



STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 GEORGE J. SCHLEICHER, \*  
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                   Complainant, \*  
 \*  
 v. \*  
 \*  
 Adjutant General, DEPARTMENT \*  
 OF MILITARY AFFAIRS, \*  
 \*  
                   Respondent. \*  
 \*  
 Case Nos. 87-0019, 0169-PC-ER \*  
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 \* \* \* \* \*

DECISION  
AND  
ORDER

Complainant, George Schleicher, filed a complaint on February 19, 1987, against his employer, Department of Military Affairs (DMA), Case No. 87-0019-PC-ER, claiming DMA unlawfully discriminated against him, in the course of his initial employment with them, on the basis of age. Later, on December 4, 1987 complainant filed another complaint, Case No. 87-0169-PC-ER, alleging DMA had continued its age discrimination against him in regards to his wages and forced him to retire. Schleicher alleged DMA's acts against him were in violation of the Wisconsin Fair Employment Act, Wis. Stat. §111.31 et seq. Both cases were investigated and an initial determination was made finding, in both instances, no probable cause to believe Schleicher was discriminated on the basis of age. These matters are before the Commission on an appeal of the no probable cause initial determinations.

FINDINGS OF FACT

1. Complainant, whose date of birth is August 16, 1931, began working for the state in May, 1959.

2. In late 1981 or early 1982, complainant, who worked as a Program Assistant (PA) 3 in the Department of Public Instruction (DPI), learned his position was to be eliminated.

3. Prior to being laid off by DPI, complainant applied for and accepted a position as Storekeeper 1 in the Department of Military Affairs (DMA).

4. At the time complainant accepted the position at DMA, his position at DPI as a PA 3 was assigned to pay range 02-08 and he was earning \$8.333 per hour.

5. Complainant's Storekeeper 1 position at DMA was in pay range 03-06 and his salary was established at \$7.00 per hour. The compensation plan in affect at that time for pay range 03-06 was \$6.508/hr. MIN., \$6.704 PSICM and \$7.390 MAX.

6. The personnel transaction between the two state agencies, DPI and DMA, involved a voluntary demotion. On February 26, 1982, complainant, by a letter to Terrance Yeazel, Personnel Manager, DMA, accepted a voluntary demotion from PA 3 at DPI to Storekeeper 1 at DMA's U.S. Properties and Fiscal Office, Camp Williams.

7. At the time, complainant moved to DMA, DMA had six other employes in comparable positions. They were:

<u>Name</u>	<u>DOB</u>	<u>Class</u>	<u>Pay Range</u>	<u>Hourly Rates</u>
Pitel	7/26/27	FRW1	03-06	\$7.374
Deisinger	12/19/36	FRW1	03-06	7.398
Billings	7/03/37	FRW1	03-06	6.906
Hanson	5/17/28	SO 1	03-06	6.935
Moore	5/09/37	SO 1	03-06	6.59
Krohn	10/26/48	SO 1	03-06	7.334

Complainant's predecessor, a younger man, had been paid \$6.69 per hour.

8. In October 1986, complainant initiated reclassification of his position. On April 23, 1987 complainant's position was reclassified to Storekeeper 2, effective March 5, 1987.

9. Complainant's new base pay as Storekeeper 2 was \$9.125 per hour.

10. After reclassification to Storekeeper 2, complainant earned a higher hourly pay rate than five employes in the same pay range, including four who were younger. Three employes in complainant's pay range earned more than complainant, two of those were younger.

11. On July 31, 1987 complainant wrote his supervisor, Richard Wiora and informed him that he was retiring on August 15, 1987.

12. On August 4, 1987 DMA acknowledged complainant's letter notifying the agency of his decision to retire.

13. August 14, 1987 was complainant's last day of work at DMA before he retired.

14. On February 19, 1987 complainant filed an appeal with the Commission charging DMA with discrimination against him because of his age. This appeal was assigned Case No. 87-0019-PC-ER. On December 4, 1987 complainant filed another appeal, Case No. 87-0169-PC-ER claiming respondents continued age discrimination against him, forced him to retire.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over complainant's charge of discrimination pursuant to §§230.45(1)(b) and 111.375(2), Wis. Stats.

2. The respondent is an employer as defined in §111.32(6)(a), Wis. Stats.

3. The complainant is an individual protected under §111.321, Wis. Stats.

4. The complainant has the burden of proving there is probable cause to believe respondent discriminated against him because of age by failing to award him pay commensurate to pay of younger employes in comparable positions and forcing him to retire.

5. The complainant has failed to meet his burden of proof, establishing probable cause to believe respondent discriminated against him on the basis of age and forced him to retire.

#### OPINION

The facts in this case are straight forward. The complainant, George J. Schleicher, claims the Department of Military Affairs, during the course of his employment with them, unlawfully compensated him for his work as a Storekeeper at a low rate because of his age. He also claims that DMA's continuing failure to compensate him commiserate with his job responsibilities caused him to retire. From the record, it appears Schleicher argues that DMA, from the beginning of his employment with them, paid him a lower rate per hour than younger employes in the same pay range. In support of his position, complainant points to the following facts: Although he started with the state in 1959, complainant's starting hourly wage was less than the maximum allowed in his pay range. Other workers in the same pay range, with less service as a state employe, some of whom were younger, were receiving higher wages. In addition, DMA immediately added new responsibilities to his job without increasing his hourly rate.

In viewing the record, it is clear complainant, age fifty-seven, comes within the age group protected from unlawful discrimination as provided in FEA, Wis. Stats. §111.31 et. seq.. However, the evidence does not corroborate complainant's allegations. No evidence was presented establishing complainant's starting hourly wage was prompted by his age. Instead, the

evidence adduced shows complainant's starting hourly wage was more than his younger predecessor's ending hourly wage. While statistical evidence indicated some younger employes were being paid more than complainant, this same evidence also indicated some younger employes were being paid less than complainant. No wage pattern could be discerned indicating age bias.

Except for complainant's declaration that DMA had been affected by his age when it made its decisions about his hourly wage, no evidence was offered which would cause the Commission to come to that conclusion. For example, when complainant changed from expressing dissatisfaction, by unilaterally resigning from his assigned duties as Fire Marshall, to formally requesting a higher position classification, DMA responded by reviewing and approving a higher classification for his position.

It appears complainant believed his 23 years in state service (seniority) entitled him to a higher starting hourly wage than paid by DMA. It also appears that this belief was predicated, in part, upon the misconception that time in state civil service would be a factor in determining his starting hourly wage.


The clear evidence does not bear out complainant's beliefs. The complainant did not transfer from his former position at DPI to his new position with respondent, he took a voluntary demotion. Consequently, time in state service was not a factor in the computation of complainant's hourly wage.

On the issue of constructive discharge, having determined the evidence insufficient to support a conclusion that complainant was discriminated against because of his age, the Commission is of the opinion that complainant was not forced to resign as alleged.

ORDER

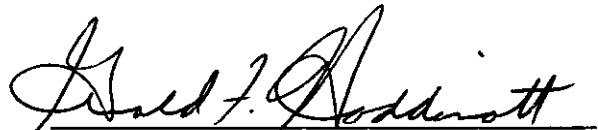
Complainant's charges of discrimination on the basis of age against respondent are dismissed.

Dated: May 18, 1989 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

DRM:jmf  
JMF06/2

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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