

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DUANE PORTER, KENNETH BLACK,)
RONALD BOUIE, RICKY BROWN,)
SAMUEL CLARK, FRANK CRADDIETH,)
DONALD GAYLES, STEVEN WILSON, and)
JEFFREY PICKETT, on their own behalf and)
on behalf of a class of all others who are)
similarly situated,)

Plaintiffs,)

v.)

PIPEFITTERS ASSOCIATION LOCAL)
UNION 597,)

Defendant.)

No. 12 C 9844

Judge Sara L. Ellis

ORDER

The Court grants Plaintiffs’ motion to certify the class pursuant to Rule 23(b)(2) [125]. The Court certifies the following class under Rule 23(b)(2): “All African American persons who are currently members of Local 597.” The Court appoints Jeffrey Pickett as the class representative of the Rule 23(b)(2) class. See Statement.

STATEMENT

Plaintiffs, African American journeyman pipefitters who currently or previously belonged to Defendant Pipefitters Association Local Union 597 (“Local 597”), claim that they and other African American pipefitters worked comparatively fewer hours than their non-African American counterparts due to Local 597’s inequitable job assignment system. They filed this suit against Local 597, alleging intentional and disparate impact discrimination in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.*, and 42 U.S.C. § 1981, and breach of Local 597’s duty of fair representation under the Labor Management Relations Act of 1947 (“LMRA”), 29 U.S.C. § 158(b), for failing to represent the interests of all its members. The Court previously granted certification of a Rule 23(b)(3) class, certifying a class of “All African American persons who were members of Local 597 at any time from November 14, 2003 to the present date.” Doc. 109. The Court reserved ruling on Plaintiffs’ request for certification of a Rule 23(b)(2) class. *Id.* Plaintiffs have amended their complaint to add an additional plaintiff and proposed class representative for the Rule 23(b)(2) class, Jeffrey Pickett. They again seek certification of that class. Local 597 opposes certification, arguing that Plaintiffs have again failed to identify an adequate class representative for their Rule 23(b)(2) class.

The Court assumes familiarity with its September 20, 2016 Opinion on class certification and so does not recite the background facts of the case here. In previously considering Plaintiffs' request to certify a Rule 23(b)(2) class, the Court noted that certification appeared proper because the injunctive relief Plaintiffs requested—a ban on the current Referral Hall system and implementation of a new job assignment system—would not require individualized determination or be a prelude to monetary relief. *Id.* at 20. But the Court reserved ruling on the Rule 23(b)(2) class because it appeared that, at the time, no named Plaintiff was an active member of Local 597 with the ability to pursue the claims for injunctive relief. *Id.* at 21. The Court found that Plaintiffs had to articulate how the injunctive relief would be of any benefit to them or address any injuries they currently suffer and that, as former union members, they had not done so. *Id.* (collecting cases where former employees' claims had been dismissed for lack of standing or their requests to represent Rule 23(b)(2) classes of current employees had been denied). The Court also noted that, to the extent it would certify a Rule 23(b)(2) class, the class would include only current union members. *Id.* at 22. To the extent necessary, the Court adopts its reasoning from its September 20, 2016 Opinion on Rule 23's requirements, with the only remaining criteria at issue being whether Pickett qualifies as an adequate class representative.

Plaintiffs argue that Pickett, as a current Local 597 member, satisfies the Court's articulated concerns about representation of the Rule 23(b)(2) class. Local 597, however, argues that Pickett is not an adequate class representative because, although a current union member, he is not currently subject to the Referral Hall system that Plaintiffs challenge. Pickett last worked under the Referral Hall system in 2014 and currently works as a pipefitter for the University of Illinois at Chicago ("UIC"), meaning he does not participate in the Referral Hall system. According to Local 597, this means Pickett does not have an injury redressable through injunctive relief. But Pickett testified at his deposition in July 2017 that, were it not for the Referral Hall system and the discriminatory fashion in which it operates, he would not have taken the job at UIC and instead remained part of the Referral Hall system. Pickett perceives that system to provide him with better benefits and testified that he needs to return to work for private contractors through the Referral Hall system to accumulate credit toward his pension. But, Pickett stated that he would like to do so under better circumstances and hopes that the present litigation will provide changes to that system. Local 597 describes Pickett's intention to return to the Referral Hall system as too vague and speculative to support his role as a class representative.

Although having a current Local 597 member participating in the Referral Hall system as the Rule 23(b)(2) class representative would be ideal, the Court finds Pickett adequate for the role. Pickett has testified that, although he has a steady job, the benefits provided through the Referral System are better and would allow him to accrue credit toward his union pension. But Pickett is not currently taking advantage of those union benefits because he maintains the system as it currently operates discriminates against him and other African American pipefitters. The injunctive relief sought—reform of the Referral Hall policy and implementation of a new job assignment system—would benefit him and address his injuries, injuries he currently mitigates by working at UIC, a job not governed by the Referral Hall system. Pickett's desire to return to the Referral Hall system so as to obtain additional pension credits and ensure he receives credit for his apprentice years suggests that Pickett has an incentive to pursue relief on behalf of all

current African American members of Local 597. This case thus differs from *Arreola v. Godinez*, where the Seventh Circuit found the plaintiff was not an adequate class representative for a Rule 23(b)(2) class to enjoin a prison policy concerning crutches where he had been released from jail and the “likelihood that he will return to the Jail *and* will once again be suffering from a lower-extremity fracture requiring crutches is too speculative.” 546 F.3d 788, 799 (7th Cir. 2008). Therefore, the Court finds that Pickett is an adequate representative for the Rule 23(b)(2) class and certifies a class of all African American persons who are currently members of Local 597.

Date: December 11, 2017

/s/ Sara L. Ellis