

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
LEE COUNTY,)
)
Defendant.)

CIVIL ACTION NO. 99-248-CV-FM3-241
SUSAN C. BUCKLEW
COMPLAINT
JURY TRIAL DEMAND
INJUNCTIVE RELIEF SOUGHT

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NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act to correct unlawful employment practices on the basis of age and to provide appropriate relief to Raymond Murphy, Howard Carpenter, Jacquelyn Carpenter and Helga Murphy. As alleged with greater particularity in paragraphs seven through fifteen below, the Equal Employment Opportunity Commission ("EEOC" or "COMMISSION") alleges that Raymond Murphy and Howard Carpenter were discharged from employment with the Defendant because of their age and/or in retaliation for objecting to actions taken by the Defendant which Raymond Murphy and Howard Carpenter believed violated federal anti-discrimination laws. The EEOC further alleges that Jacquelyn Carpenter and Helga Murphy were denied employment and/or the opportunity to compete and interview for employment in retaliation for the actions of Mr. Murphy and Mr. Carpenter.

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 to Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the "ADEA"), which incorporates by reference Sections 16(b) and 16(c) of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. § § 216(b) and 216(c).

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the Fort Myers Division of the United States District Court for the Middle District of Florida.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant, Lee County (the "County"), has continuously been a Political Subdivision of the State of Florida.

5. At all relevant times, Defendant County has continuously been an employer within the meaning of Section 11(b) of the ADEA, 29 U.S.C. § 630(b).

CONCILIATION

6. Prior to the institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

STATEMENT OF CLAIMS

7. Since at least April 28, 1995, the Defendant County has engaged in unlawful employment practices at its Department of Transportation affecting Raymond Murphy, in violation of Section 4(a)(1) of the ADEA, 29 U.S.C. § 623(a)(1). The unlawful employment practices included discharging Raymond Murphy from employment (either via termination or constructive discharge) or otherwise discriminated against him with respect to the terms, conditions, and/or privileges of employment because of his age, then 60. The EEOC alleges that Mr. Murphy was over 40 years of age, qualified for the position he then held, that he was either terminated or constructively discharged from employment and that if terminated he was replaced by a younger individual and if constructively discharged that a reasonable person in his age group would have felt compelled to resign.

8. Since at least April 28, 1995, the Defendant County has engaged in unlawful employment practices affecting Raymond Murphy, in violation of Section 4(d) of the ADEA, 29 U.S.C. § 623(d). The unlawful employment practices included allegations that the Defendant County discriminated against Raymond Murphy because he opposed an employment practice of the Defendant County that he in good faith believed was in violation of federal laws governing age discrimination in the workplace, such as, Section 4 of the ADEA, 29 U.S.C. § 623. The EEOC alleges that Lee County knew Raymond Murphy had participated in an activity protected by the ADEA (participation in an investigation of alleged age discrimination) when it took an adverse employment action against him and that the protected activity Mr. Murphy participated in and the adverse employment action he was subjected to were not wholly unrelated.

9. Since at least April 28, 1995, the Defendant County has engaged in unlawful

employment practices affecting Howard Carpenter, in violation of Section 4(a)(1) of the ADEA, 29 U.S.C. §§ 623(a)(1). The unlawful employment practices included discharging Howard Carpenter from employment (either via termination or constructive discharge) or otherwise discriminated against him with respect to the terms, conditions, and/or privileges of employment because of his age, then 61. The EEOC alleges that Mr. Carpenter was over 40 years of age, qualified for the position he then held, that he was either terminated or constructively discharged from employment and that if terminated he was replaced by a younger individual and if constructively discharged that a reasonable person in his age group would have felt compelled to resign.

10. Since at least April 28, 1995, the Defendant County has engaged in unlawful employment practices affecting Howard Carpenter, in violation of Section 4(d) of the ADEA, 29 U.S.C. §§ 623(a)(1) and 623(d). The EEOC alleges that Lee County knew Howard Carpenter had participated in an activity protected by the ADEA (filing an internal grievance alleging age discrimination) when it took an adverse employment action against him and that the protected activity Mr. Carpenter participated in and adverse employment action he was subjected to were not wholly unrelated.

11. Since at least March 18, 1997, the Defendant County has engaged in unlawful employment practices affecting Jacquelyn Carpenter, in violation of Section 4(d) of the ADEA, 29 U.S.C. § 623(d). The unlawful employment practices included allegations that the Defendant County discriminated against Jacquelyn Carpenter because of her association with Howard Carpenter, her husband, who has opposed an employment practice of the Defendant County that he in good faith believed was in violation of federal laws governing age discrimination in the workplace, such as, Section 4 of the ADEA, 29 U.S.C. § 623. The EEOC alleges that Lee County

knew Howard Carpenter had participated in an activity protected by the ADEA (filing an internal grievance alleging age discrimination) when it took an adverse employment action against his wife, Jacquelyn Carpenter, and that the protected activity Howard Carpenter participated in and adverse employment action Jacquelyn Carpenter was subjected to (denial of the opportunity to compete and interview for employment and the failure to hire) were not wholly unrelated.

12. Since at least May 28, 1997, the Defendant County has engaged in unlawful employment practices affecting Helga Murphy, in violation of Section 4(d) of the ADEA, 29 U.S.C. § 623(d). The unlawful employment practices included allegations that the Defendant County discriminated against Helga Murphy because of her association with Raymond Murphy, her husband, who has opposed an employment practice of the Defendant County that he in good faith believed was in violation of federal laws governing age discrimination in the workplace, such as, Section 4 of the ADEA, 29 U.S.C. § 623. The EEOC alleges that Lee County knew Raymond Murphy had participated in an activity protected by the ADEA (participation in an investigation of alleged age discrimination) when it took an adverse employment action against his wife, Helga Murphy, and that the protected activity Raymond Murphy participated in and adverse employment action Helga Murphy was subjected to (denial of the opportunity to compete and interview for employment and the failure to hire) were not wholly unrelated.

13. The effect of the practices complained of in the above paragraphs numbered seven through ten above has been to deprive Raymond Murphy and Howard Carpenter of equal employment opportunities and has otherwise adversely affected their status as employees because of their age and/or because they in good faith opposed an employment practice they believed was in violation of the Age Discrimination in Employment Act.

14. The effect of the practices complained of in above paragraphs numbered eleven and twelve has been to deprive Jacquelyn Carpenter and Helga Murphy of equal employment opportunities and has otherwise adversely affected their status as applicants for employment because of their association with individuals who in good faith opposed an employment practice they believed was in violation of the Age Discrimination in Employment Act.

15. The unlawful employment practices complained of in paragraphs seven through twelve above were and are willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant County, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in the failure to interview and/or hire, or to discharge (terminate or constructively discharge) any employee because of age, and/or because an individual has opposed an unlawful employment practice, and/or because an individual has associated with an employee who has opposed an unlawful employment practice and from engaging in any other employment practice which discriminates on the basis of age against individuals 40 years of age and older.

B. Order Defendant County to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals 40 years of age and older, and which eradicate the effects of its past and present unlawful employment practices.

C. Grant a judgment requiring Defendant County to pay appropriate back wages in an amount to be determined at trial, and an equal sum as liquidated damages and prejudgment interest

to those individuals whose wages are being unlawfully withheld as a result of the acts complained of above, including but not limited to, Raymond Murphy, Howard Carpenter, Jacquelyn Carpenter and Helga Murphy.

D. Grant a judgment requiring Defendant County to pay punitive damages in an amount to be determined at trial to those individuals who were retaliated against because they in good faith opposed an unlawful employment practice or who were retaliated against because of their association with an employee who opposed an unlawful employment practice, including but not limited to, Raymond Murphy, Howard Carpenter, Jacquelyn Carpenter and Helga Murphy.

E. Order Defendant County to make whole all individuals adversely affected by the unlawful practices described above, by providing the affirmative relief necessary to eradicate the effects of its unlawful practices, including but not limited to, training of employees, notice postings, the reinstatement of Raymond Murphy and Howard Carpenter and the rightful-place interviewing and/or hiring of Jacquelyn Carpenter and Helga Murphy.

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

G. 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.


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