STATE OF MICHIGAN
IN THE COURT OF APPEALS

TOM NOWACKI, ET AL.,

Plaintiffs-Appellees,

Court of Appeals No. 330255
Court of Claims No. 15-000154-MZ

v

STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS,

Defendant-Appellant.

James K. Fett (P39461)
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PLAINTIFF-APPELLEE'S MOTION PURSUANT TO MCR 7.211(A)(3)(C) TO AFFIRM COURT OF CLAIMS APPROPRIATE EXERCISE OF DISCRETION

Plaintiff-Appellee moves for summary affirmance pursuant to MCR 7.211(A)(3)(C) as follows:

Introduction

1. This motion is before the panel because Defendant-Appellant Michigan Department of Corrections ("MDOC") refused Plaintiff's offer to dismiss with prejudice all claims which can be adjudicated only in the Court of Claims (e.g. declaratory and injunctive relief); it did this to preserve the stay of proceedings in Washtenaw County Circuit Court and to avoid imminent trial in this 5 year old class action discrimination case.

2. That is correct; MDOC rejected an offer of outright dismissal with prejudice.

3. On Plaintiff's motion, the Court of Claims dismissed the Court of Claims portion of the suit and MDOC appealed, claiming that the Court of Claims abused its discretion in dismissing the case. MDOC brief, Statement of Question Presented.

4. A motion to affirm is properly granted where the appellant takes issue with the trial court's exercise of discretion and no supporting brief is required, MCR 7.211(A)(3).

The Nature of the Claim

5. Plaintiff represents a certified class of male Michigan Department of Corrections ("MDOC") Corrections Officers ("COs") that have been denied assignments and overtime because of Defendant-Appellant MDOC's policy to exclude male COs from most positions at its lone female prison.

6. MDOC's policy is based on the false premise that male officers will necessarily sexually molest female inmates while performing in positions such as food service worker, school officer, gate control officer or gym officer.

7. MDOC's discriminatory policy based on this false premise has also harmed female COs as evidenced by the EEOC determination that MDOC "is using too broad of an application of the BFOQ" which is harming the female COs (See **Exhibit A**: EEOC Determination and Department of Justice suit against MDOC).

8. There are no legitimate reasons for excluding males from the positions at issue here (non-housing) as it is undisputed that since male officers were removed from housing units in September 2005 there were 0 sustained findings of sexual *misconduct* against male officers (same with female officers), 0 sustained findings of sex *harassment* against male officers (9 against females) and 6 sustained findings of *over familiarization* against male officers (13 against females) (**Exhibit B**: Defendants' Responses to Interrogatories Dated May 8, 2013).

The Protracted Litigation

9. Plaintiff filed motions for class certification and partial summary disposition.

10. The trial court granted the motion for class certifications.

11. On the eve of the hearing on Plaintiff's motion for partial summary disposition, the Court of Appeals granted MDOC's application for leave regarding class certification.

12. MDOC kept the case tied up in the appellate courts for two years until the Supreme Court denied its application for appeal on July 1, 2015.

13. MDOC further stayed this action by transferring the portion of the claim for equitable and declaratory relief to the Court of Claims pursuant to MCLA 600.6404(3).

14. Plaintiff suggested joining the claims in the circuit court under MCLA 600.6421(3) but MDOC refused.

15. Plaintiff then proposed a stipulation and order dismissing the equitable and declaratory requests for relief and transferring the case back to Washtenaw County Circuit Court for trial; MDOC refused.

16. Plaintiff then filed a motion to dismiss the equitable and declaratory claims which MDOC opposed, claiming all kinds of prejudice if the Court were to dismiss.

17. The claimed prejudice is illusory, some would say fabricated, to avoid trial, as the Dismissal Order actually streamlines the proceedings, requiring the expenditure of less resources by the parties and the Courts.

18. MDOC claimed that (1) it did not know who the class members were because the class had yet to be defined (untrue); (2) it would be prejudiced if Plaintiff was not required to give class notices in both the court of claims and circuit court actions; and (3) it would be prejudiced because it might have to defend multiple actions on the same issues after litigating the class action.

19. The Court of Claims granted the motion with conditions (**Exhibit C**); as more fully set forth below, the (illusory) prejudice which MDOC attributes to the Court of Claims Order of Dismissal with Conditions (the "Dismissal Order") arise because MDOC refuses to join the Circuit Court and Court of Claims actions as permitted by MCLA 600.6421(3).

20. The Court of Claims crafted the Dismissal Order so that it accommodated the needs and desires of both parties.

21. A proposed Class Notice effectuating the Dismissal Order is attached as **Exhibit D**.

Challenge to Exercise of Discretion

22. The Court of Claims properly issued its Dismissal Order since:

a. Voluntary dismissal is within the discretion of the trial court;

b. MDOC will suffer no prejudice, but rather, will benefit from entry of the order; and

c. The order furthers judicial economy and accommodates the interests of both parties.

23. In this appeal, MDOC challenges the Court of Claims' exercise of discretion while again making material misrepresentations, including:

a. The insinuation that Plaintiff improperly failed to provide class notice when the trial court properly deferred that obligation as permitted by MCR 3.501, MDOC brief at 8; MDOC made the same argument to the Court of Appeals in *Nowacki v MDOC,* 2014 WL 4088041 (Mich App No 315969) (**Exhibit E**) ("Nowacki I"), to no avail;

b. MDOC does "not know who the class is comprised of and who is potentially bound by any judgments…," MDOC brief at 8, when it well knows that the Circuit Court adopted Plaintiff's definition of the class in its certification order, *Nowacki I, supra* at *1, and there are only approximately 90 male COs at the WHV facility that qualify for the class;

c. "Nowacki, with the Court of Claims' permission, compromised the rights of these as yet unknown and unidentified class members…," MDOC brief at 8, even though by the terms of the Dismissal Order, nothing has been compromised;

d. The Dismissal Order creates a new, additional burden for MDOC because it will have to defend against the claims of some class members that opt out of the class to pursue equitable or declaratory relief, when in fact, *that has always been a possibility*; the Dismissal Order actually minimizes the burden to MDOC of opt outs by requiring only one combined notice; MDOC's assertion that dual notices and the possibility of two sets of opt outs is more efficient makes no sense; and

e. "… [P]utative members are now being forced [by the Dismissal Order] to litigate a claim on their own behalf, after class certification occurred, seeking only a limited form of relief. This is because their monetary claims would still be bound by all decisions, favorable and non-favorable, in this action." MDOC brief at 9; class members are not being *forced* to do anything. They have the *right* to opt out, per MCR 3.501, to challenge both equitable *and* monetary relief; these challenges always occur after certification – otherwise there would be nothing to opt out of.

24. The real reason for MDOC's appeal is hindrance and delay.

25. The Court of Claims' appropriate exercise of discretion is not the proper subject for appeal, especially in these circumstances, MCR 7.211(A)(3)(C).

26. This is one of those rare cases that should be summarily affirmed to avoid the further waste of judicial resources.

WHEREFORE, Plaintiff-Appellee requests that this Court summarily affirm the Court of Claims' Dismissal Order and remand to the Washtenaw County Circuit Court for trial.

Respectfully submitted,
FETT & FIELDS, P.C.

/s/ James K. Fett
By: James K. Fett (P39461)
805 E. Main St.
Pinckney, MI 48169
Co-Counsel for Plaintiff Appellee
734-954-0100

Dated: June 22, 2016

Affidavit of Mailing

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties via the email service of the electronic filing system.
I DECLARE THAT THE STATEMENTS ABOVE ARE TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

/s/Maureen K. Proffitt
Maureen K. Proffitt
Dated: June 22, 2016

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Detroit Field Office
477 Michigan Avenue, Room 865
Detroit, MI 48226-9704
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Michael Hosey
EEO/Civil Rights Coordinator
MICHIGAN DEPARTMENT OF CORRECTIONS
Greenview Plaza Building
P.O. Box 30003
Lansing, MI 48909

Re: ***Margaret Sharp v. Michigan Department of Corrections***
Charge No: 471-2010-03165

Dear Mr. Hosey:

Enclosed is a copy of a determination by the District Director specifying that there is reasonable cause to believe the statutes enforced by the EEOC have been violated in the matter referenced above. The merits of the charge are not now subject to discussion. By law, we must attempt through conciliation to correct the effects of the illegal action.

On an attached document is a specification of the kinds of corrections necessary. These are subject to negotiation. However, if you desire to make counter-proposals, it is its responsibility to do so by giving the specific offer in writing. Upon receipt of your proposals (if any), the District Director will consider them. If any proposals made by you are unacceptable, I will telephone you or your designated representative and make known the modifications needed. Upon your acceptance of the attached or our agreeing to modifications, I will render them to a standard conciliation agreement for signature by the Michigan Department of Corrections designated representative and the District Director.

Expeditious processing is necessary, in order that this matter may be concluded as promptly as possible. To this end, I must receive your agreement to the attached proposals or specific counter-proposals, within ten (10) working days of receipt of this letter. I trust I will receive your reply soon.

9/30/11
Date

Lolita Davis
Lolita Davis
Investigator

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Charge No: 471-2010-03165

Margaret Sharp
[redacted]

Charging Party

Michigan Department of Corrections
3201 Bemis Road
Ypsilanti, MI 48198

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended and the Equal Pay Act of 1963, as amended.

All requirements for coverage have been met. The charging party alleges that she was discriminated against on the basis of her sex in that she was denied reassignment, promotion, equal wages and subjected to a hostile work environment. A Dismissal and Notice of Rights has been issued to the Charging Party to further address her allegations.

However, the evidence supports a violation of the statutes enforced by the Equal Employment Opportunity Commission. Specifically, the investigation revealed the Respondent is using too broad of an application of the BFOQ which has a negative impact on female officers ability to transfer to other correctional facilities.

EEOC regulations and guidelines require that if the Commission determines that there is reason to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practices by informal methods of conference, conciliation, and persuasion. Having determined that there is reason to believe that violations have occurred, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A representative of this office will be in contact with each party in the near future to begin the conciliation process. Disclosure of information obtained by the Commission during the conciliation process will be made in accordance

with the Commission's Procedural Regulations. When the respondent declines to enter into settlement discussions, or when the Commission's representative for any other reason, is unable to secure a settlement acceptable to the office Director, the Director shall so inform the parties in writing and advise them of the court enforcement alternative available to aggrieved persons, and the Commission.

On Behalf of the Commission:

9/30/11
Date

for Webster Smith
District Director

Enclosure: Information Sheet on Filing Suit in Federal Court

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Michael Hosey
EEO/Civil Rights Coordinator
Michigan Department of Corrections
Greenview Plaza Bldg., P. O Box 30003
Lansing, MI 48909

Re: Margaret Sharpe et. al v. Michigan Department of Corrections
Charge No. [redacted]

Also for Charge No(s): 471-2010-03331; 471-2011-01129; 01130; 01133; 01134; 01219; 01311; 01312; 01317; 01321; 01322; 01328; 01364; 01365; 01366; 01367; 01379; 01380; 01382; 01785; 01787; 01790; 01832; 01839; 01840; 02084; 02089 & 02093

Dear Mr. Hosey:

As you are aware, the above referenced charges were assigned to the EEOC for review. The investigation has been completed and the Commission is ready to make a determination of the merits of the above referenced charges. The determinations will be based on the information and documentation supplied by both Respondent and the Charging Parties. A summary of the information is indicated below. I also left you a detailed voice mail message regarding this matter on September 29, 2011.This letter serves as final notice of Pre-Determination of the above cited charges.

The evidence shows that there is not reasonable cause to believe that the females were denied equal pay, denied promotion, subjected to sex based and sexually based harassment or denied specific BFOQ approved positions due to their gender, female. There is, however, reasonable cause to believe that the Respondent's broad application of the BFOQ has a negative impact on female officers' ability to transfer to other correctional facilities. In other words, there is sufficient evidence to establish a violation of Title VII with respect to the denial of transfer due to sex and the expansion and overly broad application of the BFOQ without a clear cut policy and the documented consideration of less discriminatory alternatives.

The evidence gathered during the investigation revealed the following:

Issue #1: Wage Issue – ***No Violation – No Cause Finding***

The evidence shows that male and female officers are paid the same wage rates for performing the same duties. However, following the implementation of the BFOQ, there were a small number of male guards frozen, or "red circled," in their higher wage rate.

This is a very small number and it diminishes each year. No new males are eligible for this higher "red circle" rate. This is an allowable exception under the Equal Pay Act and it provides the rationale for the male RUO E10 officers who are paid at a higher wage rate.

Issue #2: Sex, Sexual Harassment - **No *Violation – No Cause Finding***

There is no evidence to establish that female guards have made the Respondent aware of specific sex based and sexually based comments, remarks and actions. Without clear cut specific instances of who was subjected to this alleged treatment, when it happened, who did it, who it was reported to and what action was or was not taken, the EEOC is unable to investigate this issue further. The Respondent has a harassment policy in place which affords an employee with the opportunity to utilize the internal process to allege a sex based or sexually hostile work environment. There is no record of any complaints having been made. Further, despite our efforts to get specific and direct answers regarding this, all of the allegations remain generalized and non-specific. There is no evidence to support the allegations of sexual harassment based on the laws enforced by the EEOC.

Issue #3: Overly Expansive Application of the BFOQ Process – ***Cause Finding***

According to the applicable legal standards and the decision of the 6th Circuit Court of Appeals, it is clear that the Respondent has met their legal burden to use the BFOQ defense in the assignment of female Correctional Officers. However, Everson v. MDOC states that female facilities need not employ only female officers. Only those positions that require females i.e., housing units, strip searches, and hospital visits (where appropriate) need to be female staffed. In the meantime, the Respondent should provide for equal employment opportunities for female correction officers, while balancing those opportunities against a moderate concern for inmate privacy and concern for institutional security. Preferential treatment should not to be granted based on the existing number of female and male guards or the percentage of the imbalance.

It appears as if the Respondent is using too broad of an application of the BFOQ which has a negative impact on female Officers ability to transfer out of the correctional facility. Meaning, female officers should be allowed the same rights the male officers are given when it comes to being transferred to other Correctional Facilities. It appears as if the transition into the BFOQ has had a fundamentally negative, adverse impact on Female Officers assigned to the MDOC Female Facility. As currently implemented, the gender based policy disqualifies females from positions without a clear analysis and consideration of non-gender specific alternatives. The Respondent needs to develop a clear-cut policy to demonstrate that such alternatives have been considered and an explanation as to why this alternative can not be effectuated.

Issue #4: Denied the opportunity for transfer – *Cause Finding*

In September 2005, the MDOC removed all male correction officers from working inside

the housing units of female prisons based on a BFOQ. The female correctional facilities became grossly under staffed because of the removal of male officers from the housing units. This event, coupled with the MDOC's hiring freeze resulted in the inability of the Respondent to provide adequate services to the female prison population due to the staffing change. Instead of considering other alternatives, the Respondent denied transfers to high seniority female Officers because they are female. This gender based decision has resulted in some female staff being denied a transfer outside the Women's Correctional Facility, because of their sex. Further, testimony revealed that the female guards are told directly by management and the Warden that they cannot transfer because they are female. No effort is made to explain the BFOQ staffing and no consideration is being made for other, less discriminatory alternatives.

Issue #5: Denied the opportunity for promotion/reassignment – ***No Cause Finding***

According to the applicable legal standards and the decision of the 6th Circuit Court of Appeals, it is clear that MDOC has met their legal burden to use the BFOQ defense in the assignment of female correctional officers. It is also clear from the evidence provided that MDOC has promoted females correctional officers. The investigation revealed that some female officers working at the Women's Huron Valley Correctional Facility were promoted outside of the facility. For example, the evidence shows three female Correction Officers were promoted from February 2010 to August 2010. (Dates of Promotion: 1/10/10, Resident Unit Officer E10; 5/2/10, Resident Unit Officer E10; 5/2/10, Resident Unit Officer E10).

This evidence, when consider as whole presents a mixed finding. The Charging Parties will receive Dismissal Notices that will allow them to pursue the no cause/no violation portion of their charges in federal court. Letters of Determination finding reasonable cause to believe that the Respondent has violated Title VII with respect to the overly broad expansion of the BFOQ and the denial of transfer to female guards will be issued.

Once the Commission's determinations have been issued, both sides will be invited to join in a collective effort toward a just resolution of this matter. Conciliation Agreements containing the types of relief necessary to remedy the violation of the statute will be forwarded at that time. If you have any questions, I can be reached at (313) 226-3347.

Sincerely,

Gail D. Cober
Field Director

Date mailed: 9/29/11

Remailed after "Return to Sender" 10/4/11

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF MICHIGAN AND MICHIGAN DEPARTMENT OF CORRECTIONS, Defendants.	CIVIL NO. 2:16-cv-12146 JURY TRIAL DEMANDED

COMPLAINT

Plaintiff United States of America ("United States") alleges:

NATURE OF THE ACTION

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.* ("Title VII").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), § 2000e-6, and 28 U.S.C. §§ 1331, 1343(a) and 1345.

3. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f)(3), § 2000e-6(b), and 28 U.S.C. § 1391(b) because it is where a substantial part of the events or omissions giving rise to the cause of action occurred.

PARTIES

4. Defendants Michigan Department of Corrections ("MDOC") and the State of Michigan are public employers.

5. Defendant MDOC is a governmental agency created pursuant to the laws of the State of Michigan, and Defendant State of Michigan is a state government within the meaning of 42 U.S.C. § 2000e(a).

6. Defendants are "persons" within the meaning of 42 U.S.C. § 2000e(a) and are "employers" within the meaning of 42 U.S.C. § 2000e(b).

7. Defendant MDOC administers and operates Defendant State of Michigan's correctional system and prison facilities, which encompass over 30 correctional facilities, house over 43,000 inmates, and employ over 7,300 Correctional Officers ("COs"). Of those COs, approximately 6,077 (83%) of MDOC COs system-wide are male and 1,292 (17%) are female.

8. Defendants employ COs who are responsible for, among other things, maintaining custodial care and control of inmates housed in correctional facilities in the State of Michigan.

9. MDOC currently administers and operates one correctional facility for adult female inmates, Women's Huron Valley Correctional Facility ("WHV"). WHV is located in the City of Ypsilanti, Washtenaw County, Michigan and within the jurisdiction of this Court. WHV houses over 2,200 female inmates and employs over 330 COs. Of those COs, approximately 85% are female.

10. The Equal Employment Opportunity Commission ("EEOC") received timely charges of discrimination from 28 women employed as COs at WHV alleging MDOC discriminated against them based on sex because MDOC: (1) maintained an overly broad female-only assignment policy without sufficient justification for a bona fide occupational qualification ("BFOQ") exception for such assignments; and (2) denied transfers to female COs in order to staff its female-only assignments. Since the time of their charges, some of the Charging Parties have stopped working at WHV or have left employment with Defendants altogether. The 28 Charging Parties are set forth below:

NAME	EEOC CHARGE NO.	DATE CHARGE FILED
Margaret Sharpe	471-2010-03165	August 5, 2010
Rita Wise	471-2010-03331	September 10, 2010
Lorrie Stanton	471-2011-01130	February 11, 2011
Megan Littrup-Dean	471-2011-01129	February 24, 2011
Kathleen Mathis	471-2011-01133	March 9, 2011

Jeannine Street-Ostrewich	471-2011-01134	March 10, 2011
Amy Morton	471-2011-01367	March 15, 2011
Roxanne Weatherly	471-2011-01311	March 18, 2011
Dana Starks	471-2011-01321	March 18, 2011
Kenesha Thomas	471-2011-01317	March 18, 2011
Latonya Dalton	471-2011-01312	March 19, 2011
Crystal Socier	471-2011-01322	March 23, 2011
Brandi Odom	471-2011-01379	March 28, 2011
Vernithia Parker	471-2011-01382	March 29, 2011
Michelle Mattox	471-2011-01380	April 4, 2011
Joyce Paige	471-2011-01219	April 11, 2011
Terri Williams	471-2011-01364	April 19, 2011
Patricia Rhodes-Reeves	471-2011-01328	April 21, 2011
Aleika Buckner	471-2011-01793	April 21, 2011
Jennifer Nielsen	471-2011-01839	April 25, 2011
Tia Shidler	471-2011-01366	April 25, 2011
Kellee Hill	471-2011-01787	April 27, 2011
Sharon Ernest	471-2011-01785	May 2, 2011
Sierra Long	471-2011-02089	May 6, 2011

Monique Joyce	471-2011-02084	May 16, 2011
Shiryl Gentry (now deceased)	471-2011-01790	May 17, 2011
Jennifer Edwards	471-2011-02093	May 17, 2011
Orlinda Mallett-Godwin	471-2011-01832	May 20, 2011

11. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated the charges, found reasonable cause to believe that Title VII violations had occurred with respect to these 28 female COs and similarly situated individuals, and unsuccessfully attempted to conciliate the charges. The EEOC then referred these charges to the United States Department of Justice.

12. On February 11, 2016, the United States notified Defendants of its intent to file a complaint against them for violating Title VII with respect to the allegations raised in the referred EEOC charges, including allegations of a pattern or practice of discrimination.

13. All conditions precedent to the filing of this Complaint have been performed or have occurred.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

Prior Litigation Regarding MDOC's Treatment of Female Inmates

14. Before 2008, MDOC primarily housed its adult female inmates in three female-only correctional facilities.

15. During the 1990s, female inmates filed lawsuits in both state and federal court against MDOC alleging numerous constitutional and federal statutory violations emanating from acts of sexual abuse that included sexual misconduct, sexual harassment, and violations of privacy. The female inmates' claims for monetary and injunctive relief were resolved by settlement agreements reached in each case.

16. The United States brought a lawsuit against Defendants in 1997, under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §§ 1997, *et seq*., alleging that Defendants were violating the constitutional rights of female inmates by failing to protect them from sexual misconduct and unlawful invasions of privacy. The parties entered into a settlement agreement resolving these claims.

17. As a result of these lawsuits, their resulting settlement agreements, and expert reports and recommendations, MDOC explored approaches for increasing the presence of female COs in certain components of its female

correctional facilities as a means of addressing sexual abuse against female inmates.

18. The United States is not challenging any corrective actions MDOC took pursuant to these settlement agreements.

MDOC's 2000 Female-Only Assignments

19. In August 2000, MDOC sought approval from the Michigan Civil Service Commission ("MCSC") to designate 267 assignments, the vast majority of which were in the housing units, as female-only assignments such that only female employees could serve in these assignments. With its application, MDOC submitted supporting documentation, including internal data and studies, and expert reports.

20. In August 2000, MCSC granted MDOC's request to certify the 267 assignments as female only.

21. The United States is not challenging the female-only assignments certified in 2000.

MDOC's 2009 Female-Only Assignments

22. In 2008, MDOC consolidated its three adult female correctional facilities into one, WHV.

23. On or about March 27, 2009, MDOC applied to the MCSC for 11 additional female-only assignments including, but not limited to: (1) Food

Service Officer; (2) Yard Control Officer; (3) Property Room Officer; and (4) Electronic Monitor Officer. These assignments are not located within WHV's housing units, and are not within the scope of the earlier settlement agreements or the 2000 female-only assignments.

24. In its application, MDOC claimed that given its history of litigation regarding sexual abuse and its desire to maximize safety and security, it demonstrated a need to expand the number of female-only assignments at WHV. Further, MDOC contended that each assignment "is either an isolated position, involves potential privacy concerns on the part of the prisoners, or requires an officer to conduct pat-down searches on female prisoners."

25. With its application, MDOC included job descriptions for each of the assignments. Aside from the job descriptions, MDOC did not submit any additional supporting documentation.

26. In April 2009, MCSC granted MDOC's request to certify sex as a BFOQ for the 11 additional assignments at WHV.

27. Shortly thereafter, MDOC designated the 11 job assignments as female only, including, but not limited to, Food Service Officer, Yard Control Officer, Property Room Officer, and Electronic Monitor Officer.

28. The Food Service Officer monitors inmate workers and outside contractor workers who receive, store, prepare, and serve food to inmates. The

assignment is generally staffed by two COs, and is located in a public area of WHV where other COs are also present. The assignment was designated as female only in 2009.

29. The Yard Control Officer monitors the yard areas and makes rounds of the buildings that comprise WHV. There are approximately ten Yard Control Officers on first and second shifts and approximately five officers on third shift. Approximately half of the assignments on each shift were designated female only in 2009. The remainder of the assignments could be staffed by either male or female COs.

30. The Property Room Officer monitors inmate workers, ensures the safety of incoming inmate purchases, maintains files of inmate purchases, and prevents the introduction of contraband. The assignment is generally staffed by two COs. The assignment was designated as female only in 2009.

31. The Electronic Monitor Officer monitors WHV through cameras and microphones in the Control Center. There are other COs and supervisory staff in the Control Center. The Electronic Monitor Officer typically does not leave the Control Center, and generally does not interact with inmates. The assignment has been designated as female only since 2009.

32. Based on representations from MDOC, beginning in or around June 2016, MDOC lifted the female-only restriction from some, but not all, of the

2009 female-only assignments, including Food Service Officer, Yard Control Officer, and Property Room Officer.

33. Prior to 2009, male COs worked in the Food Service Officer, Yard Control Officer, Property Room Officer, and Electronic Monitor Officer assignments and successfully performed the primary functions of the job for these assignments.

34. MDOC's implementation of the 2009 female-only assignments for Food Service Officer, Yard Control Officer, Property Room Officer, and Electronic Monitor Officer has required and continues to require female COs at WHV to work excessive, mandatory overtime hours in order to staff MDOC's female-only assignments and has impeded and continues to impede female COs from transferring from WHV to other MDOC facilities.

35. Charging Parties and similarly situated employees at WHV have suffered emotional distress and economic harm as a result of the unjustified 2009 female-only assignments.

MDOC's Transfer Policy

36. Section 8(b) of MDOC's employee handbook and Article 15 of MDOC's collective bargaining agreement ("CBA") with the Service Employees International Union Local 526 M, AFL-CIO, govern transfers, including seniority-based transfers, of COs between MDOC facilities.

37. Under Article 15 of the CBA, all non-probationary employees have an opportunity to apply for seniority-based transfers. Eligible employees may sign up to be on the transfer list. Management is required to select the most senior qualified employee whose name has been on the list for at least 30 calendar days.

38. In August 2005, MDOC instituted a freeze on all CO transfers out of its female correctional facilities. In February 2008, MDOC reiterated that the freeze was still in effect.

39. In April 2016, MDOC sought five female COs at WHV to transfer to its Detroit Reentry Center to fill five female-only assignments at that facility. This limited transfer opportunity did not otherwise affect or alter the ongoing transfer freeze.

40. Since the 2009 female-only assignment policy was implemented, MDOC officials have routinely granted the requests of eligible male COs to transfer from WHV to other MDOC facilities pursuant to Article 15 of the CBA despite the transfer freeze.

41. Since the 2009 female-only assignment policy was implemented, MDOC officials have routinely denied the requests of eligible Charging Parties and similarly situated eligible female COs to transfer from WHV to other MDOC facilities.

42. Since the 2009 female-only assignment policy was implemented, MDOC officials have routinely required female COs to find a female CO replacement as a condition of transfer from WHV to another MDOC facility while not requiring this condition of male COs who receive transfers.

43. As a result of MDOC's transfer denials, Charging Parties and similarly situated employees have been denied the opportunity to: (1) move from WHV to MDOC facilities closer to their homes; (2) gain additional experience at other MDOC facilities, which is beneficial for promotion; (3) experience other job opportunities not available at WHV; and (4) move from WHV to a more desirable facility.

44. As a result of MDOC's transfer denials, Charging Parties and similarly situated employees at WHV have been required and continue to be required to work excessive amounts of overtime that are hazardous to their health.

45. Charging Parties and similarly situated employees have suffered emotional distress and economic harm as a result of the discriminatory denial of transfers.

CLAIMS FOR RELIEF

COUNT I

MDOC's 2009 Female-Only Assignments for Food Service Officer, Yard Officer, Property Room Officer, and Electronic Monitor Officer Constitute a Facially Discriminatory Policy which Discriminates on the Basis of Sex Under Sections 703, 706, and 707 of Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e-5(f) & 2000e-6

46. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 45 above.

47. MDOC's 2009 female-only assignments for Food Service Officer, Yard Control Officer, Property Room Officer, and Electronic Monitor Officer have constituted and/or continue to constitute a facially discriminatory policy which discriminates on the basis of sex.

48. Defendants cannot establish that:

a. designating the Food Service Officer, Yard Control Officer, Property Room Officer, and Electronic Monitor Officer assignments as female only was reasonably necessary to the normal operation of its business;

b. designating these four assignments as female only related to the essence or central mission of its business; and

c. no reasonable alternatives existed to designating these four assignments as female only.

49. The 2009 female-only assignments of Defendants described in paragraphs 47 and 48 also constitute a pattern or practice of discrimination on the basis of sex in violation of Title VII. Defendants have pursued, and continue to pursue, policies and practices that discriminate on the basis of sex. Under both Sections 706 and 707 of Title VII, 42 U.S.C. §§ 2000e-5(f) & 2000e-6(a), the United States has authority to bring a civil action requesting relief.

COUNT II

MDOC's 2009 Female-Only Assignments for Food Service Officer, Yard Officer, Property Room Officer, and Electronic Monitor Officer Discriminate Based on Sex and Constitute a Pattern or Practice of Discrimination Based on Sex Under Sections 703, 706, and 707 of Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e-5(f) & 2000e-6

50. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 45 above.

51. In violation of Title VII, 42 U.S.C. § 2000e-2(a), MDOC discriminated against Charging Parties and similarly situated female COs, on the basis of sex, with respect to their terms, conditions, or privileges of employment at WHV by unlawfully designating the Food Service Officer, Yard Control Officer, Property Room Officer, and Electronic Monitor Officer assignments as female only.

52. Defendants cannot establish that:

a. designating the Food Service Officer, Yard Control Officer, Property Room Officer, and Electronic Monitor Officer assignments as female only was reasonably necessary to the normal operation of its business;

b. designating these four assignments as female only related to the essence or central mission of its business; and

c. no reasonable alternatives existed to designating these four assignments as female only.

53. The 2009 female-only assignments of Defendants described in paragraphs 51 through 52 also constitute a pattern or practice of discrimination on the basis of sex in violation of Title VII. Defendants have pursued, and continue to pursue, policies and practices with respect to terms, conditions, or privileges of employment that discriminate against women and that deprive or tend to deprive women of employment opportunities because of their sex. Under both Sections 706 and 707 of Title VII, 42 U.S.C. §§ 2000e-5(f) & 2000e-6(a), the United States has authority to bring a civil action requesting relief.

COUNT III

MDOC's Transfer Practice Discriminates Based on Sex and Constitutes a Pattern or Practice of Discrimination Based on Sex Under Sections 703, 706 and 707 of Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e-5(f) & 2000e-6

54. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 45 above.

55. In violation of Title VII, 42 U.S.C. § 2000e-2(a), MDOC has discriminated on the basis of sex at WHV in terms of transfers among other ways, by:

a. denying transfers or imposing additional conditions for transfers of eligible Charging Parties and similarly situated female COs at WHV; and

b. granting transfers of male COs with less seniority than eligible Charging Parties and similarly situated female COs at WHV and/or not imposing additional conditions on male COs' transfer requests.

56. The acts and practices of Defendants described in paragraph 55 also constitute a pattern or practice of discrimination on the basis of sex in violation of Title VII. Defendants have pursued, and continue to pursue, policies and practices with respect to terms, conditions, or privileges of employment that discriminate against women and that deprive or tend to deprive women of employment opportunities because of their sex. Under both Sections 706 and

707 of Title VII, 42 U.S.C. §§ 2000e-5(f) & 2000e-6(a), the United States has authority to bring a civil action requesting relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States prays that this Court grant the following relief:

A. Enjoin Defendants from further discrimination in job assignments on the basis of sex at WHV;

B. Enjoin Defendants from further discrimination in the grant of transfer requests against Charging Parties and similarly situated female COs at WHV;

C. Order Defendants to develop and implement appropriate and effective measures to prevent discrimination, including, but not limited to, policies, procedures, and training for employees and officials;

D. Require Defendants to adopt Title VII-compliant job assignment and transfer policies;

E. Award damages to Charging Parties and similarly situated female COs to compensate them for the pain and suffering and economic harm caused by the discriminatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a; and

F. Award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a).

Dated: June 13, 2016

Respectfully submitted,

BARBARA L. McQUADE
United States Attorney
Eastern District of Michigan

BY: /s/ *Sarah Karpinen*
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STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY

TOM NOWACKI, et al,

Plaintiffs,

v

STATE OF MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

No. 11-852-CD

HON. ARCHIE C. BROWN

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P.O. Box 30736
Lansing, Michigan 48909
517.373.6434

/

DEFENDANT'S RESPONSE TO PLAINTIFF'S INTERROGATORIES DIRECTED TO DEFENDANT DATED MAY 8, 2013

INTERROGATORY QUESTIONS

1. For each year 2004 to the present, please state the total number of reports against male correction officers by female inmates for:

a. sexual misconduct

b. sexual harassment

c. over-familiarization

RESPONSE: See attached spreadsheet, bates numbered 007271.

2. As to the complaints against male correction officers please state for each year 2004 to the present the number of reports of ***sexual misconduct*** that were:

a. sustained

b. not sustained

c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

3. As to the complaints against male correction officers please state for each year 2004 to the present the number of reports of ***sexual harassment*** that were:

a. sustained

b. not sustained

c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

4. As to the complaints against male correction officers please state for each year 2004 to the present the number of reports of ***over-familiarization*** that were:

a. sustained

b. not sustained

c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

5. For each year 2004 to the present, please state the total number of reports against female correction officers by female inmates for:

a. sexual misconduct

b. sexual harassment

c. over-familiarization

RESPONSE: See attached spreadsheet, bates numbered 007271.

6. As to the complaints against female correction officers please state for each year 2004 to the present the number of reports of ***sexual misconduct*** that were:

a. sustained

b. not sustained

c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

7. As to the complaints against female correction officers please state for each year 2004 to the present the number of reports of ***sexual harassment*** that were:

a. sustained

b. not sustained

c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

8. As to the complaints against female correction officers please state for each year 2004 to the present the number of reports of *over-familiarization* that were:

a. sustained

b. not sustained

c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

Please do not object as the district court in *Everson v MODC*, 222 F Supp 2d 864 (ED Mich 2002) stated that "The MDOC keeps detailed statistics which display individual incidents of improper conduct in each of the female prisons year by year, ...," *id* at 887.

Dated: 6/19/13

Pam R Nelson

Pam R. Nelson
Litigation Specialist
MDOC

Subscribed and sworn to before me this
19 day of June, 2013.

Robert W. Farr

Notary Public
Eaton County, Michigan
My Commission expires: 1-29-2015
acting in Ingham County

Allegations of Sexual Harassment, Sexual Misconduct and Overfamiliarity Toward Women Prisoners Made Against Corrections Officers

January 2004 through May 2013

Allegation	Staff/Pris	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	TOTAL
SM	M/F	8	10	1	6	5	1	2	1	0	0	34
SM	F/F	0	3	0	0	1	1	2	2	0	0	9
SH	M/F	15	6	10	5	5	5	1	0	2	1	50
SH	F/F	19	13	20	19	23	12	4	1	0	0	111
Overfamiliar	M/F	4	2	2	3	1	0	2	0	1	0	15
Overfamiliar	F/F	3	6	4	2	3	2	7	1	4	2	34
TOTAL		49	40	37	35	38	21	18	5	7	3	253

Finding	Staff/Pris	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	TOTAL
SM	M/F											
Sustained		0	0	0	0	0	0	0	0	0	0	0
Not Sustained		3	5	0	1	1	0	0	1	0	0	11
Unfounded		5	5	1	5	4	1	2	0	0	0	23
SM	F/F											
Sustained		0	0	0	0	0	0	0	0	0	0	0
Not Sustained		0	0	0	0	0	1	0	0	0	0	1
Unfounded		0	3	0	0	1	0	2	2	0	0	8
SH	M/F											
Sustained		0	0	0	0	0	0	0	0	0	0	0
Not Sustained		10	5	8	2	4	4	0	0	2	0	35
Unfounded		5	1	2	3	1	1	1	0	0	1	15
SH	F/F											
Sustained		2	0	2	1	4	0	0	0	0	0	9
Not Sustained		13	7	9	11	11	4	2	1	0	0	58
Unfounded		4	6	9	7	8	8	2	0	0	0	44
Overfamiliar	M/F											
Sustained		1	1	1	1	0	0	2	0	1	0	7
Not Sustained		1	1	0	2	0	0	0	0	0	0	4
Unfounded		2	0	1	0	1	0	0	0	0	0	4
~~Overfamiliar~~	~~F/F~~											
Sustained		1	3	0	0	2	0	2	1	4	1	14
Not Sustained		2	3	3	0	0	0	1	0	0	0	9
Unfounded		0	0	1	2	1	2	4	0	0	1	11
TOTAL		49	40	37	35	38	21	18	5	7	2 (1 open)	252

Facilities include: Western Wayne, Robert Scott, Huron Valley Complex-Women, Camps Brighton, White Lake & Valley, Special Alternative Incarceration

NOTE: Overfamiliarity includes any overly familiar conduct/contact with prisoners or their families, not necessarily of a sexual nature.

SM = Sexual Misconduct
SH = Sexual Harassment

as of May 31, 2013

Allegations of Sexual Harassment, Sexual Misconduct and Overfamiliarity Toward Women Prisoners Made Against Corrections Officers

January 2004 through May 2013

Allegation	Staff/Pris	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	TOTAL
SM	M/F	8	10	1	6	5	1	2	1	0	0	34
SM	F/F	0	3	0	0	1	1	2	2	0	0	9
SH	M/F	15	6	10	5	5	5	1	0	2	1	50
SH	F/F	19	13	20	19	23	12	4	1	0	0	111
Overfamiliar	M/F	4	2	2	3	1	0	2	0	1	0	15
Overfamiliar	F/F	3	6	4	2	3	2	7	1	4	2	34
TOTAL		**49**	**40**	**37**	**35**	**38**	**21**	**18**	**5**	**7**	**3**	**253**

Finding	Staff/Pris	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	TOTAL
SM	**M/F**											
Sustained		0	0	0	0	0	0	0	0	0	0	0
Not Sustained		3	5	0	1	1	0	0	1	0	0	11
Unfounded		5	5	1	5	4	1	2	0	0	0	23
SM	**F/F**											
Sustained		0	0	0	0	0	0	0	0	0	0	0
Not Sustained		0	0	0	0	0	1	0	0	0	0	1
Unfounded		0	3	0	0	1	0	2	2	0	0	8
SH	**M/F**											
Sustained		0	0	0	0	0	0	0	0	0	0	0
Not Sustained		10	5	8	2	4	4	0	0	2	0	35
Unfounded		5	1	2	3	1	1	1	0	0	1	15
SH	**F/F**											
Sustained		2	0	2	1	4	0	0	0	0	0	9
Not Sustained		13	7	9	11	11	4	2	1	0	0	58
Unfounded		4	6	9	7	8	8	2	0	0	0	44
Overfamiliar	**M/F**											
Sustained		1	1	1	1	0	0	2	0	1	0	7
Not Sustained		1	1	0	2	0	0	0	0	0	0	4
Unfounded		2	0	1	0	1	0	0	0	0	0	4
Overfamiliar	**F/F**											
Sustained		1	3	0	0	2	0	2	1	4	1	14
Not Sustained		2	3	3	0	0	0	1	0	0	0	9
Unfounded		0	0	1	2	1	2	4	0	0	1	11
TOTAL		**49**	**40**	**37**	**35**	**38**	**21**	**18**	**5**	**7**	**2**	**252**
											(1 open)	

Facilities include: Western Wayne, Robert Scott, Huron Valley Complex-Women, Camps Brighton, White Lake & Valley, Special Alternative Incarceration

NOTE: Overfamiliarity includes any overly familiar conduct/contact with prisoners or their families, not necessarily of a sexual nature.

SM = Sexual Misconduct
SH = Sexual Harassment

as of May 31, 2013

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY

TOM NOWACKI, et al,

Plaintiffs,

v

No. 11-852-CD

HON. ARCHIE C. BROWN

STATE OF MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

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Jeanmarie Miller (P44446)
Attorney for Defendant
Assistant Attorney General
P.O. Box 30736
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517.373.6434

---/

PROOF OF SERVICE

The undersigned certifies that a copy of the following was served upon the attorneys of record in the above cause by mailing the same to Glen N. Lenhoff and James K. Fett at the above addresses, with postage fully prepaid, on the 19th day of June, 2013 (an unsigned copy was also emailed to attorneys of record on the 13th day of June, 2013):

1. Defendant's Response to Plaintiff's Interrogatories Directed to Defendant Dated May 8, 2013; and
2. Proof of Service.

Brenda Barton
Legal Secretary

STATE OF MICHIGAN

COURT OF CLAIMS

TOM NOWACKI,

Plaintiff,

v

Case No. 15-000154-MZ

STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS,

Hon. Mark T. Boonstra

Defendant.

ORDER OF DISMISSAL WITH CONDITIONS

At a session of said Court held, in the City of
Lansing, Ingham County, Michigan, on
October 28, 2015.

This matter is before the Court on plaintiff's motion to dismiss. The Court has reviewed the motion and the defendant's brief filed in opposition thereto. For the reasons that follow, and pursuant to MCR 2.504(A)(2) and MCR 3.501(E), the Court will grant plaintiff's motion with the conditions specified in this order.

A brief summary of the procedural history of this case is first in order. This action was initiated in the Washtenaw County Circuit Court in 2011, captioned as *Nowacki v State of Michigan Department of Corrections*, Case No. 11-852-CD ("the Circuit Court Proceeding"). Plaintiff alleged gender discrimination in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq. On December 6, 2011, plaintiff, with leave of the Circuit Court, filed an Amended Complaint alleging the same cause of action, but adding class action allegations. On behalf of himself and a putative class, plaintiff sought monetary, declaratory, and injunctive relief. On June 21, 2012, the Circuit Court granted plaintiff's motion for class certification. On April 12, 2013, the Circuit Court denied defendant's motion for reconsideration of its class certification order, and additionally denied defendant's motion for involuntary dismissal. On April 30, 2013, defendant filed with the Michigan Court of Appeals an application for leave to appeal the Circuit Court's class certification order. On June 25, 2013, the Court of Appeals granted defendant's application for leave to appeal, and stayed further proceedings in the Circuit Court pending resolution of the appeal. On August 19, 2014, the Court of Appeals issued an opinion affirming the Circuit Court's class certification order. On September 30, 2014, defendant filed with the Michigan Supreme Court an application for leave to appeal the decision of the Michigan Court of Appeals. On July 1, 2015, the Michigan Supreme Court denied defendant's application for leave to appeal. On July 21, 2015, defendant filed a Notice of Transfer, pursuant to

MCL 600.6404(3), transferring to the Court of Claims plaintiff's claims for injunctive and declaratory relief only, leaving plaintiff's claims for monetary relief pending in the Circuit Court Proceeding.

On October 9, 2015, plaintiff filed in this Court a motion to dismiss premised on plaintiff's desire to waive the pending claims for injunctive and declaratory relief in order to "expedite the trial on monetary damages, the primary objective of the class." Plaintiff contends that MCR 3.501(E) ("An action certified as a class action may not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to the class in such manner as the court directs.") is inapplicable because the matters pending in this Court comprise "certain remedies" rather than an "action." Yet, plaintiff rather inconsistently requests both that this Court "dismiss this action" and that it "transfer this action back to the Washtenaw County Circuit Court."

In response, defendant argues that plaintiff, having filed a class action and obtained class action status, is bound by the requirements of MCR 3.501. Further, defendant maintains that the putative class members are entitled to notice of the action, including the relief sought (MCR 3.501(C)(5)(a)), notice that any judgment will bind all class members, whether favorable or not (MCR 3.501(C)(5)(e)), and notice that they have a right to intervene (MCR 3.501(C)(5)(f)). Defendant maintains that what is pending in this Court comprises an "equitable and declaratory action" such that MCR 3.501 is applicable, and that plaintiff seeks to compromise the action in a way that may "foreclose[] to . . . putative class members" an element of relief that had been sought on their behalf. Defendant further argues that it has a right to know who will be barred from bringing a claim as a result of the dismissal, and that, absent class notice, "any putative class member could argue that he or she is not barred by the dismissal as a class action binds only those class members who were notified of the class and who did not elect to be excluded." Plaintiff also contends that putative class members "should be given the right to intervene and object if they so choose." Finally, defendant argues that a dismissal of plaintiff's claims in this Court would be highly prejudicial to defendant because a dismissal under MCR 2.504(A)(2) is without prejudice and thus could subject defendant to having to defend the same claims in another action that may be filed by plaintiff or a putative class member.

The Court appreciates the arguments of both parties, and finds some merit in the positions of each. In particular, the Court credits plaintiff's expressed desire to expeditiously proceed with what plaintiff describes as "the primary objective of the class," i.e., the claimed monetary damages that are the subject of the Circuit Court Proceeding. The Court further credits defendant's need and desire for a definitive identification of class members who will be bound to and barred as a result of any dismissal. Most importantly, the Court wishes to ensure that putative class members are afforded proper notice, including of their right to object, intervene, or opt out of the class.

Plaintiff raises an interesting academic question as to whether that which is pending in this Court constitutes an "action," a "claim," or merely "certain relief" (as suggested by plaintiff). Theoretically, it is arguable that there is no "action" pending in this Court in the sense that an "[t]here is one form of action known as a 'civil action'" (MCR 2.101(A)), a "civil action is commenced by filing a complaint with a court" (MCR 2.101(B)), and no complaint was ever filed in this Court. However, MCR 2.101(B) merely requires that a civil action be filed in "a" court. Plaintiff's original and amended complaints were both filed in the Circuit Court, and the pleadings filed in the Circuit Court continue to govern the proceedings both there and in this Court. The fact remains, given the complicated procedural history summarized above, that what is pending in this Court is comprised of a portion of the "action"

originally filed in the Circuit Court. Plaintiff has pointed to no authority that would preclude a civil action from being split into two components pursuant to MCL 600.6404(3), or that would obviate the need to afford to the putative class members the protections of MCR 3.501 in the event of such a splitting of the civil action. The Court therefore concludes that MCR 3.501 is applicable, and it is therefore persuaded that it cannot appropriately dismiss plaintiff's claims for declaratory and injunctive relief without an appropriate mechanism by which to give proper notice to the putative class members.

The Court concludes, however, that the notification procedure described in this order constitutes such a mechanism, one that it will not only protect the interests of the putative class members but one that will additionally satisfy the legitimate concerns expressed by both plaintiff and defendant. Further, the Court concludes that it can properly implement that mechanism under MCR 2.504(A)(2) and MCR 3.501(E).

MCR 3.501(E) provides:

> **(E) Dismissal or Compromise.** An action certified as a class action may not be dismissed or compromised *without the approval of the court*, and notice of the proposed dismissal or compromise shall be given to the class *in such manner as the court directs.* (emphasis added).

The Court concludes that while the putative class members are entitled to appropriate notice and opportunity to respond before being bound by any dismissal of plaintiff's claims for injunctive and declaratory relief, adequate notice can be afforded as a component of the class notice that will need to be provided in any event in the Circuit Court Proceeding. In addition to protecting the interests of the putative class, as well as plaintiff and defendant, this mechanism will serve the interests of judicial economy and efficiency, as it will avoid the issuance of dual notices both in this proceeding and in the Circuit Court Proceeding. Moreover, to ensure adequate protection of the putative class members, and in addition to any notice provisions that may be appropriate in relation to the Circuit Court Proceeding, that class notice should apprise putative class members of the conditional dismissal of plaintiff's claims for injunctive and declaratory relief by this Court, and of their right to re-file those claims should they choose to do so, and should additionally protect them from any advancement of the running of the statute of limitations on those claims before the time by which they will be required to respond to the class notice. The Court further concludes that this mechanism adequately addresses defendant's need and desire to obtain clarity as to the identity of class members who will be bound by this Court's order of dismissal.

Further, a dismissal under MCR 2.504(A)(2) is without prejudice "[u]nless the order specifies otherwise." MCL 2.504(A)(2)(b). Consequently, in order to protect defendant from undue prejudice, while still affording all appropriate protections to plaintiff and the putative class members, the dismissal of plaintiff's claims for injunctive and declaratory relief shall be with prejudice, subject to the conditions of this order. Accordingly, and the Court being fully apprised;

IT IS ORDERED that plaintiff's claims in this class action, seeking injunctive and declaratory relief (apart from the monetary relief sought for the same claims in the Circuit Court Proceeding, which claims remain pending in the Washtenaw County Circuit Court and are not the subject of this order) are DISMISSED, with the following CONDITIONS:

1. Statutes of limitations applicable to plaintiff's claims for injunctive and declaratory relief shall be TOLLED for all putative class members until such time as putative class members are required to respond (should they choose to do so) as directed in the class notice to be issued in the Circuit Court Proceeding; and

2. The class notice to be issued in the Circuit Court Proceeding shall advise putative class members of the conditional dismissal of plaintiff's claims for injunctive and declaratory relief in this Court of Claims proceeding, of the tolling of the statute of limitations provided for in this Order, and of their right to file an action asserting those claims for injunctive or declaratory relief in the Court of Claims; and

3. Should the class notice in the Circuit Court Proceeding fail to so advise putative class members, either party may petition this Court to reopen this case; and

4. Except in the event that this case is reopened pursuant to the provisions of this order, and except as to any putative class member(s) who may opt to file an action asserting claims for injunctive or declaratory relief as provided for in this order, this order of dismissal shall be binding on all putative class members and shall constitute a DISMISSAL WITH PREJUDICE of plaintiff's claims for injunctive and declaratory relief.

This order resolves the last pending claim and closes the case.

Hon. Mark T. Boonstra
Judge, Michigan Court of Claims

Court of Claims
State of Michigan

A true copy entered and certified by Jerome W. Zimmer Jr., Clerk, on

OCT 28 2015
Date

Clerk

NOTICE OF CLASS ACTION LAWSUIT

TO:

ALL MALE CORRECTIONAL OFFICERS OF THE MICHIGAN DEPARTMENT OF CORRECTIONS (MDOC) WOMEN'S HURON VALLEY CORRECTIONAL FACILITY (WHV), PAST AND PRESENT, WHO DURING THEIR EMPLOYMENT THERE WERE OR CONTINUE TO BE, DENIED EMPLOYMENT OPPORTUNITIES, BID ASSIGNMENTS, OR OVERTIME ASSIGNMENTS.

1. A lawsuit, known as *Nowacki v MDOC*, File No. 11-852-CD, was filed in Washtenaw County Circuit Court in 2011 on behalf of a class defined as all male correctional officers who were denied employment opportunities, bid assignments, or overtime assignments at MDOC WHV.

2. This lawsuit claims that the Plaintiff class members were discriminated against in violation of the Elliott-Larsen Civil Rights Act ("ELCRA"), and seeks money damages and equitable and declaratory relief for class members to compensate them for their injuries. The class representative is:

   Tom Nowacki
   23010 Edward St.
   Dearborn, MI 48128

3. The Washtenaw County Circuit Court certified the case as a class action on June 21, 2012. The Michigan Court of Appeals affirmed the certification and the Supreme Court decided not to review the Court of Appeals' affirmance of certification.

4. The Supreme Court remanded the case to the Washtenaw County Circuit Court on July 1, 2015. Before the Washtenaw County Circuit Court could assume jurisdiction and try the case, MDOC, relying on a newly amended statutory provision, transferred a portion of the lawsuit dealing with non-monetary relief, known as equitable or declaratory relief, to the Court of Claims, the court which handles most claims against the state and its agencies. The effect of the transfer was to stay the Circuit Court claim (and further delay resolution) while the Court of Claims determined whether the class is entitled to non-monetary relief, such as an order outlawing BFOQs or an injunction against the future use of BFOQs.

   Because the primary concern of the class has always been recovery of money damages, and other reasons previously communicated to the class via the website (**Exhibit A**), class counsel requested that the Court of Claims dismiss

the non-monetary claims and remand the case for trial on liability and money damages to the Washtenaw County Circuit Court.

MDOC objected to the dismissal (yet again delaying resolution of the case). You read that right, MDOC so desperately desires to delay resolution of the case that it passed up the opportunity to avoid a declaratory judgment or injunction entered against it.

The Court of Claims granted class counsel's request to dismiss the claims for non-monetary damages but required that all class members be informed of their rights in both the Washtenaw County Circuit Court and Court of Claims portions of the lawsuit. See Order of Dismissal with Conditions (**Exhibit 1**).

5. The Court has certified this action as a class action and you will be included in the class if you fit the above description unless you file an opt-out letter which informs the Court and counsel that you do not wish to participate as a member of the class. The opt-out letter must be sent by hand delivery or mail, and **received** no later than July ___, 2016. The opt-out letter **must** be sent to the attorneys **and** the Court at the following addresses:

Class members with last names beginning with letters A-K should contact:
James K. Fett
Co-Counsel for Plaintiff Class
805 E Main St
Pinckney, MI 48169
734-954-0100
attys@fettlaw.com

Class members with last names beginning with letters L-Z should contact:
Glen N. Lenhoff
Co-Counsel for Plaintiff Class
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
lenhofflaw@usol.com

Court
Judge David S. Swartz

22nd Circuit Court
101 E Huron St
Ann Arbor, MI 48104

Counsel for Defendant MDOC
Jeanmarie Miller
Assistant Attorney General
PO Box 30736
Lansing, MI 48909

6. You may opt out of either portion of the class action for (monetary damages and/or equitable/declaratory relief). To opt out simply indicate in your letter whether you are opting out of one or both portions of the lawsuit.

7. If you opt out of either portion of the class action, class counsel will not be available to assist you in the portion of the case that you opt out of and you will be required to represent yourself or retain counsel if you wish to pursue your own action in either portion of the case. For example, if you decide that you prefer to represent yourself in the Court of Claims portion of the lawsuit, you would indicate in the letter that you are only opting out of the Court of Claims portion of the lawsuit. Class counsel would then continue to represent you in the Washtenaw County Circuit Court portion of the case for money damages.

8. Any member of the class may intervene in either portion of the class action lawsuit if he believes his interests are not adequately represented by the existing parties in this action. Pursuant to Michigan Court Rule 2.209(C), you must file a motion with the Court and give notice to all parties stating the grounds for intervention, and whether you wish to intervene in one or both portions of the class action. If you wish to intervene in either portion of the lawsuit, class counsel will not be able to assist you in the portion of the case in which you intervene and you will be required to represent yourself or retain counsel. For example, if you decide that you want your own attorney to represent you in the Washtenaw County Circuit Court portion of the case for monetary damages, class counsel would not represent you in that portion of the case. Similarly, if you do not wish to dismiss your claim for equitable or declaratory relief in the Court of Claims you can file a motion to intervene in the Court of Claims with your own attorney or by yourself.

9. **All members of this class action will be bound by any final judgment, whether favorable to the class or not, unless you have timely filed an opt-out letter, as described in number 4 above.**

10. The statute of limitations applicable to the claims for injunctive and declaratory relief is TOLLED for all class members until such time as class members are required to respond (should they chose to do so) as directed in this notice.

11. All inquiries about this class action lawsuit should be directed to:

Class members with last names beginning with letters A-K should contact:
James K. Fett
Co-Counsel for Plaintiff Class
805 E Main St
Pinckney, MI 48169
734-954-0100
attys@fettlaw.com

Class members with last names beginning with letters L-Z should contact:
Glen N. Lenhoff
Co-Counsel for Plaintiff Class
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
lenhofflaw@usol.com

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Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Tom NOWACKI/All Others Similarly Situated, Plaintiff–Appellee,
v.
DEPARTMENT OF CORRECTIONS, Defendant–Appellant.

Docket No. 315969.
|
Aug. 19, 2014.

Washtenaw Circuit Court; LC No. 11–000852–CD.

Before: SAAD, P.J., and OWENS and K.F. KELLY, JJ.

Opinion

PER CURIAM.

***1** In this employment discrimination class action, plaintiff alleges that certain policies enacted by defendant at the Women's Huron Valley Correctional Facility (WHV), defendant's only facility that houses women prisoners, discriminate against male correction officers in violation of the Civil Rights Act (CRA), MCL 37.2101 *et seq.* The trial court granted plaintiff's motion for class certification and denied defendant's motion for reconsideration. This Court granted defendant's application for leave to appeal.[1] We affirm.

I. BACKGROUND

Before 2009, several lawsuits were brought against defendant alleging that some of its staff were sexually abusing female prisoners. Settlement agreements were reached in these cases. In response, defendant sought, and the Michigan Civil Service Commission approved, the use of bona fide occupational qualifications (BFOQs), which ensured that only women could be employed for certain positions at WHV. Plaintiff's lawsuit in the underlying action alleges that defendant applied these BFOQs over broadly, improperly denying him and other men opportunities for various job assignments and overtime work.

Plaintiff moved for class certification and the trial court granted the motion without oral argument, stating that it would "decide the matter based upon the written submissions of the parties," and finding that plaintiff "satisfied the requirements ... for class certification." Defendant moved for reconsideration, arguing that the court erred by granting plaintiff's motion for class certification without oral argument and without providing specific findings on the requirements for class certification. The trial court denied the motion, stating that it had adopted "Plaintiff's pleadings to set forth the basis for the granting of the class certification."

Defendant argues on appeal that plaintiff failed to establish any of the requirements for class certification.

II. CLASS CERTIFICATION

A. STANDARD OF REVIEW

The interpretation of the court rules governing class certification is a question of law that we review de novo. *Henry v. Dow Chem Co,* 484 Mich. 483, 495; 772 NW2d 301 (2009). Findings of fact are reviewed for clear error and the decision to certify the class is reviewed for an abuse of discretion. *Id.* at 495–496. "A finding is clearly erroneous if, after reviewing the entire record, [this Court] [is] definitely and firmly convinced that the trial court made a mistake." *Duskin v. Dep't of Human Servs,* 304 Mich.App 645, 651; — NW2d —— (2014). "An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes." *Duncan v. Michigan,* 300 Mich.App 176, 185; 832 NW2d 761 (2013). "The burden of establishing that the requirements for a certifiable class are satisfied is on the party seeking to maintain the certification." *Mich Ass'n of Chiropractors v. Blue Care Network of Mich, Inc,* 300 Mich.App 577, 586; 834 NW2d 138 (2013). In determining whether class certification is appropriate, we do not consider the merits of the case. *Henry,* 484 Mich. at 504.

B. LEGAL STANDARDS

***2** A class may be certified only if it meets the requirements of MCR 3.501(A)(1). *Henry,* 484 Mich. at 496. That rule provides as follows:

> (1) One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:
>
> (a) the class is so numerous that joinder of all members is impracticable;
>
> (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;
>
> (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
>
> (d) the representative parties will fairly and adequately assert and protect the interests of the class; and
>
> (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice. [MCR 3.501(A)(1).]

"These prerequisites are often referred to as numerosity, commonality, typicality, adequacy, and superiority." *Mich Ass'n of Chiropractors,* 300 Mich.App at 586, citing *Henry,* 484 Mich. at 488.

"[A] party seeking class certification is required to provide the certifying court with information sufficient to establish that each prerequisite for class certification in MCR 3.501(A)(1) is in fact satisfied." *Henry,* 484 Mich. at 502. The Court in *Henry* recognized that the allegations in the pleadings of a party seeking class certification could potentially satisfy this burden, "such as in cases where the facts necessary to support this finding are uncontested or admitted by the opposing party." *Id.* at 503. However, the Court also recognized that "[i]f the pleadings are not sufficient, the court must look to additional information beyond the pleadings to determine whether class certification is proper." *Id.*

C. APPLICATION

1. NUMEROSITY

"There is no particular minimum number of members necessary to meet the numerosity requirement, and the exact number of members need not be known as long as general knowledge and common sense indicate that the class is large." *Zine v. Chrysler Corp,* 236 Mich.App 261, 288; 600 NW2d 384 (1999). However, "the plaintiff must adequately define the class so potential members can be identified and must present some evidence of the number of class members or otherwise establish by reasonable estimate the number of class members." *Id.* Otherwise, the trial court will be unable to determine if joinder of class members would be impracticable. *Id.* In addition, it is not sufficient merely to allege a large class. Plaintiff "must establish that a sizeable number of class members have suffered an actual injury." *Duskin,* 304 Mich.App at 653.

Plaintiff avers that the class is composed of approximately 80 male corrections officers. In an affidavit, a paralegal of plaintiff's attorney claims that "[a]pproximately 87 potential class members contacted our office." We find that a class of more than 80 members is sufficiently numerous, and defendant does not argue to the contrary.

***3** However, defendant disputes whether plaintiff has shown that a sizeable number of the members have suffered actual injury. From the exhibits provided by plaintiff in his motion for class certification, we believe that he has. One corrections officer avers that he heard the warden and deputy warden of WHV say that they were trying to motivate male officers to leave. Another officer avers to one of plaintiff's central complaints, i.e., that the broad application of the BFOQs deprives male officers of opportunities to earn overtime pay. A female officer avers that "the administration inserted 'strip searches' as core duties in most positions in order to deny those assignments to the male officers." Another officer echoes this assertion, and adds that this practice has "severely limited the available male assignments" in WHV.

We find that this evidence, as credited by the trial court, is sufficient to support numerosity. According to plaintiff's exhibits, defendant has used the BFOQs too broadly in an effort to purge WHV of male corrections officers. The affidavits suggest that this problem has affected all of the officers at WHV, both male and female. The fact that more than 80 "potential class members" have contacted the office of plaintiff's attorney strongly suggests that a sizeable number have suffered the injuries that form the basis of plaintiff's complaint. Consequently, we are not definitely and firmly convinced that the trial court made a mistake in concluding that numerosity was satisfied.

2. COMMONALITY

Commonality addresses "whether there 'is a common issue the resolution of which will advance the litigation.' " *Zine,* 236 Mich.App at 289, quoting *Sprague v. Gen Motors Corp,* 133 F3d 388, 397 (CA 6, 1998) "It requires that 'the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, must predominate over those issues that are subject only to individualized proof.' " *Zine,* 236 Mich.App at 290, quoting *Kerr v. West Palm Beach,* 875 F.2d 1546, 1557–1558 (CA 11, 1989). Plaintiffs seeking class certification must establish that "all members of the class had a common injury that could be demonstrated with generalized proof, rather than evidence unique to each class member." *A & M Supply Co v. Microsoft Corp,* 252 Mich.App 580, 600; 654 NW2d 572 (2002).

We find that commonality has been established in this case. Defendant does not dispute that it uses the BFOQs. The issue is whether its application is improper and violates the CRA. This is the sole issue, and it is shared by each class member. Furthermore, this issue can be established by generalized, rather than individual, proof. Essentially, plaintiff seeks to establish that defendant applies the BFOQs to various job assignments, the BFOQs are applied unnecessary and in bad faith, and the intention of the administration is to purge WHV of all male officers. This could be accomplished through testimony from a few class members and other employees and administrators at WHV, and every class member would not need to testify about his individual circumstances. It would then be an issue of law whether such an application violates the CRA. In sum, the determination of whether defendant employs the BFOQs in the manner alleged by plaintiff "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Duskin,* 304 Mich.App at 654 (quotation marks and citations omitted). Therefore, we are not definitely and firmly convinced that the trial court made a mistake in concluding that commonality was satisfied.

3. TYPICALITY

***4** The typicality requirement "directs the court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large." *Neal v. James,* 252 Mich.App 12, 21; 651 NW2d 181, 183 (2002) (quotation marks and citations omitted), overruled in part on other grounds by *Henry,* 484 Mich. 505 n. 39. To that end, although "factual differences between the claims do not alone preclude certification, the representative's claim must arise from the same event or practice or course of conduct that gives rise to the claims of the other class members and ... [be] based on the same legal theory." *Neal,* 252 Mich.App at 21 (quotation marks and citations omitted). However, even if the claims are "based on the same legal theory, [they] must all contain a common core of allegation." *Id.* (quotation marks and citations omitted).

As "[t]he commonality and typicality requirements of Rule 23(a) tend to merge," *Gen Tel Co of Southwest v. Falcon,* 457 U.S. 147, 157 n. 13; 102 S.Ct 2364; 72 L.Ed 2d 740 (1982), so do these factors under Michigan court rule. See *Neal,* 252 Mich.App at 15 (stating that "this Court may refer to federal cases construing the federal rules on class certification"). For the same reasons that plaintiff has satisfied commonality, he has also satisfied typicality. His claims are based on the same legal theory, violation of the CRA, and arise from the same practice, the alleged bad faith application of the BFOQs. Therefore, the trial court did not clearly err in finding that typicality was satisfied.

4. ADEQUACY

The adequacy requirement "focuses on whether the class representatives can fairly and adequately represent the interests of the class as a whole." *Neal,* 252 Mich.App at 22. To determine whether adequacy is fulfilled, a two-step inquiry is necessary. *Id.* "First, the court must be satisfied that the named plaintiffs' counsel is qualified to sufficiently pursue the putative class action. Second, the members of the advanced class may not have antagonistic or conflicting interests." *Id* (quotation marks and citations omitted).

Defendant does not allege that plaintiff's counsel is unqualified to pursue this action. Defendant, relying on Neal, argues that the class members may have had antagonistic or conflicting interests because they may have been in competition for the same job assignments that they allege defendant discriminatorily denied them. In *Neal,* this Court found that the representative plaintiffs did not meet the adequacy requirement where there were claims that some members were denied promotions because "there may be conflicts among the class members related to competitions for the same position." *Id.* at 23.

We find *Neal* distinguishable. In that case, this Court characterized the employment discrimination claims of the class representatives as "highly individualized." *Id.* at 17. It explained, "The individual factual circumstances pertinent to each plaintiff will need to be reviewed, and individual, fact-specific inquires will need to be made in evaluating why certain individuals were not hired or promoted, or why other individuals were discharged or not retained." *Id.* at 20. This Court found that adequacy had not been established for two reasons. First, as stated above, there was a possibility of conflict among members. Second, "the highly individualized nature of the claims presented," made it "unlikely that the named plaintiffs [could] adequately represent all of the interests of the entire class." *Id.* at 23. In the present case, as stated in the discussion of commonality, the class members' claims are not highly individualized and they rely on a common contention.

***5** In addition, we agree with the persuasive authority presented by plaintiff that holds that class certification should not be denied merely because of the possibility that class members vied for the same job assignments. In *Brown v. Nucor Corp,* 576 F3d 149, 159 (CA 4, 2009), the United States Court of Appeals for the Fourth Circuit observed where "representatives have a conflict with the class in terms of competition for promotions, this conflict should not defeat class certification. Indeed, if this were true, how might a class action challenging promotion practices ever be brought ... ?" The United States District Court for the Northern District of Illinois has echoed this sentiment and has suggested that the test for determining whether potential conflicts defeat adequacy is whether the conflict "goes to the very subject matter of the litigation." *Dean v. Int'l Truck & Engine Corp,* 220 FRD 319, 322 (ND Ill, 2004) (quotation marks and citation omitted); *Meiresonne v. Marriott Corp,* 124 FRD 619, 625 (ND Ill, 1989) (emphasis omitted). In the present case, any potential conflicts do not affect the crux of the class members' contention—that defendant is improperly applying the BFOQs. Moreover, it does not appear, and defendant does not allege, that any potential antagonistic interests will affect how plaintiff, as class representative, pursues

this action. Therefore, we are not definitely and firmly convinced that the trial court made a mistake in concluding that adequacy was satisfied.

5. SUPERIORITY

The superiority requirement "asks whether a class action, rather than individual suits, will be the most convenient way to decide the legal questions presented, making a class action a superior form of action." *A & M Supply Co,* 252 Mich.App at 601. When making this determination, "the court may consider the practical problems that can arise if the class action is allowed to proceed. The relevant concern ... is whether the issues are so disparate that a class action would be unmanageable." *Id.* (quotation marks and citations omitted). In deciding whether superiority has been fulfilled, MCR 3.501(A)(2) requires a trial court to consider the following factors:

(a) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class that would confront the party opposing the class with incompatible standards of conduct; or

(ii) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(b) whether final equitable or declaratory relief might be appropriate with respect to the class;

(c) whether the action will be manageable as a class action;

(d) whether in view of the complexity of the issues or the expense of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

***6** (e) whether it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action; and

(f) whether members of the class have a significant interest in controlling the prosecution or defense of separate actions.

In the present case, the class members do not present disparate issues but rather one issue—whether defendant's use of the BFOQs to deny male officers certain job assignments and overtime work violates the CRA. More than 80 actions all seeking to show that defendant pursued a specific discriminatory policy or practice based on the same evidence would be unnecessarily duplicative and would place needless demands on the resources of the court system. In addition, individual actions could lead to inconsistent adjudications regarding whether defendant's policy violates the CRA. Furthermore, it appears that equitable relief in the form an injunction to stop defendant from improperly using the BFOQs would be appropriate if plaintiff prevails. Given these considerations, the trial court did not clearly err in finding that plaintiffs established superiority.

III. CONCLUSION

We conclude that the trial court did not clearly err in finding that plaintiff established the requirements for class certification. Therefore, we hold that the trial court did not abuse its discretion in certifying the class.

Affirmed.

All Citations

Not Reported in N.W.2d, 2014 WL 4088041, 2014 Fair Empl.Prac.Cas. (BNA) 166,435

Footnotes

1 *Nowacki v. Dep't of Corrections,* unpublished order of the Court of Appeals, entered June 25, 2013 (Docket No. 315969).

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