1993 WL 436390
United States District Court, N.D. Illinois, Eastern Division.

Francene HOLLEY, Sara Hughes, Gladys Jeter, Nancy Morgan, Brenda Rigg, Janet Salkeld, Cheryl Treleaven, Mary Elizabeth Grimm, individually and on behalf of all others similary situated, Plaintiffs,
v.
PANSOPHIC SYSTEMS, INC., Computer Associates International, Inc., David J. Eskra, Robert Fortelka, G. Gordon M. Large, Anthony Paoni and Douglas R. Percy, Defendants.

No. 90 C 7505. | Oct. 26, 1993.

Opinion

MEMORANDUM OPINION AND ORDER

ANN CLAIRE WILLIAMS, District Judge.

***1** Eight women, all former managers at defendant Pansophic Systems, Inc. ("Pansophic"), have brought suit against their former employer, alleging discrimination on account of their sex. As part of their suit, plaintiffs have requested discovery of a broad range of Pansophic's personnel, salary, and benefits records. On September 30, 1993, Magistrate Judge Gottschall granted plaintiff's motion to compel discovery. Pansophic objects to the Magistrate Judge's opinion on various grounds, and asks this court to set aside the order. Under Rule 72 of the Federal Rules of Civil Procedure, this court can only modify or set aside a magistrate order upon a finding that the order is either clearly erroneous or contrary to the law. For the reasons stated below, the court declines to set aside the Magistrate Judge's order. The court, does, however, modify two portions of the Magistrate's opinion.

Background

Until November 1991, Pansophic was a leading developer and marketer of computer software products.[1] Plaintiffs are former directors, managers, and supervisors at Pansophic who were terminated in 1990 and 1991. (Def.'s Memorandum in Opposition to Motion to Compel "Opposition Memorandum" at 2; Pl.'s Supplemental Filing at 3). Prior to May 1990, plaintiffs collectively managed a broad cross section of Panasophic's operations, including: sales, training, development, customer services, marketing, quality assurance, and finance. (Pl.'s Supplemental Filing at 3). They earned salaries ranging from $40,000 to $100,000 and their tenures at Pansophic varied from a low of four years to a high of thirteen. (*Id.*). In May 1990, Pansophic laid off six of the plaintiffs, Holley, Hughes, Jeter, Morgan, Rigg, and Salkeld as part of a reduction in the company's workforce. (Opposition Memorandum at 2). The two other plaintiffs were allegedly terminated in 1991.[2]

In a sweeping complaint, plaintiffs have alleged that Pansophic violated various federal and state laws through its discriminatory treatment of the plaintiffs and other similarly situated employees. In Count I, plaintiffs allege that they were paid lower salaries and benefits than men who performed similar jobs in violation of the Equal Pay Act, 29 U.S.C. § 206(d)(1). In Count II, they seek redress under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–5, for sexual discrimination and harassment against themselves as individuals and on behalf of an entire "class of female employees who have been subject to discrimination and retaliation by Defendants due to their sex or opposition to discrimination." (Corrected Amended Complaint ¶ 34). Plaintiffs' state law claims include breach of contract for violation of Pansophic's affirmative action policy, negligence, and intentional interference with business expectancy.

Following extensive discovery on plaintiffs' individual claims, plaintiffs sought discovery on their broader allegations of "systemic sexual discrimination" at Pansophic. Defendants resisted, and plaintiffs brought the instant motion to compel. Specifically, plaintiffs seek production of the following:

***2** —personnel files and a complete salary history and wage records of all Pansophic employees holding the position of manager and above from January 1985 to the present (approximately 300 individuals)

—personnel records from four data bases maintained by Pansophic

—information concerning Pansophic's affirmative action policy,

—documents relating to Pansophic's payment of employee membership fees and related expenses to Butler National Golf Club

—severance agreements and related documents of two male employees terminated around the same time as two of the plaintiffs.

According to plaintiffs, this information is necessary not only to establish their individual and potentially class wide claims of discrimination, but also to prove that Pansophic's defense is pretextual. (Pl.'s Suppl. Filing at 34–35). Defendants characterize plaintiffs broad discovery request as a simple "fishing expedition" designed to "focus the court's attention away from the lack of evidence supporting their individual claims." (Def.'s Objections Memorandum "Objections" at 5, 8).

In her September 30, 1993 memorandum opinion and order, Magistrate Judge Gottschall granted plaintiffs' motion to compel almost in its entirety. According to the Magistrate, broad discovery was appropriate in light of the potential "class nature" of the plaintiffs' suit, and because the plaintiffs intend to prove their individual claims in part by demonstrating that it was Pansophic's standard "pattern and practice" to discriminate against its women employees.[3] (Opinion at 8–11). Defendants object, asking this court to set aside the Magistrate Judge's order. The court addresses each objection in turn below.

Discussion

I. *Personnel and Salary Records for Panasophic Management Employees*

The Magistrate Judge ordered Pansophic to produce personnel and salary records for all of its employees holding positions of manager or higher from January 1988 to November 1991, apparently 300 employees in all.[4] Defendant objects generally on the ground that the requested information encompasses certain executive positions for which plaintiffs were allegedly neither qualified nor for which they had applied. (Objections at 7). According to defendant, the Magistrate Judge's conclusion that such information is relevant to plaintiffs' suit or at least is reasonably calculated to lead to relevant evidence was clearly erroneous. The court disagrees.

As the Magistrate Judge correctly points out, defendants have mischaracterized the nature of plaintiffs' suit. This case, unlike *Gilty v. Village of Oak Park,* 919 F.2d 1247 (7th Cir.1990), upon which defendants place much weight, is not limited to a few isolated claims of individual discrimination. Rather, plaintiffs have alleged widespread discrimination against women employees throughout the Pansophic organization. (Complaint at ¶¶ 23, 26). In such a suit, evidence of a company's *general* policy of discrimination towards a protected class is not merely relevant, but required. *See King v. General Electric Co.,* 960 F.2d 617, 623 (7th Cir.1992); *EEOC v. Sears, Roebuck & Co.,* 839 F.2d 302, 354–55 (7th Cir.1988). Thus, the mere fact that the plaintiffs seek discovery of personnel or salary records for a few positions not held by the named plaintiffs is not dispositive. Evidence of discrimination against women at the highest management levels at Pansophic clearly would lend credibility to plaintiffs' allegations of similar discrimination at the middle management level. Moreover, at least two of the plaintiffs held positions prestigious enough to merit consideration for the executive level positions that defendants claim are irrelevant. (Opinion at 8). The Magistrate Judge's decision to allow discovery of the personnel and salary records of Pansophic executives was neither clearly erroneous nor contrary to the law.

II. *Pansophic's Affirmative Action Plan and Related Information*

***3** The Magistrate Judge granted plaintiffs' request that Pansophic identify its affirmative action policy and produce related information concerning the defendant's efforts to comply with the plan. (Opinion at 16). Defendant objects on the ground that the Magistrate Judge erroneously relied on *Yatvin v. Madison Metropolitan School Dist.,* 840 F.2d 412 (7th Cir.1988), in concluding that compliance with an affirmative action policy can be relevant to allegations of discrimination. (Objections at 10). The court in *Yatvin* acknowledged that an employer's violation of its affirmative action plan might support a claim of sex

discrimination but noted that "where there is substantial compliance with an affirmative action plan, occasional departures have no significance at all." *Yatvin,* 840 F.2d at 415–16. Quite reasonably, the court concluded that the potential relevance of an employer's compliance with its affirmative plan depends to a certain degree on the severity of its violation. Here, plaintiffs do not yet know whether Pansophic's affirmative action plan will support their Title VII claim of sex discrimination. Much depends on the nature of the plan and the degree to which Pansophic complied with it. That is precisely why they require the requested information.

Even if the plan were clearly irrelevant for purposes of plaintiffs' Title VII claim, it forms an important part of their breach of contract claim. As the court in *Yatvin* suggests, plaintiffs could argue that "as long as the plan was in force and [they] satisfied its requirements the defendants broke their contract with [them] by refusing to treat them preferentially. *Yatvin,* 840 F.2d at 416 (citing *Duldulao v. Saint Mary of Nazareth Hospital Center,* 505 N.E.2d 314 (Ill.1987)). Thus, the Magistrate Judge's conclusion that the requested information about Pansophic's affirmative action plan is *reasonably calculated* to lead to the discovery of admissible evidence is not clearly erroneous.

Defendant also objects to the scope of the Magistrate's order compelling discovery on Pansophic's affirmative action plan. Defendant contends that the Magistrate's order is overbroad because it includes information relating to minorities and Pansophic's hiring practices. To the extent that the order compels information exclusively related to Pansophic's affirmative action policy towards minorities, the court agrees. This is a sex discrimination case. Plaintiffs have not alleged that they were discriminated against on account of race. Thus, evidence relating solely to Pansophic's affirmative action policies for minority employees is irrelevant. The Magistrate Judge's order is hereby modified to exclude any requirement that Pansophic produce information relating exclusively to its minority employees.

III. *Butler National Golf Club Expenses*

Plaintiffs requested that defendant provide them with copies of expense reports and other documents concerning Pansophic's payment of employee membership fees and related expenses to Butler National Golf Club. Butler excludes women from golf privileges at the club. (Opinion at 18). In granting plaintiffs' request, the court noted that since "comparable level male employees may have been afforded the privilege of golf at the company's expense while plaintiffs were not, the information requested is relevant to plaintiff' disparate treatment claims." (*Id.* at 19). Defendant objects, arguing that plaintiffs have failed to establish that they played golf or even sought to participate in such activities. (Objections at 11–12).

***4** Defendant's objection is not persuasive. In support of their motion to compel, plaintiffs plainly assert that male employees were invited to golf with Pansophic's chief executive officer at the company's expense, whereas the plaintiffs were not. (Motion at 12). They also claim that Pansophic regularly reimbursed its male employees for golf outings with clients at Butler. (*Id.*). Needless to say, plaintiffs and other women employees at Pansophic were not entitled to the same benefits. Plaintiffs' alleged failure to specifically request similar perks is understandable in light of Butler's restrictive policies towards women. In the context of an argument that comparable networking activities were not offered to women managers at Pansophic, the requested information appears particularly relevant.

IV. *Sanchez and Paoni Severance Agreements*

Plaintiffs requested production of the severance agreements and related documents of two male vice-presidents who were terminated around the same time as one of the plaintiffs. Plaintiffs believe that the timing of the terminations was rigged so that the two male employees would receive hundreds of thousands of dollars as part of Pansophic's acquisition in November 1991, whereas plaintiff Grimm would not. (Motion at 12–14). In granting plaintiffs' motion to compel discovery of these documents, the Magistrate Judge found that the two severance agreements were relevant to determining Grimm's damages. (Opinion at 21). The Magistrate Judge, however, did so only after noting that defendants had not yet responded to plaintiff's damages interrogatory: "Since defendants have presented no basis to conclude that they can fully respond to Grimm's interrogatory ... Grimm may have to prove damages by comparison to other employees." (Opinion at 21).

Defendants object to the Magistrate Judge's order to compel on the grounds that its subsequent answer to plaintiff Grimm's interrogatory on damages obviates the need for additional discovery. Since the Magistrate Judge's order regarding these documents was specifically based on the assumption that defendant was unable to fully respond to plaintiff's request, the court agrees. The Magistrate Judge's order is hereby modified to exclude the requested severance agreements and related documents. If, however, the parties find that defendant's response to Grimm's interrogatory was incomplete, this court will entertain a renewed motion to compel on this issue.

Conclusion

For the foregoing reasons, the court declines to set aside the Magistrate Judge's order. The order is, however, modified in accordance with this opinion.

Parallel Citations

64 Fair Empl.Prac.Cas. (BNA) 366, 126 Lab.Cas. P 33,039

Footnotes

[1] In November 1991, Pansophic was acquired by Computer Associates International Inc., also named as a defendant in this action. (Opinion at 2).

[2] Defendant claims that plaintiff Trealeaven voluntarily resigned in August 1990. (Def. Memorandum at 2).

[3] The Magistrate ordered supplemental briefing on the plaintiffs' individual claims to ensure that they were broad enough to support a potential class action. (Opinion at 5).

[4] Plaintiffs had requested records from January 1985 to the present. (Pl.'s Motion to Compel at 4).