

1995 WL 450984
United States District Court, W.D. Louisiana,
Shreveport Division.

UNITED STATES of America
v.
BOARD OF EDUCATION CADDO PARISH.

No. Civ. A. 94-0155. | April 21, 1995. | Order
Denying Reconsideration June 13, 1995.

Attorneys and Law Firms

A. Marisa Chun, U.S. Department of Justice, Washington,
DC, for plaintiff.

Fred H. Sutherland, Beard & Sutherland, Shreveport, LA,
for defendant.

Opinion

MEMORANDUM RULING

PAYNE, United States Magistrate Judge.

*1 Currently before the Court are the Motion to Compel filed by plaintiff on October 11, 1994, and the Motion to Compel filed by defendant on December 13, 1994. A discovery conference was convoked on January 20, 1995 to address these motions. However, the conference proved unproductive and the motions were taken under advisement to be decided on the briefs.

I. Plaintiff's Motion to Compel

The Court having found that defendant's objections are not substantially supported, the motion is GRANTED IN PART, and DENIED IN PART, as follows:

Interrogatory No. 1: Defendant shall supplement its answer to add the addresses of all persons identified, the names and addresses of all former employees, including principals and assistant principals, the starting and current salaries of all persons identified, the date of original hire and date of each change of position of all such persons, with the amount of any new salary at the time of the starting of a new position. Thus, it will not be necessary to show the amounts and dates of raises given to employees while they remained in the same position.

Interrogatory No. 5: Defendant shall answer fully

instead of pointing to non-responsive documents.

Interrogatory No. 6: Defendant shall supplement to state where the notices are posted.

Interrogatory No 8: The answer is sufficient but defendant is ordered to produce the documents referred to without further delay.

Interrogatory No. 10: The answer is deemed sufficient.

Request for Production No. 10: The answer is deemed sufficient.

Requests for Production No. 13 & 14: The objections are SUSTAINED as the requests are overbroad, not being reasonably calculated to lead to the discovery of admissible evidence. Although defendant indicated that the documents would be produced if a protective order was entered, none has been sought.

Request for Production No. 15: The objection is OVERRULED. Defendant shall produce the documents requested without delay or answer categorically that no responsive documents exist.

Request for Production No. 26: The objection is OVERRULED and the defendant is directed to provide a full response to the request.

II. Motion to Compel filed by defendant on December 13, 1994.

After careful review of the motion and opposition, the defendant's motion is DENIED for the following reasons. The Memorandum in Support of the Motion to Compel groups the discovery requests at issue into three categories, each of which is addressed below.

The first area involves the identification of claimants. Defendant seeks to compel the United States to identify all of the alleged individual victims of discrimination. The United States responds that it does not know of any specific individuals besides the complainant, Mary Burns, but believes that the School Board has discriminated against the entire class of female custodial employees. Defendant responds that if the United States cannot identify the specific victims of discrimination, the claim must be dismissed.

*2 The School Board confuses the function of discovery with the function of motion practice. As long as the plaintiff truthfully answers the interrogatories, the legal sufficiency of the facts revealed is irrelevant. In any event, plaintiff need not be able to identify all of the victims of the alleged discrimination at this stage of a

pattern or practice case. The United States clearly has a continuing obligation to identify these alleged victims as they become known, but its current responses are adequate, as long as they are truthful. The School Board has presented no evidence tending to cast doubt on the truthfulness of the responses. Accordingly, the Motion to Compel is DENIED with respect to Interrogatories Nos. 1, 2, 3, 7 and 15, and Requests for Production Nos. 6 and 10.

The second area of information sought deals with the allegations regarding a policy, pattern or practice of discrimination. The memorandum is not as clear on the basis for the School Board's objections to the responses in this area. However, the Court finds that the answers to Interrogatories Nos. 10, 11, 15, 16 and 17 are sufficient. With respect to Interrogatory No. 10, the United States did not object to the relevance of the information requested, it simply responded that its answer to Interrogatory No. 9 contains all responsive information. This is not an inappropriate response.

With respect to Request for Production No. 2, regarding the "statements" of the School Board employees taken by lawyers and paralegals for the United States, the response makes it clear that no such statements exist. Instead, the United States has notes made by its attorneys and paralegals during the interviews. Fed.R.Civ.P. 23(b)(3) defines statements as a writing signed or adopted by the person making the statement or a recording, or transcription thereof, which is a substantially verbatim recital of an oral statement. The notes of interviews made by lawyers and paralegals do not fit this definition. Thus, the School Board could discover such notes "only upon a showing that the party seeking discovery has a substantial need of the materials in preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the material by other means". Rule 26(b)(3). Even upon such a showing, the court would be required to protect against the disclosure of "mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation". The School Board has not attempted to make such a showing, nor is it likely that such grounds exist. The School Board can easily interview its own employees to obtain whatever information was provided to the plaintiff's attorneys.

In response to Request for Production No. 5, the United States objected, based on the work product doctrine, to production of various memoranda prepared by its litigation staff concerning this case. That objection is obviously proper as all of the listed documents were clearly prepared in anticipation of litigation.

***3** With respect to the "EEO-4" reports, the United States agreed to produce those documents upon entry of an appropriate protective order. Accordingly,

IT IS HEREBY ORDERED that plaintiff, United States of America, shall provide to the defendant, Caddo Parish School Board, the following documents: (1) 1990 EEO-4 Report of the City of Shreveport, Louisiana; and (2) 1990 EEO-4 Report for Caddo Parish, Louisiana. The defendant at no time shall allow the disclosure of either of these documents to any individual or entity except those attorneys, employees, agents or experts of the defendant who are working on the above referenced case.

Request for Production No. 7 seeks copies of all trial exhibits. Plaintiff correctly notes that this request violates the work product doctrine because it does not request documents by relevant category, but rather only by the use to which the plaintiff's attorneys intend to put the documents. A listing of trial exhibits will be required from both sides during the final pretrial process. However, during the discovery process, any request must be based on the contents of the documents, not the opposing lawyer's impressions of their usefulness.

A final category of discovery relates to the relief sought by the United States. Again, the School Board objects to the failure of the United States to identify the specific victims of discrimination. That matter having been adequately addressed before, the Motion to Compel regarding Interrogatories Nos. 23 and 24, and Requests for Production Nos. 3 and 4, is DENIED.

III. Other relief

Because both of the litigants in this case are governmental bodies, the Court is loath to impose monetary sanctions or award attorney's fees as a result of discovery disputes. However, the Court also expects a greater degree of cooperation in discovery than that exhibited thus far by counsel for the School Board. These proceedings have been substantially delayed as a result of that attitude and the Court will take whatever measures are necessary in the future to deter such obstructionism, even if that means monetary sanctions.

Unless otherwise noted in the Order, all supplemental responses and production ordered hereunder are due to be delivered to opposing counsel by May 22, 1995. A Scheduling Conference will be held before the undersigned by telephone on June 9, 1995 at 2:00 p.m. to establish a trial date and all other necessary deadlines. Counsel for plaintiff is directed to arrange the telephone conference call.

MEMORANDUM ORDER ON RECONSIDERATION

U.S. v. Board of Educ. Caddo Parish, Not Reported in F.Supp. (1995)

Plaintiff's May 16, 1995 Motion for Reconsideration is DENIED. The plaintiff's Requests for Production Nos. 13 and 14 are overbroad. Plaintiff justifies Request No. 13 by arguing that "the contents of a personnel file invariably contain relevant information". The same is true of the defense attorney's office files. Plaintiff has requested the pond so that it may go fishing. The rules require that plaintiff request the individual fish themselves. Plaintiff must request documents by specific relevant categories. If those documents are found in the personnel files, they must then be produced. However, the abundance of irrelevant and often confidential information concerning third parties that is also found in those personnel files will not then be unnecessarily produced.

*4 Turning to Request No. 14, it does reflect an effort to

describe the subject matter of the documents sought, rather than merely their location. However, the request is overly vague in that it asks for documents that "relate to the work record" of the employees. The motion indicates that the intent is to seek evaluations of the employees' performance, but the request is much broader.

Accordingly, the Motion for Reconsideration is DENIED.

Parallel Citations

68 Fair Empl.Prac.Cas. (BNA) 4