IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	
and	)	
LORI VAUGHN and BRENDA CONNELL,	)	
Plaintiffs-Intervenors,	)	
vs.	)	**CIVIL NO. 99-4187-GPM**
KROGER FOOD STORES,	)	
Defendant.	)	

MEMORANDUM AND ORDER

MURPHY, District Judge:

This matter came before the Court for a hearing on Defendant's motion for summary judgment (Docs. 56, 57) on July 17, 2000. Defendant's motion sought summary judgment on the first amended complaint, which is based upon individual charges of sexual harassment filed by Plaintiffs-Intervenors Vaughn and Connell. Kroger argued that the Equal Employment Opportunity Commission ("EEOC") failed to satisfy the jurisdictional prerequisites required to bring an action because it failed to make a good faith effort to conciliate the claims as required by 29 U.S.C. § 626(b). Specifically, Defendant argued that the EEOC failed to conciliate Vaughn's and Connell's charges because it gave "cursory consideration" to Kroger's offer of monetary settlement. Second, Kroger contended the EEOC failed to conciliate in any way the class issues it now brings in the first amended complaint.

The facts of this case are set forth on the record of the July 17, 2000, hearing. For purposes

of this motion, the Court notes that a Determination of Cause was issued by the EEOC with respect to Vaughn's and Connell's charges on July 30, 1998. The Letters of Determination, which were mailed to the parties on that date, stated that the EEOC had determined in each case that "the evidence obtained in the investigation does establish reasonable cause to believe that Respondent violated Title VII by sexually harassing Charging party, and a class of female employees, and subjecting them to a hostile work environment." *See* Defendant's Exhibits G & H (Doc. 58). The Letters of Determination specifically invited Respondent (Kroger) to participate in conciliation efforts concerning not only the claims of Vaughn and Connell, but a class of female employees. *Id.* Subsequently, Kroger's attorney contacted the EEOC Investigator, Charles Bold, and requested a settlement demand. On August 25, 1998, Bold communicated to Kroger's attorney that the demand from Vaughn's and Connell's attorney was $300,000 for each Plaintiff, plus reinstatement for Vaughn. *See* Local Rule 7.1(h) Joint Statement of Material Facts (Doc. 68) at para. 8.

One month later, Kroger responded with a $5,000 offer to Vaughn and a $5,000 offer to Connell, and Kroger offered unconditional reinstatement to Vaughn. *See* Local Rule 7.1(h) Joint Statement of Material Facts (Doc. 68) at para. 9. On September 28, 1998, Bold advised Kroger's counsel that Kroger's offer had been rejected and that he had determined that further conciliation efforts would be futile or non-productive. *See* Local Rule 7.1(h) Joint Statement of Material Facts (Doc. 68) at para. 10. Kroger apparently did not inquire into the status of the case again until July 19, 1999, when Kroger's attorney wrote to Bold inquiring about the status of the case. *See* Local Rule 7.1(h) Joint Statement of Material Facts (Doc. 68) at para. 16.

In light of these undisputed facts, the Court finds that the EEOC met its statutory duty to conciliate in this case. The EEOC advised Kroger that there was reasonable cause to believe Kroger had violated Title VII. The EEOC invited Kroger to participate in the conciliation process, yet Kroger's only participation was to make a $5,000 offer in response to a $300,000 demand for each

of the named Plaintiffs. This is not the type of case where it is clear that the Respondent was sincerely interested in resolving the claim, but the EEOC jumped the gun and filed suit. *See, e.g., Equal Employment Opportunity Commission v. First Midwest Bank*, 14 F.Supp. 1028 (N.D. Ill. 1998) (Ordering a 60 day stay for conciliation where the record reflected that the Respondent had ongoing interest in meeting with the EEOC to discuss conciliation). The Court is not persuaded by Kroger's argument that the EEOC was required to do more than it did to pursue conciliation. As stated by the Tenth Circuit, "when the EEOC initially makes a sufficient albeit limited effort to conciliate, the minimal jurisdictional requirement of the Act is satisfied and the action is therefore properly before the court." *Equal Employment Opportunity Commission v. Prudential Fed. Savs. and Loan Ass'n*, 763 F.2d 1166, 1169 (10th Cir. 1985). The EEOC must make a good faith effort to conciliate, but it "is under no duty to attempt further conciliation after an employer rejects its offer." *Equal Employment Opportunity Commission v. Keco Indus., Inc.*, 748 F.2d 1097, 1101-1102 (2nd Cir. 1984).

Accordingly, for these reasons and for the reasons more thoroughly expressed on the record at the July 17, 2000, hearing, Defendant's motion for summary judgment (Doc. 56) is **DENIED**.

IT IS SO ORDERED.

DATED: 07/17/0

DISTRICT JUDGE