

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOHN G. MENSCH,

Plaintiff,

2005-CV-0127

v.

**HOVENSA, L.L.C., UNITED
STEELWORKERS AFL/CIO on behalf of
Local Union 8526, and UNITED
STEELWORKERS,**

Defendants.

**TO: Lee J. Rohn, Esq.
C. Beth Moss, Esq.
Michael J. Sanford, Esq.**

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL

THIS MATTER came before the Court for consideration upon Plaintiff's Motion to Compel Defendant USWA Further [sic] Supplement Responses to Demand For Production of Documents (Docket No. 72). Said Defendant filed an opposition to said motion, and Plaintiff filed a reply thereto.

The Court notes that the parties failed to submit a joint stipulation pursuant LRCi 37.2(a). However, because the matter has been briefed, in the interest of judicial economy, the Court will rule upon the papers which *could* be considered filed consistent with LRCi

Mensch v. HOVENSA, L.L.C.

2005-CV-0127

Order Denying Plaintiff's Motion to Compel

Page 2

37.2(b). As the Court has stated in previous matters, however, all future discovery motions that fail to comply with the requirements of LRCi 37.2(a) will not be considered pursuant to LRCi 37.2(c).

In addition to the individual discovery requests at issue, Plaintiff alleges that said Defendant has failed to provide a "sworn answer" to the demands for production of documents. However, a review of Fed. R. Civ. P. 34, which governs the production of documents, demonstrates that such an affirmation or certification, such as required by Fed. R. Civ. P. 33 governing interrogatories, does not mention anything about responding "under oath." Thus, the Court finds that Plaintiff is not entitled to such a "sworn answer."

With regard to the specific discovery requests at issue, the Court makes the following findings and conclusions:

Demand For Production No. 5: Said Defendant claims that it supplemented its response by way of correspondence to counsel. The Court finds that this supplementation is adequate. Although Plaintiff alleges that evidence of all other complaints alleging racial discrimination, including complainants who were not white, are relevant, the Court disagrees. In order to prevail upon a "pattern and practice claim"

Mensch v. HOVENSA, L.L.C.

2005-CV-0127

Order Denying Plaintiff's Motion to Compel

Page 3

Plaintiff first must establish a prima facie case of discrimination. *See, e.g., United States v. Lansdowne Swim Club*, 894 F.2d 83, 88 (3d Cir. 1990) (citations omitted).

A prima facie case of discrimination includes demonstrating less favorable treatment than others similarly situated. *See, e.g., Getz v. Commonwealth of Pennsylvania Blindness and Visual Services*, No. Civ. A. 97-7541, 1998 WL 961901 (E.D. Pa. December 18, 1998). No further response is necessary.

Demand For Production No. 6: Said Defendant claims that it possesses no documents responsive to Demand No. 5. Consequently, Demand No. 6 is moot.

Demand For Production No. 7: Said Defendant claims that it supplemented its response by way of correspondence to counsel. The Court finds that this supplementation is adequate. No further response is necessary.

Mensch v. HOVENSA, L.L.C.

2005-CV-0127

Order Denying Plaintiff's Motion to Compel

Page 4

Therefore, it is now hereby **ORDERED** Plaintiff's Motion to Compel Defendant USWA Further [sic] Supplement Responses to Demand For Production of Documents (Docket No. 72) is **DENIED**.

ENTER:

Dated: October 10, 2008

_____/s/
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE