

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 ARLENE CONRADY, and *
 ANITA JANOWSKI, *
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 Complainants, *
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 v. *
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 Secretary, DEPARTMENT OF *
 INDUSTRY, LABOR AND HUMAN *
 RELATIONS, and Administrator, *
 DIVISION OF PERSONNEL, *
 *
 Respondents. *
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 Case Nos. 81-PC-ER-9 & 19 *
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INTERIM
 DECISION
 AND
 ORDER

This decision is issued to resolve a dispute as to the proper issue for hearing. At the prehearing conference held January 28, 1985, the examiner proposed the following issue:

Whether the respondents discriminated against the complainants on the basis of sex in regard to the classification of their positions.

By letter of February 22, 1985, the respondents objected to the aforesaid statement of issue and proposed the following:

Whether the respondents discriminated against the complainants on the basis of sex in regard to the reallocation of their positions from Job Service Assistant Supervisors 3 (PR 1-09) to Job Service Supervisors 2 (PR 1-11) effective September 21, 1980.

The parties have submitted briefs.

On March 9, 1983, the Commission entered a decision and order following a hearing as to probable cause, with respect to these cases, and as to the merits with respect to a companion civil service appeal filed by Ms. Conrady, No. 80-363-PC. The parties had stipulated to the following issues for hearing:

80-363-PC: Whether or not the administrator's decision to reallocate appellant's position from Job Service Assistant Supervisor 3 (PR 1-9) to Job Service Supervisor 2 (PR 1-11) instead of Job Service Supervisor 3 or 4 (PR 1-12) or (PR 1-13) was correct?

81-PC-ER-9, 19: Whether there is probable cause to believe that the respondent discriminated against the complainants in the reallocation of their positions.

In the aforesaid decision and order, the Commission determined in No. 80-363-PC that the administrator's reallocation decision was not incorrect and ordered that appeal dismissed. In Nos. 81-PC-ER-9 & 19, the Commission determined there was probable cause to believe the respondent DER discriminated against the complainants, thus moving the case ahead to the stage of a hearing on the merits.

The discrimination complaints that were filed in this matter are essentially identical:

Audit of classification completed in October 1980 resulted in Job Service Assistant Supervisor 3's reclassified to Supervisor 2 if employed in larger offices. However, the Supervisor 2 classification was downgraded and resulted in a name change only and no monetary benefits. Also we are not eligible to receive overtime. Male Supervisor 2's were upgraded to Supervisor 3 - Hearing Office. We were informed this was not to be done. This reclassification affects the majority of the women in this supervisory capacity. I feel we were treated differently than the men and this is definite discrimination against women and it makes me feel very inferior.

The initial determination of "no probable cause" that was issued by the investigator ¹ contained, inter alia, the following characterization of the complaints:

¹ Pursuant to §PC 4.03(3), Wis. Adm. Code, this no probable cause determination was appealed to hearing and overturned in the aforesaid November 9, 1983, decision and order.

These charges of discrimination were filed as a result of a survey conducted by the Division of Personnel on the Job Service Assistant Supervisor and Job Service Supervisor classifications. Complainants allege that the survey perpetuated ongoing discrimination by the Department of Industry, Labor and Human Relations; that they are paid less than a male who performs the same duties and supervises less employes than complainants.

The initial determination reached the following "CONCLUSION":

This investigation concludes that there is no probable cause to believe that complainants were discriminated against on the basis of sex by DILHR as a result of the survey conducted by the Division of Personnel.

The November 9, 1983, decision included findings that the complainants had been employed as intake and processing supervisors at Job Service District offices. Prior to the survey, their positions had been classified as Job Service Assistant Supervisors 3 (JSAS 3), (PR 1-09). As a result of the survey, their positions were among those specifically identified in the position standards that were developed and effectuated as Job Service Supervisors 2 (JS Sup 2) (PR 1-11). As a result of the effectuation of the survey, therefore, the complainants' positions were reallocated from JSAS 3 (PR 1-09) to JS Sup 2 (PR 1-11).

Also included in the position standards which were developed by the survey were the specific identification of hearing office manager positions in the JS Sup 2 (PR 1-11) classification.² Notwithstanding this specific identification in the position standards, it was found that the Fox River Valley position (male incumbent), Madison position (female incumbent), and Milwaukee position (male incumbent) were classified as JS Sup 3 (PR 1-12),

² These positions also were found to have been "very similar" to the complainants' positions from a classification standpoint.

while the Eau Claire position (female incumbent) was classified as JS Sup 2 (PR 1-11). It was found that there was an insufficient basis for this classification of those three hearing officer manager positions at the JS Sup 3 (PR 1-12) levels.

The Commission ruled against Ms. Conrady with respect to her civil service appeal, No. 80-363-PC, in essence because her position was specifically identified in the position standards in the JS Sup 2 classification. Her position clearly was comparable to the hearing office manager positions which also had been specifically identified in the position standards in the JS Sup 2 classification. While she pointed to the classification of three of these positions, as aforesaid, at the JS Sup 3 level in an attempt to justify a similar classification level for her position, the Commission stated that because of the specific identification of these positions in the position standards at the JS Sup 2 level, it could only be concluded that these hearing office manager positions were misclassified. The Commission also noted that based on considerable precedent, it lacked the authority on a civil service appeal of a reallocation to, in effect, amend the position standards approved by the personnel board.

With respect to the discrimination cases, in determining there was probable cause, the Commission pointed out that despite the facts that the complainants' positions performed work substantially similar to the hearing office manager positions, and both groups of positions were specifically identified in the position standards at the JS Sup 2 level, three of the four hearing office manager positions were at the JS Sup 3 level. At the same time, 12 of the 13 intake and processing supervisors classified at the JS Sup 2 level were women, while two of the three hearing office managers

classified as the JS Sup 3 level were male, and the one hearing office manager which remained at the JS Sup 2 level was female.

Pursuant to the State's Fair Employment Act, specifically §111.39(4)(b), Stats., the Commission can only proceed to hearing on matters with respect to which probable cause has been found:

If the department [commission] finds probable cause to believe that any discrimination has been or is being committed... [the commission] shall issue and serve a written notice of hearing, specifying the nature of the discrimination which appears to have been committed.... (emphasis supplied)

The probable cause determination dated November 9, 1983, in essence concluded there was probable cause with respect to the difference in the level of classification between the three hearing office manager positions at JS Sup 3 and the complainants' positions at JS Sup 2:

The evidence showed that respondent DP's recommendation to the Personnel Board in April of 1979 to place the JSAS 1, 2, and 3 classifications in the 1-07, 1-08 and 1-09 pay ranges, respectively was not approved. The Board's Minutes specifically state:

Evidence presented to the Board raises very serious questions relating to equal pay for equal work. Both oral testimony and written submissions tended to support a conclusion that the work done by Job Service Assistance Supervisor, all women, is substantially similar to the work done by Job Service Supervisors, all or nearly all men.

After further review, respondent submitted a second recommendation, to abolish the JSAS series and place the intake and processing supervisors in the JS Sup series. This proposal was subsequently adopted by the Board and was embodied in a new position standard for the JS Sup series which specifically identified both supervisors of large intake and processing units and hearing office manager positions. The new position standard went into effect on September 18, 1980. The parties stipulated that as of October, 1980, twelve of thirteen intake and processing supervisors classified at the JS Sup 2 level were women. Two of the three hearing office manager positions which ended up being classified at the JS Sup 3 level were occupied by men as of October, 1980. The only hearing office manager position classified at the JS Sup 2 level was filled by a woman as of that date.

This evidence is sufficient to find probable cause to believe that discrimination occurred. §PC 4.03(2), Wis. Adm. Code, Practically no reliable testimony was addressed at the hearing that attempted to justify the classification of the three hearing office manager positions at a level above that specifically identified for the

positions within the JS Sup position standards. The bulk of the evidence supported the complainants' contention that their positions were classified at a lower level than the three hearing office manager positions even though they perform substantially similar work. The minutes of the Personnel Board and the male/female composition of the JS Sup 2 intake and processing supervisors and the JS Sup 2 and 3 hearing office manager positions justify the probable cause finding under these circumstances.

However, it is unclear how these classification results were reached.

It appears that two of these hearing office manager positions were reallocated to JS Sup 3 as part of the effectuation of the survey while one was first reallocated to JS Sup 2 and then reclassified to JS Sup 3. See Finding No. 19:

Subsequent to the adoption of the new standards, all of the hearing office manager positions were assigned to correspondingly higher levels within the new JSS series which had no effect on their pay ranges. In addition, the Fox Valley position was reclassified to the next higher level and pay range....

The opinion section of this determination also included the following:

Practically no reliable testimony was addressed at the hearing that attempted to justify the classification of the three hearing office manager positions at a level above that specifically identified for positions within the JS Sup position standards.

These complaints and the probable cause determinations run to the "net effect," regardless of how it was reached, that resulted after the survey was effectuated -- the predominantly male hearing office managers wound up at a higher pay range than the predominantly female JS Sup 2 intake and processing supervisors. If it develops that the respondents argue that this "net effect" was justified by some language in the new position standards, the complainants may argue that the position standards operate in a discriminatory manner. In a Fair Employment Act case, the Commission's jurisdiction is a good deal broader than its jurisdiction over civil service appeals under §230.44(1), Stats. Under §111.322(1), Stats., the Commission apparently has the authority to consider a charge that a

classification survey and resultant position standards operated to discriminate on the basis of sex and with respect to compensation.

Accordingly, the issue for hearing must not be drawn so narrowly as to preclude the complainants from presenting this argument if circumstances so dictate. The issue must take into account that it is unclear how the hearing office manager positions reached the JSS Sup 3 classification level, and what the respondents' rationale was. The complainants may be in a posture to argue that whatever approach was used to upgrade the classification of the hearing office manager positions, it should have been used to upgrade the classification of their positions. Finally, the complaints presumably could argue, if the facts so warranted, that the classification of the hearing office manager positions at a higher level than their positions constitutes unlawful sex discrimination, even if they cannot establish that their own positions could properly have been classified at a higher level under the existing civil service structure.

ORDER

The following will be the issue for hearing:

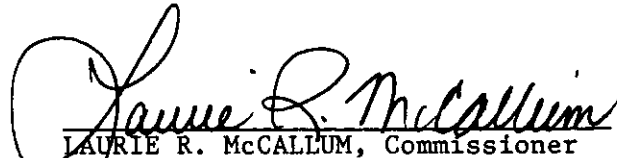
Whether the respondents discriminated against the complainants on the basis of sex in connection with the reallocations of their positions from Job Service Assistant Supervisors 3 (PR 1-09) to Job Service Supervisors 2 (PR 1-11), effective September 21, 1980, or in connection with any acts or omissions that resulted in the classification of certain hearing office manager positions at the JS Sup 3 level, including, but not limited to, the

survey process, the development and finalization of the position standards, and the personnel transactions resulting from the survey and the implementation of the position standards.

Dated: March 27, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

AJT:jmf
JGF002/1

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* Pursuant to the provisions of 1983 Wisconsin Act 27, published on July 1, 1983, the authority previously held by the Administrator, Division of Personnel over classification matters is now held by the Secretary, Department of Employment Relations.