

RECEIVED IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

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IN RE:)
EMPLOYMENT DISCRIMINATION)
LITIGATION AGAINST THE STATE)
OF ALABAMA, et al:)

THOMAS C. LAVER, CLT
v. _____
CLERK

EUGENE CRUM, JR., et al.,)

Plaintiffs,)

v.)

CIVIL ACTION NO. 94-T-356-N

STATE OF ALABAMA, et al.)

Defendants.)

MOTION FOR CERTIFICATION OF A PLAINTIFF CLASS

Comes now the named plaintiffs and plaintiff-intervenors, who move, on behalf of the themselves and the putative class they seek to represent, for certification of the following class pursuant to F. R. Civ. P. 23 (b) (2):

All African-Americans who applied for employment opportunities with the State of Alabama, or would have applied for such opportunities in the absence of the racial discrimination challenged in this action.

As grounds for this Motion, the plaintiffs incorporate the affidavits and other evidentiary materials submitted in support of class certification, including, but not limited to judicial notice of the decrees entered in United States v. Ballard, Civil Action #T-2709-N, and Reynolds v. Alabama Department of Transportation, CV-85-T-665-N (insofar as the State Personnel Department is a party to the latter decree and proceedings). As further grounds for class certification, the plaintiffs state the following:

1. The State of Alabama, and its various subordinate agencies and departments, utilizes a common selection procedure administered by the Alabama State Personnel Board as the agent of all such agencies and departments. See, Powers v. Alabama Dept. of Education, 854 F.2d 1285, 1294 (11th Cir.), cert denied, 109 S.Ct. 3158 (1988)(Holding State of Alabama departments to be liable for the acts of the SPD because "an employer cannot delegate several aspects of its promotion procedure to another agency such as SPD and then escape liability if that agency develops discriminatory practices."); Williams v. City of Montgomery, 742 F.2d 586, 589 (11th Cir. 1984).

2. The plaintiffs' challenge systemic discrimination in the administration of the selection procedure common to all defendants, both in their individual claims and in the claims brought on behalf of the class. The remedies that are sought will require structural modifications of the selection procedure administered by the Personnel Department and the various agencies and departments of the State utilizing such procedures, as well as structural modifications to the injunctive decrees already entered in United States v. Ballard, supra.

3. The modifications to the challenged selection procedure which are sought in this action should not be entered piecemeal against only certain departments or agencies, creating in effect a multitude of different merit systems which vary from one agency of the State to another.

4. Every agency and department of the State utilizes a common recruitment, examination, and certification process administered by the State Personnel Department. The State Personnel Department acts as their common agent for the recruitment of potential applicants; for the receipt of applications on a single interdepartmental application form; for the simultaneous screening of those applications to determine if the applicant is "qualified" for the

classification and "eligible" for the examination; for the administration of a common examination to form common Registers from which all departments and agencies draw their candidates through issuance of Certificates of Eligibles, for the certification of eligibles to the departments for consideration; and for the review and approval of the appointments made from such Certificates. The experience of the named class representatives with this joint, interdepartmental selection process is typical of that of the entire class. See affidavits and depositions of named plaintiffs.

5. The common claim against the selection procedure is that it disproportionately eliminates African-American applicants and potential applicants at every stage of the process. The aspects of that selection procedure that are challenged by the named plaintiffs in their individual claims and in the class claim fall in three principal categories: (a) recruitment and exam eligibility practices which disproportionately exclude African-American eligibles from examinations and placement on State Registers; (b) examinations which unnecessarily disadvantage the ranks and scores of African-American eligibles on such Registers; and (c) manipulation of the Registers and Certificates of Eligibles to avoid or disadvantage black eligibles in the certification and appointment phase of the selection procedures.

6. The individual claims of the named class representatives are embedded in the systemic claim brought against the defendants' selection procedure. The affidavits and depositions of the class representatives establish that each of them have been adversely affected by that selection procedure in the same way that is asserted on behalf of the class.

7. Denial of class certification would result in a multiplicity of separate trials challenging the same practices, but in the less efficient context of individual fact situations and

individualized efforts to establish liability to particular plaintiffs. Such a series of individual trials would have no preclusive effect on one another insofar as the plaintiffs in such separate cases are concerned. Already there are pending before the EEOC a series of new Charges by African-American applicants which raise the same systemic challenges to the defendants' appointment practices that are the subject of this action. There are also several hundred persons having the same type of systemic claims as the named plaintiffs in this action who are relying on certification of the class in this action as an alternative to bringing their own challenges, as they have been directed to do by the Supreme Court. Crown Cork & Seal Co., Inc. v. Parker, 462 U.S. 345, 103 S.Ct. 2392, 2396 (1983) ("Class members who do not file suit while the class action is pending cannot be accused of sleeping on their rights; Rule 23 both permits and encourages class members to rely on the named plaintiffs to press their claims. **** We conclude, as did the Court in American Pipe, that the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action"). (emphasis added).

8. Absent class certification, the issue of Title VII liability will have to be repeatedly relitigated in a series of hundreds of individual lawsuits involving the same type of systemic discrimination as raised by the named plaintiffs in this action. For example, every instance in which the defendants delay issuance of a certificate of eligibles or otherwise manipulate the certification process to avoid an African-American eligible could result in a new individual lawsuit absent certification of a class. Even if consolidation were possible for the hundreds of such instances that have already occurred in the period since the tolling of the limitations period began in this action, new instances of these systemic forms of discrimination will continue to

occur in the future absent a classwide remedy in this case and in United States v. Ballard that has preclusive effect regarding such practices.

9. A single classwide trial is clearly a more economical and effective means of resolving the systemic claims brought against the defendants' appointment procedures in this case.

10. In further support of this Motion the plaintiffs submit the Affidavit of Dr. Edwin Bradley and the statistical tabulations attached thereto, and the depositions of the defendants designated spokesmen on issues of personnel policies and procedures taken pursuant to F. R. Civ. P. 30 (b) (6) in this action.

WHEREFORE, for all the foregoing reasons, the plaintiffs request certification of the class defined herein.

Respectfully submitted,



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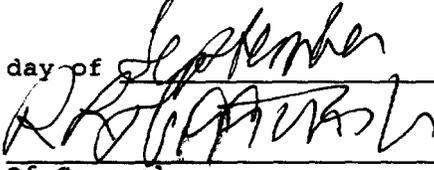
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This the 15th day of September, 1994.


Of Counsel