

1999 WL 319213
United States District Court, E.D. Louisiana.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
v.
HBH, INC.

No. CIV. A. 98–2632. | May 19, 1999.

Opinion

ORDER AND REASONS

VANCE, District J.

*1 Before the Court is plaintiff’s motion to review and vacate the Magistrate’s Order denying plaintiff’s motion to amend its complaint to identify other aggrieved individuals. After reviewing the briefs, evidence, and relevant case law, the Court affirms the Magistrate’s ruling denying the addition of Kenneth Strahan, Sevrarn Persaud, Henry Rink, Allen Polizzi, Michael Lean, Ron Livings, Carl Kelly, and Russell Hastings as plaintiffs in this law suit. The Court reverses the Magistrate’s ruling as to Jack Mann finding that the plaintiff’s complaint may be amended to add Mann as a plaintiff.

I. BACKGROUND

On September 4, 1998, plaintiff filed this law suit alleging that the defendant discriminated against Rhua Dale Williams and others in violation of the Americans With Disabilities Act. On October 29, 1998, this Court granted Williams’ motion to intervene.

On March 3, 1999, two months after the deadline for amending the complaint, plaintiff filed a motion to amend its original complaint to add the names of nine other aggrieved individuals and to add TransCoastal Marine Services Inc. as a defendant. On April 5, 1999, Magistrate Roby denied plaintiff’s motion to amend the complaint to add other aggrieved individuals on the grounds that the EEOC had not attempted to conciliate the claims of eight of the nine individuals, and as to the last individual, Jack Mann, no reason was given. The Court granted plaintiff’s motion to add TransCoastal as unopposed.

Plaintiff moves the Court to review and vacate the Magistrate’s April 5, 1999 Order on the grounds that it did attempt to conciliate the claims of the additional plaintiffs and that it had good reason for failing to timely amend its complaint to add these individuals. Defendant contends that plaintiff has failed to conciliate these additional claims and failed to present good reason for its untimely motion to add plaintiffs.

II. ANALYSIS

A. Standard of Review

Under 28 U.S.C. § 636(b)(1)(A) and Fed.R.Civ.P. 72(a), a court reviews a magistrate judge’s determination of a nondispositive issue according to whether the decision has shown to be “clearly erroneous or contrary to law.” The clearly erroneous standard requires that the court affirm the decision of the magistrate judge unless “on the entire evidence [the court] is left with a definite and firm conviction that a mistake has been committed.” *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948); see also Fed.R.Civ.P. 72(a).

B. Conciliation

E.E.O.C. v. HBH, Inc., Not Reported in F.Supp.2d (1999)

The Americans With Disabilities Act incorporates the procedures set forth in Title 42, United States Code, Section 2000e-5 for allegations by the EEOC of discrimination on the basis of disability. *See* 42 U.S.C. § 12117. Under section 2000e-5, the Commission must notify the employer of every charge of discrimination, investigate the charge, and determine whether there is reasonable cause to believe that the charge is true. 42 U.S.C. § 2000e-5(b). If the Commission determines that there is reasonable cause to believe that the charge is true, “the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.” 42 U.S.C. § 2000e-5(b). If the Commission is unable to secure from the respondent a conciliation agreement acceptable to the Commission within thirty days after the charge is filed, the Commission may bring a civil action against the respondent. 42 U.S.C. § 2000e-5(f)(1).

*2 The Fifth Circuit has held that the EEOC must make a good faith attempt to conciliate. *See Equal Employment Opportunity Commission v. Pet, Inc.*, 612 F.2d 1001, 1002 (5th Cir.1980). In evaluating this statutory requirement, the Court focuses on the “reasonableness and responsiveness of the EEOC’s conduct under all the circumstances.” *Equal Employment Opportunity Commission v. Klingler Elec. Corp.*, 636 F.2d 104, 107 (5th Cir.1981)(citing *Marshall v. Sun Oil Co.*, 605 F.2d 1331, (5th Cir.1979)).

Here, the record indicates that the EEOC attempted to conciliate the claims of Williams and Mann, but there is no evidence that the EEOC even discussed the claims of the eight other individuals plaintiff seeks to add. It is clear from the correspondence between the parties that all of the conciliation activities were directed towards the possible settlement of the claims of Williams and Mann. (Pl.’s Exs. C, D, E, F, G, H) Except for references to other members of the class and allegations concerning a class of individuals who have allegedly been discriminated against on the basis of disability, there is no reference to the eight individuals plaintiff seeks to add. (Pl.’s Exs. E, H). These allusions to other class members do not constitute reasonable attempts to conciliate the claims of the eight additional aggrieved individuals. Such references do not represent genuine efforts to conciliate. *See Equal Employment Opportunity Commission v. General Dynamics Corp.*, 849 F.Supp. 1158, 1166-67 (N.D.Tex.1994). Accordingly, the Court finds that as to these eight individuals the Magistrate’s ruling is not clearly erroneous.

B. Untimely Amendment

Although the EEOC attempted to conciliate the claims of Jack Mann, the Commission failed to amend the complaint to add Mr. Mann within the scheduling deadline set forth in the Court’s Order for amending the complaint. The Order requires amendments to the pleadings to be filed no later than January 3, 1999. *See* Order, Dec. 3, 1998, Doc. No. 8. Plaintiff filed its amended complaint on March 3, 1999.

Rule 16 of the Federal Rules of Civil Procedure provides that “[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge or ... magistrate judge .” The Magistrate denied plaintiff leave to amend its complaint to add Mr. Mann. The Court finds that plaintiff has shown good cause for failing to timely amend the complaint. Mr. Mann’s charges of discrimination state violations of the ADA and the Age Discrimination in Employment Act (ADEA), which prompted plaintiff to consider the possibility of filing a separate law suit on Mr. Mann’s behalf, because his claims include two different statutes. (Pl.’s Ex. M) It was not until March 1999, that the EEOC determined that Mr. Mann should be named in the ADA action. It is clear from the record that defendant will not be prejudiced by allowing plaintiff to amend the complaint to add Mr. Mann. The correspondence between the parties indicates that the claims of Williams and Mann were treated jointly. Discovery has included both claims, and defendant has answered interrogatories in reference to both Williams and Mann. (Pl.’s Ex. L) Accordingly, the Court reverses the Magistrate Judge’s ruling that denied plaintiff’s motion to amend the complaint to add Mr. Mann.

III. CONCLUSION

*3 For the reasons set forth above, plaintiff’s motion to vacate the Magistrate’s Order is denied as to the addition of Kenneth Strahan, Sevrarn Persaud, Henry Rink, Allen Polizzi, Michael Lean, Ron Livings, Carl Kelly, and Russell Hastings; and granted as to Jack Mann.

Parallel Citations

10 A.D. Cases 134

