

United States District Court, District of Columbia.
Walter J. THOMAS, et al., Plaintiffs,
v.
George P. SCHULTZ, Secretary of State, Defendant.
Civ. A. No. 86-2850.

July 20, 1987.

ORDER

RIVERCOMB, District Judge.

*1 Upon consideration of plaintiff's motion to certify class, the opposition thereto and the entire record, it is

ORDERED that plaintiff's motion is DENIED.

Plaintiffs in this Title VII action seek certification of a class consisting of:

"... all black [Foreign Service] officers (and those blacks who have been unsuccessful in becoming or remaining officers) [who] have been adversely affected by common discriminatory policies and practices. These policies and practices involve assignments, performance appraisal, promotions, tenuring, selection out and retaliation." Complaint para. 12.

An individual litigant seeking to maintain a class action under Title VII must meet the prerequisites of numerosity, commonality, typicality, and adequacy of representation specified in F.R.Civ.P. Rule 23(a). *General Telephone Co. of Northwest v. EEOC*, 486 U.S. 318, 330 (1980).

In general, two criteria must be examined to determine the adequacy of representation: first, the named representatives must not have antagonistic or conflicting interests with the unnamed class members; and second, the representative must appear to be able to prosecute vigorously the interests of the class through qualified counsel. *National Assn. of Regional Medical Programs v. Matthews*, 551 F.2d 340, 345, citing *Senter v. General Motors Corp.*, 532 F.2d 511, 524-525 (6th Cir.), cert. denied, 429 U.S. 870 (1976).

It should be observed that the claims of the named plaintiffs place them in economic competition with the putative class members. Furthermore, plaintiff Johns successful career may put him in some conflict with those putative class members who have allegedly experienced tenuring, assignment, evaluation and advancement difficulties in the Foreign Service. The named plaintiff's claims and those of the putative class are inevitably diverse, and it is questionable whether the named plaintiffs could fairly and adequately represent the class members.

Of primary importance in this case, however, is the requirement of commonality. It is clear that the named plaintiffs cannot establish that a question of law and fact common to the class exists. Assuming that a pattern of discrimination could be established by the plaintiffs, each individual member of the class would be required to show how the discriminatory policy affected him or her. The lack of common questions of law and fact would relegate this Court to holding separate trials to decide each class members claim. The Court concludes the maintenance of plaintiff's action as a class action does not advance "the efficiency and economy of litigation which is a principal purpose of the procedure." *American Pipe and Construction Co. v. Utah*, 414 U.S. 538, 553 (1974).

Finally, plaintiffs have failed to demonstrate typicality. The diverse career histories of the named plaintiffs demonstrate that their own claims are not typical of each other, let alone the putative class. Resolution of their claims will turn on particular factual arguments unique to their individual claims. The class-wide claims plaintiff's purport to raise on behalf of other black FSOs may center on statistical evidence. The emphasis in plaintiff's individual claims as well as the government's defenses may not emphasize statistical evidence.

*2 Accordingly, it is ORDERED that plaintiff's motion is DENIED.