



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-256639

April 12, 1994

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, Suite 1500
Dallas, Texas 75201

Dear Senator Gramm:

This letter responds to your August 23, 1993, request that we review issues raised in a letter you received from District 18 of the League of United Latin American Citizens (LULAC). LULAC asked for a GAO investigation of what it said were serious discrimination problems at the Houston District Office of the Equal Employment Opportunity Commission (EEOC). It said that Hispanic employees, especially females, were being treated like third-class citizens. LULAC spoke of Hispanic females as long being unable to gain promotion to grade 13 supervisory positions and of apparent widespread retaliation against Hispanics who complain about their treatment. LULAC also requested an inquiry into why EEOC rejected its February 1993 complaint about discrimination at the Houston District Office.

As we discussed with your staff, we did not determine whether employment discrimination and retaliation had occurred. We generally do not investigate such matters because, in our view, they are most appropriately pursued through existing administrative and legal redress processes available for that purpose. However, we obtained data to show where Hispanics stood within the grade structure of the Houston District Office and to show whether they were filing discrimination complaints. We also inquired into EEOC's basis for rejecting LULAC's complaint.

RESULTS IN BRIEF

As of September 30, 1993, 21--or about 26 percent--of the Houston District Office's 80 employees were Hispanic. Four Hispanic employees, one of whom was a female, held grade 13 or higher positions. The female employee was in a nonsupervisory position. The District Director, Houston District Office, said she promoted the four to their current positions and that

over the years she had promoted other Hispanic employees, both men and women, to grade 13 and above.

During the period October 1, 1989, through February 3, 1994, 12 Houston District Office employees and 1 job applicant filed 22 employment discrimination complaints. To place this number of complaints in some perspective, we computed a ratio of complaints to employees and compared the ratio for the Houston District Office with the ratios for 50 other EEOC locations.

The ratio for the Houston District Office was, on average, about 0.5 of 1 complaint for every 10 employees. The ratios were lower for most other EEOC locations. However, the ratios for nine locations were about the same as or higher than the Houston ratio. The ratio for EEOC overall was about 0.3 of 1 complaint for every 10 employees.¹

At the Houston District Office, 7 Hispanics filed 13 of the 22 complaints. They said they had experienced discrimination because of their national origin and/or experienced reprisals by Houston District Office officials.² Two of the 13 complaints, both filed by the same person, were being decided in federal district court, and no settlement or decision had been reached as of mid-February 1994. The others were in EEOC's complaints processing system, and were unresolved as of early February 1994.

In February 1993, LULAC's District 18 wrote to EEOC and said its letter was to serve as an "official third party Commissioner's

¹The ratios were calculated by first computing the average number of permanent employees and the average number of complaints for each location. The locations were the 50 EEOC field offices and EEOC headquarters. The number of permanent employees were those at the end of each fiscal year except for 1994. The 1994 data were as of mid-February 1994 for the Houston District Office and mid-March 1994 for the 50 other locations. The number of complaints were those filed from October 1989 to early March 1994 (early February 1994 for the Houston District Office). The average number of complaints was then divided by the average number of employees and the result multiplied by 10, which provided a ratio per 10 employees.

²EEOC's complaint data system identifies whether a complainant cited reprisal as a basis for the complaint. However, it does not say for what action the complainant believed the alleged reprisal occurred. There are generally two possible bases: filing an earlier complaint and participating in an equal employment opportunity (EEO) protected act, such as being a witness in another employee's complaint.

charge of discrimination" on behalf of female Hispanic employees of the Houston District Office. EEOC commissioners can bring discrimination charges against nonfederal employers. However, EEOC lacks the authority to make or investigate a commissioner's charge in the federal sector. Furthermore, a commissioner's charge is brought at the discretion of a Commission member and not by a third party.

Under federal discrimination complaint processing regulations, EEOC, like other federal agencies, has no authority to accept discrimination complaints filed by third-party organizations unless the third parties are acting as designated representatives of federal employees. This exception is provided for by administrative precedent. However, the precedent is based on regulatory language that no longer exists, and it is unclear whether the Commission would find that this third-party right exists under current regulations.

BACKGROUND

EEOC is one of several federal agencies responsible for enforcing EEO laws and regulations. It upholds a basic right of Americans to equal employment opportunity regardless of race, color, religion, sex, national origin, age, or disability.

EEOC carries out its mission through 50 field offices, including the Houston District Office, that receive, investigate, and resolve charges of employment discrimination made by individuals from the private employment sector. Organizationally, these offices are under the supervision of the Director, Office of Program Operations, at EEOC headquarters. EEOC also has certain EEO leadership and discrimination complaint processing responsibilities for the federal government.

Under the federal discrimination complaint processing system, agencies investigate and decide employment discrimination complaints made by their job applicants and employees. A complainant who disagrees with an agency's decision can appeal to EEOC and/or federal district court.³

EEOC, as an agency, processes complaints from its own employees. If an EEOC applicant or employee appeals EEOC's decision to EEOC in its appellate role, the appeal is handled by the appellate function that reviews appeals made by complainants from other agencies. For EEOC applicants and employees, however, the

³Applicants and employees claiming age discrimination can file suit in federal district court without first filing a formal complaint with the employing agency.

appellate decision is automatically reviewed by the EEOC commissioners, which is not the usual practice for most non-EEOC appeals.⁴

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to (1) provide a current race/national origin/gender profile of the Houston District Office workforce by pay grade, (2) provide information on discrimination complaints filed by Houston District Office employees, and (3) determine whether EEOC's stated reasons for rejecting LULAC's District 18's February 1993 letter were based on reasonable legal grounds. Data obtained in response to the first two objectives show the representation of Hispanic employees in the Houston District Office workforce and whether they were filing complaints charging discrimination and retaliation. However, the information alone does not prove or disprove the allegations of discrimination. This is for the complaints process and the courts to decide.

To meet our first two objectives, we obtained from EEOC headquarters workforce data for the Houston District Office as of September 30, 1993, and discrimination complaint data for the Houston District Office from October 1, 1989, through February 3, 1994. This period covers fiscal years 1990, 1991, 1992, and 1993 and the first 4 months of fiscal year 1994. For purposes of making comparisons with the Houston District Office, we also obtained from EEOC headquarters the numbers of employees and complaints filed at EEOC's 50 other locations since fiscal year 1990.

The District Director, Houston District Office, verified the Houston District Office workforce information that EEOC headquarters provided. In addition, we obtained from the District Director the number of employees at the Houston District Office at the end of fiscal years 1990, 1991, and 1992 and February 16, 1994. EEOC's Complaints Processing Division keeps data on discrimination complaints, and it provided the data we used for our analyses.

Regarding our third objective, we reviewed regulations governing the federal complaint processing system to determine how federal agencies are to handle third-party discrimination complaints; we also discussed these matters with EEOC officials. Our work was

⁴By law, a five-member commission heads EEOC. According to EEOC officials, the Commission chair signs EEOC's final agency decision and, for that reason, is recused from reviewing appellate decisions concerning EEOC complainants.

done between September 1993 and March 1994 in accordance with generally accepted government auditing standards.

PROFILE OF HOUSTON DISTRICT OFFICE WORKFORCE

The Houston District Office is organized into four major units-- District Director, Enforcement Group I, Enforcement Group II, and Legal Division--and subunits in each. As of September 30, 1993, the two enforcement groups, which investigate charges of discrimination, had the largest number of employees. The two groups were headed by grade 14 supervisory investigators, and the subunits were headed mostly by grade 13 supervisory investigators. The enforcement groups were the only units with grade 13 supervisory positions.

As of September 30, 1993, the Houston District Office had 80 employees. Of that number, 21 employees (about 26 percent) were white, 38 employees (about 48 percent) were black, and 21 employees (about 26 percent) were Hispanic.

Nineteen of the 80 employees were in grades 13, 14, or 15, or in the Senior Executive Service. Of those employees, seven were white, eight were black, and four were Hispanic. Twelve of the 19 employees were women, including the District Director, who was the lone Senior Executive Service member.

Three of the four Hispanic employees were at grade 13 and the fourth was at grade 14. One of the four was a female; she was a grade 13 program analyst, a nonsupervisory position, in the District Director's office.

The District Director, Houston District Office, verified that four Hispanic employees were at grades 13 and 14 and that the grade 13 Hispanic female employee was in a nonsupervisory position. She said this was true as of February 16, 1994, the date we spoke, as well as of September 30, 1993. She added that she had promoted these individuals to their current positions. She also stated that while they no longer worked at the Houston District Office, there were other Hispanic employees over the years, men and women, that she had promoted to grade 13 and above, including an Hispanic female she had promoted into a grade 13 enforcement supervisor position.

DISCRIMINATION COMPLAINTS AT HOUSTON DISTRICT OFFICE

Under the federal complaints processing system, employees who believe they have been discriminated against meet with agency EEO counselors who attempt to resolve the matter informally. If the matter is not resolved, the employee can file a formal discrimination complaint. We obtained data on formal complaints

B-256639

filed in the Houston District Office in fiscal years 1990-1994; data for 1994 were through February 3.

According to EEOC data, 12 employees of the Houston District Office filed 21 discrimination complaints over this period. Six Hispanic employees, 2 men and 4 women, filed 12 of these complaints.⁵ The Hispanic employees filed nine complaints in which they said they were discriminated against because they are Hispanic.⁶ Three also filed separate complaints in which they said they had experienced reprisal by Houston District Office officials.

The 12 complaints were filed in fiscal years 1992-1994. The personnel issues raised in these complaints frequently concerned performance evaluation and promotion. For example, complainants said they were denied an appropriate evaluation or promotion because of their Hispanic origin.

In addition to employees' complaints, one job applicant also filed a complaint. The applicant, a Hispanic and former employee of the Houston District Office, claimed he was not hired because of reprisal by Houston District Office management. The complaint was filed in fiscal year 1993.

All together, over the period reviewed, Hispanic employees and applicants filed 13 complaints. Eleven were in EEOC's complaints processing system as of February 3, 1994, and were unresolved as of that date. Two complaints, filed by the same employee, were in federal district court. No settlement or decision had been reached on this suit as of February 16, 1994.

LULAC'S COMPLAINT LETTER TO EEOC

On February 17, 1993, the Director of LULAC's District 18 wrote to the EEOC chairman and said its letter was to serve as an

⁵One complaint was originally filed as a class complaint. However, the administrative judge hearing it rejected the class designation. That rejection was appealed, and the EEOC commissioners upheld the administrative judge's decision. The complaint was being processed as an individual complaint since only one employee had filed it. According to EEOC officials, administrative judges who hear complaints filed by EEOC applicants and employees are attorneys from outside of EEOC.

⁶According to EEOC data, seven of the nine complaints contained other charges as well; for example, discrimination because of gender or age. All seven of these complaints included charges of reprisal by Houston District Office officials.

"official third party Commissioner's charge of discrimination" on behalf of female Hispanic employees of the Houston District Office. On March 22, 1993, the Director, Office of Program Operations, EEOC, wrote to LULAC and said that EEOC lacked authority to investigate commissioner's charges or to accept third-party charges made against federal employers.

Under 29 C.F.R. Part 1601.11, an EEOC commissioner is allowed to bring a discrimination charge against a private sector employer, a state or local government, and an educational institution that has 15 or more employees. However, under federal complaint processing regulations 29 C.F.R. Part 1614, which became effective October 1, 1992, there is no provision that allows a commissioner to file a charge against a federal government employer. Moreover, a commissioner's charge is brought at the discretion of a member of the Commission and not by a third party. Thus, EEOC was correct when it informed LULAC that it did not have the authority to investigate the type of charge that LULAC was attempting to file.

In its March 22 response, EEOC said Part 1614 does not include a provision for filing third-party charges, implying that it lacked authority to accept LULAC's complaint. We agree that Part 1614 does not contain a third-party provision and as such, federal agencies, including EEOC, do not have the authority to accept complaints raised by third parties. However, under certain circumstances a third party may act as the representative of a federal employee and file a complaint on the employee's behalf. In such cases, the complaint would be the employee's complaint rather than the third-party's complaint.

An EEOC administrative decision issued under the previous EEOC regulations governing federal sector complaint processing (29 C.F.R. Part 1613) held that if a complainant or class agent designates an organization to be its representative and the complaint meets all other requirements, then federal agencies should accept and investigate such complaints.⁷ This decision has not been overturned.

Should the issue ever rise on appeal, it is unclear whether the Commission would determine that the authority to accept complaints provided for by the administrative decision still exists under Part 1614, since the language in Part 1613 that the Commission relied upon in making its prior determination has been

⁷LIBERTAD, Advocates for Civil Rights v. Donald B. Rice, Secretary, Department of the Air Force, EEOC Request No. 05910768 (Jan. 7, 1992).

B-256639

deleted from Part 1614. According to EEOC, no appellate case has come to the Commission on this issue under Part 1614.

Furthermore, it is unclear from LULAC's February 1993 letter whether LULAC was attempting to file an official complaint on behalf of Houston District Office employees, or whether it was bringing general charges of discriminatory practices in the Houston District Office to EEOC's attention. According to EEOC, if allegations of discriminatory practices within EEOC are made outside the purview of Part 1614, the director responsible for a particular office is expected to address the matter. If the allegations concern the director of a field office, the authority to investigate the matter is within the purview of EEOC's Office of Program Operations.

We discussed this issue with the Director, Office of Program Operations, and he said that on the basis of his knowledge of the Houston District Office, he saw no discrimination problem. He said Hispanics worked in all levels of the Houston District Office, and the Houston District Director is well respected in, and has received support from, the Hispanic community.

- - - - -
Copies of this letter will be sent to the Chairman, EEOC, and will be made available to others upon request. We are also sending a similar letter to Representative Michael A. Andrews, who also asked us to address LULAC's concerns.

The major contributors to this correspondence were Steve Wozny, Assistant Director; Anthony Assia, Evaluator-in-Charge; and James Rebbe, Attorney. Please call me on (202) 512-5074 if you have any questions about this information.

Sincerely yours,



Nancy Kingsbury
Director
Federal Human Resource Management
Issues

(995279)