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United States District Court, N.D. Illinois, Eastern Division.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
James M. FERGUSON Plaintiff–Intervener
v.
FOSTER WHEELER CONSTRUCTORS, INC., and Pipe Fitters Association, Local Union 597, Defendants.

No. 98 C 1601. | Dec. 2, 1998.

Opinion

MEMORANDUM OPINION AND ORDER

COAR, J.

***1** Before this court are the motions of defendant Local Union 597 (the "union") to dismiss the EEOC's Second Amended Complaint and to dismiss Count I of plaintiff-intervener's James M. Ferguson's ("Ferguson") Amended Complaint on the basis that a union cannot be held liable for a hostile work environment at an employer's worksite. In addition, Local 597 and defendant Foster Wheeler have moved to dismiss Count III of Ferguson's Amended Complaint for intentional infliction of emotional distress on the basis that plaintiff's claim is preempted by the Illinois Human Rights Act, 775 ILCS 5/1–101 *et seq*. For the reasons stated below, Local 597's motion to dismiss the EEOC's Second Amended Complaint and to dismiss Count I of Ferguson's Amended Complaint is denied. Defendants' motions to dismiss Count III of Ferguson's Amended Complaint are granted.

I. Background

The complaints in the present case seek to recover against both Foster Wheeler and the union for creating and maintaining a racially hostile work environment at the Foster Wheeler worksite in Robbins, Illinois. The union provided labor to Foster Wheeler, the contractor, for the Robbins construction project. The plaintiffs allege that the union exercised control over the working conditions by selecting, assembling, organizing and managing the pipefitter workforce at the Robbins facility. Specifically, the union's agent, Dennis Hahney, served as the supervisor of all the pipefitters at the worksite including supervisors and forepersons. In addition, Hahney was designated by the Union as its agent to receive and handle grievances on behalf of the Union members at the worksite. Plaintiffs assert that Hahney thus wore two hats at the worksite—that of agent for the union and that of supervisor for Foster Wheeler. Plaintiffs further allege that despite complaints to Hahney about racial harassment at the worksite, the union, through Hahney, failed to adequately respond. In addition, Ferguson claims that he was discharged in retaliation for complaining to Hahney about the racial harassment at the site.

In Count III of his complaint, Ferguson alleges that the hostile work environment and retaliatory discharge give rise to a claim for intentional infliction of emotional distress under the common law of Illinois. (Am.Cplt.¶¶ 35–39.)

II. Analysis

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure does not test whether the plaintiff will prevail on the merits, but instead whether the plaintiff has properly stated a claim for which relief may be granted. *Pickrel v. City of Springfield, Ill.,* 45 F.3d 1115 (7th Cir.1995). A plaintiff fails to state a claim upon which relief may be granted only if "it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Leahy v. Board of Trustees of Community College Dist. No. 508, 912 F.2d 917, 921 (7th Cir.1990) (quoting *Conley v. Gibson,* 355 U.S. 41, 44–45, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)).

***2** Under the Federal Rules of Civil Procedure, plaintiffs need not set out in detail the facts upon which they base their claims; rather, the Rules require only that the defendant be given fair notice of what the plaintiffs' claims are and the grounds upon which they rest. *Conley,* 335 U.S. at 47, 78 S.Ct. 99 (1957). Accordingly, for purposes of this motion, the court must take all of the well-pleaded factual allegations in the EEOC's Second Amended Complaint and Ferguson's Amended Complaint as true, and construe them in the light most favorable to the plaintiffs. *Richmond v. Nationwide Cassel, L.P.,* 52 F.3d 640, 644 (7th Cir.1995).

A. Union Liability for Hostile Work Environment

The union contends that the claims against it must be dismissed because only the employer, Foster Wheeler, and not the union, is liable for the hostile work environment at the Robbins site. The union further asserts that, even if a union can be held liable for a hostile work environment at the employer's worksite, plaintiffs have not properly alleged that the union "instigated, supported, ratified or encouraged the hostile environment at the Robbins project." (Dft's Mem. at 1.) The union's virtually identical arguments were rejected by our sister courts in *Harper v. Foster–Wheeler Constructors, Inc.,* No. 97 C 4793, 1998 WL 433761 (N.D.Ill. July 28, 1998) (Manning, J.); *Malone v. Pipefitters' Association Local 597,* No. 97 C 3718 (July 28, 1998) (Manning, J.); *Nelson v. Pipefitters Ass'n., et al.,* No. 97 C 4787 (N.D.Ill. September 11, 1998) (Holderman, J.).

Under Title VII, an labor union is subject to liability for a hostile work environment at an employer's worksite if the union contributes to the alleged discriminatory action or intentionally acquiesces in an employer's discriminatory policies and procedures. *See generally Goodman v. Lukens Steel* Co., 482 U.S. 656, 665–67, 107 S.Ct. 2617, 2623–24, 96 L.Ed.2d 572 (1987); *Carbon Fuel Co. v. United Mine Workers Union,* 444 U.S. 212, 218, 100 S.Ct. 410, 62 L.Ed.2d 394 (1979) (holding that union liability arises upon a showing of intentional discrimination by the union); *Daniels v. Pipefitters' Ass'n Local Union No. 597,* 945 F.2d 906, 924 (7th Cir.1991); *Donnell v. General Motors Corp.,* 576 F.2d 1292, 1300 (8th Cir.1978) (union liability for ratifying or not protesting employer's discriminatory apprenticeship program); *Egger v. Local 276, Plumbers and Pipefitters Union, et al.,* 644 F.Supp. 795 (D.Mass.1986) (union violates Title VII if it acquiesces in an employer's discriminatory policies).

Plaintiffs allege that the union, through Hahney, intentionally caused or acquiesced in a hostile work environment at the Robbins site. This court agrees with its sister courts that the allegations against the union are sufficient to withstand a motion to dismiss and need not specifically allege that the union "instigated, supported, ratified, or encouraged" the alleged discrimination. *See Harper,* 1998 WL 433761 *2 (N.D.Ill.1998); *Nelson,* No. 97 C 4787 (N.D.Ill. September 11, 1998). Even if such a showing is required for plaintiffs to ultimately succeed on their claims, the present allegations of union control over the Robbins worksite are sufficient to create an inference that the union supported, ratified or encouraged the discriminatory conduct. Accordingly, the allegations adequately inform the union of the claims against it and no additional evidentiary support at the pleading stage is required. *See Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,* 507 U.S. 163, 167, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993) (Federal Rules of Civil Procedure only require plaintiff to generally allege facts from which defendant could adduce the grounds for which relief is sought, not to allege specific facts).

***3** If, after completion of discovery, plaintiffs are unable to support their claims with sufficient evidence, then summary judgment is proper—at this stage, however, plaintiffs have satisfied the requirements of notice pleading. Accordingly, the union's motions to dismiss the EEOC's complaint and to dismiss Count I of Ferguson's complaint are denied.

B. Ferguson's Intentional Infliction of Emotional Distress Claim

Defendants also move to dismiss Ferguson's claim for intentional infliction of emotional distress as preempted by the Illinois Human Rights Act ("IHRA"), 775 ILCS 5/8–111 (C). The IHRA provides that "[n]o court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act." 775 ILCS 5/8–111 (C). The IHRA thus preempts common law tort claims that are "inextricably linked to a civil rights violation such that there is no independent basis for the action apart from the Act itself." *Maksimovic v. Tsogalis,* 177 Ill.2d 511, 227 Ill.Dec. 98, 687 N.E.2d 21 (1997); *Geise v. Phoenix Company of Chicago,* 159 Ill.2d 507, 203 Ill.Dec. 454, 639 N.E.2d 1273 (1994).

Several courts in this district "have routinely dismissed Illinois state tort claims—particularly intentional infliction of

emotional distress claims—for lack of jurisdiction when brought in connection with allegations of a civil rights violation." *Ratley v. City of Aurora,* 1998 WL 30697 *3 (N.D.Ill. Jan. 22, 1998) (Marovich, J.) (citations and quotations omitted); *Westphal v. City of Chicago,* 1998 WL 329690 *2 (N.D. Ill. June 11, 1998) (Bucklo, J.); *Silk v. City of Chicago,* 1997 WL 790598 *17 (Dec. 17, 1998) (Coar, J.); *Erickson v. Elco Industries,* 1996 WL 268383 *1 (N.D.Ill.1996) (Reinhard, J.). Courts must look to the essence of the claims in order to determine whether the tort claim at issue is, in reality, a claim of discriminatory acts preemptively covered by the IHRA. *Silk,* 1997 WL 790598 *16. "In other words, there must still exist a foundation for the emotional distress claims even if the defendants' conduct was not discriminatory." *Westphal,* 1998 WL 329690 *2 (N.D.Ill.1998).

The court finds that Ferguson's intentional infliction of emotional distress claim is "inextricably linked" to his hostile work environment and discrimination claims because it relies entirely on the duty not to discriminate. Ferguson claims he was emotionally distressed due to the hostile work environment and his retaliatory discharge. Thus, absent the allegations of racial discrimination, Ferguson has no independent factual basis for imposing liability for intentional infliction of emotional distress. Accordingly, Count III is outside this court's jurisdiction and must be dismissed.

III. Conclusion

For the foregoing reasons, the court denies Local Union 597's motion to dismiss the EEOC's second amended complaint and Count I of Ferguson's amended complaint. The court grants Local Union 597's and Foster Wheeler's motions to dismiss Count III of Ferguson's amended complaint.