UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

August 7, 2024

US TECH WORKERS, ET AL., Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2024B00085
ILLINOIS INSTITUTE OF TECHNOLOGY, Respondent.	)	

Appearances: John Miano, Esq., for Complainant
David A. Calles Smith Esq., Sarah J. Millsap, Esq., and Amy L. Peck, Esq., for Respondent

ORDER DENYING MOTION TO STRIKE & DENYING LEAVE TO FILE A REPLY

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant, US Tech Workers et al., filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Illinois Institute of Technology on March 19, 2024. Complainant alleges Respondent discriminated based on citizenship (hiring), violating 8 U.S.C. § 1324b(a)(1). On July 17, 2024, Respondent filed an answer.

On June 10, 2024, Respondent filed a Motion to Dismiss, arguing "OCAHO lacks subject matter jurisdiction based on Complainant's lack of standing… [and] Complainants fail to allege a claim upon which relief can be granted." Brief Mot. to Dismiss, 4-7. Respondent expressly references Federal Rules of Civil Procedure 12(b)(1) and (h)(3), as well as 28 C.F.R. §§ 68.1 and 68.10, and then proceeds to analyze the contents of the text of the Complaint.

On June 21, 2024, Complainant filed a Response. In this submission, Complainant characterizes Respondent's motion as "rais[ing] two questions of law that can be addressed in partial summary

judgment." Resp. Mot. Dismiss 4. The motion concludes by arguing "Respondent's motion to dismiss should be denied and partial summary judgment should be granted on (1) the question of whether a recruitment campaign specifically targeted towards the hiring of H-1B non-immigrants constitutes discrimination against the protected class of U.S. workers, and (2) whether companies that form a coalition to engage in a recruitment campaign targeting H-1B non-immigrants for hiring share collective liability for the unlawful acts of the coalition." Resp. Mot. Dismiss 25. The motion is accompanied by exhibits A-K.

On July 1, Respondent filed a Motion to Strike Complainant's Response to Motion to Dismiss. Respondent argues Complainant's filing was "procedurally improper." Mot. Strike 1. Respondent requested, in the alternative, it be permitted an opportunity to submit a reply filing. *Id*. at 3.

On July 11, 2024, Complainant filed a Response to the Motion to Strike. In its filing, Complainant argues "a court may fully resolve questions of law raised in a motion to dismiss… such questions of law are evaluated as in summary judgment or partial summary judgment." Resp. Mot. Strike 1. Complainant then seeks to clarify it "did not file a cross-motion for summary judgment." *Id.* at 2.

II. LAW & ANALYSIS

A. Motion to Strike

"A motion to strike is generally understood as a request that a court either 'delete insufficient defenses or immaterial, redundant, impertinent, or scandalous statements from an opponent's pleading' or 'inadmissible evidence be deleted from the record.'" *Sharma v. NVIDIA Corp*., 17 OCAHO no. 1450f, 3 (2023) (quoting *Motion to Strike*, BLACK'S LAW DICTIONARY (11th ed. 2019)).[1]

Here, such an action is unwarranted. Complainant provided a response to the Motion to Dismiss. The Court will consider both parties' arguments pertaining to the issues raised in that Motion. The Court has a duty to fully develop the record on each issue raised by a moving party, and "deleting" an opposition filing simply because it may (as Respondent has argued) contain extraneous matters,

[1] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIMOCAHO," or in the LexisNexis database "OCAHO," or on the website at https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions.

would not be in furtherance of the Court's duty. *See Zajradhara v. Aljeric General Servs., LLC*, 16 OCAHO no. 1432g, 3 (2024) (citing *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001)). Further, and as a practical matter, to the extent the non-moving party has provided extraneous matters or requests, those extraneous portions will not impact the analysis of the issues raised by the moving party. *A.S. v. Amazon Web Servs*., 14 OCAHO no. 1381j, 5 (2021) ("[R]equests for relief should not be submitted in a response or opposition to a motion because 'requesting new relief in response to a motion strips the original moving party from an opportunity to respond . . . .'") (quoting *A.S. v. Amazon Web Servs.,* 14 OCAHO no. 1381f, 3 (2021)).

B. Leave to File a Reply

Under OCAHO's Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024), "no reply to a response, counter-response to a reply, or any further responsive document shall be filed" without permission from the presiding Administrative Law Judge. 28 C.F.R. § 68.11(b). As a result, parties "must seek leave of Court before filing a reply . . . ." *United States v. Space Expl. Techs. Corp.*, 18 OCAHO no. 1499a, 4 (2023) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1093, 7 (2003)); *see also Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362g, 4 (2024). The choice to permit a reply or sur-reply is discretionary. *US Tech Workers et al. v. Relativity*, 20 OCAHO no. 1579, 2 (2024) (citing *Space Expl. Techs. Corp*., 18 OCAHO no. 1499a, 4 (2023)). The Court may consider whether permitting a reply would develop the case record or address novel issues or arguments. *Id*. at 3 (citing *Sharma v. NVIDIA Corp*., 17 OCAHO no. 1450j, 3 (2023)).

A reply filing is not a "second bite at the apple," nor (more germane here) is it necessary if it is lodged only to address impermissibly raised matters in a response filing. The moving party (Respondent) has not demonstrated the utility of a reply filing, as its proposed reply would address matters in the Response filing which are outside the ambit of the issues initially raised.

C. "Summary Judgment"

As a baseline, summary judgment, the concept, is referred to as "summary decision" in the regulations governing this forum. 28 C.F.R. 68.38; *United States v. USA Café*, 1 OCAHO no. 42, 220, 220 ("[T]he regulations refer to [a motion for summary judgment] as a Summary Decision, and this Order will hereinafter follow the exact language of the regulation . . . .").

The spectre of summary decision was first raised by the non-moving party who later clarified it was not attempting to "file a cross-motion for summary judgment." In any event, the analysis surrounding summary decision in the forum typically involves facts (and an analysis of whether there are (or are no) genuine issues of material fact), and a careful review of the moving party's entitlement to judgment as a matter of law (through the lens of the light most favorable to the non-moving party).

The moving party here, Respondent, has asked the Court to consider issues of jurisdiction, or in the alternative, that Complainant has failed to state a claim upon which relief can be granted. These issues are routinely analyzed within the construct of Rule 12 and the body of case law related to dismissal independent of the development of an evidentiary record. Summary decision, and conversion of a motion to summary decision, need not be addressed because the moving party does not seek it, and the non-moving party cannot request (on purpose or otherwise) such a conversion in a response filing.

Respondent's Motion to Strike is DENIED.

Respondent's Motion Seeking Leave to File a Reply is DENIED.

SO ORDERED.

Dated and entered on August 7, 2024.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge