

1997 WL 728129  
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United States District Court, D. Kansas.

Saul ZAPATA, et al., Plaintiff,  
v.  
IBP, INC., Defendant.

No. Civ.A. 93-2366-EEO.  
|  
Nov. 19, 1997.

#### Attorneys and Law Firms

P. John Brady, R Lawrence Ward, James C Sullivan, Shughart, Thomson & Kilroy, P.C., Kansas City, MO, John L. Hampton, Hampton Law Office, Lawrence, KS, for Saul Zapata, individually and on behalf of others similarly situated, plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Gustavo Adolfo Vasquez, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Francisco Ponce, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Antonio Martinez, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Manuel Sigala, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Graciela Garcia, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Antonio Ponce, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Enrique Molina, Jr, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Baltazar Betran, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Pedro Lira, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Marco Interrial, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Jose Luis Velasquez, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Olga Cabral, individually and on behalf of others similarly situated plaintiff.

P. John Brady, R Lawrence Ward, James C Sullivan, John L. Hampton, (See above), for Juan Rucker, Individually and on behalf of others similarly situated plaintiff.

Jack L Whitacre, Spencer, Fane, Britt & Browne, Kansas City, MO, Russell P. Wright, IBP, Inc., Dakota City, Shelly L. Freeman, John R Phillips, Blackwell, Sanders, Matheny, Weary & Lombardi L.L.P., Kansas City, MO, J. Nick Badgerow, Michaela M. Warden, Jeannie M. DeVeney, Spencer, Fane, Britt & Browne, Overland Park, KS, Sarah R Saldana, Michele Baird, Karen B Peck, Baker & Botts, L.L.P., Dallas, TX, for IBP Inc, defendant.

#### MEMORANDUM AND ORDER

RUSHFELT, Magistrate J.

\*1 Before the court is Plaintiffs' Motion to Compel (doc. 533). Plaintiffs thereby seek an order to compel defendant IBP, inc. (IBP) to answer Interrogatories 10 through 18 of plaintiff Juan Rucker's First Interrogatories, to produce all documents reviewed in answering those interrogatories, and to produce all personnel files of witnesses listed on its witness list in response to Requests 6 and 16 of their First

Request for Production of Documents. Fed.R.Civ .P. 37 governs motions to compel. Defendant opposes the motion. The parties have resolved the dispute with regards to the interrogatories. The court thus deems the motion moot to that extent.

The issue of production of personnel files remains. IBP contends the motion is untimely. It claims plaintiffs requested the files in October 1993. It asserts that the initial Scheduling Order in this case set a 180-day deadline for filing motions to compel. It further asserts that later Scheduling Orders set a 60-day deadline. It thus argues that the motion is untimely under any Scheduling Order entered in this case.

Plaintiffs concede that they formally requested the personnel files here at issue in October 1993. They further admit that defendant timely raised various objections to the requests. They contend that they narrowed the requests, however, by letter dated February 25, 1997. They further contend that, after receiving no response to that letter, they sent a second letter on April 29, 1997 requesting production of the files here at issue. They submit, furthermore, that the parties have subsequently discussed the production on numerous occasions.

Anticipating the objection of untimeliness, plaintiffs argue that they “reacted immediately once it became possible to appropriately narrow the request.” (Mem. in Supp. of Pls.’ Mot. to Compel, doc. 534.) They explain that in early 1994 the case concentrated on issues of class certification. They assert, furthermore, that the stance of IBP regarding discrimination at its plants changed in early 1997. They contend that this change prompted the renewed request for production in February 1997. They assert that good cause thus exists to consider their motion timely. They suggest that, until they had completed sufficient discovery and defendant had identified its witnesses to be called at trial, it could not possibly narrow the concededly overly broad request. Plaintiffs say they raised the issue as soon as it became clear that defendant would argue that it had taken appropriate disciplinary action against its management and management support personnel.

The court finds the motion to compel untimely. The initial Scheduling Order in this case directed parties to file motions to compel discovery “within 180 days of the default or service of the response, answer or objection which is the subject of the motions, unless the time for the filing of such motions is extended for good cause shown, or the objection to the default, response, answer, or objection shall be waived.” (Scheduling Order of December 14, 1993, doc. 20.) Later scheduling orders reduced the relevant time-period to 60 days. (*See* Revised Scheduling Order of December 27, 1994, doc. 157; Revised Scheduling Order of December 31, 1996, doc. 410.) Plaintiffs filed the motion well outside the applicable deadline established in the Scheduling Orders of this case. They provide inadequate explanation for a delay of nearly three and one-half years between the allegedly insufficient response to the requests for production and the filing of this motion. They have not adequately demonstrated good cause to grant an extension for the filing of their motion so far out of time. The dispute raised by the motion apparently lay dormant from late 1993, until early 1997. The court finds the proffered excuses for the delay unconvincing. The events leading up to the renewed, informal request for production in February 1997 do not serve to revive a dispute long dead.

**\*2** For the foregoing reasons, the court overrules in part and deems moot in part Plaintiffs’ Motion to Compel (doc. 533). Each party shall bear its own costs and expenses incurred upon the motion.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 19th day of November, 1997.

#### **All Citations**

Not Reported in F.Supp., 1997 WL 728129