

Orlowski v. Dominick's Finer Foods

United States District Court for the Northern District of Illinois, Eastern Division

August 22, 1995, Decided ; August 28, 1995, DOCKETED

Case No. 95 C 1666

Reporter: 1995 U.S. Dist. LEXIS 12468; 1995 WL 516595

HELENE ORLOWSKI, MELBA J. KOCH, MARGARET MROZOWSKI, CAROL ANN SCHMALL, ALMA L. AGUIRRE, ROANN D. KEATY, on behalf of themselves and all other persons similarly situated, Plaintiffs, v. DOMINICK'S FINER FOODS, INC., Defendant.

Subsequent History: [*1] Motion for Reconsideration Denied September 7, 1995, Reported at: [1995 U.S. Dist. LEXIS 13197](#).

Counsel: Jeffrey Irvine Cummings, DAVIS, MINER, BARNHILL and GALLAND, P.C., Chicago, IL, Representing Plaintiffs.

Jeffrey Mark Friedman, FRIEDMAN & HOLMAN, Chicago, IL, Representing Plaintiffs.

Mark Andrew Lies, II, SEYFARTH, SHAW, FAIRWEATHER & GERALDSON, Chicago, IL, Representing Defendant.

Judges: ARLANDER KEYS, United States Magistrate Judge

Opinion by: ARLANDER KEYS

Opinion

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiffs' Motion to Compel Defendant to Provide Complete Responses to their Outstanding Interrogatories and Document Requests. For the following reasons, Plaintiffs' Motion is granted in part and denied in part.

Background

Helene Orlowski and five other female employees (hereinafter "Plaintiffs") filed the Complaint herein against Dominick's Finer Foods, Inc. (hereinafter "Defendant"), alleging violations of Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000(e) et seq. Plaintiffs allege that Defendant is engaged in a pattern of discriminatory conduct against its female and Hispanic employees including, *inter alia*,

promotional opportunities, work assignments, maintaining sex-segregated job categories and refusal to provide training to qualify [*2] them for more desirable work opportunities. Plaintiffs seek to certify a class of Defendant's female and Hispanic employees as an appropriate class pursuant to *Rule 23 of the Federal Rules of Civil Procedure*. The Complaint asserts that a class of female--past, present and future--employees of Defendant located throughout the State of Illinois is appropriate for certification. The Amended Complaint added Defendant's Hispanic employees as members of the proposed class.

Defendant's Organizational Structure

Defendant operates a chain of 85 retail food stores within the State of Illinois. It has its headquarters in Northlake, Illinois and employs approximately 15,000 employees. Each store has a store manager and co-manager, as well as a department manager for its deli, seafood, meat, produce, grocery, bakery, and customer service departments. ¹ Robert E. McCoy, Defendant's Senior Vice President of Operations, is responsible for the overall operational management of the 85 stores. However, decisions regarding hiring, training, promotions, transfers, hours and other conditions of employment are made at the individual store level, with participation or input from the Director [*3] of Area Operations, Area Merchandiser and Area Human Resources Representative for the area in which the store is located. ²

Defendant also owns, through a separate division, a 17-store retail discount operation known as Omni SuperStore/Discount Food and Drugs (hereinafter "Omni"). Omni has its own separate offices for its management and support staff and is headquartered in Bridgeview, Illinois. Omni is a separate division, has its own management structure and its own separate financial organization, and its management groups report to individuals within Defendant's corporate hierarchy who are solely assigned to Omni. Omni has separate labor contracts from Defendant's employees, and none of the named Plaintiffs herein was ever employed by or worked for Omni.

Plaintiffs' Requests for Information and Documents

¹ All of the name Plaintiffs worked in the deli departments of various stores.

² Apparently, the 85 stores are assigned to four areas, each of which is comprised of approximately 20 stores.

[*4] In an attempt to show that class certification is appropriate herein, Plaintiffs served eight written interrogatories and three requests for the production of documents upon Defendant. The interrogatories, referred to by Plaintiffs as "computer" interrogatories, apparently assume that Defendant has personnel information stored in databases that are accessible by computer.

1. The Interrogatories

Interrogatory No. 1 requests that Defendant identify the databases it maintains which contain biographical or employment information of its employees, such as their home addresses, dates of birth, sex, race, education, prior work experience, dates of hire, salary history, bonuses paid, job assignments, promotion history, performance evaluations, training and disciplinary actions taken against them.³ Interrogatory No. 2 requests Defendant to describe, in detail, the organizational structure of the databases identified in response to Interrogatory No. 1. Interrogatory No. 3 asks whether the database records are regularly purged, and Interrogatory No. 5 inquires into Defendant's policy regarding the retention of the names of terminated employees. Interrogatory No. 4 asks Defendant [*5] to identify the groups of employees included in the database. Interrogation No. 6 asks Defendant to identify and describe the backup procedures and retention policy for the databases identified in response to Interrogatory No. 1, including where they are stored and what would be involved in recovering information from the copies.

Interrogatory No. 7 requests that Defendant provide a brief description of the computer resources employed in maintaining the databases, including the principal computer involved, its disk and tape peripherals and the operating system software employed in the maintenance of the databases and retrieval of information from the databases.

Finally, Interrogatory No. 8 requests the identities of employees or other individuals most knowledgeable about the contents and maintenance of the databases.

Defendant has produced, agreed to produce [*6] "per agreement of counsel as to the appropriate limitations for production", or stated that it does not have, some documents in response to Plaintiffs' requests for production of documents.⁴

2. Document Requests

Plaintiffs' Document Requests Nos. 1 - 4 of their first request for production of documents all relate to the Defendant's computer database. Thus, Document Request No. 1 requests that Defendant provide a record layout for each database identified in response to Interrogatory No. 1. Document Request No. 2 requests a [*7] sample printout of all documents or other sources of information which are required to interpret all "coded" fields within each database. Document Request No. 3 requests sample pages from all reports regularly produced from each database, and Document Request No. 4 requests that each database be produced in a readable form.

In their second request for production of documents, Plaintiffs seek to compel Defendant to produce documents reflecting its policies regarding employee performance evaluations (Request No. 4); transfer of employees among stores (Request No. 6) transfer and lateral movement of employees between departments (Request No. 7); assignment of employees to full-time and part-time status (Request No. 9); and the assignment of work hours and work shifts (Request No. 18). Plaintiffs also request documents reflecting Defendant's qualifications, duties and requirements for each of its job descriptions (Request No. 10).

Request No. 12 seeks documentation concerning the names, race, sex, ethnic origins, dates of hire and current positions of all employees who applied for or participated in Defendant's employee development or career advancement programs. Request No. 14 requests [*8] production of all documents which Defendant provided to or received from the Equal Employment Opportunity Commission in connection with the charges that each of the name Plaintiffs filed. Request No. 15 seeks production of documents reflecting the demographic composition of Defendant's work force, including the sex racial and ethnic origin thereof.

Plaintiffs request documents listing the managers, co-managers, assistant managers and department managers of each of Defendant's stores (Request No. 16). Finally, Request No. 17 requests all documents, including contracts, affiliation agreements, articles of incorporation and by-laws which evidence the legal relationship between Defendant and Omni.

Pursuant to their third request for production of documents, Plaintiffs seek the production of documents

³ All of Plaintiffs' written interrogatories and requests for production of documents seek information concerning the period from 1990 to the present.

⁴ Defendant's qualifying language regarding agreement of counsel as to the appropriate limitations for production would indicate that the parties have agreed as to the appropriate limitations and that such documents will be produced without the Court's intervention. However, Plaintiffs' Motion to Compel indicates that no such agreement has been reached. Therefore, the Court will address each of the numerated requests which Plaintiffs have set forth in their Motion to Compel.

reflecting the formal education and any other supplemental education or training attained by Defendant's management personnel at the stores, as well as their former positions held prior to becoming managers, and requests copies of their employment applications.

Contentions of the Parties

Defendant properly notes that the six name Plaintiffs all work in the deli departments of [*9] its stores and asserts that their individual complaints concerning its personnel policies and practices are specific to their particular stores or, at most, to Defendant's deli departments. Therefore, Defendant objects to providing answers to interrogatories and producing documents which are not limited to its deli departments. In this regard, Defendant asserts that the name Plaintiffs have not demonstrated any of the requirements for class certification and that this should be shown prior to requiring Defendant to respond to discovery requests which are not limited to the deli departments. To require otherwise, Defendant argues, would be unduly burdensome.

Plaintiffs contend that the information and documents which they seek are necessary for them to carry their burden of showing that the name Plaintiffs are representative of the class which they seek to certify. In this regard, Plaintiffs assert that the purpose of its interrogatories is to discover what kind of personnel and demographic information Defendant keeps in computer readable form, how such information is organized and maintained and the identity of the persons who are most knowledgeable about the databases. The document [*10] requests, they assert, seek the production of documents needed to explain the method in which the computerized information is organized and coded. With this information, Plaintiff contends that it will be able to show the character of Defendant's work force, the number of potential class members and how Defendant's policies and procedures impact upon the other segments of its work force.

Discussion

The Complaint alleges that Defendant has engaged in and is engaging in discriminatory policies and practices against its female and Hispanic employees by denying them promotional opportunities, such as full-time status, desirable job assignments, training, promotions to management positions, additional hours and desirable shift and department assignments (First Amended Complaint P 10). With respect to each of the name Plaintiffs, the

Complaint alleges that they have been denied promotional opportunities and other job-related benefits which were given to men, despite their superior qualifications, seniority and demonstrated abilities. They further allege that men are hired, retained or scheduled for more hours of employment while the women are maintained on part-time status. The [*11] Complaint implies that females are hired into jobs in which females predominate ⁵ and that they are not provided with the experience and training necessary to qualify them for promotional opportunities to predominately male jobs ⁶ and that males are provided such experience and training. The Complaint alleges that white males dominate all management positions (92% of the 517 managerial positions), while females and minorities hold a disproportionate share of the lower level positions and rarely advance to higher positions. ⁷

Considering the allegations of the Complaint, and, notwithstanding the arguments of Defendant to the contrary, the Court finds that the information sought by Plaintiffs' interrogatories and document requests is relevant in determining the scope of the potential class herein, [*12] if any. The Court finds that, at this early stage of these proceedings, it would be premature to rule, as a matter of law, that Plaintiffs will be unable to sustain a showing that certification of a class of Defendant's employees is appropriate.

The pleadings herein reveal that Defendant employs approximately 15,000 employees in its 85 stores, each of which has a store manager, co-manager and seven department managers. The evidence thus far does not reveal the percentages of female and Hispanic employees in Defendant's overall work force. However, Plaintiffs do allege that 92% of its managers are males and that its female and Hispanic employees are relegated to the lower-paying jobs, with little upward mobility. In order to support these allegations and Plaintiffs' allegation that Defendant has intentionally engaged in unlawful discriminatory practices, information relating to the sex, ethnicity, national origin, education, prior work experience, salary history, promotion history, job assignments, performance evaluation and training is clearly relevant to show disparate treatment.

Defendant asserts that to require it to respond to Plaintiffs' discovery requests, even limited [*13] to its deli department, would require its one-person secretarial staff to pull 2,400-2,700 personnel files, as well as any related worker's compensation files. Further, it contends, to require it to respond with such information regarding all of

⁵ Presumably lower-paying jobs.

⁶ Presumably higher-paying jobs.

⁷ Of course, the Complaint contains only allegations and the Court will express no opinion as to the merits of such allegations.

its employees would require its staff to pull approximately 16,500 personnel files and any related worker's compensation files (Affidavit of Edwina A. Erlemann). The Court rejects any such contention, as the Plaintiffs' requests clearly do not seek employee personnel files. Rather, it appears that the computer-related interrogatories and document requests are directed at information which, presumably, Defendant has stored in some computerized form. If such is not the case, Defendant should so respond.

Defendant is correct in its assertion that Plaintiffs may not proceed on the merits of their proposed statewide class action until such time as a class of plaintiffs is certified by the Court. However, this fact does not preclude Plaintiffs from engaging in pre-class certification discovery in order to determine the appropriateness of a class certification. Defendant cites Mantolete v. Bolger, 767 F.2d 1416 (9th Cir. 1985) for the proposition [*14] that, absent a showing by Plaintiffs that the requirements of Rule 23 have been met, it is not an abuse of discretion to deny class discovery. In Mantolete, the plaintiff, an epileptic, filed a complaint against the United States Postal Service under the Rehabilitation Act, alleging that she was improperly denied a promotion at the Post Office in Phoenix, Arizona based on her physical handicap. Ms. Mantolete sought national class certification and national discovery. The evidence revealed that only two other complaints had been filed by epileptics against Postal Service nationally. Under these circumstances, the Ninth Circuit held that the district court's refusal to grant expanded discovery was not an abuse of discretion because such discovery was not likely to, "produce persuasive information substantiating the class action allegations." 767 F.2d at 1425 (quoting Doninger v. Pacific Northwest Bell, Inc., 564 F.2d 1304, 1313) (9th Cir. 1977).

The Court notes that, unlike the facts in Mantolete, which sought national class certification, Plaintiffs seek certification of Defendant's employees in its 85 stores in the State of Illinois, most of which are located in the City [*15] of Chicago and the suburbs (First Amended Complaint, Exhibit C). Further, unlike Mantolete, this Court cannot find, at this early stage of these proceedings, that Plaintiffs' discovery is not likely to produce persuasive information in support of their proposed class certification. For the foregoing reasons, the Court will not require Plaintiffs to prove the appropriateness of their proposed class certification without first engaging in discovery relating to that issue. The Court finds that the information sought and documents requested by Plaintiffs are relevant in determining the scope of class certification,

if any, and that the production of such information and documents, in the form requested by Plaintiffs, is not unduly burdensome.⁸ Accordingly, Defendant must comply with the information and document requests relating to Defendant's operations.

[*16] Plaintiffs' Document Request No. 17 of its Second Request for Production of Documents requests the production of all documents relating to the legal relationship between Defendant and Omni Superstore/Discount Food and Drugs. Plaintiffs assert that the relationship between Defendant and Omni is "potentially relevant" because it will aid Plaintiffs in properly defining the parameters of their class (Plaintiffs' Motion to Compel, at 15, footnote 8).

Omni is an entirely separate division of Defendant, which operates 17 retail discount stores. It has separate headquarters, in different cities, and separate management and support staff. Omni has its own management structure, which includes a separate general merchandising buying group; separate groups for buying grocery, meat, produce and deli items; and separate groups for customer services, merchandising organization, human resources, operations, loss prevention, and pharmacy. Omni has its own financial organization, which is supervised by a comptroller, and its management groups report to Defendant's Vice Presidents for Marketing and Operations, who are solely assigned to Omni. Finally, Omni's employees are covered by separate labor [*17] contracts that are different from those of Defendant's employees, and none of the name Plaintiffs have ever worked for Omni (Defendant's Response to Motion to Compel, Affidavit of Robert E. McCoy). There is no evidence that employees are interchanged between Defendant and Omni.

Plaintiffs have not alleged that Omni has engaged in any of the allegedly discriminatory policies and practices that they have attributed to Defendant. In fact, it appears that Plaintiffs learned of the relationship between Defendant and Omni only after the Complaint was filed. The Amended Complaint does not add Omni as a defendant in these proceedings. None of the name Plaintiffs have ever worked for Omni and would not, therefore, have a basis for challenging its employment policies and practices.

Considering the foregoing, the Court finds that Plaintiffs have not demonstrated the relevance of any information or documentation regarding the relationship between Defendant and Omni. Accordingly, Plaintiffs' Motion to Compel the production of such documents is denied.

⁸ The Court's ruling herein should not be construed by either party as indicating its inclination as to its ultimate decision on the class certification issue. In this regard, Defendant has raised significant questions as to whether class certification is appropriate (citing Gorence v. Eagle Food Centers, Inc., 1994 U.S. Dist. LEXIS 11438, 1994 WL 445149 (N.D. Ill. August 16, 1994)). However, resolution of those questions must await completion of the class certification discovery.

Conclusion

Plaintiffs' Motion to Compel Defendant to Provide Complete Responses to their Outstanding Interrogatories and Document Requests [*18] is granted with respect to its interrogatories and Document Requests Nos. 1 - 4 of their first request; Requests Nos. 4, 6, 7, 9, 10, 12, 14, 15, 16 and 18 of their second request; and Requests Nos. 1, 2, and 3 of their third request. Plaintiffs' Motion in regard to

Document Request No. 17 of its second request is hereby denied.

Dated: August 22, 1995

ENTER:

ARLANDER KEYS

United States Magistrate Judge