

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NORTHEASTERN PENNSYLVANIA
FREETHOUGHT SOCIETY,

Plaintiff,

v.

COUNTY OF LACKAWANNA
TRANSIT SYSTEM,

Defendant.

Civil Action No. 3:15-CV-00833-MEM

(Judge Mannion)

**PLAINTIFF’S MOTION PURSUANT TO LOCAL RULE 56.1
TO DECLARE PLAINTIFF’S STATEMENT OF UNDISPUTED FACTS
TO BE ADMITTED IN ITS ENTIRETY**

Plaintiff, Northeastern Pennsylvania Freethought Society, respectfully moves this Court pursuant to Local Rule 56.1 for an order deeming Plaintiff’s Statement of Undisputed Facts (ECF No. 33, hereinafter “Pl.’s 56.1 Stmt.”) to be admitted in its entirety. Because Defendant’s Statement in Opposition to Plaintiff’s 56.1 Statement (ECF NO. 35, hereinafter “Def.’s 56.1 Resp.”) fails to cite any record evidence whatsoever, the Court should deem Plaintiff’s 56.1 Statement to be admitted in its entirety.

Although Defendant admits the vast majority of the undisputed facts contained in Plaintiff's 56.1 Statement, Defendant denies several of Plaintiff's facts in whole or in part without citing a shred of record evidence to support the denial. *See* Def.'s 56.1 Resp. ¶¶ 9, 12, 19, 29, 31, 34, 37, 40, 52, 57, 61, 70, 79, 81.¹

Local Rule 56.1 states, in relevant part, that:

Statements of material facts in support of, *or in opposition to*, a motion shall include *references to the parts of the record that support the statements*. All material facts set forth in the statement required to be served by the moving party *will be deemed to be admitted unless controverted by the statement required to be served by the opposing party*.

L.R. 56.1 (emphasis added). The Local Rule is consistent with the Federal Rules of Civil Procedure, which likewise permit courts to treat any assertion of fact not properly addressed by the responding party as undisputed. Fed. R. Civ. P. 56(e).

Because Defendant has failed to counter Plaintiff's Statement of Undisputed Facts with citations to the record, as are explicitly required by Local Rule 56.1, the Court should enter an order declaring Plaintiff's entire Statement of Facts to be

¹ In addition, Defendant also confusingly attempts to add facts, without any citation to record evidence, to counter or qualify facts in Plaintiff's 56.1 statement that Defendant *admits*. *See id.* ¶¶ 8, 14, 15, 83. For the same reasons, these unsupported assertions should likewise be disregarded, and the corresponding paragraphs in Plaintiff's 56.1 Statement should be deemed admitted.

admitted in its entirety. *See Ullrich v. U.S. Sec’y of Veterans Affairs*, 457 Fed. App’x 132, 137 (3d Cir. 2012) (holding that district court correctly deemed movant’s statement of undisputed facts to be admitted where non-movant “admitted” or “denied” each paragraph but did not support responses with any citations to the record); *Anchorage Assoc. v. Virgin Islands Bd. of Tax Review*, 922 F.2d 168, 175 (3d Cir. 1990) (upholding validity of the local rule authorizing the district court to treat as undisputed all facts in an unopposed motion for summary judgment).

Defendant’s failure to counter Plaintiff’s facts with citations to the record reflects more than just non-compliance with the Local and Federal Rules of Civil Procedure. Plaintiff submits that there actually *is* no evidence in the record that Defendant could cite to support these denials. The facts that Defendant halfheartedly attempts to deny are supported by ample undisputed evidence, as reflected by the extensive citations to record evidence in Plaintiff’s 56.1 Statement.

For example, Defendant attempted to deny paragraph 19, which states that “COLTS does not place—and has never placed—any restrictions on the extent to which passengers are allowed to speak or debate while riding its buses.” Pl.’s 56.1 Stmt. ¶ 19. As is reflected by the citations in Plaintiff’s 56.1 Statement, Defendant’s corporate designee admitted this fact during a 30(b)(6) deposition:

Q: Well, let me ask you, clearly people are allowed to speak on a bus, is that correct?

A: Sure, absolutely.

Q: Are there any rules on the COLTS buses with respect to what people can and cannot speak about?

A: What they can and can't speak about, no.

...

Q: Are there any rules on COLTS buses about debating?

A: No[.]

G. Wintermantel 30(b)(6) Dep. (attached as Ex. C to Pl.'s Mot. for Summary Judgment) at 40:6-11, 42:3-5. In light of this party admission, there is simply no basis for Defendant's denial of this uncontroversial fact.

Similarly, Defendant attempts to deny paragraph 29, which states that "The 2011 Policy was neither designed to increase COLTS' ridership nor prompted by any revenue-related goals or concerns." Pl.'s 56.1 Stmt. ¶ 29. Again, this fact in Plaintiff's 56.1 Statement is supported by citations to unambiguous 30(b)(6) deposition testimony:

Q: In enacting this policy was increasing ridership the goal of this policy?

A: I don't think so, no.

Q: Was there any revenue related goals that kind of – was this policy joined by any revenue concerns?

A: Revenue concerns?

Q: And by concerns I don't mean worries, I just mean issues.

A: No. I mean, not that I'm aware of.

G. Wintermantel 30(b)(6) Dep. (attached as Ex. C to Pl.'s Mot. for Summary Judgment) at 51:17-52:1. And yet, Defendant attempts to deny this fact, without explanation or citation to any record evidence to support the denial.

An examination of the record would reveal that Defendant's other denials are similarly unjustified.

For all of these reasons, Plaintiff respectfully requests that the Court grant Plaintiff's Motion and enter the proposed order being filed simultaneously.

Dated: September 6, 2016

/s/ Molly Tack-Hooper
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CERTIFICATE OF NON-CONCURRENCE

In accordance with Local Rule 7.1, Plaintiff's counsel sought concurrence from Defendant's counsel. Defendant's counsel does not concur in the relief sought in Plaintiff's Motion.

Dated: September 6, 2016

/s/ Benjamin Wanger _____

Benjamin Wanger

CERTIFICATE OF SERVICE

I hereby certify that on this date, the foregoing PLAINTIFF'S MOTION PURSUANT TO LOCAL RULE 56.1 TO DECLARE PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS TO BE ADMITTED, together with the accompanying PROPOSED ORDER, were filed electronically and served on all counsel of record via the ECF system of the United States District Court for the Middle District of Pennsylvania.

Dated: September 6, 2016

/s/ Benjamin Wanger
Benjamin Wanger

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ORDER

AND NOW, on this _____ day of _____, 2016, upon consideration of Plaintiff's Motion Pursuant to Local Rule 56.1 to Declare Plaintiff's Statement of Undisputed Facts to Be Admitted in its Entirety, and any opposition thereto, it is hereby **ORDERED AND DECLARED** that Plaintiff's Statement of Undisputed Facts (ECF No. 33) is deemed admitted in its entirety.

BY THE COURT:

Malachy Mannion, J.