

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

WILLIAM HOUSTON,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 03-3494
	:	
EASTON AREA SCHOOL DISTRICT,	:	
	:	
Defendant.	:	

HENRY S. PERKIN,
UNITED STATES MAGISTRATE JUDGE

October 22, 2008

AMENDED MEMORANDUM¹

Presently before this Court is Plaintiff's Motion to Reconsider the October 3, 2005 Order of the Honorable Arnold C. Rapoport partially granting Defendant's Motion in Limine. Based on the following, the Motion will be DENIED.

I. BACKGROUND.

Because the factual background of this case is known to the parties, I will not reproduce the full account here, but rather incorporate the description set forth in the October 3,

¹The original Memorandum and Order deciding this Motion was issued on October 8, 2008. The second full sentence in the original Memorandum issued on October 8, 2008 read, "Based on the following, the Motion will be partially granted." Following review of that Memorandum, an Order was entered pursuant to Federal Rule of Civil Procedure 60(a), correcting the second full sentence in the Memorandum to be consistent with the analysis and discussion of the Motion and the October 8, 2008 Order accompanying the Memorandum. This Amended Memorandum contains the corrected sentence.

The original October 8, 2008 Order which accompanied the original Memorandum was correct, therefore no Order shall accompany the instant Amended Memorandum.

2005 Memorandum addressing, *inter alia*, Defendant's Motion in Limine.

William Houston ("Mr. Houston"), an African-American, retired from his position as an EASD cabinet-level administrator effective July 1998, following thirty-four years as a teacher and administrator. Mr. Houston's final EASD position was as a cabinet member, or advisor to the Superintendent. Cabinet members' duties included oversight of major departments, and they report directly to the Superintendent. Def.'s Mot. in Limine, Ex. 4, p. 10. Upon Mr. Houston's retirement, he was paid twenty-five percent of the value of his unused sick days. In August of 2001, Mr. Houston read a local newspaper article reporting that three Caucasian cabinet-level administrators with whom he had worked were paid one hundred percent of the value of their unused sick days at retirement. Mr. Houston filed suit in this Court on June 5, 2003, averring at paragraphs 6 through 16 of his Complaint that:

6. At all times herein relevant, Defendant significantly affected or controlled Plaintiff's access to employment at Defendant's place of business.

7. On or about 1964 Defendant hired Plaintiff to work as a teacher.

8. At all times herein relevant, Plaintiff worked diligently and professionally with an excellent work, performance and attendance record.

9. During the course of Plaintiff's

employment with Defendant, Plaintiff earned various promotions due to his excellent work performance and post-graduate degree and certificate.

10. Plaintiff earned a possession [sic] in management in 1976 before becoming Defendant's first African American Principal in 1995. By the time of Plaintiff's retirement in July, 1998, Plaintiff had earned the position of Cabinet Member for Defendant Easton Area School District.

11. Plaintiff is an African American.

12. At the time of Plaintiff's retirement, Defendant paid Plaintiff One Hundred (100%) percent of his vacation days and Twenty-Five (25%) percent of his accrued sick days.

13. On August 14, 2001, Plaintiff learned for the first time that Defendant intentionally purposefully implemented a secret, undisclosed racially discriminatory policy for Cabinet level management upon their retirement, namely, white Cabinet members received One Hundred (100%) percent of accrued vacation days at retirement and One Hundred (100%) percent of accrued sick days, but African American Cabinet members only received Twenty-Five (25%) percent of accrued sick days.

14. On August 14, 2001, Plaintiff learned and discovered for the first time about the discriminatory retirement policy, namely, that upon retirement, Defendant intentionally discriminatorily paid white Cabinet level management One Hundred (100%) percent of accrued sick days and paid African American Cabinet level management Twenty-Five (25%) percent of accrued sick days, and Defendant hid the racially discriminating policy from Plaintiff and the public until Plaintiff learned it on August 14, 2001.

15. As a direct and proximate result of

Defendant's invidiously discriminatory actions, as aforesaid, Plaintiff has suffered damages due to loss of past income, benefits and commissions, and/or earnings in excess of Seventy-Five Thousand (\$75,000.00) Dollars.

16. As a direct and proximate result of Defendant's invidiously discriminatory actions, as aforesaid, Plaintiff suffered mental anxiety, anguish, distress, humiliation, and sleeplessness which damages exceed Seventy-Five Thousand (\$75,000.00) Dollars.

Compl., pp. 2-3. The case was originally assigned to the docket of the Honorable James Knoll Gardner. On February 10, 2004, the parties consented to referral of the case to the Honorable Arnold C. Rapoport, to conduct all further proceedings and the entry of judgment pursuant to 28 U.S.C. section 636(c) and Federal Rule of Civil Procedure 73.

Defendant filed a Motion for Summary Judgment on June 15, 2004. The case was placed in suspense on September 16, 2004, and was taken out of suspense on November 4, 2004. Following completion of discovery, Defendant filed a Motion for Summary Judgment seeking dismissal of this case for essentially the same reasons provided in the instant Motion. The Court denied Defendant's Motion for Summary Judgment by detailed Order on November 4, 2004, stating specifically that:

This Court finds that the pleadings, depositions, and affidavits demonstrate that the issue of discriminatory intent is a genuine issues [sic] of material fact to be decided by a jury.

Additionally, the outcome of this case

is largely determined by whether or not the benefits received by the five named individuals are appropriate comparisons to the benefits received by Plaintiff. If it is found that Karl Hettel, William Pfeffer, Louis Ciccarelli, Joseph Piazza, and Roger Wrazien should all have received the same treatment as Plaintiff due to their collective status as "cabinet level" personnel, then Plaintiff may be entitled to some compensation, because he did not receive the same benefits at retirement that the five named individuals received. However, the pleadings, depositions, and affidavits show that the employment status of these five individuals was not the same as Plaintiff's. Specifically, Karl Hettel, William Pfeffer, Louis Ciccarelli, and Joseph Piazza, were not Act 93 employees, while Plaintiff was an Act 93 employee. Ordinarily, the question whether two employees are similarly situated is a question of fact for the jury. Thus, the degree to which benefits received by the five named individuals should be compared to the benefits received by Plaintiff is a decision to be made by the trier of fact.

See Dkt. No. 30, n.1. Defendant filed a Motion in Limine on June 1, 2005. The Motion in Limine closely mirrored the Motion for Summary Judgment, but the Motion in Limine also included attachments, specifically Defendant's 1998-2003 Compensation Plan, which was not previously submitted to the Court.

In the Motion, Defendant moved to exclude three different categories of evidence: (1) evidence regarding the retirement packages of four Caucasian employees, Roger Wrazien, Joseph Piazza, Louis Ciccarelli, and Karl Hettel; (2) evidence of "secret code" language allegedly contained in the retirement letters of Roger Wrazien and Louis Ciccarelli; and (3) evidence

regarding alleged "historical inequities" in pay and promotion offered by Plaintiff to support his claim. On October 3, 2005, the Motion in Limine was partially granted with respect to evidence regarding the retirement packages of Joseph Piazza, Louis Ciccarelli, and Karl Hettel because those individuals held the respective positions of Superintendent, Business Manager and Personnel Director at the time they retired. Due to their job positions, these three men were specifically excluded from "Act 93," the section of the Public School Code which governs compensation plans for school administrators within the Commonwealth of Pennsylvania. The Court found, however, that the compensation or salary and fringe benefits of both Plaintiff and Roger Wrazien, as cabinet-level administrators at the time of their retirements, was governed by Act 93. Thus, the Court opined that Roger Wrazien was the only appropriate comparator to Plaintiff.

Defendants next moved to exclude evidence of "secret code" language allegedly contained in the retirement letters of Louis Ciccarelli and Roger Wrazien. Evidence of Louis Ciccarelli's retirement was excluded because he was the Business Manager and his compensation was not under the purview of Act 93, therefore the Court granted the Motion and ordered the exclusion of alleged "secret code" language in Louis Ciccarelli's resignation letter. Defendant's Motion in Limine was denied with

respect to the contents of Roger Wrazien's resignation letter.

Lastly, Defendants moved to exclude evidence regarding alleged "historical inequities" in pay and promotion offered by Plaintiff to support his disparate treatment claim. The Court quoted Plaintiff's argument regarding this evidence at pages 11 through 13 of the Memorandum.² The Court held that references to "historical inequities" which may or may not have occurred during Plaintiff's tenure were precluded as time-barred because the Complaint only discusses discrimination at the time of his retirement. The Court also held that Plaintiff's allegations that Defendant discriminated against him with respect to pay for approximately twenty years should have triggered his awareness of his need to assert his rights, and once he failed to institute suit within the applicable statutory period for inadequate pay, he lost his ability to resurrect these claims by characterizing them as a continuing violation. The Motion in Limine was granted with respect to evidence regarding alleged "historical inequities."

On January 24, 2006, the case was again placed in

²In the instant Motion for Reconsideration, Plaintiff's counsel twice improperly cites this information as "the trial court properly summarized Plaintiff's evidence of 'historical inequities' as it affected him and was corroborated by independent witnesses." Mot. Reconsideration, pp. 5, 8-9. It was not a summary of evidence by the trial court, but rather was a direct quotation of Plaintiff's argument in Response to the Motion in Limine.

suspense pending the conclusion of Wrazien v. Easton Area School District in the Court of Common Pleas of Northampton County. On March 11, 2008, the case was taken out of suspense and was referred to arbitration. On July 24, 2008, an arbitration award was entered, and on July 29, 2008, Plaintiff filed a request for a trial de novo. The parties consented to a bench trial, and on July 31, 2008, Chief Judge Harvey J. Bartle, III reassigned the case to my docket. On August 6, 2008, almost three years after entry of the October 3, 2005 Order, Plaintiff filed a Motion for Reconsideration of the Order on the Motion in Limine. On August 14, 2008, Defendant filed its Response. A bench trial is scheduled for October 15, 2008.

II. STANDARD OF REVIEW.

Federal Rule of Civil Procedure 59 and Local Rule of Civil Procedure 7.1 permit a party to move the court for reconsideration within 10 days of entry of judgment.³ Fed. R. Civ. P. 59(e); E.D. Pa. Civ. R. 7.1(g). "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v.

³Local Civil Rule 7.1(g) states:

(g) Motions for reconsideration or reargument shall be served and filed within ten (10) days after the entry of judgment, order or decree concerned.

E.D. Local R. 7.1 (g).

Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171 (1986). Federal courts have a strong interest in the finality of judgments, so motions for reconsideration should be sparingly granted. Continental Cas. Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995). Courts will reconsider an issue "when there has been an intervening change in the controlling law, when new evidence has become available, or when there is a need to correct a clear error or prevent manifest injustice." Max's Seafood v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999); Gen. Instrument Corp. v. Nu-Teck Elecs., 3 F. Supp.2d 602, 606 (E.D. Pa. 1998), aff'd, 197 F.3d 83 (3d Cir. 1999); NL Indus., Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995). Mere dissatisfaction with the Court's ruling is not a proper basis for reconsideration. Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993). "A motion for reconsideration is . . . not properly grounded on a request that a court rethink a decision it has already made." Tobin v. General Elec. Co., No. 95-4003, 1998 WL 31875, at *1 (E.D. Pa. Jan. 27, 1998). However, "reargument may be appropriate where the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." Johnson v. Diamond State Port Corp., 50 Fed.Appx. 554, 560 (3d Cir. 2002)(not precedential)

(quoting Brambles USA, Inc. v. Blocker, 735 F. Supp. 1239, 1241 (D. Del. 1990)(internal quotations and citations omitted)).

III. DISCUSSION.

Despite Federal Rule 59(e) and Local Rule 7.1(g), the parties ask this Court to entertain this Motion on its merits, therefore the obvious untimeliness of this Motion by three years will not be discussed.

In support of his Motion, Plaintiff makes two arguments that the October 3, 2005 Order should be vacated to the extent that it "precludes the finder of fact from hearing and evaluating evidence" that: (1) "four Caucasian, [sic] Ciccarelli, Hettel, and Piazza received payment for 100% of their accrued sick days upon retirement;" and (2) "historical inequities directed against Plaintiff and other black administrators by the Defendant, Easton Area School District." Mot., pp. 6-7.

A. Whether Reconsideration is Warranted to Permit Introduction of Evidence of Alleged "Historic Inequities."

Plaintiff first contends that the Court erred in holding that evidence of alleged "historic inequities" should not "be introduced before the fact finder." Br. in Supp. Mot., p. 10. As stated in footnote 1, Plaintiff's counsel directly quotes from the Court's October 3 2005 Memorandum, but twice improperly cites this information as "the trial court properly summarized Plaintiff's evidence of 'historical inequities' as it affected

him and was corroborated by independent witnesses." Mot. Reconsideration, pp. 5, 8-9. It was not a summary of evidence by the trial court, but rather was a direct quotation of Plaintiff's argument in Response to the Motion in Limine. In his brief in support of the Motion, Plaintiff first argues that:

The evidence of historical inequities was important to understand how superintendent Piazza, with the concurrence of Meck, could give three white cabinet employees 100% of their sick days, but exclude the one and only black cabinet official, namely, that is how things were done at the Easton Area School District. The historical inequities had present day impact on Plaintiff in that it affected his salary level at time of retirement, thus constituting a continuing act of discrimination. Despite the fact that superintendent recognized the present day impact of "historical inequities", the Defendant never corrected the discrimination. The fact that Plaintiff was admittedly targeted for discrimination in the past by the same employer because of his race is always relevant in a racial discrimination claim.

Br. in Supp. Mot. at 9. Plaintiff then quotes a portion of the legal standard section of a case recently decided by this Court, Smith v. City of Easton, Civ. A. No. 07-3781, 2008 WL 2704570, at *5 (E.D. Pa. July 7, 2008), in which the Plaintiff's civil rights and Title VII failure to promote case was dismissed by this Court on summary judgment.⁴ Plaintiff contends here that "the

⁴Plaintiff's counsel in the instant action also represented the Plaintiff in Smith.

discrimination against Plaintiff because of his race was documents, corroborated, long standing and with a present day impact." Br. in Supp. Mot. at 10.

In response, Defendant correctly argues that Plaintiff reiterates his version of the record and re-argues that alleged "historical inequities" occurred. Defendant also notes that Plaintiff cites Smith v. City of Easton for the proposition that "evidence of past discrimination by the same employer, to the same employee, or similarly situated employers, is one way of proving race discrimination." Resp. to Mot., pp. 4-5 (quoting Id. at 9). Defendant next notes that Plaintiff fails to mention what was repeatedly pointed out in the Motion in Limine, that even if Plaintiff could point to some probative evidence that "historical inequities" existed, his Motion fails because (1) the "historical inequities" he is alleging took place more than thirty years ago and the statute of limitations has long passed; and (2) his complaint alleges only discrimination at the time of Plaintiff's retirement with regard to payment of sick days. Defendant correctly notes that a Motion for Reconsideration is not the appropriate mechanism "to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided." Johnson, 50 Fed. Appx. at 560 (3d Cir. 2002)(not precedential)(quoting Brambles USA, Inc., 735 F. Supp. at 1240). Plaintiff states that "[t]he historical inequities had

present day impact on Plaintiff in that it affected his salary level at time of retirement, thus constituting a continuing act of discrimination." Br. in Supp. Mot. at 9. By the language of this sentence, it appears that Plaintiff is attempting to do precisely what the Third Circuit stated was inappropriate in a motion for reconsideration. Thus, Plaintiff's instant Motion is denied with respect to references to 'historical inequities' which may or may not have occurred during Plaintiff's tenure.

B. Whether Reconsideration is Warranted to Reexamine the Court's Decision on Comparators.

Plaintiff's next argument is that the Court made a "fundamental error" in excluding evidence regarding the retirement packages of three Caucasian employees, Joseph Piazza, Louis Ciccarelli, and Karl Hettel. On October 3, 2005, the Motion in Limine was partially granted with respect to evidence regarding the retirement packages of Joseph Piazza, Louis Ciccarelli, and Karl Hettel because those individuals held the respective positions of Superintendent, Business Manager and Personnel Director at the time they retired. Due to their job positions, these three men were specifically excluded from "Act 93," the section of the Public School Code which governs compensation plans for school administrators within the Commonwealth of Pennsylvania. The Court found, however, that the compensation or salary and fringe benefits of both Plaintiff and Roger Wrazien, who were both cabinet-level administrators at the

time of their retirements, was governed by Act 93. Thus, the Court opined that Roger Wrazien was the only appropriate comparator to Plaintiff.

Plaintiff argues that the Court wholly ignored the testimony of Michael Doyle, a former President of the School Board, that the decision to pay some individuals 100% of their sick days came from Joseph Piazza, a former Superintendent and not Bernadette Meck, the Superintendent when Plaintiff retired. According to Plaintiff, this means that the appropriate comparators are Joseph Piazza, Karl Hettel, Louis Ciccarelli and Roger Wrazien, not just Roger Wrazien. Br. in Supp. Mot. at 10-11. Plaintiff later argues, however, that "Bernadette Meck and the white Cabinet officials had a private arrangement, despite the written policy under Act 93 that the white cabinet officials would receive 100% of accrued sick days." Id. at 13. Plaintiff cites no deposition testimony or any other evidence to support this statement.

Defendant correctly responds that regardless of who made the decision to award Joseph Piazza, Karl Hettel and Louis Ciccarelli 100% of their unused sick leave at retirement, the basis of the October 3, 2005 Order that none were appropriate comparators to Plaintiff is because the Pennsylvania Legislature specifically set forth in the Pennsylvania Code, and the School Board reiterated in their Act 93 plan, that Superintendents,

Business Managers and Personnel Directors are excluded from the Act 93 bargaining unit. 24 P.S. §11-1164; EASD Act 93 Plan. For this reason, they cannot be appropriate comparators under Tucker v. Merck & Co., 2004 U.S. Dist. Lexis 11222 (E.D. Pa. 2004), aff'd, 2005 U.S. App. LEXIS 9087 (3d Cir. 2005)(to be similarly situated, a plaintiff must prove that "all of the relevant aspects of his employment situation are nearly identical to those of the . . . employee whom he alleges were treated more favorably."). Defendant also points to Joseph Piazza's deposition testimony where he makes clear that he had nothing to do with decisions on the retirements of administrators who retired two years after he did. (Piazza Dep. at 13.) Based upon a review of the Motion and the arguments presented by each party, Plaintiff fails to meet the elements necessary for reconsideration of the October 3, 2005 decision excluding evidence about the retirements of Joseph Piazza, Karl Hettel, Louis Ciccarelli.

IV. CONCLUSION.

Plaintiff fails to meet any of the elements necessary for reconsideration of this Court's Order.