2002 WL 31260290
United States District Court, S.D. New York.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
LOCALS 2213, 2222, 2313, 2320, 2321, 2322, 2323, 2324, 2325, 2326, AND 2327 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND COMMUNICATION WORKERS OF AMERICA, Plaintiff–Intervenors,
v.
BELL ATLANTIC CORPORATION, et al., Defendants.
LOCAL 2213, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Plaintiff,
v.
BELL ATLANTIC CORPORATION, et al., Defendants.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
v.
BELL ATLANTIC CORPORATION, et al., Defendants.

Nos. 97 Civ. 6723(DC), 98 Civ. 3427(DC), 99 Civ. 5197(DC). | Oct. 9, 2002.

Employees brought action against employer alleging that employer adopted certain discriminatory personnel policies that adversely affected pregnant women. Parties brought motion to approve settlement. The District Court, Chin, J., held that settlement was fair, adequate, and reasonable.

Motion granted.

Attorneys and Law Firms

Equal Employment Opportunity Commission, By: Elizabeth Grossman, Adela Santos, New York District Office, New York, New York, for EEOC.

Mary K. O'Melveny, Washington, D.C., and Gabrielle Semel, New York, New York, for Communications Workers of America.

Weissman & Mintz, By: David Mintz, New York, New York, and Pyle, Rome & Licthen, P.C., Boston, Massachusetts, for Locals 2213, 2222, 2313, 2320, 2321, 2322, 2323, 2324, 2325, 2326, and 2327, International Brotherhood of Electrical Workers.

Morgan, Lewis & Bockius LLP, By: Christopher A. Parlo, Carrie A. Gonnell, New York, New York, for Defendants.

Opinion

MEMORANDUM DECISION

CHIN, J.

***1** In these related cases, the parties have reached a settlement and seek the approval of the Court. For the reasons that follow, I approve the settlement, as it is fair, reasonable, and adequate.

I. *BACKGROUND*

In their complaints, plaintiffs alleged that, prior to April 29, 1979, defendants adopted certain discriminatory personnel policies that adversely affected pregnant women. Under these policies, pregnant women were allegedly forced to leave work several months before they were actually disabled, denied service credit during periods of pregnancy-related disability, and not guaranteed reinstatement to their jobs once their disability ended. None of the policies applied to male employees who were disabled. In addition, female employees who took leaves of absence from work prior to 1984 to care for newborn children ("CNC Leave") were not credited for such leave. Male employees, on the other hand, were given service credit when they took CNC Leave.

According to the complaints, defendants abandoned their pregnancy leave policies in 1979 and CNC Leave policies in 1984. Nonetheless, defendants did not adjust their calculations of service credit for the women adversely affected. In 1994, defendants implemented a Force Adjustment Plan Retirement Incentive (the "FAP"). Retirement benefits pursuant to the FAP are based in part on length of service determined by the defendants' net credited service ("NCS") system. An employee's term of employment is adjusted for periods of separation and certain non-credited absences from work. The FAP, effective from April 3, 1994 until August 8, 1998, relies upon allegedly discriminatory, pre–1984 calculations of NCS to determine an employee's term and entitlement to benefits. As a result, some female employees who took leave when these policies were in effect are either ineligible for benefits under the FAP or are not eligible for the same benefits as male co-workers with the same employment tenure.

II. *PRIOR PROCEEDINGS*

On February 9, 1995, the Communication Workers of America (the "CWA") filed a charge of discrimination with the EECC challenging defendants' use of the NCS calculation to determine eligibility and benefits under the FAP. The EEOC then filed suit against defendants in this Court on September 10, 1997. International Brotherhood of Electrical Workers ("IBEW") Local 2213 filed a similar charge against defendants in February 1995 and received a right to sue letter from the EEOC on February 20, 1998. Local 2213 then filed a separate suit here on May 14, 1998. On July 16, 1999, the EEOC filed an additional complaint, alleging discrimination when defendants implemented a cash balance plan for management employees that did not include full service credit for certain covered leaves.

In June 1999, I denied defendants' motion to dismiss, concluding that plaintiffs stated valid claims under Title VII of the Civil Rights Act of 1964 ("Title VII") and the Equal Pay Act (the "EPA") that were not time-barred. *EEOC v. Bell Atlantic Corp.,* Nos. 97 Civ. 6723(DC), 98 Civ. 3427(DC), 1999 WL 386725 (S.D.N.Y. June 11, 1999).

***2** During 1999 and 2000, the parties engaged in discovery. After the initial phase of discovery, the parties agreed to prepare joint factual stipulations for submission to the Court for a trial "on the papers." Counsel for the parties, including the EEOC, the unions, and defendants, then began settlement negotiations that lasted for two years, with substantial assistance from Magistrate Judge Theodore H. Katz.

I preliminarily approved the consent decree and the terms of the proposed settlement on February 28, 2002, and I subsequently approved modifications. Notice was provided to the class, and the fairness hearing was held on September 13, 2002. The hearing included statements from objectors who opposed the settlement.

III. *THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE*

In light of all the circumstances, I approve the settlement as fair, reasonable, and adequate. First, I will briefly discuss the proposed settlement. Second, I will discuss why the settlement represents a fair compromise of the plaintiffs' claims. Finally, I will address objections to the settlement.

A. *Terms of the Settlement*

The proposed settlement will provide measurable relief to members of the class. Primarily, class members will receive additional service credit for their covered leaves. The additional service credit will, in turn, mean that class members will receive additional pension benefits, including increased monthly pension payments and eligibility for certain early retirement programs.

For active, currently employed employees, this adjustment will affect the amount of their future pension benefits when they retire, as well as other current non-pension benefits, such as vacation and sick leave. Employees who have retired since January 6, 1994, and who are already receiving service pensions, will receive an adjustment to their monthly pension checks. They will also receive a check representing the difference in the pension amount they have been receiving since they retired, and the amount they would have received with the additional service credit under the settlement, with interest. As set forth in the consent decree, special provisions of the settlement also apply to former employees whose pension benefits have not yet commenced, who will also have an adjustment made to the amount of the pension checks they will receive in the future.

For the most part, class members who participate in the proposed settlement will be eligible for an adjustment of their NCS date for each pregnancy as follows: Seven weeks of additional service credit for each pregnancy-related, maternity-related, or CNC leave commencing between July 2, 1965 and August 7, 1977; and two weeks of additional service credit for each pregnancy-related, maternity-related, or CNC leave commencing between August 8, 1977 and April 28, 1979; and two weeks of additional service credit for each CNC leave commencing between April 29, 1979 and December 31, 1983.

***3** Although the monetary relief is not great on a per person basis, this is primarily due to the derivative nature of the injury. Damages to each member are relatively small, as benefits are calculated based upon years of service, and the alleged discrimination occurred by increments of weeks. Thus, even if plaintiffs somehow achieved a 100 percent recovery on their claims, the monetary impact on each class member would not be significantly greater.

The settlement affects many categories of employees, but an example is helpful. A typical member of the class is a woman who worked as a customer representative for the defendants. If this representative were to retire, after the settlement, with thirty years of service credit during which she had one covered leave, she will receive seven weeks of additional service credit. This will amount to $87.51 per year added to her $19,447 yearly pension. A woman in the same job title who retired in 1994 would receive an additional $61 per year, plus a lump sum of approximately $869 representing retroactive pension payments and interest. (*See* Sept. 13, 2002 Fairness Hearing Tr. at 2–4). Thus, as in this illustration, the impact of the proposed settlement on individual class members is not great, but it is not insignificant. The economic impact upon defendants, on the whole, is considerable.

B. ***The Settlement is a Fair Compromise***

The settlement represents a fair compromise of the plaintiffs' claims. These cases are highly complex, and they have been vigorously defended. The lead case has been pending for five years, and continued litigation would undoubtedly be protracted. The parties have negotiated at arm's length for an extended period with the assistance of an experienced magistrate judge. All of the parties, who are sophisticated entities, are represented by experienced and capable counsel. The approval of the settlement by the EEOC, a government party, combined with the parties' extensive arm's length negotiations weigh in favor of finding this a fair, adequate, and reasonable settlement.

The proposed settlement provides some meaningful relief to each member of the class. Although members receive less than they would in the event of a complete recovery on their claims, the class avoids the uncertainty of litigating their claims at a lengthy trial, and even if the class were to prevail, the settlement avoids a lengthy appeal. Avoiding the uncertainty of litigation is especially important here as the complaints are based upon conduct that allegedly occurred many years ago, and that may be subject to timeliness defenses that have been successful in other courts. *Compare Pallas v. Pacific Bell,* 940 F.2d 1324 (9th Cir.1991), *with Ameritech Benefit Plan Comm. v. CWA,* 220 F.3d 814 (7th Cir.2000). Further, this settlement compares favorably to other court-approved settlements in the telecommunications industry involving similar claims for service credit for pregnancy and maternity leaves. *See, e.g., US WEST to Provide Additional Service Credits to Certain Employees Who Took Maternity Leave,* Business Wire, Mar. 14, 1994 (describing proposed settlement of approximately 30 days additional service credit); *Pallas v. Pacific Bell,* No. C–89–2373 DLJ, 1999 WL 1209495 (N.D.Cal. July 13, 1999) (approving settlement of up to a total of 72 days of leave per class member); O'Melveny Aff. at ¶¶ 3, 9, 12). This settlement is also the only one of its type to provide credit for leaves taken between 1979 and 1983.

C. ***Objections to the Settlement***

1. ***Notice***

***4** The parties agreed to a careful and extensive process to assure that each potential class member received notice of the proposed settlement and fairness hearing.

Defendants, through a retained settlement administrator, mailed a notice package approved by the Court to more than 55,000 putative class members who are, or were, employed at one of defendants' facilities between January 6, 1994 and April 26, 2002, and who had applicable service anytime between July 2, 1965 and December 31, 1983. In connection with the notice packages, the parties jointly engaged in a significant cooperative effort to run a toll-free hotline to provide assistance to potential class members. For example, the CWA provided office space for the hotline operators; the EEOC provided a computer system and computer equipment to track the incoming calls, and made available an EEOC paralegal to act as the hotline's supervisor. The defendants provided the phone capacity and paid the salary and benefits of hotline operators. The hotline began taking calls on April 29, 2002, and handled more than 7,000 calls by July 31, 2002. Recipients of the notice package who had questions were able to speak with counsel designated to handle their inquiries.

2. ***Objections***

Of the 55,133 individuals who received notice packages, more than 12,500 women filed claims indicating that they wished to participate in the settlement. Only 132 individuals requested to opt-out of the settlement. According to defendants' records, 46 of these 132 opt-outs did not take a covered leave during the period affected by the settlement.

Only 483, or less than 1% of the recipients, filed an objection. Of those 483, 304 sent in claim forms, i.e., opted-in. The basis for the most common objection—half of the total—is the amount of the settlement. Some objectors seek to recover the entire period of the leaves they took, in some cases up to a full year. While an objection to the size of the settlement is understandable, objections on this basis alone are not sufficient. The additional relief sought by these objectors is not necessarily related to any sex-based disparity in service credit. There are no allegations in the underlying lawsuits that defendants granted full service credit to men for anticipated disability, disability or CNC leaves that were months (or longer) in duration. The settlement represents a negotiated level of benefits intended to provide class members with a reasonable amount of service credit that would, in most cases, fairly address sex-based service credit disparities.

The settlement represents a compromise in the best interests of the entire class. Although some individuals may receive less under the settlement than what their full entitlement might be if the case were fully litigated, others may receive the full, or close to the full, amount of their entitlement without any risk. Some class members will receive even more service credit than their entitlement, and all class members will receive some service credit. The fact that some individuals want additional credit does not make the settlement unfair as a whole.

***5** Many objectors contend that women who took covered leaves of absence should, under the settlement, receive the amount of service credit that they would be granted if their leaves occurred today, under policies currently in effect. The settlement, however, only addresses allegations of sex-based disparities in covered leaves at the time the leaves were actually taken. In other words, the proper inquiry in evaluating the settlement is whether it fairly accounts for alleged disparities in the amount of service credit men, as compared to women, received (or could receive) for the same types of leaves at the time those leaves were taken (i.e., decades ago). To be adequate or fair, the settlement need not provide the amount of service credit for the covered leaves that women would receive today.

Similarly, many objectors noted that, in 1991, they received a service credit adjustment of up to one year for CNC leaves taken after January 1, 1984. They now object on the grounds that the settlement is less favorable in comparison. In 1991, the defendants, CWA, and IBEW agreed to prospectively provide service credit of up to 12 months for CNC leaves. They also agreed, retroactively, to provide a service credit adjustment for employees who took CNC leaves after January 1, 1984. These adjustments were agreed to by the defendants and the unions outside of any litigation context, and were not intended to adjust any pregnancy-based or sex-based disparity in the granting of service credit for leaves taken during the time period covered by the agreement (i.e., post-January 1, 1984). Thus, like the service credit granted under current company policies, these adjustments are not an appropriate comparison for the service credit granted under the settlement.

All of the remaining objectors contest the scope of the class itself. These objectors dispute the fact that they are not class members because they: (1) had children prior to July 2, 1965 [23 objectors]; (2) had children after December 31, 1983 [57 objectors]; (3) retired or otherwise separated from the defendants prior to January 6, 1994 [86 objectors]; or (4) have not worked for an entity affiliated with the defendants since the AT & T divestiture in 1984 [13 objectors]. These objectors are not members of the class, and have no legal standing to object.

CONCLUSION

Looking at all the factors and taking into consideration the objections and the process through which this settlement was obtained, the Court finds that this settlement on balance meets all the criteria for approval.

As I find that this is a fair, adequate, and reasonable settlement of these cases, the settlement is approved. Judgment will be entered accordingly. The cases shall be closed.

SO ORDERED.

Parallel Citations

90 Fair Empl.Prac.Cas. (BNA) 476