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

ROBERT JOHNSTON, et al.	:	CIVIL ACTION
v.	:	
SCHOOL DISTRICT OF PHILADELPHIA, et al.	:	NO. 04-4948

MEMORANDUM

Bartle, C.J. April 12, 2006

Plaintiffs Robert Johnston, Jack Zubris, Edward Pilosi, and Peter Bracchi brought suit against defendants, the School District of Philadelphia and Kimberly Sangster, their former supervisor, for employment discrimination on the basis of race and for subsequent retaliation. See 42 U.S.C. §§ 2000e-3; 42 U.S.C. § 1981; and PA. STAT. ANN. TIT. 43 § 955(a), (d). Each had been discharged from his position in the procurement department of the School District.

After a ten-day trial, the jury returned a verdict in favor of the plaintiffs on their claims of race discrimination and in favor of plaintiffs Johnston, Zubris, and Bracchi for retaliation.[1] The jury awarded economic and non-economic damages totaling $2,906,378. We allowed the jury to award not only back pay but also front pay to plaintiff Bracchi because he and his

1. At the close of plaintiff's case, we granted the unopposed motion of defendants for judgment as a matter of law as to the retaliation claim of Pilosi. See Fed R. Civ. P. 50(a).

wife prior to the trial had moved to Florida where he had found new employment. As to plaintiffs Johnston, Zubris, and Pilosi, we restricted the jury's consideration of economic loss to back pay. Upon the verdict in favor of those plaintiffs, we ordered their reinstatement to positions comparable to those they enjoyed prior to their termination. 42 U.S.C. § 2000e-5(g).

Defendants have now filed the following motions: (1) a renewed motion for judgment as a matter of law[2]; (2) a motion for a new trial; (3) and a motion for remittitur of the damages award. Payment of the monetary awards has been stayed pending resolution of the current motions.

I.

The facts, viewed in the light most favorable to the plaintiffs, are as follows. Fineman v. Armstrong World Indus., Inc., 980 F.2d 171, 190 (3d Cir. 1992). All four plaintiffs are Caucasian males who had been employed by the School District for many years in management positions in its procurement, or purchasing department. Johnston was Director of Materials Management, Zubris had been a Procurement Technical Services Supervisor, Bracchi was employed as a Procurement Services Coordinator, and Pilosi was a Purchasing Manager. In the Fall of 2002, the School District hired Kimberly Sangster, an African-American, as its new chief procurement officer. She had

2. We denied defendants' motion for judgment as a matter of law as to all discrimination and retaliation claims at the close of trial. See Fed R. Civ. P. 50(a).

previously held a procurement position with the Chicago School District. In October, 2002, prior to her start date, Sangster was invited to a School District "business" retreat. While there, she made notes recording the race of a number of the attendees, many of whom she knew. At trial, Sangster could offer no explanation for making these notations.

Plaintiff Johnston testified about three comments Sangster made to him regarding race. First, on November 4, 2002 or November 5, 2002, a few days after Sangster's start date, she said to him, "You're going to have a hard time working for a black woman, aren't you?" Then, during the third week of November, 2002, after a staff meeting, Sangster stated, "There's too many white male managers in this office." Finally, sometime during the first week of January, 2003, Sangster commented that "the Caucasian managers' offices are too big and she was going to do something about it." While Sangster denied ever making these statements, the jury clearly believed that she did.

On February 3, 2003, all four of the plaintiffs were discharged from employment. Sangster scheduled meetings in her office with each plaintiff on that afternoon. A security guard remained outside her office throughout each meeting, which lasted approximately 20 minutes. Sangster informed each plaintiff that they were being fired as part of a reorganization.

Defendants did not contend that the job performance of plaintiffs was unsatisfactory. Instead, Sangster testified that the plaintiffs were discharged because of a School District

mandate to cut the budget by ten percent and because the plaintiffs' positions constituted an unnecessary layer of management which needed to be eliminated. There was further evidence about the School District's budget woes. Plaintiffs, however, offered evidence to rebut the cost saving defense. There was testimony negating Sangster's interest in achieving budget savings. Within a few months of being hired, she purchased between $11,000 to $14,000 worth of new furniture for her office. Furthermore, there was evidence that Sangster did not discharge African-American employees on a similar management level and that she created new positions for and promoted African-Americans in the procurement department.

A few months after his termination, Johnston applied for and was offered a position as Assistant Director of Food Services at the School District. On August 7, 2003, after the plaintiffs filed charges of discrimination against the School District with the United States Equal Employment Opportunity Commission, the offer of employment was withdrawn. In September, 2004, Johnston was employed by the School District as Director of Records and Duplicating Services. However, according to Johnston, the conditions of his work environment are "horrible" and "deplorable," and his office is "filthy," smelled of "sewer gas," and has "mold" and "rodents."

After their terminations, both Bracchi and Zubris applied for open positions within the procurement and other departments in the School District. Bracchi was not hired into

any position for which he applied. Eventually, as noted above, he obtained a job in Florida and relocated there with his wife. While Zubris was denied many of the positions within the School District for which he applied, he did become temporarily employed as a School Operations Officer in January, 2004. This position paid him approximately half of his former salary. Pilosi did not apply for any positions within the School District and ultimately retired.

II.

Under Rule 50(b) of the Federal Rules of Civil Procedure, a party may renew its motion for judgment as a matter of law after the jury's verdict. Fed. R. Civ. P. 50(b). Defendants have done so here. Such a motion will only be granted if, viewing all the evidence in the light most favorable to the non-moving parties, the record is "'critically deficient of that minimum quantum of evidence from which the jury might reasonably afford relief.'" Fineman, 980 F.2d at 190. While a "scintilla of evidence is not enough to sustain a verdict of liability," the question is "whether there is evidence upon which the jury could properly find a verdict for that party." Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., Inc., 46 F.3d 258, 270 (3d Cir. 1995). In doing so, we may not weigh the evidence nor pass on the credibility of witnesses. Id. at 269-70.

The jury found that defendants had discriminated against all plaintiffs on account of their race and that Johnston, Bracchi, and Zubris had been subject to later

retaliation. We instructed the jury that to find the defendants liable for race discrimination, the plaintiffs had to prove by a preponderance of the evidence that: (1) they were qualified for their positions; (2) they were discharged despite being qualified for their positions; and (3) the defendants' reason for discharging the plaintiffs was discriminatory. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In determining whether the defendants' reasons for discharging the plaintiffs were discriminatory, the jury was instructed to consider whether race was a "determinative factor," that is, whether race had such an effect on the defendants' decision that defendants would not have discharged plaintiffs but for their race. Lewis v. Univ. of Pittsburgh, 725 F.2d 910 (3d Cir. 1983). We also charged the jury to consider whether the defendants had offered any legitimate, non-discriminatory reason for discharging the plaintiffs and whether the reason was unworthy of belief. McDonnell, 411 U.S. 792.

On the issue of retaliation, the jury was told that the plaintiffs needed to prove that: (1) they engaged in protected activity; (2) the defendants took adverse action against them subsequent to or contemporaneously with such activity; and (3) a causal connection existed between the protected activity and the adverse action. See Glanzman v. Metropolitan Mgmt. Corp., 391 F.3d 506, 508-09 (3d Cir. 2004). Again, we informed the jury that they could consider whether the defendants presented any evidence of a legitimate, non-discriminatory reason for their

actions against plaintiffs. Shellenberger v. Summit Bancorp, Inc., 318 F.3d 183, 187 (3d Cir. 2003).

The evidence was more than sufficient to support the jury's findings in favor of plaintiffs. There, of course, were Sangster's notes made in October, 2002 in which she recorded the race of various school district employees, as well as the testimony of Johnston about Sangster's racial comments shortly thereafter. Further, there was evidence before the jury that undercut Sangster's assertion that plaintiffs were discharged for budgetary reasons and not because of their race. Finally, after their termination, the School District refused to hire Johnston, Bracchi, and Zubris for certain open positions despite their qualifications. To be sure, evidence was presented supporting defendants' position on all these issues. Nonetheless, it is the role of the jury, and not this court, to decide which witnesses to believe and which witnesses not to believe and what reasonable inferences to draw concerning defendants' conduct. United States v. Kole, 164 F.3d 164, 177 (3d Cir. 1998). The jury believed Johnston and the other plaintiffs and did not believe Sangster or other witnesses on key issues. It is not for this court to second guess the fact finder. Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993).

The motion of defendants for judgment as a matter of law will be denied.

III.

Defendants have moved alternatively for a new trial pursuant to Rule 59 of the Federal Rules of Civil Procedure. Even if there is sufficient evidence to support the verdict so as to preclude the grant of judgment as a matter of law, a new trial may be granted when "the verdict [is] against the weight of the evidence" and "a miscarriage of justice would result if the verdict were to stand." Sheridan v. E.I. DuPont de Nemours and Co., 100 F.3d 1061, 1076 (3d Cir. 1996). Moreover, a new trial may be granted "where substantial errors occurred in admission or rejection of evidence." Becker v. ARCO Chemical Co., 207 F.3d 176, 180 (3d Cir. 2000). A district court's evidentiary decisions are afforded great deference and will be deemed harmless if "'it is highly probable that the error did not affect the outcome of the case.'" Id. (citation omitted).

Upon our review of the record, the jury's findings of liability are not contrary to the weight of the evidence. Indeed, there was more than ample evidence to support the verdict. We now turn to defendants' alternative motion that numerous trial errors support the grant of a new trial on liability.

Defendants first maintain that plaintiffs' counsel ignored the court's ruling precluding reference to a pattern and practice of discrimination. Prior to the trial, we granted partial summary judgment in defendants' favor with respect to plaintiffs' claims to the extent they alleged the defendants

engaged in a pattern or practice of race discrimination. Johnston v. Sch. Dist. of Philadelphia, No. Civ.A. 04-4948, 2005 WL 2656961, at *2 (E.D. Pa. Oct. 14, 2005). Defendants assert that throughout the trial, plaintiffs' counsel inappropriately attempted to inject evidence of Sangster's interest in promoting racial diversity. We disagree. Plaintiffs' counsel asked questions of Sangster simply in an attempt to obtain her viewpoint on the role race may have played in her hiring and firing decisions. Defendants had an opportunity to object to such lines of questioning and did so. The court then restricted the questioning of plaintiffs' counsel. We see no error.

Defendants also assert that plaintiffs' counsel attempted to appeal to the jury's "potential bias with regard to race" by emphasizing the race of various School District employees throughout the trial. We see no basis for defendants to suggest that plaintiffs' counsel acted improperly in this regard. There was no basis to admonish plaintiffs' counsel for pointing out the race of various School District employees who were hired or promoted not long after the plaintiffs were terminated. The issue of race was not to be avoided. It was a central issue in the case.

Defendants next argue that their ability to present their key defense, the financial distress of the School District, was restricted. At trial, we allowed defendants to present evidence pertinent to their defense that plaintiffs were discharged due to the School District's budgetary constraints.

The Budget Director of the School District, Wayne Harris, testified in detail about its financial woes. The only restriction placed upon defense counsel, as a result of a motion in limine, was that they could not adduce inflammatory testimony or make inflammatory arguments that the School District was cutting costs and terminating the plaintiffs in order to have sufficient money to educate the public school children of Philadelphia. We imposed this limitation because the danger of unfair prejudice substantially outweighed the probative value of such testimony. See Fed. R. Evid. 403. In any event, defense counsel flaunted our instructions and made this argument both in his opening statement and closing argument. No error warranting a new trial occurred.

Defendants also maintain that plaintiff's counsel repeatedly misrepresented trial testimony, presented incomplete information to the jury, and "demonized" the defendants by implying during cross-examination that Sangster and a defense witness did not voluntarily produce certain documents. Defendants also contend that plaintiffs' counsel improperly argued during his summation that the defendants were conducting a smear campaign against the plaintiffs. We find no substance in defendant's contention of prejudicial error.

In further support of their motion for a new trial, defendants contest the court's decision to limit defendants' cross-examination of plaintiff Johnston and the court's failure to give a jury instruction on the topic of destruction of

evidence. On direct examination, Johnston had testified to making handwritten notes of Sangster's comments shortly after she made them. After he was terminated, but prior to filing this litigation, Johnston or his wife or both typed the contents of the notes into his computer. This document was provided to his attorney at the time. Johnston testified that the handwritten notes were then discarded. Defendants contend that the court stopped the cross-examination of Johnston just when their counsel was about to delve into Johnston's destruction of the handwritten notes, something that he had already admitted on direct examination. Defendants maintain that they were never placed on notice, prior to trial, that there would be any time limits imposed on their presentation of evidence.

Defendants spent approximately two hours and fifteen minutes over two days cross-examining Johnston. We gave defense counsel repeated warnings during trial that he would not be entitled to endless cross-examination. At the close of the first day, we informed counsel that he would have 45 additional minutes the next day to continue his cross-examination of Johnston. During his cross-examination, we reminded counsel that much of his questioning was either irrelevant or repetitive and that he should proceed to other, more pertinent issues. We have discretion to control the progression of trial as long as each party is given a fair opportunity to present its evidence and to cross-examine witnesses. See Fed. R. Evid. 611; United States v. Boyer, 694 F.2d 58 (3d Cir. 1982). It is not an abuse of

discretion to limit cross-examination as long as we allow a party ample opportunity to address relevant issues. See Fed. R. Evid. 611; Boyer, 694 F.2d at 60. At trial, defendants were allowed extensive cross-examination of Johnston. That defense counsel chose not to utilize his time wisely, but rather, to waste time on irrelevant and repetitious inquiry is not grounds for a new trial.[3]

Defendants' claim of error in our failing to charge the jury on spoliation of evidence is totally without merit. During the charge conference with counsel in chambers, the court initially included a spoliation instruction in its proposed charge over plaintiffs' objection. Thereafter, evidence was presented at trial that defendant Sangster as well as plaintiff Johnston had not retained all documents relevant to this case. At that point defendants changed their position and urged the court to remove the spoliation charge. All parties agreed to its excision. After the jury was charged but before it retired to deliberate, we invited counsel to sidebar to make objections to the charge outside of the hearing of the jury. See Fed. R. Civ. P. 51(b) and (c). Defendants made no objection to the lack of a spoliation instruction at that time. Any objection is now waived.

Defendants further argue that the court's refusal to allow them to offer evidence of plaintiffs' performance was in

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3. Defendants' counsel cross-examined Johnston's wife about the destruction of the notes.

error. Again, defendants' position is totally lacking in substance. During the pretrial conference, defense counsel conceded that plaintiffs' job performance was not in dispute. In defense counsel's opening statement to the jury and at various sidebar discussions, he agreed that unsatisfactory performance was not the reason for the plaintiffs' discharge. On numerous occasions during trial, defense counsel objected to the questioning of the plaintiffs by their own counsel concerning their performance. We sustained the objections. Defense counsel agreed to our instruction to the jury that plaintiffs' performance was not at issue and despite an opportunity to do so made no objection to the charge on this point before the jury retired to deliberate. See Fed. R. Civ. P. 51(b) and (c).

Finally, defendants take the position that it was error to allow plaintiffs to call School District employee Gail Borden-Krause as an adverse witness. The propriety of declaring a witness adverse so as to permit examination as if on cross rests largely in the discretion of the trial court. See Fed. R. Evid. 611(a), (c); United States v. Stubin, 446 F.2d 457, 463 (3d Cir. 1971). At the time of the trial, Krause was employed by the defendant School District as a Director of School Support Services. A review of her testimony indicates that many of her statements were helpful to the defense. Defendants were not prejudiced. See Becker, 207 F.3d at 180.

Accordingly, because the verdict was not against the weight of the evidence and there were no substantial or

prejudicial trial errors, the motion of the defendants for a new trial on liability will be denied.

IV.

Defendants also move for remittitur of the damage awards on the ground that the awards were excessive in light of the evidence. The district court may order a new trial on damages unless a plaintiff accepts the remittitur. Evans v. Port Auth. of New York and New Jersey, 273 F.3d 346, 353-54 (3d Cir. 2001).

We may not lower the jury's award simply because we would have awarded a lesser amount had we been sitting as the fact finder. Gumbs v. Pueblo Int'l, Inc., 823 F.2d 768, 771 (3d Cir. 1987). A jury has "very broad discretion in measuring damages." Id. at 773. Instead, we must review the evidence to determine whether there is a "rational relationship between the specific injury sustained and the amount awarded." Id. In general, we may grant remittitur only if the verdict awarded is "so grossly excessive as to shock the judicial conscience." Keenan v. City of Philadelphia, 983 F.2d 459, 469 (3d Cir. 1992). If the damages are subject to mathematical calculation, there must be sufficient facts from which a jury "'can arrive at an intelligent estimate without speculation or conjecture.'" Scully v. US WATS, Inc., 238 F.3d 497, 515 (3d Cir. 2001) (citation omitted). If we deem remittitur appropriate, we "may not require a reduction in the amount of the verdict to less than the 'maximum recovery' that does not shock the judicial conscience."

Id. at 774 (citing Gorsalitz v. Olin Mathieson Chem. Corp., 429 F.2d 1033, 1046-47 (5th Cir. 1970)). We are afforded great deference in deciding whether to grant remittitur because a district court "'is in the best position to evaluate the evidence presented and determine whether or not the jury has come to a rationally based conclusion.'" Evans, 273 F.3d at 354 (citation omitted).

We first examine the evidence presented concerning the economic damages suffered by each plaintiff. The jury awarded Johnston $71,016 in back-pay damages. Defendants contest this amount because it is higher than the amount calculated by plaintiffs' expert, Dr. Frank Tinari. Dr. Tinari calculated $62,521 in back-pay loss. He testified that Johnston would be taxed at a higher rate due to receiving this money in one lump-sum rather than spread out between the years 2003 through 2005. He determined that Johnston would need to receive an additional $4,000 to make him whole, for a total of $66,521.

Although he informed the jury that his calculations only covered the period between the date of Johnston's termination up until October 31, 2005, the record does not support the jury's additional award of $4,495. It would not be reasonable for the jury to have awarded Johnston this amount to compensate him for the seven-week gap between October 31, 2005, the date of Dr. Tinari's report, and the December 16, 2005 verdict because Johnston's back-pay loss during the first ten months of 2005 only amounted to $608. He is simply entitled to

an additional $105.[4] While the calculation of damages need not be mathematically precise, there must be sufficient facts supporting the jury's determination. Scully, 238 F.3d at 515. A new trial on the issue of Johnston's economic damages will be granted unless he files a remittitur accepting a back-pay award of $66,626.

Defendants next argue that the jury's award to Bracchi of $141,085 in back-pay damages was excessive because it was (1) more than the $116,652 estimate given by plaintiffs' expert and (2) based upon an incorrect annual wage increase of 3% when Bracchi's union contract called for yearly increases of 4%, 0%, and 3% for the years 2003, 2004, and 2005, respectively. Defendants' expert, Dr. Brian Sullivan, calculated Bracchi's back-pay damages as $130,476 which is $13,824 more than the amount set forth by plaintiff's expert. Dr. Sullivan arrived at his number using the annual wage increases in Bracchi's union contract, and projected the back-pay amount through the end of 2005. Bracchi may only receive back-pay damages up until the time of the verdict, which was December 16, 2005. Gunby v. Pennsylvania Elec. Co., 840 F.2d 1108, 1119 (3d Cir. 1988). Dr. Sullivan's estimate, minus $1,380[5] for the amount of the

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4. We determined the amount of Johnston's back-pay loss per week by dividing $608 by 43, the number of weeks in 2005 up until the date of Dr. Tinari's report. Then, we multiplied that number by the seven-week period between the date of Dr. Tinari's report and the date of the verdict.

5. To arrive at this number, we calculated Bracchi's weekly
(continued...)

calculation representing the two weeks post-verdict, is the "maximum recovery" Bracchi could have received in back-pay damages. See Gumbs, 823 F.2d at 774. Therefore, we will grant a new trial on the issue of Bracchi's back-pay damages unless he files a remittitur of his economic damages in which he agrees to accept $129,096.

Defendants also contest the award of $243,000 in front-pay damages to Bracchi. As just noted, we may not require a reduction in the amount of damages to less than the maximum a reasonable jury could award. See id. at 774. The amount awarded by the jury was significantly less than the $406,271 in front pay and pension losses suggested by plaintiffs' economics expert. Thus, we will not reduce the amount awarded by the jury.

Defendants challenge the jury's back-pay award to Zubris. The jury awarded Zubris $203,107, approximately $17,000 more than the amount calculated by plaintiffs' expert up until October 31, 2005. As with Bracchi, defendants' economic expert, Dr. Sullivan, calculated a back-pay award greater than that estimated by plaintiffs' expert. Dr. Sullivan's testimony and report established that Zubris suffered back-pay damages of $195,872. Again, that amount includes compensation for two weeks post-verdict. After subtracting $3,627[6] for that two-week

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5(...continued)
back-pay loss in 2005 utilizing Table 1 of Dr. Sullivan's report, which was introduced into evidence.

6. As with Bracchi, we calculated Zubris' weekly back-pay loss (continued...)

period, the maximum amount a reasonable jury could award Zubris is $192,245. Accordingly, Zubris must file a remittitur agreeing to accept this amount as back-pay or we will grant a new trial on the issue of his economic damages.

Finally, defendants challenge the award of $302,170 in back-pay damages to Pilosi. They argue that Pilosi is not entitled to recover any back-pay amount because he failed to mitigate his damages. There was sufficient evidence for the jury to find that he attempted to mitigate his damages. Thus, this argument is without merit. The amount awarded by the jury, however, is not supported by the evidence. The report of plaintiffs' expert, Dr. Tinari, calculated back-pay damages of about $210,563, while defendants' expert estimated $26,907. At trial, however, Dr. Tinari explained that the $210,563 in back-pay loss listed in his report had to be offset by a $181,000 gain in pension Pilosi had benefitted from as a result of his termination. The back-pay loss would then be $29,563. Although Dr. Tinari testified that Pilosi would have to be compensated for excess taxes, he stated that they "would be minor," and did not provide the jury with a number. Similarly, Dr. Tinari provided no basis by which the jury could accurately compensate Pilosi for the seven-week gap between October 31, 2005, the date of his

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6(...continued)
in 2005 by using Table 1 of Dr. Sullivan's report, which was introduced into evidence.

report, and December 13, 2005, the date of the verdict.[7] We have previously noted that while damage calculations need not be exact, there must be evidence in the record to support the amount of a damage award. Scully, 238 F.3d at 515. Accordingly, we will grant a new trial on the issue of Pilosi's economic damages unless he elects to file a remittitur of his economic damages in which he agrees to accept $29,563.

We now examine the evidence presented concerning non-economic damages. The jury awarded each plaintiff $500,000 in damages for past, present, and future mental anguish, pain and suffering, loss of enjoyment of life, and humiliation because of any unlawful discrimination or retaliation. Contrary to defendants' assertion, the mere fact that the jury awarded identical amounts to each plaintiff is not conclusive proof that the awards are unsupported by the evidence and are clearly excessive. See Clopp v. Atlantic County, No. Civ.A. 00-1103, 2002 WL 31242218, at *3 (D.N.J. Oct. 7, 2002); see also Lambert v. Ackerley, 180 F.3d 997, 1011 (9th Cir. 1999).

To recover non-economic damages a plaintiff must show a reasonable probability rather than a mere possibility that the damages were incurred as a result of an unlawful act. Gagliardo v. Connaught Laboratories, Inc., 311 F.3d 565, 573 (3d Cir. 2002) (brackets in original) (citation omitted). Non-economic damages

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7. The defendants' expert, Dr. Sullivan, likewise did not provide sufficient information to calculate Pilosi's loss during this seven-week period.

cannot be precisely calculated. Evans, 273 F.3d at 356. However, we may not grant remittitur simply because we deem the award extremely generous. Williams v. Martin Marietta Alumina, Inc., 817 F.2d 1030, 1038 (3d Cir. 1987). As stated above, we may do so only if the verdict awarded is unsupported by the evidence, id. at 1039, and is "so grossly excessive as to shock the judicial conscience." Keenan, 983 F.2d at 469. We do not sit as the fact finder and cannot require a reduction in non-economic damages to less than the maximum amount a reasonable jury could award. Gumbs, 823 F.2d at 774. In making this determination we must be mindful of the demeanor of the witnesses and the jury's observations of such. Evans, 273 F.3d at 355. In addition, we "may consider awards in other cases involving similar injuries as a 'helpful guide' to whether a particular damage award is excessive." Blakely v. Continental Airlines, Inc., 992 F. Supp. 731, 736 (D.N.J. 1998) (citing Motter v. Everest & Jennings, Inc., 883 F.2d 1223, 1230 (3d Cir. 1989); Gumbs, 823 F.2d 768, 773 (3d Cir. 1987)).

A tearful Johnston, who had been employed by the School District for 13 years, presented compelling testimony about the effects the discrimination and retaliation had upon him. He stated that he was "shocked," "sad," and cried after he was fired. He was not sure how he could "face [his] family and [his] wife, and how could [he] tell [his] son and daughter and how could [he] pay the bills." After being fired he "finally realized that [he] was old."

He testified to the conditions in his current position as Director of Records and Duplicating Services with the School District:

> The office that they put us in is five stories below ground. I have to walk down 47 steps to get to the basement or take the elevator down. It's a warehouse, and the–as you approach the floor–as you approach 15 to 20 feet of the floor, there's a stench of sewer gas that's constantly floating around. The air is filthy. The floor is filthy, There's mice and rodents running around. The ten office staff that work there should not be there. It's inhumane conditions. There's water laying in puddles that has green and black mold growing in it. There's water that seeps through the wall in certain spots .... There's inadequate bathroom facilities. There's one toilet for all the men, and one toilet for all the ladies. I wear old black sneakers, rather than shoes, because it's just so dirty .... The print shop, which is next to our department, has no facilities for safety .... It's deplorable. It's depressing to go there. I hate going to work. As I approach the place, I get so upset, that I just can't stand it.
> ...
> It's living hell. It's confining. I never go upstairs because I'm not allowed to go to certain parts of the third floor. If I go up, people are afraid to talk to me. All the friends I had, I can't go up and have lunch with them because then they're afraid to be with me. It's like being a marked person.

When asked how his life had changed since the date of his discharge he responded:

> My life has never–it will never be the same. I have lost all confidence in myself. I have a–I feel as if I lost the respect of my family. I have problems sleeping. As you could see, I get upset very easily anymore. I vomit. At night, I wake up thinking of this. I had to run–run to the bathroom. In

> the morning before I go to work, after I eat breakfast, I get sick. I have headaches. It's just unbearable. I'm concerned about my family. I guess mostly I'm concerned I'll end up losing my wife. How long can she put up with this? It's just ridiculous. And my life has changed so much that I used to be able to go to work and love my job, and now I hate, hate every part of it. I hate everything about it. And it will just never–it will never be the same. My blood pressure's been up. I'm under a doctor's care for that. Just–it's just been terrible. There's other feelings I have. I just–the depression that sets in. One of the worst things was–my son asked me whether I ever contemplated suicide. It was a terrible feeling to have your son ask you that .... I just have a hard time enjoying life. I used to coach kids. I can't coach kids. I hate going out. Just–I've lost life. It will never be the same.

Johnston also testified that he was taking Zoloft for his anxiety, although there was evidence that he may have suffered from mild anxiety prior to his termination. He attributed the emotional effects he described to his termination by Sangster.

His daughter confirmed much of what he said. She testified that her father was "different," "depressed," and "negative." She stated that he had "gained a very large amount of weight," had "books on how to beat depression," and "vomits ... three or four times a week."

Johnston appeared visibly shaken throughout his testimony, and the jury had the opportunity to view his demeanor and assess his level of suffering. While a jury may not abandon analysis of the evidence for sympathy toward a plaintiff, a jury

does have "very broad discretion in measuring damages," so long as there is a "rational relationship between the specific injury sustained and the amount awarded." Gumbs, 823 F.2d at 773. In this case, the $500,000 award to Johnston for non-economic damages is not excessive as a matter of law. See Gagliardo, 311 F.3d at 573-74.

Bracchi and his wife testified to the effects his discharge and the later retaliation had upon him. Bracchi, who had been employed by the School District for 16 years, told the jury that his life had changed "drastically" since the termination:

> You feel like you're nothing. You work hard, we were raised to work hard, you get ahead. And, like I said, every job I had I worked very hard at, including this one here, and then all of a sudden it's like the legs are cut out from under you. It affects you, sure, it affects you. I mean, I'm a human being and to have this happen to me for no apparent reason, for–you know, our reasoning, because we were white and, you know, they had their agenda and it's like–you feel like dirt, you feel like you are nothing, and that's–I don't think anybody should be treated that way.
> ...
> I was always one that loved life....[N]ow its's like, no, I just–I don't–I don't enjoy anything. I get through the day, that's about it.

When asked whether he attributed the change to his discharge he responded in the affirmative and continued:

> I enjoyed my job, I always felt I made a difference. When I went to work, I worked for every child in that school. I felt like I was doing good for the world, you know, maybe helping one child out that might change

> the world ... and now its's like, you know, it's not important .... I just feel like there's nothing left of me, I mean, I don't do things I used to do. I used to garden; I garden now, but there's more weeds than tomatoes. I mean, there's just a lot of things I just don't do anymore. I sit around doing nothing. I go to work, I come home, I sit in my chair.
> ...
> I used to cook a lot .... I mean, these are two of the things I loved to do. Interaction with other people, I don't–I don't go out much .... I mean, like I said, you just–you feel worthless, you don't want to do anything.

When he was unable to secure re-employment with the School District, Bracchi took a position at Temple University. He described the job as "very, very physical." He described spending three to four hours a day in walk-in refridgerators and freezers. The job also required heavy lifting and "was very, very strenuous." He testified that the required physical labor was very different from his former job at the School District. Bracchi, who was 53 years old when employed at Temple University, testified to the physical effects of the job:

> [E]very muscle, bone and joint in my body hurt. I couldn't walk, there's a lot of things I couldn't do. As I said earlier, I love to garden, and I couldn't even get in my garden.
> ...
> I couldn't bend over. If I bent over–there were times I'd go out there just to try to do something, I'd lay on the ground and weed. And my neighbor had to plant my tomatoes, he's 70 years old.

While he admitted that he had occasional aches and pains from his age while employed by the School District, he

explained that these pains had grown worse as a result of his job at Temple University. As a result, his doctor prescribed the anti-inflammatory drug, Naprosyn.

His wife testified that his stance had changed since the termination. He "began to be bent over." She attributed this to his depressed outlook on life. She also mentioned that he had lost interest in activities in which he used to engage, such as cooking, socializing, singing, and gardening. Ultimately, she testified that he was no longer "old Pete."

As with Johnston, the jury and the court were able to perceive Bracchi's disposition and demeanor on the stand. The jury was able to interpret the level to which Bracchi was suffering. The evidence established that Bracchi's non-economic damages had been caused by his discharge. There is simply nothing to indicate that the jury behaved irrationally. There was extensive testimony on non-economic damages from which the jury could make a determination as to an amount of an award, and we cannot say that the $500,000 was outside of the outermost limits of reason. See Gagliardo, 311 F.3d at 573-74.

Zubris, employed by the School District for 30 years, testified that being discharged made him

> feel small, it made me feel–obviously unhappy, it made me feel worried for my financial future, it made me feel embarrassed.
> ...
> I was in a daze, you know...I'm there 29 and a half years, I mean, this was my family that I worked for and they just pushed me aside like–you know, it's like, get out of

> the way, you piece of crud, just get out of here, you know, get out by the end of the day, leave.
> ...
> [F]or months, or even longer after [the termination], that's all I can think of 24 hours a day was that termination, I mean, that's all that was on my mind, I couldn't sleep at night. I never–I never had–I had to start taking sleeping pills, you know, my stomach was bothering me, I was like very short-tempered. I mean, it was horrible.

Zubris' wife's testimony paralleled his. She testified that prior to his termination they "went out a lot," and he socialized with friends more. She continued, "[y]ou know, he used to have enthusiasm, he was involved in new projects when he was with the School District, he was always interested in finding new things, better ways to run the department."

After the termination he

> seemed to be in shock .... [H]e was kind of scared. I mean this was half of our salary .... I'm the one that got the brunt of his emotions which, you know, went from high to low and back and forth. And we just tried to deal with it, you know, the best we could.
> ...
> He'd had a number of–and still does have a number of sleepless nights.
> ...
> I mean there were times when, in the beginning, when we didn't–he didn't want to go out. He was like reclusive, we didn't want to see anybody. You know, trying to tell our children what happened, our families, it was like a really tough time and now at least he has a job and feels better about himself.

When asked about his sleeplessness, she stated:

> He would be restless and then I would wake up and he wasn't there. And I would go

> and look and he would be like laying in another room and, you know, that went on for a while .... He had stomach pains, he would have heart palpitations and, just being Jack, he's not the kind of person that would go to a doctor .... I guess like it's not that he had–angry but like when he kept, when he kept feeling like he was in a bind, you know, he would shut down a lot of times, he just didn't want to talk about it. "Just leave me alone" or something that I would say would, you know, get him upset and I would just go in the other room.

Zubris' wife further stated that prior to his termination he never had issues with sleeplessness and never needed medication. For his upset stomach he took "Tagamet or whatever was over the counter for that ...." Zubris and his wife also testified that he became concerned with their financial situation since they "had plans for [their] life and [their] retirement was now going to be cut."

Based upon this extensive testimony on Zubris' non-economic damages, we cannot say that the jury's award was "grossly excessive." Keenan, 983 F.2d at 469; see also Gagliardo, 311 F.3d at 574.

Finally, Pilosi, employed by the School District for 33 years, testified that the day he was terminated he felt

> lousy, I was in shock. I knew I was in trouble, I was the only bread winner in the house. I have a very sickly wife, she's on disability. I–it–I–my heart was palpitating. They were still talking to me, I couldn't hear anybody, I had brain freeze. I really, really–I was hoping I wouldn't have a heart attack there that day.
> ...
> I was going to retire, but retire with dignity. I didn't think, after spending most

> of my adult life with the School District of Philadelphia, that this would happen to me.

When asked how his life had changed since his termination, Pilosi responded:

> Well, you absolutely can't feel good about yourself. Since the time I lost my job, I–I find it hard. It was very hard for me in the beginning to get out of bed, you didn't want to get out of bed. I lost my income, I lost my medical insurance. You lose your dignity. It was embarrassing, I had to face my family, my sister would come down and visit me and I had to explain it to my family. Usually people, you're terminated, did you do something wrong? How do you explain to them that I didn't do anything wrong? I was–I came to work every day, I did my job, I got promoted, I–no, I–it was hard, it was very hard. Right to this day it's still hard, it's still hard. It's just not something you get over.
> ...
> [B]eing fired, somebody is going to say, you know, what was this guy doing? You know, and I didn't do anything. I didn't steal anybody's money, I didn't do anything, I was a straight-and-narrow employee as far as I was concerned.

Pilosi's wife testified that prior to being terminated he would "go into work with a lot of enthusiasm .... He's been doing a job that he's loved over all these years, he had friends there ...." He and his wife would "go out to dinner at times, [they] would do things, [they'd] discuss things. After his discharge

> He's been very quiet, very depressed. There are days he just doesn't want to get out of bed. He's very, very worried about the finances, especially the health insurance because of me, and he's we've both been extremely distraught.
> ...

> We used to go a few times, now he doesn't want to go out to dinner. He doesn't want to leave the house. He's embarrassed that he was terminated after so many years, really being humiliated for doing what he was supposed to be doing.
> ...
> [T]here are days that he doesn't want to shave, he just doesn't want to get up out of bed. He's been–he just wanders around like a lost soul .... [T]here are days he doesn't get dressed at all. He'll just maybe either stay in bed or watch some television .... He just wants to be left alone.
> ...
> His blood pressure has gone up sky-high, he's on medication. The stress brought on gallbladder attacks which he had to be rushed in for emergency surgery. The depression is–he just worries a lot. He's so quiet, he's like turned inward and there are some days that I can't even get to him.

Pilosi and his wife also testified that they were concerned about their financial situation.

Again, we find there to be sufficient evidence to support the jury's non-economic damages award to Pilosi, and do not find the $500,000 to "shock the judicial conscience." Keenan, 983 F.2d at 469; see also Gagliardo, 311 F.3d at 574.

While the court understands that each case stands on its own facts, our Court of Appeals has allowed district courts to refer to other cases involving similar injuries in determining whether an award is excessive. Gumbs, 823 F.2d at 773. The most recent case called to our attention in which our Court of Appeals upheld a large non-economic damages verdict in the face of a remittitur motion is Gagliardo v. Connaught Laboratories, Inc., 311 F.3d 565 (3d Cir. 2002). In Gagliardo, plaintiff, a customer

account representative, suffered from Multiple Sclerosis and was discharged from her employment. Plaintiff filed a complaint alleging disability discrimination and, after a trial, a jury returned a verdict in her favor awarding $1.55 million for pain and suffering. There was testimony demonstrating the effects the discrimination had on plaintiff's life, "transforming Gagliardo from a happy and confident person to one who was withdrawn and indecisive." Id. The court, in affirming the district court's denial of defendant's remittitur motion, noted that a district court is afforded great deference on such a matter. Id. at 574.

The motion of defendants for remittitur will be granted in part, as explained above.

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

ROBERT JOHNSTON, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
SCHOOL DISTRICT OF PHILADELPHIA, et al.	:	NO. 04-4948

ORDER

AND NOW, this 12th day of April, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of defendants School District of Philadelphia and Kimberly Sangster for judgment as a matter of law is DENIED; and

(2) the motions of defendants for a new trial and for remittitur are DENIED, except that:

(a) a new trial on economic back-pay damages will be GRANTED as to plaintiff Robert Johnston unless he files with this court, on or before April 26, 2006 a remittitur agreeing to reduce the judgment in his favor to $566,626;

(b) a new trial on economic back-pay damages will be GRANTED as to plaintiff Peter Bracchi unless he files with this court, on or before April 26, 2006 a remittitur agreeing to reduce the judgment in his favor to $872,096;

(c) a new trial on economic back-pay damages will be GRANTED as to plaintiff Jack Zubris unless he files with this court, on or before April 26, 2006 a remittitur agreeing to reduce the judgment in his favor to $692,245; and

(d) a new trial on economic back-pay damages will be GRANTED as to plaintiff Edward Pilosi unless he files with this court, on or before April 26, 2006 a remittitur agreeing to reduce the judgment in his favor to $529,563.

BY THE COURT:

/s/ Harvey Bartle III
C.J.