UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

Jaime Banuelos, et al., Complainants v. Transportation Leasing Company (Former Greyhound Lines, Inc.), Bortisser Travel Service, G.L.I. Holding Company and Subsidiary Greyhound Lines, Inc., Bus Wash, Missouri Corporation, Respondents; 8 U.S.C. § 1324b Proceeding; Case No. 89200314.

ORDER DENYING COMPLAINANTS' MOTION TO CERTIFY CLASS ACTION

I. Procedural History

On December 27, 1989, Complainants filed a Motion for Permission to Enter a Class Action. In a rambling memorandum offered in support of its Motion, Complainants assert that ``when numerous persons are affected in an Unfair Immigration Related Employment Practice in analogous way (sic) as Rule 23 of F.R.C.P. the Class Actions are justified as in here there are questions of law or fact common to the class, the claims are typicals to all others affected (sic) individuals and the representative parties will fairly and adequately protect the interest of all others that form the class.'' Therefore, Complainants assert, a ``Class Action is justified when Transportation Leasing Company (formerly Greyhound Lines Inc.) adopted a national policies (sic) for reorganization of the company in which change its name (sic) . . . .''

Regrettably, Complainants do not offer, in their memorandum, any particularized legal arguments to support their conclusions that they should be certified as a class.

In contrast, Respondents, as represented by counsel, oppose Complainants' Motion, and offer several legal arguments in support of their opposition.

For example, on February 2, 1990, Respondent Transportation Leasing Company (TLC) filed its Opposition to Complainants' Motion. TLC opposes Complainants' Motion on the grounds that it is irrelevant and legally insufficient, because it fails to meet the prerequisites of Rule 23(a) of the Federal Rules of Civil Procedure.

Respondents GLI Holding Company and Greyhound Lines, Inc. (collectively, ``the GLI Respondents''), filed a Response to Complainants' Motion on February 2, 1990. Respondents GLI argue that Complainants' Motion should be denied, because neither IRCA nor its regulations authorize class actions; and, alternatively, Complainants have not met their burden of showing that the proposed class meets the requirements as set out under Rule 23 of the Federal Rules of Civil Procedure.

II. Legal Analysis

I have not previously addressed this question of whether complaining parties to a section 1324b proceeding involving allegations of unfair immigration-related employment practices can certify a class action in which to seek authorized relief, nor am I aware that this question has been addressed by any other OCAHO administrative law judge in IRCA cases.

As is stated by Respondents, the current statute and regulations do not explicitly provide for such a procedural possibility. Analogous to my reasoning in the recently-issued ``Order Denying Complainants' Motion for Preliminary Injunction,'' it is my view, however, that simply because the statute and/or regulations do not provide explicit textual guidance on how to resolve a particular question, this does not preclude my considering it if such a question can be analyzed in light of the traditional practice and procedure interpreting the Federal Rules of Civil Procedure. See, 28 C.F.R. § 68.1.

The regulations governing these proceedings state at their outset that ``the Rules of Civil Procedure for the District Courts of the United States shall be applied in any situation not provided for or controlled by these rules or by any statute, executive order, or regulation.'' 28 C.F.R. § 68.1 (emphasis added.) As stated, the statute and the regulations governing these proceedings are silent on the issue of motions for class action, and I am not aware of any other statute, executive order, or regulation which ``controls'' my decision-making authority on this question. Moreover, it is well-established, at this point, that resolution of IRCA's anti-discrimination provisions is guided in large part by the jurisprudence developed in Title VII cases, and it is unequivocally clear that petitions for class actions in Title VII cases are governed by the requirements of Rule 23 of the Federal Rules of Civil Procedure. See, e.g., Schlei and Grossman, Employment Discrimination Law, at 1216 (1983). Thus, in this regard, it is my view that I ``shall'' apply the Federal Rules of Civil Procedure to Complainants' Motion for Class Action, in-

cluding Rule 23 which sets out the requirements for certifying such a request.

The prerequisites to a class action as set out in Rule 23(a) are that:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law and fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. (emphasis added)

As applied by the United States Supreme Court to employment discrimination cases, it is clear that careful attention to the requirements of Rule 23 remains indispensable:

> We are not unaware that suits alleging racial or ethnic discrimination are often by their very nature class suits, involving classwide wrongs. Common questions of law or fact are often present. But careful attention to the requirements of Fed Rule of Civ. Proc. 23 remains nonetheless indispensable. The mere fact that a complaint alleges racial or ethnic discrimination does not in itself ensure that the party who has brought the lawsuit will be an adequate representative of those who may have been the real victims of that discrimination.

See, East Texas Motor Freight System, Inc. v. Rodriguez, 431 U.S. 395, 405-06, 14 FEP 1505, 1509 (1977) (emphasis added); see, also, General Telephone Company of the Southwest v. Falcon, 457 U.S. 147, 28 FEP 1745 (1982).

As indicated in the Rodriguez decision, which involved Mexican-American drivers for a freight transport company, adequacy of representation is a key required concern for a court considering a request to certify a motion for a class action pursuant to Rule 23. In this regard, it is well-established that ``[t]he representative party's attorney must be qualified, experienced, and generally able to conduct the litigation. Layman have not been permitted to act as attorneys for a class . . . .'' See, Schlei and Grossman, Employment Discrimination Law, at 1238, (1983); see, also, Martin v. Middendorf, 420 F. Supp. 779, 780-81 (D.D.C. 1976) (competence of a layman representing himself is ``clearly to limited to allow him to risk the rights of others'').

Applying Rule 23, and its interpretive case law to the proceeding at hand, it is my view that Complainants do not meet the prerequisites necessary to certify a class action. In particular, it is certainly clear that Complainants do not meet the requirement of adequate representation. As indicated by Respondents, the pleadings filed by Complainants have been very difficult to understand as they are very poorly written, and premised on entirely convoluted understandings of often-irrelevant legal theories. I have spent considerable time reviewing carefully all of the convoluted submissions

made by Complainants (and will, of course, continue to do so until there is a fair and thorough resolution of the dispute alleged in this case), because it is absolutely clear that all persons, whether represented by trained legal counsel or not, are deserving of such administrative and judicial consideration.

Nevertheless, having spent such time, I am more convinced than ever that Complainants' efforts to represent themselves to date simply have not demonstrated an ability to adequately represent the rights of others, as required by Rule 23 of the Federal Rules of Civil Procedure. See, also, Martin v. Middendorf, supra (``. . . but plaintiff has not convinced the court that he can overcome the built-in disadvantage which a layman, presumably unfamiliar with various substantive and procedural aspects of the law applicable to his case, must face in attempting to prove that case on behalf of a class. . . .'').

Accordingly, and consistent with the reasons given above, I hereby deny Complainants' Motion to Certify a Class Action, because they have not, in my view, met the fundamental requirement of Rule 23 of the Federal Rules of Civil Procedure to show that they, as non-attorneys, can fairly and adequately represent the interests of the potential class.

SO ORDERED:
This 20th day of April, 1990, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge