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United States District Court, N.D. New York.

D. Drew ABRAMS, Individually and on behalf of all other persons similarly situated; Thomas W. LOUCKS, Individually and on behalf of all other persons similarly situated, Plaintiffs,
v.
GENERAL ELECTRIC COMPANY, Defendant.

No. 95–CV–1734 (FJS).
|
Aug. 4, 1997.

Attorneys and Law Firms

McNamee, Lochner, Titus & Williams, P.C., Joseph M. Gaug, Albany, New York, for Plaintiffs.

Epstein, Becker & Green, P.C., Ronald M. Green, New York, New York, for Defendant.

MEMORANDUM DECISION AND ORDER

SCULLIN, District Judge.

Introduction

***1** This is an action brought pursuant to the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. §§ 621 et seq., the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001 et seq., and the New York Human Rights Law ("HRL"), Executive Law §§ 290 et seq. Presently before the Court are two separate appeals by the Defendant General Electric, contesting four discovery rulings made by Magistrate Judge Ralph W. Smith. The first three of these rulings were issued by Magistrate Judge Smith in an order dated December 20, 1996, and the fourth from an order issued on January 24, 1997. Specifically, GE appeals (1) a ruling which requires it to identify and provide disposition and status information concerning all age discrimination and ERISA claims made against the Defendant since 1990; (2) a ruling which requires it to produce all documents submitted by the Defendant to the New York State Division of Human Rights ("NYSDHR") or the United States Equal Employment Opportunity Commission ("EEOC") regarding age discrimination claims resulting from reductions-in-force ("RIF"s) from 1993–1995; (3) a ruling which requires it to produce for the Court, for in camera review, lay-off impact statements which are possibly subject to attorney-client privilege, work product privilege, or self-critical analysis privilege; and (4) a ruling which orders the inclusion of eight individuals employed outside of the GE Power Systems plant in Schenectady, New York, in the Plaintiff's statutory class.

Discussion

The applicable standard of review for these appeals is set forth in Rule 72(a) of the Federal Rules of Civil Procedure and the Federal Magistrates Act, 28 U.S.C. §§ 631–639 (1988). Pretrial rulings involving discovery are generally considered non-dispositive and are reviewed under the "clearly erroneous or contrary to law" standard of review. 28 U.S.C. § 636(b)(1)(A); Fed.R.Civ.P. 72(a); *see, e.g., Aries Ventures Ltd. v. Axa Finance S.A.,* 696 F.Supp. 965, 966 (S.D.N.Y.1988); *Empire Volkswagen, Inc. v. World–Wide Volkswagen Corp.,* 95 F.R.D. 398, 399 (S.D.N.Y.1982), *aff'd,* 814 F.2d 90 (2d Cir.1987). "[A] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.,* 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948). Pursuant to this highly deferential standard of review, magistrate judges are afforded broad discretion in resolving discovery disputes, and reversal is appropriate only if that discretion is abused. *See Conway v. Icahn,* 16 F.3d 504, 510 (2d Cir.1994). The Court will address each of the Defendant's objections accordingly.

I. JUDGE SMITH'S RULING REQUIRING THE DISCLOSURE OF ERISA AND AGE DISCRIMINATION CLAIMS MADE AGAINST THE DEFENDANT SINCE 1990

Defendant first objects to an order by Magistrate Judge Smith requiring the Defendant to respond to Plaintiffs' interrogatory no. 9, which states:

> ***2** Identify, by name of claimant, docket or file number, and the agency or court to which each matter was brought for adjudication, if any, all age discrimination or ERISA claims made against defendant since 1990 and state the disposition or current status of each claim.

Defendant claims that the information sought in this interrogatory is wholly irrelevant to the present litigation and that the applicable case law compels reversal of Judge Smith's order. *See Burks v. Oklahoma Publishing Co.,* 81 F.3d 975 (10th Cir.), *cert. denied,* 519 U.S. 931, 117 S.Ct. 302, 136 L.Ed.2d 220 (1996); *Prouty v. Nat'l. R.R. Passenger Corp.,* 99 F.R.D. 545 (D.D.C.1983); *Prouty v. Nat'l. R.R. Passenger Corp.,* 99 F.R.D. 551 (D.D.C.1983).

Judge Smith found that the information requested in interrogatory no. 9 was potentially relevant and, if not admissible, could lead to the discovery of admissible evidence. *Abrams v. General Electric Co.,* No. 95–CV–1734, slip. op. at 3 (N.D.N.Y., December 20, 1996) (citations omitted). Evidence of past discriminatory practices of an employer is generally relevant in employment discrimination claims. *Zahorik v. Cornell Univ.,* 98 F.R.D. 27, 31 (N.D.N.Y.1983) (citations omitted). Accordingly, plaintiffs are entitled to discover information concerning past incidents of discrimination as long as they are not conducting a "general fishing expedition into areas unrelated to their claims." *Id.* In this case, the Court finds that Judge Smith properly exercised his discretion in finding that the Plaintiff's interrogatory no. 9 was sufficiently narrow in scope so as to be relevant to the Plaintiff's claims. Thus, Judge Smith's order in this respect is affirmed.

II. JUDGE SMITH'S RULING REQUIRING THE DISCLOSURE OF DOCUMENTS SUBMITTED TO THE NYSDHR AND THE EEOC BY THE DEFENDANT FROM 1993 TO 1995

Defendant also objects to an order by Magistrate Judge Smith requiring the Defendant to respond to the Plaintiff's interrogatory No. 16, which seeks from the Defendant:

> all documents produced by the defendant to the New York Division of Human Rights or Equality [sic] Employment Opportunity Commission in connection with any claims made to either agency regarding the termination of any individuals, including the plaintiffs, terminated by defendant in any reduction in force from 1993 through 1995.

Defendant appeals this ruling for the same reasons it objected to interrogatory no. 9. Judge Smith again found that interrogatory no. 16 was sufficiently narrow in scope and requested relevant material, or at least material which could lead to the discovery of relevant information. Pursuant to the authority cited above, the Court finds that Judge Smith's ruling in this respect is neither clearly erroneous, nor an abuse of discretion. Thus, Judge Smith's order in this respect is affirmed.

III. IN CAMERA REVIEW OF POTENTIALLY PRIVILEGED DOCUMENTS

Defendant also objects to an order of Magistrate Judge Smith directing the Defendant to turn over documents requested in interrogatory nos. 17, 18, 22, and 29 to the Court for in camera review. Defendant originally objected to these document requests on the grounds that they violated the attorney-client, self-critical analysis, and work product privileges. Judge Smith directed the Defendant to turn these materials over to the Court, along with briefing as to how each specific document was protected. Although the Defendant makes argument why the various materials requested in these interrogatories are entitled to some privilege, the Defendant fails to make any argument as to why Judge Smith's decision to

evaluate these materials in camera is clearly erroneous or contrary to law. This Court cannot find any authority suggesting that an in camera review of documents to determine whether they are privileged is an abuse of discretion. Thus, Defendant's appeal in this respect is wholly without merit, and Magistrate Judge Smith's order is affirmed.

IV. SCOPE OF CLASS NOTIFICATION

***3** Finally, Defendants object to a decision issued by Magistrate Judge Smith on January 24, 1997 granting the Plaintiffs' motion to include, as part of the class action, eight individuals who were employed by the Defendant's Schenectady Power Systems facility but who performed their duties elsewhere. The Defendant argues that this order is clearly erroneous because it impermissibly expands the class beyond that which is defined in the complaint, and in the previous order of this Court certifying the action as a collective action.[1] In that order, the relevant class was defined as "those employees over forty, previously or presently employed *at* the GE Power Systems plant, who were terminated, laid off, discharged, demoted, or forced to voluntarily retire from employment due to the 'downsizing' that occurred in May of 1995." *Abrams,* 1996 WL 663889 at *2 (emphasis added). Defendant argues that the word "at" in this description forecloses the inclusion of the eight individuals who worked for the Power Systems Division, but performed their duties elsewhere. The Defendants made this same argument to Magistrate Judge Smith, who found that the inclusion of these individuals was not inconsistent with the Court's previous order because the discriminatory RIF which allegedly occurred at the GE Powers Systems plant would necessarily affect those employees employed by the Division regardless of whether they actually performed their duties at the plant itself, or elsewhere. The Court finds that Judge Smith's ruling is a permissible interpretation of the Court's previous order and does not constitute an abuse of discretion. Thus, Magistrate Judge Smith's January 24, 1997 order in this action is affirmed.

Conclusion

Based on the foregoing, the Court finds that the Defendant's objections to these four discovery rulings of Magistrate Judge Smith lack merit. Accordingly, it is hereby

ORDERED that the December 20, 1996 and January 24, 1997 orders of Magistrate Judge Smith are AFFIRMED in their entirety, and the Defendant's appeals are DISMISSED.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp., 1997 WL 458446

Footnotes

1 The previous order of this Court dated November 4, 1996 authorized the Plaintiff to proceed as a collective action pursuant to Section 216(b) of the Fair Labor Standards Act, it did not certify the Plaintiff's class pursuant to Fed.R.Civ.P. 23. *Abrams v. General Elec. Co.,* No. 95–CV–1734, 1996 WL 663889 (N.D.N.Y., Nov.4, 1996).