

Latino Officers Ass'n N.Y., Inc. v. City of New York

United States District Court for the Southern District of New York

April 18, 2003, Decided

99 Civ. 9568 (LAK)

Reporter: 2003 U.S. Dist. LEXIS 6506

LATINO OFFICERS ASSOCIATION CITY OF NEW YORK, INC., etc., et al., Plaintiffs, -against- THE CITY OF NEW YORK, et al., Defendants.

Subsequent History: Summary judgment granted, in part, summary judgment denied, in part by, Claim dismissed by Latino Officers Ass'n v. City of New York, 2003 U.S. Dist. LEXIS 10669 (S.D.N.Y., June 16, 2003)

Prior History: Latino Officers Ass'n City of N.Y., Inc. v. City of New York, 2003 U.S. Dist. LEXIS 5760 (S.D.N.Y., Apr. 9, 2003)

Disposition: Defendants' motion to limit number of plaintiff's witnesses denied without prejudice.

Counsel: For Latino Officers Association City of New York Incorporated, Wilfred Maldonado, Anthony Miranda, Manuel Nunez, Clifford Muniz, Adam Alvarez, Charles Castro, Louis Vega, Thaddeus Gamory, Michael Padilla, Carlos Jimenez, Jose Mercedes, Ruben Malave, Hilda Susu, Daniel Figueroa, PLAINTIFFS: Barbara J Olshansky, Center for Constitutional Rights, New York, NY USA. William Goodman, Center for Constitutional Rights, New York, NY USA. Richard A Levy, Levy, Ratner & Behroozi, PC, New York, NY USA. Diane M Paolicelli, Levy, Phillips & Konigsberg, LLP, New York, NY USA. Robert H Spergel, Oceanside, NY USA.

For Hector Ariza, Manuel Gomez, Christopher Castro, Haydee Cartagena, Manuel Delgado, Parnell Peterson, Hiram Monserrate, Fernando Sanchez, PLAINTIFFS: Richard A Levy, Levy, Ratner & Behroozi, PC, New York, NY USA. Diane M Paolicelli, Levy, Phillips & Konigsberg, LLP, New York, NY USA.

For City of New York, New York City Police Department, Rudolph W Giuliani, Howard Safir, Patrick Kelleher, George Grasso, Patrick Bradley, Joseph Flynn, Richard Kubick, Charles V Campisi, The Police Relief Fund, Inc., DEFENDANTS: Julie E O'Neill, Michael D Hess, Corporation Counsel of the City of NY, New York, NY USA.

Judges: [*1] Lewis A. Kaplan, United States District Judge.

Opinion by: LEWIS A. KAPLAN

Opinion

ORDER

LEWIS A. KAPLAN, *District Judge*.

Defendants move for an order limiting the number of non-statistical evidence witnesses plaintiffs may offer in the pattern and practice liability phase of this employment discrimination class action. They reasonably point out that "the liability phase [of such a case] is largely preoccupied with class-wide statistical evidence directed at establishing an overall pattern or practice of intentional discrimination" and note this Court's undoubted power under *Fed. R. Evid. 403* "to ensure that the liability phase remains manageable" by "limiting the anecdotal evidence" of discrimination. Def. Mem. 3 (quoting *Robinson v. Metro North Commuter R.R. Co.*, 267 F.3d 147, 168 (2d Cir. 2001)). They fail, however, to offer any reasoned framework for exercising that power. In any case, it is too early in this litigation to pass on this issue.

Accordingly, the motion is denied without prejudice to renewal following disposition of any controversies concerning the admissibility of statistical evidence and on a more reasoned approach to ensuring that the trial[*2] remains within appropriate limits. *See, e.g., Evans v. Port Authority of New York and New Jersey*, 246 F. Supp. 2d 343, 2003 U.S. Dist. LEXIS 2577, No. 00 Civ. 5753 (LAK), 2003 WL 470540 (S.D.N.Y. Feb. 25, 2003).

SO ORDERED.

Dated: April 18, 2003

Lewis A. Kaplan

United States District Judge