

# LEAGUE Wins Holmes EEO Class Action Case

**The position of Postmaster, whomever occupies it, is an extremely valuable position at any level of the pay scale and should be recognized and fairly paid irrespective of the size of a particular post office.**

On July 21, 2009, the Equal Employment Opportunity Commission (EEOC) Denver Field Office issued a decision in the case of *Mary L. Holmes, et al., Class Agent, v. John E. Potter, Postmaster General, U.S. Postal Service, Agency*. Mary Holmes, who has since retired, filed a formal class action complaint on October 19, 2000. She alleged that in FY-1999 she along with other female Postmasters were subjected to gender-based discrimination when they were denied "far exceeds" performance ratings due to a 10 percent cap placed on the distribution of said ratings.

The Postal Service denied the complaint, arguing that the 10 percent cap of "far exceeds" ratings was designed to limit range inflation and were thus justified by business necessity unrelated to gender. After pre-complaint counseling, the agency finally forwarded the complaint on February 16, 2001, to the EEOC for adjudication.

On August 28, 2001, the EEOC issued a decision certifying the class.

The Postal Service appealed that decision to the Office of Federal Operations (OFO) in Washington and, in an October 27, 2003, decision, OFO upheld certification of the class. On May 10, 2005, Judge Humphrey of the EEOC granted an agency motion to bifurcate the hearing process into liability and damage phases. On March 1, 2006, the Postal Service submitted a Motion for Summary Judgment and a Memorandum in Support Thereof with 42 numbered exhibits. Complainant responded to the agency's motion on April 7, 2006, and attached 26 numbered exhibits, along with transcripts from eight depositions.

On April 18, 2006, the agency submitted its reply and on May 5, 2006, Judge Humphrey denied the Postal Service's Motion for Summary Judgment. The matter was then adjudicated with both parties utilizing expert witnesses, considerable documentary evidence and depositions that were received into evidence as testimony.

The complainant's theory was that because lower level Postmaster positions are predominantly occupied by females, whereas the higher level positions are predominantly occupied by males, the agency's 10 percent limitation has a disparate impact upon female Postmasters in both their evaluations and concomitant

bonuses for performance. In pay talks held in 1988-1989 preceding the Postal Service's adoption of the new pay package for FY-1999, the LEAGUE objected to measures that would exclude the lower ranks of Postmasters. It objected to the 10 percent cap on the number of "far exceeds" ratings that could be given to Postmasters.

However, the Postal Service moved forward with its pay package for FY-1999. The LEAGUE's expert witness, Dr. Nells Grevestad, Ph.D., testified that there was a statistical disparity when combining lower grade and upper grade levels, which resulted in the lower grade levels, predominated by females, less likely to receive "far exceeded expectations" ratings than those in levels predominated by males (higher grade levels).

The parties stipulated that the issue in the matter was whether or not the application of the agency's 10 percent rating cap had an unlawful gender-based disparate impact on female Postmasters who, but for the cap, would have received a "far exceeds expectation" rating in FY-1999.

In reviewing the evidence, the EEOC determined that it was undisputed that there is a significant statistical disparity between the number of males who encumber higher level (EAS-16-26) Postmaster positions and the number of females in the lower level (EAS 51-55, 11-15) Postmaster positions. It found that it was undisputed that a disproportionate number of the "far exceeds expectations" ratings were awarded to higher level Postmasters. The EEOC found, therefore, that the complainant had met the elements of a disparate impact gender discrimination case.

In reviewing the business necessity defense proffered by the Postal Service, the EEOC found that the agency had failed to meet its burden of producing a legitimate business necessity with the challenged employment practice of imposing a 10 percent cap of "far exceeds expectations" ratings for FY-1999. The EEOC did not agree that the 10 percent cap was imposed to avoid ratings inflation in its FY-1999 Merit Performance System. It noted that the Postal Service provided no data supporting such a conclusion or evidence that there was a history of ratings inflation at the agency, or that, absent the 10 percent cap, there was any threat that the agency may experience ratings inflations.

In addition, the EEOC noted that the complainant articulated an alternative to the agency's application of the 10 percent cap, which would have lessened the impact on female Postmasters in lower grade levels. Specifically, the alternative proposed applying the 10 percent cap to the two groups, higher level Postmasters and lower level Postmasters separately and adjusting the distribution as needed if more than a 2 percent difference is noted between the numbers of "far exceeds expectations" for the higher grade levels versus those of the lower grade levels.

The Postal Service did not dispute that this proposed alternative could have lessened the impact on female Postmasters in the lower grade levels, nor that it preserved the agency's 10 percent cap concept, thus avoiding the dangers of ratings inflation.

In summary, the EEOC found that the complainant had successfully shown that the administration of the agency's 10 percent cap on "far exceeds expectations" in FY-1999 had an unlawful disparate impact on the class of female Postmasters who would have received the "far exceeds expectations" rating, but for the cap, in violation of Title VII of the Civil Rights Act of 1964. The LEAGUE's lawyers are presently conferring on a proposed remedy in the case, which would include back pay, adjustment of formal records reflecting "far exceeds" evaluations, damages and attorneys' fees.

The real significance of the decision is that it, like the famous *Eva Fairplay* decision involving the denial of bonuses to classes of Postmasters that were dominated by females, has again reaffirmed that the Postal Service may not distinguish between higher level and lower level Postmasters in such a way as to cause a disparate impact upon the lower level classes dominated by female Postmasters.

In future pay settings, the Postal Service is obliged to treat all Postmasters equally and equitably in pay plans, bonuses and evaluations, which will benefit all Postmasters in the future and recognize that the position of Postmaster, whomever occupies it, is an extremely valuable position at any level of the pay scale and should be recognized and fairly paid irrespective of the size of a particular post office. •