

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

AUG 23 2005

Michael N. Milby, Clerk of Court

EQUAL EMPLOYMENT OPPORTUNITY §
COMMISSION §

Plaintiff, §

CIVIL ACTION NO. H-05-2945 §

v. §

JURY TRIAL DEMANDED §

EGS ELECTRICAL GROUP, L.L.C. and §
EMERSON ELECTRIC COMPANY §

Defendants. §

FIRST AMENDED ORIGINAL COMPLAINT

1. This is an action under the Equal Pay Act of 1963, as amended, 29 U.S.C. §206 *et seq.* and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.* and Title I of the Civil Rights Act of 1991, as amended, 42 U.S.C. §1981 *et seq.* to restrain the unlawful payment of wages to employees of one sex at rates less than the rates paid to employees of the opposite sex and to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Karen Barfield and April Harrison who were adversely affected by such unlawful practices. As alleged herein, Defendants, EGS Electrical Group, L.L.C. ("EGS") and Emerson Electric Company ("Emerson") unlawfully pay its female inside sales staff at wage rates which are less than the rates paid to its male employees performing substantially equal work, and otherwise discriminates against those females because of their sex in violation of Title VII of the Civil Rights Act of 1964 and the Equal Pay Act. Further, Defendants unlawfully transferred and demoted Ms. Harrison in retaliation for her opposing the unlawful wage disparity and because she filed a charge of discrimination.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended 29 U.S.C. §§216 (c) and 217, to enforce the requirements of the Equal Pay Act of 1963, codified as Section 6(d) of the FLSA, 29 U.S.C. §206(d), *et seq.* ("Equal Pay Act") and pursuant to Section 706 (f)(1) and (3) of Title VII of the Civil Rights Acts of 1964, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981A.

3. Venue is proper in this Court because the unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

PARTIES

4. Plaintiff, Equal Employment Opportunity Commission ("Commission" or "EEOC") is an agency of the United States of America charged with the administration, interpretation and enforcement of the Equal Pay Act and Title VII, and is expressly authorized to bring this action by Sections 16 (c) and 17 of the FLSA, 29 U.S.C. §§216 (c) and 217, as amended by Section 2 of the Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705 and by Section 706 (f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5 (f)(1) and (3).

5. Defendant EGS has continuously been and is now doing business in the State of Texas and the City of Houston and has continuously had more than 15 employees. EGS has its principal place of business at 13639 Aldine Westfield Road,

Houston, Texas 77039. Defendant EGS is a Delaware Limited Liability Corporation that has failed to appoint or maintain a registered agent in Texas. EGS may be served with process by serving the Office of the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

6. At all relevant times, Defendant EGS has acted directly or indirectly as an employer in relation to employees and continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. §203(d).

7. At all relevant times, Defendant EGS has continuously employed employees engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§203(b), (i) and (j) or has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§203(r) and (s).

8. At all relevant times, Defendant EGS has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

9. Defendant Emerson has continuously been and is now doing business in the State of Texas and the City of Houston. Defendant Emerson is a Missouri Corporation and may be served with process by serving its registered agent, CT Corp. System, 350 N. St. Paul Street, Dallas, Texas 75201.

10. At all relevant times, Defendant Emerson has acted directly or indirectly as an employer in relation to employees and continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. §203(d).

11. At all relevant times, Defendant Emerson has continuously employed employees engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§203(b), (i) and (j) or has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§203(r) and (s).

12. At all relevant times, Defendant Emerson has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

13. Defendant Emerson has continuously been and is now doing business in the State of Texas and the City of Houston as the operational partner and as a joint venture owner of Defendant EGS. As such, in its representative capacity, it may be served with process by serving its registered agent, CT Corp. System, 350 N. St. Paul Street, Dallas, Texas 75201.

14. At all relevant times, Defendant Emerson, as a joint venture owner, has acted directly or indirectly as an employer in relation to employees and continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. §203(d).

15. At all relevant times, Defendant Emerson, as a joint venture owner, has continuously employed employees engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§203(b), (i) and (j) or has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§203(r) and (s).

16. At all relevant times, Defendant Emerson, as a joint venture owner, has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

17. More than thirty days prior to the institution of this lawsuit, Karen Barfield and April Harrison each filed a charge of discrimination with the Commission alleging violations of the Equal Pay Act and Title VII by Defendants, their employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

18. Since at least 1999, Defendants have engaged in unlawful employment practices at their offices located at 13639 Aldine Westfield Road, Houston, Texas, in violation of Sections 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215 (a)(2), and Section 703(a)(1) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.

19. Ms. Barfield was hired by Curlee Manufacturing, a predecessor company, in 1995 as an order entry clerk. She steadily progressed through the ranks and was promoted to Sales Service/Quotations-grade 25 in 1997 with a starting salary of \$23,520. This was an inside sales position. In 1999, she was promoted within the position to grade 28 earning \$31,200. The following year she received a pay increase to \$32,136 and again in 2002 to \$33,048. In September 2004, Ms. Barfield's earned another pay increase to Sales Services/Quotations-grade 30. Her salary increased to \$35,570. Two months later, her salary increased to \$44,000.

20. Ms. Harrison was hired by Appleton Electric, a predecessor company, as a customer service representative in 1997. She was subsequently promoted, in late

1999, to Product Manager Trainee- grade 28 with a starting salary of \$25,501. This was the beginning of her work in inside sales positions. In September 2000 she was promoted to Product Support Specialist I-grade 28 earning \$28,630 and, two years later, she was promoted to Product Support Specialist II-grade 28, resulting in a pay increase to \$33,750. In September 2004, after complaining of gender based disparities, she was promoted within her position to grade 30 with a pay increase to \$36,330. Two months later, her salary increased to \$44,000.

21. In June 1999, a male was hired by Curlee Manufacturing into the position of Sales Service/Quotations. Although his title was identical to that held by Ms. Barfield, and his duties substantially similar to both women, he was hired as a grade 30 with a starting salary of \$37,000. A year later, his salary was increased to \$38,124. In 2001, his salary and grade were increased to \$42,000, grade 32. In 2003, this male salesman's pay was again increased to \$43,176. In April 2004, he was given another salary increase to \$50,000.

22. Both Charging Parties and the male comparator had the same direct supervisor. All performed inside sales duties. Although Charging Parties performed substantially equal work as the male employee, they were paid significantly less than the male comparator. Thus, since at least 1999, Defendants have willfully violated Sections 6(d)(1) and 15(a)(2) of the Equal Pay Act and Section 703(a)(1) of Title VII by paying wages to its female inside sales staff at rates less than the rate paid to a male inside sales staff in the same establishment for substantially equal work on jobs the performance of which required equal skill, effort, and responsibility and which were performed under similar working conditions.

23. As a result of the acts complained of above, Defendants unlawfully withheld and are continuing to withhold the payment of wages due to Ms. Barfield and Ms. Harrison.

24. The effect of the practices complained of herein has been to deprive Ms. Barfield and Ms. Harrison of equal employment opportunities and otherwise adversely affected their status as an employees because of their sex.

25. The conduct described in the paragraphs above was willful, intentional and was committed with malice or with willful disregard for the federally protected civil rights of Ms. Barfield and Ms. Harrison.

26. Beginning in 2003, Ms. Harrison began to complain about the wage disparity between herself and the male comparator. And, by April 2004, she spoke about the disparity with the General Manager and requested that her salary be raised to the salary the male was earning. After receiving no results from him, she spoke with the Vice President of Sales-Gulf States and complained about the wage disparity. He informed her that he was not going to take any steps to have her salary increased and that nothing she could do would result in her pay being increased. After again complaining to the General Manager about the differences in pay, she filed a charge of discrimination with the Commission. Days later, in retaliation for having filed a discrimination charge, she arrived at work to discover maintenance workers packing the contents of her desk and learned, for the first time, that she was being relocated to another building. The move has made it more difficult for her to complete her sales job duties and has effectively reduced her to a customer service role.

27. The conduct described in the paragraph above was willful, intentional and was committed with malice or with willful disregard for the federally protected civil rights of Ms. Harrison.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

28. Grant a permanent injunction enjoining Defendants EGS and Emerson, their officers, successors, assigns and all persons in active concert or participation with them, from engaging in an employment practice which discriminates on the basis of sex and from discriminating within any of its establishment between employees on the basis of sex, by paying wages to employees at rates less than the rates at which it pays wages to employees of the opposite sex in the same establishment for equal work on jobs, the performance of which require equal skill, effort and responsibility, and which are performed under similar working conditions;

29. Order Defendants EGS and Emerson to institute and carry out policies, practices and procedures which provide equal employment opportunities for its female employees and which eradicate the effects of its unlawful employment practices;

30. Order Defendants EGS and Emerson to make Ms. Barfield and Ms. Harrison whole by providing appropriate back pay, with prejudgment interest in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices;

31. Order Defendants EGS and Emerson to make Ms. Barfield and Ms. Harrison whole by providing appropriate compensatory damages to her in amounts to be proved at trial resulting from the unlawful practices described above;

32. Order Defendants EGS and Emerson to pay punitive damages to Ms. Barfield and Ms. Harrison for their willful, malicious and/or reckless conduct described above in amounts to be proved at trial;

33. Grant a judgment requiring Defendants EGS and Emerson to pay appropriate back wages in an amount to be proved at trial, and an equal sum as liquidated damages or prejudgment interest in lieu thereof, to employees whose wages are being unlawfully withheld as a result of the acts complained of above, including but not limited to, Ms. Barfield and Ms. Harrison.

34. Award pre-judgment and post-judgment interest on all amounts recovered as allowed by law;

35. Order all affirmative relief necessary to eradicate the effects of their unlawful employment practices;

36. Award the Commission its costs in this action; and

37. Grant such other and further relief as the Court deems necessary and proper in the public interest.

JURY TRIAL DEMAND

38. The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

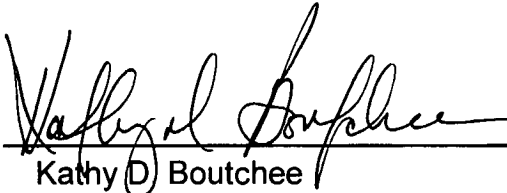
EQUAL EMPLOYMENT
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