

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

TERRY BLACK, et al. : CIVIL ACTION
v. :
THE PREMIER COMPANY and :
FRANKLIN COVEY COMPANY : NO. 01-4317

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge

September 12, 2002

Presently before the court is Plaintiffs' Motion for Leave to Amend the Complaint or, in the Alternative, Juliann Hilton's Motion to Intervene Under Fed. R. Civ. P. 24(b) (the "Motion") (Doc. No. 35). Defendants filed a brief opposing the Motion. (Doc. No. 39). For the reasons set forth below, it is respectfully recommended that the Motion be denied.¹

I. BACKGROUND

Plaintiffs filed a Complaint, on behalf of themselves and others similarly situated, against the defendants, Premier Agendas, Inc. ("Premier") and Franklin Covey Co. ("Franklin").² Generally, plaintiffs aver in their complaint that they themselves, and those similarly situated, "were subject to discrimination with respect to their religious beliefs in that they were denied the opportunity to advance in the company, had their sales territory restricted and/or reduced and/or

¹ By Report and Recommendation dated August 13, 2002, this court recommended that plaintiffs' Motion for Class Certification pursuant to Fed. R. Civ. P. 23 be denied because plaintiffs failed to satisfy Fed. R. Civ. P. 23(a)(2) and (a)(3) requiring commonality and typicality among the claims.

² As a result of a stock purchase agreement, Franklin owned Premier from March 1997 through December 2001.

were terminated by the defendants due to the fact that they did not belong to the same religious organization as did the ownership and management of the defendant companies.” (Doc. No. 1.)

On January 16, 2002, plaintiffs filed an amended complaint and, with the consent of the defendants, added three additional plaintiffs. (Doc. No. 13.) Plaintiffs filed a second amended complaint on March 19, 2002 and sought to add three more plaintiffs. (Doc. No. 26.) Defendants consented to the addition of only two of the proposed plaintiffs. Defendants withheld their consent to the addition of Juliann Hilton.³ Plaintiffs filed the instant Motion on April 29, 2002, and defendants filed their opposition thereto on May 16, 2002.⁴

II. DISCUSSION

1. Motion to Amend Complaint. A plaintiff must meet the requirements of Fed. R. Civ. P. 20, regarding joinder of parties, in order to be permitted to amend a complaint to add a new party. Webb, et al. v. Westinghouse Elec. Corp., 1977 WL 15371 (E.D. Pa. April 29, 1977). The court in Webb was guided by Martinez v. Safeway Stores, Inc., 66 F.R.D. 446 (N.D. Cal. 1975), in which the court stated:

³ Also pending is a “Stipulation to Filing of a Third Amended Complaint under Fed. R. Civ. P. 15(a)” dated June 11, 2002, adding Ingrid Wolfe as a plaintiff. Defendants have consented to Ms. Wolfe being added as a plaintiff. The parties further stipulated that the addition of Ms. Wolfe as a plaintiff will not alter or affect the court’s disposition of the instant Motion and that any ruling on the Motion shall apply to Ms. Wolfe, even though she was not a party at the time the Motion was filed.

⁴ By Order dated June 13, 2002, the Honorable James McGirr Kelly referred the Motion to the undersigned for disposition pursuant to 28 U.S.C. § 636(b)(1)(A). (Doc. No. 42.) Motions to amend a complaint and motions to intervene are generally considered nondispositive. See Kerrigan v. Villei, 1997 WL 88907, at *1 (E.D. Pa. Feb. 19, 1997). See also 12 Charles Alan Wright et al., Federal Practice and Procedure ¶ 3068.2 (2d ed. 1997) (same). By Order dated July 19, 2002, this case was reassigned to the calendar of the Honorable Michael M. Baylson. (Doc. No. 45.)

However, it is implicit in Rule 15 that a plaintiff may amend his complaint only to add matters that would otherwise have been proper to include in the original complaint The basic issue then is whether these new parties could have been joined in the original complaint.

Id. at 448. Fed. R. Civ. P. 20 governs the permissive joinder of parties and provides in pertinent part as follows:

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.

Fed. R. Civ. P. 20(a). In order for joinder to be permitted, Rule 20(a) sets forth two requirements: (1) the relief sought must arise out of the same transaction, occurrence, or series of transactions or occurrences; and (2) there must be a common question of law or fact. Martinez, 66 F.R.D. at 448. The mandate of Fed. R. Civ. P. 15(a) that “leave [to amend] shall be freely given,” is qualified by the phrase “when justice so requires.” Fed. R. Civ. P. 15(a). The decision to grant or deny a motion for leave to amend a complaint is within the sound discretion of the district court. B.J. Marchese v. Umstead, 100 F. Supp. 2d 361, 366 (E.D. Pa. 2000) (citing Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330 (1971); In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997)).

In the instant matter, the relief sought by Juliann Hilton does not arise out of the same transaction, occurrence, or series of transactions or occurrences as plaintiffs’ claims. Hilton is a former employee of Franklin. (Defs.’ Br. Opp. Mot. Ex. B (Aff. of Lorrain Smith) at 2.) She began working for Franklin on May 6, 1991. Hilton answered telephones at Franklin’s call center located at their headquarters in Salt Lake City, Utah. Her responsibilities included

taking orders for Franklin products, answering customer questions, and solving customer problems regarding Franklin products. Hilton had no involvement with Premier products. Hilton worked in this position as a Franklin employee until June 29, 2001. At that time, her position was contracted out to Electronic Data Systems (“EDS”) and Hilton became an employee of EDS. While an employee of EDS, Hilton continued to work in Franklin’s call center in Salt Lake City. Hilton left EDS in September, 2001. While employed by Franklin, Hilton was supervised exclusively by Franklin employees. Her employment was overseen by Franklin’s human resources department. Hilton’s paychecks were paid and benefits provided and administered by Franklin. Id.

On or about January 11, 2001, Hilton filed a Charge of Discrimination with the Equal Employment Opportunity Commission. Id. Ex. B. In her Charge, she identified Franklin as her employer. Hilton claimed that she was discriminated against based upon her sex and religion. Id.

The named plaintiffs in this action were sales persons, or held positions related to sales, employed by Franklin’s former subsidiary Premier in territories throughout the United States. In general, the plaintiffs assert that members of the Dutch Reform Church received favoritism in the assignment of sales territories and in the receipt of promotions and other benefits from Premier. Hilton worked as a call center employee for Franklin and claims that favoritism in promotions was shown to members of the Mormon Church. As noted by the Honorable James McGirr Kelly in his July 8, 2002 Memorandum and Order, located at 2002 WL

1471717 (E.D. Pa. July 8, 2002)⁵, Franklin’s culture is reported to be grounded in the Church of Jesus Christ of Latter Day Saints (“LDS”).⁶ 2002 WL 1471717, at *1 n.1. Plaintiffs allege that Premier favored members of the Dutch Reform Church.⁷ Id. As noted by Judge Kelly, plaintiffs “appear to suggest that somehow Franklin . . . and the LDS were complicit in Premier’s efforts to discriminate in favor of the Dutch Reform Church. Plaintiffs . . . have not explained how this perceived connection worked or why Franklin . . . or the LDS would have a preference for members of the Dutch Reform Church.” Id. The plaintiffs and Ms. Hilton, therefore, claim to have been discriminated against for different reasons: plaintiffs because they were not members of the Dutch Reform Church, and Hilton because she was not Mormon.

All of the plaintiffs were supervised by Premier management, and some shared the same supervisor(s). Hilton was supervised exclusively by management at Franklin. All of plaintiffs’ claims concern their treatment by Premier. Hilton’s claim concerns her treatment by Franklin. Plaintiffs and Hilton had different employers, different supervisors, different job locations, and different job responsibilities. It also appears that plaintiffs and Hilton claim to have been discriminated against by members of different religious organizations. Consequently, plaintiffs’ and Hilton’s claims do not arise out of the same transaction, occurrence, or series of transactions or occurrences.

⁵ In this order, Judge Kelly granted in part and denied in part defendants’ motions for summary judgment. (Doc. No. 43.)

⁶ LDS and the Mormon Church appear to be the same religious organization.

⁷ Defendants suggest that instead of the Dutch Reform Church, plaintiffs may intend to refer to the American Reform Church of which some of Premier’s management are members. (Defs.’ Br. Opp. Mot. at 1 n.1.)

Nor is there a common question of law or fact, as another requirement of Fed. R. Civ. P. 20. As stated by the court in Webb, “a simple allegation of company-wide discrimination in all phases of employment practices does not fulfill the commonality requirement.” Webb, 1977 WL 15371. The court in Webb noted that “[n]o showing has been made that discrimination against a salaried employee or a job applicant arises out of the same facts or occurrences as the alleged discrimination against the class representatives, members of the production and maintenance unit who work on an hourly wage basis.” Id. In Dickerson v. United States Steel Corp., 582 F.2d 827 (3d Cir. 1978), the Third Circuit Court of Appeals, considering a race discrimination class action case and the common question of law or fact requirement for joinder under Fed. R. Civ. P. 24(b), quoted the court in Smith v. North Am. Rockwell Corp., 50 F.R.D. 515 (N.D. Okl. 1970) which stated:

The general notion that there may have been denials of promotion in at least three cases cannot support joinder, where any purported denials of promotion would have been made by different supervisory personnel in different labor unions and work environments, with respect to employees performing different types of work.

...

It is . . . true that plaintiffs have alleged against defendant claims based upon the same general theories of law, but this is not sufficient. Whether a defendant unlawfully discriminated against one plaintiff with respect to a promotion or job assignment in a given department is not common with the question of whether defendant unlawfully discriminated against another plaintiff in a separate department. The second act constituted separate, albeit similar, conduct.

50 F.R.D. at 522, 524 (considering the commonality requirement in Fed. R. Civ. P. 20(a)). Here, Hilton’s allegations are broader than the “company-wide discrimination” cautioned against in Webb; she alleges company-wide discrimination across two corporations, involving employees with different duties and different supervisors. While plaintiffs’ and Hilton’s claims are based on the same general theories of law, they do not have common questions of law or fact.

The relief sought by Juliann Hilton does not arise out of the same transaction, occurrence, or series of transactions or occurrences as plaintiffs' claims and there is no question of law or fact common to plaintiffs' claims and Hilton's claims. Therefore, plaintiffs' motion to amend the complaint to add Ms. Hilton as a plaintiff is denied.

Moreover, this court finds that both Franklin and Premier will be prejudiced if the plaintiffs' motion to amend the complaint is granted. While plaintiffs dispute the corporate distinctiveness between Franklin and Premier, see Pls.' Opp. to Defs.' Mots. for Summ. J., Ms. Hilton's claim adds another level of discovery -- whether management at Franklin directly engaged in discriminatory employment practices at the Salt Lake City call center. The inclusion of Hilton's claim in this case could confuse the jury with all but one of the plaintiffs asserting claims against one employer, and just one plaintiff asserting a claim against another employer. Additionally, Hilton and the Franklin employees who supervised her, all reside in Utah. Ms. Hilton worked in Salt Lake City, Utah at all times relevant to her claim. The other plaintiffs worked in various locations throughout the United States. Adding Hilton to the instant litigation would require witnesses relevant only to her claim to come to this forum, while many of the other plaintiffs would have common witnesses. For all of these reasons, plaintiffs' motion to amend the complaint to add Ms. Hilton as a plaintiff is denied.⁸

⁸ Defendants also claim that amendment of plaintiffs' complaint to add Ms. Hilton's claims would be futile because her claims are deficient as a matter of law for the reasons stated in the defendants' briefs in support of their motions for summary judgment. (Defs.' Br. Opp. Mot. at 9-12.) Judge Kelly entertained oral argument on defendants' motions for summary judgment on May 13, 2002 (Doc. No. 41), and issued a Memorandum and Order dated July 8, 2002 (Doc. No. 43) granting in part and denying in part defendants' motions. This court will not consider these issues again as part of the instant motion by plaintiffs.

2. Motion to Intervene. In the alternative, Hilton moves to intervene under Fed.

R. Civ. P. 24(b) which provides in pertinent part:

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: . . . (2) when an applicant’s claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Fed. R. Civ. P. 24(b).

For the reasons stated above, there is no question of law or fact common to plaintiffs’ claims and Hilton’s claims. See Dickerson, 582 F.2d at 831-32 (affirming denial of “equitable intervention” under Fed. R. Civ. P. 24(b); Jones v. United Gas Improvement Corp., 69 F.R.D. 398, 402-03 (E.D. Pa. 1975) (denying intervention of right and permissive intervention noting, inter alia, that the intervener was a member of a union which: (1) was separate and distinct from the defendant union, (2) existed at different facilities of the company from those involved in the class action, and (3) was party to collective bargaining agreements different from the contracts at issue). Hilton’s motion to intervene is denied.

An appropriate order follows.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

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

TERRY BLACK, et al. : CIVIL ACTION
v. :
THE PREMIER COMPANY and :
FRANKLIN COVEY COMPANY : NO. 01-4317

ORDER

AND NOW, this 12th day of September, 2002, upon consideration of plaintiffs' Motion for Leave to Amend the Complaint or, in the Alternative, Juliann Hilton's Motion to Intervene Under Fed. R. Civ. P. 24(b) (the "Motion") (Doc. No. 35), and defendants' opposition thereto, it is hereby **ORDERED** that the Motion is DENIED.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge