide EEOC
9 with a written copy of its proposed EEO policy prior to distribution.
10

11 C. Training

12 15. Within ninety (90) days of the execution of this Consent Decree, and every 12
13 months thereafter, United Freight will develop and present all employees 1.5 hours of training on
14 employment discrimination issues, including discrimination against potential employees in the
15 hiring process and against employees based on sex. The EEOC will have an opportunity to
16 review the training materials prior to the training date.
17

18 16. United Freight will notify the EEOC of the completion of the training and will
19 specify the names and job titles of all employees who participated in and completed the training
20 as part of its annual reporting to the EEOC.

21 D. Expungement of Records

22 17. United Freight will expunge from its files and any other files where the company
23 keeps such information, with the exception of the legal files maintained by outside counsel, any
24 references to Ms. Posciri’s grievance, charge of discrimination or this lawsuit.
25

E. Policies Designed to Promote Supervisory Accountability

18. United Freight agrees that it shall impose substantial discipline – up to and including termination, suspension without pay or demotion – upon any non-union supervisor or manager who discriminates against any potential employee in the hiring process and/or against employees on the basis of sex. United Freight agrees to take appropriate disciplinary action against union employees as provided under the collecting bargaining agreement. United Freight shall communicate this policy to all of its supervisors and managers.

19. United Freight agrees that the handling of EEO issues will be taken into account when it evaluates the performance of non-union managers and supervisors.

20. United Freight agrees that it shall include “commitment to equal employment opportunity” as a criterion for qualification for non-union supervisory positions.

F. Reporting

21. United Freight shall report in writing and in affidavit form to the EEOC on an annual basis the following information.

- a. Certification of the completion of 1.5 hours of training and a list of attendees;
- b. Certification that its EEO policy has been distributed to all current and newly hired employees;
- c. A list of any changes, modifications, revocations and revisions to its EEO policies and procedures which concern or affect the subject of discrimination or retaliation;
- d. A summary of discrimination complaints, if any, filed by applicants or employees against United Freight which are reported to management and the resolution of each complaint; and
- e. A statement certifying that United Freight has complied with the terms of the Decree. If United Freight has not complied with any term of the Decree, the statement will specify that areas of noncompliance, the reason for the noncompliance, and the steps taken to bring United Freight into compliance.

1 G. Posting

2 22. United Freight will post a Notice, attached as Exhibit 1 to this Consent Decree. The
3 Notice shall be posted on the employee break room bulletin board at United Freight for the
4 duration of the Consent Decree. Additionally, within sixty (60) days of the date of the effective
5 date of this Consent Decree, United Freight will provide a copy of the notice to every United
6 Freight employee.

7 VIII. ENFORCEMENT

8 23. If the EEOC determines that United Freight has not complied with the terms of this
9 Decree, the EEOC will provide written notification of the alleged breach to United Freight. The
10 EEOC will not petition the court for enforcement of the decree for at least thirty (30) days after
11 providing written notification of the alleged breach. The 30-day period following the written
12 notice shall be used by the parties for good faith efforts to resolve the dispute.

13 IX. RETENTION AND JURISDICTION

14 24. The United States District Court of the District of Alaska shall retain jurisdiction
15 over this matter for the duration of the decree.

16 X. DURATION AND TERMINATION

17 25. This Decree shall be in effect for four (4) years beginning the date this Court enters
18 the Consent Decree. If the EEOC petitions the Court for breach of the Decree, and the court
19 finds United Freight to be in violation of the terms of the Decree, the Court may extend the
20 duration of the Decree.

21 XI. CONCLUSION

22 26. The parties are not bound by any provision of this decree until it is signed by
23 authorized representatives of each party and entered by the Court.

DATED this 23rd day of June, 2006

WILLIAM R. TAMAYO
Regional Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
San Francisco District Office
350 Embarcadero, Suite 500
San Francisco, CA 94105-1260

JAMES L. LEE
Deputy General Counsel

KATHRYN B. OLSON
Supervisory Trial Attorney

GWENDOLYN YOUNG REAMS
Associate General Counsel

TERI HEALY
Senior Trial Attorney

BY: /s/ William R. Tamayo
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Seattle Field Office
909 First Avenue, Suite 400
Seattle, WA 98104
(206) 220-6916
Facsimile (206) 220-6911

Office of General Counsel
1801 "L" Street, N.W.
Washington, D.C. 20507

Attorneys for Plaintiff

BY: s/Kenneth W. Legacki
KENNETH W. LEGACKI, P.C.

Attorney for Plaintiff-Intervention

BY: s/Wendy E. Lukema
DORSEY & WHITNEY LLP
WILLIAM J. EVANS
WENDY E. LEUKUMA

Attorneys for Defendant