

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JAMES PETERSON, et al.,

Civil No. 07-2502 (MJD/AJB)

Plaintiffs,

v.

ORDER

SEAGATE US LLC, et al.,

Defendants.

This matter is before the Court, United States Magistrate Judge Arthur J. Boylan, on Plaintiffs' Motion to Compel Discovery [Docket No. 137].¹ A hearing was held on March 5, 2009, in the United States Courthouse, 316 North Robert Street, St. Paul, MN 55101. Beth Bertleson, Esq., Dorene R. Sarnoski, Esq., and Dan B. Kohrman, Esq., represented Plaintiffs. Susan K. Kitzke, Esq., Michael McGuire, Esq., Kate Mrkonich Wilson, Esq., and Marko J. Mrkonich, Esq., represented Defendants.

Based upon the record, memoranda, and oral arguments of counsel, **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Compel Discovery [Docket No. 137] is **GRANTED IN PART** and **DENIED IN PART** as provided herein.

¹ Plaintiffs' corresponding motions to extend time for opt-ins to join this case and for monthly case management conferences under Fed. R. Civ. P. 16 were resolved at the hearing. Plaintiffs' counsel notified the Court on March 31, 2009, that discussions are ongoing with Defendants as to an agreeable amended deadline for plaintiffs to opt-in to this case (subject to the Court's approval).

MOTION TO COMPEL DISCOVERY

The general scope of discovery is defined by Fed. R. Civ. P. 26(b)(1) as follows:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense-including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

“[D]iscovery is not limited to issues raised in the pleadings, for discovery itself is designed to help define and clarify the issues.” Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978)(citing Hickman v. Taylor, 329 U.S. 495, 500-501 (1947)). “Nor is discovery limited to the merits of a case, for a variety of fact-oriented issues may arise during litigation that are not related to the merits.” Id. Courts have treated discovery requests in employment cases liberally. Lyoch v. Anheuser-Busch Co., 164 F.R.D. 62, 65 (E.D. Mo. 1995)(citing Finch v. Hercules, Inc., 149 F.R.D. 60, 62 (D. Del. 1993)). “[T]he necessity for liberal discovery to clarify the complex issues encountered in litigation seeking to redress employment discrimination has been widely recognized.” Id. (citing Marshall v. Elec. Hose & Rubber Co., 68 F.R.D. 287, 295 (D. Del. 1975)). In such cases, the plaintiff must be given access to information that will assist the plaintiff in establishing the existence of the alleged discrimination. Id. (citations omitted). Thus, the scope of discovery must go beyond the specifics of the plaintiff's claims. Id.

Nevertheless, “discovery, like all matters of procedure has ultimate and necessary boundaries.” Oppenheimer, 437 U.S. at 352. Those boundaries concerning the frequency and/or extent of discovery otherwise allowed by the federal rules are set forth in Fed. R. Civ. P.

26(b)(2)(C). “Courts too have imposed restrictions on discovery related to employment discrimination as to time period,...the employing facility or work unit of the plaintiff,...the job category to which the plaintiff belongs,...the type of action by which the plaintiff was aggrieved such as hiring, promotion, discharge,...and the type of discrimination alleged, such as race, age, or sex.” Lyoch, 164 F.R.D. at 65 (citing Young v. Lukens Steel Co., 1994 WL 45156, at *3 (E.D. Pa. Feb. 10, 1994)). Remaining mindful of this standard and its limitations, the Court now addresses Plaintiffs’ motion.

ANALYSIS

I. Plaintiffs’ Document Request Nos. 2, 3, 4, 7, 11, 12, 14, 15, 19, 21, and 26

In Carmen v. McDonnell Douglas Corp., 114 F.3d 790 (8th Cir. 1997), the Circuit addressed the issue of the proper geographic scope of employment discrimination discovery. In Carmen, the Defendant laid off Plaintiff as part of a reduction in force of its management staff. Id. at 791. Plaintiff sued Defendant under the Age Discrimination in Employment Act (“ADEA”). Id. A discovery dispute arose between the parties, and Plaintiff filed a motion to compel with the district court. Id. The district court granted, in relevant part, Plaintiff’s request for information regarding Defendant’s past lay-offs, or past reductions in force, but limited the geographic scope of the request to the McDonnell Douglas Aircraft Company, the component company of McDonnell Douglas Corporation where Plaintiff worked. Id. at 792. The Eighth Circuit held that the district court did not abuse its discretion in limiting Plaintiff’s request to the division in which he worked. Id. The court reasoned that “[c]ompany-wide statistics are usually not helpful in establishing pretext in an employment-discrimination case, because those who make employment decisions vary across divisions.” Id. The court found that Plaintiff had not

shown a particularized need for regional or nation company-wide information. Id.

Here, this case also involves claims of age discrimination. See Compl. [Docket No. 1]. Plaintiffs seek to compel discovery from all the Seagate facilities that were involved in the July 2004 terminations irrespective of whether or not those facilities involve Plaintiffs who have opted-in to this case. See Pls.' Mem. 11-25 [Docket No. 142]. Defendants argue that these requests are overbroad, burdensome, and seek irrelevant information, *inter alia*. Defendants object to producing nationwide discovery in this case as the employment decisions were made on a local, as opposed to a national level, and discovery should therefore be limited to the local employing units of each opt-in plaintiff. See Defs.' Mem. 18 [Docket No. 145]; see, e.g. Earley v. Champion Int'l Corp., 907 F.2d 1077, 1084 (11th Cir. 1990). The Court, however, overrules Defendants objections for three reasons. First, this Court is not bound by the decisions of the Eleventh Circuit.² Second, while it may be true that employment decisions were made by management at local Seagate facilities, Plaintiffs have shown a particularized need for "nationwide" information as Defendants have specifically stated that all of the facilities mentioned below either conducted workforce reductions and/or offered early retirement to employees in 2004. See Defs.' Answer to Int. No. 1 (Pls.' Mem. 27-28); see also Exs. 1, 7-8 [Docket No. 88]. Finally, the Court finds said discovery to be relevant and/or appears "reasonably calculated to lead to the discovery of admissible evidence" as set forth in Fed. R. Civ. P. 26(b)(1), and not overbroad or unduly burdensome per Rule 26(b)(2)(C). Defendants shall provide complete, non-privileged information responsive to these requests from the

² The Court would note that not all "nationwide" discovery was denied in the Earley case. See 907 F.2d at 1084, n.6.

following facilities: Bloomington (Normandale), Minnesota; Shakopee, Minnesota; Fremont, California; Milpitas, California; Scotts Valley, California; San Jose, California; Longmont, Colorado; Oklahoma City, Oklahoma; and Pittsburgh, Pennsylvania. Furthermore, Document Requests Nos. 15, 19, and 21 shall be limited to responsive information from January 1, 2003, until January 1, 2008.

II. Plaintiffs' Document Request Nos. 16-17

Document Request Nos. 16-17 seek information reflecting company policies on the issues of re-deployment and re-hiring in connection with the 2004 terminations from the Seagate facilities mentioned above. See Pls.' Mem. 18-19. Defendants raise the same objections to Document Request Nos. 16-17 as they raised to Document Request Nos. 2, 3, 4, 7, 11, 12, 14, 15, 19, 21, and 26. Defendants also indicate that at this time they are unaware of any responsive, non-privileged documents, but discovery is ongoing. The Court, however, overrules Defendants' objections. Plaintiffs are entitled to "nationwide" discovery, therefore, Defendants shall provide complete, non-privileged information responsive to these requests from the facilities identified above should they become aware of such documents.

III. Plaintiffs' Document Request No. 22

Plaintiffs' Document Request No. 22 seeks work performance-related information for all Seagate employees working in any of their U.S. facilities as of June 1, 2004. Id. at 22. More specifically, Plaintiffs seek performance appraisals, and all written performance discussions, written warnings, and/or performance improvement plans for the years 2000 to the present. Id. Defendants assert the same objections previously mentioned, and further contend that the requested performance appraisals, writing warnings, etc. relating to individuals (other than the

opt-in Plaintiffs) for the requested eight year time period is “not likely to lead to the discovery of admissible information, can have no relevance to this matter, and is too burdensome to be produced.” Id. Defendants do, however, agree to produce personnel records relating to all Plaintiffs who opt-in to the collective class, as well as the 2002 and 2003 performance ratings and written performance improvement plans for any individuals to whom opt-in Plaintiffs were compared when identifying or selecting a particular Plaintiff for participation in the Summer 2004 RIF (“Reduction In Force”). Id.

The Court finds said discovery to be relevant and/or appears “reasonably calculated to lead to the discovery of admissible evidence” as set forth in Rule 26(b)(1). Plaintiffs allege a pattern or practice of age discrimination and should be allowed to compare and contrast employees fired and retained. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 793 (1973); Flanagan v. Travelers Ins. Co., 111 F.R.D. 42, 45 (W.D.N.Y. 1968)(“Comparative information is necessary to afford plaintiff a fair opportunity to develop her case and may be relevant to establish the pretextual nature of defendant’s conduct.”). “In disparate-impact cases, statistical patterns of disparities are typically the entire basis of the plaintiffs’ claims.” MacDissi v. Valmont Indus., Inc., 856 F.2d 1054, 1058 (8th Cir. 1988). One potential avenue to pursue statistical analysis or circumstantial proof of a pattern or practice of age discrimination would be through a comparison of performance evaluations of older and younger employees. See Holley v. Sanyo Mfg., Inc., 771 F.2d 1161, 1165-66 (8th Cir. 1985)(in cases involving ADEA claims, plaintiff “must come forward with additional...evidence that age was a factor...such a showing could be made...by statistical evidence (as, for example, where a pattern of forced early retirement or failure to promote older employees can be shown) or circumstantial evidence (such

as a demonstration of a preference for younger employees in the business organization).”).

Nevertheless, the Court agrees with Defendants that Plaintiffs request for performance-related information for all Seagate employees over an eight-year time frame is extremely burdensome. Thus, Defendants shall provide complete, non-privileged information responsive to this request from the facilities identified above, and such production shall be limited to the personnel records relating to all Plaintiffs who opt-in to the collective class in this matter, as well as all performance ratings, written performance discussions, written warnings, and/or written performance improvement plans for the years 2002 through 2005 for any individuals to whom opt-in members of the collective class were compared when identifying or selecting a particular Plaintiff for participation in the Summer 2004 RIF.

IV. Plaintiffs’ Document Request No. 23/General Interrogatory Nos. 3 and 9

In general, Plaintiffs’ Document Request No. 23 and General Interrogatory Nos. 3 and 9 seek information relating to Defendants’ alleged hiring, transferring, and/or reassigning younger, less qualified individuals into open positions rather than selecting more qualified, older individuals for such positions.³ See Pls.’ Mem. 23, 30, 34. Notwithstanding Defendants’ repeated objections to the relevancy and burden created by these requests, Defendants argue that “the *only* employment decision at issue in this litigation is Seagate’s decision to terminate each Plaintiff’s employment in the RIF (or in the case of the SIRP participant, his decision to separate employment with Seagate in connection with that voluntary retirement program).” See Defs.’s

³ The Court would note that Plaintiffs have withdrawn Document Request No. 23 to the extent that it seeks documents concerning any individuals who applied for openings with Defendants, interview notes for said individuals, and other letters to those individuals offered the positions.

Mem. 28.

The Court, however, overrules said objections⁴ and holds that Plaintiffs are entitled to “nationwide” discovery for the aforementioned Seagate facilities. This case is not just an age discrimination case based solely on Defendants’ termination practices and policies; Plaintiffs’ Complaint specifically alleges that Seagate engaged in a pattern or practice of age discrimination with termination, selection process, opportunities for open positions, and hiring. See Compl. 2, 6-7 [Docket No. 1]. Thus, Defendants shall provide complete, non-privileged information responsive to these requests.

V. Plaintiffs’ Document Request No. 27

Document Request No. 27 seeks “...all versions (whether draft or final) of the ‘Reorganization Employee Selection Justification’ form or any other ‘justifications’ that Seagate wrote for each Plaintiff and any other employee terminated in the July 2004 Terminations. For each draft version of such documents, [Defendants shall] provide all metadata for each document.” See Pls.’ Mem. 25. Defendants objected to this request as “vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.” Id. Defendants also argued that said request sought “confidential information relating to non-party employees with no possible relevance to this matter.” Id. Without waiving their objections, Defendants did agree to produce non-privileged documents

⁴ These requests are also distinguishable from the request in Wagoner v. Pfizer, Inc., 2008 WL 821952 (D. Kan. 2008) that is cited by Defendants which sought detailed information on all persons hired by Pfizer since January 1, 2004. Unlike the Wagoner case, Plaintiffs here are in fact pursuing a traditional “pattern and/or practice” class action theory. Contra id. at *5. Furthermore, the Court finds in this case that Plaintiffs have sufficiently met their burden of showing that information related to Defendants’ hiring and promotion practices are relevant to their discrimination claims. Contra id.

relating to the selection of any employee for the Summer 2004 RIF, including any “Reorganization Employee Section Justification,” relating to all opt-in Plaintiffs, as well as any such documents reflecting other reduction decisions made by the same decision-makers who made the decisions that impacted Plaintiffs. Id. at 25-26.

The Court overrules Defendants objections and finds that Plaintiffs are entitled to “nationwide” discovery regarding Defendants’ justifications for allegedly firing older employees for purposes of comparative analysis. See Holly, 771 F.2d at 1165-66. Said discovery is relevant to the claims and defenses of this case, and is not overbroad or unduly burdensome. Defendants shall provide complete, non-privileged information responsive to this request from the facilities identified above. Furthermore, Defendants must produce all versions of the documents requested herein for all individuals terminated or selected for early retirement regardless of whether or not they chose to opt-in to this lawsuit.

VI. Plaintiffs’ General Interrogatory No. 1

Plaintiffs’ General Interrogatory No. 1 asks Defendants to identify chain-of-command information for each Seagate facility that was involved in the July 2004 terminations. See Pls.’ Mem. 27. Defendants have only agreed to provide the chain-of-command for all opt-in Plaintiffs up to at least the Vice President level. Id. The Court, however, finds this information to be relevant and orders that Defendants identify the chain-of-command starting at the lowest level supervisor(s) for each workgroup, department, and/or division up to the highest level individual(s) as of June 1, 2004, and August 1, 2004, through December 31, 2005, for all the facilities mentioned above that were involved in the 2004 RIF/SIRP.

VII. Plaintiffs’ General Interrogatory No. 2

Interrogatory No. 2 requests Defendants to identify all of their employees, at each location identified in Interrogatory No. 1, as of January 1, 2003, as well as background information pertaining to said employees (name, address, phone number, age as of June 1, 2004, etc.). Id. at 28-29. Defendants are not required to answer this request as the Court finds this request to be overbroad and unduly burdensome per Rule 26(b)(2)(C). Plaintiffs, however, shall be allowed to amend this request to narrow the scope of the answers they seek from Defendants as the Court finds said inquiry to be relevant to Plaintiffs' alleged pattern or practice of age discrimination claims.

VIII. Plaintiffs' General Interrogatory No. 5

Plaintiffs' General Interrogatory No. 5 seeks information concerning who the decision-makers were and when the decisions were made about the 2004 RIF/SIRP. Id. The Court overrules Defendants objections at this time as they have agreed to supplement their answer to this request as the investigation for responsive disclosures is ongoing. Id.; see also Defs.' Mem. 30.

IX. Plaintiffs' General Interrogatory No. 6

General Interrogatory No. 6 asks Defendants to provide information regarding yearly salary, bonus amounts paid per year, stock options per year, benefits and amount of each per year, and all other monetary disbursements per year for each Plaintiff for the years January 1, 2000, until the last day of employment. See Pls.' Mem. 32. As both Plaintiffs and Defendants note, Defendants do not maintain complete information internally related to payroll, bonuses,

stock options, etc. See Giroux Decl. ¶ 8;⁵ Defs.' Resp. 4; Roberts Decl. ¶ 2-3 [Docket No. 154]. Defendants have agreed to produce personnel and compensation records relating to all opt-in Plaintiffs. See Pls.' Mem. 32. The Court finds Defendants agreed-to disclosures to be sufficient in responding to this request.

X. Plaintiffs' General Interrogatory No. 8

Interrogatory No. 8 seeks the name and age of each employee listed on several charts provided by Defendants in response to other discovery requests by Plaintiffs, whether said employees were terminated or not terminated in July 2004, and whether these individuals were re-hired as an employee or performed work for Seagate at any time from July 2004 to the present. Id. Defendants reiterated earlier objections based on relevance and burden, and also argued that this interrogatory sought information relating to the validity of release agreements signed by Plaintiffs-an issue which was already adjudicated by the Court. Id.

The Court, however, finds that Defendants' objections lack merit and orders that Defendants produce complete, non-privileged answers responsive to this request as the information sought by this interrogatory request is relevant and/or appears reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs are entitled to confirmation that the information provided by Defendants as to the individuals allegedly terminated and not terminated in the RIF/SIRP is accurate for purposes of statistical analysis to establish the existence of a pattern or practice of discrimination. See McDonnell, 411 U.S. at 804-05 ("Statistical data is relevant to establishing an employer's pattern of conduct and may facilitate a

⁵ The Court received Plaintiff's Declaration of Ramona Giroux at the March 5th hearing, and thereafter allowed Defendants an opportunity to respond to said declaration. See Defs.' Resp. [Docket No. 155].

determination as to whether the employer has discriminated against a particular individual as well as an entire class.”); see also supra at p. 6-7. The Court also agrees with Plaintiffs’ argument that while the Special Incentive Retirement Plan (“SIRP”) releases were found invalid as a matter of law there was no definitive ruling made on the validity of the charts regarding SIRP eligible and ineligible employees. See Order [Docket No. 84]. Therefore, the names, ages, and job titles of--those individuals on the charts (referenced by Interrogatory No. 8) in the order in which they appear on the charts; the individuals listed on said charts as being terminated but were not terminated; and any individuals who were terminated in the July 2004 terminations, but subsequently rehired as an employee or who performed work for Defendants at any time from July 2004 to the present--shall be identified by Defendants and disclosed to Plaintiffs.

XI. Plaintiffs’ General Interrogatory No. 10

Finally, Plaintiffs’ General Interrogatory No. 10 asks Defendants to identify “each employee who had primary responsibility for compliance with the ADEA, the OWBPA, and for EEOC Compliance and/or creation of any adverse impact report in connection with the July 2004 Terminations.” Id. Notwithstanding their boilerplate objections, Defendants argue that all managerial and human resource personnel known to have played any role in the selection or review of any Plaintiff for separation in connection with the summer 2004 RIF were identified in their Rule 26(a)(1) disclosures almost a year ago. See Defs.’ Mem. 31. For that reason, Defendants refuse to answer Interrogatory No. 10, asserting that it is duplicative to and can be obtained from a more convenient, less burdensome source--the Rule 26(a)(1) disclosures. Nonetheless, Defendants’ answer to this request states in general terms that “all managers involved in selecting employees for participation in the July 2004 and August 2004 involuntary

reductions in force were responsible for ensuring that the selections made were based on legitimate, nondiscriminatory business reasons and did not discriminate against any employee on any unlawful basis, including age[, and] Human Resources professionals reviewed selection decisions and were also available to assist as requested...” See Pls.’ Mem. 35.

The Court overrules Defendants’ objections and orders that Defendants provide the names of the specific individuals who were responsible for compliance with the ADEA, the OWPBA, and for EEOC Compliance and/or creation of any adverse impact report in connection with the July 2004 terminations. Plaintiffs are entitled to this information because it directly relates to Defendants’ defenses to the alleged discrimination. This information is also useful in identifying the names of those managerial staff responsible for the RIF/SIRP for purposes of conducting future discovery through depositions.

Dated: March 31, 2009

s/ Arthur J. Boylan
Arthur J. Boylan
United States Magistrate Judge