

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THOMAS B. MONAHAN, MAYNA SANTIAGO, :  
DANNY SILVA, and ANDREA JANVIER, :  
 :  
Plaintiffs, :  
 :  
v. : Civil Action No.  
 : 00-505-JJF  
CITY OF WILMINGTON, CAPTAIN :  
GILBERT HOWELL, INSPECTOR JAMES :  
STALLINGS, CHIEF MICHAEL BOYKIN, :  
CORPORATE BLACK EMPLOYEES NETWORK, :  
LINDA MORRIS, LYNN TUCKER-KING, :  
and WILMINGTON FRATERNAL ORDER OF :  
POLICE, LODGE #1, :  
 :  
Defendants. :

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Victor F. Battaglia, Sr., Esquire of BIGGS & BATTAGLIA,  
Wilmington, Delaware.  
Attorney for Plaintiffs.

Kathleen Furey McDonough, Esquire of POTTER ANDERSON & CORROON,  
LLP, Wilmington, Delaware.  
Attorney for Defendants Lynn Tucker-King, Linda Morris, and  
Corporate Black Employees Network.

Jan A.T. van Amerongen, Jr., Esquire of JAN A.T. VAN AMERONGEN,  
LLC, Wilmington, Delaware.  
Attorney for Defendants Michael Boykin and James Stallings.

William W. Erhart, Esquire, Wilmington, Delaware.  
Attorney for Defendant Gilbert Howell.

Daniel B. Rath, Esquires of KLETT ROONEY LIEBER & SCHORLING,  
Wilmington, Delaware.  
Attorney for Defendant City of Wilmington.

Jeffery M. Weiner, Esquire of the LAW OFFICES OF JEFFERY M.  
WEINER, Wilmington, Delaware.  
Attorney for Defendant Wilmington Fraternal Order of Police,  
Lodge #1.

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**MEMORANDUM OPINION**

March 28, 2003  
Wilmington, Delaware

**FARNAN, District Judge**

Pending before the Court is the Motion to Dismiss of Defendants Linda Morris, Lynn Tucker-King and Corporate Black Employees Network (collectively, "CBEN") (D.I. 15). For the reasons discussed below, the Court will deny CBEN's Motion.

**BACKGROUND**

**I. Procedural History**

In May 2000, Plaintiffs, who are non-African American police officers employed by the City of Wilmington, filed a Class Action Complaint (D.I. 1) alleging Defendants violated their civil rights. In July 2000, CBEN filed the Motion to Dismiss (D.I. 15) that is the subject of this Memorandum Opinion and Order. Also in July 2000, Plaintiffs filed a Motion for Class Action Certification (D.I. 18). After the completion of briefing, the Court heard oral argument in September 2000, on both Motions. In July 2001, the Court issued a Memorandum Opinion (D.I. 52) and Order (D.I. 53) denying Plaintiffs' Motion for Class Certification, and in August 2001, Plaintiffs filed a Notice of Appeal (D.I. 54) of the Court's Order denying class certification. In October 2001, the Court stayed the case pending resolution of Plaintiffs' appeal. (D.I. 59). In November 2002, the United States Court of Appeals for the Third Circuit affirmed this Court's denial of class certification. (D.I. 63). On November 25, 2002, the Court sent a letter to the

parties requesting that they submit a Joint Proposed Amended Scheduling Order (D.I. 64); however, the Court received no response. This Memorandum Order lifts the stay in the case, orders the parties to submit a Joint Proposed Amended Scheduling Order, and resolves the pending Motion to Dismiss.

## **II. Relevant Facts<sup>1</sup>**

Defendant Corporate Black Employees Network (the "Network") is an unincorporated association of African-American executives and high-ranking employees organized to advance the interests of African-American citizens. (D.I. 1 at 3). Linda Morris and Lynn Tucker-King are agents of the Network. Id. at 3-4. Also named as defendants in the instant lawsuit are the City of Wilmington and Captain Gilbert Howell, Inspector James Stallings, and Chief Michael Boykin, who are African-American employees of the Wilmington Police Department (collectively, the "City Defendants"). Id. at 2-3.

At some point prior to July 15, 1998, CBEN requested that the City Defendants provide security for CBEN's four-day conference to be held at various locations in Wilmington. Id. at 9. CBEN requested that only African-American police officers be assigned to the conference. Id. The City Defendants agreed to

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<sup>1</sup> The relevant facts are taken from Plaintiffs' Complaint because the case is before the Court on a motion to dismiss, which mandates that the Court accept all allegations in the Complaint as true.

use only African-American officers to provide security at the CBEN conference. Id. at 10. All of the officers who provided security for CBEN's conference were African-American and were paid overtime wages by the City. Id.

#### **STANDARD OF REVIEW**

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of a complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Strum v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). In reviewing a motion to dismiss for failure to state a claim, "all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party." Strum, 835 F.2d at 1011; see also Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). A court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Jordan, 20 F.3d at 1261.

#### **DISCUSSION**

Of the eight Counts in Plaintiffs' Complaint, only Count II (42 U.S.C. § 1981), Count IV (42 U.S.C. § 1985), and Count VI (punitive damages) are asserted against CBEN.

##### **A. Count II: Section 1981**

Section 1981, which prohibits racial discrimination in the making and enforcement of contracts and property transactions, provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

...  
The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1981. In order to state a claim under Section 1981, a plaintiff "must allege facts in support of the following elements: (1) [that plaintiff] is a member of a racial minority; (2) intent to discriminate on the basis of race by the defendant; and (3) discrimination concerning one or more of the activities enumerated in the statute[, ] which includes the right to make and enforce contracts...." Brown v. Philip Morris Inc., 250 F.3d 789, 797 (3d Cir. 2001) (quoting Yelverton v. Lehman, 1996 WL 296551, at \*7 (E.D. Pa. June 3, 1996), aff'd. mem., 175 F.3d 1012 (3d Cir. 1999)) (brackets in original; internal quotation marks omitted).

Plaintiffs contend CBEN violated Section 1981 by interfering with Plaintiffs' contractual rights with the City. Plaintiffs also contend that they adequately pled the three elements

required to make out a Section 1981 claim: (1) Plaintiffs are all non African-American police officers; (2) CBEN intentionally requested only African-American police officers; and (3) CBEN interfered with Plaintiffs' contractual rights with the City. (D.I. 1). Therefore, Plaintiffs contend dismissal is legally inappropriate.

In response, CBEN contends Plaintiffs have not alleged that CBEN acted in a manner which was purposefully discriminatory and racially motivated. Moreover, CBEN contends it did not interfere with Plaintiffs protected rights under Section 1981 because it is not Plaintiffs' employer and had no means by which to affect the relationship between Plaintiffs and their employer.

After reviewing the record and the relevant law, the Court concludes that Plaintiffs have adequately pled a claim under Section 1981. In Section 1981 cases against private defendants, "individuals are personally involved in the discrimination ... if they authorized, directed, or participated in the alleged discriminatory conduct." Kohn v. Lemmon Co., 1998 WL 67540 (E.D. Pa. Feb. 18, 1998) (quoting Al-Khazraji v. St. Francis College, 784 F.2d 505, 518 (3d Cir. 1986), aff'd, 481 U.S. 604 (1987)). In the instant case, Plaintiffs have alleged that they were harmed by CBEN's participation in a process which led to officer assignments being made solely on the basis of the race. Thus, in the Court's view, Plaintiffs have alleged a set of facts that, if

proven true, could entitle them to relief; therefore, the Court will deny CBEN's Motion to Dismiss Plaintiffs' Section 1981 claim.

**B. Count IV: Section 1985**

Section 1985, which prohibits conspiracies to racially discriminate, provides in pertinent part:

If two or more persons in any State or Territory conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. 1985(3). To state a claim under 42 U.S.C. § 1985(3), a plaintiff must allege:

(1) a conspiracy; (2) motivated by a racial or class based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons to the equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States.

Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997) (citing United Brotherhood of Carpenters and Joiners of America, Local 610 v. Scott, 463 U.S. 825, 828-29 (1983); Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971)).



In the instant case, Plaintiffs contend that CBEN conspired with the State Defendants to deprive Plaintiffs of the opportunity to work overtime based solely on their race. (D.I. 1). Plaintiffs contend CBEN acted in concert with the State Defendants to ensure that only African-American officers provided security at CBEN's conference. Id. Therefore, Plaintiffs assert that they adequately pled the necessary elements of a conspiracy under Section 1985(3) and that dismissal is legally inappropriate.

In response, CBEN contends that Plaintiffs have not alleged sufficient facts to show a conspiracy. CBEN further contends that Plaintiffs have not alleged that CBEN specifically intended to harm Plaintiffs or to deprive them of their civil rights. Finally, CBEN contends that Plaintiffs have not shown that CBEN acted with the required racial animus.

After reviewing the record and the applicable law, the Court concludes that Plaintiffs have adequately pled a claim under Section 1985(3). Plaintiffs have alleged facts showing that CBEN and the State Defendants acted together to ensure officer assignments were made solely on the basis of the race. The Court notes CBEN's objections to the specificity of Plaintiffs' allegations regarding the degree of involvement of various Defendants, but, because conspiracies are by their very nature difficult to discern and prove, the Court is not inclined to

dismiss the claim at this stage of the proceedings. Plaintiffs have alleged a set of facts that, if proven true, could entitle them to relief; therefore, the Court will deny CBEN's Motion to Dismiss Plaintiffs' Section 1985(3) claim.<sup>2</sup>

#### **CONCLUSION**

For the reasons discussed, the Court will deny the Motion to Dismiss of Defendants Linda Morris, Lynn Tucker-King and Corporate Black Employees Network (D.I. 15).

An appropriate Order will be entered.

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<sup>2</sup> Because the Court will deny CBEN's Motion to Dismiss Plaintiffs' Section 1981 and 1985(3) claims, it will also deny CBEN's Motion to Dismiss Plaintiffs' claim for punitive damages.

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 :  
 Defendants. :

**ORDER**

At Wilmington this 28th day of March 2003, for the reasons  
set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

- (1) The stay imposed by the Court's October 24, 2001, Order  
(D.I. 59) is lifted;
- (2) The Motion to Dismiss of Defendants Linda Morris, Lynn  
Tucker-King and Corporate Black Employees Network (D.I.  
15) is **DENIED**;
- (3) The parties shall submit a joint Proposed Amended  
Scheduling Order to the Court no later than Monday,  
April 7, 2003.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE