

Department of Workforce Development
Equal Rights Division
P.O. Box 8928
Madison, WI 53708-8928
Telephone: (608) 266-6860
Fax: (608) 267-4592
TTY: (608) 264-8752



State of Wisconsin
Department of Workforce Development
Jim Doyle, Governor
Roberta Gassman, Secretary
Jennifer A. Ortiz, Division Administrator

DATED and MAILED JUL 15 2009

Margaret Wischhoff

Madison, WI 53717

Complainant

vs.

INITIAL DETERMINATION -
PROBABLE CAUSE

ERD Case No. 200900034
EEOC Case No. 26G200900518C

And

ERD Case No. 200901085
EEOC Case No. 26G200900883C

City of Madison
Water Utility
119 E. Olin Avenue
Madison, WI 53717

Respondent

I. THE DIVISION DECIDED:

There is probable cause to believe City of Madison -- Water Utility may have violated the Wisconsin Fair Employment Act Secs. 111.31 - 111.395, Stats., by:

- A. Discriminating against the Complainant in terms or conditions of employment because of sex;
- B. Discriminating against the Complainant in promotion because of sex; and/or
- C. Discriminating against the Complainant because the Complainant opposed a discriminatory practice under that Act.

II. THIS MEANS:

The Equal Rights Division found reason to believe there is sufficient information to hold an administrative hearing. An Administrative Law Judge will hold the hearing and will decide whether the Respondent violated the Wisconsin Fair Employment Law.

III. THE NEXT STEP IS:

The Equal Rights Division Hearing Section will now schedule a hearing on the merits of the case. A notice of hearing stating the date, time, and place of hearing will be sent to the parties in the near future. This notice will also include an information sheet regarding things that need to be done for the hearing, as well as a copy of the statutes and administrative code. At the hearing, the parties will be given the opportunity to present evidence to support their cases. Neither the Initial Determination, nor the evidence presented to the Equal Rights Division during the investigation of this case, will automatically become part of the record at hearing. The Administrative Law Judge will only consider evidence presented at the hearing. The parties may wish to consult with an attorney for legal advice.

Contact the Administrative Law Judge by letter if you wish to pursue settlement of this case prior to hearing.

IV. DATE OF FILING and/or INITIAL WRITTEN CONTACT:

The Complainant first contacted the Equal Rights Division in writing on December 18, 2008, alleging employment discrimination. The Division accepted the complaint on the same date it was received.

The Complainant again contacted the Equal Rights Division in writing on March 11, 2009, alleging employment discrimination. The Division accepted this second complaint on the same date it was received.

V. THE DIVISION DECIDED THERE WAS PROBABLE CAUSE BASED ON THE FOLLOWING INFORMATION:

- A. The Complainant, Margaret Wischhoff (Ms. Wischhoff), was hired on October 7, 2002, by Respondent to work as a Construction and Design Engineer, civil classification Engineer 3, for the Madison Water Utility.
- B. Respondent, City of Madison – Water Utility (Madison), is a municipality in Wisconsin.
- C. In April of 2008 Ms. Wischhoff applied for the vacant water supply manager position. A male applicant, Mr. Joe Dermorett, was hired for this position. In May of 2008 Ms. Wischhoff applied for the vacant general manager position, but was not given an interview.
- D. On May 16, 2008, Madison created a new management level position. This new position was assigned all the supervisory duties performed by Ms. Wischhoff. After this position was created Ms. Wischhoff no longer performed any supervisory duties. Additionally, Ms. Wischhoff's work van, which she previously used for onsite inspections, was reassigned as an office pool van.
- E. On May 29, 2008, Mr. Larry Nelson, manager, sent Ms. Wischhoff an email stating she is not to close her office door.
- F. During the summer of 2008 Madison assisted Mr. Doug DeMaster, a coworker of Ms. Wischhoff, in a reclassification from Engineer 3 to Engineer 4 after he obtained his Professional Engineer License.
- G. On August 8, 2008, Ms. Wischhoff contacted her supervisor in order to begin the process for a reclassification. On or about August 11, 2008, Madison informed Ms. Wischhoff that there were no Engineer 4 vacancies and there was no need for another Engineer 4.

- H. In August and September of 2008 Ms. Wischhoff was no longer asked to conduct site inspections while her male coworkers, Adam Wierderhoeft and Terry Russell continued to do site inspections.
- I. Also in August and September 2008 Ms. Wischhoff's manager criticized her choice of pipe size used in a particular engineering design.
- J. In September of 2008 Mr. Dave Lynch, a coworker of Ms. Wischhoff, was allowed to attend the Wisconsin Water Association annual conference. Ms. Wischhoff was not permitted to attend this conference.
- K. On September 29, 2008, a union grievance was filed against Ms. Wischhoff. Her supervisor denied the grievance without first informing her that it existed.
- L. Also in September of 2008 Ms. Wischhoff was not invited to participate in a managers "on-call" list. Managers earn overtime pay by being on-call. And, in October of 2008 Mr. Larson questioned Ms. Wischhoff regarding her use of overtime.
- M. In October of 2008 Ms. Wischhoff left a fundraising form for her child in the break room. Another employee anonymously left a photocopy of a work rule disallowing outside fundraisers next to the fundraising form.
- N. Ms. Wischhoff learned that Mr. Nelson was making statements to a human resources representative about her possibly engaging in a sexual relationship with a coworker. This conversation was held in a public location and in front of other Madison employees. On October 2, 2008, Ms. Wischhoff made a sexual harassment complaint to her human resources department regarding this incident.
- O. On October 31, 2008, Madison transferred Ms. Wischhoff from the water utility department where she worked on water supply projects to the sewer department where she currently works on storm and sanitary sewer operations projects. Since this transfer she, again, works under Mr. Nelson.
- P. Ms. Wischhoff was provided a Letter of Instruction on December 2, 2008, for poor work attitude.

VI. INVESTIGATOR'S EXPLANATION:

- A. Under the Wisconsin Fair Employment Law it is unlawful to treat an employee unfavorably because of sex or for opposing discrimination in the workplace. Ms. Wischhoff alleges that Madison treated male applicants and male employees more favorably and that Madison retaliated against her for opposing discrimination in the workplace. As a preliminary matter, Ms. Wischhoff's discrimination complaint includes numerous allegations that are beyond the 300 day statute of limitations. She stated in her first complaint that she included these allegations as background information. Therefore, any allegations that occurred before February 22, 2008, were not considered in this determination. Timeliness is not a concern in her second complaint as it was filed on March 11, 2009, and all the allegations it contains occurred after May 15, 2008.
- B. Ms. Wischhoff applied for two promotional opportunities for which she was not hired and she claims that Madison has consistently denied any attempt she has made to promote via reclassification. Madison contends that it considered women for the two promotional positions and hired the best qualified individuals. However, Madison has not provided believable evidence that Ms. Wischhoff was not reclassified based on non-discriminatory reasons. In the summer of 2008 Madison again denied Ms. Wischhoff the opportunity to reclassify to Engineer 4 while ensuring that a male coworker did, in fact, obtain his

reclassification to Engineer 4 shortly after obtaining his Professional Engineer License. Ms. Wischhoff has a Master Degree in Engineering, has had her Professional Engineer License for 12 years, and has 12 years of experience in the water supply industry. Madison argues that the male coworker had been doing the work of an Engineer 4 for some time; however, Ms. Wischhoff argues that she has been doing the work of an Engineer 4 since she was hired in 2002.

- C. Ms. Wischhoff makes a variety of allegations of unfair treatment based on her sex regarding the terms and conditions of her employment. However, it is the removal of Ms. Wischhoff's supervisory duties that appears to be discriminatory under the Act. Her supervisory duties were removed while her male coworkers continued to supervise staff. Madison denies that it created a new management position in order to discriminate against Ms. Wischhoff. However, a new management position could have been created without removing all of Ms. Wischhoff's supervisory duties.
- D. Ms. Wischhoff made a good faith complaint of sexual harassment regarding manager Mr. Larry Nelson. Several weeks later she was transferred to his department. Notably, she had been working on water supply projects and after having made a complaint against Mr. Nelson she was assigned to sewer projects. It appears that Madison retaliated against Ms. Wischhoff when it transferred her to Mr. Nelson's department and assigned her to less desirable projects.
- E. This case needs to proceed to a hearing in order to determine whether Ms. Wischhoff was discriminated against based on her sex and whether she was retaliated against when she opposed the discrimination.

Catherine Manakas
Equal Rights Officer

cc: Complainant
Jeff S. Olson, Attorney for Complaint
Steven C. Zach, Attorney for Respondent
MEOD
Officer Manakas