

THE HONORABLE EDWARD J. LODGE

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RECD 11/24/04
CANDACE S. BURKE,
CLERK, IDAHOUNITED STATES DISTRICT COURT
DISTRICT OF IDAHOEQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

and

MARLON HERRERA,

Plaintiff Intervenor,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV02-409-S-EJL

~~PROPOSED~~ CONSENT DECREE
AND ORDER DISMISSING ACTIONI. INTRODUCTION

1. This action originated when Marlon Herrera ("Mr. Herrera") filed an October 17, 2001 Intake Questionnaire with the Equal Employment Opportunity Commission ("EEOC" or "Commission"), followed by his formal charge filed on or about December 18, 2001. Mr. Herrera alleged that Idaho Power Company discriminated against him based upon his national origin (Hispanic), age and/or disability in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII"), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq. ("ADEA"), and Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101,

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1 et seq. ("ADA") when he was denied employment as a Meter Specialist from November 2, 2000
2 to November 5, 2001.

3 2. On May 21, 2002, the EEOC issued a letter of determination with a finding of
4 reasonable cause to believe that Idaho Power Company violated Title VII and the ADEA when
5 Mr. Herrera was not hired for a Meter Specialist position during the time period referred to in Mr.
6 Herrera's charge. However, the EEOC also determined that there was insufficient evidence to
7 conclude that Mr. Herrera was disabled or regarded as disabled by Idaho Power Company under
8 the ADA. Thereafter, the EEOC attempted to conciliate the charge, but was unsuccessful.

9 3. The Commission filed its Complaint on August 29, 2002 in the United States District
10 Court for the District of Idaho in Boise, Idaho. The complaint alleged that Idaho Power Company
11 violated Title VII and the ADEA by failing to consider Mr. Herrera for employment since April 14,
12 2001 based on his race and/or age. The EEOC then filed an amended complaint on October 2,
13 2002 which alleged that Idaho Power Company had violated Title VII and the ADEA by failing to
14 consider Mr. Herrera for employment since April 14, 2001 based on his national origin and/or
15 age.

16 4. The Court then granted Mr. Herrera's petition to intervene in the EEOC's ongoing
17 lawsuit by Order dated February 19, 2003. After Mr. Herrera received a notice-of-right-to-sue
18 from the EEOC regarding his claim under the ADA, he timely filed: (a) a claim under 42 U.S.C.
19 § 1981 based on the same underlying facts as the ongoing lawsuit; (b) a claim under the ADA
20 based on the same underlying facts as the ongoing lawsuit; and (c) three other claims under Idaho
21 state law.

22 5. Idaho Power Company denied the allegations of discrimination in the EEOC's
23 amended complaint and in Mr. Herrera's complaint in intervention and asserted several
24 affirmative defenses.

25 6. The parties want to conclude fully and finally all claims arising out of EEOC's
26 complaint, the charge of discrimination filed with EEOC by Marlon Herrera, and Mr. Herrera's
27 complaint brought under 42 U.S.C. § 1981, the ADA, and Idaho state law. The EEOC, Mr.

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1 Herrera and Idaho Power Company enter into this Consent Decree to further the objectives of
2 equal employment as set forth in Title VII, the ADEA, the ADA, and Idaho state law.

3
4 **II. NONADMISSION OF LIABILITY AND NONDETERMINATION**
BY THE COURT

5 7. This Consent Decree is not an adjudication or finding on the merits of this case and
6 shall not be construed as an admission by Idaho Power Company of a violation of Title VII, the
7 ADEA, the ADA or any Idaho state law.

8 **III. JURISDICTION AND VENUE**

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

15 **IV. SETTLEMENT SCOPE**

16 9. This Consent Decree is the final and complete resolution of all allegations of unlawful
17 employment practices contained in Mr. Herrera's discrimination charge, in the EEOC's
18 administrative determinations, and in the complaints filed herein, including all claims by the
19 parties for attorney fees and costs. The scope of this Consent Decree will be limited to Idaho
20 Power Company's facilities in the State of Idaho.

21 **V. MONETARY RELIEF**

22 10. In settlement of this lawsuit, Idaho Power Company agrees to pay Marlon Herrera
23 \$175,000, at such times in such amounts as specified in the Settlement and Release Agreement
24 between Mr. Herrera and Idaho Power Company. All settlement proceeds will be handled
25 between Idaho Power Company and Keller Allen, Esq., Mr. Herrera's legal counsel, whose law
26 offices are located at The Paulsen Center, Suite 421, 421 W. Riverside Ave., Spokane, WA
27 99201.

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VI. AFFIRMATIVE AND OTHER RELIEF

A. General Provisions

11. Idaho Power Company, its officers, agents, and employees will not engage in practices which unlawfully discriminate against applicants and/or employees on the basis of national origin, age or disability. In recognition of its obligations under Title VII, the ADEA, and the ADA, Idaho Power Company will institute, to the extent not already in place or being implemented, the policies and practices set forth below.

B. Anti-Discrimination Policies and Procedures

12. Idaho Power Company shall carry out anti-discrimination policies, procedures and training for employees, supervisors and management personnel, to the extent not already established, and will provide equal employment opportunities for all employees. As an ongoing commitment to Equal Employment Opportunity ("EEO"), Idaho Power Company will take steps to ensure that its managers and supervisors fully understand its EEO policies and how those policies define and identify what constitutes employment discrimination.

13. Within one-hundred-twenty (120) days of the date of the effective date of this Consent Decree, Idaho Power Company will: (a) review its EEO policy, and revise it if necessary, to ensure that it adequately prohibits discrimination against applicants and/or employees on the basis of national origin, age or disability with respect to any term, condition or privilege of employment, and addresses Idaho Power Company's obligation to provide a discrimination-free work environment for its employees; and (b) distribute, to the extent not already done, a written copy of its EEO policy to all employees, both management and non-management. Idaho Power Company will provide EEOC with a written copy of its EEO policy as part of its first semi-annual report as provided in paragraph 21 below.

C. Training

14. Within one hundred and twenty (120) days of the execution of this Consent Decree, and annually thereafter, Idaho Power Company will present to all managers and supervisors three (3) hours of training on employment discrimination, including discrimination against applicants

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1 and/or employees based on national origin, age and/or disability. (managers and supervisors
2 who have received such training within the preceding 180 days of this decree will have satisfied
3 the training requirement for the first year of this decree if the EEOC determines the training was
4 comparable). The EEOC will have an opportunity to review the training materials prior to the
5 training date. Idaho Power Company will also provide two (2) hours of training on employment
6 discrimination against applicants, to all non-management employees participating on selection
7 teams.

8 15. Idaho Power Company will notify the EEOC of the completion of the training and will
9 specify the names and job titles of the employees who participated in and completed the training
10 as part of its semi-annual reporting to the EEOC.

11 D. Expungement of Records

12 16. Idaho Power Company will not disclose any information or make references to any
13 charge of discrimination or this lawsuit in responding to requests for information about Marlon
14 Herrera.

15 E. Policies Designed to Promote Supervisor Accountability

16 17. Idaho Power Company agrees that it shall impose substantial discipline -- up to and
17 including termination of employment, suspension without pay or demotion -- upon any supervisor
18 or manager who discriminates against any applicant and/or employee on the basis of national
19 origin, age and/or disability, or who retaliates against any person who complains or participates
20 in any investigation or proceeding concerning any such conduct. Idaho Power Company shall
21 communicate this policy to all of its supervisors and managers.

22 18. Idaho Power Company agrees that it shall continue to advise all managers and
23 supervisors of their duty to actively monitor their work areas to ensure employees' compliance
24 with the company's EEO policy, and to report any incidents and/or complaints of discrimination
25 or retaliation of which they become aware.

26 19. Idaho Power Company agrees to revise its appraisal process to include
27 "commitment to equal employment opportunity" as a criterion for qualification and performance

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1 evaluation for employees holding supervisory positions.

2 F. Advertising

3 20. Idaho Power Company agrees to continue advertising vacancies for the Meter
4 Specialist position by providing notice of such vacancies to the Idaho Commission on Hispanic
5 Affairs.

6 G. Reporting

7 21. Idaho Power Company shall report in writing and in affidavit form to the EEOC on a
8 semi-annual basis, beginning six (6) months from the date of the entry of this decree, and
9 thereafter every six (6) months for the duration of the decree the following information:

- 10 a. Certification of the completion of three (3) hours of training for managers and
11 supervisors, and of two (2) hours of training for non-management employees
12 participating on selection teams, and lists of attendees;
- 13 b. Certification that its EEO policy has been distributed to all current and newly hired
14 employees;
- 15 c. A list of any changes, modifications, revocations or revisions to its EEO policies
16 and procedures which concern or affect the subject of discrimination or retaliation.
- 17 d. A summary of formal discrimination complaints, if any, filed by employees working
18 at Idaho Power Company and the resolution of each such complaint; and
- 19 e. A statement listing the other provisions of this Decree that Idaho Power Company
20 is required to perform and certifying that Idaho Power Company has complied with
21 the terms of the Decree. If Idaho Power Company has not complied with any term
22 of the Decree, the statement will specify the areas of noncompliance, the reason
23 for the noncompliance, and the steps taken to bring Idaho Power Company into
24 compliance.
- 25 f. A summary of all advertisements of vacancies for Meter Specialist positions in
26 media oriented to the Hispanic population of Idaho.

27 H. Posting

22. Idaho Power Company will post a Notice, attached as Exhibit 1 to this Consent
Decree. The Notice shall be posted on a centrally located bulletin boards at all Idaho Power
Company facilities within the State of Idaho for the duration of the Consent Decree.

VII. ENFORCEMENT

23. If the EEOC determines that Idaho Power Company has not complied with the

1 terms of this Consent Decree, the EEOC will provide written notification of the alleged breach
2 to Idaho Power Company. The EEOC will not petition the court for enforcement of this
3 Consent Decree for at least thirty (30) days after providing written notification of the alleged
4 breach. The 30-day period following the written notice shall be used by the parties for good
5 faith efforts to resolve the dispute.

6 **VIII. RETENTION OF JURISDICTION**

7 24. The United States District Court for the District of Idaho shall retain jurisdiction
8 over this matter for the duration of this Consent Decree.

9 **IX. DURATION AND TERMINATION**

10 25. This Consent Decree shall be in effect for two (2) years beginning December 1,
11 2004 and ending November 30, 2006. If the EEOC petitions the Court for breach of this
12 Consent Decree, and the Court finds Idaho Power Company to be in violation of the terms of
13 the Consent Decree, the Court may extend the duration of this Consent Decree.

14 **X. CONCLUSION**

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

17
18 Dated this 17th day of Nov., 2004.

19
20
21 A. LUIS LUCERO, JR.
Regional Attorney

ERIC S. DREIBAND
General Counsel

22 KATHRYN OLSON
Supervisory Trial Attorney

GWENDOLYN YOUNG REAMS
Associate General Counsel

23 TERI HEALY
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ORDER APPROVING CONSENT DECREE

The Court having considered the foregoing stipulated agreement of the parties, IT IS HEREBY ORDERED THAT the foregoing Consent Decree be, and the same hereby is approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees to any party. The Court retains jurisdiction of this matter for purposes of enforcing the Consent Decree approved herein.

DATED this 23rd day of November, 2004.


THE HONORABLE EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

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NOTICE TO ALL EMPLOYEES

This notice is being posted pursuant to an agreement between Idaho Power ("Idaho Power"), the U.S. Equal Employment Opportunity Commission and Marlon A. Herrera, entered as the result of a resolution of a lawsuit in federal district court. There was no finding on the merits of the lawsuit and this notice should not be considered an admission by Idaho Power of a violation of any law.

Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, and the Americans with Disabilities Act of 1990 are enforced by the EEOC and require the following:

That there be no discrimination against any employee or applicant for employment because of the employee's race, sex, color, religion, national origin, age (40 and above), or disability with respect to hiring, firing, compensation, or other terms, conditions or privileges of employment.

It is an unlawful employment practice for an employer to retaliate against any employees or applicants for employment because they have opposed a practice or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under these statutes.

Idaho Power has instituted a training program to train its managers regarding the requirements of the above statutes.

Idaho Power has posted this notice because the company supports and will comply with these federal laws in all respects.

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United States District Court
for the
District of Idaho
November 24, 2004

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 1:02-cv-00409

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

Kathryn Olson, Esq. 1-206-220-6911
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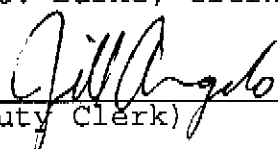
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____ Chief Judge B. Lynn Winmill
____ ✓ Judge Edward J. Lodge
____ ✓ Chief Magistrate Judge Larry M. Boyle
____ Magistrate Judge Mikel H. Williams

Visiting Judges:
____ Judge David O. Carter
____ Judge John C. Coughenour
____ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 11-24-04

BY: 
(Deputy Clerk)