IN THE DISTRICT COURT OF THE UNITED STATES FOR THE

MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

JOHNNY REYNOLDS, etc., et al, )
)
Plaintiffs, )
)
v. ) CIVIL ACTION NO. 85-T-665-N
)
RAY BASS, etc., et al., )
)
Defendants. )

ORDER

Plaintiff Johnny Reynolds, Ouida Maxwell, Martha Ann Boleware, Florence Belser, Peggy Vonsherie Allen, and Jeffrey Brown, who are black persons, have brought this lawsuit charging the defendants--the Governor of Alabama and the Alabama Highway Department and the Alabama Personnel Department and their officials with race discrimination in employment, in violation of the fourteenth amendment to the U. S. Constitution, 42 U.S.C.A. §§ 2000e through 2000e-17 (commonly known as Title VII of the Civil Rights Act) and 42 U.S.C.A. §§ 1981, 1983. This cause is now before the court on the plaintiffs' December 9, 1985, motion for class certification, as later amended a number of times. For reasons that follow, the court is of the opinion that the motion is due to be granted and three classes certified.

Approximately five years ago the highway department undertook reorganization and reclassification of its workforce. Employees at the department are now divided according to merit and non-merit systems. The plaintiffs allege that the highway department has utilized its reclassification procedures within the merit system to discriminate against black

persons in hiring, promotion and job content. The plaintiffs propose three classes, each to be headed by one or more representatives with a claim tailored to those of that class's members. The three classes are (1) all black merit system employees of the highway department employed since May 21, 1979; (2) all black non-merit system employees of the department who have unsuccessfully sought employment as merit system employees since May 21, 1979; and (3) all black non-employees who have unsuccessfully applied for merit system employment since May 21, 1979. The classes would therefore not include current black non-merit employees who have not sought merit positions; former black non-merit employees who have not sought merit positions; and black non-employees who unsuccessfully applied only for non-merit positions.

Merit system employees Reynolds, Maxwell and Boleware would be the named representatives of the first class. Reynolds has worked as an Engineering Assistant I at the highway department in Montgomery, Alabama since 1983. Maxwell and Boleware work for the highway department in Alexander City, Alabama. Boleware has held the position of Engineering Assistant I since 1978. Both Boleware and Reynolds allege, among other things, that the highway department has passed them over for promotions because of their race. Maxwell applied on several occasions for work at the highway department and was hired as a clerical aide in 1983. Since that time she has been layed off and rehired at intervals sufficiently frequent to prevent her from attaining permanent status. Maxwell contends that this treatment is part of a pattern practiced by the department upon black persons because of their race.

The second class--that of black non-merit system employees who have unsuccessfully sought merit jobs--would be represented by non-merit employee Belser. Belser worked for the highway department in Montgomery as a temporary clerical aide during 1984. She alleges that while employed as a technical aide she was required to perform the job duties of a laborer rather than clerical tasks. When Belser's temporary position expired, she reapplied for permanent positions as a laborer and as Clerk I. She contends that the department's refusal to hire her for these jobs constituted race-based discrimination.

Allen and Brown would represent class three, non-employees who unsuccessfully applied for merit jobs. Allen applied for and was refused a position as a graduate civil engineer with the highway department in late 1982 or early 1983. She is currently employed in that capacity with the Georgia Department of Transportation and she alleges that she was not hired by the Alabama highway department because of unlawful race discrimination. Brown too applied for the position of graduate civil engineer and was not hired. He avers that, but for his race, he would have been hired for that position.

As relief for their alleged injuries, the plaintiffs seek such class-wide relief as a permanent injunction restraining the highway department, its officials and employees from engaging in patterns and practices of discrimination in regard to merit systems employment, and a declaration that such practices are unlawful. The plaintiffs also seek such individual relief for themselves and the class members as backpay, instatements, and promotions.

The plaintiffs seek certification of three classes pursuant to the requirements of Fed.R.Civ.P. 23(a) and (b)(2). In order to represent a class under these provisions, a plaintiff must show numerosity of the class, typicality of the claim of the representative with those of putative class members, commonality of questions of law and fact across the class, and adequacy of representation. Fed. R. Civ. P. 23(b)(2). Whether these requirements have been met is a procedural question distinct from the merits of the action; in other words, "the question is not whether the plaintiff or plaintiffs . . . will prevail on the merits, but rather whether the requirements of Rule 23 are met." Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178, 94 S.Ct. 2140, 2153 (1973), quoting Miller v. Mackay International, 452 F.2d 424, 427 (5th Cir. 1971). Here, it appears to the court that the Rule 23 requirements are clearly satisfied as to all three classes.

Whether a class meets the requirement of numerosity is a fact-based determination with judicial economy and impracticability of joinder as its touchstones. Phillips v. Joint Legislative Committee, 637 F.2d 1014, 1022 (5th Cir. Feb. 23, 1981), cert. denied, 456 U.S. 960, 102 S.Ct. 2035 (1982). The evidence now before the court reflects that members of each class sought to be certified are clearly too numerous to be joined in this lawsuit. Judicial economy and impracticability of joinder therefore dictate that this case proceed as a class action.

The requirements of commonality and typicality tend to merge. General Telephone Company of the Southwest v. Falcon, 457 U.S. 147, 156 n. 13, 102 S.Ct. 2364, 2370 n. 13 (1982). Typicality requires that the named

representatives' claim is typical of those of class members, while commonality concerns the similarity of the issues making up members' claims across the class. To satisfy these requirements there must be common elements of law or fact in the class and individual claims such that the class action would serve as an economical method of prosecuting and defending the claims. Herbert v. Monsanto Co., 576 F.2d 77, 80 (5th Cir.), vacated on other grounds, 580 F.2d 178 (1978). The named representatives' claims must be so interrelated to the claims of the class as to ensure "that the interest of class members will be fairly and adequately protected in their absence." Falcon, supra, 457 U.S. at 156 n. 13, 102 S.Ct. at 2370 n. 13. The court is of the opinion that the class representatives for each of the three classes have met these standards.

Adequacy of representation is not at issue here. There is no evidence of any conflict between the remedies sought by a plaintiff and those of the class members that plaintiff seeks to represent. The plaintiffs have conscientiously pursued this lawsuit, and the legal representation exhibited so far by counsel has been more than adequate.

The defendants appear to have acted or refused to act on grounds generally applicable to each of the three classes thereby making injunctive or declaratory relief with respect to each class as a whole appropriate should plaintiffs prevail on the merits of their claim as to that class. See Fed. R. Civ. P. 23(b)(2).

In conclusion and for the above reasons, three classes are due to be certified consisting of (1) black merit system employees of the Alabama

Highway Department; (2) black non-merit system employees who have unsuccessfully applied to the department for merit system positions; and (3) black non-employees of the department who have unsuccessfully applied for merit system positions. All claims dating back to May 21, 1979, may be pursued through this class action.

Accordingly, it is ORDERED that:

(1) The plaintiffs' December 9, 1985, motion for class certification, as later amended a number of times, is granted;

(2) A class is certified consisting of all black merit system employees of the highway department employed since May 21, 1979; and said class is represented by plaintiffs Johnny Reynolds, Ouida Maxwell, and Martha Ann Boleware;

(3) A class is certified consisting of all black non-merit system employees of the department who have unsuccessfully sought employment as merit system employees since May 21, 1979; and said class is represented by Florence Belser; and

(4) A class is certified consisting of all black non-employees who have unsuccessfully applied for merit system employment since May 21, 1979; and said class is represented by Peggy Vonsherie Allen and Jeffrey Brown.

DONE, this the 8th day of October, 1986.

UNITED STATES DISTRICT JUDGE