U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

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EEOC Charge No: 520-2014-00608

Arthur Cheliotes
CWA Local 1180
6 Harrison Street
New York, New York 10013

Charging Party

v.

City of New York
Department of Citywide Administrative Services
1 Centre Street
New York, New York 10007

Respondent

DETERMINATION

On behalf of the U.S. Equal Employment Opportunity Commission ("Commission"), I issue the following determination on the merits of the subject charge filed under the Equal Pay Act of 1963 ("EPA") and Title VII of the Civil Rights Act of 1964, as amended ("Title VII").

The Respondent is an employer within the meaning of the EPA and Title VII and all requirements for coverage have been met.

The charge is brought by Arthur Cheliotes, president of Local 1180 of the Communications Workers of America, AFL-CIO ("Union"), on behalf of a class of African American and Hispanic women currently or formerly employed as Administrative Managers in agencies of the City of New York. The Union, on behalf of the Charging Parties, alleges that Respondent has and continues to engage in a discriminatory pattern of wage suppression and subjective promotion based on Charging Parties' sex, race, and national origin. The Union further claims that Respondent's facially neutral policies regarding assignment, promotion, and wages have had a disparate impact on the class of female African American and Hispanic Administrative Managers. The Union alleges that the minimum or entry-level salary of Administrative Managers, which is disproportionately paid to Hispanic and African-American women, has been frozen for many years, while the maximum salary of Administrative Managers, paid to a class of senior employees who are primarily Caucasian males, has increased significantly. The Union asserts that there are few opportunities for promotion beyond Administrative Manager, and that many within this title have not received raises in many years to the detriment of the generally less-senior African American and Hispanic women relative to their generally more-senior white male counterparts. Charging Parties further contend that Respondent refused to bargain in good faith with the Union, in retaliation for Charging Parties' complaints of discrimination.

Respondent is the City of New York's Department of Citywide Administrative Services (DCAS), representing the City and its agencies. In their position statement, Respondent challenged the Union's ability to bring forth an EPA claim on behalf of another party. Assuming that the union has standing to file a charge, Respondent alleges that all claims accruing prior to December 5, 2011 are untimely and should be dismissed. Respondent denies the Charging Parties' allegations of discrimination and retaliation due to the lack of evidence that was provided. Respondent provided a small sample of Administrative Managers along with their gender, race, agency, salary, and a description of their job duties in an attempt to demonstrate that Administrative Managers do not perform equal work.

The investigation reveals that relevant statutes allow a Union to file charges on behalf of third parties. Additionally, as the Charging Parties' are alleging that Respondent was, and still is, engaged in a continuous pattern and practice of discrimination, the question of EPA and Title VII viability for claims accruing prior to December 5, 2011 is an open issue suitable for further investigation.

Respondent's arguments regarding the Charging Parties' lack of evidence of discrimination and retaliation do not withstand scrutiny. The Union and the Charging Parties have brought prima facie charges under Title VII and the EPA, and so the burden of proof has shifted to the Respondent. The evidence provided by the Respondent was insufficient to evaluate the case. The Commission requested further information from the Respondent as early as March 2014, but none was provided. Respondent was specifically informed on December 11, 2014, that it risked an adverse determination if it did not respond on or before January 5, 2015. On February 27, 2015, Respondent formally declined to provide the requested information.

Because the Respondent has been afforded an opportunity to provide an appropriate response to the charge of discrimination and has failed to do so, the Commission determines that the silence is an admission of the allegations in the charge, and exercises its discretion to draw an adverse inference with respect to the allegations. The Commission concludes that anything that Respondent could submit would not support its position.

Based on the above evidence, the Commission has determined that there is reasonable cause to believe that Respondent violated the EPA and Title VII.

This determination is final. Title VII requires that, if the Commission determines that there is reasonable cause to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practices by informal methods of conference, conciliation, and persuasion.

In order to come into compliance with the EPA, wage increases and backpay must be granted to the aggrieved persons. Failure to voluntarily comply with the statute may result in a suit by the Commission.

Having determined that there is reason to believe that violations have occurred, the Commission now invites Respondent to join with it in an effort toward a just resolution of this matter. Enclosed is a letter outlining the proposed terms of conciliation.

Disclosure of information obtained by the Commission during the conciliation process may only be made in accordance with the EPA, Title VII, and the Commission's Procedural Regulations. The confidentiality provisions of Sections 706 and 709 of Title VII and Commission Regulations apply to information obtained during conciliation.

If Respondent declines to enter into conciliation discussions, or when the Commission's representative is unable to secure an acceptable conciliation agreement, the Director shall so inform the parties, advising them of the court enforcement alternatives available to aggrieved persons and the Commission.

On behalf of the Commission:

Kevin J. Berry
District Director

April 1, 2015
Date

cc: Yetta G. Kurland
The Kurland Group
160 Broadway East Bldg, 11th Fl
New York NY 10038

cc: Donna A. Canfield,
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In the matter of:

Charge No: 520-2014-00608

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CONCILIATION AGREEMENT

An investigation having been made under Title VII of the Civil Rights Act of 1964, as amended, (Title VII) and the Equal Pay Act of 1963, as amended (EPA), by the U.S. Equal Employment Opportunity Commission (EEOC) and reasonable cause having been found, the parties do resolve and conciliate the matter as follows:

1. The class of Charging Parties agrees not to sue the Respondent with respect to any allegations contained in the above-referenced charge. EEOC agrees to neither use the above-referenced charge as the jurisdictional basis for filing a lawsuit against the Respondent, nor refer such a charge to the Department of Justice for consideration of a lawsuit. However, nothing in this Agreement shall be construed to preclude EEOC and/or any aggrieved individual(s) from bringing suit to enforce this Agreement in the event that the Respondent fails to perform the promises and representations contained herein. Neither does it preclude the Charging Parties nor the Commission from filing charges in the future.

2. EEOC reserves all rights to proceed with respect to matters like and related to these matters but not covered in this Agreement and to secure relief on behalf of aggrieved persons not covered by the terms of the Agreement.

3. Respondent agrees that it shall comply with all requirements of Title VII and the EPA.

4. The parties agree that there shall be no discrimination or retaliation of any kind against any person because of opposition to any practice declared unlawful under Title

VII or the EPA; or because of the filing of a charge, giving of testimony or assistance, or participation in any manner in any investigation, proceeding, or hearing under federal anti-discrimination laws.

5. The duration of the Conciliation Agreement ("Agreement") will be 4 years.

6. Within 7 days of executing the Agreement, Respondent and its affiliates will post EEOC's poster in conspicuous places where employee notices are posted.

7. Within 7 days of executing the Agreement, Respondent and its affiliates will sign and conspicuously post the attached Notice to Employees on all employee bulletin boards for the duration of this Agreement.

7. The Commission may monitor compliance with this Agreement by inspection of the Respondent's premises, records and interviews with employees at reasonable times. Respondent agrees to make available for inspection and copying any records reasonably related to any of these areas, upon notice by the Commission.

8. In the interest of a successful conciliation, the EEOC is transmitting the attached conciliation demands for equitable and compensatory relief communicated by the representatives of the Charging Parties.

Any conciliation agreement arrived at must be reduced to writing, signed by an authorized representative of the Respondent and, to be effective, must be signed by the Commission's District Director.

We request that by April 17th, 2015, Respondent provide a written counter-proposal responding to each item in the Commission's conciliation proposal and the attached Proposed Recommendations, or advise the Commission if Respondent is not willing to conciliate this matter. If Respondent does not provide a reasonable written counter-proposal by that date, the Commission may deem that further efforts to conciliate this matter would be futile, and may fail conciliation. The Commission will be fair and flexible in considering any reasonable counter-proposal that Respondent presents.

I look forward to your timely response. If you have any questions, please feel free to contact me at (212) 336-3771.

Sincerely,

Charles Diamond
Federal Investigator
U.S. Equal Employment Opportunity Commission
New York District Office

CWA 1180 v. Bloomberg, et al – 520-14-608, 520-15-712

PROPOSED RECOMMENDATIONS

Seniority Step Process to Ensure Proper Increases In Pay

Issue: Those entering the Administrative Manager (AM) title are qualified under civil service rules to perform the duties of that title. Yet, because of structural and historic problems which exponentially impact the Administrative Manager title, including both the suppressed minimum rate of pay, and the lack of structured pay increases, Administrative Managers, who are overwhelmingly women and non-white, perform with excellence in the title, over a period of decades but are still making the minimum or near minimum rate of pay. This rate of pay is much less than their white male counterparts in similarly situated jobs and titles. Conversely, in positions in which there is a greater percentage of white and male workers, this type of annual step process is routine.

Solution: Require an annual step process with the initial increase in pay of eight percent (8%) above their gross pay, including additions to growth, upon promotion and/or implementation of this policy, whichever comes first. Thereafter, an annual increase of three percent (3%) in the same manner.[1] Further, this step process must apply to lower positions that promote to AMs, such as Principal Administrative Associates, to ensure lower positions are properly integrated into the AM title. Without this, the City could find ways to cut out the position by among other things, circumventing promotions to the position of AM, reclassifying AMs to other titles, and ultimately making the AM title obsolete instead of recognizing the newly corrected and increased rate of pay for AMs.

Increase in Minimum Salary for Administrative Managers

Issue: When the City established the managerial pay plan in 1978, they set the AM minimum at $24,000. Those holding the AM title at that time were overwhelmingly white and male. As women of color were promoted entering the AM title, the minimum was suppressed while white male incumbents received substantial increases because of the raised maximum, while suppressing the minimum for newly appointed women of color.

Solution: Increase the minimum salary to $92,117, which is the same minimum as that in 1978 when the position was white and male dominated, but adjusted to the 2014 CPI.[2] Other methods to determine the minimum salary further confirm this number is adequate and equitable. For example, had the AM minimum kept pace with collective bargaining increases paid to subordinates of AMs it would be $91,137 as of April 2015. Had the AM minimum increased at the rate of the AM maximum it would be over $113,943.85 as of September, 2014.

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[1] This percentage rate is based on the New York State Department of Civil Service's step rate increase for NYS civil servants which is 3% annually.

[2] The NY Metro CPI-U increased 192.43 points or 283.82% since 1978 (from an annual 67.80 in 1978 to an annual 260.23 in 2014, base 1982 = 100). An annual salary of $24,000 in 1978 increasing at the same pace would be $92,117 in 2014.

In addition, according to the statistical regression analysis, if the rate of pay were raised to $92,845, it would remove the discriminatory pay disparity based on race and gender.[3]

Proper Oversight, Opportunity & Enforcement of Equal Employment

Issue: Reclassification. The disparate impact CWA 1180 seeks to remedy has evolved over decades due to civil service classification processes and historic collective bargaining practices that have provided male dominated titles greater opportunities for advancement and larger increases of pay. For example, the civil service practice of frequent examinations for male dominated uniformed services (usually every 4 years) increases opportunities for promotions in these titles while civilian promotional examinations like administrative manager were offered about once a decade.

Solution: Require mandatory examinations no less frequently than every four (4) years.

Issue: Proper Monitoring. Civil service reclassification was used in the mid-1980's to eliminate dozens of AM positions preserving them for whites and males in other titles who had not passed the test when the largest group of women of color were tested and were found qualified for the position. CWA's concern is that work that should be done by AMs will be shifted to other titles to avoid paying AM's women of color a fair wage. Any remedy that does not address the structural causes outlined in the complaint and discussed here will only allow disparate impact to return. There is a need to have accessible records and reports that offer transparency to the City's civil service and collective bargaining practices and the impact of this on protected classes. The City's inability after significant time, to produce basic statistical information, in violation of Title VII, regarding race and gender, makes clear that the City must improve its recordkeeping management. But beyond this, there must be someone who can be relied on with the authority to respond more quickly to problems when they come up.

Solution: Require annual reporting of EEO statistical information to CWA 1180. The City should appoint an entity or agency responsible for providing annual disclosures of statistical information required under recordkeeping requirements of both 29 C.F.R. § 1602.7 and Title VII: 42 U.S.C. § 2000e-8(c), and be responsible for providing them to CWA 1180. Further, require that the City appoint an EEO Monitor to ensure compliance with corrective actions and to prevent future adverse impact. Such a Monitor shall be empowered with all the rights and authority necessary to access relevant information to review and approve requests for reclassification of titles, review all practices related to pay and promotion of titles, determine if there is a failure to recognize levels within a title, modifying job specifications, and/or creating new titles and/or contracting out jobs which could result in the diminishing of opportunities for equal pay. The EEO Monitor shall also be charged with reviewing titles to ensure there is not an adverse impact in pay and/or promotion practices. Further the EEO Monitor shall ensure the outlined remedies herein are instituted, that the City does not attempt to circumvent these corrective actions, and that other adverse impacts do not occur. In the event the EEO Monitor determines that there is or could be a violation of these remedies and/or that an adverse

[3] This is based on the statistical reports submitted which show an increase from the $53K to $92,845 would bring the gender differential in just under statistical significance (1.95 sd).

impact is or could be present, they are required to convey this concern to the EEOC for proper investigation and resolution.

Issue: Career paths with clear job descriptions. There are eight (8) levels in the managerial pay plan, an AM can be appointed to any level at the discretion of the hiring authority. The union represents the first two (2) levels in the AM title. In past practice, the City had refused to recognize even the two levels within the AM title. This further collapsed opportunities for pay promotion causing additional adverse impact to the title comprised mostly of women and people of color. Further, the City does not have any clear job descriptions that distinguished one level from another. Nor does the City explain how someone in level one could move up to level two, three, five, or eight. It all remains at the discretion of the hiring authority and a mystery to the AM.

Solution: Require clear job descriptions for each level, a posting and bidding process with clear selection criteria and pathways AMs may follow to advance up the career ladder.

Issue: Training and development. Equal access to training is important in the ever-changing work environment. Except for programs offered by their union there is limited access for women of color in civil service to learn new skills and obtain the knowledge and academic credentials they need to move up the career ladder and effectively compete with their white male colleagues in the workplace. By offering educational opportunities members of CWA 1180, who are predominantly women of color, the City levels the playing field and increases equal employment opportunities.

Solution: Require the City to match the tuition assistance made by CWA 1180 for the programs it offers to its members at the City University of New York's Murphy Institute.

DAMAGES

Back Pay **$188,682,531**

Equal Pay claims are calculated herein based on the Administrative Staff Analysts title as the outside comparator. Calculation of disparate pay difference based on race and gender within the AM title is based on the statistical regression analysis previously submitted. Back pay is calculated for a period of three (3) years for race, and six (6) years for gender.[4]

[4] While under Title VII, parties may recover back pay for a total of three years, under New York's Equal Pay Law, N.Y. C.L.S. Labor § 194, parties may recover back pay for a total of six years. *See Patrowich v. Chemical Bank*, 98 A.D.2d 318 (1st Dept. 1984). The back pay total of $188,682,531 stated here is divided up into the following: $175,605,444 for equal pay under New York's Equal Pay Law for a six-year period; $8,028,456 for race discrimination having a disparate impact on those within title; and $5,048,631 for back pay based on gender discrimination having a disparate impact on those within title. All figures are based on the statistical regression analysis, previously submitted in this matter.

Future Pay **Per worksheet, no less than $92,117**

Administrative Managers' salary will be increased to the Minimum Salary of $92,117 or the Adjusted Salary using the attached Future Pay Worksheet, whichever is greater. The City shall make appropriate adjustments to members' pension benefits, in accordance with this increase.

Compensatory Damages under Title VII **$56,922,000**

The substantial delays by the City in responding to the instant matter coupled with additional delays and retaliatory action when Claimant attempted to resolve these issues in collective bargaining as early as 2011 have caused significant and unnecessary hardship to members. Members who have worked decades in the Title were required to borrow from their pension to cover the cost of food and housing, even the most senior in this top level position. Others had to go without necessities like medical procedures not covered under their health insurance, vacation, or educational opportunities. Many have retired without ever seeing the benefits of the increase in pay, and all have had to endure suppressed wages for a prolonged period of time due to the City's refusal to take this matter seriously and act to remedy or even respond to this complaint timely. Further, had the City properly maintained records in accordance with its obligations, it could have very likely prevented much of this hardship. Title VII provides for compensation of up to $300,000 per complaining party. The prevailing position of the Courts is that in matters such as this in which there are multiple complaining parties, each parties' individual cap is $300,000, and is not aggregate.[5] Given this cap and the complaining parties' compensatory damages outlined here, one (1) year of the minimum salary, that is $53,000 per member, seems a reasonable and fair amount to cover compensatory damages.

Legal Fees and Costs under Title VII **Per Lodestar, no less than $1,000,000**

Punitive Damages under Title VII **Waived if matter can be settled**

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[5] *See* 42 U.S.C. § 1981a; *contra Hudson v Reno*, 130 F.3d 1193 (6th Cir. 1997) *but see Medlock v. Ortho Biotech, Inc.*, 164 F.3d 545 (10th Cir. 1999); *Martini v. Fannie Mae*, 336 U.S. App. D.C. 289 (App. D.C. 1999); *Gotthardt v. AMTRAK*, 191 F.3d 1148 (9th Cir. 1999); *United States EEOC v. W & O Inc.*, 213 F.3d 600 (11th Cir. 2000); *Pals v. Schepel Buick & GMC Truck, Inc.*, 220 F.3d 495 (7th Cir. 2000). The City engaged in retaliatory action against CWA 1180 when CWA 1180 attempted to negotiate a fair wage for AMs and the correct the inequities complained of. *See CWA, L. 1180*, 6 OCB2d 31 (BCB 2013) (IP) (Docket No. BCB-3082-13). The City's Office of Collective Bargaining determined that the City was not bargaining in good faith when it filed a complaint against CWA 1180 for alleging the discriminatory practices outlined in this matter, and ruled in favor of CWA 1180, concluding that CWA 1180 had an absolute right to grieve claims of discrimination.