

**BEFORE THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DALLAS DISTRICT OFFICE**

In the Class Action	}	
Discrimination Complaint	}	
	}	
Gerald A. Lewis, et al.	}	EEOC Case No. 310-99-5861X
and Margaret L. Finley, et al.	}	EEOC Case No. 560-2006-00235X
Class Agents,	}	
	}	
vs.	}	
	}	Agency Nos. 5-98-5097 and 5-01-5076
Mary E. Peters, Secretary	}	
Department of Transportation	}	
Federal Aviation Administration	}	
Respondent Agency.	}	

**ORDER REGARDING RESPONDENT’S RENEWED MOTION TO DISMISS THE
CLASS COMPLAINTS AND/OR MOTION FOR SANCTIONS**

Once again, we are called upon to focus on Respondent’s assertions that Class Agent’s basis for its action has not been spelled out with sufficient specificity. The basis of the Class Members claim now before us was defined by the Commission’s Office of Federal Operations in its decision certifying the class.

The **totality** of **the subjectivity** created by the changes to Respondent’s personnel management system (FPMS) **as adopted** (including those subjective processes in the system prior to the adoption of any such changes and any additional subjectivity added by the changes to the FPMS) and the **bulletins implementing the entirety of the FPMS**, namely all of the Personnel Reform Implementation Bulletins (**PRIB**) issued implementing the FPMS, as adopted, constitutes **the basis** of the claims of the class members. Stated otherwise, it is the subjectivity of all procedures permitted under the entire personnel management scheme as adopted and

implemented which results in the asserted discrimination against African-American employees or applicants, as the class is defined.

In light of the Commission's decision and the response of Class Agent to my previous order concerning discovery and this issue, I conclude Respondent's motion should be denied and that no dismissal or restrictive action against the class is appropriate. Respondent must deal with the totality of the subjectivity as created by the FPMS and PRIB, all as set forth in the preceding paragraph.

If the undersigned was to remain responsible for the adjudication of this matter, I would direct that Respondent desist from filing any more motions pertaining to this issue. Inasmuch as the case will be reassigned due to my retirement, I do not feel that it is appropriate for me to foreclose additional consideration of the issue by another adjudicator even though I conclude it is time for Respondent to move on to more fertile grounds.

All relief requested in Respondent's motion is denied.

FOR THE COMMISSION:

Dated this January 29, 2009.

David H. Rosenberg
Administrative Judge
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