

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	06-4331
v.)	TMG
)	
)	
HANNABERY ELECTRIC, INC.,)	
d/b/a/ HANNABERY HVAC,)	<u>FIRST AMENDED</u>
)	<u>COMPLAINT</u>
)	
Defendant.)	<u>JURY TRIAL DEMAND</u>

NATURE OF 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 Charging Party Michael Morrone and a class of individuals who were affected by such practices. As described with greater particularity in Paragraph 7 below, the Commission alleges that Defendant subjected older workers to disparate terms and conditions of employment including discharge, loss of raises, bonuses and benefits, negative performance evaluations, and excessive scrutiny of their job performance due to their ages.

In addition, the Commission alleges that Mr. Morrone and the class members were retaliated against for their complaints of age discrimination, or opposition to acts they believed to be illegal under the Age Discrimination in Employment Act. Because of the age discrimination and retaliation, Mr. Morrone and the class members suffered damages, including backpay, frontpay, liquidated damages, benefits, bonuses and out of pocket losses.

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(c) and 17 of the Fair Labor Standards Act of 1938 (the “FSLA”), as amended, 29 U.S.C. §§ 216(c) and 217.

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

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 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 Employer, Hannabery Electric, Inc., a Pennsylvania corporation d/b/a Hannabery HVAC, (the “Employer”), has continuously been doing business in the Commonwealth of Pennsylvania and the Cities of Allentown and/or Quakertown, and has continuously had at least 20 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

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 December 2001, Defendant Employer has engaged in unlawful employment practices at its facility at 200 Schwantz Road in Allentown, Pennsylvania, in violation of Section 4(a)(1) and (d) of the ADEA, 29 U.S.C. § 623 (a)(1), (d) as follows:

- (a) After Gary Hall, whose date of birth is April 17, 1936, filed a charge with the EEOC alleging that Defendant violated the ADEA, Defendant's Owner stated to Customer Service Manager Michael Morrone: "I want that SOB fired." Mr. Morrone was ordered to follow Hall and document his every move. Mr. Morrone refused on the grounds that such activity would be retaliation under the ADEA. Mr. Morrone's date of birth is December 1, 1954.
- (b) Installation Manager Roy Vancamp criticized Mr. Morrone for not being a "team player" and repeated the instruction to "get something on" Gary Hall. Morrone continued to refuse and Vancamp told him that Defendant could find a "22-year-old right out of vocational school" to do his Morrone's job. On his 2004 performance evaluation, Defendant criticized Morrone's performance because he [Morrone] "didn't handle ... well" the matter of "documenting Gary [Hall's] performance." Defendant began to complain about Morrone's work restrictions and Vancamp told Morrone that if he could not climb into an attic, Defendant

may need to get a “younger guy” to do the job.

- (c) Defendant began to scrutinize Mr. Morrone’s performance, providing him with raises and bonuses lower than those of his co-workers, issuing negative performance appraisals to him, and placing him on a “Last Chance Agreement” in December 2004.
- (d) Starting in 2003, Fleet Manager Charles Snyder, whose date of birth is January 9, 1950, was told by Installation Manager Roy Vancamp to document and “get something on” Gary Hall and Larry Dierkes, whose date of birth is October 3, 1956. Snyder, who had previously heard Vancamp refer to older workers as “dead wood,” refused to document these workers in the protected age group. Defendant then criticized Snyder’s performance, leading to his discharge on or about March 14, 2006.
- (e) Prior to Mr. Snyder’s discharge, Vancamp told Snyder of his preference for hiring younger workers, stating that Defendant intended to hire and recruit younger workers just out of vocational school and ordering Snyder to assist in this effort.
- (f) In 2003, Gary Hall’s job was changed and he was told that he would not be given any more raises or bonuses. Manager Lou Gitlin told HVAC Technician James O’Brien that Defendant wanted to “get rid of” Hall and replace him with younger workers.
- (g) HVAC Technician James O’ Brien, whose date of birth is December 29, 1949, was called “dead wood” by Service Manager Mike Smith in or around June 2005. Approximately one week later, Installation Manager Vancamp called O’Brien “dead wood,” and O’Brien protested this insult. Vancamp then informed O’Brien

that he should be replaced with “someone younger.” As early as 2003, Vancamp had told O’Brien and Morrone that company should get rid of them and hire “younger guys.”

- (h) In or around August 2005, O’Brien protested to Vancamp that Defendant was targeting him because of his age and stated: “Look what happened to Gary Hall... is this what you do with your older guys?” Vancamp responded that O’Brien should take time off under the Family Medical Leave Act.
- (i) Following a December 2005 knee injury to O’ Brien, Defendant caused him to lose approximately \$6,000 in Workers’ Compensation benefits and stopped paying his medical benefits. Upon information and belief, Defendant continued to pay medical benefits for younger comparators.
- (j) Customer Service Technician Larry Dierkes, who Defendant had sought to “document” by asking James O’Brien to “get something” on him, was discharged on August 17, 2004, allegedly for not returning an intimidating medical form. Other older workers were discharged for this same alleged reason.

8. The effect of the practices complained of in Paragraph 7 above has been to deprive Michael Morrone and a class of individuals of equal employment opportunities and otherwise adversely affect their status as employees because of their ages and/or in retaliation for their participation in activities protected by the ADEA.

9. The unlawful employment practices complained of in Paragraph 7 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 Employer, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practices which discriminate on the basis of age against individuals 40 years of age and older or retaliates against employees who have engaged in activities protected by the ADEA.

B. Order Defendant Employer 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 Employer to pay appropriate back wages and benefits in an amount to be determined at trial, an equal sum as liquidated damages, and prejudgment interest to Michael Morrone and a class of individuals who have been subjected to age discrimination and/or retaliatory treatment.

D. Order Defendant Employer 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 the hiring of Charles Snyder, Larry Dierkes, and any other class member so affected, or frontpay in lieu thereof if hiring is not feasible.

E. Order Defendant Employer to make whole Charging Party Michael Morrone and all individuals adversely affected by the unlawful practices described above, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices described above, including humiliation, anxiety, depression, pain and suffering, and exacerbation

of physical injuries and conditions, in amounts to be determined at trial.

F. Order Defendant Employer to pay Charging Party Michael Morrone and all individuals adversely affected by the unlawful practices described above punitive damages for its malicious and reckless conduct described above, in amounts to be determined at trial.

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

H. Award the Commission its costs in this action.

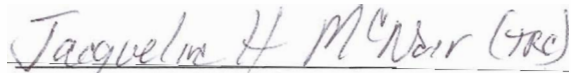
JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

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