



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

CONSUMERS ENERGY COMPANY,)

Defendant.)

Case No. 98-70846

Honorable
Arthur J. Tarnow

FILED

MAR 29 2001

CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

CONSENT DECREE

1. Plaintiff, the United States Equal Employment Opportunity Commission ("EEOC") commenced this action on February 26, 1998 in the United States District Court for the Eastern District of Michigan, Southern Division, alleging that the Defendant, Consumers Energy Company ("Consumers"), engaged in discriminatory employment practices which violated Title VII, by utilizing a pre-employment strength test for applicants for Meter Reader and Janitor positions which discriminated against female applicants.
2. As a result of settlement discussions, the EEOC and Consumers have resolved their differences and have agreed that claims for Charging Party, Debra Busard, and all similarly situated individuals to whom Claimant Identification Forms were sent in April, 1999, by the Independent Third Party ("ITP") are hereby settled and finally resolved by entry of this Consent Decree. It is the intent of the parties that this Consent Decree be a final and binding settlement in full disposition of any and all claims alleged in the Complaint against Consumers or in the Charge of

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Discrimination filed by Debra Busard, Charge No. 230-94-1443.

3. The EEOC is the agency of the United States government authorized by Title VII to investigate allegations of unlawful employment discrimination based upon gender, to bring civil actions to prohibit unlawful practices, and to seek relief for individuals affected by such practices.
4. Consumers is an employer engaged in an industry affecting commerce within the meaning of Title VII, 42 U.S.C. § 2000e, sections (g) and (h).
5. The parties acknowledge the jurisdiction of the United States District Court of the Eastern District of Michigan (Southern Division) over the subject matter and of the parties to this case for the purpose of entering this Decree and, if necessary, enforcing this Decree.
6. Venue is appropriate in the Eastern District of Michigan (Southern Division). For purposes of this Decree and for any proceedings related to this Decree only, Consumers agrees that all statutory conditions precedent to the institution of this lawsuit against it have been fulfilled.

FINDINGS

7. Having examined the terms and provisions of the Consent Decree and based on the pleadings, records, and stipulations of the parties, the Court finds the following:
 - A. The Court has jurisdiction over the subject matter of this action.
 - B. The terms and provisions of this Consent Decree are fair, reasonable and just. The rights of Consumers and the EEOC, and those for whom the EEOC seeks relief are adequately protected by this Decree.

C. The Consent Decree conforms with the Federal Rules of Civil Procedure and Title VII, and is not in derogation of the rights and privileges of any persons. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of the parties and those for whom the EEOC seeks relief.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Non-Discrimination

8. During the term of this Consent Decree, Consumers, its officers, agents, employees, and successors will comply with the provisions of Title VII with regard to sex discrimination. Consumers maintains that it has complied and continues to comply with the provisions of Title VII with regard to gender and other forms of discrimination.

Non-Retaliation

9. During the term of this Consent Decree and consistent with Consumers' existing practice, Consumers shall not take any action against any person, including Debra Busard or any similarly-situated individual, which constitutes intimidation, retaliation, harassment, or interference with the exercise of such person's rights under Title VII, because of the filing of Charge No. 230-94-1443 with the Michigan Department of Civil Rights/EEOC which forms the basis for the present case, or because such person(s) gave testimony or assistance or participated in any manner in the investigation which resulted in this action or in the discovery proceedings of this case.

Non-Admission

10. This Decree, being entered with the consent of the EEOC and Consumers, shall not constitute or be construed as an adjudication or finding on the merits of the EEOC's claims against Consumers and shall not be construed as an admission by Consumers of any violation of Title VII or any other law, rule or regulation dealing with or in connection with equal employment opportunity in regard to the EEOC's claims, or any claims alleged by Charging Party, Debra Busard or any of the similarly-situated individuals for whom the EEOC sought relief in this action. This Decree shall not be construed as evidence that any violation has occurred and shall not be admissible as evidence against Consumers in any proceedings or any forum other than in proceedings brought by the EEOC to enforce the terms of this Decree or in proceedings in which Consumers presents this Decree as a bar to any claim which has been resolved and dismissed by this Decree.

Covered Facility

11. The provisions of this Decree shall apply to all of Consumers Energy Distribution facilities in Michigan which hire Meter Readers and/or Janitors.

Dismissal With Prejudice

12. Subject to Paragraphs 13, 25 and 26 of this Consent Decree, this action shall, upon entry of the Consent Decree, be dismissed in its entirety with prejudice and without costs to any party.

Duration of Decree

13. This Consent Decree shall be in effect for a period of three (3) years from the date it is entered by the Court, and the Court shall retain jurisdiction to enforce all

terms in the Decree for three (3) years immediately following the Effective Date of the Decree. This Consent Decree and its terms shall automatically end without further action by the Court on the date which is three (3) years after the Effective Date of this Decree.

Monetary Settlement

14. Upon receipt of the original signed releases in the form attached hereto as Attachment B from Busard and any other claimants who receive any monies pursuant to the Consent Decree, Consumers shall pay, inclusive of all costs, interest and attorney fees, the total amount of \$220,000.00 (Two Hundred and Twenty Thousand Dollars) to Debra Busard and the similarly-situated individuals covered by the EEOC's lawsuit. The EEOC will determine the amount of money, if any, from the total settlement amount, that will be allocated to Debra Busard and to each similarly-situated individual by considering each person's interim earnings, mitigation efforts and level of participation in the case. The EEOC will then provide Consumers with the specific amount to be paid to each claimant so that it can issue checks made payable to each of the individuals. Consumers shall send each payment designated by the EEOC to Busard and the other individuals by certified mail within ten (10) days from the time the EEOC specifies the beneficiaries of the settlement proceeds. Within thirty (30) days of the date these payments are mailed, Consumers shall send to the EEOC's attorney of record a photocopy of the check sent to Busard and the other individuals, along with a copy of the certified mail delivery receipt. The dismissal of this action is final and bars any recovery by the EEOC for those similarly-situated individuals who

either failed to timely return the Claimant Identification Form mailed by the ITP in April, 1999, or are determined by the EEOC as not eligible to participate in the monetary settlement.

Equitable Relief

15. Consumers agrees that it will conduct training for the management and personnel officials who regularly make selection decisions to hire Meter Readers and Janitors, at its Energy Distribution facilities which employ meter readers and/or janitors, on Title VII as it relates to discrimination on the basis of gender. The training shall consist of a minimum of two (2) hours of live and/or video instructions and discussion, and shall be conducted by persons knowledgeable about Title VII. The training must be conducted within twelve (12) months after this Decree has been entered by the Court, and the EEOC must be notified, in writing, as to the type and method of training, length of training course(s) and the names and job titles of all attendees.
16. Consumers agrees that it will offer to hire Debra Busard into a Meter Reader or Janitor position if such job opening occurs during the time this Consent Decree is in effect and is within a 50-mile radius of her residence in Howell, Michigan, and provided she meets the qualifications for the position being offered. Consumers may offer Busard a position of comparable pay and benefits for which she is qualified if no Meter Reader or Janitor position is available. Busard is not obligated, however, to accept the alternative position. In the event Busard declines an offer of a Meter Reader or Janitor position, Consumers will be deemed to have fulfilled its obligations under this Paragraph 16 with regard to Busard.

Consumers will also offer to hire 11 similarly-situated individuals into Meter Reader or Janitor positions during the time this Consent Decree remains in effect. 36 similarly-situated individuals who, in response to the Claimant Identification Forms, expressed an interest in either working for or being hired by Consumers, will be eligible for consideration for the position of Meter Reader or Janitor. Consumers can choose to whom, among this group of 36 similarly-situated individuals, it wishes to extend an offer of employment. No person will be hired under the provisions of this Paragraph unless that person meets the qualifications of the position and can satisfy the terms and conditions of employment which apply to the position. Any offers extended to Busard or similarly-situated females prior to the entry of this Consent Decree will satisfy, in part or in total, the requirements of this Paragraph of the Decree. In the event Consumers determines that there are not 12 qualified individuals from the group of 37 persons referenced above (including Busard) and does not extend 12 job offers for Meter Reader or Janitor positions to persons from this group, Consumers will insure that at least 12 employment offers for Meter Reader or Janitor positions are made to females during the term of this Consent Decree.

17. Any person hired under this Consent Decree will be hired as a "new employee" of Consumers and will receive the wage rate in effect at the time of hire for Meter Readers and/or Janitors and such other benefits and terms and conditions of employment which govern the employment of new hires and which are in effect as of the date of hire. If any of the individuals who are offered a position with Consumers of Meter Reader or Janitor declines such offer, Consumers shall have

no obligation to make any further offers of employment under this Consent Decree given that twelve (12) job offers were extended.

18. Consumers agrees that it will not use its pre-employment strength test for the selection of Meter Readers or Janitors unless the provisions of Paragraph 19(a) below are satisfied.

19(a). During the period of the Consent Decree, Consumers will comply with the following requirement before resuming use of the pre-employment strength test for Meter Reader and/or Janitor applicants:

1. Consumers will notify the EEOC in writing of its intent to reinstate the pre-employment strength test for Meter Reader and Janitor applicants.
2. Within seven (7) days after notifying the EEOC of its intent to resume the test, Consumers will provide to the EEOC data, including job history data documentation, which show a majority progression. For purposes of this Consent Decree only, the parties agree that majority progression exists when 50% or more of the persons hired into Meter Reader or Janitor positions in the calendar year which is five years prior to the calendar year in which the strength test is resumed, who are still employed by Consumers on the date the test is resumed, have progressed into a Cluster A or B job as listed in Dr. Richard Reilly's December, 1993 Job Analysis Report. As an example, if Consumers desires to resume use of the strength test on January 1, 2000, majority progression would be determined by identifying the number of employees hired into Meter

Reader or Janitor positions during the 1995 calendar year who have moved into Cluster A or B jobs during the five-year period preceding resumption of the test. Similarly, if Consumers desires to resume use of the strength test on January 1, 2001, majority progression would be determined by identifying the number of employees hired into Meter Reader or Janitor positions during the 1996 calendar year who have moved into Cluster A or B jobs during the five year period preceding resumption of the test. The parties agree that data showing majority progression shall justify resumption of the pre-employment strength test for the calendar year in which the test is used during the term of this Consent Decree.

3. The EEOC shall have thirty (30) days from the date such data is provided to notify Consumers as to whether it agrees that majority progression exists. If the parties are in agreement, Consumers may resume use of the pre-employment strength tests for Meter Readers and/or Janitors. If the EEOC does not respond within thirty (30) days, Consumers is entitled to resume use of the test. For purposes of this Paragraph 19, majority progression within a five-year period will be measured using the date such persons were hired into a permanent Meter Reader or Janitor position from outside Consumers, or, if they were appointed to a permanent Meter Reader or Janitor job from a temporary position, from the date of their appointment to a permanent Meter Reader and/or Janitor position. If the EEOC disagrees with Consumers regarding

the existence of majority progression as defined in this Consent Decree,
the dispute procedures in Paragraph 19(b), below, will govern.

- (b) In case of any dispute under this section, or if necessary to enforce the terms of this section, either the EEOC or Consumers shall have the right to petition the Court or a Magistrate appointed by the Court on an expedited basis for a finding as to whether Consumers has presented sufficient information to establish a majority progression or whether a majority progression exists as defined in this Consent Decree. In case there is any dispute over whether the data support a majority progression, Consumers agrees that it will discontinue the use of the pre-employment strength test for Meter Readers and/or Janitors during the pendency of the dispute. Nothing in this Paragraph shall be construed as preventing Consumers from presenting new or updated information to the EEOC (and thereafter to the Court if necessary) in order to demonstrate that the condition for resuming the strength test is met.
- (c) Consumers shall be entitled to utilize the strength test at any time with respect to filling Category A and B positions without any required showing of a majority progression.
- (d) This Paragraph 19 is intended to provide the sole and exclusive remedy for any dispute regarding the resumption or continued use of the strength test during the period of this Consent Decree. Except for enforcement of the terms of this Paragraph, the EEOC shall not bring suit against Consumers seeking compensatory or punitive damages or monetary relief as a result of the resumption and continued use of the strength test during the period of this Consent Decree.

20. After the twelve (12) job offers identified in Paragraph 16 are extended, Consumers will, on a one-time basis, send a notice to all remaining similarly-situated persons in the group of 37 referenced in Paragraph 16 who were not extended an offer of employment, notifying them that they may reapply for possible employment with Consumers.

Posting of Notice

21. Consumers agrees that it shall post a copy of the Notice attached as Attachment A in a conspicuous location at all of its Energy Distribution facilities which employ Meter Readers and/or Janitors, where employee notices are posted. The Notice shall be posted for one (1) year. In the event that the Notice becomes defaced, marred or otherwise made unreadable, Consumers agrees to immediately post a readable copy of the Notice.

Reporting

22. Consumers shall send the EEOC documentation evidencing that job offers were extended to either twelve (12) individuals out of the group of 37 individuals identified in Paragraph 16 or to twelve (12) other females within the time period prescribed in Paragraph 16. Such documentation shall be provided within thirty (30) days of each offer. If Consumers does not extend job offers to twelve (12) of the 37 individuals identified in Paragraph 16, Consumers shall inform the EEOC, in writing, as to the reasons for not doing so thirty (30) days prior to the expiration of this Consent Decree.
23. Consumers will send documentation to the EEOC verifying that it sent notices to certain similarly-situated individuals inviting them to re-apply for work at

Consumers, as described in Paragraph 20. Such documentation shall be provided within thirty (30) days after each notice was sent to each individual. If Consumers does not send notices to all individuals identified in Paragraph 16, Consumers shall inform the EEOC, in writing, as to the reasons for not doing so thirty days prior to the expiration of this Consent Decree.

24. In January, 2002, Consumers shall provide to the EEOC, a list identifying by name, gender, application date and hire date (if applicable) all individuals who applied for Meter Reader and/or Janitor positions in Energy Distribution for the period January 1, 2000 through December 31, 2001. Consumers shall send a similar list to the EEOC in January, 2003, showing the same information for the calendar year 2002 and a final list to the EEOC in January, 2004, showing the same information for calendar year 2003.

Dispute Resolution and Compliance

25. The Court will have all available equitable power to enforce this Decree, including injunctive relief.
26. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court, and shall be required to give written notice to each other ten (10) days before moving for such review. Both parties may conduct expedited discovery under the Federal Rules of Civil Procedure for purposes of determining compliance with this Decree or defending against a claim of non-compliance, with fifteen (15) business days notice for depositions and access to documents, and

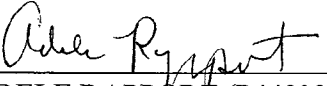
with fifteen (15) response days for written discovery.

Miscellaneous

27. If any provision(s) of the Consent Decree are found to be unlawful, only the specific provision(s) in question shall be affected and the other provisions will remain in full force and effect.
28. The terms of the Consent Decree are and shall be binding upon the present and future owners, officers, directors, employees, creditors, agents, trustees, administrators, successors, representatives, and assigns of Consumers, upon the EEOC, Debra Busard and all similarly-situated individuals to whom Claimant Identification Forms were sent in April, 1999.
29. Prior to the entry of this Consent Decree by the Court, the EEOC will deliver releases executed by Debra Busard and all similarly-situated individuals to the attorney of record for Consumers, in the form attached hereto as Attachment B.
30. This Consent Decree, inclusive of the stipulated text of the Press Release attached hereto as Attachment C, constitutes the entire agreement and commitments of the parties. Any modifications to this agreement must be mutually agreed upon and memorialized in a separate writing signed by Consumers and the EEOC.
31. When this Consent Decree requires the submission of any documents to the EEOC, if not otherwise indicated in the Decree or Attachment(s), they shall be mailed by certified mail to Adele Rapport, Regional Attorney, EEOC, Detroit District Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226.
32. The "Effective Date" of this Consent Decree is the date it is entered by the Court.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

GWENDOLYN YOUNG REAMS
Deputy General Counsel


ADELE RAPPORT (P44833)
Regional Attorney


STANLEY H. PITTS (P33519)
Supervisory Trial Attorney


LAURA A. BRODEUR (P44522)
Senior Trial Attorney

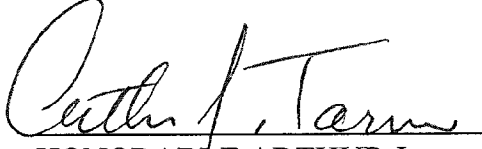
DETROIT DISTRICT OFFICE
477 Michigan Ave., Rm. 865
Detroit, MI 48226
(313) 225-6701

IT SO ORDERED:

DATE: _____


JAMES E. BRUNNER (P28051)
Consumers Energy Company
212 West Michigan Ave.
Jackson, MI 49201
(517) 788-1257


RICHARD J. SERVAK (P26152)
Miller, Canfield, Paddock & Stone, P.L.C.
150 West Jefferson, Suite 2500
Detroit MI 48226
(313) 963-6420


HONORABLE ARTHUR J.
TARNOW
U.S. District Judge

MAR 29 2001

ATTACHMENT A

NOTICE

This Notice is being posted to inform you of your rights guaranteed by federal law under Title VII, 42 U.S.C. §2000e, et seq., which prohibits discrimination against any employee on the basis of gender with regard to any term or condition of employment including hiring, lay-off, recall, promotion, discharge, pay, and fringe benefits; or in retaliation for having opposed unlawful employment practices.

The United States Equal Employment Opportunity Commission ("EEOC") is the federal agency which investigates Charges of unlawful employment discrimination and if necessary, brings lawsuit in federal court to enforce Title VII. Consumers has agreed to post this Notice as part of the resolution of a lawsuit brought against it by the EEOC on behalf of a group of similarly-situated females regarding Consumers' use of a pre--employment strength test on applicants for meter readers and/or janitors during the period of 1994-1998.

Consumers supports and will continue to comply with this federal law in all respects and will not take any action against any employee(s) because they have exercised their rights under this law.

DATED

CONSUMERS ENERGY

ATTACHMENT B

RELEASE

1. I, DEBRA BUSARD, for and in consideration of the sum of \$ _____, paid to me by Consumers Energy ("Consumers"), do hereby for myself, my heirs, executors, administrators, assigns, and agents release and forever discharge Consumers, its predecessors, successors, affiliates, and assigns, from any and all claims both judicial and administrative under Title VII of the Civil Rights Act, that I may have had, arising out of or relating to the facts alleged in Charge Number 230-94-1443 filed with the Equal Employment Opportunity Commission ("EEOC") or in the Complaint filed by the EEOC in the case entitled Equal Employment Opportunity Commission v. Consumers Energy, fna Consumers Power Company, Civil Action No. 98--70846, in the United States District Court for the Eastern District of Michigan, Southern Division.

2. I declare that I know and understand the contents of this Release, that I have executed this Release voluntarily and that this Release is part of the consideration given by me for settlement of my claim against Consumers. I understand that after signing this Release, I cannot proceed against any entity or person mentioned in this Release on account of any of the matters referred to in paragraph 1, above.

3. I understand and agree that this Release is given pursuant to the settlement embodied in the Consent Decree agreed to by the parties and to be entered by the Court.

DATED _____

Subscribed and sworn to before me this
_____ day of _____, 2000.

Notary Public
_____ County, Michigan

My commission expires: _____

ATTACHMENT C

PRESS RELEASE

FOR IMMEDIATE RELEASE

Thursday, March 29, 2001

Contact: Adele Rapport
Regional Attorney
Telephone: (313) 226-6701
TTY: (313) 226-7599

EEOC AND CONSUMERS ENERGY SETTLE LAWSUIT

DETROIT - The U.S. Equal Employment Opportunity Commission ("EEOC") announced today the settlement of a lawsuit filed under Title VII of the Civil Rights Act of 1964 against Consumers Energy Company. In its suit, the EEOC alleged that Consumers Energy engaged in discriminatory practices by utilizing a pre-employment strength test for applicants for Meter Reader and Janitor positions which discriminated against female applicants. Specifically, the strength test had the effect of excluding a disproportionate number of females from these entry level job positions. The EEOC contended that the test was unrelated to the entry level jobs and only relevant to measure ability to perform certain higher level jobs which required certain strength.

According to Consumers, prior to use of the strength test, more than half of the employees holding meter reader or janitor positions successfully bid into higher level jobs at Consumers Energy. Accordingly, Consumers answered that its pre-employment physical test was necessary and appropriate to promote the safety of its employees and the public it serves because such entry level jobs led to higher paying jobs requiring very physically

demanding work. The Company continues to maintain that the test met or exceeded all applicable EEOC regulations and requirements.

Pursuant to the settlement with the EEOC, Consumers Energy has agreed to continue to comply with Title VII and EEOC regulations governing employee selection procedures, to provide training for its management and personnel officials on Title VII as it relates to discrimination on the basis of gender, to offer Meter Reader positions to 12 qualified female applicants who were subject to the strength test, and to provide notice of hiring opportunities for the Meter Reader job position to other qualified female applicants who were subject to the strength test. The Company also agreed to provide monetary relief to be allocated to the female applicants as the EEOC deems appropriate. The EEOC and Consumers also agreed to circumstances under which Consumers can re-institute the test.

The EEOC enforces Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination based on race, color, religion, sex or national origin; the Age Discrimination in Employment Act, the Equal Pay Act; sections of the Civil Rights Act of 1991; and Title I of the Americans with Disabilities, which prohibits discrimination against people with disabilities in the private sector and state and local government. Additional information about the EEOC is available on the agency's web site at www.eeoc.gov.
