

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
~~COBURN/ADVENTIS~~

RECEIVED
IN CLERK'S OFFICE
FEB 26 2002
U.S. DISTRICT COURT
MID. DIST. TENN.

TABLE OF AUTHORITIES
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

MURRAY, INC. and UAW
INTERNATIONAL UNION 1621,

Defendants.

CIVIL ACTION NO. 1-00-0123
Judge Trauger

CONSENT DECREE

This action was instituted by the Equal Employment Opportunity Commission (hereinafter, the "Commission") 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 Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, against Murray, Inc. (hereinafter, "Defendant"), to remedy unlawful practices alleged in the Complaint filed in this action.

Specifically, the Complaint alleged Defendant violated Sections 102(a), (b) and (d) of the Americans with Disabilities Act, 42 U.S.C. § 12112(a), (b), and (d) by conducting unlawful medical inquiries and examinations of employees which resulted in the disqualification of certain employees from holding positions as lift truck operators. The parties, being desirous of settling this action, stipulate to the jurisdiction of this Court.

This Consent Decree does not and shall not constitute an admission by Defendant of the allegations of the Complaint. The parties have consented to the entry of this Decree to avoid the

This document was entered on the docket in compliance with Rule 58, and/or Rule 79(a) FRCP, on 2/28/02, OT

45

burdens of further litigation. Accordingly, the parties mutually agree to settle all issues between them.

The Court has reviewed the terms of the proposed Consent Decree in light of the applicable laws and regulations and the statements and representations of counsel for all parties, and hereby approves the Consent Decree.

NOW, THEREFORE, the Court being fully advised in the premises, it is hereby ORDERED, ADJUDGED AND DECREED:

I. SCOPE AND DURATION OF DECREE

A. This Consent Decree resolves all issues and claims arising out of the Commission's Complaint alleging unlawful employment policies and practices at Defendant's Lawrenceburg, Tennessee facility arising out of Charge No. 253-98-0759 filed with the Commission by Charging Party Raymond T. Waits. Notwithstanding any provisions contained in this Decree, this agreement shall not be considered in any manner to be dispositive of any charge now pending before any office of the Commission other than Charge No. 253-98-0759.

B. The provisions of this Consent Decree will be effective from the date the decree is entered by the Court and shall continue to be effective and binding upon the parties to this action for a period of one year from the date of the entry of this decree.

II. INJUNCTIVE RELIEF

A. Defendant, its officers, agents, employees, and all persons acting in concert with the Defendant are enjoined and must immediately cease its practice of excluding, *per se*, persons with certain specific conditions from performing as forklift/lift truck operators, and must revise any medical qualification policy that operates to that effect.

B. Defendant Murray, its officers, agents, employees, and all persons acting in concert with Defendant will immediately cease its practice of conducting triennial medical exams and triennial medical inquiries of current forklift/lift truck drivers that would reveal whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such exams/inquiries are job-related and consistent with business necessity. Defendant agrees that instead of screening for medical conditions, the triennial screening process will test the employee's current ability to demonstrate specific skills and physical requirements for the fork-lift position. Any specific skills and physical requirements must satisfy requirements as qualification standards pursuant to 42 U.S.C. § 12112(b)(6).

C. Within fourteen (14) days of entry of this Decree, Defendant shall revise or modify as necessary its current medical screening policy for lift truck operators in order to conform with the requirements of paragraph B above.

III. INDIVIDUAL AND AFFIRMATIVE RELIEF

A. Defendant agrees to pay Raymond Tommie Waits five thousand dollars (\$5,000) within ten (10) days after entry of this Consent Decree to resolve all claims arising from EEOC charge number 253-98-0759 and from the Complaint and Amended Complaint filed in this

action. Defendant will issue a certified check to Mr. Waits at 4311 N. 43 Highway, Ethridge, Tennessee, 38456. A copy of Mr. Wait's check will be concurrently mailed to:

Katharine W. Kores, Regional Attorney,
Equal Employment Opportunity Commission
1407 Union Avenue, Suite 621
Memphis, Tennessee 38104

B. Effective immediately, after the offer of employment in a forklift/lift truck position has been made, Defendant may require a medical exam or make medical inquiries of the job applicant or the successful bidder under the Collective Bargaining Agreement regardless whether he/she already is employed by Murray in some other job. Defendant may also condition an offer of employment on the results of such examination/inquiries, provided that Defendant's actions under this paragraph are consistent with Section 12112(d)(3) of the ADA, 42 U.S.C. § 12112(d)(3).

C. Any medical qualification criterion applied by Defendant under paragraph B which screens out or tends to screen out or otherwise deny a job or forklift operator license to an otherwise qualified individual with a disability must be job-related and consistent with business necessity and performance cannot be accomplished by reasonable accommodation.

D. Defendant may require that any fork lift/lift truck operator undergo a fitness for duty examination after he/she causes any accident involving his/her fork lift/lift truck, or after Murray acquires other evidence that would cause a reasonable person to inquire as to whether that operator is still capable of performing his/her job.

E. Defendant will notify each employee on Exhibit 1 who was disqualified from operating a lift truck pursuant to Defendant's Medical Screening Parameters from July 2, 1997 to the present that he/she may again bid for and be considered for a lift truck operator position, if vacant,

in accordance with Murray's new lift truck qualification standards and the current collective bargaining agreement between the United Automobile Workers and Murray Inc.

IV. NON-RETALIATION PROVISION

Defendant understands that Section 12203 of the ADA, 42 U.S.C. § 12203, prohibits retaliation against an individual for opposing practices made unlawful under the ADA, for making a charge or complaint to the Commission, or for testifying, assisting or participating in any manner in any investigation, proceeding or hearing under the ADA. Defendant understands that any person so aggrieved may file a charge of discrimination or retaliation with the Commission pursuant to 42 U.S.C. §12203(c).

V. REPORTING REQUIREMENTS

A. Within thirty (30) days of entry of this Decree, Defendant shall report to Regional Attorney Katharine W. Kores, 1407 Union Avenue, Suite 621, Memphis, Tennessee 38104, the names of all employees referred to in Section III, paragraph E, who have elected to reapply for lift truck licensure or bid again for a lift truck operator position, and the status of the employee's eligibility.

B. For the duration of this Decree or until all eligible employees referred in Section III, paragraph E who have expressed interest in applying for or bidding for a lift truck/fork lift job or licensure are placed, whichever occurs first, Defendant shall report to the Regional Attorney on a quarterly basis:

- 1) the date of lift truck operator vacancy;
- 2) the name of any employee who filled the position and whether the employee was among those of this Decree; and

3) the date the vacancy was filled.

C. For each employee referred in Section III, paragraph E who expresses interest in applying for or bidding for a lift truck/fork lift job and who again is disqualified from holding a lift truck operator position, Defendant shall give the name, date of disqualification, and reason for disqualification.

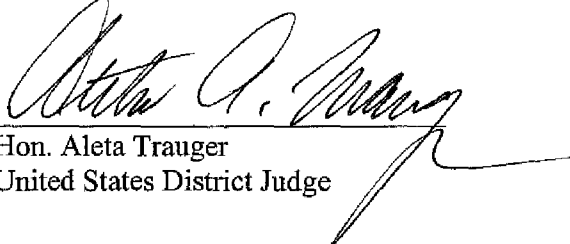
VII. NOTICE

A. Defendant shall keep conspicuously visible in a place where notices to employees and applicants are customarily posted at its facilities, the employment law poster required to be maintained pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-10.

VIII. FEES AND COSTS

The parties will bear their own costs and fees in this action.

SO ORDERED THIS 27th DAY OF Feb., 2002.


Hon. Aleta Trauger
United States District Judge

FOR THE DEFENDANT MURRAY:

RUSSELL WOODYARD
Vice President, Human Resources
219 Franklin Road
P.O. Box 268
Brentwood, Tennessee 37024-0268

FOR THE PLAINTIFF:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

NICHOLAS M. INZEO
Acting Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel


Katharine W. Kores
KATHARINE W. KORES
Regional Attorney

Terry Beck
TERRY BECK
Supervising Attorney

Celia S. Liner
CELIA S. LINER, AR #90183
Senior Trial Attorney
1407 Union Avenue, Suite 621
Memphis, Tennessee 38104
901/544-0075

Sally Ramsey
SALLY RAMSEY
Trial Attorney
50 Vantage Way, Suite 202
Nashville, Tennessee 37228
615/736-2105

FOR THE DEFENDANT MURRAY:



RUSSELL WOODYARD
Vice President, Human Resources
219 Franklin Road
P.O. Box 268
Brentwood, Tennessee 37024-0268

FOR THE PLAINTIFF:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

NICHOLAS INZEO
Acting Deputy General Counsel Counsel

KATHARINE W. KORES
Regional Attorney

TERRY BECK
Supervising Attorney

CELIA S. LINER, AR #90183
Senior Trial Attorney
1407 Union Avenue, Suite 621
Memphis, Tennessee 38104
901/544-0075

SALLY RAMSEY
Trial Attorney
50 Vantage Way, Suite 202
Nashville, Tennessee 37228
615/736-2105

FOR DEFENDANT UNION:

*Lee Anderson with permission,
by SCM*
LEE-ANDERSON
PROVOST UMPHREY LAW FIRM, LLP
3343 Perimeter Hill, Suite 220
Nashville, Tennessee 37211
615/242-0199

CA\WINDOWS\TEMP\GWViewer\consent decree proposed EEOC 2nd.wpd