



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Darell B. et al.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Headquarters),  
Agency.

Appeal No. 2020003752

Hearing No. 570-2018-00116X

Agency No. 6H-000-0036-17

**DECISION**

Complainant, the putative class agent, filed an appeal from the Agency's final order dated May 10, 2020, concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Postal Police Officer (PPO) in the United States Postal Inspection Service (USPIS) at an Agency facility in Washington, D.C.

On August 31, 2017, Complainant initiated EEO contact alleging that the Agency discriminated on the bases of race (unspecified) and reprisal for prior EEO activity when it continued to disparately impact PPOs in terms of pay, benefits, and working conditions. Complainant also alleged the Agency retaliated when, on July 27, 2017, it interfered with a scheduled teleconference between PPO Managers and the Postal Police Officers Association (PPOA), the incumbent union.

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

On October 6, 2017, Complainant filed a formal EEO complaint alleging that the Agency subjected him to discrimination on the basis of race (African American), color (Black), and reprisal for prior EEO activity. Complainant stated, “On behalf of all non-white [PPOs] and PPO managers, the undersigned alleges multiple instances of discrimination and retaliation based on race. . . . (USPIS) has a long-standing practice of discriminating against PPOs and PPO managers on the bases of pay and benefits.” Complainant alleged disparate impact of a continuing nature. Complainant alleged that PPO and PPO Manager positions are primarily held by non-white incumbents and that USPIS seeks to prevent PPOs and PPO Managers from meeting to seek better pay and intentionally misrepresents their duties to justify lesser wages. Complainant reiterated, on July 27, 2017, USPIS interfered with a PPO/PPO Manager and PPOA teleconference to discuss labor-management concerns such as hiring, recruitment, retention, and benefits within PPO ranks.

Pursuant to 29 C.F.R. § 1614.204(d), the Agency forwarded the complaint for class certification review by an EEOC Administrative Judge (AJ). During the assigned AJ’s review, Complainant alleged, for many years, “the Agency has engaged in a pattern or practice of wage suppression in racially segregated job titles that adversely affects all [PPOs],” a majority of whom are non-white (Complainant originally alleged 62% were non-Caucasian, but after October 2017 alleged 73% were non-Caucasian.) Further, Complainant alleged “the Agency has engaged in a pattern of disparate treatment across particular racial and ethnicity lines, unequal application of Agency policy, and deviations from standard procedures without explanation or justification.” Additionally, he alleged the Agency failed to provide pay and benefits comparable to other Federal law enforcement officers; failed to maintain pay parity with other Postal law enforcement officers; excluded PPOs from the Agency Health Examination Program and the Part-time Employment Program; established an awards program that disproportionately favors primarily-Caucasian work classifications; prevented PPOs from carrying a firearm to and from work for their personal protection; suppressed and minimized the duties of PPOs as compared to work classifications that are primarily-Caucasian; and prevented access to a Self-Referral Counseling Program. As to typicality, Complainant stated that all PPOs are compensated for wage and benefits on the same scale. Further, he stated, since July 2017, the Agency has interfered with protected activities, which deterred he and other PPOs from pursuing their rights. Complainant stated that there are approximately 464 PPOs and 106 PPO Managers and additional class members who are no longer employed with the Agency. Complainant stated that PPOs are dispersed nationwide but compensation decision-making is centralized. Complainant stated that he secured the services of an Employee Rights attorney for legal representation for the class.

In opposition to Complainant’s allegations, the Agency stated, “Complainant is using the EEOC [process] to pursue a generalized grievance . . . to circumvent collective bargaining and extract un-negotiated benefits for a proposed class of *all* [PPOs], regardless of whether they are part of a protected class.” The Agency stated that the instant complaint should be dismissed as a collateral attack on the Agency’s negotiated grievance process. The Agency stated that Congress expressly distinguished Postal Inspectors (PIs) from PPOs in responsibilities and level of authority. The Agency stated, “PPOs are only authorized to enforce Agency regulations regarding conduct on Agency property, whereas PIs have responsibility for investigating violations of postal laws.”

The Agency added that PPOs work in the capacity of security guards and PIs work as law enforcement officers.<sup>2</sup> The Agency stated that the terms and conditions of PPOs' employment are dictated by their collective bargaining agreement and the Union is their bargaining representative. The Agency stated that it is forbidden from making any unilateral change to the pay and benefits of PPOs outside of the collective bargaining agreement.

The Agency stated further that Complainant added the issue of PPOs' inability to access a Self-Referral Counseling Program, which should be dismissed also because it was not raised during EEO Counseling and was already addressed in another class complaint<sup>3</sup>. The Agency stated that Complainant did not raise the carrying firearm issue with a Counselor and it is more appropriately addressed under the negotiated grievance process as a generalized grievance. The Agency stated the class complaint and Complainant's individual complaint should be dismissed. The Agency provided an Agreement between United States Postal Service and Postal Police Officers Association, Handbook EL-906, 2012 – 2017. The collective bargaining agreement provides annual salary and hourly wage schedules for PPOs hired before April 5, 2014 and those hired on or after April 5, 2014 and information for step increases. In pertinent part, the agreement also has provisions for employee classifications, periodic pay adjustments, leave, seniority, safety and health, and grievance procedures.

The assigned EEOC AJ found the class complaint failed to meet the certification requirements outlined in 29 C.F.R. § 1614.204(a) and recommended dismissal of the complaint. The AJ found that Complainant failed to show that there are questions of fact common to all putative class members, failed to identify a common policy or practice, and to show "across the board claims." The AJ stated that Complainant failed to show commonality between bargaining unit employees - PPOs, and non-bargaining unit employees - PPO Managers, as well as commonality between employees who are alleging retaliation and those alleging disparate treatment based on race. The AJ stated that Complainant is a bargaining unit employee as a PPO and failed to show that he suffered substantially the same injury and has the same interest as other putative class members. Utilizing the same facts, the AJ found that the class agent failed to show that his claims of discrimination based on race and reprisal are typical of the putative class members. The AJ found that the class agent's claims were significantly different from class members. The AJ found that the class agent failed to establish commonality and typicality for the class complaint.

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<sup>2</sup> The Agency cited 5 U.S.C. § 8401(17) to define the term "law enforcement officer."

<sup>3</sup> In Clayton v. U.S. Postal Service, EEOC Appeal No. 0720120022 (April 23, 2013), a class agent filed a complaint alleging that the Agency discriminated based on race because it allowed Postal Inspectors access to a Self-Referral Counseling Program (paid for by the Agency), but did not allow such access to Postal Police Officers. The complaint alleged disparate impact, stating that most Postal Police Officers are African-American and Hispanic and most Postal Inspectors are Caucasian. The Commission reversed the Agency's final order denying certification of the class complaint for failure to satisfy the requirements set forth in 29 C.F.R. § 1614.204(a)(2).

In a footnote, the AJ held that the instant matter is analogous to the circumstances in Peoples v. U.S. Postal Service, EEOC Appeal No. 0120071094 (March 7, 2007)<sup>4</sup> and, hence, the class complaint was subject to dismissal for failure to state a claim and lack of jurisdiction. As to the individual complaint, the AJ instructed the Agency “[t]he dismissal of the class complaint shall inform the [Class] Agent either that the complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart A [for individual complaints] or that the complaint is also dismissed as an individual complaint in accordance with § 1614.107.”

On May 10, 2020, the Agency issued a final decision implementing the AJ’s dismissal pursuant to 29 C.F.R. § 1614.204(a)(2). The Agency stated further that the class and individual complaints fail to state a claim as they involve a generalized grievance. The instant appeal from Complainant followed.

### ANALYSIS AND FINDINGS

#### Class Certification

The purpose of class action complaints is to economically address claims “common to [a] class as a whole . . . turn[ing] on questions of law applicable in the same manner to each member of the class.” General Telephone Co. of the Southwest v. Falcon, 457 U.S. 147, 155 (1982); Mitchell, et al. v. Dep’t of the Air Force, EEOC Appeal No. 01A41492 (Oct. 18, 2005); Mastren, et al. v. U.S. Postal Service, EEOC Request No. 05930253 (October 27, 1993). EEOC regulations provide that a class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that: (i) the class is so numerous that a consolidated complaint of the members of the class is impractical; (ii) there are questions of fact common to the class; (iii) the claims of the agent are typical of the claims of the class; and (iv) the agent of the class, or if represented, the representative will fairly and adequately represent the interests of the class. 29 C.F.R. § 1614.204(a)(2). The regulations further provide, at 29 C.F.R. § 1614.204(d)(2), that a class complaint may be dismissed if it does not meet the four requirements of a class complaint or for any of the procedural grounds for dismissal set forth in 29 C.F.R. § 1614.107.

#### *Commonality and Typicality*

The purpose of the commonality and typicality requirements is to ensure that a class agent possesses the same interests and has experienced the same injury as the members of the proposed class. See Falcon, 457 U.S. 147.

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<sup>4</sup> In Peoples v. U.S. Postal Service, EEOC Appeal No. 0120071094 (March 7, 2007), a Postal Police Officer alleged that the Agency discriminated against him based on race as to (1) scope of authorizing PPOs, (2) increased law enforcement training, and (3) higher level pay when performing duties outside scope of employment. The Commission affirmed the Agency’s dismissal of the complaint for failure to state a claim, stating “[Complainant] lodged a generalized grievance that would apply equally to all Postal Police Officers.”

Both commonality and typicality serve as guideposts for determining whether, under the circumstances, maintenance of a class action is economical and whether a proposed class agent and the remaining potential class members' claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. Id. at 157 n.13. While these two criteria tend to merge and are often indistinguishable, they are separate requirements. Id. "Commonality requires that there be questions of fact common to the class, [that is, t]he putative class agent must establish an evidentiary basis from which one could reasonably infer the operation of an overriding policy or practice of discrimination." Garcia v. Dep't of the Interior, EEOC Appeal No. 07A10107 (May 8, 2003). Generally, this can be accomplished through allegations of specific incidents of discrimination, supporting affidavits containing anecdotal testimony from other employees who were allegedly discriminated against in the same manner as the class agent, and evidence of specific adverse actions taken. Id.; Belser v. Dep't of the Army, EEOC Appeal No. 01A05565 (December 6, 2001) (citing Mastren, EEOC Request No. 05930253). Conclusory allegations, standing alone, do not show commonality. Garcia, EEOC Appeal No. 07A10107 (citing Mastren, EEOC Request No. 05930253). Factors to consider in determining commonality include whether the practice at issue affects the whole class or only a few employees, the degree of centralized administration involved, and the uniformity of the membership of the class, in terms of the likelihood that the members' treatment will involve common questions of fact. Id.

Typicality, on the other hand, requires that the claims or discriminatory bases of the class agent be typical of the claimed bases of the class. Id. A class agent must be part of the class he seeks to represent, and must "possess the same interest and suffer the same injur[ies] as the class members." Falcon, 457 U.S. at 156. Moreover, claims must be sufficiently typical to encompass the general claims of the class members so that it will be fair to bind the class members by what happens with the class agent's claims. Matthews-Frazier, et al. v. U.S. Postal Service, EEOC Appeal No. 01A44789 (April 20, 2006).

The underlying rationale of the typicality and commonality requirement is that the interests of the class members be fairly encompassed within the class agent's claim. Falcon, 457 U.S. at 147. In this case, we agree with the AJ that Complainant failed to satisfy the requirements of commonality and typicality provided in 29 C.F.R. § 1614.204(a)(2).

Here, we determine that Complainant has not established questions of fact common to the class, and therefore has not established commonality. Complainant, a PPO who is African-American, stated that most PPOs (bargaining unit employees) and PPO Managers (non-bargaining unit employees) are non-Caucasian and, for many years, "the Agency has engaged in a pattern or practice of wage suppression in racially segregated job titles that adversely affects all [PPOs]." Complainant also alleged "the Agency has engaged in a pattern of disparate treatment across particular racial and ethnicity lines, unequal application of Agency policy, and deviations from standard procedures without explanation or justification." Complainant asserted that the Agency failed to provide pay and benefits comparable to other Federal law enforcement officers, such as Postal Inspectors; failed to maintain pay parity with other Postal law enforcement officers; excluded PPOs from the Agency Health Examination Program and the Part-time Employment Program; established an awards program that disproportionately favors primarily-Caucasian work

classifications; prevented PPOs from carrying a firearm to and from work for their personal protection; suppressed and minimized the duties of PPOs as compared to work classifications that are primarily-Caucasian; and prevented access to a Self-Referral Counseling Program. Finally, Complainant also stated that the Agency interfered with a meeting scheduled between PPO Managers and the incumbent union.

We find that Complainant failed to establish an evidentiary basis from which one could reasonably infer the operation of an overriding policy or practice of discrimination. See Garcia, EEOC Appeal No. 07A10107. The record contains conclusory allegations, which alone are insufficient to establish commonality. Id.

Likewise, we find that Complainant also failed to establish that his individual claim is typical of the class as a whole. Complainant stated that there are approximately 464 PPOs (73% of whom are non-Caucasian) and 106 PPO Managers and additional class members who are no longer employed with the Agency. As previously stated, Complainant is a PPO, which is within the bargaining unit, but PPO Managers are non-bargaining unit. Also, a significant number of PPOs/PPO Managers are Caucasian, the specific racial class Complainant asserted is favored by the Agency. Further, PPOs and PPO Managers are dispersed nationwide so terms and conditions of employment may differ at various locations. Based on the record, we determine that it would be unfair or inappropriate to bind the class members to the outcome of Complainant's claim because his experience is not representative or typical of other putative class members. See Matthews-Frazier, EEOC Appeal No. 01A44789.

We find that the AJ properly concluded that Complainant failed to establish the commonality and typicality requirements for class certification.

### Procedural Dismissal

EEOC Regulation 29 C.F.R. § 1614.107(a)(1) provides that an Agency shall dismiss a complaint that fails to state a claim. An Agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that Agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, 1614.106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

Complainant alleges that Postal Police Officers, who are primarily non-Caucasian, are not given the same pay, benefits, and working conditions the Agency provides to its Postal Inspectors, who are primarily Caucasian. Additionally, Complainant alleges the Agency failed to provide pay and benefits comparable to other Federal law enforcement officers; failed to maintain pay parity with other Postal law enforcement officers; excluded PPOs from the Agency Health Examination Program and the Part-time Employment Program; established an awards program that disproportionately favors primarily-Caucasian work classifications; prevented PPOs from carrying

a firearm to and from work for their personal protection; suppressed and minimized the duties of PPOs as compared to work classifications that are primarily-Caucasian; and prevented access to a Self-Referral Counseling Program.

The Agency stated that Complainant is attempting to pursue a “generalized grievance” through the EEO process and that the terms of PPOs’ employment is dictated by a collective bargaining agreement for whom the union, PPOA, is the bargaining representative. The Agency added that Congress distinguished between employment terms for PPOs and PIs, with PIs performing more-so as law enforcement officers.

We agree with the AJ’s alternative conclusion, finding dismissal for failure to state a claim appropriate. We find the instant complaint involves a generalized grievance shared by all who occupy PPO positions. (The Agency provided salary and wage tables for PPOs in the 2012-2017 collective bargaining agreement in the record.) The U.S. Supreme Court has noted that a generalized grievance shared by all or a substantially large class of individuals is not sufficient to establish standing. Warth v. Seldin et al., 422 U.S. 490 (1975). Therefore, we find that Complainant was not an aggrieved employee within the meaning of the Commission’s regulations with respect to the allegation set forth in this complaint. The Commission notes that Complainant failed to demonstrate that he suffered individual or unique harm with respect to a term, condition, or privilege of employment as a result of the alleged discriminatory action.

Further, as to access to the Self-Referral Counseling Program, the EEOC regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides that the Agency shall dismiss a complaint that states the same claim that is pending before or has been decided by the agency or Commission. Here, the record reflects, in Clayton v. U.S. Postal Service, EEOC Appeal No. 0720120022 (April 23, 2013), a class agent filed a complaint alleging that the Agency discriminated based on race because it allowed Postal Inspectors access to a Self-Referral Counseling Program (paid for by the Agency), but did not allow such access to Postal Police Officers. The complaint alleged disparate impact, stating that most Postal Police Officers are African-American and Hispanic and most Postal Inspectors are Caucasian. In the decision for 0720120022, the Commission reversed the Agency’s final order denying certification of the class complaint for failure to satisfy the requirements set forth in 29 C.F.R. § 1614.204(a)(2).

Finally, Complainant alleged the Agency retaliated when, on July 27, 2017, it interfered with a scheduled teleconference between PPO Managers and the incumbent union, PPOA. We find the alleged Agency actions were not of a type reasonably likely to deter Complainant or others from engaging in prior protected activity. Lindsey v. U.S. Postal Service, EEOC Request No. 05980410 (November 4, 1999) (citing EEOC Compliance Manual, No. 915.003 (May 20, 1998)).

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the dismissal of Complainant’s class and individual complaints.

STATEMENT OF RIGHTS – ON APPEAL  
RECONSIDERATION (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the complainant or the agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

**Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request.** Any supporting documentation must be submitted together with the request for reconsideration. **The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604I.**

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

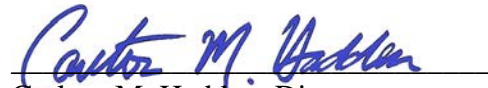
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title.

Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant’s Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

November 16, 2020

Date