

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

Anne Delliponti	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 98-3837
	:	
Borough of Norristown, et al.	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

April 9 , 1999

Presently pending is Defendants' Partial Motion to Dismiss Plaintiff's Complaint and Plaintiff's Response in opposition thereto. Plaintiff filed the instant Complaint which states that as a result of defendants' actions, she suffered the deprivation of rights guaranteed by the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution. She has therefore alleged violations of 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986 and 29 U.S.C. § 621 et seq., and 29 U.S.C. § 206. Defendants moved to dismiss plaintiff's claims arising under 42 U.S.C. §§ 1981, 1982, 1985, 1986, 29 U.S.C. § 621 et seq., and 29 U.S.C. § 206. Defendant has also moved to dismiss all of plaintiff's claims arising prior to November 5, 1996. In her response to defendants' motion, plaintiff states that the inclusion of 29 U.S.C. § 621et seq., and 29 U.S.C. § 206 was in error and is to be disregarded. Accordingly, plaintiff's claims pursuant to 29 U.S.C. § 621et seq., and 29 U.S.C. § 206 will be marked withdrawn without prejudice. For the reasons set forth below, Defendants' motion regarding the remaining claims will be granted.

FACTS

Plaintiff alleges that in 1976 she was employed by the Borough of Norristown ("the Borough") as a secretary to the police department and joined the employees union,

AFSCME. In 1980, plaintiff was promoted to secretary to the Chief of Police of the Borough. She was subsequently promoted again, to a position as a confidential employee, and pursuant to the Borough's request terminated her membership in the union. Plaintiff alleges that in January 1991 she was given three days notification that her position was being eliminated. She appealed her termination to the Court of Common Pleas of Montgomery County which ruled that plaintiff was a civil service employee and ordered plaintiff to be reinstated with back pay. The Borough appealed to the Commonwealth Court which reversed the decision of the Court of Common Pleas. Plaintiff then appealed the matter to the Supreme Court of Pennsylvania which reversed the Commonwealth Court and reinstated the Order of the Court of Common Pleas.

Plaintiff asserts that from August through November 1996, she and her attorney attempted to resolve various issues regarding her return to work as an employee of the Borough. She maintains that a general release was executed on November 6, 1996 resolving the issue of plaintiff's lost wages. She alleges that the issues of holidays and other personal and vacation days was resolved separately and committed to by defendant Biondi.

The remainder of plaintiff's Complaint essentially alleges that upon returning to work for the Borough, plaintiff was harassed and retaliated against because she successfully litigated her claim against the Borough. Specifically, plaintiff alleges, *inter alia*, that: (1) there was initially no work space provided for her; (2) she was subsequently placed in an old ticket office; (3) she was deprived of vacation days originally promised by Defendant Biondi; (4) she was given old equipment that did not suit her needs; (5) she was the only civil service employee required to punch a time clock, and; (6) she was not connected to the police network. She maintains that the above actions constitute violations of several statutes and constitutional provisions.

DISCUSSION

A complaint will be dismissed for failure to state a claim where it appears from the face of the complaint that the plaintiff can establish no set of facts which would entitle him to relief. See Wisniewski v. Johns-Mannville Corp., 759 F.2d, 271, 273 (3d Cir. 1985). It is clear that plaintiff has not stated a claim under 42 U.S.C. §§ 1981, 1982, 1985 nor 1986 as she has not alleged any racial or class-based discrimination. In order to state a claim under any of these sections plaintiff must allege some aspect of racial or other class-based discriminatory action. Plaintiff has set forth no facts alleging a cause of action based upon either racial or class-based discrimination. To establish a claim under § 1981, a plaintiff must allege: (1) that plaintiff is a member of a racial minority; (2) defendant's intent to discriminate on the basis of race; and (3) discrimination concerning one or more of the activities enumerated in the statute. Mian v. Donaldson, Lufkin & Jenrette Securities Corp., 7 F.3d 1085, 1087 (2d Cir. 1993). Plaintiff has failed to allege any the above. Section 1982 prohibits racial discrimination in the sale, rental, inheritance and conveyance of real or personal property. Plaintiff's complaint is void of any reference to the deprivation of such rights or a racial basis for the alleged discrimination. As defendants properly state, this section does not apply to claims of employment discrimination nor harassment. In order to state civil a rights claim under § 1985, plaintiff must allege that defendants, motivated by class-based or racial discriminatory animus, conspired to deprive plaintiff of equal protection of the laws. See, Bougher v. Univ. of Pittsburgh, 882 F.2d 74, 79 (3d Cir. 1989). Furthermore, in cases such as this where a complaint fails to state a § 1985 claim, it necessarily also fails to state the derivative § 1986 claim. See, Rogin v. Bensalem Township, 616 F.2d 680, 696 (3d Cir., 1980), cert denied, 450 U.S. 1029 (1981). None of these

claims, as alleged, can survive defendants' motion to dismiss. Plaintiff's § 1983 claim, however, survives as defendants have not moved to dismiss it.

Defendants also seek to dismiss all of plaintiff's claims arising before November 5, 1996 as defendants maintain plaintiff executed a release waiving all claims arising out of her termination. Plaintiff attached a copy of the aforementioned General Release to her Complaint and it will be considered in deciding this portion of defendant's motion. See Fed.R.Civ.Proc. 12(b)(6). The General Release, executed by plaintiff with the assistance of her counsel on November 6, 1996, is both broad and comprehensive. It clearly releases and discharges the Borough from all claims, demands damages, etc., resulting from plaintiff's discharge. The General Release further states that it "...contains the entire agreement between the parties hereto..." Accordingly plaintiff's claims arising prior to November 6, 1996 must be dismissed. Nevertheless, this court reserves opinion as to whether activities occurring prior to the execution of the release are relevant to plaintiff's § 1983 claims or are relevant as background information relating to her claims of retaliation.

An appropriate order follows.

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ORDER

AND NOW, this day of April 1999, IT IS HEREBY ORDERED that:

1. Defendants' Motion to Dismiss plaintiff's claims arising under 42 U.S.C. §§ 1981, 1982, 1985 and 1986 is GRANTED, without prejudice. Plaintiff is granted leave to amend the Complaint within 10 days of the date of this Order.
2. Plaintiff's claims arising under 29 U.S.C. § 621 et seq. and 29 U.S.C. §206 are WITHDRAWN, without prejudice.
3. Defendants' Motion to Dismiss plaintiff's claims arising before November 5, 1996 is GRANTED.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.