

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

MICHAEL CHIARADONNA : CIVIL ACTION  
: :  
v. : :  
: :  
ROSEMONT COLLEGE : NO. 06-1015

**MEMORANDUM AND ORDER**

JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE                      December 11 , 2006

The Plaintiff has filed a Motion to Compel Discovery in this age/gender discrimination and retaliation case. At the time of his termination, Plaintiff was an Associate Dean for the School of Continuing Studies at Rosemont College. In the Complaint, Plaintiff alleges that he sent an email to the administration and Board of Trustees of the College, notifying them of a lack of heat in several of the classrooms and staff offices. (Complaint, at ¶17). Thereafter, a verbal altercation occurred between Plaintiff and the Director of Facility Services. (Complaint, at ¶19). In the Motion to Compel, the Plaintiff states that the altercation occurred between him and two other male employees, Butch Brown and Fred Connors. (Motion, at 9). A week later, Plaintiff was told that he was terminated due to the verbal altercation. (Complaint, at ¶20). In the Complaint, Plaintiff alleges that Laurie McGarvey, the former Dean of the Continuing Education School had made similar complaints and been involved in similar altercations without termination. (Complaint, at ¶20). According to the Complaint, the Plaintiff believes that he was terminated because Rosemont's female administration did not want to hire a man to fill the Dean's position (Complaint, at ¶24), and in retaliation for his complaints about the lack of heat in the classrooms and offices. (Complaint, at ¶26).

In the Motion to Compel, the Plaintiff complains about deficiencies in the Defendant's responses to interrogatories and production of documents. We will address each, in turn. In addition, the Plaintiff complains that the responses have not been verified. With respect to the Verification, the Defendant, in responding to the Motion, states that it has now provided proper verification, specifically, the verification of the Director of Human Resources. Based on this representation from the Defendant, we consider this moot.

In Interrogatory 4, Plaintiff asks the Defendant to identify all Deans or Assistant Deans who have been disciplined since 2000. The Plaintiff seeks the reason for the discipline, the policy that was violated and whether the Dean is still employed. The Defendant objected to this interrogatory, claiming that it was overly broad. In the Motion to Compel, the Plaintiff argues that he is merely seeking comparator evidence.

although the interrogatory as drafted is overly broad, it is clear from the Motion, that the Plaintiff is not seeking all discipline regarding Assistant Deans and Deans. Plaintiff seeks discipline regarding actions similar to that for which Mr. Chiaradonna was disciplined. Therefore, we will compel the Defendant to respond to the interrogatory with respect to any Dean or Assistant Dean who has been disciplined for improperly making complaints about the physical plant or creating a hostile work environment.

The Plaintiff also indicates that any such discipline would have been meted out by Anne Amore, the now deceased President of the College. The Plaintiff complains that the Defendant has not indicated that it has reviewed the files of Dr. Amore. In responding to this interrogatory, the Defendant shall review the files of Dr. Amore and include any relevant

documentation. If no such evidence is found in Dr. Amore's files, the Defendant shall acknowledge that it did review Dr. Amore's files.

In Interrogatories 6 and 7, Plaintiff asks the Defendant to identify all verbal or written complaints made about Plaintiff, identifying the date made, and complainant's gender, age, and affiliation with the Defendant. To the extent the complaints were made by Rosemont employees, the Plaintiff seeks information regarding the investigation into the complaint. In response, the Defendant references the documents produced in response to the Request for Production of Documents. The Plaintiff complains that this is not specific enough. In addition, in response to the interrogatories, the Defendant references additional complaints made by Mssrs. Conner and Brown and Ms. Stanton., but fails to provide any documentation regarding these complaints.

Defendant shall more specifically identify the documents responsive to these interrogatories, either by Bates' stamp number, item on the Defendant's enumerated list, or other identifying criteria. In addition, to the extent the documentation regarding the complaints of Mssrs. Conner and Brown and Ms. Stanton has not been produced, the Defendant shall provide such documentation to the Plaintiff, including information concerning the investigations of the these complaints.

In Interrogatory 8 and Request for Production 7, the Plaintiff asks the Defendant to identify all other employees disciplined or terminated as a result of a complaint of discrimination or hostile work environment directed toward those employees. The Plaintiff seeks the person's identity, gender, age, affiliation with the college, the person who conducted the investigation and the outcome. In responding to this interrogatory, the Defendant has identified

five individuals and provided all of the above information except the name of the person who conducted the investigation. In Request for Production 7, the Plaintiff seeks the complete personnel files for these individuals. The Defendant objects to such disclosure.

First, the Defendant contends that the five people listed in response to Interrogatory 8 are not similarly situated to the Plaintiff. We disagree. These are the very people that the Defendant identified as being disciplined as a result of a complaint of discrimination or creating a hostile work environment. The Defendant also objects to producing personnel files. Although personnel files may be discoverable, the judges of this district have held that disclosure of such files should be limited. Northern v. City of Philadelphia, 98-6517, 2000 WL 355526 \*2 (E.D. Pa. Apr. 4, 2000)(Broderick, J.); Miles v. Boeing Co., 154 F.R.D. 112, 115 (E.D. Pa. 1994). Ordinarily, discovery of personnel records is permissible only for parties or similarly situated employees and the court has tailored the disclosure to the relevant issues. Kajani v. Philadelphia Child Guidance Center of Children's Hospital, 00-937, 2001 WL 708898 \*3 (E.D. Pa. Jun. 20, 2001)(Waldman, J.).

Having concluded that these individuals are similarly situated, we believe that certain information contained in the personnel files is discoverable. However, we will not require the disclosure of their entire personnel files. The Defendant shall provide the information relevant to the charge of discrimination/hostile work environment and the discipline. The Defendant shall also inform the Plaintiff of the length of service of each identified individual and shall provide a synopsis of prior complaints made about and any prior discipline to which these individuals were subjected. The Defendants need not provide any other information contained in the personnel file.

In Interrogatory 9 and Document Request 26, the Plaintiff asks whether Laurie McGarvey, the former Dean of the School, had been the subject of any complaints. The Plaintiff also seeks Ms. McGarvey's personnel file. In response, the Defendant states that "[n]o complaints were reported to the appropriate college authorities." The Plaintiff is concerned that the Defendant is evading the question. We have no reason to believe that the Defendant is evading the question, but in the interests of clarity, we will order the Defendant to produce any documentation contained in Ms. McGarvey's personnel file regarding any complaint made against her for any type of verbal altercation, whether it or not it was "reported to the appropriate college authorities."

With respect to the personnel file, the Defendant objects to disclosing Ms. McGarvey's complete personnel file. However, to the extent the Plaintiff seeks any complaints made by Ms. McGarvey regarding the lack of heat, the Defendant has represented that none are contained in the file. As previously stated, the Defendant is required to produce any complaint made against Ms. McGarvey for any type of verbal altercation. If there are none, the Defendant shall so state.

In Interrogatory 16 and Request for Production 34, the Plaintiff seeks information regarding any complaint made after 2000, about a failure to heat the school facilities and any supporting documentation. The Defendant claims that the request is overly broad and lacks relevance. According to the Defendant, the Plaintiff was fired for the verbal confrontation he had with other employees of the College (presumably the confrontation with Mssrs. Connor and Brown regarding the lack of heat). The Plaintiff disagrees and contends that his complaints regarding the heating difficulties contributed to his termination.

Considering the fact that the Plaintiff believes that Ms. McGarvey had complained about the heating and confronted Messrs. Connor and Brown concerning the problem, we believe that complaints about the heating are discoverable. The Plaintiff contends that there was a student task force set up in 2003 to address the heating problem, and complains that none of the documentation of this task force has been produced. The Defendant has represented to the court that it has now produced what documentation it had regarding the student task force. The defense states that the only other documentation it has regarding the heating are the work orders, which have previously been produced. The defense cannot produce what it does not have.

In Document Requests 13, 19, 20, and 33, the Plaintiff seeks information regarding the advertising of the position of Dean for Continuing Studies, documentation from the search committee, and documentation regarding Dr. Frederick Loomis, who was offered the position, but declined, and Dr. Mary Sortino, who accepted the position. The Defendant contends that this information is irrelevant because there is no evidence that the Plaintiff ever applied for the Dean's position.

After the filing of the Motion, the Defendant supplemented its response by providing the search committee notes. The Plaintiff continues to seek the correspondence between the candidates (Loomis and Sortino) and the school. We believe the offer, rejection, and acceptance letters are discoverable. The Defendant shall produce them.

In Document Request 14, the Plaintiff seeks all documentation related to the "Plan for Reorganization." According to the Defendant, included in the reorganization was the designation of Debra Klineman as temporary Dean and the relocation of certain employees to the

Admissions Office. The Defendant contends that the reorganization was irrelevant to Plaintiff's discharge.

Because part of the Plaintiff's claim involves an allegation that the school's administration favored women for the position of Dean, we believe that documents relating to the Reorganization, naming a woman as interim Dean, are discoverable. In response, the Defendant has also stated that it has produced records concerning the Reorganization. Therefore, we will consider this request moot.

In Document Request 15, Plaintiff seeks the entire employee files of six individuals: Butch Brown and Fred Conner (the two employees involved in the verbal altercation with the Plaintiff); Debra Klineman (the interim Dean); Frederick Loomis (the man who declined the offer of the Dean's position); Mary Sortino (the new Dean); and Rennie Andrews (whom the Plaintiff claims participated in the decision to fire Mr. Chiaradonna).<sup>1</sup> The Defendant objected to this request.

In the Motion, the Plaintiff narrowed the request to only portions of the personnel files that are related to the Plaintiff's claims. With the information before the court, we will require disclosure of a very limited amount of documentation. With respect to the information related to Messrs. Brown and Conner, the Defendant shall produce any documentation in their personnel files directly related to the verbal altercation that occurred with the Plaintiff. With respect to Ms. Klineman, the Defendant shall produce Ms. Klineman's curriculum vitae and the documentation related to the Plan of Reorganization mentioned in Document Request 14. Dr.

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<sup>1</sup>There was a seventh individual whose file the Plaintiff sought, but the Plaintiff has withdrawn that request.

Loomis has never been an employee of the college. The Defendants have already produced the documentation from the search committee. In addition, we have already ordered the Defendant to produce the offer and rejection letters for the Dean's position. No further documentation need be produced with respect to Dr. Loomis. The same is true of Dr. Sortino.

The Plaintiff's request for Ms. Andrews' file is two-fold. According to the Plaintiff, Ms. Andrews participated in the decision to fire him, and there is an allegation that Ms. Andrews engaged in written hostile conduct toward another faculty member. The Defendants deny that Ms. Andrews had any input into the decision to fire the Plaintiff. However, any documentation in Ms. Andrews' file concerning the incident of hostile conduct referenced by the Plaintiff must be produced. This is the same type of conduct for which Mr. Chiaradonna was fired, making Ms. Andrews a comparator.

In Document Request 30, the Plaintiff seeks all insurance policies which may provide coverage with respect to this claim. In response, the Defendant agrees to such production. If the policies have not yet been produced, the Defendant must do so.

In Document Request 37, the Plaintiff seeks the investigative files regarding any Defendant investigation into claims of discrimination or hostile work environment against any professor or administrator from 2000 to the present. The Defendant objects that this request is overly broad and is not limited to the Plaintiff.

We believe that the documentation that we discussed in addressing Interrogatory 8, the personnel files of the comparators, is relevant to this document request. However, Interrogatory 8 addressed only people who had been disciplined or terminated for, among other things, creating a hostile work environment. The Defendant must also produce the investigative

files for complaints of creating a hostile work environment that did not result in discipline or termination.<sup>2</sup> After all, it would be a relevant piece of evidence if all the hostile work environment claims brought against women were determined to be unfounded.

Finally, in Document Request 39, the Plaintiff seeks all minutes taken at administrator meetings from 2000 to the present. The Defendant denied that any minutes were taken. The Plaintiff has revised the request to include any notes, emails, or writings taken at or as a result of the senior staff meetings and has advised the court that he will make specific requests for these documents during depositions. We, therefore, decline to address this request.

An appropriate Order follows.

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<sup>2</sup>Although the Request is for the investigations of claims of discrimination and creating a hostile work environment, in his Motion, the Plaintiff limits the request to claims of creating a hostile work environment. (Motion, at 19).

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**ORDER**

AND NOW, this 11<sup>th</sup> day of December, 2006, upon consideration of the Plaintiff's Motion to Compel (Doc. 9), the response, reply, and for the reasons stated in the accompanying Memorandum, IT IS HEREBY ORDERED that the Motion is GRANTED IN PART and DENIED IN PART. The Defendant shall supplement his discovery responses to Interrogatories 4, 6, 7, 8, 9, and 16, and Requests for Production of Documents 7, 13, 15, 19, 20, 26, 30, 33, 34, and 37, **only** to the extent discussed in the accompanying Memorandum. The Defendant shall provide such supplement within ten days of the entry of this Order.

The Motion is moot with respect to the lack of Verification and Document Requests 14 and 39 because the Defendant has either produced the requested documentation or the Plaintiff is obtaining the documentation through a different source.

BY THE COURT:

/s/Jacob P. Hart

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JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE

