

1982 WL 465
United States District Court; N.D. Florida,
Tallahassee Division.

Peners L. Griffin et al., Plaintiffs
v.
Louie L. Wainwright et al., Defendants.

Civil Action No. TCA 79-1016

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July 28, 1982

Opinion

STAFFORD, Ch. J.

*1 The above-styled cause is a civil rights suit brought pursuant to 42 U.S.C. §§ 1981 and 2000e alleging discriminatory employment practices based on race. This court, by order dated March 10, 1981 (Document 84) and on the basis of a stipulation filed by the parties, certified this action as a class action with Peners L. Griffin and Henry L. Dejerinett representing a class of all past, present, and potential black employees of the State of Florida Department of Corrections. The parties have litigated this action as an across-the-board discrimination claim with discovery covering the realm of employment practices including hiring, promotions, job classification, discipline, and terminations. On June 14, 1982, the United States Supreme Court rendered a decision faulting the Fifth Circuit's quasi-automatic across-the-board rule stressing the fact that all the requirements of Rule 23(a), Federal Rules of Civil Procedure must be satisfied for the maintenance of a class action. *General Telephone Company of the Southwest v. Falcon*, [29 EPD P 32,781] slip op. no. 81-574 (U.S. June 14, 1982). Relying on *Falcon*, defendants filed a motion to vacate order certifying class (Document 143) to which plaintiffs responded in Document 146. Plaintiffs have filed a motion to intervene (Document 141) requesting this court to enter an order permitting Alvin Smith to intervene as a named plaintiff to represent the class of applicants who defendants have denied employment on the basis of a facially objective selection procedure which allegedly has a disparate impact upon black applicants. Defendants responded to this motion in Document 145.

Peners L. Griffin is a black employee of the Florida Department of Corrections. Plaintiff Griffin unsuccessfully applied for several promotions within the Department. Document 58, Defendants' Admissions 21-25, 30-32. He also alleges that he had been terminated twice for discriminatory reasons but eventually was reinstated. Document 54, Second Amended Complaint P 14. Griffin filed a charge of discrimination with the Equal Employment Opportunity Commission on February 22, 1975, and received a Notice of Right-to-Sue letter. Document 58, Defendants' Admission 20.

Henry L. Dejerinett, a black, unsuccessfully applied for the position of Property Manager III within the Department. Document 58, Defendants' Admissions 33 & 34. Defendant Dejerinett alleges that he was not hired because of defendants' impermissible racial considerations. Document 54, Second Amended Complaint P 15. He filed a charge of discrimination with the Equal Employment Opportunity Commission. Document 57, Attachment.

Defendants assert that plaintiffs Griffin and Dejerinett cannot adequately represent the class as preliminarily certified. Defendants posture that, at best, Griffin can adequately represent employees seeking promotion within the correctional officer lines within any region he applied for promotion and Dejerinett can adequately represent applicants seeking employment for ^{clerical/}office positions within region I. Defendants further claim that neither Griffin nor Dejerinett can represent a subclass of applicants rejected for employment because they failed to receive a passing score on the FDOA exam given to all applicants for correctional officer jobs. Finally, defendants urge this court to inquire into plaintiffs' financial ability to bear the costs of this suit.

[Procedural Requirements]

*2 The *Falcon* decision mandates that this court carefully examine the requirements of Rule 23(a) Federal Rules of Civil Procedure. No. 81-574, slip op. at 9. The first requirement is that "the class is so numerous that joinder of all members is impracticable." Federal R.Civ.P. 23(a)(1). The number of black persons employed by the Department in February 1981 was 1,346. Document 82, Defendants' Admission 62. This number alone, without inquiry as to the number of past and potential black

employees, clearly indicates that the class members are too numerous to join.

The second requirement is that “there are questions of law or fact common to the class.” Fed.R.Civ.P. 23(a)(2). Plaintiffs have alleged a common practice and pattern of racial discrimination which affects defendants’ hiring, promotion, job classification, disciplinary, and termination decisions. This general discriminatory policy commonly injures all members of the class of past, present, and potential black employees of the Department. Plaintiffs maintain that they will utilize similar statistical data, similar historical background, and the same or similar witnesses to support their allegations of class-wide discrimination. This court is satisfied that the commonality requirement of Rule 23 is met.

The third prerequisite for maintaining a class action is that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed.R.Civ.P. 23(a)(3). This court must inquire “whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Falcon*, slip op. at 10 n.3. Plaintiff Griffin certainly can adequately protect the interests of black employees who have claims of discrimination in promotions, job classifications, discipline, and terminations. Plaintiff Dejerinett’s claim is somewhat interrelated with the class claims of a discriminatory hiring policy. Plaintiffs allege that blacks are not hired in sufficient number because of facially neutral objective criteria, i.e., a high school education requirement and the FDOA test, which have a disparate impact on black applicants and of a subjective barrier which causes the almost exclusively white decisionmakers to discriminate against black applicants. The class claim against discriminatory subjective hiring decisions is fairly encompassed in Dejerinett’s claim. This court, however, is concerned that the class claim against the Department’s objective screening criteria which have a disparate impact upon class members, especially the FDOA test, is not fairly and adequately protected by any of the named plaintiffs.

The fourth requirement is that “the representative parties will fairly and adequately protect the interests of the class.” Fed.R.Civ.P. 23(a)(4). This court notes that plaintiffs and plaintiffs’ counsel have efficiently litigated this complex action for three years, and trial will commence in three weeks. This demonstrates that plaintiffs are adequate representatives of the class. The court, however, must also inquire whether there is a

conflict of interest between the named plaintiffs and the class they seek to represent. *See Falcon*, slip op. at 10 n. 13. This court is mindful of the possible conflict of interest for Plaintiff Griffin to represent applicants who were denied employment and who, if granted relief, might compete with him for promotions. The United States Supreme Court held that “[u]nder Rule 23, the same plaintiff could not represent these classes [of applicants].” *General Telephone Company of the Northwest v. Equal Employment Opportunity Commission*, [22 EPD P 30,861] 446 U.S. 318, 331 (1980). This court is of the view that if an unsuccessful applicant for a correctional officer position becomes a class representative, that applicant can adequately represent potential black employees. The prejudice which may result from the conflict between Griffin and the class of potential employees is far outweighed by the prejudice which would result if applicants could not be members of the class certified in this action. As is discussed more fully below, this suit has been litigated for years as a class action which included applicants. *See, e.g.*, Documents 54, 108, and 120. Extensive discovery has taken place on the hiring issue. *See, e.g.*, Documents 37, 38, and 48. It would be greatly prejudicial, at this late date, to exclude potential employees from the class.

***3** This suit is a class action for injunctive or declaratory relief under Rule 23(b)(2), Federal Rules of Civil Procedure. Defendants’ contention that the class cannot encompass all the regions in the state because employment decisions are made independently at each regional level is not well-taken. Plaintiff Griffin has applied for promotion in four out of the five regions in the state. The propriety of defendants’ behavior will be determined in a single action, and if plaintiffs prevail, this court can fashion an adequate remedy.

[Intervention]

Plaintiffs strenuously maintain the position that Griffin can adequately represent the class; however, in the alternative, plaintiffs have filed a motion to intervene on behalf of Alvin Smith. Mr. Smith applied for employment as a Correctional Officer I. Initially, Mr. Smith was denied employment because he had not completed high school. After obtaining his GED, he was again denied employment because he failed the written examination required of Correctional Officer I applicants.

Plaintiffs did not specify in their motion whether this was intervention of right, Fed.R.Civ.P. 24(a), or permissive intervention, Fed.R.Civ.P. 23(b). The foregoing discussion clearly demonstrates that plaintiff may intervene as a matter of right.

Alvin Smith, an unsuccessful applicant, certainly has an interest in this suit which seeks to challenge defendants' employment practices, including hiring. Unless he is permitted to intervene, his interest may not be adequately represented by the named parties. Mr. Smith eases this court's concern that the class claim against the Department's objective criteria was not fairly and adequately protected by the named plaintiffs. Alvin Smith is a proper representative for potential black employees.

This court is of the view that this motion was timely filed. *Falcon*, which altered this circuit's position on across-the-board discrimination claims, was decided on June 14, 1982. Plaintiffs filed their motion to intervene on July 8, 1982, as a result of *Falcon*. This court finds that defendants will not suffer prejudice if Smith is allowed to intervene. Defendants have been on notice since the institution of this action that they must defend against hiring claims. The parties have conducted discovery regarding the hiring issue, and have vigorously litigated this claim as evidenced by the motion for partial summary judgment (Document 108).

Defendants further contend that Smith cannot be a class representative because he did not timely file an EEOC complaint. This circuit adopted the single filing rule whereby "once an aggrieved person raises a particular

issue with the EEOC which he has standing to raise, he may bring an action for himself and the class of persons similarly situated..." *Oatis v. Crown Zellerback Corp.*, [1 EPD P 9894] 398 F.2d 496, 498 (5th Cir. 1968). An examination of Griffin's charges of discrimination (Document 148 Exhibits A & C) reveals that Griffin raised the hiring claim in addition to promotion, job classification, discipline, and termination claims. Griffin's charge, therefore, exhausted administrative remedies for the whole class and for all the claims.

***4** Accordingly, it is Ordered:

1. Defendants' motion to vacate order certifying class is Denied.
2. Plaintiffs' motion to intervene is Granted.
3. This action shall continue to be certified as a class with Peners L. Griffin, Henry L. Dejerinett, and Alvin Smith as named plaintiffs representing a class of all past, present, and potential black employees of the State of Florida Department of Corrections.

All Citations

Not Reported in F.Supp., 1982 WL 465, 34 Fair Empl.Prac.Cas. (BNA) 1859, 30 Empl. Prac. Dec. P 33,305