

STATE OF WISCONSIN

PERSONNEL COMMISSION

REENA ROUF,
Complainant,

v.

**President, UNIVERSITY OF WISCONSIN
SYSTEM (OSHKOSH),**
Respondent.

**RULING ON MOTION
FOR SUMMARY
JUDGMENT**

Case No. 99-0148-PC-ER

This is a complaint of age, race/color, and sex discrimination. The statement of the hearing issue to which the parties have agreed is:

Whether respondent discriminated against complainant based on age, race/color or sex when respondent offered her a substantially reduced contract in May of 1999.

On October 15, 2001, respondent filed a motion for summary judgment. The parties were permitted to brief the motion and the schedule for doing so was completed on November 2, 2001. The following findings of fact are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of resolving this motion.

FINDINGS OF FACT

1. Complainant is an Asian female whose date of birth is July 4, 1938. Complainant worked for respondent since 1988 as an academic staff lecturer teaching courses in the English Department.
2. Complainant and other academic staff members worked under fixed term contracts, and were required to re-apply for a position when the term of their contract expired.

3. During the 1997-98 and 1998-99 academic years, when Estella Lauter was Chair of the English Department, complainant's contract called for her to teach classes worth 9 to 12 credits each semester.

4. Lauter went on sabbatical some time during 1999, and Paul Klemp became Acting Chair of the English Department. Klemp offered complainant a contract for the 1999-2000 academic year which called for her to teach one 3-credit course in the fall semester and no courses in the spring semester.

5. Respondent asserts here that complainant was offered a reduced contract for the 1999-2000 academic year because her application for re-employment for 1999-2000 did not meet relevant updated criteria and complainant had not participated sufficiently in English Department activities. Complainant disputes that her application or her previous performance did not meet relevant criteria.

6. The English Department apparently filled about 19 faculty/academic staff teaching positions for the 1999-2000 academic year, and complainant was the only previous academic staff lecturer who applied for re-employment and received a reduced contract.¹

OPINION

Under the Wisconsin Fair Employment Act (FEA), the initial burden of proof is on the complainant to show a prima facie case of discrimination. If complainant meets this burden, the employer then has the burden of articulating a non-discriminatory reason for the actions taken which the complainant may, in turn, attempt to show was a pretext for discrimination. *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 5 FEP Cases 965 (1973), *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 25 FEP Cases 113 (1981).

¹ Although the fact that complainant was the only previous academic staff lecturer in the English Department who applied for re-employment and received a reduced contract for the 1999-2000 academic year is not clearly expressed in the information provided as part of the motion, it is reflected in documents attached to the charge of discrimination, and has not been disputed or even specifically discussed by respondent which focused solely in its argument on the age, race, and sex of those offered any teaching contract for the 1999-2000 academic year without any mention of those to whom a reduced contract was offered.

In the context of a hiring decision, the elements of a prima facie case are that: 1) the complainant is a member of a class protected by the Fair Employment Act, 2) the complainant applied for and was qualified for an available position, 3) the complainant was rejected despite his qualifications, 4) the position was given to a person who had similar or lesser qualifications; and 5) the person hired was of a different race, color or national origin than the complainant. *Malacara v. City of Madison*, 224 F.2d 727 (7th Cir. 2000).

In order to make a showing that summary judgment is merited, respondent must show that there is no genuine dispute of material fact and that it is entitled to judgment as a matter of law. *Balele v. DOT*, 00-0044-PC-ER, 10/23/01.

Complainant is protected from discrimination due to her age (60), her race/color (Asian), and her sex (female). Complainant would be regarded as qualified by virtue of her past 11 years of teaching for respondent under succeeding academic staff re-employment contracts. Respondent does not dispute these conclusions. Respondent does, however, contend that complainant would be unable to show that the circumstances here give rise to an inference of unlawful discrimination since other academic staff in her protected categories, including one individual who is an Asian female not quite 3 years younger than complainant, were offered teaching contracts in the English Department for the 1999-2000 academic year.

Respondent argues that, because some individuals who were similarly situated to complainant, i.e., same sex and/or race and/or comparable age, were hired for the 1999-2000 academic year, an inference of discrimination cannot be drawn even though younger white men were also hired. It will be presumed that respondent is asserting as a basis for this argument that individuals of the same sex and/or race and/or comparable age were offered non-reduced re-employment contracts for the 1999-2000 academic year. Respondent relies in this argument primarily on case law developed under fact situations where one position is at issue rather than a group of positions. If there was a single hiring action under consideration here, and complainant was passed over in favor of an Asian female close in age to her, an inference of age/race/sex discrimination

would not arise. *See, Starck v. UW (Oshkosh)*, 97-0057-PC-ER, 11/7/97. However, it would be overly simplistic to apply this analysis to a situation such as the one we have here where a number of teaching positions were filled, and a number of continuing academic staff lecturers were offered new non-reduced contracts. For example, if 20 positions are filled, and one of them is filled by a female, that does not mean that sex discrimination could not have played a role in the filling of the 19 other positions.² The fact that an Asian female comparable in age to complainant did not have her contract reduced may be relevant to the issue of discrimination raised in this case, but it is not dispositive as urged by respondent. Respondent has failed to show that complainant would not be able to demonstrate a prima facie case of age/race/sex discrimination here.

Respondent goes on to argue that, even if complainant could successfully demonstrate a prima facie case of age/race/sex discrimination, she would be unable to show that respondent's reasons for reducing her contract (see ¶5, above) were pretextual. There is a significant factual dispute relating to whether complainant's application for re-employment merited the reduction in her contract, and this is the type of dispute best left to the adjudicative process especially where, as here, the complainant is unrepresented and no reason has been advanced for not giving a liberal reading to her assertions. *See, Balele, supra.*

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to 230.45(1)(b), Stats.
2. Respondent has the burden to show that it is entitled to summary judgment.
3. Respondent has not sustained this burden.

² This is true even if, in the context of a sex discrimination case, a majority of the positions were filled by females, or, in the context of an age discrimination case, a majority of the positions were filled by candidates older than or comparable in age to the complainant. *See, Chandler v. UW-LaCrosse*, 87-0124, 88-0009-PC-ER, 8/24/89.

ORDER

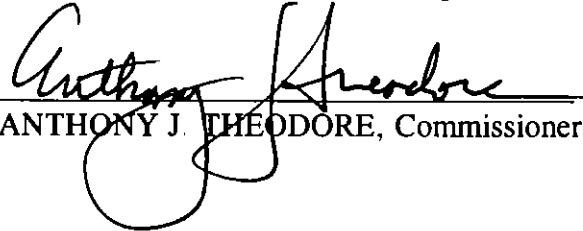
Respondent's motion for summary judgment is denied.

Dated: November 8, 2001

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson *Fms*

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ANTHONY J. THEODORE, Commissioner