

STATE OF WISCONSIN

PERSONNEL COMMISSION

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LYNN KOSINSKI, ALESIA WHITING,
 DAVE PROSA, KATHLEEN S. BLEIFUHS,
 and FLORENCE KIESLING,

Complainants,

v.

Chancellor, UNIVERSITY OF
 WISCONSIN-MADISON, and
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondents.

Case Nos. 92-0243 to 0247-PC-ER

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RULING
 ON
 MOTION

These matters are before the Commission on the motion by respondent University of Wisconsin-Madison (UW) to dismiss it as a party.

The complaints are substantially identical.¹ In her complaint, Ms. Kosinski states:

I have been employed as a parking attendant since approximately 1987 by UW Madison, Parking and Transportation. I have been discriminated against on the basis of sex by being placed in a position classified on the basis of sex. The parking attendant position was created in 1970, specifically and expressly with the intent that it be filled by women. (Subsequently, some positions have been filled by men.) The principal duty of the position of parking attendant was and is parking enforcement. Despite the fact there were male Police Officers and male Security Officers (at higher pay grades) whose duties on certain shifts had been also almost entirely parking enforcement, the parking attendant position when created was placed by respondent DER in pay grade five. Parking attendants have continued to receive lower pay than men in certain classification[s], e.g., Security Officer, though performing similar jobs requiring equal skill, effort and responsibility under similar working conditions.

The pay disparity is a perpetuation of past discrimination and has never been rectified, though our superiors have made requests on our behalf for survey or reclassification several times (February, 1984, November, 1987, and January, 1992) to respondents.

¹In his complaint, Mr. Prosa offers a somewhat more extensive explanation of his claim.

Parking attendants have also been denied appropriate title and advancement steps which would provide promotional opportunities, in contrast to male Security Officers who are called "Officers," not "Attendants," and are classified as either Security Officer 1, 2 or 3. I believe this disparity also is perpetuation of past discrimination in the creation of the position.

Respondent UW contends that the actions complained of were "not actions taken by or within the authority of the University" because the authority to establish classifications, assign pay ranges and determine hourly wages rests with respondent Department of Employment Relations (DER) and complainants' bargaining representative, the Wisconsin State Employees Union.² The complainants and DER oppose UW's motion.

Complainants contend that the UW "instigated and was directly involved in the creation of the [classification] in question" and both the complainants and DER argue that the UW, as the employing agency for the complainants, must be retained as a party for purposes of relief and contribution.

The Commission agrees that the UW is an appropriate party in terms of awarding relief to the complainants in the event they are successful in their complaint and the Commission awards the requested relief of back pay. Here, both DER and the complainants contend that UW, as the employing agency, should be a party for remedial purposes and the Commission is unable at this point in the proceeding to find, as a matter of law, that UW could not be required to make contribution in the event of a back pay award. Respondent UW argues that it would be "fundamentally unfair" to assess any back-pay liability against it because it had previously asked DER to survey the Parking Attendant classification in order to place it in a higher pay range and because it was not a party to the collective bargaining agreement which allocated the classification to a particular pay range. The determination of whether such an assessment would be fair or unfair is not ready for determination at this point in the proceeding.

²The Commission has previously ruled that it lacks the authority to include a labor organization as a party in a Fair Employment Act claim. Phillips v. DHSS & DETF, 87-0128-PC-ER, 3/15/89, 4/28/89, 9/8/89; affirmed by Dane County Circuit Court, Phillips v. Wis. Pers. Comm., 89 CV 5680, 11/8/90; affirmed by Court of Appeals, 167 Wis. 2d 205, 2/13/92.

Therefore, respondent UW's motion to dismiss it as a party in this matter is denied.

Dated: April 30, 1993 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
k:d:temp-5/93 Kosinski


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner