

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

ROBERT JOHNSTON, et al. : CIVIL ACTION  
: :  
v. : :  
: :  
SCHOOL DISTRICT OF : :  
PHILADELPHIA, et al. : NO. 04-4948

MEMORANDUM

Bartle, C.J.

March 7, 2006

Before the court is the motion of the defendants, the School District of Philadelphia and Kimberly Sangster, pursuant to Rule 62(b) of the Federal Rules of Civil Procedure, to stay execution of a judgment entered on December 16, 2005, pending the disposition of post-trial motions.

Plaintiffs Robert Johnston, Jack Zubris, Edward Pilosi, and Peter Bracchi brought suit against the School District and Sangster, their former supervisor, for employment discrimination on the basis of race and for subsequent retaliation. See 42 U.S.C. §§ 2000e-3; 42 U.S.C. § 1981; and 43 Pa. Stat. Ann. §§ 955(a) and (d). Each was discharged from his position in the procurement department of the School District.

On December 16, 2005, a jury returned a verdict in favor of the plaintiffs, and awarded them damages totaling \$2,906,378. A portion of this amount was awarded to Bracchi as front-pay. The court had ruled that reinstatement would not be feasible for him because he and his wife had since moved to

Florida, and he had found new employment there. The court ordered that the remaining plaintiffs be reinstated to positions comparable to those they enjoyed prior to their termination. Significantly, the remedy of reinstatement in lieu of front-pay had been advocated by the defendants.

Defendants have filed post-trial motions for a new trial, for judgment notwithstanding the verdict, and for remittitur. To date, however, the School District has not reinstated Johnston, Zubris, or Piloni. Zubris and Piloni remain employed elsewhere, and Johnston, although now working for the School District, is not in a position comparable to his former job.

Rule 62(b) reads:

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

Fed. R. Civ. P. 62(b).

In exercising our discretion to stay the execution of a judgment, we may consider whether the defendants have a likelihood of success on the merits of their post-trial motions, whether the defendants will be irreparably injured absent a stay,

whether granting the stay will substantially injure plaintiffs, and whether the public interest will be served by granting the stay. Combustion Sys. Serv., Inc. v. Schuylkill Energy Res., Inc., 153 F.R.D. 73, 74 (E.D. Pa. 1994). After careful consideration of these factors and the arguments presented in the briefs, we will stay the monetary judgment until we rule on the defendants' post-trial motions. It would be inappropriate for plaintiffs to execute on the money judgment in the present posture of the case. Interest, of course, will continue to accrue in the meantime to the extent any monetary judgment is upheld. No bond need be posted by the School District at this time.

A stay will not be granted, however, with respect to the reinstatement of plaintiffs Johnston, Zubris, and Pilosi. The harm to these plaintiffs in granting a stay would clearly outweigh any harm to defendants in not granting a stay, particularly when the School District argued at trial in favor of reinstatement rather than front-pay.

We assume that the School District will now promptly comply with our December 16, 2005 judgment ordering the reinstatement of plaintiffs Johnston, Zubris, and Pilosi to positions comparable to those they enjoyed prior to their discharge.

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SCHOOL DISTRICT OF                        :           :  
PHILADELPHIA, et al.                     :           NO. 04-4948

ORDER

AND NOW, this 7th day of March, 2006, it is hereby  
ORDERED that:

- (1) the motion of defendants School District of Philadelphia and Kimberly Sangster to stay execution of the judgment is GRANTED in part and DENIED in part;
- (2) the judgment for monetary damages, dated December 16, 2005, is STAYED, effective immediately, until disposition of the defendants' post-trial motions; and
- (3) the motion is otherwise DENIED.

BY THE COURT:

/s/ Harvey Bartle III \_\_\_\_\_  
C.J.