

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

BARRY YOUNG,

Plaintiff,

v.

SCHOOL DISTRICT OF
PHILADELPHIA,

Defendant.

CIVIL ACTION

No. 06-4485

MEMORANDUM/ORDER

August 10, 2007,

Plaintiff Barry Young has filed a pro se complaint against defendant School District of Philadelphia (“the school district”) alleging, *inter alia*, “harassment . . . discrimination [and] . . . retaliation.” Compl. ¶ 3. Considering the complaint together with Young’s previous dual-filed charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) and Pennsylvania Human Relations Commission (“PHRC”), it appears that Young’s complaint states a claim under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.*¹ Currently before the court is the school district’s motion to dismiss Young’s complaint in part. *See* Def.’s Mot.

¹ The parties’ filings in this case so far are consistent with the assumption that Young is proceeding under Title VII.

Dismiss (Docket No. 14). The school district claims that certain claims presented in the complaint may not be considered by this court because Young has not exhausted administrative remedies as to those claims.

There is no dispute that (1) Young dual-filed a charge of discrimination with the EEOC and PHRC on February 1, 2006; and (2) Young received a right-to-sue letter from the EEOC on August 16, 2006. Def.'s Mot. Dismiss ¶¶ 1, 2. However, the school district contends that “[i]n his complaint, the Plaintiff alleges new facts and theories of alleged discrimination (i.e. ‘Harassment’ and ‘Retaliation’) which were never properly included in his original February 1, 2006 charge with the [EEOC and] PHRC.” Def.'s Mot. Dismiss ¶ 4. The school district argues that, because Young failed to exhaust his administrative remedies as to his claims of retaliation and harassment, these claims therefore “must be dismissed as a matter of law.” Def.'s Mot. Dismiss ¶ 6.

In response, Young claims that he amended his EEOC/PHRC charge on June 28, 2006 to include his allegations of harassment and retaliation, and that he was told by EEOC personnel that the determination he received would apply to both his original and amended charges. Therefore, he contends that the August 16, 2006 right-to-sue letter encompasses his claims of retaliation and harassment, as well as his claim of discrimination. However, Young states that he is unable to fully document his account of the administrative proceedings because the EEOC has lost (or, at least, misplaced) its records of his June 28, 2006 amendment.

In support of this last contention, Young has submitted a letter on EEOC

letterhead, signed by Joan D. Gmitter, “Charge Receipt Supervisor,” which states that:

We are unable to locate either the charge file for the referenced charge or the questionnaire that you completed for the referenced inquiry, which may have been filed in the charge file. We have made a diligent search for both. The documents that I have previously sent you establishing that you were in the office are all that I am able to locate.

I apologize for any inconvenience.

Gmitter letter of June 29, 2007 (Docket No. 21). In addition, Young has provided what appears to be a copy of a visitor sign-in sheet (presumably from the EEOC’s office) dated “6/28/06” and showing that “Barry Young” signed in at “1:30 p.m.” for the purpose of “attach[ing] Amendment to complaint.” Gmitter letter (attachment one).²

At the outset, I note that the school district’s motion should be considered as one for summary judgment under Federal Rule of Civil Procedure 56(b), rather than as a motion to dismiss under Rule 12(b)(6), because the school district relies on “matters outside the pleading,” namely, the EEOC/PHRC charge. Fed. R. Civ. P. 12(b) (providing that a motion to dismiss which requires consideration of “matters outside the pleading . . . shall be treated as [a motion] for summary judgment and disposed of as provided in Rule 56”); *see also Robinson v. Dalton*, 107 F.3d 1018, 1021–22 (3d Cir. 1997) (stating that, because requirement of administrative exhaustion is not jurisdictional, a district court cannot consider matters outside of the pleading on a motion to dismiss for failure to exhaust administrative remedies). A motion for summary judgment will be granted if the

² Young also submitted a second, similar document marked “WALK-IN . . . CONTROL LOG” and bearing the name of Joan Gmitter. *See* Gmitter letter (attachment two).

moving party shows that “no genuine issue of material fact exists for resolution at trial and the moving party is entitled to judgment as a matter of law.” *Gordon v. Lewistown Hosp.*, 423 F.3d 184, 207 (3d Cir. 2005); *see also* Fed. R. Civ. P. 56(c).

It is true that, in most cases, a Title VII suit is precluded if the plaintiff has not exhausted his or her administrative remedies. *See Robinson*, 107 F.3d at 1021 (“It is a basic tenet of administrative law that a plaintiff must exhaust all required administrative remedies before bringing a claim for judicial relief.”). However, exhaustion of administrative remedies in a Title VII case does not require an exact correspondence between the face of the EEOC charge and the face of the district court complaint. Rather, “[t]he relevant test in determining whether [Young] was required to exhaust h[is] administrative remedies . . . is whether the acts alleged in the subsequent Title VII suit are fairly within the scope of the prior EEOC complaint, or the investigation arising therefrom.” *Antol v. Perry*, 82 F.3d 1291, 1296 (3d Cir. 1996) (internal quotation marks omitted).

At this point, I find it premature to determine whether the “acts alleged” in Young’s complaint are “fairly within the scope of [his original] . . . EEOC complaint, or the investigation arising therefrom.” *Id.* Discovery in this case is in the early stages, and it appears that further factual development may clarify whether Young’s claims of harassment and retaliation likely would have been encompassed by the EEOC investigation of his charge. In addition, there appears to be some evidence that Young undertook to amend his EEOC charge—in order, according to Young, to add claims of

harassment and retaliation. With the record in this posture, it suffices to say that the school district has not met its burden to show that it is entitled to judgment as a matter of law.

Accordingly, it is hereby **ORDERED** that the defendant's Motion to Dismiss (Docket No. 14)—which, for the reasons stated above, is treated as a motion for summary judgment—is **DENIED**.

BY THE COURT:

/s/ Louis H. Pollak

Pollak, J.