

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOAN GERMAN,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 TRANSPORTATION,
 Respondent.
 Case No. 83-0034-PC-ER

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is a complaint of discrimination on the basis of sex in the assignment of state troopers to the Wisconsin Correctional Institution during an inmate disturbance. On April 9, 1984, one of the Commission's Equal Rights Officers issued an initial determination finding no probable cause to believe that discrimination had occurred. On May 11, 1984, complainant appealed this determination. A hearing was held on August 9, 1984.

FINDINGS OF FACT

1. At all time relevant to this matter, complainant has been employed as a trooper with respondent's Division of State Patrol and has been assigned to Troop C in District 3.

2. Beginning in the morning hours of January 31, 1983, and continuing into February 1, 1983, there was an inmate disturbance at Waupun Correctional Institution (WCI). Certain troopers were ordered to report to WCI and were assembled into squads upon their arrival at WCI. No female troopers were present at WCI on January 31 or February 1.

3. As stipulated by the parties, Trooper Ellen Flynn, who is assigned to District 3, was contacted on January 31, 1983, at 10:29 a.m. by Trooper Art Sheldon, was advised by him of the inmate disturbance at WCI, and was instructed by him to have her civil disturbance equipment in her cruiser when she reported for duty as scheduled at 2:00 p.m. Trooper Flynn was not ordered to report to WCI.

4. As stipulated by the parties, Trooper McDonald and Trooper Pichette (both male), who are assigned to District 3, were scheduled for duty on January 31, 1983, and were ordered to report to WCI on that date. Each did so report but did not stay over night at WCI. Neither was scheduled for duty on February 1, 1983, but both were ordered to report to WCI on February 1.

5. Trooper Pueringer (a male), who is assigned to District 3, was originally scheduled to report for duty at 5:30 p.m. on January 31, 1983. On January 30, 1983, at Trooper Pueringer's request, his schedule was changed to a shift beginning at noon because he needed to get the radio in his cruiser repaired. At 10:30 a.m. on January 31, Sergeant Janssen telephoned Trooper Pueringer, advised him of the inmate disturbance at WCI, and instructed him to report for duty as scheduled and with his civil disturbance gear. When trooper Pueringer advised Sergeant Janssen of the fact that his schedule had been changed to a shift beginning at noon, not 5:30 p.m., Sergeant Janssen ordered Trooper Pueringer to report to WCI at the beginning of his shift.

6. Trooper Lindbeck (a male), who is assigned to District 3, was scheduled to report for duty at 2:00 p.m. on January 31, 1983. At 11:30 a.m. on January 31, Trooper Lindbeck received a telephone call from Trooper Sheldon instructing him to report for duty early and with his civil

disturbance equipment. Trooper Lindbeck started his shift by depositing bond money at the Washington County Courthouse. While at the courthouse, Trooper Lindbeck received a telephone call from Sergeant Janssen instructing him to pick Captain DeGuire up at a Milwaukee airport at 4:30 p.m. and to take him wherever he wanted to go. Trooper Lindbeck picked Captain DeGuire up at the airport at 4:15 p.m. and was instructed by Captain DeGuire to take him to Fond du Lac. After leaving the airport, Trooper Lindbeck received radio instructions that Colonel Goetsch wanted to talk to Captain DeGuire. Trooper Lindbeck drove to District 3 headquarters in Fond du Lac, remained there approximately 1 to 1½ hours, drove Captain DeGuire to Madison, and was then instructed to return to his duty sector.

7. Trooper Ferg (a female), who was assigned to District 3, was living with Trooper Bänder (a female) on January 31 and February 1, 1983. Trooper Ferg was not scheduled for duty on January 31, 1983, but was scheduled for duty on February 1. She was not ordered to report to WCI on January 31 or February 1. Trooper Bender was scheduled to report for duty at 2:00 p.m. on January 31. At 10:00 a.m. and at noon on January 31, Trooper Sheldon telephoned their residence and left a message with Trooper Ferg. In the first phone conversation, Trooper Sheldon advised Trooper Ferg that Trooper Bender should bring her civil disturbance gear when she reported for duty. In the second phone conversation, Trooper Sheldon advised Trooper Ferg that Trooper Bender should report for duty early and report to her duty sector.

8. Complainant was not scheduled for duty on January 31 or February 1, 1983, and was not ordered to report for duty or to report to WCI on those days.

9. Duty schedules for troopers assigned to District 3 were prepared in advance and posted. These posted schedules were generally not modified if subsequent changes were made in the schedule.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to §230.45(1)(a), Stats., and §PC 4.03(3), Wis. Adm. Code.
2. The respondent is an employer within the meaning of §111.32(3), Stats.
3. The complainant has the burden to prove that there is probable cause to believe that respondent discriminated against her on the basis of sex in assigning troopers to the Wisconsin Correctional Institution.
4. The complainant has not satisfied her burden.

OPINION

The definition of probable cause is set forth in §PC 4.03(2), Wis. Adm. Code:

"Probable cause exists when there is reasonable ground for belief supported by the facts or circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been or is being committed."

In determining whether probable cause exists, the Commission normally utilizes the kind of analytical framework used in hearings on the merits, but in the context of the aforesaid definition of probable cause. This framework is as follows:

1. Is there a prima facie showing of discrimination?
2. If so, can the respondent agency articulate a legitimate, non-discriminatory rationale for its actions?
3. Is this articulated rationale merely a pretext for unlawful discrimination?

A prima facie case is in essence a set of facts from which one can infer, if the facts remain unexplained, that the employer's action was motivated by discriminatory reasons.

What constitutes a prima facie case will vary from one type of employment transaction to another. However, we will assume for the purposes of discussion, in view of the fact that complainant is a female and that no female troopers were present at WCI on January 31 or February 1, 1983, that in this case there are sufficient facts and circumstances to give rise to a prima facie case in the probable cause context. The next question is whether the respondent can articulate a legitimate, non-discriminatory rationale for its actions and, if so, whether complainant can show such rationale is a pretext for discrimination.

On the basis of the hearing record, the Commission concludes that respondent assigned troopers to WCI in the following manner on January 31 and February 1, 1983: Those scheduled to work shifts starting earlier than 2:00 p.m. on January 31, were ordered to report to WCI; those scheduled to work the 2:00 p.m. shift on January 31 were instructed to report to their duty sectors early and with their civil disturbance equipment; those not scheduled for duty on January 31 were not ordered to report for duty; and those troopers ordered to WCI on February 1, 1983, were those who had been present at WCI on January 31. There is no evidence in the record that female and male troopers scheduled to work the same shifts were issued different orders or that the respondent deviated in any significant way from the procedure outlined above. Finally, it was not unreasonable for respondent to order those troopers scheduled for earlier shifts to report to WCI since the disturbance commenced in the morning hours of January 31; for respondent, in the interest of continuity, to order those troopers who

had been present at WCI on January 31 to report to WCI on February 1; and for respondent not to order off-duty troopers to report to WCI on January 31 when troopers scheduled for duty on that date were available. The procedure respondent followed in assigning troopers to WCI is reasonable in view of the circumstances, is neutral on its face, and no evidence has been produced to demonstrate that it was not followed uniformly. Complainant has thus failed to demonstrate that the procedure followed by respondent, which is legitimate and non-discriminatory on its face, was a pretext for discrimination.

ORDER

This complaint is dismissed.

Dated: Nov. 8, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

LRM:jab
ORDER

Parties

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