

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

CRYSTAL M. ROGERS, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
COMMONWEALTH OF PENNSYLVANIA; :
PENNSYLVANIA STATE POLICE :
Defendant. : NO. 97-6627

MEMORANDUM & ORDER

J.M. KELLY, J.

DECEMBER 8, 1997

Plaintiff, Crystal Rogers ("Rogers"), filed this action seeking a temporary restraining order or preliminary injunction requiring her employer, the Pennsylvania State Police ("State Police"), "to maintain the status quo" by paying her special extended sick leave pay pending an investigation by the Equal Employment Opportunity Commission ("EEOC") of her claims of racial and sexual discrimination and retaliation for filing her claims with the EEOC. While Rogers talks of maintaining the status quo, it is clear that the relief she seeks would require the Court to mandate that the State Police alter her current employment status. A hearing was held in this matter on November 13, 1997. This Memorandum and Order shall constitute the Court's Findings of Fact and Conclusions of Law.

BACKGROUND

Rogers was hired by the State Police in 1980, attended the State Police Academy and was promoted to the rank of Trooper. She was initially assigned to a troop in Harrisburg. While

assigned in Harrisburg, Rogers filed a harassment complaint and a retaliation complaint with the Pennsylvania Human Relations Commission. These complaints were settled in 1989. Another complaint was filed with the Pennsylvania Human Relations Commission in 1994. In 1993 she was assigned to the Bureau of Drug Law Enforcement in Philadelphia. On August 29, 1996, Rogers was assigned to return to Troop S in Harrisburg. As a result of the harassment complaints she filed while stationed in Harrisburg, Rogers alleges that she was terrified of being stationed at Troop S and that the stress involved make her unable to work. Based upon her demeanor at the November 13, 1997 hearing in this matter, I believe that Rogers is very concerned at the prospect of returning to Troop S, but I also believe that a substantial amount of her concern stems from the personal upheaval and lost overtime income that would result from leaving the Bureau of Drug Law Enforcement and relocating from Philadelphia to Harrisburg.

From the date that she was informed that she had been reassigned to Troop S, until late April 1997, Rogers utilized her accrued and prospective sick leave and annual leave rather than return to work. On January 15, 1997, she filed another harassment claim with the Pennsylvania Human Relations Commission. She applied for and was granted a twenty day special extension of sick leave which expired May 22, 1997. This initial special extension was approved by the State Police, pursuant to Commonwealth of Pennsylvania personnel policy. Rogers then

applied for a further special extension of sick leave. This special extension was, after some delay, recommended for approval by the State Police and forwarded to the Executive Board. The Executive Board rejected Rogers' application because she could not identify a date she expected to return to work, inconsistencies in her statement of financial need and the possibility that she might be entitled to other relief. She then, on July 22, 1997, filed a complaint with the EEOC based upon denial of the second special extension of sick leave. Rogers now seeks injunctive relief as a result of the acts underlying the July 22, 1997, EEOC complaint. In order to circumvent a potential jurisdictional challenge, Rogers has requested and received a limited Right to Sue letter from the EEOC.

JURISDICTION

Rogers brings this action for preliminary injunctive relief, pending EEOC completion of its investigation, pursuant to 42 U.S.C. § 2000e-5(f)(2), which states in relevant part:

Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge.

As an initial issue, the Court must determine whether 42 U.S.C. § 2000e-5(f)(2) authorizes Rogers to seek a temporary restraining order or preliminary injunction. The State Police

argue that a straightforward reading of 42 U.S.C. § 2000e-5(f)(2) limits the right to seek a preliminary injunction pendent lite to the EEOC, or in this case, the Attorney General. Title VII, however, also provides that an individual may be entitled to an injunction as relief. 42 U.S.C. § 2000e-5(g)(1). To accept the State Police's reading of 42 U.S.C. § 2000e-5(f)(2) would require the Court to find Congress intended to limit the inherent equitable power of the district courts to enter an injunction until a matter could be fully adjudicated when an individual sought the injunction under Title VII.

The parties have cited to no court of appeals or district court case in the Third Circuit that addresses the present issue and the Court's research has been similarly unproductive. The State Police place primary reliance upon Fields v. Village of Skokie, 502 F. Supp. 456 (N.D. Ill. 1980) for the position a private litigant may not seek injunctive relief prior to final EEOC action. As an initial matter, the plaintiffs in Skokie, unlike Rogers, did not approach the district court armed with a right to sue letter. Further, the district court assumed without discussion that 42 U.S.C. § 2000e-5(f)(2) was intended to divest the district courts of jurisdiction to grant preliminary injunctive relief under customary equitable authority.

Rogers urges that the better view is presented in Bailey v. Delta Air Lines, Inc., 722 F.2d 942 (1st Cir. 1983). In Bailey, the court rejected the construction of § 2000e-5(f)(2)

urged here by the State Police and as set forth in Skokie. The Bailey court relied upon Sampson v. Murray, 415 U.S. 61 (1974), where the plaintiff, a discharged government employee, was allowed to seek preliminary relief pending Civil Service administrative proceedings, absent express statutory authority. In reaching this conclusion, the Court held that the issue of jurisdiction must be resolved in conjunction with the issue of the propriety of relief in the case. Id. at 68. Therefore, in the Title VII context, a plaintiff would be required to make a showing of irreparable harm absent an injunction in order for the district court to have jurisdiction to grant an injunction. Bailey, 722 F.2d at 944. As a result, the plaintiffs in Bailey were not entitled to injunctive relief as they made no showing of irreparable harm. Id.

In Wagner v. Taylor, 836 F.2d 566 (D.C. Cir. 1987), the court extensively examined the history of 42 U.S.C. § 2000e-5(f)(2). Id. at 572-75. Finding that preliminary injunctive relief is essential to maintaining the integrity of Title VII proceedings, especially where retaliation is likely, the court found no intent expressed by Congress in amending Title VII in 1972 to remove an individual's right to seek preliminary relief. Id. Under Wagner, Title VII allows a plaintiff as an individual to seek injunctive relief where the prerequisites for equitable intervention are met. Id. at 575.

In viewing the three approaches to the Court's jurisdiction, the Court shall reject the narrow, literalist

approach advanced by Skokie. If in drafting 42 U.S.C. § 2000e-5(f)(2) Congress had intended to foreclose the right of a private litigant to seek injunctive relief, it could have said so. I am convinced that 42 U.S.C. § 2000e-5(f)(2) was intended, as it is drafted, to expand the power of the EEOC to seek pendent lite relief. The Court is also concerned that Bailey's approach of combining the question of its subject matter jurisdiction with the issue of irreparable harm suffers from a certain amount of intellectual dishonesty. If the Court does not have jurisdiction, it cannot address the merits of the underlying issues. To rest a jurisdictional determination upon the merits is the judicial equivalent of putting the cart before the horse. Accordingly, I believe that Wagner presents the best approach and 42 U.S.C. § 2000e-5(f)(2) does not divest an individual plaintiff of the right to seek injunctive relief during an EEOC investigation.

INJUNCTIVE RELIEF

To determine whether a plaintiff is entitled to an injunction, the court must balance 1) the plaintiff's likelihood of success on the merits, 2) whether plaintiff will suffer irreparable harm absent an injunction, 3) whether other parties will be harmed if an injunction is granted and 4) the public's interests. Wagner, 836 F.2d at 575. Here, the public interest is served if a plaintiff can file a complaint with the EEOC without fear of retaliation and there is no evidence of great

harm to other interested parties if Rogers is placed upon extended sick leave.¹

In order to prevail upon her retaliation claim, Rogers will need to prove that 1) she was engaged in a protected activity, 2) that the defendants took an adverse action against her and 3) a causal connection between the protected activity and the adverse action. See Nelson v. Upsala College, 51 F.3d 383, 386 (3d Cir. 1995). Here, filing the complaint with the EEOC is a protected activity and failing to provide a special extension of sick leave is an adverse action. Based upon the evidence presented at the hearing in this matter, I do not believe that Rogers is likely to prove the causation prong of her claim. It is undisputed that the State Police recommended to the Executive Board that Rogers be granted the special extension. Further, I find highly credible that the Executive Board rejected Roger's request for a special extension because of the inability of her doctor to state when he expected her to be able t`o return to work.

Rogers cites to Moteles v. University of Pennsylvania, 730 F.2d 1040 (3d Cir. 1984) in support of the proposition that she must show irreparable harm in order to obtain injunctive relief. Rogers' reliance upon Moteles is somewhat surprising

¹The State Police argue that the special extension of sick leave Rogers requests is limited by custom to twenty days, even though Commonwealth personnel policies do not explicitly state that limitation. Assuming that the extension in fact may last longer, the harm to the Commonwealth would still appear to be minimal.

given the express requirement that irreparable harm in a Title VII action must be of a more than serious or substantial nature not readily compensable by monetary damages. Id. at 919. Here, if Rogers ultimately proves a causal connection between her EEOC complaint and the denial of a special extension of sick leave, she can be monetarily compensated for her lost benefits. Even though she is faced with foreclosure of her house as a result of her lack of income, irreparable injury is not present. Id., citing Sampson, 415 U.S. at 91-92. While the Court is not unmindful of the serious economic situation facing Rogers, it is clear that upon the facts presented she cannot establish irreparable harm.

CONCLUSION

The Court concludes that it has the jurisdiction to consider Rogers' claim for preliminary injunctive relief pursuant to Title VII. Rogers has failed, however, to show either a likelihood of success on the merits or irreparable harm. Accordingly, the motion for a preliminary injunction must be denied and this matter shall be closed.