

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James Peterson, et al.,
for and on behalf of themselves
and other persons similarly
situated,

Plaintiffs,

v.

MEMORANDUM OF LAW
AND ORDER
Civil No. 07-2502

Seagate US LLC, Seagate Technology,
et al.,

Defendants.

Beth E. Bertelson and Andrea R. Ostapowich, Bertelson Law Offices, P.A.,
and Dorene R. Sarnoski, Dorene R. Sarnoski Law Office Law Office for and on
behalf of Plaintiffs.

Marko J. Mrkonich, Kathryn Mrkonich Wilson and Susan K. Fitzke, Littler
Mendelson for and on behalf of Defendants.

This matter is before the Court upon Plaintiffs' motion to authorize notice
to potential class members pursuant to Hoffman-LaRoche v. Sperling, 493 U.S.
482 (1989).

Background

This is an action in which Plaintiffs allege they were discriminated against

on the basis of age in violation of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 et seq. In the Complaint, Plaintiffs allege that they were all over the age of forty when their employment with Seagate terminated in 2004, and that they were terminated pursuant to a corporate pattern or practice to terminate employees on the basis of age. Complaint ¶¶ 7 and 11. In support, Plaintiffs point out that by the time Seagate concluded its firings in 2004, over half of the employees who lost their jobs were over the age of forty. Id. ¶ 15.

Plaintiffs further allege that at the time of their termination, they received a package of materials including a Special Separation Agreement and General Release of claims which purport to release all claims against Seagate, including age discrimination claims under the ADEA. Id. ¶ 16. Seagate Human Resources asked the employees to sign the releases immediately without allowing them the opportunity to consult with an attorney. Id. ¶ 17. Human Resources personnel then stood at the door of the facility to collect the signed releases as the terminated employees were leaving. Id.

By Order dated November 20, 2007, this Court rejected the Defendants’ argument that those plaintiffs who signed a release could not maintain a claim in this action. Thereafter, by Order dated May 28, 2008, this Court granted

Plaintiffs' motion for partial summary judgment, finding that the releases signed by those named plaintiffs who lost their jobs during the 2004 RIF are invalid as a matter of law. The Court did not, however, find as a matter of law that the release signed by plaintiff Calcagno, who was terminated pursuant to the 2004 SIRP, was invalid as a matter of law.

Plaintiffs now move the Court for an order authorizing notice to be sent to potential class members - that is "all former Seagate employees who were affected, along with the named plaintiffs, by Seagate's group termination in 2004."

Standard

The ADEA incorporates enforcement provisions of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq. Relevant to this motion is the provision which provides that an age discrimination claim may be brought "by any one or more employees for and in behalf of himself or themselves and others similarly situated." 29 U.S.C. § 216(b). This section further provides that "[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party . . ." In Hoffman-LaRoche, the Supreme Court held that a district court has discretion, in appropriate cases, to implement §

216(b) by facilitating notice to potential plaintiffs. 493 U.S. at 486.

Whether an action under the ADEA is appropriately brought as a collective action depends on whether plaintiffs are “similarly situated” - and this question is governed by a two-step inquiry. Pagliolo v. Guidant Corp., Civil No. 06-943, 2007 WL 2892400, at *1 (D. Minn. Sept. 28, 2007) (citing Thiessen v. Gen. Elec. Capital Corp., 267 F.3d 1095, 1102 (10th Cir. 2001)). The first step occurs early in the litigation, and requires only that plaintiffs establish a colorable basis for their claim that the putative class members are the victims of a single decision, policy or plan. Id. Plaintiffs must, however, demonstrate some factual basis beyond the mere averments in their complaint. Id. at *2.

The second step occurs after discovery is completed, at which time the Court employs a more stricter standard. Id. (citing Kalish v. High Tech. Institute, Inc., 2005 WL 1073645, at *2 (D. Minn. April 22, 2005)). For example, the Court must consider the extent and consequence of disparate factual and employment settings of the individual plaintiffs, available defenses and other fairness and procedural considerations. Id. (citing Thiessen, 267 F.3d at 1102-03).

Because discovery is not yet completed, the Court will apply the standard described above for the first step of the applicable inquiry.

Plaintiffs assert that they have easily met the requirements of this more lenient standard. Plaintiffs allege that over half of the employees chosen for termination in 2004 were over the age of 40. Plaintiffs further allege that Seagate has recognized that the 2004 RIF was a single, all-business policy that was put into practice as a company-wide plan. (Doc. No. 38; Bertelson Aff., Ex. 1, 7 and 8 (power point presentations)). From the top down, managers were instructed not to think of terminations as within their departments, but wholistically within the company. (Bertelson Aff., Ex. 2). Plaintiffs have also submitted a number of affidavits from the named plaintiffs, describing the particular circumstances surrounding their termination, which generally describe situations in which they were forced to train their younger replacements, or that it was apparent the company's workforce was generally becoming younger.

Defendants oppose the motion, arguing that there was no company wide policy implemented during the 2004 reduction of its workforce. Rather, it operates a number of facilities across the U.S., and that each facility differs in its primary business function. Because each facility is specialized, Defendants generally rely on local managers to assess project criticality and employee skills and to make staffing decisions. Defendants assert that identifying which

employees would be selected for layoff was a completely local decision.

Defendants further argue that the named plaintiffs are not similarly situated - Peterson and Olson did not sign releases, while the other plaintiffs did, and plaintiff Calcagno participated in the voluntary retirement program, while the others were laid off pursuant to the RIF. To this Plaintiffs respond that they are similarly situated because they were terminated in 2004 as a result of Defendants' reduction policy which included a RIF and a SIRP.

At this stage of the litigation, the Court does not take into consideration disputed facts or evidence. The proper time to review such evidence is at the second stage - which generally takes the form of a motion to decertify after discovery is closed.

Based on the relevant case law, and the evidence presented thus far, Plaintiffs have met their minimal burden at this stage. They have put forth sufficient evidence tending to show that employees terminated in the 2004 RIF and the SIRP were subject to a company-wide policy, that over half of the terminated employees were older than 40, and that many were replaced by younger, less experienced workers. See, Pagliolo v. Guidant, 2007 WL 2892400 (D. Minn. Sept. 28, 2007); Burch v. Qwest Comm., 500 F. Supp. 2d 1181 (D. Minn.

2007); Koren v. Supervalu, Inc., Civil No. 00-1479 (D. Minn. 2001); Williams v. Sprint/United Management Co., 222 F.R.D. 483 (D. Kan. 2004).

IT IS HEREBY ORDERED;

1. Plaintiffs' Motion to Authorize Notice to Potential Class Members Pursuant to *Hoffman-LaRoche v. Sperling* [Doc. No. 103] is GRANTED.
2. Defendants must provide to Plaintiffs' counsel the names and addresses of all individuals who were employed by Defendants in any United States location and who were 40 years of age or more on the date in 2004 when Defendants offered them a retirement separation agreement or a termination separation agreement.
3. The notice to potential class members, "Exhibit A" to Plaintiffs' Motion, is approved.

Dated: October 23, 2008

s/ Michael J. Davis
The Honorable Michael J. Davis
Chief Judge of District Court