

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

JOHN MCOWEN	:	
	:	Civil Action
Plaintiff,	:	
	:	No. 06-2617
v.	:	
	:	
VILLA JOSEPH MARIE	:	
	:	
Defendant.	:	

Green, S.J.

October 10, 2006

MEMORANDUM

Presently pending is Defendant’s Motion to Partially Dismiss Plaintiff’s Complaint, and Plaintiff’s Response thereto. For reasons stated below, Defendant’s motion will be denied.

Factual & Procedural Background

Plaintiff is an adult citizen who currently resides in Bucks County, Pennsylvania. Defendant is a private catholic girls high school located in Bucks County, Pennsylvania. Plaintiff’s Complaint alleges employment discrimination pursuant to the Age Discrimination in Employment Act (hereinafter “ADEA”) 29 U.S.C. § 626(b) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981. Plaintiff’s Complaint also alleges pendant state law claims. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343 and 1367.

Plaintiff’s Complaint alleges that he was employed at Defendant high school until his termination on June 11, 2004. Plaintiff was sixty-four (64) years old on June 11, 2004. Plaintiff attained the position of varsity soccer coach in 1980, Athletic Director in 1982, varsity basketball coach in 1983, and varsity lacrosse coach in 1989. In 2001, Defendant high school alleged told

Plaintiff that she was taking away one coaching job each successive year, beginning in the 2002-2003 school year. The Complaint states that Harrington also told Plaintiff that he would be terminated from the Athletic Director position when he reached sixty-five (65) years of age. Harrington allegedly told Plaintiff and a newspaper reporter that she was firing Plaintiff because she wanted to hire a female replacement.

Plaintiff's Complaint alleges that he was fired as the varsity lacrosse coach and the varsity basketball coach prior to the 2003-2004 season. Plaintiff was replaced as lacrosse coach by a young woman. Plaintiff alleges that because a female basketball coach could not immediately be found, the younger male assistant basketball coach led the team until a female coach was found.

Veronica Harrington allegedly terminated her employment at Defendant high school in August 2003. Harrington was replaced by Diane Koopman. Plaintiff alleges Koopman decided to continue Harrington's plan to take away one coaching job per year, then remove Plaintiff as Athletic Director when he reached sixty-five (65) years of age. Defendant allegedly terminated Plaintiff on June 11, 2004.

Moreover, Plaintiff's Complaint alleges that Defendant failed to reimburse Plaintiff for out of pocket expenses incurred while traveling to out of town athletic events. Plaintiff alleges that on five (5) separate occasions between August 2001 and November 2002 Defendant failed to reimburse Plaintiff.

Plaintiff's Complaint includes six (6) Counts: (1) Age Discrimination under the ADEA; (2) Gender Discrimination under Title VII; (3) Breach of the Pennsylvania Wage Payment and Collection Law (hereinafter "PA WPCL") for failure to reimburse; (4) Breach of Contract; (5) Wrongful Discharge; and (6) Age and Gender Discrimination under the Pennsylvania Human

Relations Act (hereinafter "PHRA"). Defendant asserts that Count III should be dismissed because Plaintiff failed to bring his claim within the three (3) year statute of limitations for the PA WPCL. Defendant further argues that Count II, and the Gender Discrimination claim of Count VI should be dismissed because Plaintiff failed to exhaust his administrative remedies before filing this claim.

Plaintiff asserts that the statute of limitations on Count III of his Complaint did not begin to run until his termination in 2004 because until that point, Plaintiff was negotiating with Defendant to receive his reimbursement. Moreover, Plaintiff asserts that he exhausted all of his administrative remedies prior to filing this claim.

Discussion

A court should grant a motion to dismiss for failure to state a claim only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. See Hishom v. King & Spalding, 467 U.S. 69, 73 (1984). When deciding a motion to dismiss, the court must "construe the complaint in the light most favorable to the Plaintiff, and determine whether, under any reasonable reading of the pleadings, the Plaintiff is entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-6 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989). The Federal Rules of Civil Procedure authorize notice pleadings in civil proceedings. Fed. R. Civ. P. 8(a) (2006).

A. Count III of the Complaint

Plaintiff alleges that the statute of limitations has not run on his claim under the PA WPCL because he continued to negotiate with his employer for the reimbursement until June 2004. Construing the Complaint in the light most favorable to the Plaintiff, the Court concludes

that a reasonable reading of the pleadings could entitle Plaintiff to relief under the PA WPCL. As such, Defendant's Motion to Dismiss Count III will be denied.

B. Counts II and VI of the Complaint

Prior to filing a Title VII claim in federal court, a Plaintiff must follow several jurisdictional prerequisites. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1973). Most important is that Title VII litigants file charges with the PHRA and Equal Employment Opportunity Commission (hereinafter "EEOC"). Id. The purpose of this requirement is to provide both the PHRA and EEOC the opportunity to settle disputes through conference, conciliation, and persuasion, while avoiding unnecessary action in court. Antol v. Perry, 82 F.3d 1291, 1296 (3d Cir. 1996). However, once a discrimination charge has been filed, the scope of the judicial complaint is not limited to the four corners of the administrative charge. See Hicks v. ABT Associates, 572 F.2d 960, 965 (3d Cir. 1978). The scope of the subsequent action is limited to what can reasonably be expected to grow out of the charge of discrimination. Id.

In this case, Plaintiff alleges in his charge to both the PHRA and the EEOC that he was terminated from Defendant high school and replaced by people who are younger and female. The Court finds that a gender discrimination complaint can reasonably be expected to grow out of this charge. As such, Plaintiff exhausted his administrative remedies before filing a complaint in federal court. An appropriate order follows.

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Defendant.	:		

ORDER

AND NOW, this 10th day of October 2006, **IT IS HEREBY ORDERED** that Defendant's Motion to Partially Dismiss Plaintiff's Complaint is **DENIED**.

BY THE COURT

s/ Clifford Scott Green, S.J.

CLIFFORD SCOTT GREEN, S.J.

