1987 WL 65054
United States District Court,
N.D. California.

Archie BAREFIELD, Jr., et al, Plaintiffs,
v.
CHEVRON U.S.A. INC., Defendant.

No. C 86–2427 TEH. | Sept. 9, 1987.

Attorneys and Law Firms

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Opinion

ORDER

Thelton E. HENDERSON, District Judge.

***1** This matter comes before the Court on plaintiffs' motion for class certification. On July 27, 1987 the Court held oral argument on plaintiffs' motion. Having carefully-considered the lengthy papers and oral argument of counsel, the Court grants plaintiffs' motion, as explained below.

I. Introduction

This lawsuit was filed by the named plaintiffs on May 12, 1986 as a class action to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.,* as amended, the Civil Rights Act of 1866, 42 U.S.C. § 1981, and the California Fair Employment and Housing Act, Government Code § 12900 *et seq.,* on behalf of blacks and Hispanics employed in the oil and production facilities in the Northern California Division of Chevron. Plaintiffs claim that defendant operates a discriminatory internal promotion system in which white employees receive a disproportionate share of the higher level jobs; as a result of this system, plaintiffs claim, minority employees have been, and continue to be, excluded from higher level jobs. Specifically, plaintiffs claim they have been denied promotions to 1) salaried, 2) head and lead, 3) technician, 4) maintenance, and 5) oilfield operator A positions. Further, the complaint alleges that promotion decisions are made on a subjective basis, by a virtually all-white managerial workforce, without objective criteria or guidelines. Plaintiffs also allege nepotism, preference for white employees, and discrimination in job assignments, training and compensation. Plaintiffs assert that all of these practices constitute disparate treatment of blacks and Hispanics, and have resulted in continuing disparate impact upon these minority employees.

II. Legal Standard

In this motion, plaintiffs seek to certify the following class:

> a11 current, former and future black and Hispanic persons employed on or after may 12, 1983 in Chevron U.S.A. Inc.'s Northern California Division, Exploration, Land and Production Department for the Western Region, excepting clerical employees and engineers, who have been or continue to be or may in the future be subject to discrimination on the basis of race or national origin pertaining to promotions, job assignments, performance evaluations and training.[1]

According to Rule 23(a) of the Federal Rules of Civil Procedure, plaintiffs must satisfy all of the following requirements before a class can be certified: 1) numerosity—the class must be so numerous that joinder of all its members is impracticable; 2) commonality—there must be questions of law or fact common to the class; 3) typicality—the claims or defenses of the representative parties must be typical of the claims or defenses of the class; and 4) adequacy—the representative parties must fairly and adequately protect the interests of the class. Fed.R.Civ.P. 23(a).

In addition to these prerequisites, plaintiffs must satisfy one of the elements of Rule 23(b). Here, plaintiffs seek to certify a class pursuant to Rule 23(b)(2), which requires plaintiffs to establish that the party opposing the class has

acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Fed.R.Civ.P. 23(b)(2).

***2** Before addressing each of these requirements, a few initial observations are appropriate. In determining whether to certify this class, this Court must only determine whether the prerequisites of Rule 23 have been met. Indeed, ' [the question [for class certification] is not whether the ... plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 178 (1974), *quoting with approval, Miller v. Mackey International, Inc.* 452 F.2d 424, 429 (5th Cir.1971). Moreover, while a Title VII class action must, like any other action, withstand a rigorous analysis under Rule 23, *see General Telephone Co. of Southwest v. Falcon,* 457 U.S. 147, 161 (1982), "a trial court must consider the broad remedial purposes of Title VII and must liberally interpret and apply Rule 23 so as not to undermine the purpose and effectiveness of Title VII in eradicating class-based discrimination." *Gay v. Waiters' and Dairy Lunchmen's Union,* 549 F.2d 1330, 1334 (9th Cir.1977).

A. Requirements of Rule 23(a)

1. Numerosity

The first prong under Rule 23(a) requires that the class be sufficiently numerous that joinder of all class members is impracticable. Fed.R.Civ.P.23(a)(1). The determination of numerosity depends upon the specific facts of each case, and not simply a count of class members. *Garcia v. Gloor,* 618 F.2d 264, 267 (5th Cir.1980), *cert. denied,* 449 U.S. 1113 (1981); *Kraszewski v. State Farm,* 27 FEP Cases 27, 29 (N.D. Cal.1981); *see also* 3B J. Moore & J. Kennedy, *Moore's Federal Practice* S 23.05 [1] at 23–150, 23–151 (2d ed.1985). However, a class with one hundred or more members almost certainly satisfies the numerosity requirement. *Kraszewski,* 27 FEP at 29; *see, e.g., Griffin v. Burns,* 570 F.2d 1065, 1072–73 (5th Cir.1978) (123 members); *Sagers v. Yellow Freight System, Inc.,* 529 F.2d 721, 734 (5th Cir.1976) (110 members); *Kirkland v. New York State Dep't of Correctional Services,* 520 F.2d 420, 427 (2d Cir.1975) (117 members), *cert. denied,* 429 U.S. 823 (1976).

In this case, plaintiffs claim that there are 116 incumbent black and Hispanic employees in the Northern California Division, excepting engineers and clerical workers, subject to discrimination in promotion, job assignment, performance evaluation, and training practices and that the number of former and future minority employees is indefinite. The Court finds this number satisfies the numerosity requirement. Because the sheer size of this class makes joinder impracticable, class treatment is appropriate.

Chevron's sole objection to plaintiffs' showing of numerosity is that the number of class members who have filed administrative charges of discrimination is insufficient to meet the numerosity requirement. However, class members need not satisfy the jurisdictional requirements of filing an administrative charge. *Inda v. United Air Lines, Inc.,* 565 F.2d 554, 559 (9th Cir.1977), *cert. denied,* 435 U.S. 1007 (1978); *Kenna v. Pan Am World Airways, Inc.* 17 FEP Cases 1445, 1447–48 (N.D. Cal.1978). Moreover, Chevron's reliance on *Roundtree v. Cincinnati Bell, Inc.,* 90 F.R.D. 7, 9 (S.D. Ohio 1979), for the proposition that the number of administrative charges filed is insufficient to certify a class, is mistaken. In *Roundtree* the entire proposed class was *36* individuals who had filed administrative discrimination charges. *Id.* In the instant case, the proposed class is at least *116* employees. Accordingly, the Court finds plaintiffs have satisfied the numerosity requirement.

2. Commonality

***3** The second requirement of Rule 23(a) is that the class members must have questions of law or fact in common. Fed.R.Civ.P. 23(a)(2). This does not mean, however, that every question of law or fact must be common to every member of the class. *Int'l Molders' and Allied Workers' Local Union No. 164 v. Nelson,* 102 F.R.D. 457, 461 (N.D. Cal.1983); *Martinez v. Bechtel Corp.,* 11 FEP Cases 898, 902–03 (N.D. Cal.1975).

In *Harriss v. Pan American World Airways, Inc.* 74 F.R.D. 24, 41 (N.D. Cal.1977), Judge Schwarzer set forth a framework for considering the commonality requirement, tailored to the employment discrimination context:

> (i) What is the nature of the unlawful employment practice charged—is it one that peculiarly affects only one or a few employees or is it genuinely one having class-wide impact.
>
> (ii) How uniform or diverse are the relevant employment practices of the employer, considering matters such as: size of the work force; number of plants and installations involved; extent of diversity of employment conditions, occupations and work activities; degree of geographic dispersion of the" employees and of intra-company employee transfers

and interchanges; degree of decentralization of administration and supervision as opposed to the degree of local autonomy.

(iii) How uniform or diverse is the membership of the class, in terms of the likelihood that the members' treatment will involve common questions.

(iv) What is the nature of the employer's management organization as it relates to the degree of centralization and uniformity of relevant employment and personnel policies and practices.

(v) What is the length of the time span covered by the allegations, as it relates to the degree of probability that similar conditions prevailed throughout the period.

Under the criteria set forth by Judge Schwarzer, the Court finds plaintiffs have met the commonality requirement. First, the alleged unlawful employment practice has class-wide impact. Plaintiffs' statistics reveal a disproportionately low representation of blacks and Hispanics in upper-level jobs for which class members are eligible under the promotion-from-within system. For example, in 1985 while minority employees constituted 29% of the operations workforce, they held only three of 126 salaried positions and one of 51 head and lead positions. In addition, administrative investigative findings have sufficiently established class-wide impact in job assignments, training and performance evaluations.

As noted above, at this stage of the proceedings, plaintiffs need not convince the Court that they'will prevail on the merits. While statistics or administrative findings may be less than definitive as proof of discrimination, they may be sufficient for class certification. *See Duncan v. Tennessee,* 84 F.R.D. 21, 36 (M.D. Tenn.1979); *Vuyanich v. Republic Nat'l Bank,* 78 F.R.D. 352, 356 (N.D.Tex.1978); *Women's Committee for Equal Employment Opportunity v. NBC,* 71 F.R.D. 666, 670 (S.D.N.Y.1976). Through statistics and administrative findings plaintiffs have demonstrated the alleged unlawful employment practice has class-wide impact. Thus, it cannot be said the alleged unlawful employment practice "peculiarly affects only one or a few employees." *Harriss,* 74 F.R.D. at 41.

***4** With regard to the second criterion, the Court finds the alleged discriminatory impact is the product of uniform employment practices. Plaintiffs allege, and defendant does not dispute, that the procedures by which Chevron fills vacancies by promotion in salaried and classified positions are the same for all areas and departments within the Northern California Division.

Similarly, the Northern California Division uses a single evaluation with the same criteria to assess the job performance of all classified operations and maintenance employees from all work areas. In addition, the same evaluation form with the same criteria is used to assess the job performance of all salaried employees, including operations assistants, foremen and staff employees. Accordingly, the Court finds the relevant employment practices of the Northern California Division are sufficiently uniform to meet the commonality requirement.

Third, the Court finds the class membership is uniform enough such that the members' treatment will involve common questions. All class members are blacks and Hispanics who perform or will perform oilfield-related work; all have been subject to the same system of promotion, job assignment, training, and evaluation process.

Fourth, the Court finds the Northern California Division's employment practices are controlled by a uniform, centralized management organization. As noted above, the Human Resources Group oversees a uniform promotion system and evaluation process for all Northern California Division departments.

Finally, regarding the fifth criteria, the Court finds the alleged employment practices have remained relatively consistent throughout the time span covered by the allegations. Defendant does not suggest that the challenged promotion, training, job assignment and evaluation practices have varied during the relevant time span. Thus, the challenged employment practices have remained sufficiently consistent such as to meet the commonality requirement.

Defendant objects to plaintiffs' showing of commonality on three grounds: 1) plaintiffs' statistical data is defective because it does not take account of seniority; 2) plaintiffs' use of the.29% minority representation in the operations job category as the proper selection pool for the filling of higher positions is inappropriate; and 3) Chevron's selection procedures are proper, as Chevron uses objective, and not as plaintiffs suggest, subjective criteria for promotions.

Regarding defendant's seniority objection, as defendant conceded at oral argument, this objection is directed to the merits of this case. In deciding whether to certify a class, a court must only determine whether plaintiffs have met the requirements of Rule 23, and not whether plaintiffs will prevail on the merits. *Eisen,* 417 U.S. at 178. Second, with regard to the proper selection pool, the Court finds that the 29% minority representation in operations is an

appropriate selection pool for assessing Chevron's selection rate of minority employees to more responsible jobs. The operations job category is the predominant occupation group from which employees move into other job categories; the operations group is *the* primary source of promotions into salaried, technician and maintenance positions. While it may be true, as defendant argues, that operator B employees are not promoted to head and foreman positions, operator A employees *are* promoted to these positions. Moreover, OOB employees are promoted to operations-assistant, maintenance, and technician jobs.

***5** Third, whether Chevron's selection criteria fall on the objective or subjective end of the continuum is immaterial because it's the existence of commonality and not the merits that is at issue. As plaintiffs argue, defendants must validate the use of either criteria if unjustified disparate impact results. *Antonio v. Wards Cove Packing Co., Inc.,* 810 F.2d 1477, 1485 (9th Cir.1987) (en banc). For all these reasons, under the analysis set forth by Judge Schwarzer, the Court finds plaintiffs have satisfied the commonality requirement of Rule 23(a).

3. *Typicality*

Under the third requirement of Rule 23(a), the named plaintiffs must present claims that are "typical" of those of the class. Fed.R.Civ.P. 23(a)(3). The requirement is satisfied if the "class representative[s] ... 'possess the same interest and suffer the same injury' as the class members." *East Texas Motor Freight System, Inc. v. Rodriguez,* 431 U.S. 395, 403 (1977). Typicality does not require that the representatives' claims be identical to those of the other class members. Rule 23(a) requires only that the claims emanate from the same legal or remedial theory. *Wofford v. Safeway Stores, Inc.,* 18 FEP Cases 1645, 1666 (N.D. Cal.1978). In addition, the Court notes that a finding of commonality will ordinarily support a finding of typicality. *See General Tel. Co. of Southwest v. Falcon,* 457 U.S. 147, 157, n. 13 (1982)(I'The commonality and typicality requirements of Rule 23(a) tend to merge."); *Harriss,* 74 F.R.D. at 41 ("The line between the (a)(2) commonality requirement and the (a)(3) typicality requirement is murky—undoubtedly, there is much overlap between the two.")

In the instant case, the nine named plaintiffs allege that they have all been subject to discrimination that generally affects blacks and Hispanics employed in the Northern California Division. While the company's alleged discrimination in promotion and other employment practices will have affected each individual differently, such factual variations are not sufficient to defeat class certification. *See Paxton v. Union Nat'l Bank,* 688 F.2d 552, 561 (8th Cir.1982), *cert. denied,* 460 U.S. 1083 (1983). The claims of the named plaintiffs closely resemble those that might be brought by the remaining members of the proposed class and emanate from the same legal or remedial theory. *Wofford,* 18 FEP Cases at 1666.

Defendant argues plaintiffs' claims are not typical of the putative class' claims for several reasons. First, Chevron points out that other than the eight plaintiffs here, there is but one Hispanic employee who has claimed a mental stress industrial injury, and therefore, plaintiffs, claims are unique. Yet, defendant confuses plaintiffs' discrimination claims, which parallel those of the class, with plaintiffs' injuries, which may vary from individual to individual. As plaintiffs' allege their stress injury arises out of the same legal and remedial theory, i.e. classwide discrimination, such factual variations are not significant enough to defeat the typicality requirement. *See Paxton,* 688 F.2d at 561. Moreover, simply because other class members may not have filed workers' compensation claims does not mean they have not suffered stress as a result of discrimination.

***6** Second, defendant suggests that the named plaintiffs, six of whom have been disabled from working at Chevron, do not have the same interest in obtaining injunctive and declatory relief as the remaining class members, most of whom are currently working at Chevron. The Court does not agree. In their supplemental declarations, the named plaintiffs all state that they have brought this case in order to eliminate discriminatory practices and to achieve an integrated work place at Chevron for black and Hispanic employees. Plaintiffs' Reply Brief, Supplemental Declarations. In addition, they state they are interested in advancement and continued employment at the Northern California Division. *Id.* Finally, the six plaintiffs on temporary disability leave due to stress all state that they intend to return to work when their treating physician, Dr. Rashmikant Shah, permits. *Id.* Thus, the Court finds there is not a divergence of interests between the named plaintiffs and the remaining class members with respect to the injunctive and declatory relief sought.

Third, defendant claims there is an inherent conflict of interest in establishing, on the one hand plaintiffs' psychiatric disability, and, on the other, plaintiffs' fitness for current or future promotional opportunities at Chevron. Defendant paints a distorted picture of plaintiffs' stress disability arising from severe mental illness, rather than from, as plaintiffs claim, job-related stress. As defendant's own psychiatrist and psychologist concluded, plaintiffs suffer from job-related stress, and not from any psychiatric dysfunction. *See, e.g.,* Plaintiffs' Appendix in Support of Plaintiffs' Reply Brief, pp. 9–

10,'20. Because plaintiffs argue that their temporary disability is due to racially discriminatory employment practices, and not due to mental illness, there is no conflict in their also attempting to demonstrate their fitness for current or future promotional opportunities at Chevron.

Fourth, defendant claims that plaintiffs' "psychological status" creates unique defenses not common to the class. Specifically, defendant argues that plaintiffs' "phobias" and 'paranoias" provide a potential defense not common to the remaining class members. Once again, the court finds this claim unpersuasive, because Chevron fails to acknowledge that the stress plaintiffs suffer is allegedly a consequence of class-wide discrimination and not due to plaintiffs' "phobias" and "paranoias."

Finally, defendant insists that plaintiff Coffee is an atypical representative because the date of his allegedly discriminatory promotion denial occurred just after he returned from an extended disability leave. The Court does not agree. While plaintiff Coffee was recently on disability leave, he has been employed by Chevron as an oilfield operator B, the lowest position above entry-level trainee, for the last ten years. At oral argument, plaintiffs' counsel argued that whites are promoted from an oilfield operator B position to a higher position on the average after three years! Thus, the Court finds plaintiff Coffee's claim is typical of the remaining plaintiffs' claims against Chevron for discrimination in promotion and other employment practices.

***7** Accordingly, the Court finds plaintiffs have met the typicality requirement of Rule 23(a).

4. Adequacy of Representation

The fourth and final prerequisite of Rule 23(a) with which plaintiffs must comply is that "the representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(4). This requirement has been construed to have three components: (1) competence of plaintiffs' counsel; (2) absence of collusion; and (3) absence of antagonistic interests between the representatives and remaining members of the class. *Eisen,* 391 F.2d at 562–63; *see also Social Services Union, Local 535 v. County of Santa Clara,* 609 F.2d 944, 947 (9th Cir.1979); *Schwartz v. Harp,* 108 F.R.D. 279, 283 (C.D. Cal.1985); *Kraszewski,* 27 FEP Cases at 32.

The Court finds that plaintiffs adhere to all three requirements, and consequently are adequate and fair representatives. Defendant does not dispute the competency of counsel and the Court notes that plaintiff's counsel have ample experience in bringing class action Title VII cases. In addition, defendant does not offer, and the Court is not aware of, any evidence of collusion. Defendant does contend, however, that eight of the nine named plaintiffs suffer from such severe psychiatric disorders that they are unfit to represent the interests of the class. Specifically, defendant points out that the eight plaintiffs frequently see their psychiatrist, Dr. Rashmikant Shah, that seven of the eight require regular use of mood-altering and/or sedating drugs to deal with their psychiatric situations, that six of the eight are disabled from working at Chevron, and that all eight were unable to have their former supervisors present [Illegible slip opinion page 18] asserts that these individuals are fully competent to serve as class representatives, as they are able to understand the issues, the purposes of the class action, the litigation process, and the consequences of their words and actions. *Id.* at ¶ 13.

Moreover, Drs. Enelow and Herrera, who conducted a plenary review and study of five of the named plaintiffs on temporary disability leave, found psychiatric impairment absent in all. Further, Chevron's doctors' concluded that these plaintiffs suffer from job-related stress, not from psychiatric disturbance. For example, regarding plaintiff Francies, Chevron's psychiatrist, Dr. Enelow, found that he "has only one impairment, that is that he cannot work for the same supervisors who permitted harassment to take place and with the same individuals who have made racist remarks, including insulting and demeaning remarks ... " Plaintiffs' Appendix in Support of Plaintiffs' Reply Brief at 72. Similarly, Chevron's psychologist, Dr. Herrera, found that Francies cognition was not impaired and that he had adequate concentration. *Id.* at 83. Both Dr. Herrera and Dr. Enelow found Francies to be clearly honest and forthright. *Id*. at 71, 83.

In addition, regarding plaintiff Barefield, Dr. Enelow found that he suffers not from a psychiatric impairment, but from "an occupational problem ... that could be resolved by Chevron U.S.A. but not through psychiatric treatment." *Id.* at 9–10. Dr. Enelow also concluded that plaintiff Barefield was "an honest and forthright man who has very slight anxiety, anger and depression," because of his employment problems. *Id.* Drs. Enelow and Herrerals findings regarding the remaining class representatives are virtually identical: these individuals suffer from job-related stress and not from psychiatric disturbance. Accordingly, the Court finds the medical evidence of Drs. Shah, Enelow and Herrera contradicts defendant's suggestion that eight of the nine named plaintiffs suffer from a disabling mental impairment.[2,3]

***8** Regarding the ninth representative, Ismael Gonzales,

defendant argues he is incapable of fairly and adequately representing the interests of the class due to his lack of candor, recall and knowledge of basic facts regarding the issues in this action. The Court is not persuaded by any of these challenges. Mr. Gonzales' inability to recall some minor details about the issues in this litigation does not preclude Mr. Gonzales from acting as an adequate class representative.

Rather than finding that these class representatives are somehow incapable of adequately representing the class, the Court is impressed by the zealous manner in which these individuals have pursued their claims. Without the assistance of counsel, plaintiffs have vigorously pursued the avenues of redress short of litigation. Plaintiffs tried to resolve their discrimination claims through the Northern California Division management, the union, the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, and the U.S. Department of Labor. After failing to obtain the resolution they desired, plaintiffs obtained the assistance of counsel to pursue this action. Nothing in the record indicates that these individuals will not continue to vigorously pursue their claims on behalf of all black and Hispanic employees of the Northern California Division.

For all these reasons, the Court finds the named plaintiffs are adequate representatives of the proposed class, and that plaintiffs have met all of the conditions posed by Rule 23(a) for class certification. B. Requirements of Rule 23(b)

Having satisfied the four prerequisites of 23(a), plaintiffs must also qualify under Rule 23(b)(2). Rule 23(b)(2) requires that:

> ... the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole ...

Fed.R.Civ.P. 23(b)(2).

The first element of Rule 23(b)(2)—that defendant have acted in a manner generally applicable to the class—is encompassed by the commonality requirement of Rule 23(a). See *Harriss,* 24 F.R.D. at 46. As plaintiffs have satisfied the commonality requirement, so too have they satisfied the requirement that defendant have acted in a manner generally applicable to the class. The second element of Rule 23(b)(2)—that injunctive or corresponding declaratory relief be sought as a remedy—is also satisfied here. In their first amended complaint, plaintiffs seek declaratory, injunctive, compensatory and exemplary relief. See Plaintiffs' First Amended Complaint, pp. 12–13. The fact that plaintiffs seek monetary relief does not prevent certification under Rule 23(b)(2), as the primary relief sought is injunctive and declaratory. In *Probe v. State Teachers' Retirement System,* 780 F.2d 776, 780 (9th Cir.1986), *cert. denied,* 106 S.Ct. 2891 (1986), the Ninth Circuit concluded that class actions certified under Rule 23(b)(2) are not limited to actions requesting only injunctive or declatory relief, but may include cases that also seek monetary damages. *See also Senter v. General Motors Corp.,* 532 F.2d 511, 525 (6th Cir.1976) (action not removed from Rule 23(b)(2) category by request for back pay), *cert. denied,* 429 U.S. 870 (1976); *Wetzel v. Liberty Mutual Insurance Co.,* 508 F.2d 239, 250–51 (3d Cir.1975) (same), *cert. denied,* 421 U.S. 1011 (1975); *Kraszewski,* 27 FEP at 33–34 (same). Accordingly, the Court finds plaintiffs have met the requirements of Rule 23(b)(2).

C. Class Definition

***9** In addition to a general objection to the certification of any class, defendant specifically objects to plaintiffs' proposed definition of the class. First, defendant disputes plaintiffs' assertion that the class should include persons employed on or after May 12, 1983.

Plaintiffs filed this case under Title VII and 42 U.S.C. § 1981. The statute of limitations for Title VII actions is 300 days prior to the initiation of proceedings with a state agency. *Domingo v. New England Fish Co.,* 727 F.2d 1429, 1442–43 (9th Cir.1984). Thus, the cut-off date for defining the class with respect to plaintiffs' Title VII claim is July 4, 1984.

With respect to plaintiffs' section 1981 claim, the statute of limitations is the three-year period provided by California Code of Civil Procedure § 338(1). *Jones v. Bechtel,* 788 F.2d 571, 573–74 (9th Cir.1986).[4] Applying this limitations period results in a class definition date of May 12, 1983 for plaintiffs' section 1981 claim.

Second, defendant argues that because none of the named plaintiffs has ever worked in the support organizations, the class should not include non-operations support employees. The Court does not agree. As plaintiffs assert, the non-operations "technician" employees are part of the same centrally-managed, uniform personnel system; for example, technician positions are principally filled by promotion or transfer of operations employees, and technicians are eligible for promotion to higher level jobs, such as salaried positions. Because technicians are part of the same system as operations employees, the Court finds the class may include non-operations support employees.

In addition, the Court notes plaintiffs' claims are typical of those of the minority technicians. For example, as plaintiffs pointed out at oral argument, plaintiffs Flores and Francies, among others, allege they were denied technician positions. Therefore, plaintiffs can properly represent the interests of technician employees of the Northern California Division.

III. Conclusion

Accordingly, good cause appearing, IT IS HEREBY ORDERED that as plaintiffs have satisfied all of the requirements of Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, this case may be maintained as a class action. Accordingly, plaintiffs' motion for class certification is GRANTED.

IT IS FURTHER ORDERED that the parties shall appear on Friday, October 16, 1987 at 9:00 a.m. in Courtroom 11 for a status conference. At that time the parties should be prepared to discuss the future course of this litigation, including further anticipated pretrial motions, possible trial dates, a tentative timetable for the expeditious prosecution of the action, and the possibility of settlement. Counsel shall submit status certificates, which address these and any other relevant issues, 10 days prior to the status conference.

Footnotes

1 In their reply papers and at the July 27, 1987 oral argument, plaintiffs proposed two minor amendments to their proposed class definition. First, plaintiffs proposed a cutoff date of May 12, 1983 in lieu of the original April 30, 1983 date. Second, in response to Chevron's request that the original proposed definition be limited to the specific employment practices challenged by plaintiffs, plaintiffs agreed to add the language, le ... pertaining to promotions, job assignments, performance evaluations and training." The Court has incorporated both of these amendments in this proposed class definition.

2 The Court also notes that by suggesting that these plaintiffs suffer from severe mental disorders, defendant seems to have adopted an archaic view of mental health which equates seeing a psychiatrist with mental derangement. If plaintiffs have indeed suffered the job-related stress they allege, seeing a psychiatrist would be a reasonable response to their condition.

3 In support of its claim that these eight plaintiffs' mental impairments prevent them from adequately representing the class, defendant cites two cases in which an individual named plaintiff was found to be an inadequate class representative. In *Roundtree v. Cincinnati Bell, Inc.,* 90 F.R.D. 7, 10 (S.D. Ohio 1979), the court relied on medical reports "indicat[ing] that plaintiff has suffered physical ailments for at least ten years that have led to a neurosis that adversely affects his temperament." Moreover, the plaintiff was unable to show that he met any of the requirements for class certification. *Id.* In *Ivy v. Boeing Co.,* 20 FEP Cases 1240, 1245 (D.Kan.1977),-a psychiatrist attested to the Plaintiff's "paranoid schizophrenia," a condition that the court found could impair plaintiff's ability to assist counsel in vigorous prosecution of a class action. Neither case remotely resembles the instant case.

4 The Court finds unpersuasive defendant's argument that *Goodman v. Lukens Steel Co.,* —— U.S. ——, 107 S.Ct. 2617 (June 19, 1987) should be applied retroactively. in *Goodman, id.* at 2621, the Supreme Court held that section 1981 claims are governed by a state's personal injury statute of limitations—which, in California, is the one-year period provided by California Code of Civil Procedure § 340(3). The general rule is that federal cases should be decided in accordance with the law existing at the time of the decision. *Gulf Offshore Co. v. Mobil Oil Corp.,* 453 U.S. 473, 486, n. 16 (1981). At the time plaintiffs filed this lawsuit, the statute of limitations for section 1981 claims was three years. *Jones,* 788 F.2d at 573–74. In *Jones, id.,* the Ninth Circuit held that even if the Ninth Circuit found-in a subsequent opinion that a one-year statute of limitations applies to section 1981 claims, it could not be retroactively applied where it shortens the limitation period. Thus, the Court found a pending § 1981 lawsuit is governed by a three-year statute of limitations. *Id.* Moreover, in *Saint Francis College v. Al–Khazraji,* —— U.S. ——, 107 S.Ct.2022,' 2025 (May 18, 1987), the Supreme Court recently approved this Ninth Circuit rule by upholding the "clearly established circuit precedent" of declining to apply retroactively a shorter limitations period for pending 1981 cases.