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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	CIVIL ACTION
Plaintiff,	:	NO. 04-CV-4531
and	:	
GODWIN AKIKO, IZZELDEEN ELHAGE, MOHAMMED MAGZOOB, IBRAHIM MOHAMED, MARTIN NWOGA, ONYEBUCHIM ONYEANUSI, OSMAN E. OSMAN, and ABBUD H. WALI,	:	
Plaintiff-Intervenors,	:	
v.	:	
NORTHWESTERN HUMAN SERVICES	:	
Defendant.	:	

SURRICK, J. **OCTOBER 14, 2005**

MEMORANDUM & ORDER

Presently before the Court is the Motion For Leave To Intervene (Doc. No. 17) of the proposed Plaintiff-Intervenors Ibrahim Mohamed, Abbud H. Wali, and Osman E. Osman ("Movants"), Defendant's Brief In Opposition To The Motion For Leave To Intervene (Doc. No. 18), and the proposed Plaintiff-Intervenors' Reply Memorandum Of Law (Doc. No. 22). For the following reasons, we will grant the motion for leave to intervene.

I. BACKGROUND

On September 27, 2004, the Equal Employment Opportunity Commission ("EEOC") instituted a civil action pursuant to § 706 of Title VII of the Civil Rights Act of 1964 against Northwestern Human Services ("NHS") on behalf of Godwin Akiko, Izzeldeen Elhage, Mohammed Magzoob, Martin Nwoga, Onyebuchim Onyeanusi, and a class of similarly situated

employees who were allegedly adversely affected by the alleged discriminatory employment practices of NHS. (Doc. No. 1.) Specifically, the EEOC contends that NHS's employment practices were in violation of § 703(a)(1) of Title VII, 42 U.S.C. § 2000d-2(a)(1). (*Id.* at 1, 3-6.) The EEOC alleges that NHS terminated Akiko, Elhage, Magzoob and a class of similarly situated employees based on their national origin, African. The EEOC also alleges that NHS subjected Nwoga, Onyeanusi, and a class of similarly situated employees to disparate treatment in the terms and conditions of their employment based on their national origin, African. (*Id.* at 5-6.) All of the named individuals in the EEOC's complaint were born in Africa. (*Id.* at 3.) More than thirty days prior to the institution of the EEOC's lawsuit, the Akiko Plaintiff-Intervenors filed charges with the Commission alleging violations of Title VII by NHS. (*Id*. at 3.)

On or about October 12, 2004, Akiko, Elhage, Magzoob, Nwoga, and Onyeanusi ("Akiko Plaintiff-Intervenors") filed a motion for leave to intervene as of right pursuant to Federal Rule of Civil Procedure 24. (Doc. No. 2.) We granted the motion on January 6, 2005. (Doc. No. 5.) The present Motion For Leave To Intervene was filed on August 22, 2005. (Doc. No. 17.) In this Motion, Movants assert the same facts and claims as the Akiko Plaintiff-Intervenors. (*Id.* at Ex. A.) Movants have not filed any charges with the EEOC. (Doc. No. 22 at 5.)

II. LEGAL ANALYSIS

Movants seek to intervene as of right pursuant to Rule24(a)[1] which provides, in pertinent part,

[1] Alternatively, Movants appear to request permissive intervention under Rule 24(b).

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene . . . .

Fed. R. Civ. P. 24(a). Title VII provides that "the person or persons aggrieved shall have the right to intervene in a civil action brought by the [EEOC]." 42 U.S.C. § 2000e-5(f)(1) (2003). Movants' right to intervention turns on whether (1) their application for intervention was timely, and (2) they fall within the scope of "persons aggrieved" such that they have an unconditional right to intervene. *See Jones v. United Gas Improvement Corp.*, 69 F.R.D. 398, 400-01 (E.D. Pa. 1975).

A. Intervention As Of Right

1. Timeliness

Defendant argues that Movants' motion for intervention was not timely filed and thus should be denied. "The timeliness of a motion to intervene is 'determined from all the circumstances' and, in the first instance, 'by the [trial] court in the exercise of its sound discretion.'" *In re Fine Paper Antitrust Litig.*, 695 F.2d 494, 500 (3d Cir.1982) (quoting *NAACP v. New York*, 413 U.S. 345, 366 (1973)). To determine whether the intervention motion is timely, courts in this Circuit consider: (1) the stage of the proceeding; (2) the prejudice that delay may cause the parties; and (3) the reason for the delay. *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.* 72 F.3d 361, 369 (3d Cir. 1995) (citing *In re Fine Paper*, 695 F.2d at 500).

The first two factors weigh in favor of determining that Movants have filed in a timely manner. The parties have stipulated to an extension of the discovery period until December 30, 2005. (Doc. No. 21.) According to Movants, NHS has not yet deposed all of the named

Plaintiffs and none of Defendant's witnesses have been deposed. (Doc. No. 22 at 4-5.) *See Mountain Top Condo. Ass'n*, 72 F.3d at 370 (intervention permitted where some written discovery and settlement negotiations had occurred between the parties, but no depositions taken and no dispositive motions filed); *cf. In re Fine Paper*, 695 F.2d at 500 (intervention properly denied where motion filed after settlement and entry of judgment). Furthermore, the Movants' claims are identical to the claims of the Akiko Plaintiff-Intervenors. Defendant received sufficient notice of the nature of Movants' claims when it was served with both the EEOC's complaint and the Akiko Plaintiff-Intervenors' complaint. Therefore, Defendant should not experience any delay in preparing its case due to the addition of Movants as named Plaintiffs. Finally, Movants have provided the Court with little insight into the reason for the delay in their application for intervention. Thus, it is difficult to evaluate the merits of this third factor. However, considering the stipulation extending the discovery deadlines and the apparent lack of prejudice as well as the total circumstances of this case, we conclude that the Movants' application is timely filed.

2. Person Aggrieved

The parties agree that Movants have not filed any charges with the EEOC regarding their claims of employment discrimination, and are now time-barred from doing so. (Doc. No. 18 at 2; Doc. No. 22 at 5.) The Third Circuit has declined to address the issue of whether intervention should be denied to a "person aggrieved" unless he himself has actually filed a charge of unlawful employment practices with the EEOC. *EEOC v. Am. Tel. & Tel. Co.*, 506 F.2d 735, 740 (3d Cir. 1974). *But see Jones v. United Gas Improvement Corp.*, 383 F. Supp. 420, 426 (E.D. Pa. 1975) (in a Title VII action, "it is not necessary that members of the class bring a

charge with the EEOC as a prerequisite to joining . . . in the litigation. It is sufficient that they are in a class and assert the same or some of the issues." (quoting *Oatis v. Crown Zellerbach Corp.*, 398 F.2d 496, 499 (5th Cir. 1968)). In the standing context, the Third Circuit has defined "persons aggrieved" as "any person aggrieved by any of the practices forbidden by the statute." *EEOC v. Am. Tel.*, 506 F.2d at 740 (citing *Hackett v. McGuire Bros.*, 445 F.2d 442 (3d Cir. 1971). The case of *Spirt v. Teachers Ins. & Annuity Ass'n*, 93 F.R.D. 627 (S.D.N.Y.), *aff'd in part and rev'd in part on other grounds*, 691 F.2d 1054 (2d Cir. 1982), is instructive. In *Spirt*, the defendant argued that intervention in an EEOC-filed civil action is limited to those persons who actually filed the charge that prompted the EEOC to commence the action. *Id.* at 640. In reviewing the Title VII case law, the *Spirt* court noted that a private person having Article III standing is permitted to commence a private Title VII action as a "person aggrieved" even if the plaintiff has not previously filed an EEOC charge, so long as someone else has previously filed an EEOC charge "nearly identical" to the claim set forth in the plaintiff's complaint. *Id.* at 641. Because the *Spirt* court reasoned it would be "nonsensical" for the courts to give the term "person aggrieved" a different meaning in an EEOC-filed Title VII action, it held that the right of intervention provided in 42 U.S.C. § 2000e-5(f)(1) may be invoked if:

> (1) the proposed intervenor has an interest in the action sufficient to establish standing under article III of the United States Constitution, and (2) the action was commenced by the EEOC in response to a charge filed either (a) by the proposed intervenor or (b) by another private party having a nearly identical claim to the claim raised by the proposed intervenor.

Spirt, 93 F.R.D. at 641-42. Under this test, the Movants have satisfied the requirements for intervention. Although they have not filed a charge with the EEOC, they have identical claims to the claims raised by the Akiko Plaintiff-Intervenors, who did file charges with the EEOC which

then filed suit in response to those charges.

Both parties rely on *Communications Workers of America, AFL-CIO v. New Jersey Dep't of Personnel*, 282 F.3d 213 (3d Cir. 2002), for its discussion of the single filing rule doctrine. According to the Third Circuit, the single filing rule doctrine permits a party to join a Title VII class action without filing a charge with the EEOC if the original EEOC charge, filed by the plaintiff who subsequently filed a class action, alleged class-based discrimination in the EEOC charge. *Id.* at 217 (citing *Lusardi v. Lechner*, 855 F.2d 1062, 1077-78 (3d Cir. 1988)). Thus, the doctrine requires that the underlying action be certified as a class action. *Id.* The *Communications Workers* court ultimately upheld the dismissal of the intervenors' complaint, largely due to the fact that the underlying action was never certified as a class action, thereby failing to satisfy the requirements of the single filing doctrine. *Id.*

In the case at bar, Defendant argues that Movants should not be able to use the Akiko Plaintiff-Intervenors' timely filed charges with the EEOC as a means to circumvent Title VII's requirements because the EEOC has not moved for class certification, and thus the intervenors should meet the same fate as the intervenors in *Communications Workers*. (Doc. No. 18 at 4-5.) This argument is inapposite, however, as the Supreme Court has specifically ruled that Federal Rule of Civil Procedure 23, regarding class certification, is not applicable to an enforcement action brought by the EEOC in its own name and pursuant to its authority under § 706 of Title VII. *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 466 U.S. 318, 323 (1980). Furthermore, the EEOC's original complaint clearly states that the action was brought on behalf of named individuals *and* a class of similarly situated individuals. (Doc. No. 1 at 3-6.) Thus, the

shortcomings of the intervenor action in *Communication Workers* are not present here.[2]

In addition, we note that the purpose of 42 U.S.C. § 2000e "is to provide notice to the charged party so as to bring to bear the voluntary compliance and conciliation functions of the EEOC." *Behlar v. Smith*, 719 F.2d 950, 953 (8th Cir. 1983). "When any charge is filed, these purposes are served as there is no claim of surprise in such a situation." *Id.* Because Movants' claims are identical to those of the Akiko Plaintiff-Intervenors, Defendant cannot claim it is unaware of the nature of the claims of the former. *See id.* (defendant was apprised of claims of other plaintiffs and could not then claim it was improper to allow new party to intervene so as to assert charges of the same nature).

B. Permissive Intervention

Alternatively, Movants have met the standard for permissive intervention under Rule 24(b)(2), 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). Whether to grant permissive intervention is a matter of discretion for the

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[2] The fact pattern is also markedly different in *Communications Workers* than in the case at bar. In that case, the EEOC had brought a charge of class-based discrimination but declined to file suit in its own name; instead the original plaintiff that had filed a complaint with the EEOC initiated a Title VII action. The intervening party was ultimately time-barred from filing a complaint because it could not satisfy Title VII's requirement that, where the EEOC declines to bring suit, an action must be filed within ninety days from the date of the EEOC right to sue letter. *Communications Workers*, 282 F.3d at 217. By contrast, here the EEOC has opted to bring suit in its own name, and Title VII has no such time limitation for intervention in an action where the EEOC has sued in its own name. *See* 42 U.S.C. § 2000e-2(f)(1).

trial court. *Harris v. Pernsley*, 820 F.2d 592, 597 (3d Cir. 1987). In exercising its discretion, the Court is required to consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Fed. R. Civ. P. 24(b). While the length of delay is a factor to be considered, it is not dispositive. *Molthan v. Temple Univ.*, 93 F.R.D. 585, 587 (E.D. Pa. 1982). The court must assess the impact of intervention on the case as it presently stands. *Id.*

As we noted earlier, Movants' claims raise the same issues of both law and fact as those presented in the EEOC's complaint. Furthermore, Defendant is unlikely to experience any undue delay or prejudice. Discovery is ongoing, and Defendant is already familiar with the nature of the claims asserted by Movants since they are identical to those asserted by the Akiko Plaintiff-Intervenors and the EEOC. *See, e.g., Ass'n for Fairness in Bus., Inc. v. New Jersey*, 193 F.R.D. 228, 232 (D.N.J. 2000) (permissive intervention granted where case was in preliminary stage of litigation and there was limited opportunity for discovery); *cf. Molthan*, 93 F.R.D. at 587-88 (court denied EEOC's request for permissive intervention where intervention would necessitate delay at a time when the case had made significant progress towards resolution). Thus, we conclude that permissive intervention is also proper in this case.

An appropriate Order follows.

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GODWIN AKIKO, IZZELDEEN ELHAGE, MOHAMMED MAGZOOB, IBRAHIM MOHAMED, MARTIN NWOGA, ONYEBUCHIM ONYEANUSI, OSMAN E. OSMAN, and ABBUD H. WALI,	:	
	:	
Plaintiff-Intervenors,	:	
v.	:	
	:	
NORTHWESTERN HUMAN SERVICES	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 14th day of October 2005, upon consideration of the Motion For Leave To Intervene (Doc. No. 17) of the proposed Plaintiff-Intervenors Ibrahim Mohamed, Abbud H. Wali, and Osman E. Osman, Defendant's Brief In Opposition To The Motion For Leave To Intervene (Doc. No. 18), and the proposed Plaintiff-Intervenors' Reply Memorandum Of Law (Doc. No. 22), and it further appearing that Plaintiff-Intervenors are entitled to intervene as a matter of right under Federal Law and that permissive intervention is also appropriate in this case, it is ORDERED that Plaintiff-Intervenors' Motion For Leave To Intervene is GRANTED. The Clerk is directed to file the Complaint of the Plaintiff-Intervenors and issue summons

thereon and to amend the caption to include Plaintiff-Intervenors as shown.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge