

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

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

AREA ERECTORS, INC.,

Defendant.

OPINION AND
ORDER

06-C-516-C

GILES L. JEFFERSON,

Plaintiff-Intervenor,

v.

AREA ERECTORS, INC.

Defendant.

In this suit brought under Title VII, plaintiff Equal Employment Opportunity Commission alleges that defendant Area Erectors, Inc. has engaged in unlawful employment practices by terminating plaintiff-intervenor Giles Jefferson and other African American employees because of their race and by retaliating against Jefferson by terminating his employment because he filed a charge of discrimination with plaintiff. Before the court are two related motions filed by defendant: 1) a motion to transfer venue to the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. § 1404(a); and 2)

a motion to join certain local unions as non-aligned parties pursuant to Fed. R. Civ. P. 19(a). Although plaintiff and plaintiff-intervenor oppose the joinder motion, neither party opposes the motion to transfer venue; in fact, plaintiff-intervenor appears to agree that venue should be transferred. See Correspondence from Dan Barker, April 20, 2007, dkt. #30. According to defendant, this court need not decide the Rule 19 joinder motion in the event it grants the motion to transfer venue.

OPINION

Before a court weighs the appropriate factors to determine whether to transfer a case under § 1404(a), it must conclude that (1) venue is proper in the transferor district and (2) the transferee district is one in which the action could have been brought. Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219 (7th Cir. 1986). Venue and personal jurisdiction would be proper in either the transferor or transferee district. 42 U.S.C. § 2000e-5(f)(3) (action under Title VII may be brought in any judicial district in state in which (1) unlawful employment practice allegedly occurred; (2) relevant employment records are maintained and administered; or (3) aggrieved individual “would have worked but for the alleged unlawful employment practice . . .”). Therefore, I turn to the question whether this case should be transferred to the Northern District of Illinois.

In a motion to transfer venue brought pursuant to 28 U.S.C. § 1404(a), the moving party bears the burden of establishing that the transferee forum is "clearly more convenient."

Coffey, 796 F.2d at 219-20. In weighing the motion, a court must decide whether the transfer serves the convenience of the parties and witnesses and will promote the interest of justice. 28 U.S.C. 1404(a); Coffey, 796 F.2d at 219-20; see also Roberts & Schaefer Co. v. Merit Contracting, Inc., 99 F.3d 248, 254 (7th Cir. 1996) (question is whether plaintiff's interest in choosing forum is outweighed by either convenience concerns of parties and witnesses or interest of justice). The court should view these factors as placeholders among a broader set of considerations and evaluate them in light of all the circumstances of the case. Coffey, 796 F.2d at 219 n.3. Such broader considerations include the situs of material events, ease of access to sources of proof and plaintiff's choice of forum. Harley-Davidson, Inc. v. Columbia Tristar Home Video, Inc., 851 F. Supp. 1265, 1269 (E.D. Wis. 1994); Kinney v. Anchorlock Corp., 736 F. Supp. 818, 829 (N.D. Ill. 1990).

From the evidence adduced by defendant in support of its motion, I am convinced that defendant has met its burden of establishing that the transferee forum is clearly more convenient. Defendant's principal place of business is in Rockford, Illinois, and it appears that the situs of most material events is Illinois. Plaintiff-intervenor, nearly all class members and nearly all potential witnesses are Illinois residents. It appears that the only connection this case has to Wisconsin is that plaintiff-intervenor complains that defendant unlawfully laid him off from a job in Beloit, Wisconsin. However, the witnesses to this event, including plaintiff-intervenor and defendant's employees, reside in the Northern District of Illinois. Further, plaintiff-intervenor also complains of a second, allegedly

unlawful termination by defendant from a job in Rockford, Illinois. As noted previously, plaintiff-intervenor agrees to the proposed transfer of venue.

Although a plaintiff's choice of forum is ordinarily granted significant weight, that weight is diminished in this case because plaintiff EEOC is an agency of the federal government, which is no more a resident of the Western District of Wisconsin than of the Northern District of Illinois. United States v. Klearman, 82 F. Supp. 2d 372, 375 (E.D. Pa. 1999) (while government's choice of forum properly granted significant weight, "it is not a choice that deserves the same level of deference as does a choice by a plaintiff to bring an action in her home district"). Moreover, plaintiff has not disputed any of the facts adduced by defendant or pointed to any reasons that weigh significantly against transfer. In light of plaintiff's failure to oppose the motion, plaintiff-intervenor's consent to transfer venue and the facts adduced by defendant, I am convinced that convenience and justice would be served by transferring this case to the Northern District of Illinois.

In reaching my conclusion that defendant has met its burden to prove that a change of venue should be granted, I have not considered defendant's argument that transfer is necessary so that defendant can meet the requirements for joining Illinois-based local unions who have agreements with defendant containing provisions that may affect defendant's ability to reinstate certain class members should liability be found. Even ignoring defendant's alleged need to ensure service of process over the Illinois-based local unions as a factor, transfer is still appropriate.

In sum, the convenience of the parties, witnesses and the interests of justice dictate transfer of this lawsuit to the Northern District of Illinois. In light of this conclusion, defendant's Rule 19 joinder motion is moot. Defendant will have to file a new motion addressing the propriety of joinder in the transferee district.

ORDER

IT IS ORDERED THAT:

1. The motion of defendant Area Erectors, Inc. to transfer this case is GRANTED. This case is transferred to the United States District Court for the Northern District of Illinois;
2. The motion of defendant Area Erectors, Inc. to join certain local unions as non-aligned parties pursuant to Fed. R. Civ. P. 19(a) is DENIED as moot; and
2. The clerk of court is directed to transfer the file to the United States District Court for the Northern District of Illinois.

Entered this 23d day of April, 2007.

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