

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

PATRICIA EVANS)
)
) CIVIL ACTION
 v.)
)
 FEDERAL RESERVE BANK OF)
 PHILADELPHIA, et al.) NO. 03-4975
)
)

Padova, J.

MEMORANDUM

July 8, 2004

Plaintiff Patricia Evans, a former employee of Defendant Federal Reserve Bank of Philadelphia ("Bank"), alleges that the Bank and three of its employees discriminated against her and harassed her in retaliation for her open opposition to the Bank's discriminatory employment practices. Plaintiff asserts causes of action against the Bank and three of its employees under both Title VII of the Civil Rights Act of 1964 ("Title VII") and the Pennsylvania Human Relations Act ("PHRA"). Defendants have moved to dismiss those counts of the Complaint which allege violations of the PHRA, and assert that the PHRA is preempted by the Federal Reserve Act ("FRA"). For the reasons that follow, the Court will grant Defendants' Motion, and will dismiss those counts in the Complaint which allege violations of the PHRA.

I. RELEVANT BACKGROUND

Plaintiff was employed as a Human Resources Recruiter at the Bank from on or about July 5, 2000 to on or about November 7, 2001,

when she was terminated. During this period, Plaintiff maintained a satisfactory job performance rating. Also during this period, Plaintiff recommended a number of African men for positions of employment with the Bank. In response, Plaintiff's recruiting techniques were criticized by her fellow employees, notwithstanding the fact that each of the men she recommended possessed Green Cards and were otherwise qualified for the available positions.

In response to this criticism, Plaintiff registered a complaint with the Bank, in which she demanded that the Bank's employees cease from engaging in discrimination and comply with the Bank's employment selection policies. In response to Plaintiff's complaints about the Bank's discrimination, Defendant Susan Tobin-Santomo threatened Plaintiff with termination. Thereafter, on November 17, 2001, Plaintiff was terminated from her position with the Bank.

Plaintiff asserts one count of retaliation against the Bank under Title VII (Count I), one count of retaliation against the Bank under the PHRA (Count II), and one count of Aiding and Abetting Retaliation against the individual employee defendants under the PHRA (Count III).

II. DISCUSSION

Defendants have moved to dismiss Counts II and III of the Complaint. Defendants assert that these counts, brought pursuant to the PHRA, are preempted by the FRA. The FRA, which governs the

activities of federal reserve banks, provides in relevant part that:

A federal reserve bank . . . shall have power . . . [t]o appoint by its board of directors a president, vice presidents, and such officers and employees as are not otherwise provided for in this chapter, to define their duties, require bonds for them and fix the penalty thereof, and to dismiss at pleasure such officers or employees.

12 U.S.C. § 341 (emphasis added). Defendants argue that the "dismiss at pleasure" language found in the FRA works to preempt all employment rights against federal reserve banks created by state laws, including state anti-discrimination laws such as the PHRA. The parties do not dispute that Title VII is applicable to the federal reserve banks, and hence Defendants have not sought dismissal of Count I of Plaintiff's Complaint. Plaintiff argues in response that the relevant language in the FRA at most preempts any contractual employment rights created by state law, and has no preemptive effect upon state anti-discrimination laws.

Preemption of state law by a federal statute may be found in three situations. First, under express preemption, a state law is preempted by a federal law when Congress explicitly so states. Second, under field preemption, state laws which regulate conduct in a field which Congress intended to occupy exclusively are preempted. Finally, under conflict preemption, a state law is preempted "to the extent that it actually conflicts with federal

law." English v. General Electric Co., 496 US 72, 79 (1990). In English, the United States Supreme Court held that conflict "preemption [will be found] where it is impossible for a private party to comply with both state and federal requirements . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id. at 79 (internal citations and quotation marks omitted).

The parties do not dispute that express preemption does not apply in this case. Similarly, Defendants have presented no evidence which indicates that Congress intended to regulate the conduct of the federal reserve banks exclusively. Moreover, there is a history of dual state and federal regulation of national banking institutions in this country. See Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 33 (1996)(noting that, while state laws cannot significantly impair the exercise of a power that Congress has explicitly granted to a national bank, "[t]o say this is not to deprive States of the power to regulate national banks where . . . doing so does not prevent or significantly interfere with the national bank's exercise of its powers.")(citations omitted); National State Bank, Elizabeth, N.J. v. Long, 630 F.2d 981, 985 (3d Cir. 1980)(in the context of discussing the applicability of a state law prohibiting discrimination in the granting of home mortgages to a national bank, noting that "regulation of banking has been one of dual control since the

passage of the National Bank Act in 1863.") Accordingly, the Court finds that field preemption is likewise not present. The Court must therefore conduct a conflict preemption analysis, and determine the extent to which the PHRA actually conflicts with the FRA.

The United States Court of Appeals for the Third Circuit ("Third Circuit") has not yet considered whether the Federal Reserve Act preempts state anti-discrimination laws. However, the Third Circuit, as well as every other court to have considered the issue, has found that the "dismiss at pleasure" language in the Act preempts the enforcement of employment contracts under state law. See Mele v. Federal Reserve Bank of New York, 359 F.2d 251, 255 (3d Cir. 2004) ("We hold that the Federal Reserve Act precludes enforcement against a federal reserve bank of an employment contract that would compromise its statutory power to dismiss at pleasure, and prevents the development of a reasonable expectation of continued employment.") The Federal Reserve Act's preclusion of contractual employment rights extends to process or tenure rights conferred upon the employee by independent sources, including process or tenure rights conferred upon the employee by state law. See Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093, 1098 (9th Cir. 1981) ("Assuming that Bollow would indeed have been entitled to certain process rights under California law, such law when applied to reserve bank employees conflicts with section Four,

Fifth [of the Federal Reserve Act].")

Courts are in agreement that federal reserve banks are subject to federal anti-discrimination laws, and specifically are subject to Title VII. See, e.g. Ana Leon T. v. Federal Reserve Bank of Chicago, 823 F.2d 928, 931 (6th Cir. 1987)(noting that the plaintiff "could have brought her claim under Title VII of the Civil Rights Act of 1964."); see also Mueller v. First Nat. Bank of Quad Cities, 797 F. Supp. 656, 663 (C.D. Ill. 1992)(finding the Age Discrimination in Employment Act ("ADEA") applicable to national banks because the "at pleasure" provision in the National Bank Act only restricted contractual employment rights.)¹

However, courts differ regarding the extent to which the Federal Reserve Act preempts state anti-discrimination laws. In Ana Leon T., the United States Court of Appeals for the Sixth Circuit ("Sixth Circuit") concluded that the "dismiss at pleasure" language found in the Federal Reserve Act "preempts any state-

¹ The National Bank Act, which governs national banking institutions as opposed to the federal reserve banks, contains language concerning the dismissal of a national bank's officers which is substantively identical to the "dismiss at pleasure" language found in the Federal Reserve Act. Specifically, pursuant to 12 U.S.C. § 24, a national bank has the power to "elect or appoint directors, and by its board of directors to appoint a president, vice president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places." See 12 U.S.C. § 24. The Court has found no basis which would support differing interpretations of the "dismiss at pleasure" language found in the two acts.

created employment right to the contrary," including state laws prohibiting employment discrimination. 823 F.2d at 931. Courts in the Sixth Circuit have continued to follow Ana Leon T.'s holding with respect to the Federal Reserve Act's preemption of state employment discrimination laws. See Arrow v. Federal Reserve Bank, 358 F.3d 392 (6th Cir. 2004). However, the court's opinion in Ana Leon T. is devoid of any analysis of conflict or field preemption. Ostensibly, the Ana Leon T. court found that the "dismiss at pleasure" language of the Federal Reserve Act on its face preempted state anti-discrimination laws, thereby resulting in express preemption.

However, courts in other jurisdictions have disagreed with the reasoning of Ana Leon T.. These courts note that, while the "dismiss at pleasure" language may preempt any state laws which provide employees with contractual employment rights, there is nothing to indicate that Congress intended to preempt state laws prohibiting discrimination in employment. For example, in Katsiavelos v. Federal Reserve Bank of Chicago, No. 93 C 7724, 1995 WL 103308 (N.D. Ill. Mar. 3, 1995), the district court rejected the reasoning of Ana Leon T., and noted that, while a district court must give "respectful consideration" to the decisions of other circuits, "the Leon court provided no reasons or policy for its holding that all state employment rights were pre-empted by the dismiss at pleasure language." Id. at *2. The Katsiavelos court

further found that, "dismiss at pleasure is analogous to dismiss at will, implying the absence of a contractual relationship between employer and employee. The right to be free from discrimination is not a contractual right, and therefore is not necessarily embodied in the dismiss at pleasure language." Id. at *3. The Katsiavelos court engaged in a conflict preemption analysis, and found that the state anti-discrimination laws at issue would not stand as an obstacle to the objectives that Congress sought to achieve by the passage of the Federal Reserve Act. The court noted that the federal reserve bank in that case had acknowledged that it was subject to federal anti-discrimination laws, and that the relevant state anti-discrimination laws were consistent with Title VII's goals. The Katsiavelos court therefore held that "the 'at pleasure' language of the Federal Reserve Act only serves to preempt state law created contractual employment rights." Id. at *4. Other district courts have come to similar conclusions. In Moodie v. Federal Reserve Bank of New York, 831 F. Supp. 333 (S.D.N.Y. 1993), the court refused to dismiss claims brought under the New York State Human Rights Laws on preemption grounds, and noted that "nothing in the plain language of § 341 supports the Bank's view that Congress intended that section to exempt the federal reserve banks, in the area of employment discrimination, from statutes or regulations of the states in which they operate, particularly when the state statutory scheme is consistent with the

federal legislation." Id. at 337.

The court in Moodie did not, however, provide guidance concerning the appropriate course of action to take when a state anti-discrimination law conflicts with the provisions in Title VII or other relevant Federal anti-discrimination laws. Similarly, in Katsiavelos, the court stated, without explanation, that the anti-discrimination statute at issue in the case was consistent with federal anti-discrimination laws. As is discussed, *infra*, the PHRA is arguably inconsistent with Title VII in at least two respects which are relevant to this case.

Perhaps the most thorough analysis of the issue now before the court was performed by the California Supreme Court in Peatros v. Bank of America, 990 P.2d 539 (Cal. 2000). In Peatros, the court considered whether the "at pleasure" language in the National Bank Act preempted some or all of the provisions in the California Fair Housing and Employment Act (FEHA). The plaintiff in Peatros had sued the defendant, her employer, for allegedly terminating her on the basis of her race and age. Plaintiff asserted causes of action only under California law, and did not assert a cause of action under Title VII or the ADEA. Justice Mosk, writing for himself and two other justices, first noted the apparent conflict between the "at pleasure" language in the National Bank Act, which appeared to grant the bank unfettered discretion to dismiss an employee, and the language found in Title VII and the ADEA, which together

prohibit discrimination against employees on the basis of race and age. As Justice Mosk was "unable to harmonize" the National Bank Act with Title VII and the ADEA, he reasoned that the National Bank Act had been "impliedly amended" by the two statutes. Id. at 549. Justice Mosk therefore found that:

As impliedly amended by Title VII and the ADEA, [the National Bank Act] grants a national bank a *limited* power to dismiss any of its officers at pleasure by its board of directors, not extending to dismissal on the ground of race, color, religion, sex, national origin, or age. And, as impliedly amended by Title VII and the ADEA, [the National Bank Act] bestows a *qualified* immunity from liability arising from its exercise, allowing only specified relief, with limits and/or bars against compensatory and/or punitive damages.

Id. at 549-50 (emphasis in original).

Justice Mosk went on to engage in a traditional preemption analysis to determine whether the National Bank Act, as impliedly amended by Title VII and the ADEA, preempted the California FEHA. Justice Mosk first found that neither express preemption nor field preemption was present. However, upon engaging in a conflict preemption analysis, Justice Mosk found that the "dismiss at pleasure" language of the National Bank Act, as amended by Title VII and ADEA, provided a maximum level of protection for officers of a national bank. Justice Mosk therefore found that the FEHA conflicted with the National Bank Act to the extent that the FEHA provided more extensive remedies than those provided under Title VII and ADEA. However, Justice Mosk specifically rejected the

proposition that the National Bank Act preempted the FEHA in its entirety. Id. at 552. Rather, Justice Mosk found that the National Bank Act only preempted the FEHA to the extent that its provisions provided employees with greater rights or remedies than those available under Title VII and the ADEA. Id. Accordingly, Justice Mosk found that the FEHA was preempted to the extent that it provided remedies for types of discrimination not specifically prohibited by Title VII and the ADEA, such as, for example, marital status. Id. Furthermore, Justice Mosk found that the National Bank Act specifically preempted the FEHA to the extent that the FEHA's remedies "offend the [federal statutes'] limits and/or bars against compensatory and/or punitive damages." Id.

Justice Brown, writing in dissent for himself and two other justices, disagreed with Justice Mosk, and would have found that the "at pleasure" language in the National Bank Act completely preempted the FEHA. Justice Brown based his decision upon "congressional intent and policy," as well as "pragmatics." Id. at 561 (Brown, J. dissenting). Justice Brown noted first that "[t]he purpose of the ['at pleasure' dismissal] provision in the National Bank Act was to give those institutions the greatest latitude possible to hire and fire their chief operating officers, in order to maintain the public trust." Id. (quoting Mackey v. Pioneer National Bank, 867 F.2d 520, 526 (9th Cir. 1989)). Justice Brown further found that, although Title VII and the ADEA were applicable

to national banks, these federal anti-discrimination laws applied uniformly across the country, allowing the national banks to conform to one uniform standard. Id. at 562. Applying state anti-discrimination laws, which confer upon employees widely divergent rights and remedies, would frustrate the ability of the national banks to make crucial employment decisions, ultimately undermining confidence in the national banking system. Id. Finally, Justice Brown found that forcing courts, and state agencies, to engage in a detailed preemption analysis in order to determine which aspects of state anti-discrimination laws conflicted with federal anti-discrimination laws would unnecessarily burden the judicial system. Justice Brown noted that, "This is a high price to pay for a cause of action that merely duplicates remedies already available under Title VII and ADEA." Id. at 563. Accordingly, under Justice Brown's reasoning, all state anti-discrimination laws would be preempted by the Federal Reserve Act, regardless of any actual conflict between the rights and remedies available under state and federal laws. Consequently, utilizing either Justice Mosk's or Justice Brown's reasoning, all state anti-discrimination laws would be preempted to the extent that they provided more extensive rights or remedies than those provided under relevant Federal anti-discrimination laws.

Upon consideration of all relevant precedent, the Court concludes that the "dismiss at pleasure" language in the Federal

Reserve Act preempts the application of state anti-discrimination laws which expand the rights and remedies available under federal anti-discrimination laws. As a preliminary matter, the Court rejects Plaintiff's attempt to characterize the "dismiss at pleasure" language in the Federal Reserve Act as merely limiting contractual employment rights. Cf. Mackey, 867 F.2d at 526 (rejecting the plaintiff's request to limit the preemptive power of the National Bank Act to contract actions, and dismissing both contract and tort claims.) There is no evidence that Congress intended the "dismiss at pleasure" language in the Federal Reserve Act merely to provide for "at will" employment.² Rather, courts which have interpreted the "dismiss at pleasure" language to merely prohibit contractual employment rights appear to have based their decisions upon public policy considerations. Specifically, these courts have found that the ability of the federal reserve banks and national banks to remove officers who do not act in their interest, in order to maintain the public's confidence in the banks' integrity, would not be thwarted by the enforcement of anti-discrimination laws. See Mueller v. First Nat. Bank of Quad Cities,

²The doctrine of "at will" employment provides generally that, in the absence of an employment contract or relevant statutory law, an employee may be fired at any time for any reason, or for no reason at all. See Geary v. United States Steel Corp., 319 A.2d 174, 176 (Pa. 1974) ("absent a statutory or contractual provision to the contrary, the law has taken for granted the power of either party to terminate an employment relationship for any or no reason.")

797 F. Supp. 656, 663 (C.D. Ill. 1992) ("The public policy concern underlying 12 U.S.C. § 24 involved the banking community's ability to remove inefficient, incompetent or dishonest officers 'at will' without contractual challenges stemming from oral representations, employee handbooks, and ambiguous contractual language.") In the context of Federal anti-discrimination laws, this argument has merit. However, subjecting the federal reserve banks to state employment laws and regulations which broaden the rights and remedies available under federal law will subject the federal reserve banks, and possibly their employees, to a myriad of different laws and regulations which vary from jurisdiction to jurisdiction. The lack of uniformity in the employment laws and regulations to which the banks would be subjected would in turn frustrate the intent of Congress to allow the federal reserve banks the "greatest latitude possible" in terminating their employees. See Mackey, 867 F.2d at 526; see also Talbott v. Silver Bow County, 139 U.S. 438, 443 (1891)(noting the National Bank Act was designed to create a national banking system with "uniform operation"). Moreover, while courts are generally in agreement that federal anti-discrimination laws have limited the discretion with which the federal reserve banks may hire and fire employees, there is no indication in the Federal Reserve Act that Congress ever intended for state laws to further restrict the federal reserve banks' discretion. See Andrews v. Federal Home Loan Bank of Atlanta, 998

F.2d 214, 220 (4th Cir. 1993) ("Congress intended for federal law to define the discretion which the Bank may exercise in the discharge of employees.")

Plaintiff nevertheless argues that the failure to apply state anti-discrimination laws to Defendants, while at the same time applying Title VII to Defendants, would be inconsistent with Title VII's own provisions. Title VII provides that

Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

42 U.S.C. § 2000e-7. Accordingly, Plaintiff argues that, because Title VII does not preempt state anti discrimination laws, and because Defendants concede that the Federal Reserve Act does not preempt Title VII, it follows that the Federal Reserve Act does not preempt state anti-discrimination laws. However, the United States Supreme Court has rejected this very same argument in the context of determining the preemptive effect of the Employee Retirement Income Security Act ("ERISA") on state anti-discrimination laws. See Shaw v. Delta Air Lines, 463 U.S. 85, 101 n.22 (1983) (rejecting the argument as "simplistic," and noting that its application in the context of that case would "save almost all state laws from preemption.")

Accordingly, the Court finds that the Federal Reserve Act preempts state anti-discrimination laws which provide more expansive rights or remedies than those available under federal anti-discrimination laws. Furthermore, as discussed, *supra*, the Court finds that, in this case, the PHRA expands the rights and remedies available under Title VII in two important ways. First, the PHRA provides a cause of action against individual employees as well as against the employer. This is in contrast to Title VII, which, as construed by the Third Circuit, does not allow suits against individual employees. See Sheridan v. E.I. DuPont de Nemours, 100 F.3d 1061, 1078 (3d Cir. 1996)(en banc). Second, in contrast to the PHRA, there is a statutorily mandated upper limit on the total compensatory and punitive damages that may be recovered for a Title VII violation. See 42 U.S.C. § 1981(a). Accordingly, application of the PHRA to this case would "offend [Title VII's] limits and/or bars against compensatory and/or punitive damages." Peatros, 990 P.2d at 552.

Furthermore, the Court finds that the appropriate response to the preemption problem presented in this case is to dismiss Plaintiff's state law claims in their entirety. The approach advocated by Justice Mosk in the Peatros decision, in which the relevant state anti-discrimination laws are only preempted to the extent that they actually conflict with federal anti-discrimination laws, would allow Plaintiff's state law causes of action to remain

in the case, subject to the requirement that they be interpreted to provide the same level of protection as is available under Title VII. However, the Court declines to follow Justice Mosk's approach in this case, as it would require the Court to essentially rewrite the relevant provisions of the PHRA to parrot Federal anti-discrimination law. In so doing, the Court would risk frustrating the intent of the publicly elected legislature which enacted the PHRA in the first place. The Court further finds that such an approach is entirely unnecessary in this case, given the fact that Plaintiff has brought a cause of action under Title VII.³

III. CONCLUSION

Accordingly, for the foregoing reasons, Counts II and III of Plaintiff's Complaint, alleging violations of the PHRA, are dismissed in their entirety.

An appropriate order follows.

³ The Court expresses no opinion concerning the effect of the dismissal of a plaintiff's state law causes of action on the ability of state administrative agencies to evaluate a plaintiff's claims of employment discrimination. See 42 U.S.C. § 2000e-5(c) (providing that, when a violation of Title VII is alleged to have occurred in a state whose laws also prohibit the practice in question, the charge shall initially be referred to the relevant state agency). As Plaintiff has already exhausted her administrative remedies in this case, the Court need not address this issue.

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ORDER

AND NOW, this 8th day of July, 2004, upon consideration of Defendants' Motion to Dismiss Counts II and III of the Complaint (Doc. No. 6), Plaintiff's response, all related submissions, and the oral argument conducted in open court on January 8, 2004, **IT IS HEREBY ORDERED** that said Motion is **GRANTED**. Counts II and III of Plaintiff's Complaint are **DISMISSED** in their entirety. This case will proceed on Count I against Defendant Federal Reserve Bank of Philadelphia only.

BY THE COURT:

John R. Padova, J.

