

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

RICHARD KIRCHER, *

Complainant, *

v. *

Secretary, DEPARTMENT OF *

HEALTH AND SOCIAL SERVICES, *

Respondent. *

Case No. 87-0065-PC-ER *

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is a charge of discrimination on the basis of creed with respect to the denial of add-on credit for salary purposes for a college course completed by complainant. This charge was filed June 9, 1987, and subsequently held in abeyance pending a re-review of the denial by the Bureau of Personnel and Employment Relations (BPER) within the Department of Health and Social Services (DHSS). This re-review resulted in the affirmation of the earlier denial. On January 25, 1988, one of the Personnel Commission's equal rights investigators issued an initial determination finding no probable cause to believe that discrimination had occurred as alleged. On February 9, 1988, complainant filed an appeal of such determination. A hearing pursuant to this appeal was held on June 13, 1988, before Laurie R. McCallum, Commissioner.

FINDINGS OF FACT

1. Complainant, a math teacher at Fox Lake Correctional Institution (FLCI), was entitled to a "Teacher Supplemental Pay Add-On" upon the

completion of a certain amount of additional relevant course work. Course credits were subject to approval by respondent.

2. Early in 1987, complainant requested that respondent approve supplemental pay add-on for three credits he had earned through completion of a course at St. Xavier College in Chicago called Fundamental Science of Nature. After initial disapproval of this request at FLCI, complainant requested review at the Division of Corrections (DOC) level by Robert Hable, Chief, Education and Employment Section.

3. At Mr. Hable's request, complainant submitted a copy of the St. Xavier College's official description of this course, which stated as follows:

Fundamental Science of Nature. This course is devoted to principles that underlie physics, chemistry, biology, and psychology. The student examines the primary principles and causes of natural things, the concept of nature, a generalized definition of motion or change, the nature of the infinite, of time, place, and space. Of equal importance is the development of the methodology that will be applied systematically through the remaining three semesters. The semester concludes with the study of a strict proof for the existence of God as the First Unmoved Mover, thus preparing the way for theological wisdom with an acceptable scientific base. Lecture-demonstration, 4 hours a week.

4. Mr. Hable decided to deny approval for these course credits for the reasons expressed in a letter to complainant dated April 6, 1987, which stated as follows:

"The description of the course is sketchy, but it is described as a science course for theology students rather than a science course for education students. The guidelines established for the add-on program require relevance to the field in which you are teaching at Fox Lake. It is my judgment that this course is not relevant to your responsibility as a mathematics teacher."

5. Mr. Hable's decision was re-reviewed and ultimately affirmed by respondent's Bureau of Personnel and Employment Relations. In a letter to complainant dated January 8, 1988, Staff Specialist Michael Soehner expressed the essential rationale for the decision as follows:

We recognize that in issues of relevancy, judgment is required. In your case, the Division of Corrections reviewed your previously earned educational credits and found that, in their judgment, the course titled Fundamental Science of Nature was not relevant to your current teaching assignment. Recognizing that they (the division and institution) are in the best position to judge relevancy, our review was ultimately limited to the issue as to whether or not their decision appeared to be an abuse of discretion, i.e., was their decision "not justified by and clearly against reason and evidence." We believe that it is reasonable to conclude that not all science courses are relevant either to the field of teaching or to a specific certification area (Mathematics). We therefore concluded that their judgment of relevancy was within reason and evidence and as such should not be overturned at the departmental level.

6. In determining the relevancy of credits for add-on purposes, respondent applied the following guideline:

"Once it has been determined which credits are eligible to be considered, these credits must be reviewed to determine which credits are relevant to the duties and responsibilities of the position.

1. Credits in courses which are job-related are relevant. Job-related credits are credits in courses which aid the employe in improving or updating skills and knowledges in the employe's present position. Relevant courses are either directly applicable to the teaching assignment, to teaching methodology or teaching theory."

7. Complainant's above-described request was part of a larger request by complainant for the approval of supplemental pay add-on for 85 credits he had earned through the completion of college-level courses. Respondent decided that 53 of these credits were "relevant" and 32 "non-relevant."

8. Respondent has approved supplemental pay add-on for credits earned through the completion of courses at both sectarian and non-sectarian colleges.

9. Complainant testified at the hearing that he is not claiming that respondent denied his request on the basis of complainant's own religious beliefs.

CONCLUSIONS OF LAW

1. This case is properly before the Personnel Commission pursuant to §§230.45(1)(b), Stats.
2. Respondent is an employer within the meaning of §111.32(3), Stats.
3. Complainant has the burden to prove that there is probable cause to believe that respondent discriminated against complainant on the basis of creed in regard to the subject action.
4. Complainant has failed to sustain his burden.

DECISION

The Fair Employment Act (FEA) prohibits employment discrimination on the basis of creed. Section 111.321, Stats., provides:

"Subject to ss. 111.33 to 111.36, no employer...may engage in any act of employment discrimination as specified in s. 111.322 against any individual on the basis of...creed...." (emphasis added)

Section 111.322, Stats., provides:

"Subject to ss. 111.33 to 111.36, it is an act of employment discrimination to do any of the following:

(1) ...to discriminate against any individual...in compensation...because of any basis enumerated in s. 111.321." (emphasis added)

While the FEA does not define "creed," the Wisconsin Supreme Court has held that it means "a system of religious beliefs." Augustine v. Anti-Defamation League, 75 Wis. 2d 207, 215, 249 N.W. 2d 547 (1977).

At this point, this legal framework must be applied to the facts of this matter. According to these statutory provisions, a conclusion of employment discrimination on the basis of creed would require that the employer have taken an adverse action against complainant because of "a system of religious beliefs."

It is important to keep in mind that the Commission's inquiry as to a charge of discrimination is limited to whether there is probable cause, §PC 1.02(16), Wis. Adm. Code, to believe there was a violation of the FEA. The Commission is not looking at this transaction from the standpoint of whether it agrees or disagrees with respondent's determination as to the relevancy of these credits, but is only looking at it from the standpoint of whether there is probable cause to believe respondent's decision constituted discrimination on the basis of creed in violation of the FEA.

What the employer did in this case was to deny approval for salary add-on purposes of the credits earned for the course in question. The reason for the denial was the determination that the course was not relevant to complainant's duties and responsibilities as a math teacher. There is no evidence that this determination was because of "a system of religious beliefs," either complainant's "system of religious beliefs," anyone else's, or in general. In fact, complainant admitted in his testimony that he is not claiming that respondent denied his request on the basis of complainant's own religious beliefs and did not allege that it was based on anyone else's.

The FEA was not designed to address or redress every employment action perceived to be inequitable by a member of a protected group, only those employment actions based on membership in a protected group. In the instant case, if complainant had alleged and proved that respondent had denied add-on credit for the subject course based on complainant's religious beliefs or anyone else's, the result in this case could have been different. But complainant did not do so and his attempt to shoe-horn his situation into protection under the FEA is misplaced.

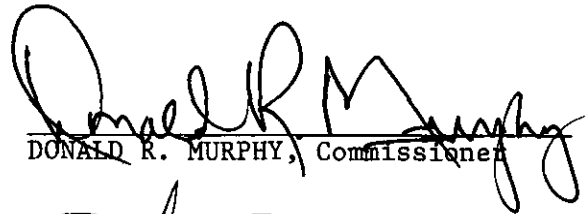
There is clearly no probable cause to believe complainant has been discriminated against as alleged.

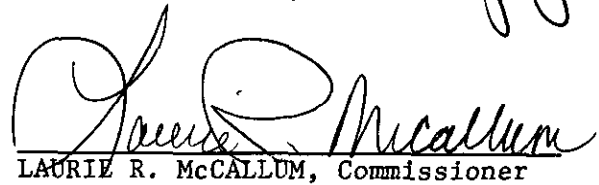
ORDER

This complaint is dismissed.

Dated: August 10, 1988 STATE PERSONNEL COMMISSION

LRM:jmf
JMF09


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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