IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS B. MONAHAN, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 00-505-JJF
	:	
CITY OF WILMINGTON, et al.,	:	
	:	
Defendants.	:	

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MEMORANDUM OPINION

July 23, 2001
Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is Plaintiffs' Motion for Class Certification (D.I. 18). Briefing on the motion has been completed and the parties have argued their respective positions before the Court. For the reasons discussed, the Court will deny Plaintiffs' motion.

BACKGROUND

Plaintiffs Thomas B. Monahan, Mayna Santiago, Danny Silva, and Andrea Janvier ("Plaintiffs"), filed a Class Action Complaint on May 19, 2000, against the City of Wilmington, Captain Gilbert Howell, Inspector James Stallings, Chief Michael Boykin, Corporate Black Employees Network, Linda Morris and Lynn Tucker-King (collectively "Defendants")(D.I. 1). Plaintiffs are all non-African American employees of the City of Wilmington's Department of Police ("WPD"). (D.I. 1 at ¶ 3). Plaintiffs' claims against Defendants include alleged violations of: (1) 42 U.S.C. § 1983, (2) 42 U.S.C. § 1981, (3) 42 U.S.C. § 1985, (4) 42 U.S.C. § 1986, and (5) Title VII. In addition, Plaintiffs raise a cause of action for breach of contract and a claim for punitive damages. (D.I. 1 at 12-19).

Plaintiffs contend that, beginning in 1993 with the appointment of Defendant Michael Boykin as Wilmington's ("the City") Chief of Police, a pattern of discrimination against non-African American police officers developed within the WPD. (D.I. 19 at 6). Specifically, Plaintiffs contend this discrimination has affected the WPD's decisions regarding: (1) promotions,[1] (2) patrol assignments, (3)

[1] For purposes of promotions, police officers are grouped in "bands" according to the officers' experience and ability. (D.I. 19 at 6-7). All officers within the same "band" are candidates for the same promotions. (D.I. 19 at 6-7). Plaintiffs allege that African-American police officers "are historically promoted first within each grouping or 'band' of candidates . . . in apparent disregard for the experience and abilities of the non-African Americans within the same promotional bands." (D.I.

detective unit assignments, and (4) overtime job assignments. (D.I. 19 at 6-8). With this background in mind, the Court will address the instant motion for class certification.

DISCUSSION

The party seeking class certification bears the burden of establishing that certification is warranted under the circumstances. In re ML-Lee Acquisition Fund II, L.P. Sec. Litig., 848 F. Supp. 527, 557 (D. Del. 1994). Rule 23 of the Federal Rules of Civil Procedure sets forth the requirements for certification of a class. Pursuant to Rule 23(a), four requirements must be met in order for a class to be certified. Anchor Prods. Inc. v. Windsor, 521 U.S. 591, 613 (1997). These requirements are:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or 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.

FED. R. CIV. P. 23(a). In addition to the four requirements of Rule 23(a), plaintiffs seeking class certification must also satisfy one of the three requirements in Rule 23(b).[2] In this case, the applicable requirement is Rule 23(b)(3), which requires the Court to find that: "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." FED. R. CIV. P. 23(b)(3). Factors relevant to the determination of predominance and

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19 at 6-7).

[2] The parties agree that Rule 23(b)(3) is the only subsection of Rule 23(b) that Plaintiffs can possibly satisfy.

superiority are:

> (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

FED. R. CIV. P. 23(b)(3).

A. Numerosity - Rule 23(a)(1)

The requirement that potential class members be so numerous as to make joinder of all members "impractical" does not establish a rigid minimum number of class members necessary to warrant certification; rather, joinder of all members need only be impractical, not impossible. In re Life USA Holding, Inc., 190 F.R.D. 359, 365 (E.D. Pa. 2000), rev'd on other grounds, 242 F.3d 136 (3d Cir. 2001). Among the factors to consider with respect to the numerosity requirement are (1) the size of the class; (2) the expediency of joinder, and (3) the practicality of multiple lawsuits. ML-Lee, 848 F. Supp. at 558. The purpose of the numerosity requirement is to ensure that a class is certified only when the circumstances make certification a necessity. In re Am. Med. Sys., Inc., 75 F.3d 1069, 1079 (6th Cir. 1996). By their motion, Plaintiffs contend that the proposed class could consist of as many as 125 officers of the WPD. (D.I. 19 at 13). Because classes containing between 100 and 1000 members frequently satisfy the numerosity requirement, Plaintiffs urge the Court to find that the numerosity requirement has been met. However, the "100 to 1,000" range is not a rigid requirement and many cases within this range have been denied certification due to the existence of other relevant factors. See, e.g., Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp., 149 F.R.D. 65, 74 (D.N.J.

1993)(concluding numerosity is not satisfied when 123 potential class members exist because (1) all members are readily identifiable and easily located, (2) all members live in New Jersey, and (3) all members are capable of protecting their own interests).

After reviewing the factors relevant in the circumstances of this case, the Court concludes that Plaintiffs cannot satisfy the threshold numerosity requirement. In their brief, Plaintiffs state that the proposed class "consists of all current and/or former non-African American police officers of the WPD." (D.I. 19 at 13). Thus, the class is readily identifiable. Further, Plaintiffs acknowledge that almost all proposed class members live in New Castle County, Delaware. (D.I. 19 at 24). Lastly, the record indicates that the vast majority of proposed class members are pursuing independent remedies with the Equal Employment Opportunity Commission ("EEOC") or the Delaware Department of Labor ("DDOL"), thus demonstrating their knowledge of their legal rights and their initiative to actually pursue those rights. Indeed, of the alleged 126 potential class members, only 8 have not filed. Because the factors relevant to numerosity weigh against a finding that joinder would be impractical in this case, the Court concludes that Plaintiffs fail to satisfy the threshold requirement of Rule 23(a)(1).

B. Common Questions of Law or Fact Predominate - Rule 23(b)(3)[3]

[3] By focusing on Rule 23(b)(3), the Court is not concluding that the commonality requirement of Rule 23(a)(2) or the typicality requirement of Rule 23(a)(3) are satisfied. Rather, the Court finds that in this case, the analysis under Rule 23(b)(3) is similar to the analysis under Rules 23(a)(2) and 23(a)(3). Since the standard for Rule 23(b)(3) is more stringent, the Court will focus on this requirement. FED. R. CIV. P. 23(b)(3)(stating that common questions of law and fact must "predominate over any" individual questions of law and fact)(emphasis added). See also Jackson v. Motel 6 Multipurpose, Inc., 130 F.3d 999, 1005 (11th Cir. 1997)(noting that the analysis for Rule 23(b)(3) is "far more demanding" than the commonality requirement of Rule 23(a)(2)).

By their motion, Plaintiffs contend that all of the proposed class members allege a pattern of racially discriminatory conduct, premised on the same legal theories, and therefore, the requirements of Rule 23(b)(3) are satisfied. (D.I. 35 at 11). In response, Defendants contend that the only "common" question is whether or not Defendants engaged in a pattern of racial discrimination. According to Defendants, how each proposed class member was or is harmed by the alleged discrimination will be a highly individualized fact sensitive analysis. (D.I. 30 at 13). Thus, Defendants contend that Plaintiffs cannot satisfy the requirements of Rule 23(b)(3).

The Court agrees with Defendants. While differences in potential damages awards may be insufficient to deny class certification in this case, given the variety of claims raised by Plaintiffs, the Court's analysis of any alleged discrimination and its impact will be fact intensive and specific to each Plaintiff. For example, to determine whether a Plaintiff is entitled to recover, and to determine how much he or she is entitled to recover, the Court will have to assess whether or not each individual class member: (1) was denied a promotion despite having more experience and better ability than the recipient of the promotion, (2) received inferior patrol assignments, (3) sought assignment to the Detective Unit but such assignment was denied, (4) was available for and desired overtime work, but was denied the opportunity for overtime work, and (5) desired a specific overtime job that he or she was wrongfully denied. Given the individualized and fact specific nature of the issues in this case, the Court concludes that Plaintiffs cannot satisfy the requirement of Rule 23(b)(3). See Jackson, 130 F.3d at 1005 (denying class certification because the only common issue was whether the defendant had a general policy of discrimination, and this common issue did not predominate over the "unmanageable

variety of individual legal and factual issues"). See also Rutstein v. Avis Rent-A-Car Sys., Inc., 211 F.3d 1228, 1235 (11th Cir. 2000)(holding that the issue of whether or not the defendant had a policy of discrimination did not predominate over the specific factual and legal issues as to whether each individual class member was harmed by the alleged conduct).[4]

CONCLUSION

For the reasons discussed, the Court will deny Plaintiffs' Motion for Class Certification (D.I. 18).

An appropriate Order will be entered.

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[4] Plaintiffs contend that "the problem of determining individual damages conveniently has been solved" by the charts submitted by Defendants supplying data on each class member's availability for overtime work during the CBEN annual conference, and his or her history of accepting overtime work. (D.I. 35 at 12). However, the Court disagrees with Plaintiffs' contention. First, Plaintiffs' Complaint is not confined to discrimination in the assignment of the CBEN overtime job, or assignment of overtime jobs in general. Second, Plaintiffs specifically state that they "do not . . . admit that [Defendants'] chart . . . is correct." (D.I. 35 at 10 n.8). This reservation of rights by Plaintiffs negates any suggestion that the individual factual issues relevant to each class member are resolved.

Plaintiffs also suggest that further dividing the class into sub-classes could alleviate some of the aforementioned Rule 23(b)(3) problems. Regardless of whether forming sub-classes would eliminate or lessen these problems, the Court concludes that any "effective" sub-division of the 126 member class would make each sub-class so small as to render the certification a nullity.

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	:	
Defendants.	:	

O R D E R

At Wilmington this 23 day of July, 2001, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Plaintiffs' Motion for Class Certification (D.I. 18) is **DENIED**.

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UNITED STATES DISTRICT JUDGE