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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

LINDA JOHNSON, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
	)	Civil Action Number
vs.	)	**5:07-cv-00064-UWC**
STEELCASE, INC.,	)	
Defendant.	)	

PRETRIAL ORDER

A pretrial conference was held in the above case on September 8, 2008, wherein, or as a result of which, the following proceedings were held and action taken:

1. Appearances. Appearing at the conference were: Henry F. Sherrod III, Robert F. Childs, Jr., and Herman N. Johnson, Jr. for Plaintiff and the Class; and Kenneth L. Thomas and Roslyn Crews for Defendant.

2. Jurisdiction and venue. Subject matter jurisdiction exists under 28 U.S.C. Sections 1331 and 1334. Personal jurisdiction and venue are not contested.

3. Parties and trial counsel. Any fictitious defendants are deleted; the parties before the Court are correctly named as set out below; and the designated trial counsel for the parties are as set out below:

	PARTIES	TRIAL COUNSEL
Plaintiff:	Linda Johnson	Henry F. Sherrod III Robert F. Childs, Jr. Herman N. Johnson, Jr.

Defendant: Steelcase, Inc.

Kenneth L. Thomas
Roslyn Crews
Afrika C. Parchman

4. Pleadings. The following pleadings have been allowed: first amended complaint; answer.

5. Statement of the case.

A. Agreed summary.

This is a race discrimination case, brought under the provisions of 42 U.S.C. § 2000e *et seq.* ("Title VII") and 42 U.S.C. § 1981.

B. Plaintiff's position.

(i). **Class claims**. Plaintiff brings this lawsuit on her own behalf and on behalf of a class of similarly-situated African-American employees of Steelcase at its Athens, Alabama plant holding jobs in EEO category 7 (production technician) who were not selected by Steelcase for permanent positions in EEO categories 5 and 6. The positions in EEO categories 5 and 6 include quality specialist, quality control technician, zone leader, temporary supervisor, and production specialist. Plaintiff brings disparate treatment class claims.

Plaintiff seeks for the class a declaratory judgment and equitable and injunctive relief pursuant to a) Title VII of the Civil Rights Act of 1964, which was amended by the Civil Rights Act of 1991, and which is codified at 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. §1981a, and b) the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 and 1981(A).

Defendant maintains a selection process for EEO category 5 and 6 jobs that demonstrates a pattern and practice and effect of discriminating against African-American employees holding positions in EEO category 7, production technician.

Defendant contracts with the federal government and has known for years that African-American employees in the majority of its EEO classifications were underutilized. In spite of this underutilization, Steelcase has taken no action to ensure

the selection process it utilized was fair, nor to increase African-American representation in these categories. Defendant did not even take action to make sure open positions were equally known to African-American employees, nor to encourage African-Americans to apply for the jobs in which they are underutilized.

Discrimination in the Steelcase selection process occurred at every level and has been effected by the exercise of subjective discretion by Steelcase's predominantly-Caucasian management employees. Human Resources personnel are directly involved in the selection process and have permitted Caucasian managers to manipulate the selection process to the disadvantage of African-American production technician employees.

Historically, Steelcase has allowed its Athens management, predominantly Caucasian, the discretion to decide whether and when to post jobs. Frequently, jobs were never posted and were filled on a long-term "temporary" basis or on a short-term "temporary" basis. The selection of persons to fill positions on a permanent and temporary basis is a matter of subjective discretion primarily exercised by defendant's predominantly Caucasian managerial staff. The filling of jobs on a temporary basis has been used to train and develop candidates for promotions. These practices have been used to discriminate against African-American employees and has had the effect of limiting the advancement of African-American employees out of the production technician position.

Even when jobs are posted, Caucasian managers have been permitted to manipulate the posting and selection process to disadvantage African-American production technicians seeking advancement.

Jobs that were posted were posted less prominently in the areas in which most of the African-American production technician employees worked. Recognizing deficiencies in its posting process, Steelcase relied on supervisory employees to inform production technicians about promotion opportunities that were posted. Frequently, only hand-picked individuals would be informed regarding posted jobs. These practices have been used to discriminate against African-American employees and has had the effect of limiting the advancement of African-American employees out of the production technician position.

Steelcase management frequently decides who will be selected for a job before

it authorizes the job to be posted. Often, the pre-selected person is already working in the position on a temporary basis. Even if an individual has not been pre-selected, Steelcase management can cancel the posting and re-post after additional Caucasian persons have been encouraged to apply if it is not satisfied with the candidates for the position. These practices have been used to discriminate against African-American employees and have had the effect of limiting the advancement of African-American employees out of the production technician position.

Steelcase management has manipulated the selection process in other ways with the purpose and effect of limiting the advancement of African-American employees out of the production technician position. These additional methods of manipulation include, but are not limited to, not interviewing disfavored candidates; skipping the interview process entirely; changing interview scores to a favored candidate's advantage; "losing" applications or resumes; exaggerating the preferred or required job requirements; transferring an employee into an open position to avoid posting that position; and selecting multiple persons for multiple jobs on a posting that is for a single job.

(ii). **Individual Claims.** Plaintiff also brings individual claims on her own behalf under Title VII of the Civil Rights Act of 1964, which was amended by the Civil Rights Act of 1991, and which is codified at 42 U.S.C. § 2000e *et seq*. and 42 U.S.C. §1981a, and the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 and 1981(A), for her demotion from backup quality specialist to production technician in January 2006 and for Steelcase's denial of promotions to her.

After Plaintiff was denied promotions in February and March 2005, she applied for and received a promotion to a formerly all-Caucasian department, the quality department, as a backup quality specialist. After her promotion, Steelcase did not train her for the position, forced her to train herself, and transferred her between shifts to satisfy the preference of a Caucasian employee, which was contrary to past practice. Then, Steelcase, as a pretext for discrimination, demoted Plaintiff back to production technician using an invalid transfer request made prior to her promotion to the quality job. Thereafter, she was replaced by a Caucasian female who received top-notch training.

In August 2007, Plaintiff interviewed for a full-time quality technician position that opened up as part of a reorganization of the quality department. Though

Plaintiff's interview scores entitled her to the last available position, interview team members lowered plaintiff's scores and increased the preferred Caucasian candidate's scores so that plaintiff would not receive the job.

Thereafter, in approximately October 2007, the regional quality manager, based on advice from human resources personnel, did not post quality technician backup jobs even though backups were needed. Emails between the manager and human resources personnel show the jobs were not posted. The jobs were not posted because Plaintiff was a natural candidate for one of these positions and likely to apply.

After October 2007, Steelcase denied Plaintiff the opportunity to apply for zone leader positions for which she was a natural candidate by not posting positions in her area, including one she specifically spoke to her supervisor about.

In April and May 2008 Plaintiff applied for and was denied a production specialist position. In May 2008, Plaintiff applied for another zone leader position and did not receive the position. In August 2008, Plaintiff attempted to transfer from a level 1 production technician position to a level 2 production technician position. She was entitled to the position based on seniority but human resources personnel treated her request as a request for a transfer to a level 1 position in a different area.

Plaintiff individually seeks appropriate declaratory and injunctive relief, back pay, compensatory damages, and punitive damages.

C. Defendant's position.

(i). **Class Claims.** Defendant does not maintain a selection process for EEO category 5 and 6 jobs which treats African Americans differently than its other employees. At all times, defendant acted with the reasonable belief that it was operating its job selection system within the bounds of the applicable laws. Since 2005, excepting the instant case, Defendant has had only five complaints in which race was an issue, and none of those complaints concern job selection practices. In that same time frame, Plaintiff's complaint is the sole EEOC charge/lawsuit related to job selection practices. In May and June of 2008, the Department of Labor's Office of Federal Contract Compliance conducted a compliance evaluation of employment practices at the Athens plant. The results did not identify Defendant's job selection process as non-compliant.

Defendant maintains several posting boards in various locations throughout the Athens facility. Those boards are near time clocks, restrooms, break rooms and the cafeteria. Employees of all races work in every area of the plant, and have time both before shift, after shift, and during breaks and lunch to locate a posting board to check job postings. In addition, job opportunities are disseminated to supervisors and zone leaders who regularly announce job opportunities to employees in the area at the start of shifts.

Defendant's practice is to post permanent job opportunities. Whether a permanent position actually exists is based on a combination of business factors including, but not limited to, the length of time the work is expected to last, budgets, and available work force. Employees may perform higher paying work on a temporary basis to cover for illnesses, vacations, or brief upturns in work. Working in these temporary positions does not ensure that a candidate will be given a permanent position should one actually become available. African Americans have been, and continue to be among those selected to perform both production and supervisory tasks on temporary assignment.

Defendant has made progress in improving its African-American utilization in EEO categories at issue, by increasing the African American representation in the pool from which selections are made, EEO 7. As a result, the percentage of African Americans in those categories has increased, dramatically so in the case of category 6BA which includes Zone Leaders and Temporary Supervisors.

Defendant uses a variety of job selection procedures related to the job categories in question; none of which are designed to be discriminatory. Targeted interviewing by panels of two or more persons, experience, area of work, and seniority all can and do play a role in candidate selection.

(ii). **Individual Claims.** Plaintiff applied for two zone leader positions in February and March 2005. Plaintiff withdrew her name from consideration for one position. The other position was awarded to a qualified applicant who was in the same "value stream." The "value stream" preference was clearly indicated on the physical job posting and was a standard policy at that time. Plaintiff was not assigned to the object "value stream" at the time the job became available.

In late 2005, Plaintiff applied for and was awarded a 2nd shift back up position in the quality department. The job entailed performing quality control tasks when the employee who "owned" the position was out for any reason, or when an increase in work required more quality coverage. Plaintiff understood that the work would be intermittent and that performing quality work on a back up basis did not guarantee her a promotion into a permanent quality position.

Shortly there after, Defendant began to experience quality issues on its relatively new 3rd shift. The quality manager asked Plaintiff if she would go to 3rd shift to cover the need. He did not tell Plaintiff that the move was permanent. However, the coverage was needed every day. Therefore, there was no danger that Plaintiff would work her production technician job and discover at the end of 2nd shift that she was needed to work an additional shift in quality. Plaintiff's absence from 2nd shift did, however, leave only one quality person available on 2nd shift. Eventually, the quality manager sent Plaintiff back to 2nd shift where her permanent position as a production technician was to provide back up in quality. Plaintiff remained the back up quality specialist on second shift. Because there were more than half a dozen quality specialists on first shift, the quality manager filled his need to cover 3rd shift from his first shift availability.

Prior to being given the back up quality assignment, Plaintiff made an electronic request for transfer to 1st shift. Such transfers are seniority based and Plaintiff's request was honored when she was high senior on the list of those requesting such transfers. It is not unusual for employees to take pay cuts and/or demotions to transfer to first shift because the shift most closely approximates regular business hours. Plaintiff did not go to the Human Resources Department and raise questions as to why her transfer request was honored. She went to 1st shift and proceeded to work.

In August 2007, Defendant reorganized its quality department nationwide and posted all quality jobs for selection regardless of whether there were incumbents. Plaintiff applied for a quality specialist position and participated in the interview process in October of 2007. At the end of all interviews, neither Plaintiff nor the white male she identifies as being given preferential treatment, Joel McMunn, achieved scores high enough to be offered a permanent position. Neither was initially offered a position in the reorganized quality department. In addition, at least two

white males who held the positions on a permanent basis for many years prior to the reorganization also failed to qualify for one of the permanent positions.

In 2007, Defendant had at least one zone leader take extended leave and therefore Defendant moved existing zone leaders in order to cover that work.

Defendant learned for the first time, on September 4, 2008, when its counsel received the initial draft of this Proposed Pretrial Order that plaintiff has additional denial of promotion claims which arose in April and May of 2008. These claims were not identified in the initial complaint and/or the amended complaint. Thus, Defendant objects to the addition of these claims on the grounds that it would be unduly prejudiced if these claims are allowed without Defendant having the full benefit of discovery. In the alternative, Defendant respectfully requests that it be permitted additional time to conduct discovery related to these new claims.

6. Discovery and other pretrial procedures. The parties are given leave to proceed with further discovery provided it is commenced in time to be completed by **October 31, 2008.**

7. Voir Dire Questions and Requested Jury Instructions. When the case is called for trial, the parties shall present to the Court any special questions or topics for voir dire examination of the jury venire, and, to the extent the same can be anticipated any requests for instructions to the jury (including extracts of any statutes on which instructions are requested).

8. Damages. By **September 26, 2008,** Plaintiff shall provide to the Defendant's counsel a list itemizing all damages claimed to have been incurred, showing the amount (and, where applicable, the method of computation) of such items.

9. Expert Witnesses.

A. By **September 23, 2008,** Plaintiff's counsel shall provide to Defendant's counsel a list stating the names and addresses of any expert witnesses whom she expects to offer at trial and the expert's report embodying the information specified in Fed.R.Civ.P. 26(b)(4)(A).

B. By **October 16, 2008,** Defendant's counsel shall provide to Plaintiff's counsel a list stating the names and addresses of any expert witnesses whom it expects to offer at trial and the expert's report embodying the information specified in Fed.R.Civ.P. 26(b)(4)(A).

10. Regular Witnesses. By **October 31, 2006,** counsel for the parties shall exchange lists stating the names and addresses of all witnesses (other than expert witnesses) whom they expect to offer at trial.

Unless specifically agreed between the parties or allowed by the Court for good cause shown, the parties shall be precluded from offering substantive evidence through any witness not so listed. The listing of a witness does not commit the party to have such witness available at trial or to call such witness to testify, but it does preclude the party from objecting to the call of such witness by another party. Except to the extent that written notice to the contrary is given within five (5) days after receiving such list, each party shall be deemed to have agreed that the conditions of Fed. R. Civ. P. 32(a)(3) are satisfied with respect to the deposition of any listed medical expert or of any other persons identified in the list as one whose testimony is expected to be offered by deposition.

11. Exhibits. Counsel for the parties shall, by **October 31, 2008,** exchange lists describing all writings, recordings, documents, bills, reports, records, photographs and other exhibits (collectively called "exhibits") which they may utilize at trial. The blanket listing of bulk exhibits (e.g., "all documents obtained during discovery, all documents produced by defendants") does not comply with the provisions of this paragraph.

Unless specifically agreed between the parties or allowed by the Court for good cause shown, the parties shall be precluded from offering as substantive evidence any exhibit not listed. Except where beyond a party's control or otherwise impracticable (e.g., records from an independent third-party being obtained through subpoena), each party shall make such exhibits available for inspection and copying. Except to the extent written notice to the contrary is filed with the Clerk of the Court within five (5) days after receiving such list, each party shall be deemed to have agreed (for purposes of this litigation only):

(a) that the originals of the listed exhibits are authentic within Fed. R.

Evid. 901 and 902;

(b) that a duplicate, as defined in Fed. R. Evid. 1001, of the listed exhibits is admissible to the same extent as would be the original;

(c) that any of the listed exhibits purporting to be records described in Fed. R. Evid. 803(6) meet the requirements of such rule without extrinsic evidence;

(d) that any of the listed exhibits purporting to be correspondence were sent by the purported sender and received by the purported recipient on approximately the dates shown or in accordance with customary delivery schedules;

(e) that any listed photographs fairly and accurately portray the scene therein depicted as of the time when made;

(f) that any listed bills for services or materials are reasonable in amount for the services or materials therein billed; and

(g) that each of the listed exhibits is admissible at trial, subject only to Fed. R. Evid. 403 and relevancy objections.

The number assigned to an exhibit on the list will be the number given to the exhibit when offered at trial, unless otherwise ordered by the Court.

Each party shall provide to the Court a copy of each key exhibit, or relevant portion thereof, to be utilized in the direct examination of a witness. Counsel shall make sufficient copies of each such exhibit for publication to each juror.

12. Special medical provisions. Counsel for all parties are hereby granted the right to inspect and copy all hospital and medical reports relative to the medical care, treatment, diagnosis, condition, and history of Linda Johnson, together with the right to depose, with due notice, or interview (in person or otherwise) all physicians, administrators, and other personnel in connection therewith. A copy of this Order shall constitute sufficient authority for such inspection, copying or interview. Any party claiming damages for his or her own personal injuries shall submit, if requested by counsel for an opposing party, to a medical examination by a physician selected by (and compensated by) such opposing party, but counsel for the injured party shall

be furnished a copy of any reports of such examination and shall have the right to depose or interview the examining physician.

13. Trial. The trial of this action is hereby set for the week beginning at 9:00 am, on **November 10, 2008**, in Decatur, Alabama.

It is hereby ORDERED that the above provisions be binding on all parties unless modified by further order for good cause shown.

U.W. Clemon
United States District Judge