

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

Civil Action No. 03-5091

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and SAMI MARTINEZ,

Plaintiff/Intervenor,

v.

NORTH CENTRAL SUPPLY, INC.,

Defendant.

CONSENT DECREE

I. RECITALS

1. This matter was instituted by Plaintiff, Equal Employment Opportunity Commission ("Commission" or "Plaintiff" or "EEOC"), an agency of the United States, alleging that Defendant North Central Supply discriminated against Sami Martinez because of her sex and pregnancy, in violation of Section 703(a) of Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000e-2(a).

2. The Commission and Defendant, desiring to settle this action by an appropriate Consent Decree ("Decree"), agree to the jurisdiction of this Court over the parties and the subject matter of this action, and agree to the power of this Court to enter a Consent Decree enforceable against Defendant.

3. This Decree is final and binding upon the parties as to the issues resolved, as well as upon their successors and assigns.

4. The parties agree that this Consent Decree fairly resolves the issues alleged in this lawsuit, and constitutes a complete resolution of all of the Commission's claims of unlawful employment practices under Title VII that were made or could have been made in this action.

5. This agreement, being voluntarily entered into by the Parties as a result of private bargaining, shall not constitute an admission of any violation of law or an adjudication of the merits of the case.

6. For the purpose of amicably resolving disputed claims, the Defendant joins with the Commission in requesting this Court to adjudge as follows:

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION

7. The parties stipulate to the jurisdiction of the Court over the parties and subject matter of this action, and have waived the entry of findings of fact and conclusions of law.

8. The duration of this Decree shall be five years from the date of signing by the Court, subject to the reporting provisions at Section IV(C).

III. ISSUES RESOLVED

9. This Decree resolves and releases all of the EEOC's claims for damages arising out of the issues and claims set forth in Civil Action No. 03-5091.

personnel pursuant to this paragraph, said interviews shall be scheduled with due regard to the convenience of the individual to be interviewed.

14. Each party shall bear its own costs in conjunction with the maintenance of records, preparation of any report, access or copying of records, or interviews of employees.

15. Defendant shall provide semi-annual reports for each six month period following the date the Court signs the Decree. The reports shall be due thirty days following the end of the respective six month period, except the final report which shall be submitted to the Commission two weeks prior to the date on which the Consent Decree is to expire.

16. Each report shall provide the following information:

- 16.1 The name, address and telephone number of each person, if any, making a complaint of gender discrimination to the Defendant or to any federal, state, or local government agency; the date of the complaint, and the name of the individual(s) who allegedly engaged in the discriminatory conduct;
- 16.2 A brief summary of each complaint, including the date of the complaint, the name of the individual(s) who allegedly engaged in the discriminatory conduct, the Defendant's response to the complaint, the name of the person who investigated or responded to the complaint, and what, if any resolution was reached;
- 16.3 Copies of all documents memorializing or referring to the complaint, investigation, and/or resolution thereof.
- 16.4 In the event that no complaints of gender discrimination have been made during the time period of any semi-annual report, the Defendant shall then

provide a report which states that there have been no complaints made during said time frame.

C. Posting of Notice

17. Within five business days of the entry of this Consent Decree, Defendant shall post in a conspicuous place in each of its facilities, where notices to employees and applicants for employment are customarily kept or posted, the Notice attached as Attachment A to this Decree. The Notice shall remain posted for the duration of this Decree. If the Notice becomes defaced or illegible, Defendant will replace it with a clean copy. Defendant shall certify to the Commission, in writing, within twenty (20) days of entry of this Decree that the Notice has been properly posted.

D. Gender/Pregnancy Discrimination Policy

18. Defendant shall adopt or maintain a policy prohibiting discrimination based on sex or pregnancy, and proscribing retaliation against any employee who complains about gender or pregnancy discrimination. ("Discrimination Policy"). For the duration of this Decree, Defendant shall post in a conspicuous place in each of its facilities, where notices to employees and applicants for employment are customarily kept or posted, a copy of the Discrimination Policy. For the duration of this Decree, Defendant shall provide each employee a copy of the Discrimination Policy. Within thirty days of the execution of this Decree, Defendant shall forward a copy of its Discrimination Policy to the Commission and a letter indicating that the Discrimination Policy has been posted and distributed.

E. Training

19. For the duration of the term of this Decree, the Defendant shall conduct annual training for all its supervisory and managerial employees, on the subject of compliance with

10. Defendant and its officers, agents, employees, successors, and all other persons in active concert or participation with any of them will not interfere with the relief herein ordered, but shall cooperate in the implementation of this Decree.

IV. COMPLIANCE

A. Injunctive Relief

11. During the term of this Consent Decree, Defendant, its officers, agents, successors and other persons in active concert or participation with it, or any of them, is enjoined from engaging in any employment practice which discriminates on the basis of sex.

12. During the term of this Consent Decree, Defendant, its officers, agents, successors and other persons in active concert or participation with it, or any of them, is enjoined from engaging in reprisal or retaliation of any kind against any person because of such person's opposition to any practice made unlawful under Title VII, because of such person's filing a charge, testifying or participating in any manner in any investigation, proceeding or hearing under any of these statutes, because such person was identified as a witness or possible witness for the Commission, because such person participated in any manner in this action or in the investigation giving rise to this action, or because such person is designated as an aggrieved individual under this Decree.

B. Record Keeping and Reporting Provisions

13. Defendant shall maintain all records concerning its implementation of this Consent Decree during the term of the Decree. The Commission shall have the right to interview any personnel employed by Defendant for the purpose of determining Defendant's compliance with the terms of this Consent Decree. In the event the Commission exercises its right to interview

federal laws prohibiting employment discrimination, including specifically Title VII provisions prohibiting discrimination based on sex or pregnancy, and provisions prohibiting retaliation against individuals who complain about perceived discrimination.

20. Defendant agrees that the training will be conducted by an outside consultant and, the first such session will take place within ninety days after approval of this Decree.

21. Each seminar training session shall be no less than 4 hours of instruction. The registry of attendance shall be submitted to the EEOC and retained by Defendant for the duration of this Decree.

22. The Commission, at its discretion, may designate one or more Commission representatives to attend any of the seminar-training sessions described above, and the representative(s) shall have the right to attend and fully observe all of the sessions.

V. RETENTION OF JURISDICTION AND ENFORCEMENT

23. Enforcement may be had by the Commission or Defendant petitioning the Court for enforcement of the terms of this Decree. Upon the Court approving this Decree, the EEOC claims against Defendant shall be dismissed with prejudice from this action, except that the parties expressly agree that the Court shall retain jurisdiction of this case for purposes of compliance with this Decree and entry of such further orders or modifications as may be necessary or appropriate to effectuate equal employment opportunities for employees.

24. There is no private right of action to enforce Defendant's obligations under the Decree and only the Commission and Defendant, or their successors or assigns may enforce compliance herewith.

VI. EEOC AUTHORITY

25. With respect to matters or charges outside the scope of this Decree, this Decree shall in no way limit the powers of the Commission to seek to eliminate unrelated employment practices or acts made unlawful by any of the statutes over which the EEOC has enforcement authority.

VII. COSTS AND ATTORNEY'S FEES

26. Each party shall be responsible for and shall pay its own costs and attorney's fees.

VIII. NOTICE

27. Any notice, report, or communication required under the provisions of this Decree shall be sent by certified mail, postage prepaid, to the appropriate parties as follows:

Regional Attorney
Denver District Office
Equal Employment
Opportunity Commission
303 E. 17th Avenue, Suite 510
Denver, CO 80203

North Central Supply
Mr. Ronald A. Colerick
President
North Central Supply
P.O. Box 380
Rapid City, SD 57709-0380

SO ORDERED this ____ day of _____, 2005.

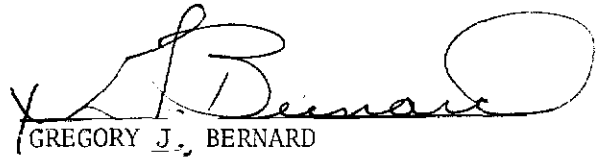
BY THE COURT:

United States District Judge

APPROVED AS TO FORM:

Joseph H. Mitchell
Regional Attorney

Nancy A. Weeks
Supervisory Trial Attorney



GREGORY J. BERNARD
Thomas Nooney Braun Solay & Bernard
P. O. Box 8108
Rapid City, SD 57709

Attorneys for Defendant



Kim R. Rogers
Trial Attorney
(303) 866-1361

Equal Employment Opportunity Commission
303 East 17th Avenue, Suite 510
Denver, CO 80203

Attorneys for Plaintiff

BY CONSENT:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

BY: Joseph H. Mitchell 9/12/05
Joseph H. Mitchell Date
Regional Attorney

BY: Ronald A. Colerick 9/12/05
North Central Supply Date
Ronald A. Colerick
President