

ACE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff)	No. 10 C 6259
v.)	Judge Ruben Castillo
)	
UNITED ROAD TOWING, INC.,)	
)	
Defendant.)	

ORDER

The Equal Employment Opportunity Commission (“EEOC”) brings this suit against United Road Towing, Inc. (“URT”) on behalf of 19 current and former URT employees pursuant to Section 107(a) of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12117(a), and Section 706 of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.* (R. 1, Compl.) Presently before the Court is URT’s motion for partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. (R. 64, Def.’s Mot.) Specifically, URT moves for summary judgment as to the EEOC’s claims on behalf of all claimants except those named as the Charging Parties in the EEOC’s reasonable cause determination letter. (*Id.*) For the following reasons, URT’s motion is denied.

BACKGROUND¹

I. The EEOC’s reasonable cause determination

¹ The Court takes the undisputed facts from the parties’ Local Rule 56.1 Statements. (R. 66, Def.’s Local Rule 56.1 Statement (“Def.’s Facts”); R. 84, Pls.’ Local Rule 56.1 Statement of Additional Facts (“Pls.’ Facts”); R. 85, Pls.’ Local Rule 56.1 Response to Def.’s Local Rule 56.1 Statement (“Pls.’ Rule 56.1 Resp.”); R. 104, Def.’s Local Rule 56.1 Reply to Pls.’ Local Rule 56.1 Statement of Additional Facts (“Def.’s Rule 56.1 Reply”).)

On July 23, 2009, Hazel Holmes, a terminated URT employee, filed an Amended Charge with the EEOC alleging that URT violated the ADA by denying her a reasonable accommodation, terminating her in December 2008, and denying her rehire thereafter.² (R. 66-2, Def.'s Ex. V, Am. Charge, Jul. 23, 2009.) On September 26, 2009, another former employee, William Snyder, filed a charge with the EEOC alleging that URT violated the ADA by failing to reasonably accommodate his disability when the company terminated his employment in March 2009. (R. 66, Def.'s Facts ¶ 24.)

On July 22, 2010, the EEOC issued a determination letter to URT stating that it had reasonable cause to believe that URT had committed three violations of the ADA against Holmes and Snyder ("Charging Parties") and against a "class of disabled individuals." (R. 84, Pls.' Facts ¶ 1.) Specifically, the EEOC stated that it found reasonable cause to believe that URT: "(1) discriminated against Charging Parties and a class of disabled individuals through the application of its unpaid leave policy; (2) denied reasonable accommodations to a class of disabled individuals; and (3) discriminated against Charging Parties and a class of individuals by failing to rehire them." (*Id.* ¶ 2.) Holmes and Snyder are the only claimants who actually filed charges with the EEOC against URT and were the only individually-named claimants in the EEOC's reasonable cause determination letter to URT. (R. 66, Def.'s Facts ¶ 31.)

II. The conciliation process between the EEOC and URT

In its determination letter, the EEOC invited URT to engage in conciliation efforts to resolve the three violations it had identified. (R. 84, Pls.' Facts ¶ 3.) Subsequently, URT's

² In its Local Rule 56.1 Statement, URT characterizes Holmes's Amended Charge as a single ADA violation concerning only her termination from URT. (*See* R. 66, Def.'s Facts ¶ 21.) A review of Holmes's Amended Charge, however, reveals that Holmes included two additional alleged violations of the ADA: denying her a reasonable accommodation and failing to rehire her after she was terminated. (R. 66-2, Def.'s Ex. V, Am. Charge, Jul. 23, 2009.)

counsel, Rachel Cowen, exchanged several emails with an EEOC investigator, Kiprono Sigilai, concerning the EEOC's investigation and the conciliation process. On August 4, 2010, Cowen wrote in an email to Sigilai that she was "stunned" by the suggestion that a settlement would include economic damages for employees other than Holmes and Snyder because the EEOC had yet to identify any other employees who were allegedly affected by URT's medical leave policy. (R. 66, Def.'s Facts ¶ 33.) Cowen also wrote that URT's records indicated that during the 300 days prior to the filing of Holmes's charge, only two other employees had been terminated following the expiration of medical leave, neither of whom had sought rehire by URT. (*Id.*) Cowen then stated that she felt that the EEOC was in the best position to make an opening settlement offer given URT's lack of information on other potential claimants, its lack of information on Snyder's claim, and its belief that Holmes was not damaged by URT's allegedly unlawful leave policy. (*Id.*; Def.'s Ex. NN, Email from Rachel Cowen, Aug. 1, 2010.)

On September 3, 2010, Sigilai informed Cowen that the EEOC was seeking \$2 million in monetary relief for the Charging Parties and all affected class members referenced in the determination letter. (R. 84, Pls.' Facts ¶ 5.) The EEOC also proposed that URT "bear the costs of searching for additional class members . . . not yet [] identified due to [URT's] failure to maintain employee medical leave request records for employees ineligible for [Family and Medical Leave Act]." (R. 66, Def.'s Facts ¶ 34.) According to URT, this portion of Sigilai's letter led URT to believe that the "class members" were strictly limited to employees who had been denied medical leave, (R. 104, Def.'s Rule 56.1 Reply ¶ 6), even though it is undisputed that the EEOC informed URT that it had reasonable cause to believe that URT had also violated the ADA by denying a class of disabled individuals reasonable accommodations and

discriminating against a class of disabled individuals by failing to rehire them. (R. 84, Pls.' Facts ¶ 1-2.)

URT responded to the EEOC's settlement demand by declining to further participate in conciliation, indicating that URT did not view the offer as a "bona fide, good faith offer." (*Id.* ¶ 6.) According to URT, it believed that the offer was not made in good faith because, as stated above, the EEOC had "led URT to believe that [the EEOC] was only pursuing the claims of a handful of employees who had received additional medical leave." (R. 104 Def.'s Rule 56.1 Reply ¶ 6.) On September 14, 2010, the EEOC issued a notice of conciliation failure. (R. 84, Pls.' Facts ¶ 7.)

III. The EEOC's suit against URT

On September 30, 2010, the EEOC filed its complaint alleging that URT violated the ADA by: "(1) [t]erminating a class of qualified disabled employees who exhausted 12 weeks of leave under [its] medical leaves policies or practices; (2) [f]ailing to provide reasonable accommodations to a class of qualified disabled employees; and (3) [d]iscriminating . . . or retaliating against a class of qualified disabled employees who sought rehire after being terminated under [URT's] medical leave policies or practices." (R. 1, Compl.) During discovery, between January 3, 2011, and October 3, 2011, the EEOC provided details to URT concerning the specific nature of its claims and the identities of its claimants. (R. 66, Def.'s Facts ¶¶ 36-39.) The EEOC disclosed all of the 17 claimants at issue in this motion by the October 3, 2011 deadline set by this Court for identifying claimants. (R. 84 Pls.' Facts ¶ [9].)³ Three days later, after learning that URT intended to file a motion for summary judgment

³ In its Rule 56.1 Statement of Additional Facts, the EEOC lists the cited paragraph as paragraph number 8; however, it is actually the ninth paragraph in the document.

because it believed that the conciliation process was deficient, Laurie Elkin of the EEOC sent Cowen a letter that offered URT another opportunity to reach a negotiated resolution of the claims. (*Id.* ¶ [10].)⁴ URT declined the offer to negotiate a resolution, and now requests that the Court grant summary judgment as to all claimants except for Holmes and Snyder. (R. 64, Def.'s Mot.) URT argues that the Court should grant summary judgment as to all of the claimants at issue except for the original Charging Parties because the EEOC failed to satisfy all of its administrative requirements that apply prior to filing suit.

LEGAL STANDARD

Summary judgment is proper where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). Material facts are those that “might affect the outcome of the suit under governing law.” *Hampton v. Ford Motor Co.*, 561 F.3d 709, 713 (7th Cir. 2009). Courts are to draw all reasonable inferences and resolve all factual disputes in the non-moving party's favor when considering a motion for summary judgment. *Knight v. Wiseman*, 590 F.3d 458, 462 (7th Cir. 2009).

The moving party has the initial burden of demonstrating that it is entitled to summary judgment. *Wheeler v. Lawson*, 539 F.3d 629, 634 (7th Cir. 2008). The burden then shifts to the non-moving party to demonstrate that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). To meet this burden, the non-moving party must show that “there is evidence upon which a jury

⁴ In its Rule 56.1 Statement of Additional Facts, the EEOC lists the cited paragraph as paragraph number 9; however, it is actually the tenth paragraph in the document.

reasonably could find for the plaintiff.” *Wheeler*, 539 F.3d at 634. Accordingly, “the existence of a mere scintilla of evidence . . . is insufficient to fulfill this requirement.” *Id.*

ANALYSIS

The EEOC brings this lawsuit alleging violations of the ADA by URT under § 706 of Title VII, 42 U.S.C. § 2000e-5 (“Section 706”). (R. 1 Compl.) Section 706 authorizes the EEOC to bring lawsuits in its own name on behalf of persons who have been aggrieved by unlawful employment practices under Title VII, the Age Discrimination in Employment Act, and the ADA. 42 U.S.C. § 2000e-5. Prior to filing suit under Section 706, the EEOC must fulfill certain administrative requirements. Specifically, after receiving a charge of discrimination, the EEOC must serve notice of the charge on the employer, investigate the charge, and, if it finds “reasonable cause” to believe that a violation occurred, attempt conciliation with the employer. 42 U.S.C. § 2000e-5(b); *see also Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 359 (1977); *EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 831 (7th Cir. 2005).

URT argues that the EEOC is limited to pursuing claims on behalf of Holmes and Snyder because the EEOC failed to exhaust these statutory prerequisites for the other 17 claimants. (R. 64, Def.’s Mot. at 1-2.) URT points to two main alleged deficiencies in the pre-suit administrative process that, in its view, warrant summary judgment: (1) the EEOC’s alleged failure to investigate the claims of the 17 claimants at issue; and (2) the EEOC’s alleged failure to give URT an opportunity to conciliate as to these 17 claimants. (*Id.*) The Court addresses each argument in turn.

I. The EEOC’s investigation

URT first argues that the EEOC failed to satisfy the Section 706 investigation requirement as to the 17 claimants at issue prior to filing suit. (R. 65, Def.'s Mem. at 14.) This argument fails because the Seventh Circuit has made clear that courts may not review EEOC administrative investigations to determine whether a particular investigation sufficiently supports the claims that the EEOC brings in a subsequent lawsuit. *See Caterpillar*, 409 F.3d at 833 (“[Courts] have no business limiting [a] suit to claims that the court finds to be supported by the evidence obtained in the Commission’s investigation. The existence of probable cause to sue is generally and in this instance not judicially reviewable.”) (citations omitted). The rationale for this prohibition is that if defendant employers were permitted to challenge whether an EEOC investigation provided sufficient reasonable cause for subsequent claims, the focus of employment discrimination litigation would become the EEOC’s administrative efforts, rather than the validity of the actual claims of discrimination. *See EEOC v. Keco*, 748 F.2d 1097, 1100 (6th Cir. 1984); *see also EEOC v. Chi. Miniature Lamp Works*, 526 F. Supp. 974, 975 (N.D. Ill. 1981). The Sixth Circuit has acknowledged this “pitfall” of judicial review of administrative investigations into reasonable cause, stating:

That line of inquiry [into the sufficiency of a pre-suit investigation] would deflect the efforts of both the court and the parties from the main purpose of this litigation: to determine whether [the defendant] has actually violated Title VII. . . . [Determining the sufficiency of an investigation] would effectively make every Title VII suit a two-step action: First the parties would litigate the question of whether EEOC had a reasonable basis for its initial finding, and only then would the parties proceed to litigate the merits of the action.

Keco, 748 F.2d at 1100 (finding error for district court to inquire into sufficiency of EEOC’s administrative investigation) (quoting *Chi. Miniature Lamp Works*, 526 F. Supp. at 975).

Accordingly, the Court will not inquire into whether the EEOC’s administrative investigation

adequately supported the claims of the 17 claimants on behalf of whom the EEOC has brought suit.⁵

II. The EEOC's conciliation efforts

URT next argues that the EEOC should not be allowed to litigate the claims of the 17 claimants at issue because the EEOC did not fulfill its statutory obligation to conciliate those claims prior to filing suit. (R. 65, Def.'s Mem. at 15.) As mentioned above, the EEOC is required to attempt conciliation prior to filing suit against an employer. 42 U.S.C. § 2000e-5(b). District courts reviewing whether that process was adequate have varied, however, in the level of deference they have given the EEOC. *See EEOC v. Supervalu, Inc.*, 674 F. Supp. 2d 1007, 1008 (N.D. Ill. 2009) ("There is no general agreement among the courts on the issue [of the standard that district courts should use when reviewing the sufficiency of the EEOC's conciliatory efforts.]"); *see also EEOC v. McGee Bros.*, No. 3:10-cv-142, 2011 WL 1542148, at *4 (W.D.N.C. Apr. 21, 2011) (identifying circuit split as to what level of review is appropriate when analyzing the EEOC's conciliation attempts). Courts appear to use two standards of review when assessing the adequacy of the conciliation process—a "deferential standard" and a "heightened scrutiny standard." *McGee Bros.*, 2011 WL 1542148, at *4. Under the so-called deferential standard, district courts do not review the substance of the conciliation process and ask only whether an attempt to conciliate was made. *See EEOC v. Keco Indus., Inc.*, 748 F. 2d 1097, 1102 (6th Cir. 1984) ("The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of

⁵ For these reasons, the Court struck all facts relating to the EEOC's administrative investigation from the record. (R. 80, Min. Order, Nov. 9, 2011) (granting the EEOC's motion to strike immaterial facts, specifically ¶¶ 22-23, 25-29, 35 of R. 66, Def.'s Facts.)

the EEOC as the agency . . . and is beyond judicial review.”); *EEOC v. Zia Co.*, 582 F.2d 527, 533 (10th Cir. 1978) (“[A] court should not examine the details of the offers and counteroffers between the parties, nor impose its notions of what the government should provide . . .”). Under the heightened scrutiny standard, courts review the EEOC’s efforts for “reasonableness and responsiveness under all the circumstances.” *McGee Bros.*, 2011 WL 1542148, at *4 (quoting *EEOC v. Asplundh Tree Expert Co.*, 340 F.3d 1256, 1259 (11th Cir. 2003)) (citing *EEOC v. Agro Distrib., LLC*, 555 F.3d 462, 468 (5th Cir. 2009) (asking whether the EEOC responded “in a reasonable and flexible manner to the reasonable attitudes of the employer.”)). The Seventh Circuit has not specifically addressed the standard to be used by district courts facing allegations of deficient conciliation, *Supervalu, Inc.*, 674 F. Supp. 2d at 1008, and the parties have not specifically addressed this issue in their briefs. It is of no matter, however, because under either level of inquiry, the Court declines to grant summary judgment in favor of URT based on the conciliation process that occurred prior to the EEOC filing suit.

Under the deferential standard, summary judgment is not warranted in this case because it is clear that the EEOC made an attempt to conciliate, and that this attempt was sufficient to pursue litigation on behalf of the 17 claimants at issue. URT concedes that the EEOC attempted conciliation in this case and that the EEOC “may pursue relief in litigation for similarly situated ‘claimants’ whose allegations were not individually conciliated but whom defendants were generally aware of during the conciliation process[.]” (R. 103, Def.’s Reply at 1-2.) Nevertheless, URT argues that it was not given “a meaningful opportunity to engage in conciliation” in this case because the identities of these claimants and the nature of their claims were not known to URT before the EEOC filed suit. (R. 65, Def.’s Mem. at 14; R. 103, Def.’s

Reply at 2-12.) The record, however, indicates otherwise. First, it is undisputed that the EEOC stated in its determination letter that it had found reasonable cause to believe that URT had committed violations of the ADA against the Charging Parties and *a class of disabled individuals*. (R. 84, Pls.' Facts ¶ 1.) Thus, URT was on notice that the EEOC was seeking conciliation on behalf of individuals other than the Charging Parties. Second, it is undisputed that the determination letter stated that the EEOC had found reasonable cause to believe that that URT had committed three violations. Specifically, the letter stated that the EEOC found reasonable cause to believe that URT had: (1) discriminated against the Charging Parties and a class of disabled individuals through the application of its unpaid leave policy; (2) denied reasonable accommodations to a class of disabled individuals; and (3) discriminated against the Charging Parties and a class of individuals by failing to rehire them. (*Id.* ¶ 2.) Accordingly, URT was aware, or should have been, that the EEOC was pursuing claims based on these three violations, and that its conciliation efforts encompassed such claims.

Even under a more heightened level of scrutiny, the EEOC's efforts at conciliation in this case, though concerning in some respects, do not warrant summary judgment in this case. URT contends that the EEOC affirmatively misled URT during conciliation by making it believe that the Charging Parties were the only individuals alleging unlawful termination after being unable to return from leave, and that the unidentified class members only consisted of individuals who had been turned down for leave. (R. 103, Def.'s Reply at 13-14.) The record, however, does not bear this allegation out. The communications between the EEOC and counsel for URT do indicate that URT's understanding was that conciliation was limited to claims relating to the application of URT's medical leave policy, and that URT believed that these claims were limited

to a few individuals. (*See* R. 68-1, Ex. B, Email from Rachel Cowen, Aug. 4 2010.) This misunderstanding, however, was not intentionally caused by the EEOC. As discussed above, the EEOC's determination letters clearly indicated that the scope of the claims was broader than the claims related to URT's medical leave policy. The Court is concerned by the EEOC's failure to clarify its position after receiving communications from URT indicating that there was a misunderstanding concerning the scope of conciliation, but the fault for this communication breakdown also lies with URT. Instead of requesting more information or clarification when it received the EEOC's \$2 million settlement demand, URT terminated the conciliation. (*See* R. 68-1, Ex. D, Email from Rachel Cowen, Sept. 7, 2010.) Thus, because any deficiencies in the conciliation process were caused by both parties, the Court declines to grant summary judgment in favor of URT on this ground. *See EEOC v. Klingler Elec. Corp.*, 636 F.2d 104, 107 (5th Cir. 1981) (noting that "summary judgment is far too harsh a sanction to impose on the EEOC even if the court should ultimately find that conciliation efforts were prematurely aborted" in the "absence of grossly arbitrary and unreasonable conduct or substantial prejudice to the defendant"); *see also EEOC v. CRST Van Expedited*, 670 F.3d 897, 916 (8th Cir. 2012) (noting that dismissal of case was not an abuse of discretion where the "EEOC wholly failed to satisfy its statutory pre-suit obligations"). Nevertheless, although summary judgment is not warranted in this case based on the EEOC's conciliation efforts, the Court will stay the proceedings for fourteen days under 42 U.S.C. § 2000e-5(f)(1) to permit the parties to attempt conciliation on the remaining claims in this case. *See id.*; *see also EEOC v. First Midwest Bank, N.A.*, 14 F. Supp. 2d 1028, 1031 (N.D. Ill. 1998) ("If a district court finds improper conciliation efforts were made, the appropriate remedy is not dismissal, but a stay of the proceedings so that conciliation between

the parties may take place.”) (citing *Prudential Fed. Sav. & Loan Assoc.*, 763 F.2d 1166, 1169 (10th Cir. 1985); *EEOC v. Rymer Foods, Inc.*, No. 88-cv-10680, 1989 WL 88243, at *1 (N.D. Ill. July, 31, 1989)).

CONCLUSION

For the reasons stated above, URT’s motion for partial summary judgment (R. 64) is denied. The proceedings in this case are stayed for fourteen days to permit the parties to engage in good faith conciliation.⁶

Entered:


Judge Ruben Castillo
United States District Court

Dated: May 11, 2012

⁶ The limited duration of the stay is based on the parties’ briefing on this motion that indicates that any renewed attempts at conciliation will unlikely be fruitful. Nevertheless, if progress is being made in this conciliation and additional time is needed to further the process, the parties are directed to file a motion for an extension of the stay.