

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

_____)	
CHARLES TAYLOR, <i>et al.</i>)	
Plaintiffs,)	
v.)	
)	
DISTRICT OF COLUMBIA)	Civil Action No. 01-00561 (HHK/AK)
WATER AND SEWER AUTHORITY,)	
Defendant.)	
_____)	

MEMORANDUM ORDER

Pending before this Court is Plaintiffs’ Motion to Compel, which includes [as a memorandum in support thereof] a Renewed Motion to Compel the Defendant to Fully Respond to the Plaintiffs’ Interrogatories and Requests for Production of Documents and Plaintiffs’ Motion, in the Alternative, to Preclude or Estop the Defendant from Using any Workforce Data in Opposition to the Plaintiffs’ Class Certification Motion Other than the Workforce Data the Defendant has produced in Response to the Plaintiffs’ Interrogatories and Requests for Production of Documents (“Motion to Compel”) [195] and Defendant District of Columbia Water and Sewer Authority’s (“WASA”) opposition to the Motion (“Opposition”) [197].¹

Background

On January 4, 2010, the trial court granted the parties’ Joint Motion for Further Enlargement of Discovery and Case Management Deadlines, thus setting a January 15, 2010 due date for non-expert discovery. (*See* 01/04/10 Order [184]) Plaintiffs’ expert designation was

¹Plaintiff Charles Taylor is an individual Plaintiff and class representative on behalf of all Plaintiffs. The Court herein refers to Plaintiffs in the plural form. The title of Attachment A (supporting the Motion) indicates a request for alternative relief (preclusion of evidence in opposition to a class certification motion) but this alternative relief request is moot because the class certification issue has already been decided.

also due by January 15, 2010 and their expert report was due by March 5, 2010. (01/04/10 Order [184]) On January 26, 2010, this case was referred by the trial court to the undersigned for consideration of all motions relating to discovery. (*See* Order of Referral [188].) On February 2, 2010, this Court granted in part and denied in part Plaintiffs' [partial] Consent Motion for Extension of Time to Complete Discovery. (02/02/10 Minute Order.) Plaintiffs' request for a 21 day extension of discovery was granted to the extent that the January 15, 2010 deadline for non-expert discovery was extended up to and including February 5, 2010 for the limited purposes of: 1) allowing the parties to meet and confer regarding any discovery noticed or requested prior to January 15, 2010; and 2) permitting the Plaintiffs an opportunity to respond to Defendant's outstanding requests for production of documents. Non-expert discovery was not otherwise continued during the extension period.

On March 9, 2010, Plaintiffs, through counsel, filed a motion for a stay of discovery deadlines alleging that because they had not received certain documents sought through discovery, they were unable to comply with the March 5, 2010 expert report deadline.² Plaintiffs accordingly requested that this Court "stay the discovery deadlines in this matter, *nunc pro tunc* to March 5, 2010, through March 15, 2010 for the Plaintiffs to file their motion to compel." (Motion to Stay Discovery [191] at 2.) This Court granted in part and denied in part the Motion to Stay (03/15/10 Minute Order [192].)

On March 17, 2010, Plaintiffs filed the instant Motion to Compel [195], and on March

²Plaintiffs did not file their motion prior to the March 5, 2010 expert report deadline due to illness of counsel.

26, 2010, Defendant WASA filed its Opposition [197].³ A review of the record in this case indicates that Plaintiffs' Motion to Compel is a verbatim copy of an earlier Renewed Motion to Compel [67] filed in April 2004. Defendant WASA filed its opposition [81] in response to that motion [67] in May 2004, and Plaintiffs replied to the opposition in June 2004. (Reply attached to [85] Motion for Extension of Time to File Reply.) Plaintiffs' Renewed Motion to Compel [67] was denied by the trial court in a March 9, 2005 Minute Order, *nunc pro tunc* September 24, 2004. On September 24, 2004, the trial court issued an Order [88] denying Plaintiffs' motion to compel responses to interrogatories and requests for production of documents; re-open discovery; modify the discovery schedule; and extend and bifurcate discovery "except to the extent further discovery was authorized by th[e] [trial] court's order docketed January 6, 2004." (September 9, 2004 Order [88] at 1.) The trial court's January 6, 2004 Order [50] ordered that

defendant WASA shall, to the extent it has not done so already, provide plaintiffs with (1) any electronic versions of spreadsheets (i.e., in Excel format) requested by plaintiffs, which they already obtained from defendant in paper form and (2) any other documents (e.g., the list of names and addresses of current WASA employees) not yet in plaintiffs' possession which defendant purported to have already produced; . . .

(Order [50].) Accordingly, the trial court granted Plaintiffs some of the relief requested pursuant to their underlying motion to compel certain discovery responses, but on March 9, 2005, the trial court issued a Minute Order denying Plaintiffs' Renewed Motion to Compel [67]. Plaintiffs now renew that Renewed Motion to Compel after the close of merits discovery. In renewing that Motion in its original [outdated] form (with the attachment of some new exhibits), Plaintiffs make no showing that the contested discovery requests discussed therein are relevant to and

³Plaintiffs requested a two-day extension of time in which to file their Motion to Compel prior to filing it on March 17, 2010.

necessary for the preparation of their expert report. Nor do Plaintiffs provide any justification for revisiting the trial court's prior rulings on such Renewed Motion to Compel.⁴

Information Relevant to Expert Report, as noted in Plaintiffs' Motion to Stay

Plaintiffs' request for a stay of discovery deadlines until they had an opportunity to file a motion to compel was premised upon their assertion that "the Plaintiffs have not received important documents and data that they sought through merits and other discovery served on the Defendant, [and] they are not able to produce that expert report." (Motion to Stay Discovery [191] at 1.) Plaintiffs particularly indicated that they needed "personnel files of the Defendant's employees during the class period and certain unspecified "data." (Motion to Stay [191] at 1-2.) Plaintiffs did not modify their Motion to Compel to explain what information their expert, Dr. Lanier, requires in order to prepare his expert report. Rather, they re-filed the same motion they filed several years ago when they were preparing for class certification [with a different expert] and they simply attached new exhibits thereto, including a Declaration by Dr. Lanier. Dr. Lanier's Declaration notes without further explanation that he requests basic information "including but not limited to each employee's age, level of education, exempt or non-exempt status, and actual W-2 compensation." (Declaration ¶5.) Dr. Lanier also includes a list of files that need to be produced in a different format before he can use them. WASA explains its position on both of these issues in its Opposition to the Motion to Stay.

⁴WASA asserts that "Plaintiffs' Motion to Compel is untimely because it has been filed after the close of merits discovery and raises alleged discovery deficiencies related to discovery responses that were provided to Plaintiffs at least four years ago." (Opposition at 7.) WASA further contends that Plaintiffs have "not offered any facts to explain why [they have been] unable to conduct discovery within the ample time frames set by this Court's Scheduling Orders, despite the fact that class certification discovery began in November 2002 and non-expert merits discovery extended from March 2008 through January 2010." (*Id.*)

Personnel Files

With regard to the personnel files, WASA acknowledges that “Plaintiff[s] [were] entitled to inspect personnel files during the two year merits discovery period [b]ut Plaintiff[s] simply did not make arrangements to do so, and [they] now request that the Court further delay this already long-overdue case to allow a three-week inspection that should have taken place months, if not years ago.” (Opposition at 1.)⁵

WASA asserts that it was not until January 13, 2010, two days before the close of merits discovery, that it received a letter indicating that its September 21, 2009 discovery responses were allegedly inadequate. (Opposition, Exh. H, January 13, 2010 letter from Plaintiffs’ counsel to Defendant’s counsel.) WASA responded by detailing its allegedly inadequate responses and providing a description of responsive documents. (Opposition, Exh. I, January 15, 2010 letter from WASA’s counsel to Plaintiffs’ counsel.) A Consent Motion to Extend Discovery for 21 days was filed on January 15, 2010, and granted in part by this Court to allow the parties until February 5, 2010 to meet and confer about document production disputes.

WASA asserts that during a January 27, 2010 conference call, Plaintiffs’ counsel informed WASA that he could not find unique employee identification numbers in any of the documents produced by WASA to date, and in response thereto, WASA identified the responsive documents that contained that information, which had been produced four years ago, in March, 2006. (Opposition at 5; *see* Exh. J, January 30, 2010 electronic mail chain.) Plaintiff’s counsel further indicated that WASA had not produced personnel files for over 1,000 individuals

⁵Merits discovery began on March 5, 2008 and closed on January 15, 2010. (Opposition at 3.)

employed by WASA during the class period and WASA notes that it “investigated the feasibility of such production.” (Opposition at 5.) On February 5, 2010, the parties held a conference to discuss WASA’s responses to Plaintiffs’ discovery requests. (*Id.*) At that time, WASA indicated that it would not produce the 1,000 complete personnel files, because it was too burdensome and Plaintiffs had the opportunity to inspect these files during merits discovery. Plaintiffs’ counsel requested another opportunity to inspect the files outside the discovery period. (Opposition, Exh. K, February 26, 2010 electronic mail chain.) On February 24, 2010, WASA informed Plaintiffs that it was “not in a position to accommodate Plaintiffs’ request for inspection of personnel files, as Plaintiffs failed to request this inspection during the discovery period after being repeatedly notified that the files were available for inspection.” (Opposition, Exh. K.)

WASA notes that Plaintiffs were allowed to inspect its personnel files on June 23, 2003 pursuant to a joint proposed discovery order. (Opposition, Exh. Q, Joint Status Report and Order.) The files were made available for inspection and copying from June 23, 2003 through July 8, 2003, and Plaintiffs’ counsel inspected them for one and one-half days before halting the inspection and declaring that it was too burdensome and a “document dump.” (Opposition at 9; *see* Exh. R, November 24, 2003 Status Hearing Transcript, pp 22-30.) During a November 24, 2003 status hearing, the trial court found that Plaintiffs’ pending motion to compel did not properly raise the personnel file issue and he also indicated that counsel should have raised this issue at the time of the inspection. (Opposition at 9; *see* Exh. R.) Plaintiffs’ Renewed Motion to Compel [67] was thereafter denied by the trial court in March 2005. (03/09/05 Minute Order.)

WASA asserts that the issue of production of personnel files was not raised again by Plaintiffs until the close of merits discovery when WASA’s counsel sent a January 15, 2010

letter to Plaintiffs' counsel, responding to allegations of discovery deficiencies and noting that Plaintiffs had the opportunity to request a review of personnel files during merits discovery but had not done so. (Opposition at 9; *see* Exh., I, January 15, 2010 letter from WASA's counsel to Plaintiffs' counsel.)

The issue of personnel files was initially addressed by the trial court during class certification discovery when Plaintiffs began and then disbanded their inspection of the files. The trial court subsequently denied Plaintiffs' renewed request to compel this discovery. Plaintiffs have now raised this same issue at the close of merits discovery. While Plaintiffs have asserted that the personnel files are necessary in order for their expert to prepare his report, the Declaration of Dr. Lanier does not confirm this assertion. Accordingly, this Court finds that Plaintiffs' request for personnel records is untimely and should be denied.

Data Files

With respect to the data files, WASA indicates that Plaintiffs received electronic data files "over 4 years ago, [but] first raised the issue of obtaining some of these particular files in a different format on February 5, 2010, at which point Plaintiffs and Dr. Lanier (Plaintiffs' new expert) agreed to provide a listing of the requested files." (Opposition at 2.) Such listing was not provided until Plaintiffs filed their Motion to Compel on March 17, 2010, and attached to Dr. Lanier's Declaration a listing of approximately 85 requested files. Defendant notes that, on March 26, 2010, WASA provided the listed files in the requested format to Plaintiffs' counsel,

and thus, with regard to this issue, Plaintiffs' Motion to Compel is moot. (Opposition at 12.)

Wherefore, it is this 22nd day of April, 2010, hereby

ORDERED that the Plaintiffs' Motion to Compel the Defendant [195] is DENIED.

_____/s/_____
ALAN KAY
UNITED STATES MAGISTRATE JUDGE