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Employment: Sex Discrimination Claim Fails Where County's Reasons for Denying Pay Raise Were Not Pretextual

Harper v. Fulton County, No. 13-2553 (7th Cir. Apr. 8, 2014)

An Illinois case illustrates the necessity for supporting claims of sex discrimination with more than conclusory arguments that the employer's reasons for disparate treatment were "pretextual."

County Treasurers are elected in Illinois. Residents of Fulton County elected and re-elected Victoria Harper as their Treasurer from 1994 to 2010. For twenty years, between 1983 and 2002, the County Treasurer and Clerk were paid the same salary. Between 2003 and 2006, the County increased the pre-retirement compensation of a soon-to-retire Clerk while not raising the Treasurer's salary; when the Clerk retired, the salaries were again equalized from 2007 to 2010. It appears that during these last three years Harper clashed about a salary increase with the County's Finance Committee, which had the authority to recommend salaries and increases. Ultimately, the County board voted against increasing Harper's salary for 2011, but did raise the salary of the County Clerk.

Harper brought a Section 1983 action, alleging that the denial of her raise constituted sex discrimination in violation of the Fourteenth Amendment's Equal Protection Clause. The County countered with a summary judgment motion, citing numerous legitimate reasons for denying the raise. The district court granted the County's motion. Harper appealed.

HELD: The Seventh Circuit held that as a matter of law Harper failed to establish sex discrimination under either a direct or indirect approach, therefore affirming the district court's grant of summary judgment in favor of the County.

DISCUSSION: Discrimination claims may be pursued in two ways. First, under the direct method, a plaintiff may bring forward sufficient direct or circumstantial evidence proving the employer's discriminatory animus motivated an adverse employment action. Alternatively, a plaintiff can use the *McDonnell Douglas* burden-shifting approach, under which the plaintiff establishes a prima facie case by showing 1) she is a woman, 2) she suffered an adverse employment action, 3) she met the "legitimate business expectations" of the employer, and 4) a similarly situated man would have been treated differently. If this is established, the employer then has the burden to articulate legitimate, non-discriminatory reasons for the adverse action, which, if accomplished, shifts the burden back to the plaintiff, who must show that such articulated reasons are pretextual and that gender was the actual motivating factor for the adverse action.

The Circuit Court determined that Harper failed under the direct approach because the proffered evidence was not direct, nor was it strong enough as circumstantial evidence to allow a jury to infer gender discrimination. The only evidence proffered by Harper consisted of the testimony of two fellow county employees. The first, a member of the County Board between 1998-2010, recounted that 1) a male Board member was once appointed chair without using the traditional election approach and instead used a straw poll, 2) male Board members argued that a female Board member who missed meetings due to a lengthy commute should resign, but did not make the same arguments against a male with the same commute and same absentee issue, and 3) that in her observation of the Board "a sufficient number of the male members of the Board who had influence with the remaining male members of the Board were biased against women." The second, a former Circuit Clerk, said that whenever the County Clerk's salary was set higher than hers, she had to make a presentation and prove why her compensation should be the same, but that male officers were not required to make such presentations. She also felt the male Board members were more "aggressive" towards her than her male colleagues. The Circuit Court said this evidence was conclusory, speculative, and in any event did not establish that male Board members' bias against women led to the decision to deny Harper's pay raise.

Under the indirect *McDonnell Douglas* approach, the issue was whether the County's justifications for differential treatment were pretextual. The County advanced numerous reasons for denying Harper's requested pay raise, all of which focused on performance, including the fact that Harper did not work full-time hours, did not provide work product as requested and on-time, and failed to attend Finance Committee meetings or to assist with the budgeting process. The Circuit Court found that Harper merely argued that these shortcomings were not her fault, but did not produce any evidence that these reasons were pretextual. It therefore affirmed the district court's dismissal.

http://caselaw.findlaw.com/us-7th-circuit/1662892.html (last accessed Apr. 16, 2014).