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IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

FILED

MAR 22 1991

CLERK  
U. S. DISTRICT COURT  
MIDDLE DIST. OF ALA. *W*

ROBERT JOHNSON )

Plaintiff-Intervenor )

v. )

ROYCE KING, in his official )  
capacity as Director of the )  
Alabama Highway Department; )  
the STATE OF ALABAMA HIGHWAY )  
DEPARTMENT; HALCYON BALLARD )  
in her official capacity as )  
Director of the State of )  
Alabama Personnel Department; )  
STATE OF ALABAMA PERSONNEL )  
DEPARTMENT; V.E. RICHEY in his )  
official capacity as Personnel )  
Officer for the Alabama )  
Highway Department; J.F. )  
HORSLEY, individually and in )  
his official capacity as )  
Division Engineer of the )  
State of Alabama Highway )  
Department, Third Division; )  
J.WAYNE PARKER, individually )  
and in his official capacity )  
as District Engineer, of the )  
State of Alabama Highway )  
Department, Third Division; )  
DONNIE PINION, individually )  
and in his official capacity )  
as Assistant District Engineer )  
of the State of Alabama )  
Highway Department, Third )  
Division, )

Defendants. )

CIVIL ACTION NO.  
85-T-665-N

COMPLAINT IN INTERVENTION

I. INTRODUCTION

1. This is an action for relief from unlawful racial discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., and for denial of equal

protection of the law pursuant to the 14th Amendment of the United States Constitution and the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 and 1983, by the State of Alabama Personnel Department and State of Alabama Highway Department and is pursued by the named plaintiff on for personal relief and damages against the individuals sued in their individual capacities and on behalf of a plaintiff class of black applicants and employees of the Highway Department seeking employment in Highway Department merit-system maintenance positions. Jurisdiction is proper in this court pursuant to 28 U.S.C. §1343(3) and (4).

## II. PARTIES

2. Plaintiff-intervenor (Mr. Johnson) was initially hired in June 1981 by the Highway Department as a per diem laborer but was subsequently "set up" or "provisionally appointed" as a "Certified Laborer" on or about October 14, 1981. In 1983, as a laborer he successfully completed all of the training courses offered by the Highway Department to its maintenance employees. Although he sought employment in the Highway Maintenance Technician classifications, Mr. Johnson was not selected for any of the vacancies in that classification and he held the title of certified laborer until May 22, 1986 when he was promoted to the position of Highway Maintenance Technician I. In February 1990, Mr. Johnson was listed on the certificate of eligibles from the promotional register for promotion to Highway Technician II, but was not selected. He was told by his supervisor that the reason he was not scored as highly as a white

who had not worked for the highway department as long as Mr. Johnson was that Mr. Johnson had no "bat wing" experience (mowers used to cut grass on the highways are nicknamed "bat wings" because of their winglike appearance). On or about October 26, 1990, Mr. Johnson was terminated from his position of Highway Maintenance Technician I in retaliation for having opposed discriminatory practices by the Highway Department.

2. The defendant Royce King has at all times relevant been the Director of the Highway Department and is a necessary party to these proceedings.

3. The defendant State of Alabama Highway Department (hereafter "Highway Department") is an agency of the State of Alabama and an employer within the meaning of that term as it is defined in Title VII and was at all relevant times the employer of the plaintiff-intervenor Johnson, and the agency authorized to make hiring, promotion, assignment, pay, and disciplinary decisions with regard to employees and applicants for employment in the Highway Department.

4. The defendant Halcyon Ballard is the director of the State of Alabama Personnel Department (hereafter "Personnel Department") and is a necessary party to these proceedings.

5. The defendant Personnel Department is the agency charged with establishing job classifications, testing scoring and ranking of applicants for employment and promotion to merit system positions in the Highway Department, enforcement of state policies, affirmative action plans, court orders and decrees with

regard to hiring, discharge and promotion practices in the Highway Department, and verification of employment testing, qualifications and scoring criteria for promotional registers.

6. The defendant V.E. Richey is the Personnel Officer of the defendant Highway Department charged with enforcing the policies of the Personnel department with regard to employment decisions made by agents and employees of the Highway Department, including the scoring of written and "unassembled" examinations for employment and promotion to Highway Department classifications, and is a necessary party to these proceedings.

7. The Defendant J. Wayne Parker is the District Engineer for the First District of the Third Division of the Highway Department and is sued in both his official capacity and individually for intentional acts of discrimination in which he personally participated with regard to the plaintiff-intervenor and other black employees of the Highway Department pursuant to the authority he exercised as an "employer" for the Highway Department within the meaning of that term as defined in Title VII, and in violation of the civil rights of the affected employees.

8. The Defendant Donnie Pinion is the Assistant District Engineer for the First District of the Third Division of the Highway Department and is sued in both his official capacity and individually for intentional acts of discrimination in which he personally participated with regard to the plaintiff-intervenor and other black employees of the Highway Department

pursuant to the authority he exercised as an "employer" for the Highway Department within the meaning of that term as defined in Title VII, and in violation of the civil rights of the affected employees.

### III. CLASS ALLEGATIONS

9. Plaintiff-Intervenor seeks to represent all black applicants for employment in or promotion to merit system classifications in the Highway Department, particularly those employees and applicants for employment in the maintenance classifications of the Highway Department. Plaintiff intervenor has a serious stake in the litigation, having been terminated for his opposition to racially motivated practices and will fully and fairly represent the members of the class he seeks to represent.

10. Joinder of all members of the class is impracticable.

11. The claims asserted by the plaintiff intervenor are typical of the class he seeks to represent.

12. Legal and factual issues raised by the plaintiff-intervenor's complaint are common to all members of the class he seeks to represent, and predominate over the individual claims asserted by the plaintiff making class resolution the most fair means of adjudicating the controversy:

a. Blacks as a class have generally been discriminated against with regard to hiring and promotion practices of the defendants for merit system

positions with the Highway Department, and specifically have been discriminatorily hired into non-merit and merit system laborer classifications with adverse effects on their opportunities for employment and promotion in the higher classifications;

b. Black employees have been subjected to discriminatory evaluation and assignment practices which have affected their opportunities for advancement;

c. Black employees have generally not been allowed to advance in their salaries and positions at the same rate which white employees have enjoyed and do not enjoy the same privileges and benefits of employment with the Highway Department as white employees, and in particular blacks are not provided with the necessary information and/or training to pursue promotion to the higher classifications, and are denied accommodation for physical limitations which is afforded to white employees;

d. Black employees are subject to both overt and subtle racist behavior on the part of their fellow employees and supervisors and have been retaliated against for voicing objections to such behaviors and disparate treatment;

e. The defendants have acted and refused to act on grounds generally applicable to the class, making final

injunctive relief and corresponding declaratory relief appropriate with respect to the class as a whole.

13. Prosecution of separate claims by individual members of the class or by a subclass in a separate action would create a risk of inconsistent or varying adjudications, particularly with regard to injunctive relief to be provided should the individuals or one or the other or both classes succeed or fail in their claims, which varying results would establish incompatible standards of conduct for the parties opposing the class, and would impair and impede the ability of individual class members to protect their interests. This is particularly true with regard to the instant litigation where the proposed intervenor is a class member as the class was defined in the original class certification, has been pursuing charges under Title VII which raise the same issues, and pursuit of a separate action would require duplication of the discovery already conducted.

14. Because the personnel and employment practices are centralized in the defendant Departments, discovery with regard to defendant Departments' employment practices and policies with regard to blacks as a class is necessary to the adjudication of the individual rights of individual class members, making a class action superior to other available methods for the efficient adjudication of the controversy.

#### IV. FACTS

15. On information and belief, virtually 100% of

laborers employed by the Highway department are black and as laborers in the Highway Department are expected to perform the same duties as classified employees.

16. On information and belief, employment, training and experience as a black laborer with the Highway Department, although the equivalent of experience in the higher classifications does not result in higher ranking for employment in the higher job classifications.

17. On information and belief, white applicants for employment who indicate prior experience with private employers equivalent to the experience of black labors receive higher scores in the grading system utilized for employment in the Maintenance Technician classifications and are placed on the registers and considered for employment in higher than entry level positions.

18. On information and belief, blacks are hired into the laborer classification primarily for purpose of increasing the rate of employment of blacks in the Highway Department so as to comply with affirmative action requirements imposed by federal law on the Highway Department as a recipient of federal funding.

19. The practice of hiring blacks as laborers and not in the higher classifications adversely impacts black employment opportunities with the Highway Department because employment as a laborer results in minimal credits for promotional advancement to higher classifications. Black laborers are denied equivalent



credit given to white applicants on open registers for employment in higher classifications.

20. Generally, whites are not initially hired as laborers but are hired in as Highway Maintenance Technicians.

21. Employees are ordinarily assigned to several different work crews within the Highway Department, which crews were racially segregated in the Third Division and on information and belief were segregated in other divisions as well.

22. Black employees have generally been hired and assigned to the less skilled jobs while the whites were generally hired and assigned to positions which performed skilled tasks.

23. On information and belief, Blacks have not received step increases to which they were entitled as a result of their performance ratings. During his tenure with the Highway Department, Mr. Johnson's performance was never less than satisfactory and consistently was rated as "exceeding standards" after 1984. Mr. Johnson, because of his consistent high scores on his evaluations was eligible for step increases in his salary, however his white supervisors have never requested such increases for him and during his entire tenure with the Highway Department Mr. Johnson never received a step increase but received only his annual raises and adjustments resulting from unpaid leaves of absence.

24. Plaintiff-intervenor and other black employees of the Highway Department have complained of problems with a racially discriminatory attitudes on the part of certain white

supervisory employees of the Highway department. Beginning in 1989 and continuing thereafter black maintenance employees have sought to bring these complaints to the attention of the Highway Department by submitting written petitions and written and verbal complaints as a group. Complaints of disparate treatment in assignments and evaluations were made in 1989 but were not investigated by the Highway Department. After the selection of a junior white for the Highway Maintenance Technician II position, many blacks, including Mr. Johnson again protested the racially discriminatory employment practices, including discriminatory crew assignments, discriminatory evaluation practices, the use of racially derogatory terms by white supervisory staff, and denial of promotions by signing a petition opposing these activities.

25. In general, blacks who complain of discriminatory attitudes and actions are subjected to retaliatory treatment by white supervisors in the Highway Department. In response to the complaints by black employees in the Third Division in 1990, a meeting between black employees and the white supervisory staff in the First District was held in May or early June, 1990. Mr. Johnson was singled out by the white supervisory staff at the meeting, told that the white supervisors did not like his attitude and within a month was transferred from the herbicide crew to which he had been assigned and which he had shown he could perform satisfactorily, to a traffic Control Crew. On information and belief this reassignment was in retaliation for

Mr. Johnson having spoken out against racially discriminatory practices. On information and belief at least one other black employee participating in protests against discriminatory behavior has been retaliated against as a result of his participation in the protests, and received a written reprimand and threat of suspension for his participation in meetings with white supervisory staff, which letter stated the cause of the threat of suspension was his "deliberate" actions to discredit a white supervisor, and his "uncooperative, unpleasant attitude."

26. On information and belief, Black employees in the Highway Department have been evaluated on tasks they have not performed and not been evaluated on tasks they have performed while whites have been evaluated on actual performance of tasks to which they have been assigned.

27. Although black employees of the Highway Department have been told that assignment and evaluation with regard to particular tasks affects their promotional ranking, on information and belief, the Personnel Department utilizes "unassembled examinations" for grading employees for employment in classifications which do not require specialized skills, including the Highway Maintenance Technician classifications. In scoring the unassembled examinations for Highway Maintenance Technician classifications all employees are purportedly given the same credit on open and promotional registers for their service as Highway Maintenance Technicians regardless of their crew or task assignments.

28. On information and belief the misleading information and other practices of the defendant Highway Department with regard to evaluations and promotional applications have deprived black employees of the ranking on such registers which they would have otherwise held had the Personnel and Highway Departments told black employees what factors were evaluated and the point values assigned to each factor in achieving the final grades for the employment and promotional registers.

29. On information and belief, to the extent that subjective evaluations of qualifications by the Highway Department are utilized for employment and promotional purposes and are based on job assignments, such practices have discriminatory impact as the result of discriminatory and racially based crew assignments.

30. On information and belief, the unassembled examination and scoring system utilized by the defendant Personnel Department for ranking applicants on the employment registers for Highway Maintenance classifications utilizes specified additional points for educational levels achieved by the applicants, which educational levels are not necessary or functionally related to the tasks of Highway Maintenance Technicians and are believed to discriminatorily impact black opportunities for employment in the Highway Maintenance classifications.

31. Although Alabama law requires that records of its

departments and agencies be open for public inspection unless such disclosure would violate public policy, the Personnel Department refuses to permit publication of the standards utilized in grading unassembled examinations which refusal permits and condones the dissemination of misinformation by the Highway and other state departments with regard to the grading of such examinations, which misinformation intentionally misleads black employees regarding the necessity for and value of submitting additional applications for promotions and adversely affects their opportunities for employment and advancement. Maintaining secrecy of such scoring keys when they are related only to objective factors which can not be manipulated by the applicants serves only to prevent qualified applicants from obtaining the highest scores they could receive on the registers, and on information and belief disparately impacts black applicants for merit system positions in the Highway and other state Departments. Without knowledge of how to improve their scores, and given disinformation about the scoring of applications, black applicants are unable to effectively seek employment in higher classifications in the Highway Department.

32. Mr. Johnson and other black employees have been disparately treated with regard to physical limitations which disparate treatment has resulted in adverse employment actions including termination of their employment. White employees who have been subject to permanent physical limitations have been reassigned to specific job duties within their limitations, but

Mr. Johnson and other black employees have not been given the benefit of such treatment and unlike white employees are expected to continue performing all duties of their job classification and are subject to termination by their white supervisors because of their race and limitations. As the result of several on the job injuries (including an injury to his back which occurred on August 20, 1990, after his transfer from the herbicide crew to the traffic crew), on August 27, 1990, Mr. Johnson was permanently restricted by his physician from lifting more than 25 pounds in performing his duties as a Highway Maintenance Technician I. On Friday October 26, 1990, while he was assigned to a traffic control crew, Mr. Johnson's white supervisors, who had full knowledge of Mr. Johnson's physical limitations and acted in disregard for the welfare and safety of Mr. Johnson, ordered him to perform tasks other than his traffic control duties and which he in good faith believed were not within his limitations and would result in further injury to his back. When Mr. Johnson presented a copy of his physician's permanent limitations to the supervisors, they acknowledged receipt of the limitations and told him to perform the work anyway or be terminated. When Mr. Johnson failed to comply with his supervisor's request, he was terminated and told that he would have to find his own way back to the office from the job site. On information and belief, the decision to order Mr. Johnson to perform the work or be terminated was disparate treatment and retaliatory conduct intended by the white supervisors to provoke

anger and insubordination to justify his termination. Mr. Johnson filed a timely appeal of his termination with the State Personnel Board which has not yet set a date for hearing on his termination.

33. On information and belief, the internal procedures provided by the Highway Department for pursuit of claims of discrimination are ineffective and biased against employees and in favor of white supervisors. In October, 1990, the Highway Department's Equal Employment Opportunity Coordinator submitted reports on the complaints of racial discrimination made by Mr. Johnson and other black employees. On information and belief that the reports relied primarily on a comparison of evaluation scores for black and white employees for a period which included several months after the allegations of discrimination in evaluations without segregating those evaluations on which the complaints were based or comparing them to previous evaluations of the affected black employees to determine if discriminatory practices had been followed prior to the complaint, and specifically asserted that the investigation "revealed no discriminatory practices in terms of the assignment of any specific jobs, equipment or machinery." On information and belief, the reports failed to note that the work crews were racially segregated (although that problem was subsequently noted in "recommendations" to the Division Engineer) or to address the potential impact of such practices on the assignment and evaluation of black employees, and did not address the complaints

of blacks being evaluated for work not performed and not evaluated on tasks performed.

34. The plaintiff intervenor has filed timely charges with the Equal Employment Opportunity Commission. Mr. Johnson went to the Equal Employment Commission in June 1990 and complained of the apparent discrimination in the selection of the junior white for the promotion to Highway Maintenance Technician II. A charge of discrimination regarding his retaliatory reassignment was filed by Mr. Johnson with the Equal Employment Opportunity Commission on or about August 20, 1990. In September, 1990, the black employees, including Mr. Johnson had received no response to the complaints they submitted to the Department in May, 1990, and they proceeded to file charges of discrimination with the Equal Employment Opportunity office asserting discrimination against black employees in job assignments and unlawful employment practices. A charge of discrimination with regard to Mr. Johnson's termination was filed in October, 1990. These complaints have been under investigation by the Equal Employment Opportunity Commission and are currently approaching the conciliation stage of the proceedings.

#### V. COMPLAINTS

COUNT ONE: Black merit system employees have sought and been denied promotions because of their race.

COUNT TWO: Black applicants have sought employment with the Highway Department and have been disproportionately placed in lower paying laborer and temporary job classifications which



provide limited opportunity for advancement to higher classifications.

COUNT THREE: The Highway Department through its agents, including the individual defendants has pursued a pattern and practice of denying black merit system employees the right to advance in their salaries at the same rate as white employees have been advanced, and has discriminatorily denied step raises to which they were entitled.

COUNT FOUR: The Highway Department through its agents, including the individual defendants has pursued a pattern and practice of denying black employees seeking merit system positions instruction and information which is necessary for successful application for promotion to merit system classifications and have been given misinformation with regard to requirements and qualifications for promotion which practices have adversely impacted black employees as a class.

COUNT FIVE: Black employees do not enjoy the same terms and conditions of employment as white employees.

COUNT SIX: Black employees are subjected to overt and subtle racist remarks on the part of their fellow employees and supervisory staff which have been reported to the Highway and Personnel Departments which merely characterized such actions as a personal managerial style and took no disciplinary action with regard to the white employees involved in such conduct.

COUNT EIGHT: The Highway Department through its agents, including the individual defendants has pursued a pattern and

practice of retaliation against black employees who oppose racially discriminatory practices and racist attitudes in co-employees and supervisors.

COUNT NINE: The Personnel Department's use of educational criteria and subjective valuation of non-Highway Department training and experience to calculate scores used for individual ranking on employment and promotional registers adversely impacts employment opportunities for black applicants' and black employees seeking employment in merit system classifications in the Highway Department.

COUNT TEN: The Personnel Department has failed to vigorously pursue its responsibility to eliminate discriminatory practices in the hiring, assignment, promotion, discipline and termination of black employees of the Highway Department and has acquiesced in, condoned, sanctioned and furthered the discriminatory practices of the Highway Department by not responding to complaints of discrimination by taking disciplinary action against those individuals participating in and promoting the discriminatory policies and practices and by not adequately supervising the activities of the Highway Department to ensure compliance with federal laws, court orders and state policies prohibiting discrimination and providing affirmative action for minority applicants and employees.

COUNT ELEVEN: Defendants discriminatorily terminated the plaintiff intervenor in retaliation for his opposition to racial discrimination.

COUNT TWELVE: Defendants discriminatorily denied the plaintiff intervenor promotion to a Highway Maintenance Technician II position.

COUNT THIRTEEN: Defendants have discriminated against the plaintiff by preventing him from advancing on the pay scale through "step" raises by failing to request step raises to which the plaintiff intervenor was entitled based on his annual evaluations.

WHEREFORE, Plaintiff intervenor requests the following relief:

A. Declaratory judgment finding the defendants in have discriminated against black employees and job applicants in violation of the law;

B. Injunctive relief redressing the discriminatory effects of the defendants' discriminatory practices on the register ranking of black applicants and employees for merit system positions with the Highway Department;

C. Injunctive relief reinstating those class members who have been terminated as a result of racially disparate treatment and retaliatory conduct by the defendants;

D. Back pay and experience credits toward further advancement as appropriate pursuant to proof with regard to termination and denial of promotional opportunities;

E. Affirmative relief through front pay and instatement of affected class members according to proof;

F. Declaration as to the discriminatory impact of the

use of educational criteria and subjective analysis of prior experience and training in awarding employment and promotional ranking to black applicants for merit system positions;

G. Injunctive relief requiring the Personnel Department to publish the standards by which unassembled examinations are scored and a procedure for challenge to the score(s) assigned to individuals who believe the subjective evaluation of prior experience and training is improper;

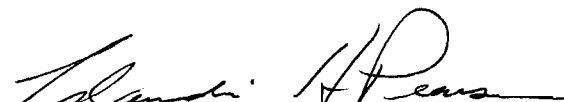
H. Punitive damages against defendants Parker and Pinion in their individual capacities for their racially motivated and retaliatory actions with regard to Mr. Johnson and other black employees;

I. Injunctive relief to correct the discriminatory evaluations received by black employees prior to the complaints by Mr. Johnson and other blacks, and to the degree that task assignments are considered at any point in the promotional process, injunctive relief to redress the effects of segregation of work crews and discriminatory task assignments to black employees of the Highway Department;

J. Costs and attorney fees as provided by law;

k. Such other and further relief as the court may determine to be appropriate.

Respectfully submitted,

  
Claudia H. Pearson

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing on the following parties by placing a copy of the same in the U.S. Mail, postage prepaid and properly addressed and by FAX as indicated:

Hon. Alvin Prestwood  
350 Adams Avenue  
Montgomery, AL 36104  
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Hon. Rick Harris  
Legal Counsel State of Alabama  
Department of Public Health  
Montgomery, AL 36130  
FAX 240-3097

Julian McPhillips, Esq.  
516 S. Perry Street  
P.O. Box 64  
Montgomery, AL 36101  
FAX 263-2321

Honorable Gil Kendrick  
505 South Perry Street  
Montgomery, AL 36104  
FAX 263-9940

**and by hand delivery on March 12, 1991 to the following attorneys of record:**

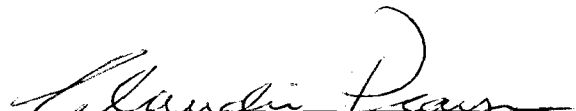
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This 12th day of March, 1991,

  
Claudia H. Pearson

FILED

MAR 22 1991

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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF ALA.  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOHNNY REYNOLDS, et. al. )  
 )  
 PLAINTIFFS, )  
 )  
 CECIL PARKER, )  
 )  
 INTERVENOR/PLAINTIFF. )  
 )  
 v. )  
 )  
 ROYCE KING, et. al. )  
 )  
 DEFENDANTS. )

CIVIL ACTION NO. : 85-T-665-N

COMPLAINT OF INTERVENOR

COUNT ONE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1343. This action is authorized and instituted pursuant to 42 U.S.C. Section 2000-e, et. seq. (hereinafter referred to as "Title VII").

2. The unlawful discrimination alleged herein was and is now being committed within the State of Alabama.

3. Cecil Parker (hereinafter referred to as "Intervenor"), is an "employee", as defined in 42 U.S.C. Section 2000-e(f), and has standing to institute this suit.

4. Defendants are "employers" within the meaning of 42 U.S.C. Section 2000-e(b) of Title VII.

5. Since at least January 1, 1987, Intervenor has been denied higher pay and promotions, as a result of job assignments made by Defendants. Defendants willfully, and without cause, engaged in unlawful employment practices in this regard in violation of Title VII. Defendant has

*264a*

willfully limited Intervenor's earning capacity by restricting his ability to be promoted on the basis of qualification, and instead making promotions on the basis of race. Plaintiff was treated differently from similarly situated white employees of Defendants solely due to Intervenor's race, which is black.

6. All conditions precedent to the filing of this action have been met.

WHEREFORE, PREMISES CONSIDERED, Intervenor prays that this Court will:

- (a) Grant a judgment requiring Defendants to pay appropriate back wages, benefits and interest for Defendant's violation of Title VII; and,
- (b) Order Defendants to immediately promote Intervenor to a higher paying position; and,
- (c) Expunge any adverse statements, documents or otherwise from Intervenor's personnel file dealing with this action; and,
- (d) Grant Intervenor his costs and expenses in this action, including a reasonable attorney's fee; and,
- (e) Grant such other, equitable or further relief the Court deems just to make Intervenor whole.

#### COUNT TWO

7. Intervenor adopts by reference, as if fully set forth herein, each and every material averment contain in Count One, above.

8. As a result of Intervenor's filing a charge of discrimination, dated January 4, 1989, with the Equal Employment Opportunity Commission (EEOC), Intervenor has been denied certain more desirable work assignments, while the assignments have instead been given to whites. Further, Intervenor has been denied wages that he has earned in retaliation for his filing of his charge of racial discrimination with the EEOC. Bobby Lambert, Intervenor's supervisor, has willfully failed and intentionally failed to report actual payment hours worked by Intervenor

to Defendant Highway Department's payroll division, or if reported, Intervenor has not been paid for hours actually worked. Whites have not been so treated.

9. Defendants have failed to pay child support payments into court, as ordered by the Circuit Court of Alabama, after said sums were withheld from Intervenor's pay for that purpose. Whites employees have not been treated similarly.

10. Bobby Lambert, Intervenor's supervisor, has attempted to solicit from Intervenor's co-workers, false and untrue statements regarding Intervenor for use in disciplinary proceedings against Intervenor in retaliation for his filing of charges of racial discrimination. Whites have not been so similarly treated.

11. Intervenor has been assigned work details which are both dangerous and punitive in retaliation for his previously filed charge with the EEOC, while white employees of Defendant have not been so treated.

12. All conditions precedent to the filing of this action have been met.

WHEREFORE, PREMISES CONSIDERED, Intervenor prays that this Court will:

- (a) Grant a judgment requiring Defendants to pay appropriate back wages, benefits and interest for Defendants' violation of Title VII; and,
- (b) Enjoin Defendants from retaliating against Intervenor in any term or condition of Intervenor's employment as a result of Intervenor's race and/or as a result of Intervenor's pursuit of this action; and,
- (c) Expunge any adverse statements, documents or otherwise from Intervenor's personnel file dealing with this action; and,
- (d) Grant Intervenor his costs and expenses in this action, including a reasonable attorney's fee; and,
- (e) Grant such other, equitable or further relief the Court deems just to Intervenor whole.



COUNT THREE

13. Intervenor adopts by reference, as if fully set forth herein, each and every material averment contained in Counts One and Two, above.

14. Jurisdiction is conferred upon this Court pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 201, et. seq. (hereinafter referred to as "FLSA"), specifically 29 U.S.C. Section 216.

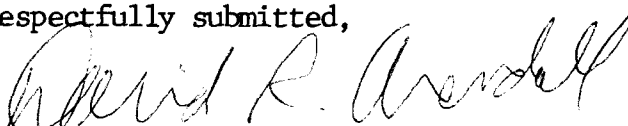
15. During the period of Intervenor's employment with Defendants, Defendants, an employer having employees subject to the provisions of 29 U.S.C. Section 206, has willfully violated FLSA by willfully failing and refusing to pay those wages earned by Intervenor and due to Intervenor as a result of his labors.

16. All conditions precedent to the filing of this action have been met.

WHEREFORE, PREMISES CONSIDERED, Intervenor moves that this Court will:

- (a) Grant a judgment requiring Defendants to pay appropriate back wages, benefits and interest, and an equal sum as liquidated damages to Intervenor for Defendants' willful violation of the Fair Labor Standards Act; and,
- (b) Expunge any adverse statements, documents or otherwise from Intervenor's personnel file dealing with this action; and,
- (c) Grant Intervenor his costs and expenses in this action, including a reasonable attorney's fee; and,
- (d) Grant such other, equitable or further relief the Court deems just to Intervenor whole.

Respectfully submitted,




---

David R. Arendall  
Attorney for the Intervenor  
2107 Fifth Avenue, North  
Age Herald Bldg. Suite 201  
Birmingham, Alabama 35203  
252-9551

OF COUNSEL:  
ARENDALE & O'KELLEY

CERTIFICATE OF SERVICE

I, David R. Arendall, Attorney for the Intervenor, do hereby certify that I have mailed a copy of this Complaint attached to the Motion to Intervene to the Attorneys for the Plaintiff, viz: Rick Harris, c/o Moore, Kendrick, Glass, Roth, Harris & White, 410 South Perry Street, P.O. Box 910, Montgomery, Alabama (36102); and Julian L. McPhillips, Jr. at McPhillips, DeBardleben & Hawthorn, 516 South Perry Street, Montgomery, Alabama (36102); and a copy to Attorneys for Defendants, William F. Gardner, at Cabaniss, Johnston, Gardner, Dumas & O'Neal, 1900 First National-Southern Natural Building, Birmingham, Alabama (35203); and Alvin Preswood, at 350 Adams Avenue, P.O. Box 1910, Montgomery, Alabama (36101), by United States Mail, first class, postage prepaid, addressed to the above attorneys at the above address on this the 22 day of August, 1989.

  
David R. Arendall