

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

FILED  
ASHEVILLE, N.C.

2003 DEC -8 PM 1:36

EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
Plaintiff, )  
 )  
v. )  
 )  
PIONEER ASSOCIATES, INC. d/b/a )  
WILLIAMS ELECTRIC COMPANY, )  
Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION NO. 1:03cv184

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

U.S. DISTRICT COURT  
WESTERN DISTRICT OF N.C.  
ASHEVILLE, N.C.

NATURE OF THE ACTION

This is an action under the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 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 under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex. This action seeks appropriate relief due to Angela Ragland, Tina Kitchens, and other similarly situated female employees who were adversely affected by unlawful practices. Plaintiff, the United States Equal Employment Opportunity Commission (“EEOC” or the “Commission”), alleges, as described with greater particularity in paragraphs 9 and 13 below, that Defendant Pioneer Associates, Inc. d/b/a Williams Electric Company (“Defendant”) pays the female Flagger at wage rates which are less than the rates paid to the male Groundmen performing substantially equal work, and otherwise discriminate against those female employees because of their sex.

JURISDICTION AND VENUE

1. 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 Sections 16(c) and 17 of the Fair Labor

Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963 (“EPA”), codified as Section 6(d) of the FLSA, 29 U.S.C. §206(d), and pursuant to Section 706(f) (1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. §2000e–5(f)(1) and (3). This action is also authorized and instituted pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of North Carolina.

### PARTIES

3. Plaintiff is the agency of the United States of America charged with the administration, interpretation and enforcement of the EPA 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 1 of Reorganization Plan No. 1 of 1978, 92 Stat. 2781, and Public Law 98-532 (1984), 98 Stat. 2705, and by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Pioneer Associates, Inc., a New York corporation, has maintained a place of business in Shelby, North Carolina, d/b/a Williams Electric Company, has continuously been doing business in the State of North Carolina and the City of Shelby, and has continuously employed at least 15 employees.

5. At all relevant times, Defendant Pioneer Associates, Inc. has continuously been 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).

6. At all relevant times, Defendant Pioneer Associates, Inc. has acted directly or indirectly as an employer in relation to employees and has 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 Pioneer Associates, Inc. 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).

#### STATEMENT OF CLAIMS

8. More than thirty days prior to the institution of this lawsuit, Angela Ragland and Tina Kitchens filed charges with the Commission alleging violations of the FLSA and Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

9. Since at least 1998, Defendant has engaged in unlawful employment practices at their Augusta, Georgia, facility and other facilities in violation of Sections 703(a) of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. §2000e-2(a), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. Specifically, Defendant subjected Angela Ragland, Tina Kitchens, and other similarly situated female employees who were employed as Flaggers to discrimination:

- a. by (1) paying lower wages to the female Flaggers than it paid to the male Groundmen (i.e., by giving the Groundmen larger increases in pay), and (2) subjecting the female Flaggers to disparate terms and conditions of employment by refusing to allow them to work storm trips, based on their sex, in violation of Section 703(a)(1) of Title VII;
- b. by engaging in a pattern and practice of classifying female employees as Flaggers and denying them equal opportunities for advancement within the company based on their sex; and
- c. by denying female Flaggers reclassification into Groundman positions thereby denying them equal opportunities for advancement within the company based on their sex, in violation of Section 703(a)(2) of Title VII.

10. The effect of the practices complained of in paragraph 13 above has been to deprive Angela Ragland, Tina Kitchens, and other similarly situated female employees of equal employment opportunities and otherwise adversely affect their status as employees because of their sex, female.

11. The unlawful employment practices complained of in paragraph 9 above were, and are, intentional.

12. The unlawful employment practices complained of in paragraph 9 above were, and are, done with malice and/or with reckless indifference to the federally protected rights of Angela Ragland, Tina Kitchens, and a group of similarly situated female employees.

13. Since at least 1998, Defendant has violated Sections 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by paying lower wages to the female Flaggers than it paid to the male Groundmen (i.e., by giving the Groundmen larger increases in pay) for substantially equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

14. As a result of the acts complained of in paragraph 13 above, Defendant has unlawfully withheld, and are continuing to withhold, the payment of wages due to Angela Ragland, Tina Kitchens, and a group of similarly situated female employees.

15. The unlawful practices complained of in paragraph 13 above were willful.

#### PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with them, from subjecting employees to sex-based discriminatory job classifications and opportunities or any other employment practice that discriminates on the basis of sex.

B. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns and all persons in active concert or participation with them, from discriminating within any of their establishments between employees on the basis of sex, by paying wages to employees of one sex at rates less than the rates at which they pay wages to employees of the opposite sex for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

C. Order Defendant to institute and carry out policies, practices, and programs that provide equal employment opportunities for women and which eradicate the effects of their past and present unlawful employment practices.

D. Order Defendant to make whole Angela Ragland, Tina Kitchens, and a group of similarly situated female employees by providing appropriate lost wages with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices described in paragraphs 9 and 13 above.

E. Order Defendant to make whole Angela Ragland, Tina Kitchens, and a group of similarly situated female employees by providing compensation for past and future pecuniary losses resulting from the unlawful practices complained of in paragraphs 9 and 13 above in amounts to be determined at trial.

F. Order Defendant to make whole Angela Ragland, Tina Kitchens, and a group of similarly situated female employees by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraphs 9 and 13 above, including but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life, humiliation, and loss of civil rights in amounts to be determined at trial.

G. Order Defendant to pay Angela Ragland, Tina Kitchens, and a group of similarly situated female employees, punitive damages for their intentional, malicious and reckless conduct,

as described above, in amounts to be determined at trial.

H. Grant a judgment requiring Defendant to pay appropriate back wages in amounts to be determined 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 Angela Ragland, Tina Kitchens, and Carol Redd.

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

J. Award the Commission its costs of this action.

JURY TRIAL DEMAND

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

DATED this 20<sup>th</sup> day of November 2003.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF


**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing *Second Amended Complaint* by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following persons at the following addresses which are the last known addresses to me:

John D. Cole, Esquire  
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*Counsel for Defendant*

This the 20<sup>th</sup> day of November 2003.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

By:   
Kara Gibbon Haden  
Senior Trial Attorney