Reid v. Lockheed Martin Aero. Co.

United States District Court for the Northern District of Georgia, Atlanta Division
January 29, 2001, Decided ; January 29, 2001, Filed; January 31, 2001, Entered
CIVIL ACTION NO. 1:00-CV-1182-JOF, CIVIL ACTION NO. 1:00-CV-1183-JOF

Reporter: 2001 U.S. Dist. LEXIS 991; 85 Fair Empl. Prac. Cas. (BNA) 602
MELVIN REID, et al., Plaintiffs, vs. LOCKHEED MARTIN AERONAUTICS COMPANY, et al., Defendants. FARRIS YARBROUGH, et al., Plaintiff, vs. LOCKHEED MARTIN AERONAUTICS COMPANY, et al., Defendants.

Disposition: [*1] EEOC'S motions to intervene DENIED. EEOC'S motions for hearing DENIED and Plaintiff's motions for leave GRANTED.

Counsel: For MELVIN REID, VONDA MOORE, JOHNNIE WEST, CLARENCE E. SINKFIELD, plaintiffs: J. Keith Givens, Angela Joy Mason, Cochran Cherry Givens & Smith, Dothan, AL. Josie Anne Alexander, Alexander & Associates, Atlanta, GA. Hezekiah Sistrunk, Jr., Cochran Cherry Givens Smith & Sistrunk, Atlanta, GA. Jock Michael Smith, phv, Cochran Cherry Givens & Smith, Tuskegee, AL. Johnnie L. Cochran, Jr., phv.

For LOCKHEED MARTIN AERONAUTICS COMPANY, LOCKHEED MARTIN CORPORATION, defendants: William Henry Boise, Daniel F. Piar, Kilpatrick Stockton, Atlanta, GA. R. Lawrence Ashe, Jr., Nancy E. Rafuse, Paul Hastings Janofsky & Walker, Atlanta, GA. Martha Marie Blankenship Wright, Lockheed Martin Aeronautical Systems Company, Marietta, GA.

For EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Proposed Intervenor: Steven Mark Tapper, Equal Employment Opportunity Commission, Atlanta, GA.

Judges: J. OWEN FORRESTER, UNITED STATES DISTRICT JUDGE.

Opinion by: J. OWEN FORRESTER

Opinion

ORDER

These cases are before the court on motions to intervene and for an expedited hearing filed by the Equal Employment [*2] Opportunity Commission, as well as Plaintiffs' motions for leave to file a reply.

I. STATEMENT OF THE CASE

Plaintiffs [1] filed these two civil rights actions on May 10, 2000, alleging that Defendants, [2] among other things, have engaged in racial discrimination in violation of Title VII of the Civil Rights Act of 1964, *42 U.S.C. § 2000e, et seq.,* as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981a ("Title VII"). These cases were initially assigned to Chief Judge Orinda D. Evans, and after much activity by the parties, Judge Evans granted a series of motions allowing the parties, within the limits of the orders, to contact prospective class members. On August 17, 2000 and August 24, 2000, respectively, scheduling orders were entered in each of these cases outlining the schedules for discovery and class certification. Thereafter, these cases were reassigned to the undersigned judge, and the court held a conference with counsel for the parties on October 4, 2000 in which it adjusted the deadlines set in Judge Evans' previous order. On November 17, 2000, the court filed an order embodying these adjustments by extending [*3] the deadline for class-related discovery until March 1, 2001 and by requiring motions for class certification to be filed no later than April 2, 2001. The court also ordered that, after the completion of Defendants' class-related discovery on May 15, 2001, all further discovery would be stayed until the court ruled on the merits of class certification. At the October 4 conference, the court made clear that it would not grant any further extensions without a showing of extraordinary cause.

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[1] Plaintiffs in civil action number 1:00-CV-1182 include Marvin Reid, Vonda Moore, Johnnie West, and Clarence W. Sinkfield. Plaintiffs in civil action number 1:00-CV-1183 include Farris Yarbrough, Calvin Combs, Edward Kirkland, Wendell Carlisle, Rita Oliver, Wayne Elliot, and Joseph Banks. Plaintiffs in each case seek to maintain the action as a class action on behalf of themselves and other similarly situated employees.

[2] Defendants in both civil actions number 1:00-CV-1183 include Lockheed Martin Aeronautics Company, formerly doing business as Lockheed Martin Aeronautical Systems, and Lockheed Martin Corporation (collectively referred to as "Lockheed"). In addition to Lockheed, Plaintiffs in civil action number 1:00-CV-1183 have named as Defendants both the International Association of Machinists and Aerospace Workers, A.F.L.-C.I.O. and its Local Lodge 709 (collectively referred to as "the Unions").

[*4] On December 5, 2000, the United States Equal Employment Opportunity Commission ("EEOC" or "Commission") filed motions to intervene in these actions pursuant to Title VII § 706(f)(1) and *Federal Rule of Civil Procedure 24(b)*. The EEOC also filed motions for an expedited hearing on its motions to intervene. The next day, the court ordered that the parties respond to the EEOC's motions on an expedited basis. Lockheed and the Unions subsequently filed responses in opposition to the EEOC's motion to intervene, and Plaintiffs filed responses in support of intervention. Following replies by the EEOC, Plaintiffs moved on December 27, 2000 for leave to reply to Defendants' responses and filed its replies on that same date. Lockheed replied to Plaintiffs' responses in support of intervention on January 4, 2001.

II. DISCUSSION

Section 706(f)(1) of Title VII provides that, after certain administrative requirements have been satisfied, a private party aggrieved by a violation of Title VII may bring suit against the offending party. *See42 U.S.C. § 2000e-5(f)(1)*. That section further provides that "upon timely application, the court may, in its discretion, [*5] permit the Commission … to intervene in such civil action upon certification that the case is of general public importance." *See id.*

Federal Rule of Civil Procedure 24(b)(1) provides the general procedure for seeking intervention that is predicated on a conditional right found in a statute of the United States. That rule, similar to § 706(f)(1), gives the court discretion to allow intervention when timely application is made, and it provides that the court "shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Fed. R. Civ. P. 24(b)*. Although *Rule 24(b)* provides the general framework for the court's discussion of permissive intervention, the court remains cognizant that the "EEOC's right of intervention is narrower than permissive intervention under the Federal Rules" because it is allowed only in cases of general public importance. *E.E.O.C. v. Louisville & Nashville R. Co.,* 505 F.2d 610, 614 (5th Cir. 1974). [3]

[*6] After reviewing the papers filed by the parties with regard to the EEOC's motion to intervene, and having carefully considered the factors pertinent to the issue, the court finds that the EEOC should not be allowed to intervene in this case. [4] First, with regard to the circumstances of this particular case, the motion to intervene is untimely. In evaluating the timeliness of a *Rule 24(b)* motion, the court should consider four factors: (1) "the length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene"; (2) "the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case"; (3) "the extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied"; and (4) "the existence of unusual circumstances militating either for or against a determination that the application is timely." *Stallworth v. Monsanto Co.,* 558 F.2d 257, 264-66 (5th Cir. 1977). [*7]

The court finds that the first three of these factors weigh against intervention and that the fourth factor is neutral. The EEOC admits in its papers that it has been considering whether or not to intervene since May 2000. Thus, the EEOC contemplated its interest in this case roughly seven months before it sought to intervene. In that seven months, much work was accomplished by the original parties, including a good deal of discovery and the securing of an order outlining contact with members of the potential class. The court finds that the parties, especially Defendants, would likely have conducted their initial discovery and planning differently had they known as early as May 2000 that the EEOC would seek intervention. Moreover, as Lockheed argues [*8] in its response, the EEOC's contact with potential members of the class during the seven-month period in which it was analyzing whether it would intervene may have prejudiced Defendants in that the Commissions's communications with these potential class members were not subject to any control or scrutiny by the court. While the EEOC may have been authorized to communicate with complainants in its role as investigator, the court finds the EEOC's unmonitored and unknown contacts with potential class plaintiffs to be problematic. Had the Commission attempted to intervene earlier, the court could have addressed any questions about the EEOC's ability to communicate with potential class members at the same time that it addressed the class contact issue with respect to the original parties. Accordingly, the court finds that the original parties have suffered more than minimal prejudice as a result of the Commission's failure to intervene sooner. Conversely, the court finds that any prejudice potentially suffered by the EEOC by not being allowed to intervene is

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[3] In *Bonner v. City of Prichard,* 661 F.2d 1206 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions rendered by the former Fifth Circuit prior to October 1, 1981.

[4] The court notes, as an initial matter, that the EEOC has submitted a certification that the issues raised in these cases are of general public importance. Although the certification is conclusory, the court will defer to the EEOC's determination in this regard.

minimal. Finally, no unusual circumstances have been brought to the court's attention that militate either for or against a determination [*9] that the Commissions's motion is timely. Because the first, second, and third factors weigh against a finding of timeliness, and the final factor favors neither conclusion, the court finds that the motion to intervene was not timely made.

In addition to being untimely, the court also finds that allowing the EEOC to intervene in these cases would unduly delay the adjudication of the rights of the original parties. The papers filed by Lockheed represent that Defendants have deposed all of the named Plaintiffs in civil action number 1:00-CV-1182 and have either deposed or scheduled the depositions of all of the named Plaintiffs in civil action number 1:00-CV-1183. Plaintiffs' papers similarly represent that Plaintiffs have scheduled depositions, and both Plaintiffs and Lockheed agree that more than a million documents have been produced by Defendants. The EEOC represents that Plaintiffs have information from more than 150 individuals at various Lockheed facilities. The initial period for discovery is scheduled to close on March 1, 2001 for Plaintiffs and May 15, 2001 for Defendants, and motions for class certification are due by April 2, 2001. In light of these events, and notwithstanding [*10] the EEOC's and Plaintiffs' arguments that these cases are still at the early stages of discovery, a large amount of information has been exchanged and the termination of class-related discovery is quickly approaching. Although the EEOC represents that it would adhere to all of the court's deadlines if allowed to intervene, the court finds that the volume of information already produced, not to mention the information yet to be discovered, would make it extremely difficult for an additional set of lawyers adequately to familiarize themselves with these cases within the time contemplated by the court's schedule. Furthermore, a fairly major discovery dispute between Plaintiffs and Defendants has been brought to the court's attention via a motion to compel, and the prospect of an additional party and additional counsel would raise the likelihood of not only prolonging the dispute in question, but of additional discovery disputes that would need to be resolved before addressing class certification.

Finally, it appears to the court that allowing intervention may improperly broaden the scope of this litigation, causing undue prejudice to Defendants. The EEOC and Plaintiffs spend much time [*11] asserting that the Commission's claims are no broader than the nationwide discrimination alleged in Plaintiffs' complaints. While it remains true that Plaintiffs have proposed broad classes of Lockheed employees throughout the United States, it should be noted that a class certified based on a motion by the original Plaintiffs ultimately may not be as broad as the class alleged in Plaintiffs' complaints. Moreover, *Federal Rule of Civil Procedure 23* would govern any class determination brought by the original Plaintiffs, whereas the EEOC may not be subject to the strictures of *Rule 23*. *See General Tel. Co. v. E.E.O.C.,* 446 U.S. 318, 333-34, 64 L. Ed. 2d 319, 100 S. Ct. 1698 (1980) (holding that EEOC may seek relief for group of aggrieved individuals without first obtaining class certification pursuant to *Rule 23* in action initiated by EEOC itself); *see also Jefferson v. Ingersoll Int'l. Inc.,* 195 F.3d 894, 899-900 (7th Cir. 1999) (noting circuit split as to whether *General Telephone* applies when EEOC intervenes in private action). [5] A class certified under *Rule 23*, therefore, may not reach as far as the EEOC could itself insist upon. Put differently, [*12] just because Plaintiffs allege a nationwide class does not necessarily mean that they will realistically achieve certification of a nationwide class, and intervention by the EEOC, which clearly seeks to pursue claims of discrimination on a national level, may very well expand the practical scope of this litigation to the prejudice of Defendants. [6]

[*13] III. CONCLUSION

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[5] The Eleventh Circuit has apparently not weighed in on this circuit split, and allowing the EEOC to intervene would therefore require the court to decide whether *Rule 23* is applicable to the Commission in its role as intervenor. The resolution of this issue, on which there exists a split in authority and no controlling precedent on this court, would cause further undue delay to these proceedings.

[6] The court also expresses its concern about the EEOC's attempt to prosecute a "pattern and practice" case via intervention in private actions where it did not issue cause determinations for a majority of the named Plaintiffs. These actions are private actions brought pursuant to § 706, which is designed to address the grievances of particular individuals. *See United States v. Allegheny-Ludlum Indus.*, 517 F.2d 826, 843 (5th Cir. 1975). Section 707, on the other hand, allows the Commission to institute "pattern and practice" suits anytime that it has reasonable cause to believe such a suit is necessary. *Id.* Suits initiated by the Commission pursuant to § 707 are primarily designed to "vindicate the broad public interest in eliminating unlawful discrimination" and do not require individual grievances. *Id.* In its complaint, the EEOC references § 707 as well as § 706. The court, however, questions whether EEOC intervention in these actions is the best vehicle for adjudicating "pattern and practice" claims of systemic, nationwide discrimination on the part of Defendants. Only five of the twelve named Plaintiffs in these cases received a cause determination from the EEOC, a fact which could be seen as diluting the Commission's view that these cases are of general public importance. Furthermore, one of the primary arguments advanced by both Plaintiff and the EEOC in support of intervention -- that the EEOC's experience with national litigation and statistical evidence would greatly assist Plaintiffs -- could

For the foregoing reasons, the EEOC's motions to intervene [35; 49] are DENIED. The court also DENIES the EEOC's motions for a hearing [36; 48] and GRANTS Plaintiffs motions for leave to reply [50; 67].

J. OWEN FORRESTER

UNITED STATES DISTRICT JUDGE

SO ORDERED this, 29th of January 2001.

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be seen primarily as a benefit to particular parties rather than protection of the broad public interest in eliminating employment discrimination.