

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LINDA PIPPEN, et al., Plaintiffs, v.	Case No. CL 107038 (consolidated with Case Nos. CL 103856 & 103122)
THE STATE OF IOWA, et al., Defendants.	ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF ELECTRONIC WORKFORCE DATA

Hearing in the above-captioned case came before the Court on September 8, 2009. All parties were represented by their attorneys of record. After reviewing the file, various briefs, pleadings, exhibits, and appendices, and hearing arguments of counsel, the Court hereby enters the following order.

The Plaintiffs have come to the Court requesting that it compel the production of electronic workforce data stored in Defendants computer systems.

FACTUAL BACKGROUND

Plaintiffs, on behalf of themselves and the putative class they seek to represent, challenge employment practices throughout the State's executive branch agency departments as being unlawfully discriminatory against African-Americans related to the State's hiring and promotion policies and practices. Plaintiffs also allege that Defendants engaged in a pattern-or-practice of discrimination against African-Americans by denying them equal terms and conditions of employment, and challenge Defendants' conduct under theories of intentional discrimination and discrimination under a disparate impact theory. Defendants have denied the Plaintiffs' allegations. The only issue before the

Court is whether the Plaintiffs should be allowed to conduct discovery and collect certain data.

The Plaintiffs' Motion concerns Plaintiffs' Document Request No. 16 and Interrogatory No. 9. Through these discovery requests, Plaintiffs seek electronically stored workforce data and information about the systems Defendants use to maintain that data.

Defendants maintain four primary databases regarding applicants or employees for merit positions in the Executive Branch. Generally speaking, information about applicants is stored on two systems. In approximately 2006, an applicant tracking system called "AS 400" was replaced with a system called "Brass Ring." Both of these database systems maintain identifying information about each applicant, the applicant's qualifications and jobs to which the applicants applied, as well as information about when positions were posted, whether applicants were deemed qualified by the State for the positions to which they applied, how far the applicant progressed in the hiring process, whether the applicant was hired and by whom, and whether the position was re-posted if no one was hired. AS 400 maintains this type of information for years 2006 and prior – possibly dating as far back as 1993 – as well as information regarding affirmative action. Brass Ring maintains this type of information for years 2007 to the present.

As Defendants explained in their briefs and at the hearing, the AS-400 system is a dormant system merely lying on the State's computers and it is far easier to retrieve data from the Brass Ring system than the AS-400 system.

Information about employees (many of whom are also applicants for promotion) is stored on two primary databases. Employment related information regarding current

and former state employees is stored on Defendants' "Human Resources Information System" ("HRIS"). Information stored on that database includes identifying demographic information about each employee as well as information about an employee's employment history, performance and compensation. Defendants also maintain a separate payroll database that reflects what employees are actually paid, but information on that system appears to be drawn from the HRIS.

As explained at the hearing, data from these different systems can be connected to each other or "married" using information that is commonly stored on each system (e.g., social security number, name and address, employee number or an assigned unique identifier).

Based in part on sworn testimony from Dr. Mark Killingsworth, the expert on whom Plaintiffs will rely in support of their motion for class certification, Plaintiffs contend the workforce data they seek is relevant to their ability to use statistical analyses to demonstrate that class certification is appropriate.

The State appears to be primarily concerned about issues of privacy and cost, which are valid concerns. The State's concerns regarding privacy can be resolved by the Court's entry of a protective order.

ANALYSIS

A party may obtain discovery of any matter, not privileged, which is relevant to the claim or defense of a party. Iowa R. Civ. P. 1.503(1). Here, discovery is limited to class certification issues. The Court finds that the workforce data Plaintiffs seek is relevant to class certification issues. The Court further finds that the data sought by Plaintiffs will aid in determining the scope of the class Plaintiffs ultimately will seek to

represent. In addition, the Court finds that the workforce data Plaintiffs seek is relevant to a statistical analyses Plaintiffs may use to show class treatment of their claims is appropriate. The data sought is reasonably calculated to lead to the discovery of admissible evidence. Iowa R. Civ. P. 1.503(1).

Other courts have found, and this Court agrees, that the collection of statistical evidence is relevant for class certification purposes. *See, e.g., Hopewell v. Univ. of Pittsburgh*, 79 F.R.D. 689, 693-94 (W.D. Pa. 1978) (“Common questions of across the board discrimination can be shown in a number of ways. Most commonly, statistical evidence may indicate an overrepresentation of blacks in low paying positions.”); *see also Thornton v. Mercantile Stores Co., Inc.*, 180 F.R.D. 437, 441-42 (M.D. Ala. 1998) (collecting cases on significance of statistical evidence in systemic discrimination cases). Other courts have ordered employers to produce company-wide electronic workforce data like that Plaintiffs seek in support of class certification.¹

Here, Plaintiffs have limited their requests to merit system employees and applicants in the Executive Branch. In light of the foregoing, the Court finds that workforce data should be produced for all Executive Branch merit system employees or applicants. In weighing the cost and burden to the State with Plaintiff’s need for the information, the Court finds that the data should be produced.

¹ *See, e.g., Bennett et al. v. Nucor Corp., et al.*, No. 3:04CV00291 SWW, 2005 U.S. Dist. LEXIS 44117, *19-22 (E.D. Ark. July 5, 2005); *Zapta et al. v. IBP, Inc.*, Case No. 93-2366-EEO, 1994 U.S. Dist. LEXIS 16285, *8 (D. Kan. Nov. 10, 1994); *Babbitt et al. v. Albertson’s Inc.*, No. C-92-1883 SBA (PJH), 1992 U.S. Dist. LEXIS 1901, *14-17 (N.D. Cal. Nov. 30, 1992); *Ylla v. Delta Airlines, Inc.* No. 76-1503A, 1977 U.S. Dist. LEXIS 17397, *24-28 (N.D. Ga. Feb. 11, 1977); *Peters v. Wayne State Univ. et al.*, Case. No. 6-70165, 1977 U.S. Dist. LEXIS 14241, *2-4 (E.D. Mich. Aug. 30, 1977).

Data to be produced

Based on the descriptions of the systems provided by the parties, the Court finds that significant portions of the data described above in the Brass Ring and AS-400 data systems is relevant and pertinent to Plaintiffs' claims of systemic discrimination in hiring and promotion. The Court also finds that at least some of the information maintained on the HRIS system is relevant. Examples of such pertinent data includes, but is not limited to, data regarding job titles, job classifications, job duties, rates of pay, dates of promotion or job changes, dates of termination, performance evaluation, education, and other employment history information, as well as demographic information like race, age and sex.

Defendants are not required to produce data both parties concede is not pertinent, such as bank account numbers, direct deposit information, health insurance, medical information, workers compensation, deferred compensation, vacation, tax deductions, dental, or garnishments. However, the Court recognizes that it may be difficult to separate some of this information that is irrelevant from a production of relevant data. A protective order will be sufficient to protect this information should the State, to save costs of separating and production prefer to provide more data than is required by this Order.

To effectuate production of this data, within 15 days of entry of this Order, Defendants – to the extent they have not done so already – shall produce full documentation (user's manuals and other descriptive materials showing the nature of the data elements ("fields") and the type of data encoded in a specific field) for all of its computerized human resource and personnel data, including in the Brass Ring, AS-400

and HRIS systems. Subsequently, Defendants shall produce those data fields identified by Plaintiffs (with the assistance of their expert) as pertinent within 30 days of receiving Plaintiffs' field designations.

Defendant shall produce "raw" data rather than tabulations or reports based on underlying data. Defendants shall produce only those data fields Plaintiff's expert identifies as "pertinent," unless producing all data from a particular system proves more cost-effective or time-efficient. Additionally, Defendants shall produce data only for years 2001 to 2009, unless providing information for prior years along with the data produced from 2001-2009 proves more cost-effective or time-efficient.

In producing data from different databases, Defendants shall also provide a means by which Plaintiffs can link information produced from Defendants different databases (e.g., by assigning a unique identifier, using scrambled social security numbers or some other manner). Employees' or applicants' social security numbers will only be produced if doing so is the only manner in which information from the different databases can be linked.

The Court is mindful of Defendants' concerns regarding maintaining the confidentiality of information regarding the State's workforce. Accordingly, to protect disclosure of confidential information (e.g., addresses, phone numbers, date of birth) the Court does hereby enter a protective order applicable to workforce data produced clarifying that production of the data is for the limited purpose of performing statistical analyses in this case, that it may only be used for the limited purposes of this case, and that data must be maintained as confidential by Plaintiffs' counsel and their experts (reports analyzing the data will not be confidential, but must be redacted to prevent

identification of any particular applicant or employee). Plaintiffs' counsel and their experts must agree to be bound by the order prior to receiving workforce data. This order does not preclude the entry of more extensive protective order by the parties to cover other discovery, but to expedite the production of the raw data, the Court enters this order that will bind the parties and their experts on this issue at this time.

The Court directs the parties to work together such that Defendants produce workforce data consistent with this Court's order as expeditiously, efficiently and inexpensively as possible. The Court recognizes the expense to the State and the burden this will place on counsel and state employees responsible for producing this data. The Court also encourages the parties to work together to resolve any further disputes in light of the guidance provided by this Court's order. Towards that end, the Court encourages the parties' experts to confer with each other.

The parties will provide a status of the production during the next scheduled hearing. The Court will consider appointing a Special Master for discovery disputes if needed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

The Plaintiffs' Motion to Compel production of Electronic Workforce data is **GRANTED** as set forth above.

IT IS SO ORDERED this 6th day of October, 2009.

DONNA L. PAULSEN, JUDGE
Fifth Judicial District of Iowa

Original filed.

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