

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

THOMAS ROCHE., : CIVIL ACTION
Plaintiff, :
 : NO. 97-2753
v. :
 :
SUPERVALU, INC. and :
TEAMSTERS LOCAL :
UNION NO. 429 :
Defendants. :

M E M O R A N D U M

BUCKWALTER, J.

July 29, 1998

Plaintiff commenced this action, alleging violations of the Americans with Disabilities Act, 42 U.S.C. § 12111 et seq. ("ADA"), on April 22, 1997 and initially named his employer Supervalu, Inc. as the sole defendant. On April 23, 1998, Plaintiff filed a second amended complaint in which he added as a defendant the Teamsters Local Union No. 429 ("Union"). Presently, the Union seeks summary judgment, contending that Plaintiff's failure to name it as a defendant in his original EEOC complaint divests this Court of jurisdiction to review Plaintiff's present claims against it.

The ADA requires a complainant to file a charge of discrimination with the EEOC prior to bringing suit against a party in district court. 42 U.S.C. §§ 2000e-5(f)(1), 12117. The filing of an administrative charge serves two purposes; it gives the charged party notice of his possible violations of federal

law and provides an avenue for voluntary compliance. Glus v. G.C. Murphy Co., 562 F.2d 880, 885 (3d Cir. 1977). The Third Circuit, however, has recognized exceptions to this requirement. Id. The Court in Glus enumerated four factors to be considered in determining whether a claim may be asserted against a party not named as a respondent in the EEOC charge: "1) whether the role of the unnamed party could through reasonable effort by the complainant be ascertained at the time of the filing of the EEOC complaint; 2) whether, under the circumstances, the interests of a named party are so similar as the unnamed party's that for the purpose of obtaining voluntary conciliation and compliance it would be unnecessary to include the unnamed party in the EEOC proceedings; 3) whether its absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party and 4) whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to through the named party." Glus, 562 F.2d at 888. More recently, the Third Circuit has streamlined this inquiry to a two factor test -- where the unnamed party has received notice and where there is a shared commonality of interest between the named and the unnamed parties failure to name a defendant in an EEOC charge does not divest a federal court of jurisdiction. See Schafer v. Board of Public Education, 903 F.2d 243 (3d Cir. 1990)(recognizing an exception when the

unnamed party received notice and when there is a shared commonality of interest with the named party); Goodman v. Lukens Steel Co., 777 F.2d 113, 127-28 (3d Cir. 1985)(dismissing claim against individual not named in the EEOC charge absent "commonality of interest and actual notice"); See also Duffy v. Southeastern Pennsylvania Transportation Company, 1995 WL 299032 * 4 n. 4 (E.D.Pa. May 12, 1995)(explaining that recent Third Circuit decisions, while referring to the Glus factors have encapsulated them into the two factor test described in Goodman and Schafer).

Based on the facts before me, I cannot find that the Union ever received notice of Plaintiff's suit prior to the filing of Plaintiff's second amended complaint on April 23, 1998. The Union has attached the affidavit of Barry Krzyzewski, Business Agent of Teamsters Local Union No. 429 who attests to the fact that the Union never received notice of Plaintiff's EEOC or PHRA charges. Additionally, although several members of this Court have found that mention of a defendant, not named in the caption of the EEOC charge, in the body of the complaint constitutes sufficient notice to satisfy the general rule, here neither party has supplied a copy of Plaintiff's EEOC charge, thus I am unable to determine whether the Union was mentioned in the body of the complaint. See McLaughlin v. Rose Tree Media School Dist., -- F.Supp. --, 1998 WL 196394 * 5, (E.D.Pa. Apr. 22,

1998)(citations omitted). Finally, the mere fact that Defendant, Supervalu Inc., had a collective bargaining agreement with the Union is insufficient to establish a commonality of interest. See Goodman, 777 F.2d at 127-28 (holding that even though union and employer were parties to the same collective bargaining agreement, plaintiff failed to establish the necessary identity of interest between employer and the union); Schafer, 903 F.2d at 252 (finding fact that union and employer were parties to the same collective bargaining agreement insufficient to establish requisite identity of interest between defendants). Accordingly, the Union's motion for summary judgment will be granted.

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O R D E R

AND NOW, on this day of July, 1998, upon consideration of a motion for summary judgment (Dkt. No. 18) and for sanctions (Dkt. No. 19) submitted by Defendant, Teamsters Local Union No. 429 ("Union"); Plaintiff's responses (Dkt. Nos. 20 and 21); the Union's replies (Dkt. Nos. 22 and 23); and Plaintiff's sur-reply (Dkt. No. 24), it is hereby ORDERED that the Union's motion for summary judgment is **GRANTED** the Union's motion for sanctions is **DENIED**. Accordingly, the Teamsters Local Union No. 429 is **DISMISSED** as a defendant in the above captioned case.

BY THE COURT:

RONALD L. BUCKWALTER, J.