

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

SYLVESTER MCCLAIN, on his own	§	
behalf and on behalf of a class of similarly	§	
situated persons, et al.,	§	
	§	
Plaintiffs,	§	CIVIL ACTION NO. 9:97-CV-063
vs.	§	
	§	JUDGE CLARK
LUFKIN INDUSTRIES,	§	
	§	
Defendant.	§	

FOURTH AMENDED INJUNCTION

The Fifth Circuit, in vacating the Court's earlier injunction, remanded to this Court "to craft an adequate remedial order that will eliminate discrimination without hobbling Lufkin's legitimate promotion policies." *McClain v. Lufkin Industries, Inc.*, 519 F.3d 264, 284 (5th Cir. 2008). The Court of Appeals left to this Court "the task of reviewing afresh the propriety of the injunction, and if it is found necessary, of balancing plaintiffs' requests for stronger measures to ensure Lufkin's compliance with the imprecision of the liability finding." *Id.*

In carrying out the Fifth Circuit's mandate, the Court has held multiple status conferences with the parties in an attempt to narrow the disputed issues and identify areas of agreement. In addition, subject to and without waiver of the parties' rights to appeal, the parties have reached agreements, incorporated into stipulations, on certain other issues related to the scope and terms of injunctive relief.¹

¹ The Court's Injunction [Doc #683] entered on December 18, 2009, provides that, after conferring with one another and the Ombudsperson, the parties may submit to the court agreed upon modifications to the Injunction by stipulation. On November 7, 2011, the parties submitted a joint stipulation regarding modification of the injunction [Doc. #737]. Those changes were reflected in the Amend Injunction. [Doc. #745]. On April 25, 2012, the parties submitted a second joint stipulation [Doc. #750] which was reflected in the Second Amended Injunction (Doc.

In this Order, the Court (1) incorporates and combines the parties' stipulations, so that all issues previously resolved or determined are set forth in this Order, (2) provides for the specific injunctive relief to be implemented by Defendant Lufkin Industries, Inc. ("Lufkin" or "Defendant") and (3) provides for the procedures and methods by which this Injunction shall be implemented, monitored and enforced.

Therefore, pursuant to Federal Rules of Civil Procedure 65, the Court enters this permanent injunction to partially remedy the discrimination found by Judge Cobb, and affirmed by the Fifth Circuit, towards black employees when determining promotions for hourly and salaried positions. It is therefore ORDERED as follows:

I. Injunctive Provisions

A. Ombudsperson

1. Appointment of Ombudsperson

- a. The Court appoints Tony P. Rosenstein to serve as an outside Ombudsperson to monitor compliance with this Injunction and to hear complaints from class members regarding matters described in Section I.A.2.a. below. Mr. Rosenstein has read and signed the attached Scope and Limits of Appointment as Ombudsperson. The Court is satisfied that his appointment will adequately safeguard the judicial process.

#754]. On August 30, 2012, the Parties submitted a Third Joint Stipulation [Doc. # 758] requesting that the injunction be modified in two respects: (1) Class II Assemblers will be allowed to bid on Inspector jobs through October 2, 2014; and (2) Class I Assemblers will no longer be classified as Appendix 9 jobs. Instead, for promotions to Class I Assembler, Lufkin shall offer training opportunities for promotion to Class II Assemblers in seniority Order. On July 3, 2013, the Parties submitted a Fourth Joint Stipulation requesting that the Injunction be modified in three respects: (1) Maintenance Mechanic Class B be reclassified as an Appendix 9 job; (2) Incumbent Inspectors may request to take tests to qualify as an Inspector Specialist without signing a bid sheet; and (3) the Testing Protocol be amended to allow employees who fail the Inspector Specialist test to take the test before six months under certain circumstances. [Doc. # 766]. This Fourth Amended Injunction incorporates those changes.

- b. Lufkin shall be responsible for the prompt payment of reasonable fees and expenses the Ombudsperson incurs in connection with his duties and responsibilities under this Order. The Ombudsperson shall provide an invoice detailing his time spent and expenses incurred to Lufkin with each request for payment.

2. Duties and Responsibilities of the Ombudsperson

a. Complaint Investigation

- i. The Ombudsperson shall have the authority to receive, investigate, provisionally determine and recommend measures to resolve the following types of complaints: (1) complaints from Lufkin employees regarding Lufkin's non-compliance with this injunction, (2) complaints from black employees regarding promotion and promotion related discrimination, and (3) complaints of retaliation from employees who allege that they have been retaliated against for making a complaint regarding non-compliance with a specific mandate of this injunction or a promotion-related matter to the Ombudsperson, Lufkin or one of the unions representing Lufkin's employees.
- ii. Lufkin and its officers, agents, managers and supervisors shall not engage in or be a party to any act, policy, practice or procedure that discriminates or retaliates against (1) any employee of Lufkin who, in good faith, contacts the Ombudsperson regarding Lufkin's alleged non-compliance with this injunction; (2) any black

employee who, in good faith, contacts the Ombudsperson with regard to alleged promotion and promotion related discrimination; and (3) anyone who, in good faith, contacts the Ombudsperson regarding complaints of alleged retaliation for making a complaint regarding non-compliance with a specific mandate of this injunction or a promotion-related matter to the Ombudsperson, Lufkin or one of the unions representing Lufkin's hourly employees.

- iii. In giving the Ombudsperson this authority, the Court does not intend for him to displace the unions' statutory obligation to represent Lufkin's hourly employees or to provide a substitute for the grievance processes set forth in the collective bargaining agreement.
- iv. Lufkin shall provide to its employees in writing a toll free number that employees can use to contact the Ombudsperson and other information as provided for in Section I.H.2. below and in Appendix 1 to this Order.
- v. In order to investigate any complaint, the Ombudsperson shall have the authority to conduct additional fact finding which may include requesting documents or other information from Lufkin and interviewing employees, supervisors or other Lufkin personnel. The Ombudsperson shall also have the authority to take such actions as appropriate to assist the resolution of the

complaint, including recommending appropriate corrective action to Lufkin. If the Ombudsperson concludes after investigation that Lufkin has not complied with the injunction or has engaged in promotion related discrimination or retaliation, the Ombudsperson shall request that Lufkin take recommended remedial action and in the absence of such action report the matter to the Court and Class Counsel.

3. Monitoring

- a. The Ombudsperson shall be responsible for monitoring Lufkin's implementation of, and compliance with, this Order and any other subsequent or superseding remedial orders of the Court. In connection with this responsibility, the Ombudsperson shall have the authority to:
 - i. Review any documents maintained by Lufkin as described in Section I.E. below;
 - ii. Audit Lufkin's promotion procedures, practices and related-decisions;
 - iii. Conduct independent analyses of data related to Lufkin's promotion procedures, practices and related-decisions;
 - iv. Request additional information and data from Lufkin in order to carry out his audit and/or independent analyses of Lufkin's promotion procedures, practices and related-decisions.
 - v. Confer with Lufkin's Internal Monitor selected pursuant to Section II.G. below, and other Lufkin managers for the purpose of

reviewing with them Lufkin's implementation of, and compliance with, this Order and any other subsequent or superseding remedial orders of the Court.

- vi. Receive information from, and confer with, Class Counsel or Lufkin's counsel regarding Lufkin's implementation of, and compliance with, this Order and any other subsequent or superseding remedial orders of the Court.

4. Reporting

- a. The Ombudsperson shall report quarterly to the Court with respect to (1) any complaints requiring remedial action and the action taken thereon by Lufkin, and (2) Lufkin's compliance with the Promotion Procedures set forth in Section I.B. below.
- b. Class Counsel and Lufkin's counsel shall be given a copy of these reports and an opportunity to confer and respond at least five (5) days prior to filing with the Court.
- c. The unions' counsel shall be given a copy of any reports that document promotion-related complaints made by hourly employees.

B. **Compliance with Promotion Procedures**

- 1. Lufkin shall comply with the following Promotion Procedures for employees assigned to its facilities in Angelina County, Texas, until further order of the Court as provided in Section III or the expiration of this Injunction.
- 2. For purposes of this order,
 - a. "Bidder" means an employee who places, and does not withdraw, his or her name on a bid posted pursuant to Article 25, Section 1 of the 2011-

2014 Master Collective Bargaining Agreement and/or any similar provision of any amended or subsequent collective bargaining agreement between Lufkin and its unions (hereafter “Master CBA”).

- b. “Career Path” means those jobs set forth in Appendix 2.
- c. “Departmental Seniority” is as defined in the Master CBA, Article 22, Section 1(b). However, employees on the Boilermaker Department who work in the Fabrication Shops at Oilfield and Power Transmission will promote from within their respective shops, pursuant to Boilermakers Letter of Stipulation No. 10.
- d. “Eligible Employee” means:
 - i. For hourly job classifications on the IAM machining seniority roster and in the IAM Assembly and Distribution career paths on the Assembly and Shipping Department seniority roster, an Eligible Employee is an employee seeking to move:
 - 1) Within the employee’s current career path on a seniority roster for which the employee has Departmental Seniority into an hourly job classification which has a maximum rate of pay greater than the maximum rate of pay for the employee’s current job classification, unless the employee is exercising his right under Article 25, Section 3(i)(2) to bid on another schedule/shift/crew for the same classification that the employee currently holds and the employee has met the requirements of that section; or

- 2) Into a different career path than the employee's current career path for which the employee has Departmental Seniority on the seniority roster for the job classification into which the employee is seeking to move.
- ii. Subject to Article 25, Section 3, an employee bidding on an IAM job classification will not be Eligible under any of the following circumstances:
- 1) The employee submitted a bid for multiple concurrently posted positions and failed to prioritize any of those selections as required;
 - 2) The employee was disqualified from another position within six months of bidding on the job. However, the employee will be eligible to return to their former position, if it has not been filled. Once their pre-bid position becomes available, or another position within the department within which they have previous experience with the Company becomes available, the returning employee will be moved to that position, and the Company will not have to post this specific position. It is recognized that this provision is an exception to the prescriptions for promotions in Sections I.B.3-10. If a position within a returning employees' previous pre-bid classification becomes available during the disqualification period, the

returning employee will be permitted to make a lateral bid to the other shift and take that lateral position if the employee is the successful bidder for that position.

- 3) The employee was disqualified for the second time from another position within twelve months of bidding on the job. However, the employee will be eligible to return to their former position, if it has not been filled. Once their pre-bid position becomes available, or another position within the department within which they have previous experience with the Company becomes available, the returning employee will be moved to that position, and the Company will not have to post this specific position. If a position within a returning employees' previous pre-bid classification becomes available during the disqualification period, the returning employee will be permitted to make a lateral bid to the other shift and take that lateral position if the employee is the successful bidder for that position.
- 4) The employee was a successful bidder and was awarded a job, but has been prevented from accepting the job by the Company, unless the employee has been waiting for more than thirty (30) days.

- iii. An employee bidding on an IAM job classification may not decline that job if it is awarded and may not voluntarily return to the employee's old classification.
- iv. In addition to sub-sections (i) (1) and (2) above, an Eligible Employee is an employee in the Machinist or Shaft Finisher job classification who has Departmental Seniority on the seniority roster for the hourly job classification he is seeking and he is exercising his rights under IAM Letter of Stipulation No. 2.
- v. For hourly job classifications on all seniority rosters other than the IAM machining seniority roster including movements from job classifications in the Assembly or Distribution career paths not addressed in subsection (i) above, an Eligible Employee is an employee seeking to move from:
 - 1) An hourly job classification not in a Line of Progression into an hourly job classification that (a) is on a seniority roster for which the employee has Departmental Seniority or is permitted to bid on pursuant to GMP Letter of Stipulation No. 22 and (b) has a greater maximum rate of pay than the employee's current hourly job classification;
 - 2) An hourly job classification not in a Line of Progression into an hourly job classification that is in a Line of Progression, that (a) is on a seniority roster for which the employee has Departmental Seniority or is permitted to bid

on pursuant to GMP Letter of Stipulation No. 22 and (b) the highest hourly job classification in such Line of Progression, has a greater maximum rate of pay than the employee's current job classification;

- 3) An hourly job classification that is in a Line of Progression into an hourly job classification that: (a) is on a seniority roster for which the employee has Departmental Seniority or is permitted to bid on pursuant to GMP Letter of Stipulation No. 22 and (b) has a greater maximum rate of pay than the maximum rate of pay for the highest job classification in the employee's current Line of Progression;² or
- 4) An hourly job classification that is in a Line of Progression into an hourly job classification that is in a different Line of Progression (the "Receiving Line of Progression"), that (a) is on a seniority roster for which the employee has Departmental Seniority or is permitted to bid on pursuant to GMP Letter of Stipulation No. 22 and (b) the highest hourly job classification in the Receiving Line of Progression has a greater maximum rate of pay than the maximum rate of pay for the highest hourly job

² Notwithstanding this provision, a Class II Assembler is eligible to sign a bid for an Inspector job in the Final Assembly and Shipping Department through October 2, 2014.

classification in the employee's current Line of Progression.

- vi. In addition to sub-sections (iii) (1) and (2) above, an Eligible Employee is an employee in the Chip-Grind Finish job classification who has Departmental Seniority on the seniority roster for the hourly job classification he is seeking and he is exercising his rights under GMP Letter of Stipulation No. 19.
 - e. "Line of Progression" means:
 - i. For the Fabrication Department: Fork Lift, and Inspector lines;
 - ii. For the Foundry Department: the Core Machine Operator, Molding Machine Operator, Welder, Electrician, Mechanic (Class B to Master Maintenance Specialist), and Fork Lift lines; and
 - iii. For the Pattern Shop Department: the Pattern Maker and Pattern Tender lines.
 - f. "Subordinate Job Classification" means a job classification that an employee is required to hold before promotion to a higher hourly job classification.
3. For promotions to the hourly job classifications set forth in Appendix 3, Lufkin shall offer the promotion to the Eligible Employee Bidder with the highest Departmental Seniority. If that bidder is permitted to decline the promotion, Lufkin shall offer the position to the Eligible Employee Bidder with the next highest Departmental Seniority until all Eligible Employee Bidders have been offered the promotion. If no Eligible Employee Bidder accepts the position, the

position may be filled pursuant to the Master CBA. Lufkin shall post the name of the Eligible Employee Bidder who is awarded the promotion on the main bulletin board for the applicable department.

4. For promotions to the hourly job classifications set forth in Appendix 4 and 4a, Lufkin shall offer the promotion to the Eligible Employee Bidder with the highest Departmental Seniority who has passed the applicable test or skill demonstration as set forth in Appendix 4 or as provided for in Section I.C.3. below. If that bidder is permitted to decline the promotion, Lufkin shall offer the position to the Eligible Employee Bidder with the next highest Departmental Seniority who has passed the applicable test or skill demonstration until all Eligible Employee Bidders passing the applicable test or skill demonstration have been offered the promotion. If no Eligible Employee Bidder accepts the position, the position may be filled pursuant to the Master CBA. Lufkin shall post the name of the Eligible Employee Bidder who is awarded the promotion on the main bulletin board for the applicable department. Subject to the foregoing, any employee who is currently classified as an Inspector may request to take the test to qualify as an Inspector Specialist without the position being posted.
5. For promotions to the Crane Operator or Hydraulic Manipulator Operator job classifications in the Foundry Department, Lufkin shall promote the employee in the Learner job classification for the position with the highest Departmental Seniority provided the employee has completed a minimum of ninety (90) days service in the Learner job classification for the position. In order to be promoted to Crane Operator, the employee must also successfully complete the Crane

Operator Learner Task Proficiency Check Off list, attached as Exhibit 5. If the employee in the Learner classification for the position does not have the requisite ninety (90) days service in the Learner job classification, Lufkin shall promote the employee in the Learner job classification with the next highest Departmental Seniority who meets the minimum ninety (90) days service in the Learner classification for the position.

6. For promotions to the hourly job classifications set forth in Appendix 6, Lufkin shall offer the promotion to the Eligible Employee Bidder with the highest Departmental Seniority who has at least ninety (90) days service in the Subordinate Job Classification and meets the other criteria as set forth in Appendix 6. If that bidder is permitted to decline the position, Lufkin shall offer the position to the Eligible Employee Bidder with the next highest Departmental Seniority who has at least ninety (90) days service in the Subordinate Job Classification until all Eligible Employee Bidders with ninety (90) days service in the Subordinate Job Classification have been offered the promotion. If no employee in the Subordinate Job Classification has bid for the position or has the requisite length of service, Lufkin may treat the posting as a bid for the Subordinate Job Classification and award the promotion to the Eligible Employee Bidder with the highest Departmental Seniority or elect to hire for the position. If Lufkin elects to offer the Subordinate Job Classification to the Eligible Employee Bidder and that bidder declines the position Lufkin shall offer the position to the Eligible Employee Bidder with the next highest Departmental Seniority until all Eligible Employee Bidders have been offered the promotion to

the Subordinate Job Classification. If no Eligible Employee Bidder accepts the position, the position may be filled pursuant to the Master CBA consistent with the provisions of this Order. Lufkin shall post the name of the Eligible Employee Bidder who is awarded the promotion on the main bulletin board for the applicable department.

7. For promotions to the Melter A job classification, Lufkin shall promote the employee in the Melter B job classification with the highest Departmental Seniority provided the employee has passed the Melter A test and demonstrated ability as set forth in the Melter A demonstration standards attached as Appendix 7.
8. For promotion to the job classification Machinist (for gear hobs and grinders), as provided in IAM Letter of Stipulation No. 5, Lufkin shall offer the promotion to Sykes generator operators in order of Departmental Seniority and if none accept the promotion shall post and award the position as provided in paragraph 3 above.
9. For promotion to the hourly job classifications set forth in Appendix 8:
 - a. If the Eligible Employee Bidder who is awarded the promotion is moving in the same career path and his current rate of pay is less than the maximum rate of pay for the Trainee job classification, he shall be classified initially in the Trainee job classification within the career path.
 - b. If the Eligible Employee Bidder who is awarded the promotion is moving in the same career path and his current rate of pay is higher than the

maximum Trainee job classification rate of pay, he shall be placed in the job classification on which he bid.³

- c. If the Eligible Employee Bidder who is awarded the promotion is moving into a different career path, he will be classified initially in the Trainee classification at the minimum hourly rate for the Trainee classification.⁴
- d. Lufkin shall post the name of the Eligible Employee Bidder who is awarded the promotion on the main bulletin board for the applicable department.

- 10. For promotions to Class I Assembler, Lufkin shall offer training opportunities for promotion to the position to eligible Class II Assemblers in seniority order. A Class II Assembler will be deemed eligible for a training opportunity if the employee has attained 3 years classification seniority, i.e., three years in the Class II Assembler position, although the Company may waive the 3 year requirement in the event that there are no employees in the Class II Assembler position who meet that requirement, provided that the Company offers training opportunities in order of seniority to employees in the Class II Assembler position. An employee will be given up to 60 days to complete the training program. If the candidate does not successfully complete the training program, they will remain as Class II assemblers, and will not be reconsidered for an Assembler Class I position for up

³ For example, an Eligible Employee Bidder classified as a Machine Operator Class C earning \$ 14.49 per hour, who in 2009, accepts Lufkin's offer of a Machine Operator Class A position will initially be classified as a Machine Operator Trainee because the 2009 maximum rate of pay for Machine Operator Trainee is greater than the employee's current rate of pay. If the Machine Operator Class C was earning \$15.88 per hour at the time of his successful 2009 bid, he would be classified as a Machine Operator Class A because his current rate of pay is greater than the current maximum rate of pay for the Machine Operator Trainee classification.

⁴ For example, an Eligible Employee Bidder who is in a Class II Assembler position at the time he accepts in 2009, Lufkin's offer of a Machine Operator Class A position will initially be classified as a Machine Operator Trainee and paid \$12.19 per hour, which is the 2009 minimum rate of pay for the Trainee classification.

to six months from the date he or she is determined not to have successfully completed the training program. For each opening of a Class I Assembler position, Lufkin will document and report to the Ombudsperson and Plaintiffs the race and classification seniority date of: (a) all employees then in the Class II Assembler position, (b) the person(s) selected for the Class I Assembler training program, and (c) any person selected to train for the job who is ultimately not successful.”

11. For promotions to the hourly job classifications set forth in Appendix 9, Lufkin shall review and analyze the promotions, including the person who was promoted to the position, all persons offered but declining the position and all other persons qualified for the promotion by race on an annual basis and provide its written assessment and the underlying data used to make its assessment to the Ombudsperson. If the Ombudsperson determines that there is a racially disparate pattern in the promotions adverse to black employees, she shall review the promotion decisions that have been made in light of the requirements of the job and, if warranted, recommend remedial action to Lufkin. If Lufkin declines to implement such remedial action, the Ombudsperson shall report his findings, proposed remedial action and Lufkin’s response to the Court, Lufkin and Class Counsel. Lufkin shall retain the right to defend against implementation of the recommended remedial action, including on the ground that the racial disparities found by the Ombudsperson were not statistically significant or, in light of the job’s requirements, valid criteria were used to make the promotion decisions. For purposes of this sub-section “other persons qualified for the promotion” means

persons: (a) in the Subordinate Job Classification if the promotion is within a career path or into a specialist or master position or (b) in the Machine Operator A job classification if the promotion is to Machinist.

12. For job classifications in a career path, Lufkin shall retain all records and data necessary to analyze and shall analyze on an annual basis to determine whether there are any racial disparities in (a) the length of time in which discretionary merit and other pay increases are awarded to employees in Trainee classifications, for which such discretionary merit and other pay increases are provided for by the Master CBA and (b) the length of time employees spend in Trainee classifications before they are promoted out of the classification. Lufkin shall report these analyses to the Ombudsperson. If the Ombudsperson determines that there is a racially disparate pattern with respect either to the time to pay increases or promotion from the trainee classification adverse to black employees, she shall investigate to determine the causes of such disparities and, if warranted, recommend remedial action to Lufkin. If Lufkin declines to implement such remedial action, the Ombudsperson shall report his findings, proposed remedial action and Lufkin's response to the Court, Lufkin and Class Counsel. Lufkin shall retain the right to defend against implementation of the recommended remedial action, including on the ground that the racial disparities found by the Ombudsperson were not statistically significant or valid criteria were used for making the decisions.

C. Testing Protocols

1. Lufkin shall comply the testing protocol described in Appendix 10 in its administration of any tests or skill demonstrations it uses for determining

promotions to any of the jobs listed in Appendices 4, 5 and 7 or to be developed pursuant to Section I.C.3. below.

2. Lufkin shall analyze the results of each paper and pencil test and skill demonstration it administers by the race of the persons who take, pass and fail the test or skill demonstration and provide its written analysis and the underlying data used to conduct the analysis to the Ombudsperson. If the Ombudsperson determines there is a racially disparate pattern in the passing rate for such test or skill demonstration adverse to black employees, she shall review the job, the test, and the degree of the disparate pattern to determine whether to require Lufkin to validate the test or skill demonstration and if so, recommend such validation, including determining whether there is another suitable test or skill demonstration that has less adverse impact. If Lufkin declines to follow the Ombudsperson's recommendation, the Ombudsperson shall report his findings, the recommended remedial action and Lufkin's response to the Court, Lufkin and Class Counsel. Lufkin shall retain the right to defend against implementation of the recommended remedial action, including on the ground that the racial disparities found by the Ombudsperson were not statistically significant or that the test or skill demonstration is valid.
3. If during the term of this Order, Lufkin has a need to develop a test or skill demonstration for any of the job classifications listed on Appendix 4a, or any newly established or changed job classifications, Lufkin shall provide copies of the test or outline of the skill demonstration to the Ombudsperson and Class Counsel at least fourteen (14) days prior to Lufkin's commencement of use of the

test or skill demonstration. Class Counsel may provide comments on the test or skill demonstration to the Ombudsperson and Lufkin.

D. Manager Training

1. Initial Training

- a. Within thirty (30) days of the entry of this injunction, Lufkin shall provide Initial Training to all of its officers, executives, managers and supervisors in Angelina County on the terms of this Injunction including the promotion and testing procedures.
- b. Lufkin's counsel or a member of Lufkin's management who is knowledgeable about this litigation will provide the Initial Training.
- c. Lufkin shall provide such Initial Training to all new officers, executives, managers and supervisors in Angelina County, who have not previously received the Initial Training, within thirty (30) days of their hire or promotion.

2. Other Manager Training

- a. Lufkin shall engage the services of Dr. Winfred Arthur to develop and provide live training for its officers, executives, managers and supervisors that addresses the Court's liability findings and reduction of subjectivity in decision making in the workplace. Dr. Arthur shall advise Lufkin on the appropriate specific content of the training and written materials to provide to trainees. Training for officers, executives and managers shall be a one day program and for supervisors a half day program.
- b. Lufkin shall provide this training within one hundred eighty (180) days of the date of entry of this Order.

- c. Lufkin shall provide similar training in videotape format to any newly hired or promoted officers, executives, managers and supervisors (who have not previously received the training) within thirty (30) days of their hire or promotion.
- d. Lufkin shall provide written verification to the Ombudsperson of the completion of the training and that all of its officers, executives, managers and supervisors received such training.

E. Recordkeeping

- 1. Lufkin shall maintain paper and data records that reflect promotion-related decisions including bid sheets, postings and other written communications reflecting employee interest in promotions, forms documenting decisions, structured interview questions and responses, data analyses, paper and pencil tests, records of skill tests, job descriptions for salaried jobs, formal training, and all documentation pertaining to any internal employee complaints, including but not limited to, union grievances, arising from promotion-related decisions and the investigation and resolution of such complaints.
- 2. Lufkin shall retain such documents, records and data for the duration of this Order.

F. Annual Executive EEO Updates

- a. Lufkin's Internal Monitor will prepare an Annual Executive Report for Lufkin's executive team.
- b. For purposes of this Order, Lufkin's "executive team" means officers of the Company.

- c. The Annual Executive Report shall contain, as a minimum, summaries of any adverse impact analysis of promotions that has been provided to the Ombudsperson, and any reports provided by the Ombudsperson to the Court. Copies of any analyses or reports referred to in the Annual Executive Report will be attached to the report.
- d. A copy of this Report shall be concurrently provided to the Ombudsperson, who may submit comments or recommendations based on the Report, in which case such comments or recommendations shall also be provided to, and reviewed by, the executive team.

G. Internal Monitoring

- 1. Within fourteen (14) days of entry of this Injunction, Lufkin shall designate an Internal Monitor. At the same time, Lufkin shall advise the Court, the Ombudsperson and Class Counsel of the identity of the Internal Monitor.
- 2. The Internal Monitor shall be responsible for the following:
 - a. Monitoring Lufkin's compliance with the terms of this Injunction and coordinating with the Court-appointed Ombudsperson.
 - b. Monitoring Lufkin's compliance with the promotion and testing procedures, training procedures, data analyses, recordkeeping and reporting required by this Injunction.
 - c. Serving as Lufkin's liaison with the Ombudsperson and responding to any requests for information from the Ombudsperson.
 - d. Overseeing the preparation of and submitting quarterly reports to the Ombudsperson which will include data on all promotions awarded in the prior quarter. This data will include the name of each person who was

promoted, their race, the position from which they were promoted, the position to which they were promoted, as well as the name, race, and classification of each unsuccessful candidate for the promotion.

- e. Conducting an adverse impact analysis of Lufkin's promotion data every six months to determine if there are any statistically significant shortfalls in promotions of black employees not the product of a bona fide seniority system.
- f. Reporting to Lufkin's Chief Executive Officer and senior management staff regarding Lufkin's implementation of, and compliance with, the Court's remedial orders and concurrently sending a copy of such report to the Ombudsperson.
- g. Conducting and reporting to the Ombudsperson the annual analyses required under Sections I.B.10. and 11. and I.C.2. of this Order.
- h. Preparing the Annual Executive Report required under Section II.F. of this Order.

H. Communications

- 1. Lufkin shall provide a copy of this Injunction to all officers, executives, supervisors and managers as part of the Initial Training required under Section I.D.1. of this Order. Lufkin shall also provide copies of any subsequent remedial orders of the Court modifying or amending this Order to its officers, executives, supervisors and managers, and to the unions.
- 2. Within fourteen (14) days of the entry of this Injunction, Lufkin shall provide to all employees a copy of the notice attached as Appendix 1 which summarizes the

terms of this injunction and identifies the Ombudsperson, explains his role, and provides a phone number and other contact information for him.

II. Jurisdiction

This Court specifically retains jurisdiction to enforce this permanent injunction.

III. Modification of this Order

In the event that changed or other circumstances make a modification of this Order necessary to ensure its purposes are fully effectuated, the parties shall attempt in good faith to reach agreement on such modification suitably tailored to the changed or other circumstance, including by conferring with one another and the Ombudsperson, and submit the modification to the Court by stipulation. If the parties are not able to reach such agreement, any party may move the Court to modify the Order.

IV. Term of this Order

This Order shall remain in effect for five (5) years from the date December 18, 2009, when the Court first entered this Injunction.

So **ORDERED** and **SIGNED** this 17 day of **July, 2013**.



Ron Clark, United States District Judge

APPENDIX 1

[LUFKIN INDUSTRIES LETTERHEAD]

NOTICE TO ALL LUFKIN INDUSTRIES EMPLOYEES IN ANGELINA COUNTY

In August 2005, the United States District Court for the Eastern District of Texas found that Lufkin Industries' exercise of discretion in promotion-related practices had a discriminatory impact on its black employees in Angelina County. In order to ensure that this discriminatory impact on black employees is eliminated, the Court has entered an injunction against Lufkin requiring Lufkin to:

- Clarify its promotion-related practices to curtail subjectivity.
- When tests or skill demonstrations are required for promotions, administer the tests and skill demonstrations according to a written protocol. Any employee may request a copy of this protocol from Lufkin's human resources department.
- Train all supervisors and managers on the promotion-related procedures and equal employment opportunity.
- Keep documents related to every promotion-related decision so that they can be reviewed if a promotion-related decision is challenged.
- Review and analyze promotion-related decisions periodically to ensure that its procedures are followed and that black employees are not adversely affected by excessive subjectivity in the promotion process.

The Court has appointed _____, a Houston attorney, as an outside ombudsperson to monitor Lufkin's compliance with this injunction and to receive, investigate and recommend resolution for certain kinds of complaints from Lufkin employees. Black employees may complain to _____ regarding what they believe to be promotion and promotion related discrimination. Any employee who believes Lufkin has failed to comply with the Court's injunction or who believes he/she may have been retaliated against for complaining to _____, may also complain to _____ at the telephone number below.

_____(Ombudsperson) 1-800-_____

Employees are not required to complain to _____ and may choose instead to complain directly to Lufkin or, if an hourly employee, to one of the unions representing Lufkin's employees at one of the following numbers:

John Havard (Manager of Human Resources) (936)637-5405

GMP Local 429 _____

Boilermakers Local 587 _____

IAM Local 1999 _____

**Lufkin will not retaliate against any employee who makes a complaint to _____,
Lufkin Industries or to one of the unions.**

APPENDIX 2

Career Paths

Machine Shop Department roster Assembly

**Master
Commercial Gear Assembly
Welder
IGBW
Class A
Trainee
Helper**

**Class I
Class II
Trainee
Helper**

**Finish Painter
Spray Painter**

Distribution

**Specialist
Handler
Trainee
Truck-Trailer Operator**

Heat Treat

**Master Heat Specialist
Master Heat Treater
Heat Treater
Heat Treat Trainee**

Machining

**Inspector Specialist
Inspector
Machinist
Machine Operator Class A
Machine Operator Class B
Machine Operator Class C
A B C Tool Room
Machinist Helper
Shaft Finisher
Master Tool Maker
Tool Maker
Tool Grinder Class A
Electrical Department Specialist
Electrician Class A
Electrician Class B
Electrician Class C
Electronics Technician
Electronics Trainee**

APPENDIX 2

Career Paths

**Master Maintenance Specialist
Maintenance Mechanic specialist
Maintenance Mechanic Class A
Maintenance Mechanic Class B
Maintenance Mechanic Class C
Pipe Fitter Class A
Pipe Fitter Class B
Pipe Fitter Class C
Utility Maintenance Class A**

Assembly and Shipping roster

Assembly

**Class I
Class II
Trainee
Helper**

Distribution

**Specialist
Handler
Trainee**

APPENDIX 3

Burner
Casting Finisher
Casting Painter
Cleaning Machine Operator
Core Mold Finisher
Crane Operator Learner
Drill Press Operator
Forklift Casting Handler
Forklift Specialist
Forklift Tow Motor Operator
Grit Blast Operator
Hydraulic Manipulator Op Learner
Main Bay Mold Closer
Mullor Operator Class A
Rod Bender
Sand Reclaimer Operator
Shakeout Operator
Pattern Maker Apprentice
Pattern Tender Class B
Belt Cover/Crank Guard Builder
PT Burner
Burner Class B
Crane Operator
Fork Lift Operator
Grinder Structural
Inspector
Machine Operator Structural IV
Sheet Metal Worker
Parts Finisher
Storekeeper
Structural Worker
Truck Trailer Operator
PT Assembler CI A
OF Assembler CI II
Spray Painter
Distribution Handler
Heat Treater
Inspector
Machinist (for PT/OF designated machines)
Machine Operator CI A
Machine Operator CI B
Machine Operator CI C
Shaft Finisher
Tool Maker
Tool Grinder Class A

Truck Trailer Operator
Utility Maintenance CI A
Assembler Class II
Distribution Handler
Crane Operator
Crane Operator (Mobile)
Fork Lift Operator
Inspector
Spray Painter
Painter/Cleaner
Truck Trailer Operator

MACHINES THAT ARE CLASSIFIED AS MACHINIST MACHINES

9/29/09

POWER TRANSMISSION			
Machine Number			
	Machine Description	Actual Work Center	Generic Work Center
M00269			
M00246	Manual Hob	246	106640
M00305	Manual Hob	246	106640
M00477	Manual Hob	246	106640
M09345	Manual Hob	477	106640
M00304	Manual Hob	477	106640
M00289	Manual Hob	292	106640
M00096	Small Manual Hob	289	106640
M09522	Small Manual Hob	223	106640
M09521	CNC Hob	291	106640
M09259	CNC Hob	291	106640
M09520	CNC Hob	291	106640
M09523	CNC Hob	291	106640
M12041	CNC Hob	291	106640
M09631	CNC Hob	291	106640
M08703	Gear Grinder	504	106640
M09630	Gear Grinder	504	106640
M09362	Gear Grinder	506	106640
M04219	Gear Grinder	506	106640
M05815	Gear Grinder	506	106640
M00595	Gear Grinder	506	106640
M11419	Gear Grinder	507	106640
M01501	Gear Grinder	508	106640
M00506	Gear Checker	923	106640
M00048	Gear Checker	923	106640
M00288	Lapper	048	106640
M09417	Lapper	048	106640
M09416	Lapper	048	106640
M04934	Lapper	048	106640
M00195	Press	134	106657
M00212	Engine Lathe	185	106657
M005199	Press	212	106657
M006168	Engine Lathe	225	106657
M0012125	Integrex 70Y	323	106657
M004708	Integrex E650H	323	106657
M09499	CNC Grinder	344	106657
M00573	Engine Lathe	460	106657
M006437	Engine Lathe	460	106657
M00397	Integrex 50Y	463	106657

MACHINES THAT ARE CLASSIFIED AS MACHINIST MACHINES

9/29/09

M00500	Engine Lathe	500	106657
M00382	Engine Lathe	500	106657
M08072	Engine Lathe	500	106657
M00276	Horizontal Boring Mill	075	106648
M00423	Horizontal Boring Mill	276	106648
M00538	Horizontal Mach Center	423	106648
M00539	Horizontal Mach Center	423	106648
M00750	Horizontal Mach Center	423	106648
M00750	Horizontal Mach Center	750	106648
	Horizontal Boring Mill	750	106648
OILFIELD			
Machine Number			
M11349	Machine Description	Actual Work Center	Generic Work Center
M00468	G & L Hhs/Cov Machining Cntrs	236	102
M00469	G & L Hhs/Cov Machining Cntrs	236	102
	G & L Hhs/Cov Machining Cntrs	236	102
M10190			
M11350	G & L Machining Cntrs	239	102
	G & L Machining Cntrs	239	102

APPENDIX 4

Casting Inspector	Casting Inspector Test	Foundry
Core Gating Assembler	Core Gating Assembler Test	Foundry
Core Machine Operator CI B	Core Machine Operator B Test	Foundry
Coresetter	Coresetter Test	Foundry
Coreless Furnace Operator	Coreless Furnace Operator Test	Foundry
Cupola Operator	Cupola Operator Test	Foundry
Foundry Process Inspector	Foundry Process Inspector Test	Foundry
Melter Class B	Melter B Test	Foundry
Molding Machine Operator B	Molding Machine Operator B Test	Foundry
Shipping/Receiving Operator	Shipping/Receiving Test	Foundry
Storekeeper	Storekeeper Test	Foundry
Welder Class B	Welder B Test	Foundry
Electronics Technician	Electronics Technician Test	Foundry
Foundry Mechanic Class A	Mechanic Class A Test	Foundry
Foundry Mechanic Class A	Vehicle Maintenance Test	Foundry
Maintenance Storekeeper	Maintenance Storekeeper Test	Foundry
Maintenance Helper	Maintenance Helper Test	Foundry
Flask Repairman	Flask Repairman Test	Foundry
Pattern Maker Class B	Pattern Maker Class B Test	Foundry
Pattern Masker Class A	Pattern Maker Class A demonstration	Foundry
Hot Gear Welder	Hot Gear Welder & Demonstration	Fabrication
Welder Class A	Welder A Test	Fabrication
Maintenance Mechanic Structural	Maintenance Mechanic Structural Cl. A Test	Fabrication
Electronics Technician	Electronics Technician Test	Power Transmission
Inspector Specialist	Inspector Specialist Test	Power Transmission
Maintenance Mechanic CL A	Maintenance Mechanic CL A test	Power Transmission
Electronics Technician	Electronics Technician Test	Assembly and Shipping
Maintenance Mechanic CI A	Maintenance Mechanic CI A Test	Assembly and Shipping

APPENDIX 4a

Electrician Class A	Foundry
Electrician Class B	Foundry
Foundry Mechanic Class B	Foundry
HVAC Specialist	Foundry
Electrician Class A	Machining
Electrician Class B	Machining
Electrician Class C	Machining
Maintenance Mechanic CL C	Machining
Electrician Class A	Assembly and Shipping
Electrician Class B	Assembly and Shipping
Electrician Class C	Assembly and Shipping
Maintenance Mechanic CI B	Assembly and Shipping
Maintenance Mechanic CI C	Assembly and Shipping
Pipefitter Class A	Assembly and Shipping
Pipefitter Class B	Assembly and Shipping
Pipefitter Class C	Assembly and Shipping
Maintenance Mechanic CI B	Fabrication
PT Welder	Machining
PT Finish Painter	Machining
Pipefitter Class A	Machining
Pipefitter Class B	Machining
Pipefitter Class C	Machining
Inspector Specialist	Machining

APPENDIX 5

Employee Name & Clock #: _____

**Crane Operator Learner
Task Proficiency Check Off**

LCF Operations

1. Movements
 - a. Adequate speed at setting up flask _____
 - b. Adequate speed at stripping molds from pattern _____
 - b. Efficiency of movements (I.E. unnecessary trips) _____
2. Distance Judging
 - a. Positioning block over pattern & molds _____
 - b. Rolling mold over to be set on floor _____
 - c. Transferring mold & flask over ground objects _____
3. Following Hand signals of ground crew _____
4. Safety
 - a. Prevention of "Side Loading" crane _____
 - b. Avoidance of taking load over ground personnel _____
 - c. Ability of keeping proper tension on chains while mold is being shaken on shakeout deck. _____
 - d. Prevention of overloading crane _____

Other comments _____

LCF Supervisor _____

Date Training Complete _____

Hours spent training in this Facility _____

Employee Name & Clock #: _____

**Crane Operator Learner
Task Proficiency Check Off**

MAIN BAY
Coreup and Closeup

1. Visual depth perception
 - a. Depth perception at centering block over a point to be cored _____
 - b. Depth perception at centering block to close up a mold _____
 - c. Depth perception at centering flask on pattern _____
 - d. Depth perception at centering block to draw mold from pattern _____
2. Ability to follow hand signals from ground crew _____
3. Precision of movements
 - a. Ability to control necessary slight movements of all crane motions _____
 - b. Ability to "spot" loads in exact locations as directed by ground crew _____
4. Safety
 - a. Prevention of "Side Loading" crane _____
 - b. Avoidance of taking load over ground personnel _____
 - c. Prevention of overloading crane _____

Other Comments _____

Molding Supervisor _____

Date Training Complete _____

Hours spent training in this Facility _____

Employee Name & Clock #: _____

**Crane Operator Learner
Task Proficiency Check Off**

Melting Department

1. Charging Melt operations
 - a. Knowledge of material and ingredient numbers _____
 - b. Judgement of proper magnet load to meet final scale amount _____
 - c. Adequate speed & proficiency to accomplish required task _____
2. Tapping Ladles
 - c. Distance judging as ladle approach's source to be tapped _____
 - d. Anticipation and reaction to ladle height adjustment requirements as ladle is being filled from tap. _____
 - e. Safe handling of full ladle and ability to set full ladle down safely _____
3. Pouring Ladles
 - a. Safety in handling ladle full of iron (avoidance of ground personnel, ability to prevent ladle from swinging, avoidance of bumping ladle wheel, etc) _____
 - b. Precision in positioning ladle lip over down sprue of mold. _____
 - c. Ability to follow hand signals from ground crew _____
 - d. Anticipation of the need to move as Iron is being poured _____
 - e. Delicacy of small movements to keep ladle in proper position _____
 - f. Minimum splash and spill due to improper positioning(quick actions) _____
4. Safety
 - a. Prevention of "Side Loading" crane _____
 - c. Prevention of overloading crane _____

Other comments _____

Melting Supervisor _____

Date Training Complete _____

Hours spent training in this Facility _____

APPENDIX 6

Core Machine Operator Class A		If no B class signs, hire from outside or take senior eligible bidder and make B class
Molding Machine Operator Class A		If no B class signs, hire from outside or take senior eligible bidder and make B class
Pattern Maker Class A		If no B class signs, hire from outside or take senior eligible bidder and make B class
Welder Class A	Class A demonstration Welder A Test	If no B class signs, hire from outside or take senior eligible bidder and make B class
Pattern Tender Class A		If no B class signs, hire from outside or take senior eligible bidder and make B class
Burner Class A		If no B class signs, hire from outside or take senior eligible bidder and make B class

APPENDIX 7

MELTER-A

REFRACTORIES

- 1** Must be able to remove ladle linings, install new castable, and completely make the ladle ready for molten iron.
- 2** Must know how to clean and repair ladles. Must have the understanding of what material is to be used in each area of the ladle, and have the knowledge to determine what will, and will not work when repairing ladles to make the ready for molten iron.
- 3** Must have the knowledge and ability to repair all aspects of the cupola, and have it ready to run a campaign. This includes the interior of the cupola, the tap hole, box, trough, and receiving ladle.
- 4** Must be able to perform all coreless repair work, and have a basic understanding of how the coreless furnaces operate.
- 5** Must have the knowledge the remove and install a lining in a coreless furnace. This will include a basic understanding of the sintering process.

MELTING

- 1** Must have a basic understanding of how the cupola melts iron.
- 2** Must have a basic understanding of how the coreless furnace melts iron.
- 3** Should be able to melt white iron when needed. This includes the operation of the VIP furnace, and alloy requirements to make white iron.
- 4** Must know how to operate the cupola charging equipment, and be able to perform the duties to charge the cupola.
- 5** Should know how to check temperatures, electrical readings, and shell temps on the holding furnace. Including an understanding of what KW level is required to effectively hold iron at the desired temperature.
- 6** Should be able to skim and rod the inductor on holding furnaces.

POURING

- 1** Must be able to demonstrate the ability to pour iron properly from all melting operations, and all sizes of ladles.
 - 2** *Must be able to inventory the molds available to pour and establish the most efficient ladle quantities with regard to metal type, and temperature requirements.*
 - 3** Must be able to effectively identify alloys, and have enough of an understanding of the process to follow instructions from the lab so that the necessary chemistries are met.
 - 4** Must be able to properly skim a ladle.
 - 5** Must understand our certification requirements, and get test blocks/bars/micros poured as required.
 - 6** Must demonstrate the ability to manage ladles of iron, take, and record all required data in the proper fashion.
- Must be able to pass Melter-A written test

APPENDIX 8

Machine Shop Department roster

Assembly

Class A

Class II

Spray Painter

Distribution

Handler

Heat Treat

Heat Treater

Machining

Inspector

Machinist

Machine Operator Class A

Machine Operator Class B

Machine Operator Class C

A B C Tool Room

Shaft Finisher

Tool Maker

Tool Grinder Class A

Electrician Class A

Electrician Class B

Electrician Class C

Electronics Technician

Maintenance Mechanic Class A

Maintenance Mechanic Class B

Maintenance Mechanic Class C

Pipe Fitter Class A

Pipe Fitter Class B

Pipe Fitter Class C

Utility Maintenance Class A

Assembly and Shipping Department roster

Assembly

Class II

Distribution

Handler

APPENDIX 9

Cleaning Room Specialist
Master Foundryman
Master Melter
Master Maintenance Specialist
Master Maintenceman
Master Mechanic
Master Pattern Maker
Fork Lift Specialist
Inspector Specialist
Master Maintenance Specialist
Master Mechanic Specialist
PT Master/OF Master (no longer used)
PT Commercial Gear Assembler

PT IGBW
OF Assembler Class I
Distribution Specialist
Master Heat Specialist
Master Heat Treater
Machinist (Rover)
Master Tool Maker
Electrical Department Specialist

Electronics Trainee
Master Maintenance Specialist
Maintenance Mechanic Specialist

Assembler Class I
Distribution Specialist
Finish Painter
Electrical Department Specialist

Electronics Trainee
Master Maintenance Specialist
Maintenance Mechanic Specialist
Maintenance Mechanic Class B (Machining)

APPENDIX 10

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

SYLVESTER MCCLAIN, on his own
behalf and on behalf of a class of similarly
situated persons, et al.,

Plaintiffs,

vs.

LUFKIN INDUSTRIES,

Defendant.

§
§
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§
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CIVIL ACTION NO. 9:97-CV-063

JUDGE CLARK

**DEFENDANT LUFKIN INDUSTRIES INC.'S
TESTING AND SKILL DEMONSTRATION PROTOCOL**

For those job classifications for which a test or skill demonstration is required for promotion, Lufkin will administer the tests and skill demonstrations according to the following protocol:

A. Testing

1. Each test shall be writing. The cover page of each test shall state the following: (a) the job classification for which the test is being administered, (b) the time allowed for completion of the test, (c) the value of each question, (d) the score required to pass (by section if passing specific sections is required), and (e) the test identification number. Attached as Exhibit A are the tests by job classification.

2. Prior to posting a bid, Lufkin will select the test version to be used to test for such bid. All tests administered by Lufkin shall conform substantially without material modification to the tests used in the promotion process for each job classification and attached as Exhibit A. Changes in the order of questions or minor modification in the problems (for example, changes in the numbers used in the addition, subtraction, multiplication and division problems; changes

in fractions used in fraction problems; changes in the readings requested for the ruler or tape measure problems; changes in the symbols, abbreviations and working drawings or blueprints) shall not constitute a material modification of the test instrument.

3. All employees for the same bid will be administered the same test version.

4. Employees bidding to a job classification requiring a test shall first be ranked in Departmental Seniority order. Lufkin will select Eligible Employee Bidders for testing by Departmental Seniority order from the Eligible Employee Bidders and may schedule Eligible Employee Bidders for testing in groups by Departmental Seniority. Lufkin shall administer the test according to this protocol until a sufficient number of Eligible Employee Bidders have passed the test to fill the number of jobs posted or all Eligible Bidders have been tested.

5. Employees to be administered a test will be scheduled to report to Lufkin's Department of Health and Safety for testing. Lufkin shall provide written notice of the test to the bidders to be tested at least two days in advance of the test date. Employees scheduled for testing will be notified at the time of scheduling if calculators may be used during the test. Tests will be administered immediately before or immediately after an employee's shift. If a test is scheduled immediately before an employee's shift, sufficient time should be included in the schedule to allow the employee to review the certification sheet, as described in paragraph 6 below, and to report for work on time after a restroom break. If an employee cannot attend the test on the original scheduled date, the employee shall notify the Department of Health and Safety before the scheduled test and must reschedule a test within two days of the original scheduled date. Only one rescheduling will be allowed. Lufkin shall maintain written records of the scheduling and rescheduling of tests. If an employee does not report for testing as scheduled,

the Department of Health and Safety will make and retain a written record that the employee did not complete the testing process because he did not report on the scheduled date or did not request that the test be rescheduled.

6. Tests will be administered in a room in the Department of Health and Safety or in the Buck Creek facility and under conditions appropriate for testing. Employees reporting for testing will be provided a separate paper on which they will certify, by printed name, clock number and signature, the test identification number of the employee's test. The certification sheet will advise the employee in writing that (1) the employee should not sign or otherwise mark the test with their name, clock number or other identifying information; (2) if the test is timed, that the time will begin when the test paper is opened; (3) that the test monitor may not speak or provide any assistance to the employee during the testing process; (4) that the employee may not communicate with any other person, use any electronic device or use any written material other than the test paper during the testing process or, if applicable to the test, that calculators may be used; (5) that the employee may not leave the room until the test is completed and returned to the test monitor; and (6) if the test is timed, that the test monitor will collect all test papers not previously turned in upon expiration of time. The test administrator shall provide sufficient time for the employee to review the certification sheet and written advisories before giving the instruction that the test may be opened and the test time period begins. Except for tests on for which a calculator may be used, employees will not be permitted to enter the testing room with cell phones, messaging devices or other electronic devices, nor will they have or use any writings or notes during test administration. If an employee is observed using a cell phone or other electronic device (except a calculator when authorized), using any written material other than the test paper, or receiving any assistance during the testing, the test will be immediately

confiscated, marked as “failed for rule violation,” and the employee will be subject to disciplinary action. Test monitors shall monitor compliance with these instructions strictly.

7. Upon completion of testing for each posting, the Health and Safety Department shall send the test papers to the department that posted the job for which employees were tested for scoring and, until the scoring process is completed, shall not report the employees’ names or clock numbers to the test grader or department.

8. The original test papers and a copy of the scoring guide shall be retained by the department for each bid, with a copy of the tests filed in the individual employee’s departmental file, for the longer of the Injunction or as required by law. A summary of the test results (including the races of employees taking the test, the races of employees passing the test, and races of employees failing the test) will be maintained by Lufkin’s Human Resources Department and analyzed on an annual basis to determine whether there are racial disparities in the test results.

9. Employees taking but not passing any test shall be advised in writing that they did not pass the test and that and how they may request to review their graded test. An employee not passing the test may request to view the graded test paper but shall not be allowed to make a copy of the test paper or make notes. An employee not passing a test will not be permitted to take the same test for a period of 6 months.

a. Employees who take the Inspector Specialist test and fail may repeat the test at a later date which may be less than the above mentioned 6 month period provided that (1) the employee has attended remedial training for the test on

his/her own time and (2) a manager agrees that the employee is ready to take the test again.

b. If an employee is allowed to take the test a second time within 6 months, and fails the test, he/she will not be allowed to repeat the test for 6 months from the date of the first failure.

B. Skill Demonstrations

1. Skill demonstrations shall be conducted according to a written outline of the demonstration to be performed. Skill demonstration outlines shall be available upon request to any employee. Requests for the skill demonstration outline should be directed to Human Resources. Attached as Exhibit B are the skill demonstrations and outlines.

2. Employees seeking promotion to a job classification requiring skill demonstration will be scheduled for a skill demonstration in an appropriate work area. All employees performing a skill demonstration for the same bid will use the same work area.

3. Employees bidding for promotion to a job classification requiring a skill demonstration shall first be ranked in Departmental Seniority order. Lufkin will select for the skill demonstration in Departmental Seniority order from the Eligible Bidders in departmental seniority order. Skill demonstrations shall be administered according to this protocol. If the Eligible Bidder with the highest Departmental Seniority does not pass the skill demonstration, Lufkin will administer the skill demonstration to the next eligible employee in Departmental

Seniority order, and will repeat this process until an eligible employee has successfully completed the skill demonstration or all bidders seeking a promotion have been tested.

4. Employees to be administered a skill demonstration will be scheduled to report to the appropriate work area. Lufkin shall provide written notice of the skill demonstration to the bidders to be tested at least two days in advance of the test date. Skill demonstrations will be administered immediately before or immediately after an Employee's shift. If a skill demonstration is scheduled immediately before an employee's shift, sufficient time should be included in the schedule to allow the employee to review the certification sheet, as described in paragraph 5 below, and to report for work on time after a restroom break. If an employee cannot attend the skill demonstration on the date scheduled, the employee shall notify his supervisor before the scheduled time and the skill demonstration will be rescheduled. Employees must reschedule a skill demonstration within two days of the original scheduled date. Only one rescheduling will be allowed. Lufkin shall maintain written records of the scheduling and rescheduling of skill demonstrations. If an employee does not report for the skill demonstration as scheduled, and has not rescheduled the skill demonstration, the department will make and retain a written record that the employee did not complete the skill demonstration process because he did not report on the scheduled date or did not request that the test be rescheduled.

5. Employees reporting for a skill demonstration will be provided a certification paper on which they will certify, by printed name, clock number and signature, the skill demonstration identification number for the skill demonstration. The certification paper will advise the employee that (1) any time period for completion of the skill demonstration, and if timed, that the time for the skill demonstration will begin when the employee commences work; (2) that the skill demonstration monitor may not speak to or provide any assistance to the

employee during the skill demonstration process; (3) that the employee may not communicate with any other person or receive any assistance during the skill demonstration process; (4) that the employee may not leave the work area until the skill demonstration is completed; and (5) if the skill demonstration is timed, the monitor will stop the skill demonstration at the expiration of time. If an employee is observed receiving any assistance during the skill demonstration, the skill demonstration will be immediately terminated, marked as "failed for rule violation," and the employee will be subject to disciplinary action. Monitors shall monitor compliance with these instructions strictly. Skill demonstration monitors shall not provide assistance in the performance of the skill demonstration to the employee, nor shall the monitor engage in any activity that could be distracting to the employee during the skill demonstration.

6. Upon completion of each skill demonstration, if the demonstration is to be graded other than actual determination that the part or assembly operates as specified, skill demonstration materials or parts shall be sent to a scorer without identification of the employee completing the skill demonstration until the scoring process is complete.

7. A copy of the scoring sheet for each skill demonstration shall be retained by the department for each bid, with a copy of the scoring sheet filed in the individual employee's departmental file for the longer of the Injunction or as required by law. A summary of the skill demonstration results (including the races of the employees performing the skill demonstration, the races of the employees passing the skill demonstration, and the races of the employees failing the skill demonstration) will be maintained by Lufkin's Human Resources Department and analyzed on a semi-annual basis to determine whether there are racial disparities in the skill demonstration results.

8. Employees taking but not passing a skill demonstration shall be advised in writing that they did not pass the skill demonstration and that they may review their performance on the skill demonstration with the person who administered the skill demonstration. An employee not passing a skill demonstration will not be permitted to take the same skill demonstration for a period of 6 months.

a. Except Employees in the Oilfield and Power Transmission Division who take the welding demonstration and fail the demonstration may repeat the demonstration at a later date which may be less than the above mentioned 6 month period provided that (1) the employee, on his/her own time, practices for the welding test with the knowledge of his/her supervisor and (2) the supervisor agrees that the employee is ready to take the demonstration again.

b. If an employee is allowed to provide another demonstration of welding skills as prescribed in Appendix 10, B. 8.a and fails the demonstration again, he/she will not be allowed to repeat the demonstration for 6 months from the date of the first failure.

Respectfully submitted,

/s/

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Attorneys for Defendant,

LUFKIN INDUSTRIES, INC.

US 1979278v.2

****NOT FOR PRINTED PUBLICATION****

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

SYLVESTER MCCLAIN, on his own behalf §
and on behalf of a class of similarly situated §
persons, ET AL., §

Plaintiffs, §

v. §

LUFKIN INDUSTRIES INC., §

Defendant. §
§

CIVIL ACTION No. 9:97CV63

JUDGE RON CLARK

SCOPE AND LIMITS OF APPOINTMENT AS OMBUDSPERSON

Mr. Tony Rosenstein's appointment as Ombudsperson in this case is subject to the following terms:

1. Mr. Rosenstein understands that it is necessary for the court to avoid any conflicts of interest and even the appearance of impropriety or bias. Therefore, he has examined the list of parties and counsel in this case and affirms that:

A Neither he, his spouse, nor any resident minor child:

I Is employed by, or receives any form of compensation or benefits from, any of such parties or counsel;

II. Has an expectation of, or contract for future employment or any form of compensation from, any such parties or counsel;

III. Has any financial interest in (defined as ownership of a legal or equitable interest in), or a relationship as director, adviser, or other active participant in the affairs of, any of such parties or counsel (ownership in a mutual or common investment fund that holds securities of such parties or entities is not such a financial interest or relationship, unless the individual participates in the management of the fund); and

B. He is not aware of any reason why he would have a bias in favor of or against any of the parties.

2. During his appointment as Ombudsperson, Mr. Rosenstein shall not acquire any financial interest in, nor enter into any relationship as director, adviser, or other active participant in the affairs of, any of the parties or counsel.

I, Tony P. Rosenstein, declare under the penalty of perjury under the laws of the United States of America that I have read this document, that the statements in paragraph 1 are true and correct, and that I agree to comply with the terms of paragraph 2.

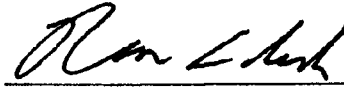
Nov. 13, 2009

Date ..



Tony P. Rosenstein

So ORDERED this 18th day of December, 2009.



Ron Clark
United States District Judge