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SUZANNE HASELOW,
 Complainant,
 v.
 Chancellor, UNIVERSITY OF
 WISCONSIN-Madison,
 Respondent.
 Case No. 94-0171-PC-ER

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RULING
 ON
 MOTION
 TO DISMISS

This case involves a charge of discrimination under the FEA (Fair Employment Act). Complainant, proceeding without counsel, alleges she was employed at the Lesbian, Gay & Bisexual (LGB) campus center, a registered student organization (RSO) at UW-Madison, and was discriminated against on the basis of sexual orientation and marital status with respect to the elimination of her position. The discrimination allegedly was caused by the director and assistant director of the LGB center. Respondent UW-Madison has moved to dismiss on the ground that it has had no employment relationship with respect to complainant, and that the LGB Center is not a state agency over which the Commission has jurisdiction pursuant to §111.375(2), stats.

Respondent's motion relies on an affidavit executed by Associate Dean Roger Howard. He states that pursuant to UW policies, RSO's must be controlled and directed by students, and have the responsibility to hire, supervise, and fire student hourly employes such as complainant. He further states as follows:

The Dean of Students exercises only fiscal responsibilities, by requiring that the RSO supervisor sign time sheets verifying hours worked. Dean of Students staff do not supervise any RSO employe. They simply submit the verified requests for disbursement of the previously allocated funds.
 * * *

10. The University does not consider Suzanne Haselow to be an employe of the University. No employe of the University has authority to hire, discipline or fire these student hourly employes. As a student hourly employe of the RSO LGB, she can utilize the procedures for deciding claims of discrimination against an RSO as set out in Chapter 3 of the RSO Handbook (Attachment 1). Ms. Haselow has not utilized these procedures.

Section 111.375(2), stats., provides:

This subchapter applies to each agency of the state except that complaints of discrimination or unfair honesty testing against the agency as an employer shall be filed with and processed by the Personnel Commission under s. 230.45(1)(b).

Section 111.32(6)(a), stats., defines agency as follows:

"Employer" means the state and each agency of the state ... In this subsection, "agency" means an office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

The Commission has reviewed the documents submitted by respondent in support of its motion, as well as the related statutory provisions, and concludes that the LGB Center is not sufficiently outside the control and governance of the UW-Madison to be considered in legal effect an independent entity such that it would have a capacity as employer independent of the UW-Madison. Therefore the UW-Madison is the appropriate respondent.

The UW System "Financial Policy and Procedure Paper No. 37, Subject: Segregated University Fee Policy," dated July 1991, includes the following:

Students are delegated certain responsibilities for student life, services and interests by Section 36.09(5) Wisconsin Statutes. That statute provides:

The students of each institution or campus, subject to the responsibilities and powers of the Board, the President, the Chancellor and the faculty shall be active participants in the immediate governance of a policy development for such institutions. As such, students shall have primary responsibility for formulation and review of policies concerning student life, services, and interests. *Students in consultation with the chancellor and subject to the final confirmation of the board shall have the responsibility for the disposition of those student fees which constitute substantial support for campus student activities.* The students of each institution or campus shall have the right to organize themselves in a manner they determine and to select their representatives to participate in institutional governance. (Emphasis added)

The UW System Guidelines for Student Governance (*Guidelines*), approved by the Board of Regents in November, 1986 (RPD 86-4), discuss the responsibility of students for SUF allocations. Section 36.09(5) Wisconsin Statutes gives students the right to organize themselves to participate in institutional governance. ("Emphasis added" in original)

Thus the UW recognizes the existence and the self governing nature of RSO's like the LGB Center. However, the RSO's are subject to control by the Board of Regents and the Chancellors of the various institutions, such as UW-Madison.

Section 36.09(5) specifically provides that while "students shall have primary responsibility for the formulation and review of policies concerning student life, services, and interests," it also provides that this power is "subject to the responsibilities and powers of the board, the president and the chancellor and faculty of the institution." This point is illustrated by the "Student Organization Handbook" published by the Student Organization Office at UW-Madison, submitted by respondent, which makes several references to the RSO's status as part of the institution, and the institution's authority for oversight of the RSO's. For example, Chapter Two ("Policy on the Registration, Conduct and Discipline of Student Organizations") states that: "[t]he UW-Madison student government association proposes changes in student organization policies which the Chancellor then accepts or rejects." (emphasis added). It also provides that RSO's and their representatives are subject to discipline through institutional disciplinary procedures for violations of student organization policies, and that while an RSO "that violates federal, state, or local laws shall be liable in the appropriate courts," it is "not exempt from discipline action." Also, an RSO "may use the name of the University of Wisconsin-Madison to identify the group's affiliation."

Chapter Three sets forth the "Procedures for Deciding Claims of Discrimination against Registered Student Organizations." It provides that complaints charging that an RSO "has discriminated on the basis of age, color, handicap, national origin, race, religion, sex or sexual orientation must be submitted in writing to the Dean of Students." Final authority for the disposition of these complaints rests with the chancellor.¹

¹ Section 36.12(1) states, provides:

No student may be denied admission to, participation in or the benefits of, or be discriminated against in any service, program, course or facility of the system or its institutions or centers because of the student's race, color, creed, religion, sex, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status.

Section 36.12(2) vests final authority for the resolution of complaints of discrimination with the chancellor, with review available by the board of regents.

Therefore, while the LGB Center can independently make decisions regarding its own operation, including the employment of student employes, such decisions, in a manner that is similar to many other entities within the UW-Madison community, are subject ultimately to the authority of the chancellor and the board of regents. As an employer under the FEA, the LGB Center is not an entity separate from the UW-Madison. The foregoing conclusion is strongly supported by Kaye v. Board of Regents, 158 Wis. 2d. 664, 671-73, 463 N.W. 2d 398 (Ct. App. 1990). The Court held that the Union Policy Board (UPB) of UW-M, a student organization pursuant to §36.09(5), stats., was subject to the requirement of §20.918, stats., that "[n]o state agency may employ any attorney until such employment has been approved by the governor." The Court construed §20.918:

[T]o apply to the principal administrative unit in the administration and governance of the unit. UPB is an "active participant[] in the immediate governance of and policy development" of the University of Wisconsin-Milwaukee. Sec. 36.09(5), Stats. UPB is an unincorporated association which is the board of directors for the University of Wisconsin - Milwaukee student union. It is the primary governance body for the activities of and services to union members and guests. UPB Constitution, art. II, sec. 1.

* * *

Student organizations such as UPB have "primary responsibility" for certain acts of governance. Sec. 36.09(5), Stats. However, they are subject to the responsibilities and powers of the Board of Regents. *Id.*

* * *

The Board of Regents has "primary responsibility" for the governance of the university system. Sec. 36.09(1)(a), Stats. "The student rights [under sec. 36.09(5)] are subject to the responsibilities of the board of regents." *Student Ass'n. of Univ. of Wis.-Milwaukee v. Baum*, 74 Wis. 2d 283, 291, 246 N.W. 2d 622, 625 (1976).

* * *

Irrespective of other student rights under sec. 36.09(5), there is no language therein from which it can be inferred that the legislature intended to give a student organization the right to hire an attorney without the governor's approval. UPB is subject to sec. 20.918, Stats., because it is an integral part of the principal administrative unit -- the University of Wisconsin System -- under the authority of the Board of Regents.²

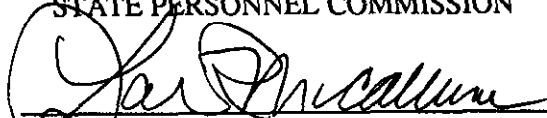
² Cf. Beranek v. Kelly, 40 FEP Cases 779, 782, 630 F. Supp. 1107 (D. Mass. 1986) (Massachusetts Department of Elder Affairs (MDEA) considered an employer under Title VII with respect to employes of non-profit corporation (area II) which provides services to elderly poor and receives state funding, on the basis of employes' allegations that MDEA exercises requisite control over the nominal employer because it has the "means and authority" to control discriminatory employment practices on the part of Area II due to the

ORDER


Respondent's motion to dismiss is denied and respondent is directed to file an answer to the complaint within 30 days of the date of this order.

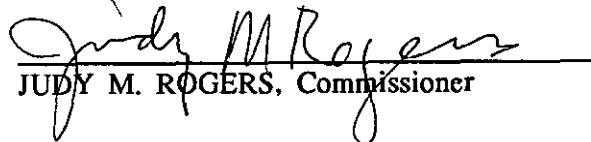
Dated: June 9, 1995

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:jan


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

contractual arrangement between the MDEA and Area II ... [and because of] the plaintiff's asserted need to have affirmative relief ordered against the MDEA.")