

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROSLYN EVERSON, RANDY FOX,
STENNIS GEORGE, RICHARD IDEMUDIA,
and BRENDA L. SEBASTIAN, and a class
of all persons similarly situated,

Plaintiffs,

v.

CASE NO. 00-73133
HON. AVERN COHN
MAGISTRATE JUDGE CAPEL

STATE OF MICHIGAN DEPARTMENT
OF CORRECTIONS and BILL MARTIN,
individually and in his official capacity as
Director of the Michigan Department of
Corrections,

Defendants.

FILED
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CLERK
U.S. DISTRICT COURT
EAST DIST. MICH.
DETROIT

SACHS, WALDMAN, O'HARE, BOGAS
& McINTOSH, P.C.

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FIRST AMENDED COMPLAINT AND JURY DEMAND

NOW COME Plaintiffs ROSLYN EVERSON, RANDY FOX, STENNIS GEORGE,
RICHARD IDEMUDIA and BRENDA L. SEBASTIAN, by and through their attorneys SACHS,
WALDMAN, O'HARE, BOGAS & McINTOSH, P.C., and complains of Defendants, STATE
OF MICHIGAN DEPARTMENT OF CORRECTIONS and BILL MARTIN, as follows:

JURISDICTION

1. This civil action is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et seq. (hereafter "Title VII"), the Elliott-Larsen Civil Rights Act, MCLA 37.2101, MSA 3.548 (101) et seq. (hereafter "Elliott-Larsen") and 42 USC § 1983 to redress intentional sex discrimination in employment, under color of law, in violation of Title VII, Elliott-Larsen and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. The jurisdiction of this Court is invoked pursuant to Section 706(f)(3) of Title VII, 42 USC § 2000e-5(f)(3) and Title 28 USC §§ 1331, 1343(a)(3) and (4) and 1367(a). Jurisdiction for the declaratory relief sought and such other relief as may be predicated thereon is also premised upon the Declaratory Judgments Act, 28 USC §§ 2201 and 2202. Venue lies in the Eastern District of Michigan pursuant to Section 706(f)(3) of Title VII, 42 USC § 2000e-5(f)(3) and 28 USC § 1391(b).

PARTIES

3. Plaintiff ROSLYN EVERSON is a Corrections Officer E-9 employed by the State of Michigan Department of Corrections in the security bargaining unit represented by the Michigan Corrections Organization at the Robert Scott Correctional Facility located in Plymouth, Michigan. Ms. Everson resides in Detroit, Michigan, has been employed by the Michigan Department of Corrections since November, 1985 and is aggrieved by the unlawful discriminatory practices alleged below.

4. Plaintiff RANDY FOX is a Resident Unit Officer E -10 (RUO) employed by the State of Michigan Department of Corrections in the security bargaining unit represented by the Michigan Corrections Organization at the Camp Branch Correctional Facility located in Coldwater

Michigan. Mr. Fox resides in Quincy, Michigan, has been employed by the Michigan Department of Corrections since February, 1988, and is aggrieved by the unlawful discriminatory practices alleged below.

5. Plaintiff STENNIS GEORGE is a Resident Unit Officer E-10 employed by the State of Michigan Department of Corrections in the security bargaining unit represented by the Michigan Corrections Organization (MCO) at the Robert Scott Correctional Facility located in Plymouth, Michigan. Mr. George resides in Oak Park, Michigan, has been employed by the Michigan Department of Corrections since June, 1987, and is aggrieved by the unlawful discriminatory practices alleged below.

6. Plaintiff RICHARD IDEMUDIA is a Resident Unit Officer E-10 employed by the State of Michigan Department of Corrections in a bid job (Segregation Unit) in the security bargaining unit represented by the Michigan Corrections Organization (MCO) at the Western Wayne Correctional Facility located in Plymouth, Michigan. Mr. Idemudia resides in Detroit, Michigan, has been employed by the Michigan Department of Corrections since August, 1986, and is aggrieved by the unlawful discriminatory practices alleged below.

7. Plaintiff BRENDA L. SEBASTIAN is a Corrections Officer E-8 employed by the State of Michigan Department of Corrections in the security bargaining unit represented by the Michigan Corrections Organization (MCO) at the Camp Cassidy Lake Correctional Facility located in Chelsea, Michigan. Ms. Sebastian resides in Albion, Michigan, has been employed by the Michigan Department of Corrections since May 3, 1999, and is aggrieved by the unlawful discriminatory practices alleged below.

8. The Defendant STATE OF MICHIGAN DEPARTMENT OF CORRECTIONS is a governmental unit, acting under color of state law, and is an employer engaged in an industry

affecting commerce which has and had fifteen (15) or more employees for each working day in each of twenty or more calendar weeks in the current or proceeding calendar year, within the meaning of subsections 701(a) and (b) of Title VII, 42 USC § 2000e(a) and (b).

9. Defendant BILL MARTIN is duly appointed Director of the State of Michigan Department of Corrections.

CLASS ACTION ALLEGATIONS

10. This action is brought as a class action pursuant to Rule 23(a) and (b)(1) and (2) of the Federal Rules of Civil Procedure.

11. The class is composed of all correctional officers and related classes of employees employed by the State of Michigan Department of Corrections in the security bargaining unit represented by Michigan Corrections Organization who have been or will be adversely affected by the gender-based assignments at the Camp Branch, Camp Cassidy Lake, Robert Scott and Western Wayne Correctional facilities and any other state correctional facilities at which women prisoners are housed.

12. The class is so numerous that joinder of all members is impracticable.

13. There are questions of law and fact common to the class as a whole, including but not limited to the question of whether Defendants have the right to make gender-based assignments to certain positions at the Camp Branch, Camp Cassidy Lake, Robert Scott and Western Wayne Correctional Facilities and any other state correctional facilities at which women are housed.

14. The claims of the named representative Plaintiffs are typical of the claims of the class.

15. The Plaintiffs and their attorneys will fairly and adequately protect the interests of the class.

16. Prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendant; and adjudication with respect to individual claims would, as a practical matter, be dispositive of the interest of other members of the class not parties to that adjudication or substantially impair or impede their ability to protect their interest.

17. The Defendant has acted on grounds generally applicable to the class, making injunctive and declaratory relief appropriate with respect to the class as a whole.

COUNT I

(TITLE VII OF THE CIVIL RIGHTS ACT OF 1964)

18. Prior to instituting this action Plaintiffs EVERSON, FOX, GEORGE, IDEMUDIA and SEBASTIAN filed timely charges of discrimination against Defendant STATE OF MICHIGAN DEPARTMENT OF CORRECTIONS, with the United States Equal Employment Opportunity Commission (EEOC), alleging that they had been or were about to be adversely affected by Defendants' plan to make gender-based assignments at the Camp Branch, Camp Cassidy Lake, Robert Scott, Western Wayne and other state correctional facilities at which women are housed.

19. Prior to instituting this action, Plaintiffs EVERSON, FOX, GEORGE, IDEMUDIA and SEBASTIAN have requested and/or received notices of Right-to-Sue letters from the United States Department of Justice.

20. This action has been commenced within ninety (90) days of the earliest date upon which a Right-to-Sue letter was or will be received by one of the representative Plaintiffs.

21. In or about September, 1999, Defendants began to make gender-based assignments to and reassignments from Resident Unit Officer E-10 (RUO) positions and certain other positions

at the Robert Scott Correctional Facility located in Plymouth, Michigan, even though sex is not a bona-fide occupational qualification reasonably necessary to the performance of such positions.

22. Upon information and belief, Defendants intend to continue to make gender-based assignments to and reassignments from the Resident Unit Officer E-10 (RUO) positions at the Robert Scott Correctional Facility located in Plymouth, Michigan until such time as all Resident Unit Officer positions and all other housing unit positions at the facility are held by women officers, even though sex is not a bona-fide occupational qualification reasonably necessary to the performance of those positions.

23. On or about January 27, 2000 Defendants involuntarily transferred a female "green tag" or probationary Corrections Officer to a housing unit position at Camp Cassidy Lake, a state correctional facility located in Chelsea, Michigan. Said assignment was gender-based even though sex is not a bona-fide occupational qualification reasonably necessary to the performance of such position.

24. Upon information and belief, Defendants intend to continue to make gender-based assignments to and reassignments from the housing unit positions at the Camp Cassidy Lake and other state correctional facilities and centers which house women prisoners until all housing unit positions are held by women, even though sex is not a bona-fide occupational qualification reasonably necessary to performance of those positions.

25. Defendants have announced that beginning in the Summer or Fall, they intend to make gender-based assignments to and reassignments from the Resident Unit Officer (E-10) positions and other certain positions at the Camp Branch Correctional Facility located in Coldwater, Michigan, and the Western Wayne Correctional Facility located in Plymouth Michigan, even though sex is not a bona-fide occupational qualification reasonably necessary to

the performance of such positions.

26. Upon information and belief, Defendants intend to continue to make gender-based assignments to and reassignments from the Resident Unit Officer E-10 (RUO) positions at the Camp Branch and Western Wayne Correctional Facilities until all Resident Unit Officer E-10 (RUO) positions and other housing unit positions are held by women, even though sex is not a bona-fide occupational qualification reasonably necessary to performance of those positions.

27. Defendants' practice of making gender-based assignments to and reassignments from the Resident Unit Officer E-10 (RUO) positions and certain other positions at the Robert Scott, Camp Branch, Camp Cassidy Lake, Western Wayne, and other state correctional facilities which house women prisoners, even though sex is not a bona-fide occupational qualification reasonably necessary to the performance of those positions, constitutes intentional discrimination based upon sex in violation of Section 703(a)(1) of Title VII, 42 USC § 2000e-2(a)(1).

28. As a direct and proximate result of Defendants' actions, Plaintiffs have and will continue to suffer substantial damages, including but not limited to loss of wages, promotional opportunities, contractual rights and other benefits they would have enjoyed but for the intentional discrimination complained of.

COUNT II

(ELLIOTT-LARSEN CIVIL RIGHTS ACT)

29. Plaintiffs repeat and reallege paragraphs 1-28 as if fully set forth herein, paragraph for paragraph.

30. Defendants practice of making gender-based assignments to and reassignments from the Resident Unit Officer E-10 (RUO) positions and certain other positions at the Robert Scott, Camp Branch, Camp Cassidy Lake, Western Wayne, and other state correctional facilities which

house women prisoners, even though sex is not a bona-fide occupational qualification reasonably necessary to the performance of those positions, constitutes intentional discrimination based upon sex in violation of Section 202(1)(a) of the Elliott-Larsen Civil Rights Act, MCLA 37.2202(1)(a), MSA 3.548(202)(1)(a).

31. As a direct and proximate result of Defendants' actions, Plaintiffs have and will continue to suffer substantial damages, including but not limited to loss of wages, promotional opportunities, contractual rights and other benefits they would have enjoyed but for the discrimination complained of.

COUNT III

(42 USC § 1983 against Defendant MARTIN individually only)

32. Plaintiffs repeat and reallege paragraphs 1-31 as if fully set forth herein, paragraph for paragraph.

33. In or about September, 1999 and continuing to date, Defendant MARTIN, acting under color of law and pursuant to his authority as Director of the Michigan Department of Corrections, announced that the Department intended to begin making gender-based assignments to and reassignments from the position of Resident Unit Officer E-10 (RUO) and certain other positions at the Robert Scott, Camp Branch, Camp Cassidy Lake, Western Wayne Correctional Facilities and other state correctional facilities which house women prisoners.

34. Upon information and belief, Defendants have adopted a policy and practice of assigning only female officers and refusing to assign male officers to Resident Unit Officer E-10 (RUO) positions and all other housing unit positions at the Robert Scott, Camp Branch, Camp Cassidy Lake, and Western Wayne Correctional Facilities and other state correctional facilities which women prisoners are housed.

35. The actions of the Defendants in assigning only female officers to Resident Unit Officer E-10 (RUO) positions and in reassigning certain male officers from their Resident Unit Officer E-10 (RUO) positions at the Robert Scott, Camp Branch, Camp Cassidy Lake, Western Wayne, and other state correctional facilities which house women prisoners, because of or on the basis of their gender, were taken pursuant to the policy and practice of the Defendant State of Michigan Department of Corrections.

36. Defendants' actions in making assignments to and reassignments from the Resident Unit Officer E-10 (RUO) positions and certain other positions at the Robert Scott, Camp Branch, Camp Cassidy Lake, Western Wayne, and other state correctional facilities which house women prisoners, because of or on the basis of gender abridge Plaintiffs' right to equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution.

37. As a direct and proximate result of the Defendants' actions, Plaintiffs have suffered and will continue to suffer substantial damages, including but not limited to loss of wages, promotional opportunities, contractual rights and other benefits they would have enjoyed but for the Defendants' violation.

PRAYER FOR RELIEF

WHEREFORE, this court enter judgment against Defendants for the following relief:

1. A declaratory judgment pursuant to 28 USC 2201 declaring that Defendants' actions in making gender-based assignments to Resident Unit Officer E-10 (RUO) positions and certain other positions at the Robert Scott, Camp Branch, Camp Cassidy Lake, Western Wayne Correctional Facilities and any other state correctional facilities where women are housed are unlawful and violative of the rights of Plaintiffs under Title VII of the Civil Rights Act of 1964, *supra*, the Elliott-Larsen Civil Rights Act, *supra* and the Equal Protection Clause of the

Fourteenth Amendment;

2. Preliminary and permanent injunctive relief pursuant to Fed. R. Civ. P. 65 enjoining any further discrimination against Plaintiffs because of or on the basis of gender;

3. An award to Plaintiffs of back pay or damages for lost earnings in the amount they would have earned, with interest, absent the Defendants' unlawful discrimination against them;

4. An award to Plaintiffs of compensatory damages sufficient to compensate them for their mental anguish and emotional distress, embarrassment and humiliation, and damage to their professional reputation as a result of Defendants' actions;

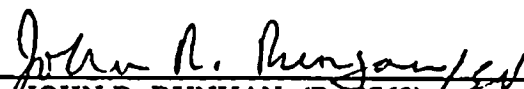
5. An award to Plaintiffs of punitive damages against Defendant MARTIN as a result of the reckless indifference with which he violated Plaintiffs' right to nondiscriminatory treatment and equal protection of the laws;

6. As award to Plaintiffs of the costs and disbursements of this action, including reasonable attorney fees pursuant to Title VII of the Civil Rights Act of 1964, *supra*, the Elliott-Larsen Civil Rights Act, *supra* and the Civil Rights Attorney's Fees Awards Act of 1976, 42 USC 1988(b).

SACHS, WALDMAN, O'HARE, BOGAS &
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Dated: September 27, 2000