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

Missey JEFFERSON, et al., Plaintiffs,
v.
INGERSOLL INTERNATIONAL, INC., et al., Defendants.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
v.
INGERSOLL INTERNATIONAL, INC., et al., Defendants.

Nos. 98 C 50042, 99 C 50362. | Jan. 4, 2000.

Attorneys and Law Firms

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Opinion

MEMORANDUM OPINION AND ORDER

REINHARD, J.

Introduction

***1** Plaintiffs have filed a fourth-amended complaint against the following corporate defendants: Ingersoll International, Inc. ("Ingersoll International"), Ingersoll Milling Machine Company ("Ingersoll Milling"), Ingersoll Cutting Tool Company ("Ingersoll Cutting") and Ingersoll Maschinen und Werkzeuge GmbH ("Ingersoll GmbH").[1] All but two of the named plaintiffs (Collier and King–Bey) are current or former employees of, or applicants for employment at, Ingersoll Milling. These twenty four plaintiffs (referred to as "the original plaintiffs")[2] assert claims against Ingersoll Milling without reliance on the single employer theory of liability. Collier alleges he sought employment at both Ingersoll Milling and Ingersoll Cutting, and asserts claims directly against both entities, without reliance on the single employer theory. King–Bey worked solely for Ingersoll Cutting and asserts claims against Ingersoll Cutting, without reliance on the single employer theory. All plaintiffs seek to recover against all corporate defendants on the theory that the corporate defendants constitute a single employer. (Compl.¶ 37, 40–43) Specifically, all plaintiffs rely on the single employer theory to assert claims against Ingersoll GmbH; the original plaintiffs also rely on the theory to assert claims against Ingersoll Cutting, as does King–Bey with respect to Ingersoll Milling.

Thus, defendants have moved for partial summary judgment pursuant to Fed.R.Civ.P. 56 with respect to three categories of claims: (1) all plaintiffs' claims against Ingersoll GmbH; (2) the original plaintiffs' claims against Ingersoll Cutting; and, (3) King–Bey's claims against Ingersoll Milling. (Defs.Memo., p. 1–2) The basis of defendants' motion is that defendants Ingersoll Milling, Ingersoll Cutting and Ingersoll GmbH are not a single employer for purposes of plaintiffs' discrimination claims, brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII") and the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981 ("section 1981").

Preliminary Matters

A. ***Defendants' Motion to Strike***

Defendants have moved to strike certain paragraphs of plaintiffs' Local Rule 56.1(b) Statement of Additional Facts on one of three grounds: (1) they contain information which is entirely immaterial to the single employer issue; (2) they merely repeat prior paragraphs; or, (3) they are descriptions of a document or deposition testimony. The court will not consider information that has no relevance to the single employer issue or that is merely a repeat of prior material. As for the statements which are descriptions of a document or deposition testimony, such information properly constitutes statements of facts under Local Rule 56.1. Defendants' motion to strike is denied.

B. ***Plaintiffs' Motion to File Race–Coded Job Applications***

On October 4, 1999, plaintiffs filed their response to defendants' motion for partial summary judgment. On November 16, 1999, Ingersoll Cutting produced at least thirty job applications, which plaintiffs claim are race coded. Plaintiffs seek leave to supplement their response with the recently produced job applications. The court will consider the evidence proffered by plaintiffs in reaching its decision regarding the single employer issue, and plaintiffs' motion is granted.

Relevant Facts

A. ***Background***

***2** Ingersoll International is a holding company with wholly owned subsidiaries Ingersoll Milling, Ingersoll Cutting and Ingersoll GmbH. Each corporation is privately owned, and each is separately incorporated. Ingersoll International has two classes of stock, voting common stock and non-voting Class A stock. Except for approximately one percent of the common stock, the stock of Ingersoll International is held by members of the Gaylord family. On and before December 31, 1998, Ingersoll International had no employees. On January 1, 1999, forty two employees were transferred from a corporate group within Ingersoll Milling (referred to as the "Corporate Division") to Ingersoll International. According to defendants, the transfer of the employees was seen as a housekeeping chore, prompted by one employee not wanting Ingersoll Milling employees to have access to his salary. The transfer did not affect any employee's duties or responsibilities.

Ingersoll Milling is incorporated in Illinois, its headquarters are located in Rockford, Illinois, and it has approximately 1,400 employees. Ingersoll Cutting is incorporated in Delaware. Its headquarters are also in Rockford, Illinois, and it has approximately 550 employees. Ingersoll GmbH is a German corporation with its principal place of business in Burbach, Germany. Ingersoll GmbH operates four wholly-owned subsidiaries in Germany, and operates a small field office, consisting of approximately nineteen employees, in Rockford.

B. ***Officers and Directors***

Ingersoll International has a Board of Directors consisting of thirteen individuals. Until August of 1999, its five officers were: Edson Gaylord, Chairman of the Board; Helmut Belz, Vice Chairman of the Board; Frederick Wilson, President and Chief Executive Officer; William Shannon, Secretary/Treasurer; and, Paul Ballweg, Vice President and Assistant Secretary. In August, Wilson retired as CEO and was replaced by Deiter Feisel, the President of Ingersoll's German group of companies since 1995. (Def.LR56.1(a) ¶ 23; Pl. Exh. 28) At that time, Belz also retired and was not replaced. (Pl.Exh. 28) The Board of Directors holds regular meetings and maintains written minutes of its meetings. (LR56.1(a) ¶ 20)

Ingersoll Milling has one director, Edson Gaylord, who is also the sole director of Ingersoll Cutting. Ingersoll Milling currently has thirteen officers, Ingersoll Cutting has four officers, and Ingersoll GmbH has two officers. (Def.LR56.1(a) ¶¶ 28, 35, 37; Def. Exh. 11) Of the officers of all three companies, Wilson (until August of 1999) was a common officer of Ingersoll International and Ingersoll Milling, and Shannon and Ballweg were common officers of Ingersoll International, Ingersoll Milling and Ingersoll Cutting. Ingersoll International, Ingersoll Milling and Ingersoll Cutting are each governed by their own by-laws.

C. ***Management Structure, Location***

Ingersoll International's daily affairs are conducted by its Chairman of the Board (Gaylord) and the President and CEO (formerly Wilson and now, apparently, Feisel). Its principal place of business is in the same building as the management of Ingersoll Milling. (LR56.1(a) ¶ 53) The presidents and senior managers of the several U.S. subsidiaries of Ingersoll International periodically meet with the President of Ingersoll International to review their business plans for the coming year. (LR56.1(a) ¶ 42) Each subsidiary of Ingersoll International has separate management personnel.

***3** Ingersoll Milling makes special machine tools and integrated manufacturing systems for industry world-wide. (*Id.* ¶ 64) Its products range from automated transfer lines that produce auto engine parts each hour, to huge, one-of-a-kind machines that take hours to produce a single tractor part. (Defs. Exh. 26, Bates No. ING124762) It has four plants in Rockford, and owns its buildings and all equipment therein. (LR56.1(a) ¶ 66–68) Since October 1996, the President of Ingersoll Milling has been Tom Shifo, who has daily responsibility for and control over management of the company. (*Id* . ¶ 44) He has no responsibility for management of Ingersoll Cutting or Ingersoll GmbH. (*Id.* ¶ 45)

Ingersoll Cutting makes specially engineered cutting tools. Its office is located at 505 Fulton Avenue and its main manufacturing facility is adjacent to the office building. (*Id.* ¶ 87–88) Ingersoll Cutting owns the office building and Fulton Avenue plant, owns another plant on Industrial Avenue, and leases space in another building on Main Street. (*Id.* ¶ 90–91) It owns all of the equipment in its offices and plants in Rockford. (*Id.* ¶ 92) From approximately 1988 to 1998, Merle Clewett was President of Ingersoll Cutting. Since August of 1998, Rod Drummond has been the President, and has daily responsibility for and control over management of Ingersoll Cutting. (*Id.* ¶ 47) Drummond has no responsibility for management of Ingersoll Milling or Ingersoll GmbH, nor did Clewett. (*Id.* ¶ 49)

Ingersoll GmbH operates several subsidiaries which design, develop, manufacture and sell large machine tools, cutting tools, and electrical discharge machines. (*Id.* ¶ 105) Ingersoll GmbH leases space from Ingersoll Milling. Employees from the two subsidiaries co-exist in the same building, separated by an aisle, and share rest rooms, a copier, a coffee shop and a parking lot. (*Id.* ¶ 107, 109; Pl. Exh. 15, Stanis Aff., ¶ 4) From 1997 to 1999, the President of Ingersoll GmbH was Hollis Hanson, who reported to the President of Ingersoll International's German Operations. (*Id.* ¶ 51) Since 1999, the General Manager of Ingersoll GmbH has been John Harris. Neither Hanson nor Harris have had responsibility for running Ingersoll Milling or Ingersoll Cutting.

D. ***Finances***

Although Ingersoll International, Ingersoll Milling, Ingersoll Cutting and Ingersoll GmbH maintain separate corporate records from each other, the separate profit and loss statements, earnings statements and balance sheets for Ingersoll Milling and Ingersoll Cutting are consolidated to show the combined results of the U.S. Operations. (LR56.1(a) ¶ 24, 31, 36, 38, 141) Ingersoll International, Ingersoll Milling and Ingersoll Cutting file consolidated federal and state income tax returns. (*Id.* ¶ 141) Ingersoll Milling and Ingersoll Cutting each file separately for purposes of employment tax reporting, each has its own federal identification number, and each files separate sales tax returns. (*Id.* ¶ 84, 103, 142–43) Ingersoll Milling and Ingersoll Cutting each have its own company controller, whose job is to oversee the cost accounting and budgeting for the individual subsidiary. (*Id.* ¶ 80, 99) Ingersoll Cutting's company controller reports to the Corporate Finance Department which, until December of 1998, was part of Ingersoll Milling. Ingersoll GmbH has an operating account for daily funds, but forwards any money received from customers to Germany. (*Id.* ¶ 113) Ingersoll Milling and Ingersoll Cutting each develops its own budget plan. Although Ingersoll International has the authority to disprove the plan, it did not do so in 1997 or 1998. (*Id.* ¶ 81, 100)

***4** Defendants assert that Ingersoll Milling is separately capitalized, with a current equity capital of approximately $16 million, and that Ingersoll Cutting is also separately capitalized, with a current equity capital of approximately $22 million. (LR56.1(a) ¶ 25, 32) Plaintiffs note that in the 1980's, Ingersoll Milling transferred equity to Ingersoll Cutting, which was not returned until 1997. (Pl. Exh. 6, Wilson dep., p. 220–21) Ingersoll International and its subsidiaries collectively obtain bank financing, with Ingersoll International acting as the guarantor. (LR56.1(a) ¶ 124; Pl. Exh. 18) Ingersoll International's Board of Directors has the responsibility for approving the amount Ingersoll Milling and Ingersoll Cutting spend on capital investments. (Pl.Exh. 17)

Ingersoll International and its U.S. subsidiaries maintain a number of different bank accounts. Each company has a separate "lockbox" collection account. (LR56.1(a) ¶ 126) All receipts from the collection accounts are combined into a single corporate account, from which disbursements are made. The corporate account is designated an Ingersoll Milling account. (*Id.* ¶ 127) A daily record is maintained showing to which subsidiary the money in the corporate account belongs. (*Id.* ¶ 128) To the extent a subsidiary has a surplus in the corporate account, it is paid interest; likewise, to the extent a subsidiary has a

deficit in the corporate account, it is charged interest. (*Id.* ¶ 129) The Corporate Finance Department (until recently a part of Ingersoll Milling) must approve the release of any checks by Ingersoll Milling or Ingersoll Cutting. (*Id.* ¶ 131) Currently, the paychecks for employees of each subsidiary reflect the subsidiary's name. Accounts payable checks for Ingersoll Milling and Ingersoll Cutting are prepared by each subsidiary's Accounts Payable Department. (*Id.* ¶ 130) Ingersoll Milling also processes Ingersoll GmbH's payroll, although the paychecks for Ingersoll GmbH employees say "Ingersoll GmbH." (*Id.* ¶ 138–39)

E. ***Operations***

Some of the services provided by employees overlap. For example, the Corporate Finance Department[3] provides services to U.S. subsidiaries of Ingersoll International. In addition, certain Ingersoll Milling employees provide some administrative services to the subsidiaries, including cafeteria, mail, travel and photography services. The salaries of the officers of Ingersoll International and the Ingersoll Milling Corporate Finance Department employees are allocated to each subsidiary, based on the Corporate Finance Department's best estimate of the benefit received by each subsidiary. (LR56.1(a) ¶ 59)

There is minimal overlap regarding the manufacture and sale of each subsidiary's product. For example, although the subsidiaries share marketing information on a worldwide basis at periodic business meetings, each company has its own sales force. (*Id.* ¶ 71, 94, 110) Ingersoll Milling's workforce manufactures and sells its products and, likewise, Ingersoll Cutting's workforce manufactures and sells its products. (*Id.* ¶ 69, 93) Ingersoll Milling and Ingersoll Cutting have worked together in connection with the joint sale of machines and cutting tools to a single customer, but infrequently. (*Id.* ¶ 73; Wilson 6/4/99 dep., p. 98–99) Each subsidiary's sales force generally does not sell the products of another subsidiary. (*Id.* ¶ 72, 95, 111)[4] On occasion, Ingersoll Milling has purchased cutting tools from Ingersoll Cutting which are then incorporated into Ingersoll Milling's machines. On those occasions, purchase prices are negotiated at arm's length. (*Id.* ¶ 77) Ingersoll Cutting occasionally uses Ingersoll Milling's services in making its cutting tools but pays Ingersoll Milling for those services. (*Id.* ¶ 97)

***5** Ingersoll Cutting has approximately 6,000 customers in North America, whereas Ingersoll Milling has 100 customers. (Pl. Exh. 8, Clewett dep., p. 172–73) There are probably two or three common customers between Ingersoll Milling and Ingersoll GmbH. (Clewett dep ., p. 172–73) Ingersoll Cutting and Ingersoll GmbH have a limited number of customers in common; less than 25 percent of the products that Ingersoll's German group sells in the United States are in an industry in which Ingersoll Cutting is involved. (Pl. Exh. 7, Hanson dep., p. 54–55)

Each subsidiary bills its customers separately. (LR56.1(a) ¶ 79, 98, 114) Generally, each subsidiary purchases its own supplies independently. (*Id.* ¶ 74) When common supplies are purchased in bulk, each company is charged for the supplies it uses. (*Id.* ¶ 75–76) With one exception, each subsidiary has maintained its own inventory, separate and apart from the others. (*Id.* ¶ 78, 96)

The Ingersoll companies in the United States use the same mainframe computer system, including the same system for personnel data (known as "TotalHR"). (LR56.1(a) ¶ 234, 236–40) Major fringe benefit programs, applicable to Ingersoll International and its U.S. subsidiaries, are managed by Ingersoll Milling's Human Resources Department. (*Id.* ¶ 242) One manager is used for all workers' compensation matters. (*Id.* ¶ 244) The Ingersoll companies also commonly use the name "Ingersoll" which, depending on the context, can refer to the holding company or any of its subsidiaries.

F. ***Personnel Policies and Practices***

Ingersoll Milling management has overall responsibility for employment-related matters at Ingersoll Milling. (*Id.* ¶ 174) Likewise, Ingersoll Cutting management has overall responsibility for employment-related matters at Ingersoll Cutting. (*Id.* ¶ 186) Moreover, while Ingersoll International's Board of Directors and its officers hypothetically have the authority to do so, they do not review employment-related decisions by managers of Ingersoll Milling, Ingersoll Cutting or Ingersoll GmbH, nor does the holding company direct or control the hiring, promotion, compensation or other employment-related decisions of either Ingersoll Milling, Ingersoll Cutting or Ingersoll GmbH. (*Id.* ¶ 166, 168, 170, 172)[5] Neither Gaylord nor Wilson has vetoed or overridden a manager's hiring, promotion or salary decision. (*Id.* ¶ 167)

Ingersoll Milling and Ingersoll Cutting each has its own Human Resources Department. While each department supports its own subsidiary, there is also evidence the departments have acted in tandem with respect to certain employment policies, such as drafting and submitting an affirmative action plan, and in administering a job opportunities program. Over fifty years

ago (before Ingersoll Cutting was in existence), Ingersoll Milling drafted an employee handbook known as the "Blue Book," which contains a number of employment-related policies. These policies apply to Ingersoll Milling and Ingersoll Cutting. (LR56.1(a) ¶ 160) Ingersoll GmbH also considers the policies in the Blue Book as guidelines. Although the majority of policies Ingersoll Cutting follows were formulated by Ingersoll Milling, Ingersoll Cutting has developed some of its own employment-related policies. (LR56.1(a) ¶ 189) Ingersoll Cutting uses many of the same employment forms as Ingersoll Milling, but has also independently developed some of its own standardized forms and has developed its own packet of orientation materials for new employees, known as the "Gray Book." (*Id.* ¶ 191–94) Some of the terms and conditions of employment for Ingersoll Cutting employees differ from those of Ingersoll Milling employees. (*Id.* ¶ 208)

***6** As for Ingersoll GmbH, Ingersoll Milling's Human Resources Department provides some services to Ingersoll GmbH, such as posting a job opening and preliminarily reviewing applications. (LR56.1(a) ¶ 216; Pl. Exh. 16) Ingersoll GmbH also uses Ingersoll Milling's forms. (*Id.* ¶ 211) However, the President and senior management of Ingersoll GmbH in Germany have overall responsibility for employment-related decisions at Ingersoll GmbH. (*Id.* ¶ 209)

Ingersoll Milling and Ingersoll Cutting follow the same system of salary grades and ranges. Ingersoll GmbH also uses the same salary grades and ranges, except for field sales people. (*Id.* ¶ 226) Ingersoll Milling's Human Resources Department has determined the salary ranges, at one point in consultation with Ingersoll Cutting. (*Id.* ¶ 223) Ingersoll Cutting has developed some salary classifications and ranges within one grade that differ from those applicable to Ingersoll Milling. (*Id.* ¶ 224)

Employees transfer between Ingersoll Milling and Ingersoll Cutting, but only through a posted job opening process (other than for top management positions). (*Id.* ¶ 227) An Ingersoll Milling employee who applies for an open position at Ingersoll Cutting must pick up an application from Ingersoll Milling and submit it to Ingersoll Milling's Human Resources Department, which reviews the application and forwards it to Ingersoll Cutting. The Ingersoll Milling Human Resources Department reviews the application to see if the posted position would be a lateral or downward transfer, which is prohibited at Ingersoll Milling. (*Id.* ¶ 229, 231) Ingersoll Cutting follows the same procedure, although Ingersoll Cutting will allow such a transfer with a manager's approval. (*Id.* ¶ 230–31)

Discussion

Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986). The question to be determined is whether, if the record of the summary judgment proceeding were the record at trial, a reasonable factfinder could find in favor of the non-moving party. *Tobey v. Extel/JWP, Inc.,* 985 F.2d 330, 332 (7th Cir.1993). The record is to be examined in the light most favorable to plaintiffs, but conclusory allegations will not suffice. *Miller v. Borden, Inc.,* 168 F.3d 308, 312 (7th Cir.1999). Plaintiffs may not rest on denials or allegations in the pleadings, but must set forth specific facts sufficient to raise a genuine issue for trial. *Weicherding v. Riegel,* 160 F.3d 1139, 1142 (7th Cir.1998).

In *Papa v. Katy Indus., Inc.,* 166 F.3d 937, 940–41 (7th Cir.), *cert. denied,* 120 S.Ct. 526 (1999), the Seventh Circuit identified three situations when affiliated corporations should be considered a single employer: (1) where the traditional conditions are present for piercing the corporate veil; (2) where an enterprise splits itself up into a number of corporations, each with fewer than the statutory minimum number of employees, for the express purpose of avoiding liability under the discrimination laws; or (3) where the parent corporation might have directed the discriminatory act of which the employee of the subsidiary is complaining. The focus is on what corporation is the real decision maker. Plaintiffs initially argue that *Papa* specifically addressed what test to use in determining whether a small employer with fewer than 15 or 20 employees meets the definition of "employer" within the meaning of the discrimination laws. *See Papa,* 166 F.3d at 939. Because each Ingersoll employer in this case (other than Ingersoll International, which is not the subject of defendants' motion) satisfies the numerical definition of employer within the meaning of Title VII, plaintiffs conclude *Papa* is inapplicable here.

***7** The court disagrees with plaintiffs' restrictive interpretation of *Papa. See International Oil, Chem. & Atomic Workers v. Uno–Ven Co.,* 170 F.3d 779, 781–82 (7th Cir.1999) (applying *Papa* to issue of whether company was signatory to collective bargaining agreement); *EEOC v. Foster Wheeler Constr., Inc.,* No. 98, C 1601, 1999 U.S. Dist. Lexis 10565, at *20–22 (N.D.Ill. July 6, 1999) (no indication *Papa* limited solely to small employer situation). No matter if the issue is whether a small employer falls within the discrimination laws' coverage or whether a parent and subsidiary are considered a single

employer, the policy considerations are the same. That is, whether each employer being sued should be subject to liability.

The Seventh Circuit's broad language supports this interpretation. The court specifically stated the legal principles governing affiliate liability should not vary from statute to statute. *Papa,* 166 F.3d at 941. The *Papa* Court stated, "the basic principle of affiliate liability is that an affiliate forfeits its limited liability only if it acts to forfeit it—as by failing to comply with statutory conditions of corporate status, or misleading creditors of its affiliate, or configuring the corporate group to defeat statutory jurisdiction, or commanding the affiliate to violate the right of one of the affiliate's employees." *Id.* Such broad language shows the Seventh Circuit's holding in *Papa* extends to this case.[6]

Moreover, the facts in *Papa* show that Ingersoll International, Ingersoll Milling, Ingersoll Cutting and Ingersoll GmbH do not constitute a single employer, whether considered as a whole or in combination with one or more of each other. *See also Ritter v. Hill 'N Dale Farm, Inc.,* No. 98 C 2895, 1999 U.S. Dist. Lexis 11870, at *12–13 (N.D.Ill. July 28, 1999) (although parent and subsidiary shared equipment, employee completed application with parent logo, employee agreed to abide by parent's rules, fringe benefits were administered by parent, employees transferred between parent and subsidiary, and there was common ownership between parent and subsidiary, such facts were insufficient to impose liability on parent under *Papa*). In *Papa* (a consolidated case involving two different sets of parent companies and their respective subsidiaries), one parent company had the authority to order a layoff at the subsidiary, fixed the salaries of the subsidiary's employees, administered the subsidiary's pension plan, and funded the subsidiary. *Id.* at 939. The companies' operations were also somewhat integrated. For example, their computer operations were integrated, the subsidiary used certain subaccounts in the parent's checking account rather than having its own bank account, and the subsidiary needed the parent's approval to write checks of more than $5,000. *Id.*

The facts of the second consolidated case in *Papa* showed a similar degree of integration between the parent and subsidiary. Payroll and benefits were centralized as were the computer operations, the membership of the boards of directors of the two companies overlapped, and employees transferred among affiliates. *Id.* Despite the degree of integration between the parents and their respective subsidiaries, the Seventh Circuit found they did not constitute a single employer.

***8** Likewise, the facts in this case show a degree of integration between the Ingersoll companies. For example, fringe benefits are managed by Ingersoll Milling, one computer system is used, there is some overlap between the officers of Ingersoll International, Ingersoll Milling and Ingersoll Cutting, officers have transferred between the companies in the past, and only the holding company has a Board of Directors.

Nevertheless, Ingersoll Milling, Ingersoll Cutting and Ingersoll GmbH have complied with all the formalities required of a subsidiary so as to maintain separate corporate identities. Each subsidiary has its own management structure, including its own sales force. Although the companies share some services and make some bulk purchases, they also keep track of such transactions, and each company is charged for its portion of the expense. *See Hukill v. Auto Care, Inc.,* 192 F.3d 437, 443 (4th Cir.1999) (that corporations purchased administrative services from sister corporation was not unusual in today's business climate and was of no consequence in determining corporations were not single employer). Likewise, employees do not transfer between the subsidiaries at a whim but, rather, must apply for posted positions. Although the employee's Human Resources Department reviews the application to make sure the transfer is not a lateral or downward departure, management from the new subsidiary makes the decision whether to hire the individual. In short, as evidenced by their advertisements and website, the Ingersoll companies hold themselves out to the world as being separate entities. (Pl. Exh. 34, 35; Def. Exh. 26) There is no showing that an ordinary creditor of one of the subsidiaries could pierce the corporate veil and sue the parent corporation or any of the other subsidiaries. *See Papa,* 166 F.3d at 942.

Plaintiffs point to the credit agreement wherein Ingersoll International is the guarantor for each of the subsidiaries. (Pl.Exh. 18) Plaintiffs also point to a Board of Directors resolution, wherein four companies (Ingersoll International, Ingersoll Cutting, Ingersoll Milling and Ingersoll C.M. Systems) were declared integrated, "having financial and administrative interdependence." (Pl. Exh. 17, Bates No. ING125254) The court finds neither the credit agreement nor the Board resolution, which merely highlights the companies' integration, evidence a piercing of the corporate veil. The corporate veil is pierced because the corporate group has neglected forms intended to protect creditors from being confused about whom they can look to for the payment of their claims. *Id.*

Moreover, regarding the third circumstance in which a parent may be liable, there is no suggestion that the parent, or any subsidiary with respect to a non-employee, directed, commanded, or undertook the specific personnel actions of which plaintiffs are complaining. *See id.* Plaintiffs have proffered allegedly race-coded applications for Ingersoll Cutting. Apparently they are arguing that such race-coding, in conjunction with the race-coding of applications by Ingersoll Milling, implies an overarching policy of discrimination. After seven months of extensive discovery, they have produced no evidence

showing what individuals allegedly race-coded applications and at whose direction. Absent such evidence, they have failed to establish a connection between Ingersoll International and any of its subsidiaries, or between any of the subsidiaries, sufficient to show affiliate liability. *See Chavez v. Lawrence & Frederick, Inc.,* No. 97 C 4535, 1999 U.S. Dist. Lexis 16361, at *15–20 (N.D.Ill. Oct. 6, 1999) (although employee averred parent "might have directed" his termination and plant personnel manager served for both parent and subsidiary, facts showed subsidiary made its own decisions).

***9** Plaintiffs also argue Ingersoll Milling formulated the personnel policies which led to the alleged discrimination. Plaintiffs point to Ingersoll Cutting's reliance on Ingersoll Milling for the preparation of an affirmative action plan. Again, this is insufficient to establish affiliate liability. There is no evidence Ingersoll Milling directed an employee of Ingersoll Cutting to discriminate against an applicant or employee, or vice versa. *See Papa,* 166 F.3d at 942. Defendants' evidence shows the opposite; the management of each subsidiary is responsible for its own decisions.

Plaintiffs also argue that, should the court determine *Papa* applies here, the court should delay resolution of defendants' motion pending additional discovery. The court rejects plaintiffs' plea. They have had over seven months within which to explore the single employer issue, and have actively and painstakingly pursued discovery on this issue. Plaintiffs have had more than adequate time and opportunity to fully explore the issue, and any failure to discover relevant information rests with them.

Conclusion

For the reasons set forth above, defendants' motion for partial summary judgment is granted. Defendants' motion to strike is denied, and plaintiffs' motion to file alleged race-coded applications is granted. Judgment is entered in defendants' favor with respect to claims asserted against any corporate defendant based solely on the single employer theory of liability.

Footnotes

1 Ingersoll GmbH is a German corporation which maintains a small sales office in Rockford, Illinois. Plaintiffs' allegations with respect to Ingersoll GmbH involve only its Rockford, Illinois office. (Compl.¶ 35) However, because plaintiffs' complaint names Ingersoll GmbH as a defendant and not merely its U.S. office, defendants' motion for summary judgment encompasses the entire company. (Defs. Memo., p. 2 n. 1)

2 Specifically, the original twenty four plaintiffs are: Missey Jefferson, Grover Shelton, Jack Allen, Elizabeth Brown, Robert Burrage, Linda Carter, Fernando Cole, Gerald Collins, Denver Edwards, Walter Flannigan, Charles Fiddis, Ray Gaddie, Charles Gray, Cyrus Hatchett, James Hopson, A.Z. Jefferson, Jennifer Johnson, Dennis Locke, Felicia Morris, James Stanis, Michele White–McIntosh, DeWanda Thomas, Dwight Williams and Kevin Williams.

3 The parties dispute whether the employees who were formerly considered to have comprised the Corporate Division of Ingersoll Milling are employees of Ingersoll Milling or Ingersoll International. Construing all inferences in plaintiffs' favor, the court assumes the employees were employed by Ingersoll Milling.

4 Ingersoll Cutting sold Ingersoll GmbH products on one occasion. (*Id.* ¶ 95)

5 The holding company has had input with respect to certain decisions involving top management, such as setting the salaries of all subsidiary presidents. (Clewett dep., p. 76; LR56.1(a) ¶ 169, 171, 173)

6 Prior to *Papa,* the four-part test plaintiffs urge the court to follow, articulated in *Rogers v. Sugar Tree Prod., Inc.,* 7 F.3d 577 (7th Cir.1993), was extended to issues beyond the small employer situation. *See, e.g., Chisholm v. Foothill Capital Corp.,* 3 F.Supp.2d 925, 933–34 (N.D.Ill.1998). The court's decision to apply *Papa* to the circumstances present here is consistent with prior application of *Rogers.*