

# FAA discrimination suit passes critical court test

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A major battle in a class-action discrimination suit against the Federal Aviation Administration was won recently when a U.S. District Judge certified the class, thus paving the way for that suit to go forward.

The ruling came in the case of Frank A. Pagano versus the FAA when Pagano was named agent of the undetermined number of Alaska Natives who, he charges, have been discriminated against because of the FAA's methods of hiring and retaining minority personnel. Pagano worked in the FAA's Office of Civil Rights.

The FAA had objected to Pagano being named agent of the class because, it alleged, he was in a job that was so unique that others couldn't share the circumstances of the alleged discrimination.

That argument was rejected by U.S. District Judge James A. von der Heydt who ruled that Pagano could represent all the members of

the class.

In order for a class action suit to be carried on in the courts, one or more specific people must be named agent of that class. The class also must be officially "certified," that is, it must be officially determined that there is a group of people who might have suffered the same form of injustice that would lump them together in a court case.

Pagano and Frank Peratovich were hired as Equal Employment Opportunity workers in the FAA's Civil Rights Office in the early 1970s when the job of office supervisor was opened.

Both applied and the suit contends that they both had enough job experience and the necessary civil service "rank" to be hired. They were also the only applicants for the job and the job "bid," the announcement of the minimum qualifications necessary to apply — was withdrawn and the rank upgraded.

# Class certification means FAA suit goes forward

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With that upgrade, neither man qualified to apply.

The job was then given to a white woman, Harriet Ann Tuck, who had some affirmative action experience in Alaska. Ann Tuck, who had some affirmative action experience in government work in the Lower 48. She had never worked in Alaska.

Pagano's suit charges that Tuck later discriminated against him when she transferred him from the Civil Service office to hazardous duty detail at the Anchorage International Airport.

Pagano's suit charges that he had no training to be doing the hazardous duty; that when he showed up for work the supervisor at the airport had not asked for him or any other worker and had nothing for him to do; and that for several weeks he sat in a windowless room with no tasks to perform.

Pagano charges that the transfer was made to punish him because he gave advice to five white FAA male employees who had complaints against Tuck. He contends that his job was to give such advice.

Another complaint against Tuck was that she refused to allow Pagano to attend a jobs program organized by the Alaska Federation of Natives. The reason given for the refusal was that Pagano was needed in the office but Tuck also told him that he could take a day of his annual leave to attend the program.

Both charges were taken to an arbitration board which ruled in Pagano's favor.

In the case of the hazardous duty, the board ruled that the transfer was punitive and he was returned to his former job. In the case of the AFN seminar, the board ruled that if Pagano was truly needed in the FAA office, Tuck shouldn't have told him he could have annual leave to attend.

The arbitration board also stated that the AFN seminar was within the duties that Pagano was performing and he should have been allowed to attend.

The class action portion of the suit alleges that the FAA has systematically discriminated against Alaska Natives and all other minorities in its hiring practices and its follow-up of minority employees.

Pagano states that when he started working at the FAA, the minority ratio was 3 percent.

He said he started a one-to-one recruiting drive to reach out to make personal contact with potential FAA employees. By 1974, the FAA had a 10.6 percent ratio of Alaska Native employees.

But in that year, the FAA changed the duties of the Office of Civil Rights and Pagano was no longer allowed to conduct recruiting, he says. That duty is now handled by the FAA personnel office. The methods were changed, said Pagano, because the FAA decided that the Office of Civil

Rights couldn't evaluate a recruiting drive which it conducts itself.

So, the FAA personnel office now handles the minority drive hiring and, according to court documents, the ratio of Alaska Natives has dropped since 1975.

Those documents show a 8.8 percent ratio in 1975; 6 percent in 1976; 7.5 percent in 1977; 6.3 percent in 1978; 6 percent in 1979 and 5.9 percent in 1980. No figures were available for 1981.

Pagano charges that the FAA system for handling minority applicants in fact keeps them from being hired because applications are routed to a minority hiring officer. Those applications take longer to be processed than applications from non-minority people and by the time that officer is finished with them, the job is usually filled, says Pagano.

No trial date has been set for the suit to be heard and lengthy court battles are expected to continue. Numerous depositions will have to be taken and volumes of FAA documents will have to be sorted out before trial.

That records search was another battle that Pagano won in the case. According to court documents, the FAA had to be ordered by a judge to stop destroying past personnel records so that the Pagano's attorneys could conduct their research.

The suit and the attitude of the FAA have left Pagano bitter by his own admission.

He retired late last month

after reaching his tenth year with the FAA and he says he will never again work for any federal agency, nor will he encourage his family to try for a federal job.

He blames his problems and the record of the FAA in minority programs on a change in attitude in the FAA as the mid-70s approached.

When Pagano started with the FAA, the top-level administration was dedicated to the minority program. But those people moved on, and Pagano says that the "second-level management became first level. They were mostly opposed to the program. They did nothing. They let it die on the vine."

"As I tried to bridge the gap between the management and employees, management began to attack my credibility. I would bring out and identify problems that they didn't want to hear about. They branded me as a troublemaker, a radical," says Pagano.

Pagano, who could be of many varied ethnic backgrounds, says that his co-workers didn't realize he was an Alaska Native and often vocalized prejudiced viewpoints about Alaska Natives. The Koniag shareholder (and a former director of the Koniag Corporation) says that when he told those same people of his

heritage, their attitude would change. "They treated me as if they didn't have to listen to me because I was a Native too."

"It developed in the other employee's minds that minority people were getting something for nothing when they had to work hard for what they got."

Pagano said that the FAA has a system of transferring people up to Alaska from the Lower 48 and also paying the way back. He calls the system "the biggest travel agency in the country," and says it also leads to prejudice in the FAA.

People who are transferred to Alaska soon were given the impression that Alaska Natives "got this land and lots of money from the (Alaska Native Claims) Settlement Act, so they don't need jobs." He adds that if he argued with that view and the people weren't aware that he was Native before their discussion "they would claim I set them up. That I was sneaky. I didn't feel I had to say right out that I was Native, but if I didn't they accused me of being sneaky."

Pagano says he has retired to a life of fishing back in Kodiak. Peratovich has since left the FAA.