

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT JEAN, ET AL.,)	CASE NO.1:04CV1904
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
Vs.)	
)	
THE STANLEY WORKS, ET AL.,)	ORDER
)	
Defendant.)	

CHRISTOPHER A. BOYKO, J:

This matter is before the Court on Defendant's, The Stanley Works, Motion for Protective Order (ECF# 108). Defendant seeks to prohibit, by means of language in a protective order, Plaintiffs from using any discovery in the instant case in the arbitration. Defendant offers the following language:

Any and all Discovery material shall only be used in the above-captioned Action (and any mediation thereof) and shall not be used, nor the fact that such material exists be disclosed, in any other litigation, arbitration, or mediation or for any other purpose.

Plaintiffs oppose such language as they desire to use discovery in the arbitration proceedings. Plaintiffs suggest the following language:

Any and all discovery materials shall only be used for the purposes of litigation,

arbitration, and mediation in which Stanley is a party, and for no other purposes.

Defendant contends arbitration does not permit the broad discovery afforded litigants under the Federal Rules of Civil Procedure and streamlined discovery is a distinct characteristic of arbitration. If this Court were to permit Plaintiffs' language in the protective order, it would circumvent the arbitrator's authority in controlling and managing discovery in the arbitration and would negate the parties contractual expectations. There is nothing to prohibit the arbitrator from permitting the same discovery in its action and Defendant's proposed language does not prohibit Plaintiffs from requesting the same in arbitration.

Plaintiffs contend, absent a protective order, all discovery in federal civil litigation is generally available for any lawful purpose and may be disseminated by the receiving party. Collateral litigants should not be precluded from obtaining discovery materials by way of a protective order and the arbitrator may determine what discovery it will consider wherever obtained. Stanley has also failed to demonstrate specific harm or prejudice that would result from the use of discovery in the instant case in arbitration. FRCP 26(c) requires a party seeking to prohibit discovery to show good cause why the protective order is necessary.

On March 8, 2007, this Court referred the Motion to Magistrate Judge for a ruling. On May 2, 2007, the Magistrate Judge issued an opinion telling the parties to agree to language no later than April 13, 2007 if they failed to agree, the Court held it would draft suitable language. No agreement was reached and no language was provided.

In his opinion, the Magistrate Judge held arbitration rules of the JAMS (the arbitration service named in the relevant arbitration clause) limited depositions to one opposing party witness leaving the necessity of further depositions to the discretion of the arbitrator. The JAMS rules further require the production of all documents "on which they rely in support of their

positions”. The Magistrate Judge determined Plaintiffs should not have *carte blanche* to utilize all discovery from this action in the arbitrations, however, he also determined Plaintiffs were entitled to use discovery in the instant action for defensive purposes in the arbitration (i.e. for impeachment). The Magistrate Judge further determined it would make no sense for purposes of economy to require parties redepose someone already deposed in the instant action. Also, discovery already completed in the instant action may very well be permitted by the arbitrator under the JAMS’ own rules.

The Court finds the parties, having agreed to subject their disputes to arbitration, have also subjected themselves to the rules of arbitration under the JAMS. Therefore, the Court modifies the language of the protective order to include the following language:

Any and all discovery materials obtained in the instant case shall be subject to the JAMS rules of arbitration and the arbitrator shall determine what materials, evidence and testimony may be considered.

Therefore, the Court grants Defendant’s Motion for Protective Order with the foregoing language.

IT IS SO ORDERED.

09/28/2007
Date

S:/Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Judge