

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Applicant,)
)
vs.) Case No. 02-3072-CV-S-3
)
NEW PRIME, INC.,)
)
Respondent.)

ORDER ENFORCING SUBPOENA DUCES TECUM

On February 20, 2002, the Equal Employment Opportunity Commission (“EEOC” or “Commission”) filed an Application for an Order requiring Respondent New Prime, Inc. (“New Prime”) to show cause why a certain subpoena duces tecum, No. SL 0144, requiring Respondent to produce certain evidence should not be enforced. The Subpoena was issued on September 20, 2001, for the case of JUDITH ALSTON v. NEW PRIME, INC., Charge No. 28A10906, pursuant to Section 710 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-9. The Court granted Applicant’s motion and directed Respondent to show cause why the subpoena should not be enforced. Respondent filed a timely response and, therein, argued that (1) the information and documents requested were not relevant to the charge under investigation, (2) the subpoena exceeded the EEOC’s authority under 42 U.S.C. §§ 2000e-5, e-8, (3) the EEOC did not provide adequate notice of the charge of discrimination to the employer, and (4) the investigation was not conducted in good faith and the documents, materials and information sought were overbroad and too indefinite.

BACKGROUND

As a matter of background, Judith Alston, the Charging Party, filed an Intake Questionnaire ("Questionnaire"), which included her verified signature, on April 20, 2001. In summary, her Questionnaire alleged:

Jerome Carter sexually harassed me from the time I began working for him as a co-driver until the time of my flight from the truck. Mr. Carter blew up at me many times because I refused to become sexually involved with him. He also would not let me leave his truck once I told him I had enough and was leaving.

Approximately one week later on April 27, 2001, the EEOC forwarded a Notice of Charge of Discrimination to Respondent. Respondent states that it only received two pages of the seven page questionnaire along with the Notice - the first page, bearing the heading "INSTRUCTIONS" and the signature page.

On September 18, 2001, Lynn Bruner, District Director of the EEOC's St. Louis office, issued a subpoena requesting the following:

- (1) Documents which show all female driver-trainees for the period of January 1, 1997 to the present (including name, social security number, date of hire, current status, address and telephone number, and name(s) of all drivers to whom they were assigned) and
- (2) Documents which show all female drivers and co-drivers, both employees and independent contractors, for the period January 1, 1997 to the present (including name, social security number, date of hire, current status, address and telephone number, and name(s) of all drivers to whom they were assigned)¹.

¹Initially, the EEOC also requested documents which show all Prime trainee-students that graduated from Midwestern Training Centers. However, it has now withdrawn that request because it received the desired information directly from Midwestern Training Centers.

ANALYSIS

Title VII grants the EEOC the power to administratively subpoena evidence of unlawful employment practices which is relevant to a charge of discrimination filed under that title. 42 U.S.C. § 2000e-8(a). In other words, a valid charge is a condition precedent to the issuance of a subpoena. Here, the EEOC has conducted its investigation based on the April 20, 2001 Questionnaire filed by Ms. Alston. Initially, the Court must determine whether the April 20, 2001 Questionnaire meets the sufficiency requirements of a formal charge under Title VII and the EEOC administrative regulations. Otherwise, the EEOC's reliance on the questionnaire as the basis for its subpoena is misplaced. Title VII provides that "[c]harges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires." 42 U.S.C. § 2000e-5(b). The EEOC regulation setting forth the sufficiency requirements of a charge, 29 C.F.R. 1601.12 (b), states "a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of."

The Eighth Circuit has held that an intake questionnaire may serve as a formal charge of discrimination when verified and intended to function as a charge. See Lawrence v. Cooper Communities, Inc., 132 F.3d 447 (8th Cir. 1998); Diez v. Minnesota Mining and Mfg. Co., 88 F.3d 672, 677 (8th Cir. 1996). Here, Ms. Alston signed the final page of the Questionnaire directly beneath the following language: "I declare under the penalty of perjury that the information provided in this questionnaire is true and correct." The Questionnaire included the names and addresses of Ms. Alston, New Prime, Inc. and Jerome Cater and, in several areas, included a description of the sexual harassment complained of ("several times each day for one reason or another he yelled, screamed, raged that something was wrong with me for not wanting to go to bed with him." Alston Questionnaire, page 5). Moreover, the EEOC, upon receiving the Questionnaire, treated it as a formal charge and immediately commenced an investigation. In this case, the

Questionnaire can appropriately serve as the formal charge of discrimination as it meets the sufficiency requirements of a charge under EEOC regulations.

Relevancy

New Prime contends that the information and documents requested are not relevant to the charge under investigation. The investigatory power of the EEOC is defined in Section 2000e-8(a) which provides:

In connection with any investigation of a charge filed under section 2000e-5 of this title, the commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

This section requires that the evidence sought be "relevant to the charge under investigation." Courts have given a broad construction to the term "relevant" and "have afforded the Commission access to virtually any material that might cast light on the allegations against the employer." EEOC v. Shell Oil Co., 466 U.S. 54, 68-69 (1984). Further, reasonable cause does not have to exist before the EEOC can issue a subpoena. In fact, the function of such investigative subpoenas is to establish whether reasonable cause to bring a discrimination charge exists. EEOC v. Chrysler Corp., 567 F.2d 754, 755 (8th Cir. 1977).

The evidence sought by the EEOC in the present action meets the relevancy requirement. The issue of widespread sexual discrimination among female drivers and trainees and evidence related to the company's reaction to prior reports of sexual harassment is relevant to Alston's individual allegations of sexual harassment against New Prime and its handling of her complaints. Here, the EEOC has received multiple common charges of discrimination and harassment in addition to that of Ms. Alston. These multiple charges indicate a company-wide pattern and practice of harassment and discrimination. The EEOC is an enforcement agency whose role is not only to respond to the allegations of Ms. Alston but also to vindicate the public interest. Because the

EEOC has received several complaints of sexual harassment and discrimination, there is a realistic expectation that the information sought might cast light upon allegations of widespread sexual discrimination and harassment common to the individual allegations lodged by Ms. Alston. See EEOC v. United Air Lines, Inc. 287 F.3d 643, 653 (7th Cir. 2002) (subpoena should not be enforced when information sought does not “throw light” upon issues raised in complaint but rather is a “fishing expedition” and reflects an “idle hope” that something will be discovered).

Moreover, the subpoena is sufficiently limited in scope to individuals who may be considered similarly situated to Ms. Alston. For example, the EEOC is seeking only documents related to female drivers, co-drivers or driver-trainees. It has not requested information regarding all female employees or other company positions. For example, the EEOC has not included documents related to female administrative or office personnel in its request. In sum, the Court believes that the breadth of the EEOC’s request for information related to widespread discriminatory practices is reasonable, relevant to Ms. Alston’s charge and comports with the EEOC’s role in vindicating the public interest. See EEOC v. Morgan Stanley & Co., Inc., 132 F. Supp. 2d 146, 161 (S.D.N.Y. 2000); EEOC v. Packard Elec. Div., 569 F. 2d 315 (5th Cir. 1978) (when investigating individual complaint, district court may enforce company-wide subpoena if EEOC has proffered evidence of relevancy of company-wide data); Blue Bell Boots v. EEOC, 418 F.2d 355 (6th Cir. 1969). Bearing in mind that the function of the investigation and subpoena is also to determine whether reasonable cause to bring a discrimination charge exists, all of the information requested by the subpoena is relevant to this goal.

The subpoena issued by the EEOC seeks information that is relevant to the charge under investigation and must be enforced, unless New Prime demonstrates that it is unduly burdensome. To show that the request is unduly burdensome, New Prime must demonstrate that compliance would seriously disrupt the normal operation of its business. University of Pa. v. EEOC, 493 U.S. 182, 191 (1990); EEOC v. Maryland Cup Corp., 785 F.2d 471, 475-77 (4th Cir.1986). In this case, New Prime states that it will have to search over 15,000 driver qualification and employee files to obtain the subpoenaed information. However, New Prime has not alleged that the costs of such a

search is unduly burdensome in light of its normal operating costs. For example, New Prime has not argued that the request requires a costly manual search of files or a search of documents in different areas of the country that are not centrally located. Further, the temporal scope of the request, dating back approximately five years, is not too burdensome or irrelevant. See EEOC v. Roadway Express Inc., 261 F.3d 634, 642 (6th Cir. 2001) (“[I]t is not uncommon for the EEOC to receive information concerning events that took place up to three or four years before the date when the discrimination allegedly took place. . . Evidence of hiring and promotion practices prior to the time of the charge provide context to allow the EEOC to determine whether alleged discrimination actually took place.”). Thus, the number of documents sought is not wholly unreasonable and will not seriously disrupt the operation of New Prime’s business. Compliance with the production request will not impose an undue hardship or burden on New Prime.

Procedural Requirements

Respondent New Prime also alleges that the EEOC has failed to comply with its own procedural requirements as well as those set forth by Congress by serving inadequate notice within the ten day time limit set forth in 42 U.S.C. 2000e-5(b). Under this statute, “the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer. . . within ten days [of the filing of the charge], and shall make an investigation thereof.” The EEOC received Ms. Alston’s Questionnaire on April 20, 2001 and forwarded a Notice of Charge of Discrimination and the first and last pages of the Questionnaire to New Prime on April 27, 2002. New Prime argues that the Questionnaire did not give adequate notice of the charges against them. Specifically, they allege that the Notice of Charge of Discrimination did not include the date, place and circumstances of the unlawful employment action.

In EEOC v. Shell Oil Co., the Supreme Court rejected Shell's argument that the requirement that the employer be notified of the "date, place and circumstances" of the unlawful practice compelled "a specification of the persons discriminated against, the dates the alleged discrimination occurred, and the manner in which it was practiced." Shell, 466 U.S. at 73. Instead, the Court construed the statute as requiring the EEOC to include in the notice given to the employer the same information required in the formal charge. Id. ("we construe § 706(b) [of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e-5(b)] to require the Commission, within 10 days of the filing of a charge, to reveal to the employer all of the information that must be included in the charge itself"). The purpose of the notice provisions is to provide an employer with "fair notice that accusations of discrimination have been leveled against [it]," Shell, 466 U.S. at 74, and "to ensure that the employer [i]s given some idea of the nature of the charge," id. at 75. Therefore, similar to a formal charge of discrimination, the notice given to New Prime must have been sufficiently precise to identify the parties and describe generally the action or practices complained of.

On April 27, 2001, the EEOC transmitted an introductory letter, a document entitled the "Notice of Charge of Discrimination" and the first and last pages of the Intake Questionnaire. The introductory letter stated, "Ms. Alston is alleging sexual harassment by a driver named Jerome Carter." The first page of the Intake Questionnaire included the name and address of Ms. Alston, Respondent New Prime and Jerome Carter as well as her title and dates of employment (January 31, 2001 to February 4, 2001). This information was forwarded to New Prime within ten days of the filing of Alston's Intake Questionnaire/charge and is adequate to identify the parties and generally describe the discriminatory action or practices. Thus, the EEOC has met the procedural requirements associated with proper notice to New Prime.

Good Faith

New Prime also argues that the EEOC acted in bad faith in issuing the subpoena. Particularly, it contends that the EEOC conducted its investigation for the illegitimate

purpose of obtaining company-wide information to support a claim of pattern or practice discrimination. However, as stated above, this Court believes that the company-wide information requested by the EEOC was relevant to Ms. Alston's charge. Furthermore, the EEOC has complied with the procedural requirements of Title VII and its own regulations. The EEOC has not acted in bad faith during this investigation and has not attempted to abuse the Court's process.

CONCLUSION

In accordance with the foregoing discussion, the EEOC's motion for an order enforcing its subpoena duces tecum number SL 01-44 is GRANTED in its entirety. The EEOC's subpoena duces tecum number SL 01-44 is hereby enforced, and Respondent New Prime is Ordered to comply with subpoena duces tecum number SL 01-44 by producing the documents and compilations within thirty days of the date of this order.

IT IS SO ORDERED.

DATE: May 28, 2002

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT