

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff, )

and )

DONNELL ADDISON, KAREN ALEXANDER, )  
EDDIE ANDERSON, KEITH CLARK, )  
BILLY HERRING, KENDRICK HUNT, )  
ROY OLIVER, AND FRED WIGGINS, )

Intervening Plaintiffs, )

v. )

TRI-STATE PLUMBING, HEATING & )  
AIR CONDITIONING CONTRACTORS, INC., )

and )

UNITED ASSOCIATION OF PLUMBERS, )  
PIPEFITTERS, and SPRINKLERFITTERS, )  
PLUMBERS LOCAL UNION NO. 17, )

and )

UNITED ASSOCIATION OF JOURNEYMEN )  
and APPRENTICES OF THE PLUMBING and )  
PIPEFITTING INDUSTRY of the UNITED )  
STATES and CANADA )

Defendants. )

CIVIL ACTION NO. 05-2717 B P

JURY TRIAL DEMAND

**INTERVENORS' FIRST AMENDED COMPLAINT**

This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. (Title VII), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981, and 42 U.S.C. §1985(3) to correct unlawful employment practices on the basis of race, sex, and retaliation for opposing practices made unlawful by Title VII and by the XII and XIV

Amendments to the United States Constitution, and to provide appropriate relief to African American employees and union members. Plaintiffs allege that Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., Defendant United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (“United Association”), and Defendant United Association of Plumbers, Pipefitters, and Sprinklerfitters, Plumbers, Local Union No. 17 (“Local 17”), an affiliated and/or chartered local with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (collectively “Defendant Unions”) subjected African American employees and union members to unlawful discrimination because of their race and to unlawful retaliation for opposing practices made unlawful by Title VII and 42 U.S.C. §§1981 and 1985(3), and that Defendant Employer subjected a female employee to unlawful discrimination because of her sex.

### **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 Sections 706(f)(1) and (3) of Title VII and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §§ 1981 and 1985(3).

2. The unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Western District of Tennessee, Western Division.

### **PARTIES**

3. Plaintiff, Donnell Addison, (“Addison”) is an African-American male who, at all relevant times, was employed by Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., (“Defendant Employer” and/or “Tri-State”) and is a Member of Defendant

United Association of Plumbers, Pipefitters and Sprinklerfitters, Plumber and Local 17 (“Defendant Unions”). He resides at 577 Haynes Street, Memphis, Tennessee 38111.

4. Plaintiff, Karen Alexander, is an African-American female who, at all relevant times, was employed by Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., (“Defendant Employer” and/or “Tri-State”) and is a Member of Defendant United Association of Plumbers, Pipefitters and Sprinklerfitters, Plumbers and Local Union 17 (“Defendant Unions”). She resides at 664 Regent Avenue, Memphis, Tennessee 38106.

5. Plaintiff, Eddie Anderson, is an African-American male who, at all relevant times, was employed by Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., (“Defendant Employer” and/or “Tri-State”) and is a Member of Defendant United Association of Plumbers, Pipefitters and Sprinklerfitters, Plumber’s Union and Local 17 (“Defendant Unions”). He resides at 428 Parkdale Drive, Memphis, Tennessee 38109.

6. Plaintiff, Keith Clark, is an African-American male who, at all relevant times, was employed by Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., (“Defendant Employer” and/or “Tri-State”) and is a Member of Defendant United Association of Plumbers, Pipefitters and Sprinklerfitters, Plumber’s Union and Local 17 (“Defendant Unions”). He resides at 261 Ayer, Apartment 5, Memphis Tennessee 38105.

7. Plaintiff, Billy Herring, is an African-American male who, at all relevant times, was employed by Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., (“Defendant Employer” and/or “Tri-State”) and is a Member of Defendant United Association of Plumbers, Pipefitters and Sprinklerfitters, Plumber’s Union and Local 17 (“Defendant Unions”). He resides at 3412 Windy Hollow Circle, Memphis, Tennessee 38118.

8. Plaintiff, Kendrick Hunt, is an African-American male who, at all relevant times,

was employed by Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., (“Defendant Employer” and/or “Tri-State”) and is a Member of Defendant United Association of Plumbers, Pipefitters and Sprinklerfitters, Plumber’s Union and Local 17 (“Defendant Unions”). He resides at 2777 Treasure Island East, Memphis, Tennessee 38115.

9. Plaintiff, Roy Oliver, is an African-American male who, at all relevant times, was employed by Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., (“Defendant Employer” and/or “Tri-State”) and is a Member of Defendant United Association of Plumbers, Pipefitters and Sprinklerfitters, Plumber’s Union and Local 17 (“Defendant Unions”). He resides at 1952 Goodhaven Drive, Memphis, Tennessee 38116.

10. Plaintiff, Fred Wiggins, is an African-American male who, at all relevant times, was employed by Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., (“Defendant Employer” and/or “Tri-State”) and is a Member of Defendant United Association of Plumbers, Pipefitters and Sprinklerfitters, Plumber’s Union and Local 17 (“Defendant Unions”). He resides at 1319 Bugsby Avenue, Memphis, Tennessee 38127.

11. At all relevant times, Defendant Tri-State Plumbing, Heating & Air Conditioning Contractors, Inc., (Defendant Employer) has continuously been a Tennessee corporation doing business in the state of Tennessee and the city of Memphis, and has continuously had at least fifteen employees.

12. At all relevant times Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

13. At all relevant times, Defendants United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and

Defendant Local 17, an affiliated and/or chartered Local with the United Association have continuously been an association of participating employees which deals with employers concerning terms and conditions of employment, have continuously had at least fifteen members, and have continuously maintained a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer. At all relevant times, Defendant Unions have been a recognized collective bargaining representative for employees of Defendant Employer.

14. At all relevant times, Defendant Unions have continuously been labor organizations engaged in an industry affecting commerce within the meaning of Sections 701(d) and (e) of Title VII, 42 U.S.C. §§ 2000e(d) and (e).

#### **STATEMENT OF CLAIMS**

15. More than thirty days prior to the institution of this lawsuit, Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins filed charges with the Commission alleging violations of Title VII by Defendant Employer and Defendant Local 17. All conditions precedent to the institution of this lawsuit have been fulfilled. Upon information and/or belief, the United Association was aware of said Charges of Discrimination and worked with Local 17 in formulating a response to the EEOC.

16. Since at least approximately September 24, 2003, Defendant Employer has continually engaged in unlawful employment practices in violation of Sections 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) and 42 U.S.C. §§1981 and 1985(3).

17. The unlawful employment practices involved discriminating against Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy

Oliver and Frederick Wiggins, African American plumbers, apprentice plumbers and laborers, because of their race, by subjecting them to racial harassment.

18. These African American employees were subjected to racially derogatory comments, racially derogatory graffiti, and other unwelcome conduct based on race at the FedEx Forum work site.

19. Their supervisors were aware of this unwelcome racial conduct, but failed to take prompt and effective action to end it.

20. The unwelcome racial conduct was sufficiently severe or pervasive to alter the conditions of the victims' employment and create an abusive working environment.

21. The unlawful employment practices also involved discriminating against Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins, because of their race, by subjecting them to different terms and conditions of employment at the FedEx Forum work site and other jobs within the relevant time period.

22. These African American employees were assigned to less desirable job tasks because of their race, while similarly situated White employees were assigned to more desirable job tasks.

23. The unlawful employment practices also involved discriminating against Donnell Addison, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins, because of their race, by denying them the opportunity to work overtime at the FedEx Forum work site because of their race while allowing similarly situated White employees to work overtime.

24. The unlawful employment practices also involved discriminating against Karen

Alexander, a female laborer, by denying her the opportunity to work overtime at the FedEx Forum work site, because of her sex and race, while similarly situated male employees were allowed to work overtime.

25. Since at least approximately September 24, 2003, Defendant Employer has also engaged in unlawful employment practices in violation of Sections 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) and 42 U.S.C. §§1981 and 1985(3).

26. The unlawful employment practices involved ending the employment of Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins in retaliation for their opposition to practices made unlawful by Title VII and 42 U.S.C. §1981.

27. After these employees complained about practices made unlawful by Title VII, and Defendant Employer became aware of their complaints, Defendant Employer ended their employment while allowing similarly situated and less qualified employees who had not opposed practices made unlawful by Title VII to work.

28. Since at least approximately May 17, 2004, Defendant Unions have continually engaged in unlawful employment practices in violation of Sections 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).

29. The unlawful employment practices involved discriminating against Donnell Addison, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins, African American union members, by failing to represent them because of their race. Upon information and/or belief, Defendant United Association, which sufficiently controlled the operations of Local 17, was aware of said practices and failed to prevent and/or protect Plaintiffs from the discriminatory conduct in spite of its obligations under federal antidiscrimination laws

and its own constitution. Upon information and/or belief, Defendant United Association was aware of the racial demographics of the Memphis-Shelby County area, was aware of the under-representation of African-American members in Defendant Local 17, was aware that some or all of Plaintiffs were treated differently with respect to apprenticeship training, and was aware that African-American union members and applicants for membership were the victims of disparate treatment at the hands of Local 17 officers and/or agents, yet demonstrated a studied ambivalence toward the illegal conduct. Local 17 and the United Association allowed and encouraged “traveling” members from other locals to work through Local 17 despite the fact that the Intervening Plaintiffs were told that there was no work for them. These “traveling” members were mostly non-minorities. Upon information and belief, the United Association knew of the existence of travelers working through Local 17 and that the Intervening Plaintiffs, and those similarly situated to them, were unemployed. Consequently, and in addition thereto, upon information and/or belief, the United Association encouraged, ratified, authorized conducted, and/or condoned the discriminatory course of conduct of Local 17 by and through its officers and/or agents.

30. Certain of the African American union members complained to Defendant Local 17 personnel about racial discrimination by Defendant Employer at the FedEx Forum work site, but Defendant Unions did not initiate and pursue effective corrective action to end the unlawful discrimination. Further, Employer was notified by Defendant Unions of the Plaintiffs’ complaints and Plaintiffs were threatened with termination. The Defendants acted in concert in the instant case, as well as in other instances to violate the Plaintiffs’ rights under statute and the Constitution to be free of discrimination or retaliation because of their race.

31. The unlawful employment practices also involved denying job referrals to



Donnell Addison, Eddie Anderson, Kendrick Hunt and Frederick Wiggins, African American union members, because of their race, while White union members who were less entitled to referral were referred.

32. Since at least approximately May 17, 2004, Defendant Unions and Defendant Employer have also engaged in unlawful employment practices in violation of Sections 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) and 42 U.S.C. §§1981 and 1985(3). The unlawful employment practices also involved denying job referrals to Donnell Addison, Eddie Anderson, Kendrick Hunt and Frederick Wiggins, African American union members, in retaliation for their opposition to practices made unlawful by Title VII, while others who had not opposed unlawful employment practices, and who were less entitled to referral, were referred.

33. The effect of the practices complained of in paragraphs 9 through 26 above has been to deprive Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins of equal employment opportunities and otherwise adversely affect their status as employees and union members because of their race, their opposition to practices made unlawful by Title VII, and Ms. Alexander's sex.

34. The unlawful employment practices complained of in paragraphs 9 through 32 above were intentional.

35. The unlawful employment practices complained of in paragraphs 9 through 32 above were done with malice and/or with reckless indifference to the federally protected rights of Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins.

**CAUSES OF ACTION**

**COUNT I - 42 U.S.C. §2000e et seq. (Title VII)**

36. Plaintiffs reallege and incorporate as if pled herein verbatim paragraphs one (1) through thirty-five (35).

37. Defendant Employer engaged in an ongoing manner of discrimination against Plaintiffs because of their race and Ms. Alexander's gender. Specifically, Defendant Employer treated Plaintiffs differently from similarly situated employees who are not African American by assigning them to less desirable job tasks, denying them the opportunity to work overtime, and failing to stop racial harassment including racially derogatory comments, graffiti and other unwelcome conduct while working at the FedEx Forum work site. Plaintiffs further allege that Defendant Employer terminated their employment in retaliation for complaints made unlawful by Title VII.

38. Defendant Local 17 engaged in unlawful employment practices against Plaintiffs because of their race by failing to represent them after complaints of discrimination were made against Defendant Employer, failing to initiate and pursue effective corrective action to end the discrimination, and denying job referrals.

39. Plaintiffs aver that the reason for this disparate treatment by Defendant Employer and Defendant Local 17 was because of their race and Ms. Alexander's gender, which is a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq.

**COUNT II - 42 U.S.C. §1981**

40. Plaintiffs reallege and incorporate as if herein plead verbatim, paragraphs one (1) through thirty-nine (39).

41. Defendant Employer and Defendant Unions are in violation of 42 U.S.C. §1981 for refusing to contract with the Plaintiffs because of their race. Defendant Employer and Defendant Unions also failed to grant the Plaintiffs the same benefits and privileges to contract with them as they extended to White employees and members. Finally, Defendant Employer and Defendant Unions retaliated against the Plaintiffs for exercising their rights under Title VII and Section 1981. Therefore, Plaintiffs are entitled to equitable relief, compensatory damages and punitive damages.

**COUNT III- 42 U.S.C. §1985(3)**

42. Plaintiffs reallege and incorporate as if herein plead verbatim, paragraphs one (1) through forty-one (41).

43. Defendant Employer and Defendant Unions are in violation of 42 U.S.C. §1985(3) by conspiring to discriminate against the Plaintiffs because of their race, thereby depriving them of their Equal Protection rights and their rights under the Privileges and Immunities clause of the United States Constitution. Therefore, Plaintiffs are entitled to equitable relief, compensatory damages and punitive damages.

**PRAYER FOR RELIEF**

Therefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer and its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practice which discriminates against employees because of their race, sex, or opposition to practices made unlawful by Title VII;

B. Grant a permanent injunction enjoining Defendant Unions and their respective officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practice which discriminates against employees because of their race or opposition to practices made unlawful by Title VII;

C. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for African American employees, female employees, and employees who oppose practices made unlawful by Title VII, and which eradicate the effects of Defendant Employer's unlawful employment practices described in paragraphs 9 through 27 above;

D. Order Defendant Unions to institute and carry out policies, practices, and programs which provide equal employment opportunities for African American employees and employees who oppose practices made unlawful by Title VII, and which eradicate the effects of Defendant Unions' unlawful employment practices described in paragraphs 28 through 32 above;

E. Order Defendant Employer to make whole Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices, including but not limited to rightful-place reinstatement;

F. Order Defendant Unions to make whole Donnell Addison, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of Defendants' unlawful employment

practices;

G. Order Defendant Employer to make whole Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices, in amounts to be determined at trial;

H. Order Defendant Unions to make whole Donnell Addison, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices, in amounts to be determined at trial;

I. Order Defendant Employer to make whole Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins by providing compensation for nonpecuniary losses resulting from the unlawful employment practices, including emotional and psychological pain and suffering, in amounts to be determined at trial;

J. Order Defendant Unions to make whole Donnell Addison, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins by providing compensation for nonpecuniary losses resulting from the unlawful employment practices, including emotional and psychological pain and suffering, in amounts to be determined at trial;

K. Order Defendant Employer to pay Donnell Addison, Karen Alexander, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins punitive damages for its malicious and/or reckless conduct, in amounts to be determined at trial;

L. Order Defendant Unions to pay Donnell Addison, Eddie Anderson, Keith Clark, Billy Herring, Kendrick Hunt, Roy Oliver and Frederick Wiggins punitive damages for its

malicious and/or reckless conduct, in amounts to be determined at trial;

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

N. Award the Plaintiffs attorneys' fees and expenses and their other costs of this action.

**JURY TRIAL DEMAND**

The Plaintiffs request a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,  
EVANS & PETREE PC

s/ Michael R. Marshall  
Michael R. Marshall #15225  
Caren B. Nichol #16093  
1000 Ridgeway Loop Road  
Suite 200  
Memphis, Tennessee 38120  
Phone: (901) 525-6781  
[mmarshall@evanspetree.com](mailto:mmarshall@evanspetree.com)

s/ Kevin H. Sharp  
Kevin H. Sharp #16287  
Drescher & Sharp, P.C.  
1720 West End Ave.  
Suite 300  
Nashville, Tennessee 37203  
Phone: (615) 425-7111  
[ksharp@dsattorneys.com](mailto:ksharp@dsattorneys.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon:

Carson L. Owen,  
EEOC  
1407 Union Ave, Ste. 621  
Memphis, Tennessee 38104

David A. Velandar, Esq.  
105 South Sherrin Ave.  
Louisville, KY 40207

Deborah Godwin, Esq.  
Timothy P. Taylor, Esq.  
Morgan Keegan Tower  
50 N. Front Street  
Suite 800  
Memphis, Tennessee 38103

Craig M. Beard, Esq.  
88 Union Ave.  
14<sup>th</sup> Floor  
Memphis, Tennessee 38103

Nicholas R. Femia  
4748 Wisconsin Ave. N.W.  
Washington, D.C. 20016

via CM/ECF, July 12, 2006.

s/Michael R. Marshall