

1975 WL 11940
United States District Court, E.D. Pennsylvania.

Equal Employment Opportunity Commission,
Hodgson, Secretary of Labor, United States
Department of Labor, and United States Of
America

v.

American Telephone And Telegraph Company, et
al.

No. 73-149.

|
Jul. 3, 1975.

Opinion

A. LEON HIGGINBOTHAM, Jr., District Judge:--

*1 In an earlier decision in this civil rights action, reported at 365 F.Supp. 1105, 6 FEP Cases 643 (E.D. Pa. 1973), this Court granted the Communication Workers of America (hereinafter "CWA") restricted leave to intervene; pursuant to 42 U.S.C. § 2000e-5(f) (1), to litigate the rights of pregnant female employees of defendants. *Id.* at 1126, 6 FEP Cases at 658-659. On appeal, the Court of Appeals held that this ruling was "inherently interlocutory," and dismissed defendant's appeals from it for want of jurisdiction. *Equal Employment Opportunity Commission, et al. v. American Telephone & Telegraph Company, et al.*, 506 F.2d 735, 742, 9 FEP Cases 53, 58 (3d Cir. 1974). Subsequent to the decision of the Court of Appeals, defendants renewed their Motion to Dismiss the Amended Complaint in Intervention of CWA.¹ The issues were thoroughly briefed by defendants and CWA, and were argued before this Court on March 5, 1975.

Since then, I have carefully reconsidered the record of this case in the light of the arguments advanced by the parties, the decision of the Court of Appeals and numerous representations in the record by the government plaintiffs that the issue of maternity benefits was specifically excluded from the extensive negotiations that led to the filing of the complaint in this case and the entry of the Consent Decree and Memorandum of Agreement. In my earlier opinion, I stated that "if one stretches every inference in the record in the light most advantageous to CWA, one could perhaps conclude that on *one issue only* there is a *miniscule*, tangential relationship between the

charge CWA filed before EEOC, and one of the issues in the EEOC's Consent Decree." 365 F.Supp. at 1125, 6 FEP Cases at 657 (Emphasis in original). My review of the record has convinced me that my earlier reading of the record was, as the language of the opinion indicates, excessively strained. In fact, I have concluded that that reading exhausted even the considerable elasticity of the English language. The statements of record by the government plaintiffs clearly suffice to rebut any inference that the complaint and the Consent Decree in this action were ever intended to embrace the maternity benefit issue as raised in charges filed by the CWA with the EEOC.

[HOLDING]

Accordingly, I hold that the CWA was improperly granted limited leave to intervene by my ruling of October 5, 1973. So much of my opinion and order of that date which does grant said limited leave to intervene is hereby vacated, as well as any subsequent order or portion thereof which reaffirmed that limited grant of intervention. Defendants' Motion to Dismiss the Amended Complaint in Intervention of CWA is GRANTED.

*2 It is essential to note that this decision in no way prejudices any substantive rights of CWA. As I said in my earlier opinion, ". . . none of the CWA charges before EEOC are included and incorporated in the complaint at bar. Thus any ruling by the Court now will not necessarily impair CWA's ability to process administratively its charges before EEOC. Moreover, if there is a failure to secure voluntary compliance by the agency, a ruling now adverse to CWA will not in any way be dispositive of its rights to enforce and prosecute those charges by resort to private litigation. On the basis of a negative decision today, CWA would not *per se* be barred or precluded from initiating its own lawsuit challenging AT & T's maternity leave practices." 365 F.Supp. at 1125-26, 6 FEP Cases at 658.²

Moreover, CWA is not even precluded from participating in the instant action for it has been granted leave to intervene as a party defendant by the Court of Appeals. *Equal Employment Opportunity Commission v. American Telephone & Telegraph Company*, 506 F.2d 735, 742, 9 FEP Cases 53, 58 (3d Cir. 1974).

An appropriate order will be entered.

defendants, American Telephone & Telegraph Company, et al., to Dismiss the Amended Complaint in Intervention of CWA is GRANTED.

All Citations

Not Reported in F.Supp., 1975 WL 11940, 13 Fair Empl.Prac.Cas. (BNA) 390

ORDER

AND NOW, this 3rd day of July, 1975, it is hereby ORDERED and DECREED that the Motion of

Footnotes

- ¹ Defendants simultaneously filed several other motions. My disposition of the motion to dismiss effectively renders these other motions moot.

- ² To avoid even the slightest possibility of prejudice to CWA, the parties are directed to prepare, within ten (10) days of the entry of this order, a proposed form of order wherein the defendants agree to waive any defenses-- of statutes of limitations and the like--which may have accrued to them in other actions during the pendency of my decision on this motion.