

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

PENSION FUND FOR HOSPITAL & HEALTH : CIVIL ACTION  
CARE EMPLOYEES-PHILADELPHIA AND :  
VICINITY DISTRICT 1199C TRAINING :  
AND UPGRADING FUND, AND DISTRICT :  
1199C NATIONAL UNION OF HOSPITAL :  
AND HEALTH CARE EMPLOYEES AND :  
PARTICIPATING HEALTH EMPLOYERS JOB :  
SECURITY FUND :  
v. :  
NORTH PHILADELPHIA HEALTH SYSTEM : NO. 98-2415

**MEMORANDUM AND ORDER**

HUTTON, J.

April 21, 1999

Presently before this Court is the Defendant North Philadelphia Health System's Motion for Leave to Amend Answer to Amended Complaint (Docket No. 6) and the Plaintiffs Pension Fund for Hospital and Health Care Employees-Philadelphia and Vicinity, District 1199C Training and Upgrading Fund and District 1199C National Union of Hospital and Health Care Employees and Participating Health Employers Job Security Fund's response thereto (Docket No. 7). For the reasons stated below, the Defendant's Motion is **GRANTED**.

**I. BACKGROUND**

This is an action brought against North Philadelphia Health System (NPHS" or "Defendant") to recover delinquent contributions to employee benefit and pension funds pursuant to §

15 of the Employee Retirement Income Security Act ("ERISA"), 42 U.S.C. § 1145. Pension Fund for Hospital and Health Care Employees-Philadelphia and Vicinity, District 1199C Training and Upgrading Fund and District 1199C National Union of Hospital and Health Care Employees and participating Health Employers Job Security Fund (collectively, the "Plaintiffs") filed their original complaint in this action on May 18, 1998 and amended the complaint on July 14, 1998. The Defendant filed its answer on August 24, 1998. On November 9, 1998, the Defendant filed this motion to amend its answer to add certain affirmative defenses with respect to one of the collective bargaining units at issue. The Plaintiffs filed their response thereto on November 23, 1998.

## **II. DISCUSSION**

### **A. Standards For Leave To Amend**

Federal Rule of Civil Procedure 15(a) allows a defendant to amend its answer after it has already been filed:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading whichever period may be the longer, unless the court otherwise orders.

Fed. R. Civ. P. 15(a) (emphasis added). To explore the contours of this rule and detail when a defendant may amend his answer, the United States Supreme Court has explained that:

Rule 15(a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded.... If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--that leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). The United States Court of Appeals for the Third Circuit has interpreted these factors "to mean that 'prejudice to the non-moving party is the touchstone for the denial of an amendment.' ... In the absence of substantial or undue prejudice, denial instead must be based on bad faith or dilatory motives, truly undue or unexplained delay, repeated failures to cure the deficiency by amendments previously allowed, or futility of amendment." Lorenz v. CSX Corp., 1 F.3d 1406, 1413-14 (3d Cir. 1993). Therefore, the non-moving party must do more than merely claim prejudice. Instead, "[i]t must show that it was unfairly disadvantaged or

deprived of the opportunity to present facts or evidence which it would have offered had the ... amendments been timely." Bechtel v. Robinson, 886 F.2d 644, 652 (3d Cir. 1989); see Kiser v. General Elec. Co., 831 F.2d 423, 427-28 (3d Cir. 1987) (non-moving party has burden of demonstrating that allowing amendment will result in prejudice), cert. denied sub nom., Parker-Hannifin Corp. v. Kiser, 485 U.S. 906, 108 S.Ct. 1078, 99 L.Ed.2d 238 (1988). Mere passage of time, without more, does not require that a motion for leave to amend be denied; however, at some point, the delay will become undue, placing an unwarranted burden on the court, or prejudicial, placing an unwarranted burden on the opposing party. Adams v. Gould Inc., 739 F.2d 858, 868 (3d Cir. 1984), cert. denied, 469 U.S. 1122, 105 S.Ct. 806, 83 L.Ed.2d 799 (1985); Harle v. Edward B. O'Reilly & Assoc. Inc. Employee Health Care Plan, No. CIV.A.92-1721, 1993 WL 39319 (E.D.Pa. Jan.12, 1993). Prejudice does not result merely from a party's having to incur additional counsel fees; nor does it result from a delay in the movement of the case. Adams, 739 F.2d at 869; Harle, 1993 WL 39319, at \*2. Prejudice under Rule 15 "means undue difficulty in prosecuting [or defending] a lawsuit as a result of a change in tactics or theories on the part of the other party." Deakyne v. Commissioners of Lewes, 416 F.2d 290, 300 (3d Cir. 1990).

In addition to prejudice, futility of the amendment is a reason to deny leave to amend. Where a party opposes an amendment

on the ground of futility, leave to amend an Answer in order to assert an affirmative defense should be denied "only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient" defense. Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988).

**B. Analysis of the Defendant's Motion**

In its motion, the Defendant seeks to amend its Answer related to contributions allegedly owed by the Defendant pursuant to a collective-bargaining agreement between the Defendant and United Nurses of Pennsylvania National Union of Hospital and Health Care Employees, AFSCME, to Plaintiff Pension Fund for Hospital & Health Care Employees-Philadelphia and Vicinity to clarify its position and to reflect information learned by the Defendant since the filing of its Answer to Amended Complaint." (Def.'s Mem. at 2.) More specifically, the "Defendant seeks to amend its Answer to clarify and place Plaintiffs on notice as to the nature of its defense relating to the [the United Nurses of Pennsylvania National Union of Hospital and Health Care Employees AFSCME, AFL-CIO] UNOP unit contributions claimed in the Amended Complaint." (Id. at 4-5.) The Plaintiffs claim that the proposed amendment is futile. (Pls.' Resp. at 4.) Moreover, the Plaintiffs contend that they will be prejudiced by the Defendant's proposed amendment to its answer because the deadline for discovery is less than eight weeks

away. (Id.) Thus, the Plaintiffs assert that the Defendant's motion should be denied.

After reviewing the parties' submissions, this Court finds that the Defendant's motion is not the result of bad faith nor dilatory motive nor would it result in undue delay. In addition, this Court finds that the Plaintiffs have not demonstrated that they will be unfairly disadvantaged or deprived of the opportunity to present facts or evidence, which it would have offered had the amendments been timely. Therefore, the Court finds that the Plaintiffs have not satisfied their burden of demonstrating that they will be prejudiced if the Defendant amends its answer pursuant to Federal Rules of Civil Procedure 15(a). Furthermore, at this stage of the proceedings, this Court is unwilling to find that the amendment to the Defendant's answer would be futile or serve no legitimate purpose. Because the underlying facts and circumstances relied upon by the Defendants appear to be a proper subject of relief, it ought to be afforded an opportunity to amend its answer. See Foman, 371 U.S. at 182, 83 S.Ct. at 230.

An appropriate Order follows.

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O R D E R

AND NOW, this 21st day of April, 1999, upon consideration of the Defendant North Philadelphia Health System's Motion for Leave to Amend Answer to Amended Complaint (Docket No. 6) and the Plaintiffs Pension Fund for Hospital and Health Care Employees-Philadelphia and Vicinity, District 1199C Training and Upgrading Fund and District 1199C National Union of Hospital and Health Care Employees and Participating Health Employers Job Security Fund's response thereto (Docket No. 7), IT IS HEREBY ORDERED that the Defendant's Motion is **GRANTED**.

IT IS FURTHER ORDERED that the Defendant has fifteen (15) days from the date of this Order to file its amended answer.

BY THE COURT:

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HERBERT J. HUTTON, J.