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11-21-2005

**Equal Employment Opportunity Commission, Plaintiff, -against
SPS Temporaries, Inc.,; Professional Personnel Management
Corporation; Jamestown Container Lockport, Inc, doing business
as Jamestown Container Companies; Jamestown Container Corp,
doing business as Jamestown Container Companies; and Whiting
Door Manufacturing Corp., Defendants.**

Judge John T. Elfvin

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Equal Employment Opportunity Commission, Plaintiff, -against SPS Temporaries, Inc,; Professional Personnel Management Corporation; Jamestown Container Lockport, Inc, doing business as Jamestown Container Companies; Jamestown Container Corp, doing business as Jamestown Container Companies; and Whiting Door Manufacturing Corp., Defendants.

Keywords

Equal Employment Opportunity Commission, SPS Temporaries Inc, Professional Personnel Management Corporation, Jamestown Container Lockport Inc, Jamestown Container Companies, Whiting Door Manufacturing Corp., 04-CV-0052E(SC), Consent decree / Settlement, Disparate Treatment, Hiring, Pregnancy Complications, Manufacturing, Employment Law, ADA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

-against

SPS TEMPORARIES, INC.;
PROFESSIONAL PERSONNEL
MANAGEMENT CORPORATION;
JAMESTOWN CONTAINER LOCKPORT,
INC, doing business as JAMESTOWN
CONTAINER COMPANIES; JAMESTOWN
CONTAINER CORP. doing business as
JAMESTOWN CONTAINER COMPANIES;
and WHITING DOOR MANUFACTURING
CORP.,

Defendants.

04-CV-0052E(SC)

CONSENT DECREE

*Between Plaintiff Equal Employment Opportunity Commission and
Defendants Jamestown Container Lockport, Inc., doing business as
Jamestown Container Companies, and
Jamestown Container Corp., doing business as Jamestown Container Companies*

FILED
05 NOV 22 AM 8:31
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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PART I GENERAL PROVISIONS

Section 101 Introduction

The Plaintiff Equal Employment Opportunity Commission ("EEOC" or "Commission") and Defendants Jamestown Container Lockport, Inc., doing business as Jamestown Container Companies at its facility on Grand Street in Lockport, New York ("Lockport facility") and Jamestown Container Corp., doing business as Jamestown Container Companies at its facility located on Walden Avenue in Cheektowaga, New York ("Cheektowaga facility")(said Defendants are referred to collectively herein as "Jamestown") have agreed to resolve this action by the terms of this Consent Decree ("Decree") as set forth below.

It is agreed that Jamestown's undertakings and obligations under this Decree and EEOC's rights under this Decree are limited to Jamestown's Lockport and Cheektowaga facilities and personnel at those facilities.

On January 27, 2004, the Commission brought this action under Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, the Americans with Disabilities Act and the Age Discrimination in Employment Act to correct unlawful discrimination on the basis of race, sex, pregnancy, national origin, disability and age and to make whole James Sciandra, Michelle Alberts, Tammi Iser and the class of individuals who were discriminatorily denied temporary employment by one or more Defendants.

The EEOC's complaint alleges that Defendants SPS/PPMC failed to refer individuals for temporary employment based on their race, sex, pregnancy, national origin, disability and age. The complaint further alleges that SPS/PPMC complied with discriminatory requests made by their

clients for temporary employees based on race and sex, including Defendants Jamestown and Whiting Door.

The EEOC's complaint contains numerous other allegations regarding SPS/PPMC. Through this action, the Commission sought injunctive relief and monetary damages for all individuals affected by Defendants' discriminatory acts.

Section 102 Purpose of the Decree

A. The parties, defined as the EEOC and Jamestown, desire to settle this action, and therefore do hereby stipulate and consent to the entry of this Decree as final and binding between the parties and their successors and assigns and any other corporation or other entity by which either or both of Jamestown's Lockport facility or Cheektowaga facility may be acquired or into which they may be merged or with which they may consolidate. Jamestown shall provide notice and a copy of this Consent Decree to any successors, assigns, and any other corporation or other entity by which either or both of said facilities may be acquired, or into which they may be merged or with which they may consolidate.

B. This Consent Decree resolves all issues raised in EEOC Charge Number 165-A1-0616, which served as the jurisdictional prerequisite for naming Jamestown as Defendants in this case. The Decree does not resolve any charge of discrimination currently pending before the EEOC, or any charge that may be filed in the future, other than those charges listed above. The Commission reserves all rights to proceed regarding matters not covered in this Consent Decree.

C. The terms of this Agreement represent the full and complete agreement of the parties.

The parties agree that this Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court.

D. This Consent Decree does not constitute an admission by Jamestown to any violations of those provisions of Title VII of the 1964 Civil Rights Act prohibiting race and sex discrimination, and Jamestown denies any such violation.

Section 103 Prohibited Conduct and Agreement to Not Discriminate

A. Jamestown, its successors and assigns hereby agree not to refuse to hire temporary employees based on their race and sex or make requests for temporary employees based on race and/or sex.

B. Jamestown, its successors and assigns hereby agree not to retaliate against any individual because that individual is a beneficiary of this Decree, has filed a complaint, or has provided information, assistance, or participated in any other manner in the investigation or litigation of this matter.

C. Nothing in this Consent Decree shall be construed to limit or reduce Jamestown's obligations to comply with the statutes enforced by the Commission: Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.*, Title I of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.*, and Equal Pay Act, 29 U.S.C. §206(d).

Section 104 Consent to Jurisdiction

A. The Commission and Jamestown agree that this Court has jurisdiction over the subject matter of this litigation and the parties for the duration of this Decree, that venue is proper, and all administrative prerequisites have been met. No party shall contest the validity of this Decree or the jurisdiction of the federal district court to enforce this Decree and its terms.

B. The Court shall retain jurisdiction over this Action for the duration of the Decree for all purposes including, but not limited to, the entering of all orders, judgments, and decrees as necessary to implement the relief provided herein. In any action to enforce the terms of this Decree, the Court will have full authority to order any remedy the Court deems appropriate, including, but not limited to, specific performance and/or extension of the Decree beyond the three-year term.

Section 105 Implementation of the Decree

EEOC and Jamestown agree to take all steps that may be necessary to fully effectuate the terms of this Consent Decree.

Section 106 Amendments to the Decree

By mutual consent of the parties, this Consent Decree may be amended in the interest of justice and fairness and to facilitate execution of the Decree's provisions. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing, approved by all Parties to this Decree, and approved or ordered by the Court, except that the Parties may mutually agree to modify the procedures in Sections 202 and 204 without approval of the Court.

Section 107 Duration of the Decree

This Consent Decree shall remain in effect for three (3) years from the effective date of the Decree. The effective date of the Decree shall be the date it is signed and executed by the Court. The Decree shall not expire against any signatory while any enforcement action pertaining to this Decree is pending against that signatory.

Section 108 Severability

If one or more provisions of this Decree are rendered unlawful or unenforceable as a result of a legislative act or a decision by a court of competent jurisdiction, the following shall apply to insure that the Decree continues to effectuate the intent of the Parties. The provisions of this Decree which are not rendered unlawful, unenforceable or incapable of performance as a result of such legislative act or court decision, shall remain in full force and effect, and the Parties' responsibilities shall not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of the Decree would be undermined.

Section 109 Breach of Decree

The parties agree that they will cooperate to effectuate and implement all terms and conditions of this Decree, and exercise good faith efforts to accomplish the terms and conditions of this Decree. The Commission and Jamestown agree to confer regarding any dispute arising from the implementation of this Decree. In the event the parties are unable to resolve this dispute, any action

relating to this Decree shall be filed in the Court that approves this Decree. This Decree shall be construed under applicable federal law.

Section 110 Notices

Except as otherwise provided for in this Decree, all notifications, reports and communications to the Parties required under this Decree shall be made in writing and shall be sufficient as hand-delivered, faxed or sent by certified or registered mail or by Federal Express/UPS to the following persons (or their designated successors):

For EEOC: Robert D. Rose
U.S. EEOC
33 Whitehall Street
5th floor
New York, NY 10004
Fax: 212.335.3623

For Jamestown: Thomas E. Brydges
Jaekle Fleischmann & Mugel, LLP
Ficet Bank Building
Twelve Fountain Plaza
Buffalo, NY 14202-2292
Fax: 716.855.0432

Any party may change such addresses by written notice to the other parties that sets forth a new address for this purpose. Notwithstanding the provisions for notification contained in this paragraph, the Parties may, after agreement memorialized in writing, send each other such notifications, reports and communications by email.

PART II

SYSTEMIC RELIEF

Section 201 Posting and Distribution of Notices

A. Notice of Resolution

Within ten (10) days of the effective date of this Decree, Jamestown shall conspicuously post and maintain a "Notice of Resolution" regarding this lawsuit on the EEOC letterhead (attached as Exhibit A), in all prominent places where employee notices are posted. This Notice shall remain posted for the three year duration of the Decree.

B. EEO Posters

Jamestown will post EEOC posters in places visually accessible to applicants and employees of Jamestown as required by federal regulations.

Section 202 Non-Discrimination Policy and Complaint Procedures

A. Required Content of Policies and Procedures

Jamestown shall maintain one or more comprehensive policies prohibiting all forms of employment discrimination made unlawful under federal laws. Jamestown also shall maintain effective complaint procedures for discrimination complaints which ensure that a thorough, fair and timely investigation of complaints are conducted by a qualified and trained person(s). The policies/procedures shall set forth Jamestown's commitment to equal opportunity in all aspects of employment and, at a minimum, set forth the following:

- 1. A detailed explanation of prohibited conduct;**
- 2. The assurance that Jamestown will not retaliate against employees who make**

complaints of discrimination, who oppose practices they consider to be unlawfully discriminatory, and/or who participate in protected activity or who provide information related to complaints of discrimination;

3. A clearly described complaint process that provides accessible avenues of complaint with a number of choices of individuals to whom complaints can be made, including persons outside the employee's chain of command;

4. The assurance that Jamestown will accept any and all complaints from employees who wish to file complaints internally. The policies/procedures shall state that the filing of anonymous complaints is permitted;

5. The assurance that Jamestown will keep confidential to the extent possible and not publicize unnecessarily the subject matter of the complaints or the identity of the complainants;

6. A complaint process that provides a prompt, thorough, and effective investigation, including interviewing complainant and all witnesses and obtaining and reviewing all material documents identified by the complainant or respondent to the extent necessary to reach a reasonable conclusion concerning the allegations;

7. A requirement that such investigations be thoroughly documented in written form;

8. Upon completion of an investigation into a discrimination complaint, promptly communicate to the complainant and the respondent a summary of the conclusions reached as a result of the investigation;

9. The assurance that Jamestown will take prompt and appropriate corrective

action when it determines that discrimination has occurred;

10. A strict requirement that any manager who observes or learns of possible discrimination report it immediately; and

11. Jamestown shall provide a complaint form with its policies/procedures, which may be used by employees to file a complaint. The policies/procedures shall make clear that employees may make oral or written complaints and that written complaints need not be made on the complaint form.

B. EEOC Approval of Policies and Procedures

EEOC has approved and Jamestown has adopted the attached Anti-Discrimination and Anti-Harassment Policy prior to the execution of this Decree (Exhibit B), and these policies/procedures satisfy the requirements in subparagraph A above. Under no circumstances has the EEOC, by reviewing and approving Jamestown's Anti-Discrimination and Anti-Harassment Policy, waived its right to investigate or litigate any alleged violation of federal law enforced by the EEOC, related to or resulting from the implementation of any such policy.

C. Issuance of Policies/Procedures

Jamestown shall issue its Anti-Discrimination and Anti-Harassment Policy to all employees within ten (10) days of the effective date of this Decree. The Anti-Discrimination and Anti-Harassment Policy shall be issued with a letter from the President of each Jamestown Defendant affirming Jamestown's commitment to maintaining a work environment free of discrimination. Jamestown shall include the Anti-Discrimination and Anti-Harassment Policy in its Employee Handbook. Jamestown shall provide all new employees with copies of the Anti-Discrimination and Anti-Harassment Policy within five (5) days of the commencement of their employment.

B. Modification of Policies and Procedures

If Jamestown wishes to modify its Anti-Discrimination and Anti-Harassment Policy during the term of the Decree, it shall do so only after submitting the modified Anti-Discrimination and Anti-Harassment Policy to the EEOC for approval and receiving such approval in writing.

Section 203 Reserved

Section 204 Training

A. Initial Training

1. Scheduling of Training

Within sixty (60) days of the effective date of the Decree, Jamestown shall conduct the agreed upon initial training programs for all full-time (a) non-supervisory employees, (b) management/supervisory employees, and (c) human resource employees (attached as Exhibits C and D). The trainings shall be conducted by HR Works, Inc. and may include training by Jamestown's Corporate Human Resources Manager regarding Jamestown's Anti-Discrimination and Anti-Harassment Policy. Counsel for Jamestown shall provide training as to the requirements of this Decree for supervisory and human resource employees. The failure of Jamestown to conduct initial training programs for all employees within sixty (60) days of the effective date of the Decree shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

2. Confirmation of Training

Within ten (10) days of each training session, Jamestown shall provide the EEOC with an attendance sheet that includes the date, the names of those in attendance and the signatures of those

in attendance. The failure of Jamestown to provide attendance sheets within ten (10) days of any training session, shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

B. Annual Training

1. Annual Training for Non-supervisory Employees

On an annual basis, Jamestown will provide non-supervisory employees with at least two (2) hours of EEO training as described below in sub-paragraph 4. The failure of Jamestown to provide two (2) hours of annual training to non-supervisory employees shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

2. Annual Training for Management and Supervisory Employees

On an annual basis, Jamestown will provide management/supervisory employees with at least four (4) hours of EEO training as described below in sub-paragraph 4. The failure of Jamestown to provide four (4) hours of annual training to management/supervisory employees shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

3. Annual Training for Human Resources Employees

On an annual basis, Jamestown will provide all human resource employees with at least four (4) hours of EEO training as described below in sub-paragraph 4. The failure of Jamestown to provide four (4) hours of annual training to human resources employees shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

4. Required Subjects of Annual Training

The EEO annual training programs shall include:

- 4. For non-supervisory, management/supervisory, and human resources employees,**

instruction on the requirements of all applicable equal employment opportunity laws including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Pregnancy Discrimination Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Equal Pay Act, and a review of Jamestown's non-discrimination policies and procedures with particular emphasis on the complaint procedure.

b. For management/supervisory and human resources employees, instruction on any policies and requirements related to this Consent Decree and instruction on the specific requirements of this Consent Decree and the proper procedures for responding to complaints of discrimination or harassment.

C. Reporting Requirements for Training

All employees attending any training session described in the above paragraphs shall print and sign their full name on an attendance sheet. Within ten (10) days of the completion any trainings described in the preceding paragraph, Jamestown shall provide the Legal Unit of the EEOC, New York District Office, 33 Whitehall Street, 5th floor, New York, New York 10004 (attention: Robert D. Rose), with copies of all attendance sheets.

D. Pre-Training Notification Requirement

At least thirty (30) days prior to any scheduled training under Section 204, Jamestown will provide the EEOC notice of the date, time and location of the scheduled training. The EEOC, at its discretion, may attend and observe one or more of the training sessions and may provide recommendations to the trainer at appropriate times.

Section 105 Monitoring and Reporting

A. Monitoring by the EEOC

The EEOC may monitor Jamestown's compliance with the Consent Decree for a period of three (3) years from the effective date of the Decree through the inspection of Jamestown's premises and existing records, and interviews with employees at reasonable times. Jamestown shall make available for inspection and copying any existing records reasonably related to Jamestown's compliance with the Consent Decree, upon reasonable notice from the EEOC.

B. Reporting Requirements for Discrimination Complaints

For the duration of this Decree, every six months beginning six months after the effective date of the Decree, Jamestown shall provide a written report to the Legal Unit of the EEOC, New York District Office (attention: Robert D. Rose), with information regarding any verbal or written complaints of discrimination from temporary agency employees or applicants for temporary agency employment which were received during the preceding six months. The report shall include the name of the complainant, the name of the alleged harasser or discriminator, a list of each step taken by Jamestown during the investigation, a summary of the complaint, the location, the results of any investigation of the complaint, and any remedial action taken by Jamestown.

C. Reporting Requirements for Temporary Employees

For the duration of this Decree, every six months beginning six months after the effective date of the Decree, Jamestown shall provide a written report to EEOC containing the following information: a breakdown by race and gender of all temporary agency employees used by Jamestown during the six month period, and the names of temporary employment agencies used by Jamestown.

Section 206 Compliance with Record-keeping Requirements

A. Record Retention

For the duration of the Decree, Jamestown agrees to maintain such records as are necessary to demonstrate its compliance with 29 C.F.R. §1602 in addition to the following records required by the Decree: training attendance lists, non-discrimination policies and procedures, training materials and other reports required by the Decree. Jamestown shall verify that the reports submitted pursuant to the Decree are accurate.

Section 207 Miscellaneous

A. Management Evaluation and Accountability Policy

Within three (3) months of the effective date of the Decree, Jamestown shall add a factor encompassing compliance with Jamestown's non-discrimination policies and procedures, and with federal anti-discrimination laws, to performance evaluations for supervisors and managers.

PART III

MONETARY RELIEF FOR CLASS MEMBERS

Section 301 Claims Fund

A. Establishment and Control of the Fund

A Claims Fund shall be established to compensate class members. All terms regarding the Claims Fund, including the notification, identification and distribution of damages to class members, shall be governed by the terms of the Consent Decree between EEOC and Defendants SPS/PPMC.

If SPS/PPMC and EEOC do not enter into a Consent Decree, EEOC shall implement alternative procedures for the Claims Fund, including notification, identification and distribution of damages to the class members, on notice to Jamestown.

B. Jamestown Payment to the Claims Fund

Immediately upon execution of this Decree, in resolution of the EEOC's claims of hiring discrimination based on sex and race, Jamestown shall pay the gross sum of \$20,000 into the Claims Fund, if one exists, in a manner specified by EEOC to Jamestown in writing at least fifteen (15) days prior to the execution of this Decree. If a Claims Fund does not exist at that time, or EEOC has not specified a manner of payment as aforesaid, Jamestown shall await instructions from the EEOC and shall pay the \$20,000 to such person or entity at such time and in such manner as EEOC shall instruct in writing, within fifteen (15) days after receiving such instructions.

C. Releases

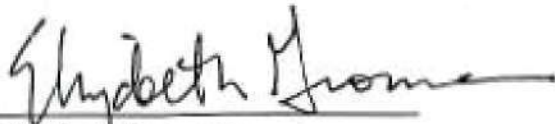
All persons receiving payment from the Claims Fund or other payment mechanism established by the EEOC shall be required to execute a Release in the form attached as Exhibit E as a condition of receiving such payment, and EEOC shall provide copies of all such Releases to Jamestown within sixty (60) days after completion of the payment process.

PART IV
SIGNATURES

Each signatory to this Decree represents that each is fully authorized to execute this Decree and to bind the parties on whose behalf each signs.

Dated: September 7, 2005

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION



Elizabeth Grossman
Acting Regional Attorney

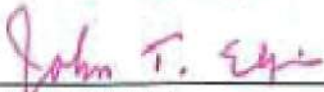
Lisa D. Sirkin
Supervisory Trial Attorney

Robert D. Rose
Senior Trial Attorney

New York District Office
33 Whitehall Street, 5th Floor
New York, New York, 10004
(212) 336-3708

Date: November 21, 2005

Buffalo, N.Y.



Hon. John T. Elfvin
United States Judge

Dated: August 29, 2005

JAMESTOWN CONTAINER
LOCKPORT, INC.

By: Joseph R. Palmieri
President
8-29-05

JAMESTOWN CONTAINER
CORP.

By: Joseph R. Palmieri
V.P. C.O.O.
8-29-05

Jamestown Exhibits

Exhibit A **Notice of Resolution**

Exhibit B **Anti-Discrimination and Anti-Harassment Policy**

Exhibit C **Preventing Discrimination and Harassment in the Workplace - Employee Training**

Exhibit D **Preventing Discrimination and Harassment in the Workplace - Manager Training**

Exhibit E **Release Form**