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STATE OF WISCONSIN

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ELIZABETH J. AUSTIN,
 Complainant,

v.

DEPARTMENT OF MILITARY
 AFFAIRS,
 Respondent.

Case No. 81-PC-ER-30

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PERSONNEL COMMISSION

DECISION
AND
ORDER

On March 6, 1981 complainant filed a complaint with the Personnel Commission charging that she was discriminated against by the respondent because of her sex in violation of sections 111.31-11.37 Wis. Stats. Following investigation, an agent of the Commission issued an Initial Determination on June 3, 1981, finding probable cause to believe that such discrimination did occur. A hearing was held on October 21, 1981. Based upon the evidence of record, the following determinations are made.

FINDINGS OF FACT

1. Complainant, Elizabeth Jeanne Austin, a female, began her employment with the respondent, Department of Military Affairs, a state agency, on January 1, 1979. She was hired as a security officer at Truax Field, Madison, Wisconsin and worked in that capacity until resigning in January, 1981, to enter a training program as an enforcement cadet with the Wisconsin State Patrol.

2. In February, 1981, complainant decided she wished to return to her former position with respondent. Under state classified civil service law, she was eligible for reinstatement. She called her former supervisor and advised him that she wanted to return. During this telephone call she asked to be reinstated upon learning that her former position remained vacant. Her supervisor told complainant that he was not opposed to her reinstatement but that another former employe (a male) was also being considered for the position.

3. Prior to complainant's reinstatement request, respondent was considering various methods of filling the vacant position including open recruitment.

4. Subsequent to complaint's request for reinstatement, the male former employe withdrew from consideration. Respondent considered complainant for reinstatement but decided to advertise the position instead. Complainant had been the source of some intra-office friction and had failed to follow military grievance procedures during the period in which she had previously been employed by respondent agency.

5. On March 6, 1981, complainant filed with the Commission a charge of sexual discrimination against the respondent. Conciliation failed, respondent continued the recruitment process, interviewed 14 applicants--including complainant--finally selecting a male candidate with much greater experience in security than complainant.

6. Complainant was not reinstated because respondent elected to select from a broader pool of applicants through open recruitment. Respondent decided to use open recruitment because of appellant's prior failure to follow military grievance procedures and because she had been the source of intra-office friction.

7. Complainant was not selected for the position because respondent believed she was not the best candidate.

CONCLUSIONS OF LAW

1. The Commission has authority to hear this matter in accordance with §230.45(1)(b) Wis. Stats.

2. Respondent is an employer within the meaning of §111.32 Wis. Stats.

3. Complainant has failed to prove by a preponderance of the evidence that respondent discriminated against her on the basis of sex in its failure to reinstate her.

4. Complainant has failed to prove by a preponderance of the evidence that respondent violated §111.32-111.37 Wis. Stats.

OPINION

There is no basis for finding a pattern or practice of sex discrimination. Complainant presented no evidence as to the availability of women possessing qualifications for the position. Other women were employed as security personnel during complainant's employment with the respondent. The fact that a department is overwhelmingly male does not, in itself, establish an inference of sexual discrimination.

Similarly, complainant's allegations that she experienced disparate treatment when given work assignments were also unsupported by sufficient evidence. Complainant's supervisor testified (contrary to complainant's testimony) that male employes also worked double shifts and that such work was voluntary. Evidence regarding the clean up schedule was inconclusive. While it is clear complainant was given clean-up detail twice in twelve months, no evidence was presented showing that her co-workers were treated differently.

It is questionable whether complainant proved a prima facie case of discrimination. Her allegation that respondent offered the vacant position to a former male employe with lesser qualifications has no factual basis in the record; there was no testimony to support this position. Although respondent failed to reinstate her, she was considered along with other applicants for the position. Notwithstanding appellant's arguments to the contrary, respondent articulated a nondiscriminatory reason for not reinstating complainant, which complainant failed to prove was pretextual.

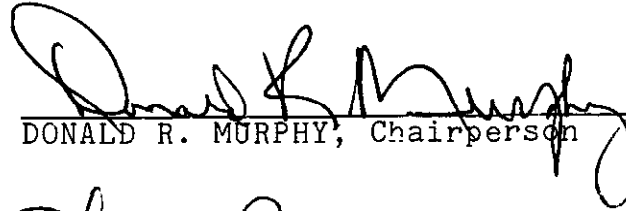
It is not a violation of the Fair Employment Act to fail to reinstate an employe who caused friction because she was unable to get along with co-workers and failed to follow military chain of command procedures. The record is clear that complainant was not reinstated for reasons other than unlawful discrimination.

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ORDER

The complaint of Elizabeth Jeanne Austin is hereby
dismissed.

Dated: Feb 9, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

Parties

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