

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

ROGER KOEHN, )  
 ) NO. 4:02-cv-10273  
 Plaintiff, )  
 ) RULING ON MOTION  
 vs. ) FOR LEAVE TO AMEND  
 ) COMPLAINT  
 INDIAN HILLS COMMUNITY )  
 COLLEGE and JAMES LINDENMAYER, )  
 )  
 Defendants. )

The above resisted motion (#12) is before the Court. Plaintiff's complaint pleads a cause of action under 42 U.S.C. § 1983 for discharge in retaliation for the exercise of his First Amendment rights, and a state claim of wrongful discharge in violation of public policy. By the present motion he seeks leave to amend the federal claim to seek reinstatement or other equitable relief. The scheduling order deadline for amending pleadings was November 15, 2002. Plaintiff's counsel states the failure to include a prayer for equitable relief in the original complaint was due to oversight. Defendants resist the motion because the amendment is beyond time and there is no showing of good cause to allow an untimely amendment.

Plaintiff's motion is one of those at the uneasy intersection between the liberal pleading amendment standard in Fed. R. Civ. P. 15(a) and the more restrictive scheduling order modification standard in Fed. R. Civ. P. 16(b). Under Rule 15(a)

. . . a district court's denial of leave to amend pleadings is appropriate only in those limited circumstances in which undue delay,

bad faith on the part of the moving party, futility of the amendment, or unfair prejudice to the non-moving party can be demonstrated.

Roberson v. Hayti Police Dept., 241 F.3d 992, 995 (8th Cir. 2001) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). Undue delay is the question here, but delay alone is not sufficient to deny leave to amend. There must be a showing of prejudice to an opposing party. See Dennis v. Dillard Dept. Stores, Inc., 207 F.3d 523, 525 (8th Cir. 2000); Bell v. Allstate Life Ins. Co., 160 F.3d 452, 454 (8th Cir. 1998).

The equation changes when a scheduling order deadline for the amendment of pleadings is implicated. The "less forgiving" good cause standard of Rule 16(b) may then come into play. Bradford v. DANA Corp., 249 F.3d 807, 809 (8th Cir. 2001). A scheduling order is not to be modified except upon a showing of good cause. Fed. R. Civ. P. 16(b); LR 16.1(f). A motion for leave to amend long after the scheduling order deadline passes effectively seeks a modification of the scheduling order. The movant must therefore show good cause to permit the late amendment. See In re Milk Products Antitrust Litigation, 195 F.3d 430, 437 (8th Cir. 1999), cert. denied sub nom Rainy Lake One Stop, Inc. v. Marigold Foods, Inc., 529 U.S. 1038 (2000). The primary measure of good cause is a party's diligence in complying with the scheduling order. Bradford, 249 F.3d at 809 (citing Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)).

Plaintiff's counsel candidly attributes the delay to simple oversight. Oversight does not comport with diligence and therefore cannot itself amount to good cause. Johnson, 975 F.2d at 609. But other circumstances may supply the good cause.

The motion relates solely to the relief sought by plaintiff. As plaintiff notes, it is not necessary for him to plead equitable relief in the form of reinstatement to obtain that remedy if he is entitled to it. Fed. R. Civ. P. 54(c) mandates that "every final [non-default] judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings." See Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 65-66 (1978). The Eighth Circuit has applied the rule to permit an award of equitable relief not requested in a complaint. See Charles Schmitt & Co. v. Barrett, 670 F.2d 802, 806 (8th Cir. 1982) (recission allowed in contract action where not sought in prayer for relief); see 10 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure: Civil 3d § 2664 at 191 ("with the merger of law and equity, specific or injunctive relief may be awarded even though damages were prayed for . . . ."). There is an exception if the opposing party can show prejudice. See Matter of Hanover Corp. of America, 67 F.3d 70, 75 (5th Cir. 1995). Defendants do not claim prejudice. Equitable relief in the form of reinstatement adds little to the factual and legal issues in this action. Trial is more than six months away and

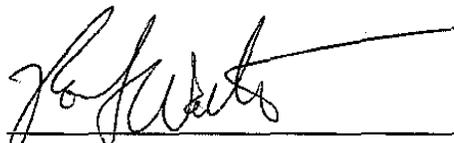
there is time to permit additional discovery if necessary. From shortly after his termination defendants have known plaintiff wants his job back because he unsuccessfully pursued that relief in collateral contested case proceedings before the Iowa Public Employment Relations Board, a decision defendants plead is issue preclusive.

The proposed amendment merely gives explicit notice of a request for relief which the Court is empowered to award under the present pleadings. It clarifies but does not change. As such the good cause is in the notice it provides and avoidance of a question which might, later in the case, present a problem. There is no reason not to allow the amendment.

Motion granted. The Clerk of Court shall file the Amended and Substituted Complaint and Jury Demand attached to the motion.

IT IS SO ORDERED.

Dated this 2nd day of April, 2003.



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ROSS A. WALTERS  
CHIEF UNITED STATES MAGISTRATE JUDGE