

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PATRICIA MULLINS,

Plaintiff,

v.

MEMORANDUM AND ORDER

BOARD OF REGENTS of THE  
UNIVERSITY OF WISCONSIN SYSTEM,

05-C-581-S

Defendant.

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Plaintiff Patricia Mullins commenced this civil action under the Equal Pay Act, 29 U.S.C. §206(d)(1). She alleges that defendant Board of Regents of the University of Wisconsin System did not pay her the same as male lecturers at the University of Wisconsin-Madison School of Business.

On February 1, 2006 defendant filed a motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, an affidavit and a brief in support thereof. This motion has been fully briefed and is ready for decision.

Plaintiff moves to strike certain paragraphs of the affidavits of Michael Knetter and James Johnanes. This motion will be denied but the Court will consider only the portions of the affidavits that are admissible evidence.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

#### FACTS

For purposes of deciding defendant's motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Patricia Mullins is an adult resident of the State of Wisconsin. Defendant Board of Regents of the University of Wisconsin System is charged by statute with the governance of the University of Wisconsin System.

Michael Knetter is the Dean of the School of Business at the University of Wisconsin-Madison. Plaintiff is employed by the Business School as a Senior Lecturer. Lecturers at the Business School teach undergraduate and masters level courses but are not tenured or tenure track faculty. At the University of Wisconsin-Madison there are also two small departments in the business disciplines of Real Estate and Actuarial Science, Risk Management and Insurance.

Plaintiff and Timothy Welnetz are assigned to the Actuarial Sciences, Risk Management and Insurance Department at the Business School (ASRMI). Loren Kuzuhara, Timothy McClurg, Henry Boyd and plaintiff all taught courses at the business school and were considered Senior Lecturers.

Plaintiff has Bachelors and Masters degrees from the University of Wisconsin Madison in Communicative Disorders. In 1989 plaintiff received her Doctorate of Philosophy in Psychology from the University of Chicago.

The Business School and plaintiff agreed that she would initially teach one section of General Business 303 (Business Statistics) in the Spring 2001 semester for compensation of

\$10,500. Plaintiff has taught GB303, Business Statistics, every semester and summer since coming to the Business School. This course is a required course for all students within the Business School, unless they take one of several other statistics courses offered elsewhere in the University.

In the summer of 2001 she taught GB303 for compensation of \$7,500. For the 2001-2002 school year Dr. Mullins received an appointment with the business school in the ASRMI department as a Senior Lecturer. Her compensation rate was \$9,375 per course and she taught six courses.

In the summer of 2002 plaintiff taught GB303 for compensation of \$7,500. For the 2002-2003 plaintiff received \$11,501 per course she taught. In the summer of 2003 she taught GB303 for compensation of \$7,808. In the 2003-2004 school year she was paid \$11,711 per course. In the summer of 2004 she taught GB303 for compensation of \$7,808. In the 2004-2005 school year she received \$13,828 per course. In the summer of 2005 she taught GB303 for a compensation of \$9,219. In the 2005-2006 school year she received \$15,868 per course.

Loren Kuzuhara received his Pd.D. in Business Administration from the University of Wisconsin-Madison in August 1994. He was hired as a Lecturer in the University of Wisconsin School of Business in the Department of Management and Human Resources. In 1998 he was made a Senior Lecturer with the University of

Wisconsin's School of Business. He taught Organizational Behavior, MR300, and Human Resource Management, MHR 305.

For the 2001-2002 school year he received \$12,102 per course. In the summer of 2002 he received \$14,067 per course. In the 2002-2003 school year he received \$16,678 per course. In the summer of 2003 he received \$13,741 per course. In the summer of 2004 he received \$7,494 per course. In the 2004-2005 school year he received \$17,059 per course. In the summer of 2005 he received \$11,373 per course.

Timothy McClurg received his Ph.D. in Operations Management from Purdue University and is currently in the Operations and Information Management Department in the School of Business. He teaches OIM 350 and OIM 765 for the evening MBA program. For the 2001-2002 school year he was paid \$16,660 per course. In the 2002-2003 school year he was paid \$17,162 per course. In the summers of 2003 and 2004 he was paid \$9,635 per course. In the 2004-2005 school year he was paid \$17,551 per course. In the summer of 2005 he received \$9,750 per course.

Henry Boyd received his Ph.D. in Marketing from Duke University in 1996 and his J.D. from the University of Wisconsin-Madison in 2005. He was a senior lecturer at the Business School from 2002-2005. He received \$15,000 per course.

Timothy Welnetz has a Master of Science in Statistics. He teaches GB303 and GB304 at the Business School. In the 2001-2002

school year he received \$8,250 per course and in the summer of 2002 he received \$8,236 per course. In the 2002-2003 school year he received \$8,503 per course. In the summers of 2003 and 2004 he received \$8,675 per course. In the 2003-2004 school year he received \$8,588 per course. In the 2004-2005 school year he received \$10,212 per course, and in the summer of 2005 he received \$7,500 per course. In the 2005-2006 school year he received \$10,384 per course.

On March 7, 2003 Mullins wrote to her department chair formally requesting a gender equity review of her salary. Associate Dean R.D. McNair was asked to perform the review. On September 7, 2004 Dean Knetter wrote plaintiff a letter concluding that her current pay was appropriate. He further states, "Associate Dean Nair and I analyzed the data and found that variation by department and seniority are the main drivers of salary difference among teaching staff."

#### MEMORANDUM

Plaintiff claims that the defendant violated the Equal Pay Act. To establish a *prima facie* case of a violation of the Equal Pay Act plaintiff must show that higher wages are paid to employees of the opposite sex; that the employees do equal work which requires equal skill, effort and responsibility and that the

employees have similar working conditions. Wollenburg v. Comtech Mfg. Co., 201 F.3d 973, 975 (7<sup>th</sup> Cir. 2000).

For purposes of its motion defendant agrees that she is paid less than Senior Lecturers Kuzuhara, McClurg and Boyd even though she is paid more than the other statistics lecturer. Defendant also agrees that plaintiff and the male lecturers had similar working conditions. Defendant argues that plaintiff did not do equal work to that of Kuzuhara, McClurg and Boyd because the work did not require equal skill, effort and responsibility. In determining a *prima facie* case this comparison is to be made between position requirements and not individuals. Cullen v. Indiana University Bd. of Trustees, 338 F.3d 693, 704 (7<sup>th</sup> Cir. 2003).

Defendant argues that the positions of Kuzuhara, McClurg and Boyd require more skill, effort and responsibility because the positions are for instructors of core subjects in the business school. Dean Knetter states the core subjects at the Business School are Finance, Marketing, Management, Accounting and Operations. Plaintiff argues that this is a conclusion of the Dean of the Business school and not a fact. It remains disputed whether Statistics which is a required subject for an undergraduate business degree is a core subject at the business school. Factual disputes remain as to whether the positions of teaching Marketing

and Management require the same skill, effort and responsibility as teaching statistics.

\_\_\_\_\_Where plaintiff proves a prima facie case the burden then shifts to the employer to show the wage disparity is due to a seniority system, a merit system, a system which measures earnings by quantity or quality of production or any factor other than sex. 29 U.S.C. § 206(d) (1) (I)-(v). The actual differences between the individuals rather than the positions being compared are relevant to the affirmative defense of any factor other than sex. Id., at 699 FN2.

Defendant argues that the skill, effort and responsibility of the individuals are valid factors for consideration regarding its affirmative defense. Defendant argues that the difference between plaintiff's salary and the salaries of Kuzuhara, McClurg and Boyd is because plaintiff does not have a terminal degree in a core area of the School of Business and does not teach a core area. Plaintiff argues that defendant has not met its burden of proof concerning the differences between the skill, effort and responsibility of the defendants. Factual disputes remain as to whether the plaintiff and the male lecturers Kuzuhara, McClurg and Boyd have the same skill and responsibility and put forth the same effort. Accordingly, defendant's motion for summary judgment will be denied.

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ORDER

IT IS ORDERED that plaintiff's motion to strike the affidavits of Michael Knetter and James Johannes is DENIED.

IT IS FURTHER ORDERED that defendant's motion for summary judgment is DENIED.

Entered this 10<sup>th</sup> day of March, 2006.

BY THE COURT:

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JOHN C. SHABAZ  
District Judge