

FILED

SEP 29 2004

CLERK'S OFFICE, DETROIT-PSG
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

7
ORIGINAL

FILED

EQ04 SEP 29 P1 56
EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

U.S. DIST. COURT CLERK)
EAST DIST. MICH.)
DETROIT-PSG) Plaintiff,)

v.)

LABORERS' INTERNATIONAL UNION)
OF NORTH AMERICA)

Defendant.)

JUDGE : Edmunds, Nancy G.
DECK : S. Division Civil Deck
DATE : 09/29/2004 @ 13:44:26
CASE NUMBER : 2:04CV73812
CMP EEOC V. LABORERS
INTERNATIONAL (KC)

COMPLAINT
JURY TRIAL DEMAND

MAGISTRATE JUDGE KOWIVES

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Charging Party, Harold McKart ("McKart") and other similarly situated individuals who were adversely affected by such practices. As alleged with greater particularity in paragraph 8, the Commission alleges that the Defendant, Laborers' International Union of North America ("LIUNA" or "Union"), refused to place McKart and other similarly situated individuals on its out of work referral list at its Monroe, Michigan facility, without first submitting to pre-employment medical inquiries on the basis of their disability.

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 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Sections

706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, as amended, 42 U.S.C. §1981(a).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of Michigan, Southern Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f) (1) and (3).

4. At all relevant times, the Defendant Union has been doing business in the State of Michigan and the City of Monroe, and has continuously had at least fifteen (15) members.

5. At all relevant times the Defendant Union has continuously been engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 107(7) of the ADA, 42 U.S.C. § 12117(7), which incorporates by reference Section 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g) and (h).

6. At all relevant times, the Defendant Union has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than thirty (30) days prior to the institution of this lawsuit, Charging Party

McKart filed a charge with the Commission alleging violations of Title I of the ADA by the Defendant Union. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least February 2001, Defendant Union has engaged in unlawful employment practices at its Monroe, Michigan facility in violation of ADA Sections 102(a), 102(b)(1), and 102(d)(2)(A), 42 U.S.C. §§ 12112(a), 12112(b)(1), and 12112(d)(2)(A). These practices include, but are not limited to, Defendant Union's refusal to place McKart and other similarly situated individuals on its out of work referral list without first submitting to pre-employment medical inquiries physical exams and providing medical information.

9. The effect of the unlawful practices complained of in paragraph 8 has been to deprive McKart and other similarly situated individuals of equal employment opportunities and to otherwise adversely affect their status as employees because of their disability.

10. The above-mentioned, unlawful employment practices were intentional.

11. The unlawful employment practices complained of in paragraph 8 above were done with malice or with reckless indifference to the federally protected rights of McKart and other similarly situated individuals.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant Union, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any unlawful employment practice which discriminates on the basis of disability;

B. Order Defendant Union to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals with disabilities, and which eradicate

the effects of its past and present unlawful employment practices;

C. Order Defendant Union to make whole McKart and other similarly situated individuals by providing them with appropriate lost earnings and benefits, with pre-judgment interest, in amounts to be proven at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices;

D. Order Defendant Union to make whole McKart and other similarly situated individuals by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph 8 above, including but not limited to, emotional pain, suffering, inconvenience and loss of enjoyment of life, in amounts to be determined at trial;

E. Order Defendant Union to provide ADA training to all of its members and officers;

F. Order Defendant Union to pay McKart and other similarly situated individuals punitive damages for its malicious and reckless conduct, as described in paragraph 8 above, in amounts to be determined at trial.

G. Order Defendant Union to cease and desist its practice of making pre-employment inquiries and requiring medical exams prior to placement on the out of work referral list;

H. Order Defendant Union to pay McKart nominal damages;

I. Grant the Commission its costs in this action;

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

JURY TRIAL DEMAND

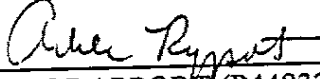
The Commission requests a jury trial on all questions of fact raised in this lawsuit.

Respectfully submitted,

ERIC S. DREIBAND
General Counsel

JAMES LEE
Deputy General Counsel

Equal Employment Opportunity Commission
1801 L. Street, N.W.
Washington, D.C. 20507


ADELE RAPPOORT (P44833)
Regional Attorney

DATED: September 29, 2004

STANLEY H. PITTS (P33519)
Supervisory Trial Attorney

DALE PRICE (P55578)
Trial Attorney

DETROIT DISTRICT OFFICE
Patrick V. McNamara Building
477 Michigan Ave., Room 865
Detroit, Michigan 48226
(313) 226-6701

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: MONROE

NGG/ PJK
73812

04 730 12

This civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the rules of court, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1994, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DEFENDANTS

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

(b) County of Residence of First Listed USA

County of Residence of First Listed MONROE

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Dale Price (P55578), Equal Employment Opportunity Commission, 477 Michigan Avenue, Room 865, Detroit, MI 48226 (313) 226-7808

Attorneys (If Known): NANCY G. EDWARDS

MAGISTRATE JUDGE KONIVES

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item 111)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PLA | DEF | | PLA | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Com mod ties/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus; <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multi district Litigation
- 7 Appeal to District Judge from Magistrate

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is an action under the Title I of the American with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 \$DEMAND _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) INSTRUCTIONS): IF ANY

DATE: 9-29-04 JUDGE: _____ DOCKET NUMBER: _____ SIGNATURE OF ATTORNEY OF RECORD: Dale Price

SUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
