



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D. C. 20415

IN REPLY PLEASE REFER TO

DEC 30 1977

YOUR REFERENCE

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Mr. Kevin D. Rooney
Assistant Attorney General
for Administration
U.S. Department of Justice
Washington, D.C. 20530

DC 713A8A011

Dear Mr. Rooney:

This constitutes my recommendations under the provisions of section 713.604 of the Civil Service regulations for the acceptance or rejection of the class complaint filed on September 19, 1977, at the Department of Justice by Christine A. Hansen in behalf of herself and all females who have ever applied for the position of special agent of the Federal Bureau of Investigation. The basis of the complaint is that the Federal Bureau of Investigation (FBI) has engaged in the use of arbitrary and irrational employment practices which have intentionally discriminated against women and made it more difficult for them to become special agents or to remain as special agents or to advance in careers in the FBI.

On July 15, 1977, Ms. Hansen first contacted an EEO Counselor and made known her complaint. Civil Service class complaint regulations require the agent for the proposed class to contact an EEO Counselor within 90 days of the matter giving rise to the agent's allegation of individual discrimination. The agent must advise the counselor that she intends to file a class complaint and must submit the individual and class aspects of the complaint to counseling. If the counseling is unsuccessful, the agent has 15 days from her receipt of the notice of final interview in which to file a signed and written formal complaint. The formal complaint, together with subsequent submissions under section 713.604(d) of the Civil Service regulations must set forth specifically and in detail: 1) a description of the agency personnel management policy or practice giving rise to the complaint; and 2) a description of the resulting matter which adversely affected the agent. The allegations raised in the complaint must be within the purview of part 713, subpart F, of the regulations, and cannot consist of allegations that were contained in a previous complaint filed in behalf of the same class which is pending in the agency or which has been resolved or decided by the agency. Finally, the class must be so numerous that a consolidated complaint of the class members would be impractical, the complaint must raise common questions of fact, the claims of the agent must be typical of the claims of the class, and the agent or her representative must fairly and adequately protect the interests of the class.

The Civil Service regulations define a class as a group of agency employees, or former agency employees, and/or applicants for employment with the agency. The

regulations do not provide for the inclusion of future employees or future applicants in the class. Only one agent may bring the complaint in behalf of the class and that agent, in order to have standing to attack a particular policy or practice, must have been personally adversely affected by the questioned policy or practice. In view of the regulations, the Examiner finds:

- 1) a class may not consist of future employees or applicants;
- 2) only one agent can bring a complaint in behalf of a class;
- 3) a class complaint may not attack any alleged discriminatory policy or practice unless the agent was personally adversely affected by that policy or practice.

In addition, before discussing the specific allegations of the asserted agent, the question of timeliness should be reviewed. As stated above, the regulations require the agent to contact an EEO Counselor within 90 days of the matter giving rise to the agent's allegation of individual discrimination. The agent argues that she is alleging that her employer has an overall, pervasive and continuing practice of discriminating against female employees. The Examiner recognizes that there is support in the case law for this argument. However, the Civil Service regulations do not provide for the expansion of the time limit on the basis of an allegation that the pattern of discriminatory conduct continued into the 90 day period, and the regulations have not been interpreted to allow for the expansion of the time limit on such a basis. As a result, the Examiner finds that an alleged continuing pattern of discriminatory conduct is not a sufficient reason to extend the time limit for contacting a counselor or to accept a class complaint which would otherwise be untimely.

The agent has divided the alleged acts of discrimination against women into three groups, (a) applicant recruitment, (b) training, and (c) work situations. For the purposes of analysis, each of these allegations will be considered a separate class complaint which must meet all the requirements for a class complaint before it can be accepted.

(a) Applicant Recruitment

The agent alleges that the recruitment procedures of the FBI are used to favor male applicants over female applicants and to reject a greater percentage of female applicants for special agent positions. The record reflects that Ms. Hansen was appointed to a Special Agent position effective November 20, 1972. Because any adverse effects upon the agent which resulted from the FBI's recruitment policies and practices must have occurred prior to the effective date of the appointment, and because the appointment of the proposed agent was made more than 90 days before the contact with the counselor, the Examiner finds that the individual claim on which the agent could base the class complaint is untimely. Further, the agent has not specifically disclosed the adverse effects that the recruitment practices have had on her other than the general allegation that by keeping the number of female special agents small, the agency is able to

discriminate against them more easily. Accordingly, the Examiner recommends that this allegation be rejected as a class complaint.

(b) Training

The agent alleges that the training program for newly appointed special agents at the FBI Academy at Quantico, Virginia, requires a higher standard of women and has never been correctly validated. Ms. Hansen successfully completed this training after her initial appointment. There has been no showing that the proposed agent has been adversely affected by the practices and policies which she wishes to contest. Accordingly, the Examiner finds that she lacks standing under the Civil Service regulations to bring a class complaint on this issue and recommends that the agency reject this allegation as a class complaint.

(c) Work Situations

In this regard, the asserted agent alleges that women are assigned and transferred to the various FBI offices, given assignments within a given office, and denied promotional opportunities on the basis of sex. The record shows that Ms. Hansen was assigned to the Phoenix Office in December, 1976 and has continued in that assignment (although on detail to Headquarters) through the present time. Because her assignment has been continuing and because the agency's decision not to assign her to another position has been continuing, the Examiner finds that the asserted agent's allegations in this regard can be considered timely and that within the context of the further criteria for the maintenance of a class complaint discussed below, the Examiner recommends that the agency accept the allegation regarding work situation as a class complaint.

As noted above, four of the criteria for the maintenance of a class complaint are numerosity, commonality, typicality, and adequacy of representation. In this complaint, the record reveals that there are 70 female special agents with the FBI. The file does not reflect the number of female special agents who have left the FBI. Nonetheless, the Examiner finds the number of potential class members to be sufficiently large to make consolidation impractical. The allegations raise a common question of sex discrimination and the agent's claim of sex discrimination is typical of the claims of this asserted class. The record shows that the agent's representative is adequate and does not present any reason to believe that the interests of the agent are in conflict with the interests of the class members. The Examiner is aware that the agent would include in the class all female applicants who were rejected for the position of Special Agent and all women forced to resign from the Special Agent training school, however, in view of my recommendation to accept only that issue concerning the work situation of female special agents, it would appear that the appropriate class would be all present and former female special agents only. I recommend that the agency so define the class if it accepts only issue (c) discussed above.

Throughout all the allegations, the agent has asserted discrimination in connection with many incidents, other than those discussed above, which occurred outside of the 90 day time period for contacting the counselor and which affected persons

other than the asserted agent. While past acts may be used as evidence in regard to a timely issue of discrimination, they, themselves, cannot be considered as timely claims and cannot be treated as such.

In summary, the Examiner recommends that the class be limited to current and former female special agents, and that Ms. Hansen be accepted as the agent for a class complaint regarding FBI policies and practices in the assignment and usage of female special agents. The Examiner recommends that rejection of all other allegations.

The recommendations contained herein shall become the agency decision unless the agency rejects or modifies them within 10 calendar days of its receipt.

Sincerely yours,

Martha J. Lanphear
EEO Complaints Examiner

cc: Mr. Alexander C. Ross
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