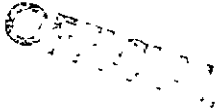


STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 WANDA COLE, *
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 Complainant, *
 *
 v. *
 *
 UNIVERSITY OF WISCONSIN-Oshkosh, *
 *
 Respondent. *
 *
 Case No. 79-PC-ER-50 *
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 * * * * *



DECISION
 AND
 ORDER

This matter is before the Commission on consideration of a Proposed Decision by the hearing examiner issued August 27, 1980.

By letter filed December 26, 1980, the complainant's attorney requested a new hearing on the grounds that Ms. Cole was not represented at the hearing held in this matter and was not able to present her case effectively.

Based on the record in this case the Commission finds that although the complainant was unrepresented by counsel at the hearing she is a person of intelligence and has a college education, and she previously appeared in this matter by counsel.

The complainant's current attorney in the letter cited above states: "Without a competent litigator aiding Ms. Cole, the Commission had an obligation to assist her." In the opinion of the Commission, the obligation of the hearing examiner to "assist" a complainant does not and can not run so far so as to put the examiner in the posture of acting as the complainant's attorney or advocate. To go that far would be to take the examiner out of the role of an

impartial official and to deprive the respondent of a fair hearing. The Commission finds, on the basis of the transcript of hearing, that the examiner did assist the complainant with respect to explaining matters of evidence and procedure, and that the complainant was not denied a fair hearing.

The Commission recognizes that in most cases a complainant will be able to present a more effective case with the assistance of counsel than without such assistance. This is undoubtedly true of any legal proceeding. The absence of counsel alone cannot be the basis for the grant of a new hearing.

ORDER

The Commission denies the complainant's request for a new hearing. The Proposed Decision and Order of the hearing examiner, a copy of which is attached hereto, is incorporated by reference as if fully set forth and adopted as the final Decision and Order in this matter.

Dated: January 13, 1981.

STATE PERSONNEL COMMISSION

PARTIES

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Charlotte M. Higbee
Chairperson

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UW-Systems President
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Gordon H. Brehm
Gordon H. Brehm
Commissioner

*Commissioner Murphy abstains from voting due to his employment with the University of Wisconsin-Madison at the time this complaint was filed.

FINDINGS OF FACT

1. Ms. Cole was hired as an Assistant Professor in the Art Department by the University of Wisconsin-Oshkosh in 1973 for a one-year appointment to replace a faculty member who was on leave of absence.

2. When the instructor Ms. Cole was replacing did not return from leave of absence, complainant was retained in the Art Department as an Assistant Professor with her contract being renewed each year through the 1979-80 academic year, except for the 1977-78 academic year when she was on leave of absence.

3. Early in 1978, members of the Art Department faculty voted 14 to 3 with one abstention to recommend renewal of Ms. Cole's contract for the academic year, 1979-80. Department Chairperson Michael Brandt also supported her renewal. William Leffin, Dean of the College of Letters and Science, however, did not recommend her reappointment and Chancellor Edward M. Penson concurred. Ms. Cole then appealed the non-renewal decision and Dean Leffin reversed his recommendation and her contract was renewed.

4. Early in 1979, members of the Art Department faculty voted 10 to 6 with one abstention to recommend Ms. Cole's contract renewal for the academic year, 1980-81. Chairperson Franklin Utech reluctantly recommended renewal. Dean Leffin and Chancellor Penson failed to approve her renewal and subsequently rejected her appeal of this decision.

5. Ms. Cole did not have tenure at the University since §36.13(1)(b), Wis. Stats., provides that "a probationary appointment shall not exceed 7 consecutive academic years in a full-time position in an institution...."

Since she served only 6 academic years at the University of Wisconsin-Oshkosh, a decision on tenure for Ms. Cole would not have been made until early in 1980.

6. Ms. Cole's teaching contract was not renewed because the University of Wisconsin-Oshkosh Chancellor Penson determined that her teaching record revealed a "marginal record of professional performance; and recommendations from peers are not sufficiently strong to warrant continuing your probationary status beyond next year." (Appellant's Ex. #2)

CONCLUSIONS OF LAW

1. The respondent, University of Wisconsin-Oshkosh, is an employer within the meaning of §111.32(3), Wis. Stats.

2. The Personnel Commission has jurisdiction over this matter pursuant to §111.33(3) and §230.45(1)(b), Wis. Stats.

3. The burden of proof is on the complainant to establish by the preponderance of credible evidence that she was discriminated against because of sex and/or retaliation for having made a previous complaint, pursuant to §111.32(5), Wis. Stats.

4. The complainant has not met her burden of proving that she was discriminated against because of her sex and in retaliation for her previous complaint under §111.32(5), Wis. Stats.

OPINION

Complainant alleged in her original complaint that she was discriminated against in the conditions of her employment at the University of Wisconsin-Oshkosh because of her sex. She failed, however, to present a preponderance of credible evidence at the hearing to support this charge.

Ms. Cole apparently attempted to prove there was discrimination against her demonstrated by the respondent during a period when the University was studying the establishment of a Master of Arts in the Humanities degree program. The only evidence offered, however, was that there was a dispute between her and other members of the faculty concerning what should have been in the curriculum of this proposed program.

Ms. Cole's allegation that the respondent refused to support a National Endowment for the Arts grant in her behalf was denied by Dean Leffin (Tr. 143) and complainant offered no testimony to challenge this denial.

In regard to the renewal of her teaching contract for the academic year 1979-80, complainant failed to present any evidence indicating discriminatory reasons why her contract renewal was at first rejected and then approved.

Considerable testimony and evidence was presented concerning the failure of respondent to renew her teaching contract for the academic year, 1980-81, effectively terminating her employment with the University on June 5, 1980. Allegations made by Ms. Cole concerning discriminatory reasons why three male members of the faculty voted against her proposed

renewal were not proven. Two of the three persons who allegedly made these statements denied having made them and the third person was not called by the complainant to testify.

Dean Leffin's testimony, which was not challenged by complainant, was that Ms. Cole's contract renewal decision was made on the basis of programmatic needs of the University and on her record as an instructor at the University of Wisconsin-Oshkosh. He also testified that during Ms. Cole's last two academic years at the University, five of the six instructors whose teaching contracts were not renewed were males.

Ms. Cole was afforded all her rights of appeal provided by the Wisconsin statutes and the Wisconsin System Administrative Code in regard to the non-renewal of her contract. Chancellor Penson, who made the final decision, stated the reasons why respondent denied her appeal by saying:

"The original reasons given for non-renewal in my letter of May 24, 1979 to Professor Cole remain valid as a result of the corrected process, namely: 'The decision to non-renew your contract is based on two factors: the evidence submitted describes a marginal record of professional performance; and recommendations from peers are not sufficiently strong to warrant continuing your probationary status beyond next year.'" (Appellant's Ex. #2)

Nothing in the record of the hearing establishes that respondent had any other reasons than those stated by Chancellor Penson for its decision to non-renew Ms. Cole's contract.

In her brief, complainant raises issues concerning alleged violations of the University of Wisconsin System Administrative Code by respondent relating to her teaching contract at the University of Wisconsin-Oshkosh. Since these issues were not properly a part of this hearing, and in any event, this Commission has no jurisdiction in these matters, the Commission will make no finding relative to them.

As to the complaints of discrimination against Ms. Cole because of her sex and retaliation, the Commission for reasons previously stated finds that no such discrimination or retaliation occurred.

ORDER

It is hereby ordered that the complaint against the President of the University of Wisconsin-Oshkosh is hereby dismissed.

Dated _____, 1980

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Chairperson

Gordon H. Brehm
Commissioner

Commissioner Donald Murphy abstained due to his employment with the University of Wisconsin at the time this case came before the Commission.

GHB:mek

Parties:

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