File Name: NY_Times_CD.wpd

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. NEW YORK TIMES CO. AND NEW YORK NEWSPAPER PRINTING PRESSMEN'S UNION NO. 2, Defendants.	92 CIV. 6548 (RPP) **PROPOSED CONSENT DECREE**

The Litigation

1. This action is brought by the Equal Employment Opportunity Commission ("EEOC") against New York Times Co. ("Times Co.") and the New York Newspaper Printing Pressmen's Union No. 2 ("Pressmen's Union"). The EEOC alleges that the Pressmen's Union violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. ("Title VII"), by failing to refer women, blacks, hispanics and Asians for employment as casuals in the pressroom of Times Co. and by failing to make reports required by Title VII. The EEOC also alleges that Times Co. violated Title VII by relying on the Pressmen's Union for referrals of casuals for

employment in its pressroom and by failing to keep records as required by Title VII. The practices complained of are alleged to have resulted in the exclusion of women, blacks (including Charles E. Hart), Hispanics and Asians from employment as casuals in the pressroom, or limiting their opportunities to obtain such employment, because of their race and color, sex or national origin.

2. Times Co. and the Pressmen's Union have consistently denied, and continue to deny, the allegations of discrimination and any other wrongdoing in connection with the allegations of the Complaint.

3. The parties, wishing to resolve the issues raised by this action without the uncertainty, delay and expense of further litigation, have resolved their differences and have voluntarily agreed that this action should be resolved by entry of this Consent Decree ("Decree").

Intent of the Parties

4. It is the intent of the parties that this Decree be a final and binding settlement in full disposition of any and all claims by the EEOC, and any and all claims brought by Charles E.

Hart, against Times Co. or the Pressmen's Union that were or could have been raised in this action or in EEOC Charge Nos. 160-89-1549, 160-89-1859, 160-91-0124 or 160-91-0125.

Findings

_____5. Having examined the terms and provisions of the Decree, having considered the statistical imbalance in the membership of the Pressmen's Union and in the Times Co. bargaining unit that is represented by the Pressmen's Union and having conducted a hearing on _____, after notice to certain third parties, and based on the pleadings, the record and the stipulations of the parties, the Court finds the following:

(a) The Court has jurisdiction over the subject matter of this action and over the parties.

(b) The Decree conforms with the Federal Rules of Civil Procedure and Title VII, will further the objectives of Title VII and does not unreasonably or inequitably affect the rights or privileges of any third party.

NOW THEREFORE, in consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby

acknowledged, it is agreed and IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

Claims Resolved By the Decree

6. This Decree finally and conclusively disposes of, and therefore dismisses with prejudice, all claims that were raised or could have been raised by the EEOC, or brought on behalf of Charles E. Hart, against Times Co. or the Pressmen's Union in this action or in EEOC Charge Nos. 160-89-1549, 160-89-1859, 160-91-0124 or 160-91-0125. With respect to all such matters, compliance with the Decree shall be deemed compliance with all applicable laws, including but not limited to Title VII, and shall be deemed to satisfy any claims for remedial action.

7. In consideration of the relief set forth in paragraphs 14, 15 and 16 of this Decree, Charles E. Hart ("Hart"), for himself and for his heirs, executors, administrators and assigns, releases and forever discharges Times Co., its parent corporations, subsidiaries, divisions, affiliated entities, successors and assigns and its or their respective past and/or present directors, officers, employees, agents and representatives, and the Pressmen's Union and any and all of its affiliated entities, successors and assigns and its or their respective past

and/or present directors, officers, employees, agents, representatives and members from all manner of claims, demands, causes of action, fees and liabilities of any kind whatsoever (including, but not limited to, attorney's fees, costs, disbursements and the like), whether arising under Title VII which were or could have been raised in this action or in EEOC Charge Nos. 160-89-1549 or 160-89-1859 AND WHICH in any way related to any act, omission, event, transaction, conduct, occurrence or practice ON THE PART OF EITHER DEFENDANT OR BOTH that occurred up to and including the date of entry of this Order.

Non-Admission

8. Neither the agreement to enter into this Decree, anything in the Decree nor anything accomplished by the Decree is, shall be construed as, or shall be admissible in any proceeding as evidence of any violation by Times Co. or the Pressmen's Union of Title VII or any other Law.

Duration of Decree and Retention of Jurisdiction

_____ 9. This Decree shall remain in effect UNTIL THE REPRESENTATION OF MINORITIES IN THE CATEGORY OF JUNIOR PRESSMEN REACHES A GOAL OF FORTY PERCENT (40%). THIS DECREE WILL BE SUBJECT

TO RENEWAL BASED UPON THE REVIEW OF THE GOAL TO COMPORT WITH CHANGING AVAILABILITY EVERY FIVE (5) YEARS. During the effective period of the Decree, the Court shall retain jurisdiction for the purposes of enforcing its provisions and for the purpose of enabling any of the parties to apply to the Court for such further orders and directions as may be necessary or appropriate, including such further orders as may be necessary to effectuate the provisions of this Decree. Such orders may include, but need not be limited to, an injunction against any organization, person or persons who take or threaten any strike, work stoppage, picketing or other interruption of normal employment or production arising out of or in connection with any action taken by Times Co. or the Pressmen's Union to comply with the provisions of this Decree.

Class Relief

10. Within ninety (90) days following the date of entry of this Decree, Times Co. shall establish a program to train persons for work as Junior Pressmen in its pressrooms ("Training Program"). The Training Program will be conducted as follows:

(a) During each of the FIRST five (5) years of the Decree following the establishment of the Training Program, Times Co. will recruit and offer enrollment in the Training Program to a

total of six (6) persons who are not, and have not been, members of the Pressmen's Union. (Persons who accept such offers and become enrolled in the Training Program are hereinafter referred to as "Trainees.") Times Co. shall use its best efforts to ensure that three (3) of the Trainees enrolled in the Training Program each year are female and/or black, Hispanic or Asian. IN THE EVENT THAT TIMES CO. EXPECTS THAT, DESPITE IT BEST EFFORTS, IT WILL BE UNABLE IN ANY YEAR TO ENROLL IN THE TRAINING PROGRAM THREE (3) TRAINEES WHO ARE BLACK, HISPANIC, ASIAN AND/OR FEMALE, TIMES CO. SHALL SO NOTIFY THE EEOC IN WRITING NO LATER THAN TWENTY (20) DAYS IN ADVANCE OF THE COMMENCEMENT OF THE TRAINING PROGRAM FOR THAT YEAR IN ORDER TO ALLOW THE EEOC AN OPPORTUNITY TO SUGGEST APPROPRIATE RECRUITMENT SOURCES. Each year, for every Trainee who is female and/or Black, Hispanic or Asian, one of the total number of places in the Training Program (up to a maximum of three (3) places) will be offered to a person whose name is at the time of the offer on the list maintained by Times Co. for casual employment in its pressrooms (the "Pressroom Casual List"); until such an offer is accepted, these offers will be extended to persons on the Pressroom Casual list in the order in which their names appear on the List, provided that the person shaped in person for no fewer that forty-four shifts during the twelve months preceding the date on which the offer is extended. For example, if three (3) Trainees who are female and/or Black, Hispanic or Asian are enrolled in the Training

Program, three places in the Training Program will be offered to persons on the Pressroom Casual List. TIMES CO. SHALL GIVE THE EEOC ADVANCE NOTICE IN WRITING OF THE IDENTITY OF EACH PERSON SELECTED FOR ENROLLMENT IN THE TRAINING PROGRAM WHO IS FEMALE AND/OR BLACK, HISPANIC OR ASIAN. IN THE EVENT THAT THE EEOC DOES NOT APPROVE THE ENROLLMENT OF A PARTICULAR TRAINEE, IT SHALL SO INFORM TIMES CO. IN WRITING WITHIN TEN (10) CALENDAR DAYS OF RECEIVING SUCH NOTICE AND SHALL STATE THE BASIS FOR ITS REFUSAL TO APPROVE THE ENROLLMENT OF THE TRAINEE. IN THE ABSENCE OF SUCH NOTIFICATION BY EEOC TO TIMES CO., THE EEOC SHALL BE DEEMED TO HAVE APPROVED THE ENROLLMENT OF THE TRAINEES AT ISSUE. IT IS UNDERSTOOD AND AGREED THAT THE EEOC SHALL NOT UNREASONABLY WITHHOLD ITS APPROVAL OF THE ENROLLMENT OF ANY TRAINEE. IN THE EVENT OF ANY DISPUTE BETWEEN TIME CO. AND EEOC AS TO WHETHER APPROVAL HAS BEEN UNREASONABLY WITHHELD, EITHER PARTY MAY APPLY TO THE COURT FOR AN ORDER RESOLVING THE DISPUTE.

(b) The Training Program offered to Trainees will last for twelve (12) months and will consist of no fewer than thirty (30) hours of classroom training, no fewer than ten (10) shifts of formal on-the-job training and, to the extent available, work as part of the normal complement of workers in the pressrooms of Times Co. For time spent in classroom training, the Trainees will be paid no less than the applicable minimum wage. For time spent in

formal on-the-job training (when they are not considered for purposes of meeting the contractually required complement of workers in the pressroom), the Trainees will be paid one-half the minimum contractual wage rate applicable to Junior Pressmen. For time worked as part of the contractually required complement of workers in the pressroom, Trainees will be paid the minimum contractual wage rate applicable to Junior Pressmen. The cost of the Training Program (including but not limited to wages) will be paid by Times Co.

(c) Classroom training and formal on-the-job training will be scheduled during the course of the Training Program at the discretion of Times Co. When they work as part of the contractually required complement of workers in the pressroom, Trainees will perform only the types of work performed by other casual employees who have not yet been certified as Junior Pressmen.

(d) In order to permit the orderly scheduling of work opportunities for Trainees, the following procedures will apply:

(i) During the twelve-month period of their enrollment in the Training Program, the Trainees will not be required to "shape" for casual work in person but, rather, will be

permitted to make themselves available for work by telephone.

(ii) During the effective period of this Decree, in addition to such other procedures for earlier notification as may be agreed upon by Times Co. and the Pressmen's Union, no later than two (2) hours in advance of the commencement of each shift, the Pressmen's Union will furnish to the Times the names of the Journeymen and Junior Pressmen who will fill out the needed complement on the shift.

(iii) To the extent that casual work opportunities remain available for Junior Pressmen at the time of the notice provided for in Paragraph 10(d) (ii), either because the names furnished by the Pressmen's Union do not completely fill out the needed complement on the shift or because the Pressmen's Union has not furnished names, Times Co. may offer such work opportunities to Trainees in preference to all other persons (including but not limited to persons on the Pressroom Casual List).

(iv) To the extent that work opportunities for Junior Pressmen become available at the commencement of any shift due to the failure of a Journeyman or Junior Pressman to report for work as scheduled, or within fifteen minutes thereafter, Times Co. may offer such work opportunities to Trainees in preference to all

other persons (including but not limited to persons on the Pressroom Casual List).

(v) The preferences provided for in Paragraph 10(d) (iii) and (iv) above may be applied by Times Co. to afford each Trainee up to a maximum of one hundred and ten (110) shifts of work during the twelve months that the Trainee is enrolled in the Training Program. Thereafter, once the preferences are exhausted with respect to a Trainee, the Trainee may for the balance of his/her Training Program shape for casual employment in the pressrooms in accordance with such procedures as are applicable to persons on the Pressroom Casual List.

11. The goal referred to in Paragraph 10(a) above with respect to the enrollment of females and/or members of minority groups in the Training Program is not an inflexible quota but an objective to be pursued in a good faith effort to maximize employment opportunities for females and members of minority groups in the bargaining unit that is represented by the Pressmen's Union. Accordingly, a failure to reach that goal in any year shall not constitute a violation of this Decree. HOWEVER THE INABILITY TO REACH EITHER A YEARLY GOAL DURING THE FIRST FIVE YEARS WILL NOT CONSTITUTE A DEFENSE IN THE FAILURE TO MEET THE GOAL IN SUBSEQUENT YEARS.

12. With respect to each Trainee who is certified by Times Co. as having satisfactorily completed the Training Program during the effective period of this Decree,

(a) Times Co. and the Pressmen's Union, in their respective capacities as members of the Joint Apprenticeship Committee, shall approve the certification of the Trainee as a Junior Pressman;

(b) Times Co. and the Pressmen's Union shall use their best efforts to ensure that the other member(s) of the Joint Apprenticeship Committee approve the certification of the Trainee as a Junior Pressman; and

(c) Subject to the Trainee's payment of such fees and dues as are uniformly required as a condition of acquiring or retaining membership in the Pressmen's Union, the Pressmen"s Union shall admit the Trainee to membership.

13. Upon certification as a Junior Pressman and admission to the Pressmen's Union, the former Trainee (a) shall have the status of Junior Pressman under the collective bargaining agreement between Times Co. and the Pressmen's Union and shall have all the rights, privileges and obligations provided for in the

collective bargaining agreement by virtue of that status, including such rights to employment opportunities with Times Co. as would be afforded to any Junior Pressman of like seniority date who has been certified by the Joint Apprenticeship Committee as a Junior Pressmen; and (b) shall have all the rights, privileges and obligations applicable to Junior Pressmen by virtue of their membership in the Pressmen's Union, which rights shall include (provided that the Trainee has been certified as a Junior Pressman by the Joint Apprenticeship Committee) such rights to employment opportunities with other newspaper publishers under contract with the Pressmen's Union as would be afforded to any Junior Pressman of like seniority date who has been certified by the Joint Apprenticeship Committee as a Junior Pressman. For purposes of determining priority for available work opportunities, Trainees who complete the Training Program at the same time and who therefore have the same seniority date shall be deemed to have been certified as Junior Pressman in the order that accords with the alphabetical order of their surnames.

14. IF AFTER THE END OF FIVE (5) YEARS THE PERCENTAGE OF JUNIOR PRESSMEN HAVE NOT REACHED THE GOAL AS SET FORTH IN PARAGRAPH 9 OF THIS DECREE, WITH THE SUCCESSFUL COMPLETION OF 110 SHIFTS AND ADMISSION TO THE PRESSMEN'S UNION BY A NON-MINORITY FROM THE CASUAL LIST, TIME CO. WILL INSURE THAT A FEMALE AND/OR BLACK,

HISPANIC OR ASIAN WILL FILL THE NEXT OPPORTUNITY FOR ADMISSION INTO THE UNION BY FOLLOWING THE PROCEDURES AS SET FORTH IN 10 (D) FOR PREFERENCE FOR SHIFT WORK IN THE PRESSROOM. THIS METHOD OF SELECTION WILL CONTINUE UNTIL THE JUNIOR PRESSMAN CATEGORY REACHES THE GOAL OF 40% NON-MINORITY.

Individual Relief

_____ 14. Within fifteen (15) calendar days of the date on which Hart delivers to Times Co. a duly executed Release in the form appended hereto as Attachment A or the date on which Times Co. receives written notice from the EEOC of its approval of Hart's withdrawal of EEOC Charge No. 160-89-1549 whichever is later, Times Co. shall pay to Hart the sum of Five Thousand Dollars ($5,000.00). Said sum shall be paid in the form of a check payable to Hart and sent to him by Certified Mail, Return Receipt Requested.

15. Within fifteen (15) calendar days of the date on which Hart delivers to the Pressmen's Union a duly executed Release in the form appended hereto as Attachment B or the date on which the Pressmen's Union receives written notice from EEOC of its approval of Hart's withdrawal of EEOC Charge No. 160-89-1859, whichever is later, the Pressmen"s Union shall pay to Hart the sum of Five Thousand Dollars ($5,000.00). Said Sum shall be paid in

the form of a check payable to Hart and sent to him by Certified Mail, Return Receipt Requested.

16. Subject to Hart's execution of Releases in the form appended hereto as Attachments A and B and the EEOC's approval of Hart's withdrawal of EEOC Charge Nos. 160-89-1549 AND 160-89-1859, Hart's placement on the Pressroom Casual List shall be adjusted so that his name appears immediately below the name of R. Capanelli and immediately above the name of C. Capanelli. This adjustment shall be effective on the tenth calendar day following the latest of the date on which Hart delivers to Times Co. a duly executed Release in the form appended hereto as Attachment A, the date on which Hart delivers to the Pressmen's Union a duly executed Release in the form appended hereto as Attachment B or the date on which Times Co. and the Pressmen"s Union receive written notice of the EEOC's approval of Hart's withdrawal of EEOC Charge Nos. 160-89-1549 AND 160-89-1859. The adjustment of Hart's placement on the Pressroom Casual List, as provided for in this Paragraph, shall be subject to any conflicting judicial, administrative or arbitral order, including but not limited to an order directing Times Co. to grant to another person or persons placement on the Pressroom Casual List superior to that of Hart.

Compliance and Dispute Resolution

17. During the effective period of this Decree, if one of the parties believes that another party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the challenged party in writing, describing in detail the alleged non-compliance and suggesting an appropriate remedy. The challenged party shall have sixty (60) days from its receipt of such notice to investigate and to attempt to correct or refute the claimed violation. If, after the sixty days, the complaining party continues to believe that the challenged party has not complied with this Decree and has not remedied the alleged non-compliance, the complaining party may apply to this Court for relief.

Recordkeeping

The defendants agree to comply with all the record keeping requirements under Title VII and the regulations as set forth in 29 CFR 1602.

Attorneys Fees and Costs

18. Each party shall bear its own attorneys fees and costs incurred in this action.

Miscellaneous

19. The terms of this Decree are and shall be binding upon all successors and assigns of Times Co. and the Pressmen's Union.

20. In the event of a conflict between this Decree and any provision(s) of the collective bargaining agreement between Times Co. and the Pressmen"s Union, this Decree shall govern.

21. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected

and the other provisions will remain in force and effect.

22. The provisions of this Decree constitute the complete understanding among the parties. No other promises or agreement shall be binding unless agreed to in writing and signed by the parties.

Dated: New York, New York
December , 1993

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

_____
James L. Lee
Regional Attorney

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Dated: New York, New York
December , 1993

New York Times Co.

_____

New York Newspaper Printing
Pressmen' Union No. 2

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_____
Charles E. Hart

SO ORDERED

Date: _____

_____
U.S. District Court Judge