

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MELODY CULVER,

Plaintiff,

v.

GORMAN & COMPANY,

Defendant.

FINAL PRETRIAL
CONFERENCE ORDER

03-C-0727-C

A final pretrial conference was held in this case on August 3, 2006, before United States District Judge Barbara B. Crabb. Plaintiff appeared by Mary Kennelly. Defendant appeared by Robert Gingras and Paul Kinne.

Counsel agreed to a jury of eight. They were to exercise three peremptory challenges each against a qualified panel of fourteen. They agreed to the sequestration of witnesses and to advise each other of the witnesses they would be calling on the following day and in the order in which they would be called.

Counsel anticipated that the liability phase of the trial could be finished by noon on Wednesday, August 9, 2006. They understand that the trial days will start at 9:00 a.m. and run until 5:30 p.m., with an hour break for lunch and two short breaks: one in the morning and one in the afternoon.

At the conference, counsel agreed to the voir dire questions as proposed. Following the final pretrial conference, defendant submitted a proposed revision of the statement of the case that was used at trial with plaintiff's agreement.

Plaintiff confirmed to the court that her underlying claim of discrimination includes both the alleged pay discrepancy between her and the male maintenance workers and the way her supervisor, Ron Schroeder treated her in comparison with male employees and limited her responsibilities. Both counsel confirmed that they consider this a mixed motive case. Defendant advised the court that since Peter Jorde's whereabouts are unknown, defendant will be using his deposition at trial. Disputes about the portions of the deposition to be read at trial will be resolved as necessary during trial.

Turning to the parties' motions in limine, plaintiff's first two motions concerning evidence about plaintiff's relationship with her former husband and her relationship with her current husband are GRANTED as unopposed.

Plaintiff's motion to bar evidence that plaintiff told Aeron Polodna that plaintiff had told Schroeder to F-off is GRANTED.

Plaintiff's motion to bar evidence of Polodna's opinion or that of other employees why plaintiff did not get along with Schroeder is GRANTED.

Plaintiff's motion to bar testimony from Brian Koenig or others that plaintiff had a tendency to complain is GRANTED.

Plaintiff's motion to bar evidence of defendant's written policy prohibiting discrimination is DENIED.

Plaintiff's motion to bar evidence of the parties' agreement to dismiss plaintiff's sex discrimination claim is GRANTED as unopposed.

Defendant's motion to bar evidence of a note from Gary Gorman praising plaintiff's work in 2002 is GRANTED.

Defendant's motion to bar evidence of a positive performance review of plaintiff by Paula Accettura is DENIED.

Defendant's motions to bar evidence that Schroeder recommended a raise for Harrison in the fall of 2001 and denied plaintiff's request for a raise in the fall of 2001 and about the reasons for his decision is DENIED, provided plaintiff can prove she knew of each of these things at the time she learned of Harrison's raise.

Defendant's motion to bar evidence that Koenig told plaintiff she was underpaid is GRANTED. Koenig was not a policy-making employee of defendant and not in a position to know whether plaintiff was or was not underpaid. His opinion about the fairness of her pay cannot be attributed to defendant.

Defendant's motion to bar evidence about what other employees thought of Schroeder is GRANTED; however, Becker-Johnson will be allowed to testify that she was unhappy with her own raise she received in 2001.

Defendant's motion to bar testimony about Schroeder's statement to plaintiff about her vacation is DENIED.

Defendant's motion to bar evidence from plaintiff about comments made to her by James Crim or Brad Harrison about the raises they received in January 2002 is GRANTED.

Defendant's motion to bar evidence from plaintiff about comments Brad Harrison may have made to Ron Schroeder is GRANTED.

Defendant's motion to prohibit plaintiff from making reference to any position she was offered at Gorman & Company during the time she was not supervised by Ron Schroeder is DENIED.

Defendant's motion to prohibit plaintiff from making reference to any opinions Accettura had about Ron Schroeder's performance is GRANTED as unopposed.

Defendant's motion to preclude plaintiff from making reference to any performance concerns Gorman & Company had with Brad Harrison is GRANTED with the exception that plaintiff may introduce one general statement only.

Defendant's motion to bar evidence that plaintiff received a probable cause determination in the Equal Rights Division is GRANTED.

Defendant's motion to prohibit plaintiff from making reference to receiving unemployment compensation benefits is GRANTED as unopposed.

Defendant's motions to prohibit plaintiff from making reference to Gorman & Company's net worth and from making any argument that she is entitled to damages for loss of earning capacity or front pay are taken under advisement.

Finally, defendant's motion to prohibit plaintiff from basing her back wage and front pay awards about speculative assumptions of raises and promotions she would have

received if she had remained employed by Gorman is DENIED, provided plaintiff can support her contention with admissible evidence.

Entered this 9th day of August, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge