

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

DR. LESLIE SALKIN, et al. : CIVIL ACTION
:
v. :
:
TEMPLE UNIVERSITY, et al. : NO. 05-6579

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: April 18, 2007

In these consolidated actions, Dr. Leslie M. Salkin, Dr. Alan M. Stark, Dr. Kenneth G. Boberick, and Dr. Allen F. Fielding, who all are or were tenured professors in dentistry at Temple University, have sued the university (“Temple”), and individual defendants Dr. Michael Pliskin, Dr. Daniel Boston and Dean Martin Tansey, for age discrimination, under the ADEA, 29 U.S.C. § § 621 *et seq.*, and the Pennsylvania Human Relations Act. Dr. Stark has also alleged discrimination on the basis of disability, under the ADA, 42 U.S.C. § § 12101.

Temple has filed a motion seeking a protective order with regard to certain requests for production of documents served upon it by the Plaintiffs, and to preclude the depositions of Dr. Ivan Lugo, and his administrative assistant. As set forth below, Temple’s motion will be granted in part and denied in part.

I. Relevant Law

The Federal Rules of Civil Procedure are liberal with respect to discovery, permitting the requesting party to obtain even inadmissible material, as long as it is relevant to the claim or defense of any party, unprivileged, and reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1).

The federal rules permit a court to limit discovery where “the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more

convenient, less burdensome, or less expensive. Fed. R. Civ. Pr. 26(b)(2). A court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Fed. R. Civ. Pr. 26(c).

II. Discussion

A. Request No. 5

For the years from September 10, 2004 until January 1, 2007, provide the entire production of written reports and oral reports from the Board of Visitors (“BV-TUSoD”) from the date of its inception in 2003 or 2004 by the Temple University Board of Trustees under authority granted from Policy number 07.60.01.

(a) Provide a complete listing of all members of the BV-TUSoD from its inception to 12/30/06 with titles of each member included. Since the inception of the BV-TUSoD, the term of some members would have expired, please provide the information and identification of new membership citing whom they are replacements for and who nominated them for that role of new Board member. When identifying all membership, past and present, please list their names, and professional occupations along with their home and business addresses.

(b) Provide the actual budget for each year since the BV-TUSoD has been created and indicate the source of such funding for each year of its operation.

(c) Provide full and complete copies of any and all written reports prepared, authored or reviewed by the BV-TUSoD.

(d) Provide documentation detailing all interviews and meetings with the student body and the faculty and were documented [*sic*] by, or for use by, the BV-TUSoD itself, or the Office of the Dean.

(e) Since the inception of the BV-TUSoD, provide the date, time, location and attendance record of each BV member for every meeting scheduled by the BV-TUSoD (or scheduled by the Office of the Dean). Provide all documents that were produced by the BV-TUSoD from its inception until 12/30/06.

Fortunately, Plaintiffs have agreed in their response to Temple’s motion that they need only reports prepared by the Board of Visitors between the years 2001 and 2006, which were submitted to Dean Tansy, or his designee, addressing recommendations regarding the School of

Dentistry. As explained by the parties, the Board of Visitors is an advisory panel of outside experts which provides academic oversight of the School of Dentistry.

Temple argues that the Board has not been implicated in any of the consolidated complaints, nor was it involved in any way with any employment decision with regard to any plaintiff. Nevertheless, it is possible that the Board made some recommendation or observation which would reflect Plaintiffs' claim that the School of Dentistry planned to replace all senior, tenured faculty with younger, non-tenured Clinical Education Technicians ("CET"s).

Therefore, I will direct Temple to comply with this request, as limited in the Plaintiffs' response. I will additionally limit the production to only reports, or portions of reports concerning (a) any individual plaintiff; (b) advice or observations regarding the retention, status, or duties of tenured faculty; (c) advice or observations regarding the hiring or use of CETs; or (d) age of faculty in any respect.

B. Requests No. 7 and 13

Plaintiffs agreed in their response that they do not oppose Temple's motion with regard to these Interrogatories or their subparts.

C. Request No. 14

For the years 1996 through and including fiscal year 2006, provide all profit and loss statements for the TUSoD. Indicate the method used for accounting and the person(s) responsible for the data provision to the accounting firm(s).

In their response, Plaintiffs have limited their request to the years 1998 through 2003, inclusive. Temple has simply stated that the request is "entirely irrelevant", with no further discussion. It is apparent, however, that this financial information is likely to be relevant to any argument by Temple that its actions with respect to Plaintiffs were motivated by financial need,

rather than by animus on the basis of age or disability. For that reason, I will direct Temple to respond to this request as limited by Plaintiffs in their response.

D. Request No. 17

As this request, with its subparts, is quite lengthy, I will not reproduce it. It asks for detailed information as to the management of Temple University's Ryan White Care Clinic, which provides dental treatment to HIV-positive individuals. More specifically, it requests information regarding work performed at the clinic by Dr. Ivan Lugo, including his hours billed and clients treated. Finally, it seeks detailed information regarding work by Dr. Lugo which was funded by the Ryan White Grant or the Robert Wood Johnson Grants.

In their response, Plaintiffs limit their request to information for only the year 1999. They argue that this information could shed light on whether and how the School of Dentistry became unable to afford to maintain tenured faculty. They also seem to suggest that Plaintiffs may have been encouraged to leave to keep them from discovering Dr. Lugo's misdeeds: "Anything improper about the Ryan White Grant funding and reimbursement would affect the behaviors of the Dean and his behavior toward the senior tenured faculty." Response at page 10.

This seems to be a very attenuated and dubious connection between this case and the information requested. Dr. Lugo is not even a defendant in this case. Whether Dr. Lugo is unimpeachable, or the most larcenous figure in the history of Philadelphia, his work practices are irrelevant to whether Plaintiffs were the subject of disparate treatment by their employer on the basis of age or disability. Accordingly, I will not require Temple to respond to this request. I will also grant Temple's request to preclude Plaintiffs from inquiring in discovery into the management of the Ryan White Clinic or its billing practices.

E. Request No. 20

In 2003 or 2004, Dr. Laurie MacPhail, Professor (awarded the Rosenthal Endowed Chair), took over management responsibility from Dr. Lugo for the Ryan White Care Clinic work and grant. Soon after her appointment, she drafted an official report to the Office of the Dean concerning Dr. Lugo's management of the Ryan White Care Clinic.

Provide every report and documentation from Laurie MacPhail addressing problems that she documented that identified any problems including funding and payment irregularities. Provide any and all documents authored or approved by Laurie McPhail concerning the Ryan White Care Clinic upon her assuming management from Dr. Lugo.

As discussed above, Plaintiffs have not made a convincing showing that irregularities, or the lack thereof, in the running of the Ryan White Care Clinic are relevant to their case within the meaning of Federal Rule 26. For that reason, I will not compel Temple to comply with this request.

F. The Depositions

As must be obvious from the above, I will not permit the Plaintiffs to depose Dr. Lugo or his administrative assistant on the subject of the Ryan White Clinic, or the use of the grants which fund it. Plaintiffs also maintain, however, that Dr. Lugo's deposition is likely to lead to the discovery of relevant material with respect to recruitment of the CETs from Latin America who, according to Plaintiffs, are eventually to replace all tenured faculty at the School of Dentistry.

It is not precisely clear how this alleged plan to replace tenured faculty with CETs jibes with Plaintiffs' claims of age discrimination. Assuming that Plaintiffs are building a coherent theory in this regard, however, I am still not convinced that Dr. Lugo's deposition is necessary. Plaintiffs maintain that Dr. Lugo is the "chief recruiter" for CET personnel, "responsible solely to

Dean Tansy in this regard.” However, they have provided no evidence to show that Dr. Lugo fills this role. I cannot presume it from the Plaintiffs’ assertion that Dr. Lugo is from Puerto Rico and attends many Hispanic dental conferences. In any event, since Dr. Lugo is “answerable to Dean Tansey”, the information Plaintiffs hope to obtain from Dr. Lugo is likely to be available from the Dean.

I am reluctant to involve a non-party in this litigation where there has been no real showing that he knows any relevant facts. I will, therefore, preclude Plaintiffs from deposing Dr. Lugo or his administrative assistant. This ruling is subject to reconsideration if other discovery reveals that Dr. Lugo is uniquely knowledgeable about the School of Dentistry’s use of CETs.

In light of the foregoing I now enter the following:

ORDER

AND NOW, this 18th day of April, 2007, upon consideration of Defendant Temple University’s Motion for a Protective Order, docketed in this case as Document 28, and Plaintiffs’ Response thereto, it is hereby ORDERED that the motion is GRANTED IN PART AND DENIED IN PART:

(1) Temple is directed to respond to Plaintiffs’ Request No. 5, as limited in this Opinion, within two weeks of the date of this Order;

(2) Temple is directed to respond to Plaintiffs’ Request No. 14, as limited in this Opinion, within two weeks of the date of this Order;

(3) The Motion is otherwise GRANTED.

(4) It is further ORDERED that Plaintiffs are precluded from inquiring into the management of the Ryan White Clinic or payment or billing of patients.

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE