UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Marjorie Fish, Kathleen Gill, June Goemer, Christine Jazwinski, Lora Robinson, and Mary Clifford on behalf of themselves and a class of similarly situated persons,

Plaintiffs,

v.

St. Cloud State University, Minnesota State University System a/k/a Minnesota State Colleges and Universities a/k/a MnSCU, f/k/a MSUS, and the Inter Faculty Organization,

Defendants.

Civil No. 6:96-155 (DWF/RLE)

MEMORANDUM OPINION AND ORDER

Tammy Friederichs, Esq., Dorothy Buhr, Esq., and Edwin Sisam, Esq., Sisam & Watje, 6600 France Avenue South, Suite 360, Minneapolis, MN 55435, appeared on behalf of Plaintiffs.

Gary Cunningham, Esq., and Melissa Wright, Esq, Minnesota Office of the Attorney General, 445 Minnesota Street, St. Paul, MN 55101, appeared on behalf of Defendants St. Cloud State University and Minnesota State University System.

Carey Meyer, Esq., Oppenheimer Wolff & Donnelly, 3400 Plaza VII Building, 45 South 7th Street, Minneapolis, MN 55402, appeared on behalf of Defendant Inter Faculty Organization.

Introduction

The above-entitled matter came on for hearing before the undersigned United States District Judge on May 14, 1999, pursuant to Defendants St. Cloud State University and Minnesota State University System's motion to join the male faculty as a necessary party; Defendant Minnesota State University System's motion for partial summary judgment; Defendant Minnesota State University System's motion to decertify the plaintiff class; Plaintiff's

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motion for partial summary judgment; Defendant Minnesota State University System's motion to strike testimony; and Defendant Minnesota State University System's motion to strike Plaintiff's supplemental memorandum. In the Complaint, the Plaintiffs allege violations of Title VII with respect to compensation, promotion and tenure, and terms and conditions of employment. For the reasons set forth below, all motions before the Court are denied.

Background

Defendant Minnesota State University System ("MnSCU") is an agency of the State of Minnesota which governs and operates post-secondary educational facilities, including community colleges, technical colleges, and four-year universities. Defendant St. Cloud State University ("SCSU") is a four-year university operated by MnSCU in St. Cloud, Minnesota. SCSU offers undergraduate degrees in 47 subjects and graduate degrees in 38 subjects.

SCSU employs over 500 full-time faculty members.[1] Defendant Inter Faculty Organization ("IFO") provides union representation for the faculty of SCSU.

In 1976, a female faculty member of SCSU, Mary Craik, brought a class action lawsuit against the Defendants in this case, alleging the same type of gender discrimination. After a judgment for Defendants was reversed in part by the Eighth Circuit in *Craik v. Minnesota State Univ. Bd.*, 731 F.2d 465 (8th Cir. 1984), the parties entered into a consent decree (the "*Craik* decree"). Under the terms of the consent decree, most individual class members were awarded back pay as well as adjustments in their rank and salary.

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[1] During the 1997-98 academic year, SCSU employed 549 full-time faculty, 191 of whom were women.

The instant action was filed on June 4, 1996, as a purported class action lawsuit brought on behalf of all female faculty of SCSU and alleging violation of Title VII of the Civil Rights Act of 1964. Specifically, the Complaint alleges that SCSU and MnSCU maintain gender discriminatory policies with respect to compensation, promotion and tenure, and terms and conditions of employment.

In an Order dated March 3, 1998 (Doc. No. 91), the Court granted a motion to certify three classes of Plaintiffs: (1) a "compensation class"; (2) a "promotion and/or tenure class"; and (3) a "terms, conditions, and privileges of employment class."[2] The compensation class was defined as "[a]ll female faculty of SCSU who are employed, have been employed or will be employed by SCSU and MNSCU from March 4, 1995 through the present, who receive less compensation because of their sex." April 30, 1998, Order at 5. The promotion and tenure class was defined as "[a]ll female faculty of SCSU, who are employed, have been employed or will be employed by SCSU and MnSCU from March 4, 1995 through the present, who have not been promoted and/or tenured or have been promoted and/or tenured at a slower rate because of their sex." *Id.* The final class, the "terms and conditions" class, was defined as "[a]ll female faculty of SCSU, who are employed, have been employed or will be employed by SCSU and MnSCU from March 4, 1995 through the present, who have been discriminated against in the terms, conditions and privileges of employment because of their sex." *Id.*

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[2] The definitions of these classes were amended in an order dated April 30, 1998 (Doc. No. 108).

Discussion

1. Motion to Decertify the Class

MnSCU attacks the validity and viability of all three classes certified in 1998. For the most part, the Defendants' challenge to the class certification turns upon the same legal issues and determinations of evidentiary adequacy raised in their motion for partial summary judgment. The Court discusses the particulars of these issues–such as whether the claims of certain class members are time barred and the evidentiary showing required to maintain a compensation discrimination claim–at length below. Based upon the Court's conclusions on these issues, however, the Court finds that little has changed since the classes were certified by Judge Tunheim in 1998. Accordingly, the Court finds that the requirements of Rule 23 of the Federal Rules of Civil Procedure have been met and denies Defendants' motion to decertify the classes.

2. Defendants' Motion for Partial Summary Judgment

A. Standard of Review

Summary judgment is proper if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court must view the evidence and the inferences which may be reasonably drawn from the evidence in the light most favorable to the nonmoving party. *Enterprise Bank v. Magna Bank*, 92 F.3d 743, 747 (8th Cir. 1996). However, as the Supreme Court has stated, "summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to 'secure the just, speedy, and inexpensive determination of every action.'" Fed. R. Civ. P. 1. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

The moving party bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Enterprise Bank*, 92 F.3d at 747. The nonmoving party must demonstrate the existence of specific facts in the record which create a genuine issue for trial. *Krenik v. County of Le Sueur*, 47 F.3d 953, 957 (8th Cir. 1995). A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Krenik*, 47 F.3d at 957.

B. Statute of Limitations

Defendants argue that most of the alleged discrimination complained of by the Plaintiff class is reducible to discreet incidents, many of which took place outside the statutory time period. Specifically, decisions about initial salaries, promotions, and applications of the Salary Equity Process were discreet, isolated events for each class member. Accordingly, Defendants argue that many members of the Plaintiff class should be dismissed because their individual claims are barred by the statute of limitations. The Court disagrees.

The Plaintiffs allege that Defendants maintained a discriminatory system for setting initial salaries, adjusting salaries (including the ongoing application of the Salary Equity Process), and making promotions. Such discriminatory policies represent continuing violations. *Wetzel v. Liberty Mutual Insurance Co.*, 508 F.2d 239 (3rd Cir. 1975), *cert. denied*, 421 U.S. 1011 (1975); *Cooper v. University of Texas at Dallas*, 482 F. Supp. 187 (N.D. Texas 1979), *aff'd* 648 F.2d 1039 (5th Cir. 1981). As a result, the fact that individual members of the class did not seek promotion or salary increases during the limitations period does not preclude them from class membership. The statute of limitations does not bar any members of the class in this

litigation, so long as some application of the policy took place or the policy was maintained within the statutory period.[3]

C. Accord and Satisfaction

MnSCU argues that all class members in the current litigation who were also class members in the *Craik* action should be dismissed pursuant to the terms of the *Craik* consent decree. Specifically, MnSCU argues that any existing salary differences between *Craik* class women and comparable male faculty are the direct result of differences which existed at the time of the *Craik* consent decree, because "once the *Craik* class claims were settled, the bound class members' salaries were changed only according to the IFO Agreement and the Salary Equity Process, neither of which are alleged to cause disparate treatment." State Defendant's Memorandum of Law in Support of Motion for Partial Summary Judgment at 11-12.

This misstates the Plaintiffs' compensation claims. Plaintiffs do, indeed, allege that the IFO Agreements and the Salary Equity Process contribute to the disparity between male and female faculty with respect to salary. The Court finds that the *Craik* consent decree does not bar claims by *Craik* class members based upon discriminatory acts or decisions which took place after the consent decree was signed. Moreover, the Court finds that the Plaintiffs have raised genuine issues of material fact regarding whether and the extent to which any existing salary disparity is the result of post-*Craik* salary adjustments or pre-*Craik* salary decisions.

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[3] The parties discuss at the length the applicability of the "every paycheck as a new violation" rule to the instant facts. The Court need not reach the issue, because it finds that the allegedly discriminatory behavior constitutes a continuing violation, regardless of whether each paycheck amounts to a new discriminatory act.

D. Compensation Claims

In addition to challenging the ability of particular subsets of the class to bring compensation claims, the Defendants challenge the merits of Plaintiffs' compensation claims.[4] First, Defendants argue that under *McKee v. Bi-State Development Agency*, 801 F.2d 1014 (8th Cir. 1986), claims brought under Title VII alleging inequality in compensation must satisfy the legal standard used to analyze claims under the Equal Pay Act. Thus, Plaintiffs must show that the Defendants "pay[] different wages to employees of the opposite sex for 'equal work on jobs the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions.'" State Defendant's Memorandum of Law in Support of Motion for Partial Summary Judgment at 5 (quoting *Corning Glass Works v. Brennan*, 417 U.S. 188, 194 (1974)). In the context of an academic institution, the Defendants argue, this standard requires Plaintiffs to show that they made less than similarly situated men within their academic discipline.

Defendants go on to identify particular members of the Plaintiff class who have failed to identify male comparators within their academic discipline, who are both similarly situated to the class members and actually make more than the class members. Similarly, for those class

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[4] The Court discusses several particular legal theories asserted by the Defendants in support of their motion for partial summary judgment. In addition, however, the Defendants make several allegations of evidentiary insufficiency. To the extent that Defendants argue, generally, that the Plaintiffs have failed to provide evidence to support their claims or to rebut Defendants' assertions of "legitimate, non-discriminatory bases" for their policies, the Court finds that the record presents material questions of fact which cannot be resolved on a motion for summary judgment.

members who have identified an "appropriate" comparator, Defendants go on to argue that they have identified legitimate, non-discriminatory reasons for the disparity in salaries.[5]

In response, Plaintiffs argue that the status of the litigation as a class action prevents the Court from considering the merits of individual class-members' claims at this juncture. *See, e.g.*, *Craik v. Minnesota State Univ. Bd.*, 731 F.2d 465, 471 (8th Cir. 1984) ("[The Magistrate] first considered the plaintiffs' individual claims under the *McDonnell Douglas-Burdine* framework and rejected them. Then he addressed and rejected the class claims. In our view this was error . . . ."). Instead, Plaintiffs argue that they may present aggregate evidence of a "pattern or practice" of discrimination, pursuant to *International Bhd. of Teamsters v. U.S.*, 431 U.S. 324 (1977). *See also Craik v. Minnesota State Univ. Bd.*, 731 F.2d 465 (8th Cir. 1984); *Jenson v. Eveleth Taconite Co.*, 824 F. Supp. 847 (D. Minn. 1993).

The parties seem to suggest that the legal standard articulated in *McKee* and the evidentiary standard articulated in *Craik* are irreconcilable. The Court disagrees. There is no reason why the Plaintiff class could not establish, through the use of aggregate statistical data, that women at SCSU are paid less than men for doing substantially similar work. Indeed, Plaintiffs appear to have done so. *McKee* does not require plaintiffs to show that the work performed by men and women is identical; rather, it is sufficient that the positions require "substantial equality of skill, effort, responsibility, and working conditions . . . ." *McKee*, 801

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[5] "For example, the salaries of Associate Professor Bonnie Hedin and Professor Richard Josephson currently differ by two steps. When Josephson was promoted to full professor in 1992, he was awarded a two-step increase according to the CBA in effect at that time. . . . Thus, the promotion represents the difference in wages." State Defendant's Memorandum of Law in Support of Motion for Partial Summary Judgment at 9.

F.2d at 1019, n.5. Both Plaintiffs' and Defendants' experts use multiple regression analysis to compare the salaries of male and female faculty. Through the use of appropriate control variables, such analysis can determine whether women make significantly less than men, holding constant the type of work being done. Both Dr. Gray and Dr. Stoikov (the two experts) include control variables for rank, years of teaching, degree held, and department[6]; presumably, the use of these controls ensures that the comparison reveals disparity in salaries for substantially equal work. To the extent that the Defendants argue that these controls are insufficient, that is a question of fact which the Court will not resolve on a motion for summary judgment.

Thus the Court concludes that Plaintiffs have met their prima facie burden through the use of aggregate statistical evidence. The Court will not deconstruct the class claims to grant summary judgment with respect to individual class members who have not identified appropriate comparators. Similarly, the Court will not permit the Defendants to counter the statistical evidence through the use of ad hoc explanations for individual class members' salaries. Such rebuttal evidence does not address the "pattern or practice" of discrimination implied by the statistical evidence.

The Defendants further argue that the Salary Equity Process cannot serve as the basis for a Title VII action because it is a remedial measure, in the nature of an affirmative action program, and as such cannot create a separate cause of action for discrimination. As the Defendants put it, "surely there can be no independent liability for not implementing a

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[6] The control for department does not differentiate between each of the academic disciplines, but rather distinguishes between "normal" disciplines and those which command a market premium.

completely effective [remedial] plan." State Defendant's Memorandum of Law in Support of Motion for Partial Summary Judgment at 25. However, Plaintiffs' criticism of the Salary Equity Process is not that it failed to remedy disparity, but that it actually made that disparity worse. Plaintiffs' Memorandum of Law in Opposition to State Defendants' Second Motion for Summary Judgment at 35, and supporting documents. Certainly, a policy which has a discriminatory effect on women cannot be shielded from attack under Title VII simply by calling it a "remedial" program.

Finally, Defendants argue that disparate impact compensation claims cannot be maintained under an Equal Pay Act analytic framework because the Equal Pay Act allows employers to assert as an affirmative defense that a wage differential is "based on any other factor other than sex." 29 U.S.C. § 206(d)(1). Defendants argue that there is a split in authority regarding the implications for this affirmative defense upon the availability of disparate impact claims. Specifically, Defendants cite to *Colby v. J.C. Penney Co., Inc.*, 811 F.2d 1119 (7th Cir. 1987), for the proposition that compensation systems cannot be challenged under a disparate impact theory. The *Colby* court suggests that, under the Supreme Court's ruling in *Washington County v. Gunther*, 452 U.S. 161 (1981), it seems unlikely that compensation systems could be challenged under a disparate impact theory. But the *Colby* court does not squarely address the issue because the argument had not been raised in the trial court.

The Second Circuit, which continues to recognize disparate impact compensation claims, has noted that the "any-other-factor" defense does not provide employers with *carte blanche* to adopt any facially neutral compensation system. Rather, in asserting the defense, the employer must show that the system is rooted in legitimate business-related reasons. *See Aldrich v.*

Randolph Central School District, 963 F.2d 520 (2nd Cir. 1992); *see also Christiana v. Metropolitan Life Ins. Co.*, 839 F. Supp. 248, 253 n.14 (S.D.N.Y. 1993) (noting that the Seventh Circuit does not require a specifically proven business reason for a compensation disparity to be upheld under the Equal Pay Act pursuant to the "any-other-factor" defense). In light of this reasoning, a disparate impact compensation claim would seem to be viable.

Although the Eighth Circuit has not directly addressed the question of what effect, if any, *Gunther* has on disparate impact compensation claims, such claims continue to be brought in the Eighth Circuit. *See Davey v. City of Omaha*, 107 F.3d 587 (8th Cir. 1997). In *Davey*, moreover, the Eighth Circuit indicates that the "any-other-factor" defense requires something more than a mere showing of a facially neutral compensation system and thus apparently aligns itself with the Second Circuit. Given that the Eighth Circuit continues to implicitly recognize the validity of such claims, and in the absence of any persuasive authority to the contrary, this Court declines to hold that disparate impact compensation claims are defective as a matter of law.

E. Promotion and Tenure Claims

Defendants challenge Plaintiffs' allegation of discrimination with respect to promotion and tenure decisions on three grounds: (1) many of the individual Plaintiffs' claims are time-barred; (2) individual Plaintiff Lora Robinson's promotion denial was justified; and (3) Plaintiffs have not established a prima facie case of disparate impact discrimination with respect to promotion and tenure. At the outset, the Court notes that the limitations issue was addressed above with respect to Plaintiffs' compensation claims, and that analysis is applicable to the promotion and tenure claims as well. Similarly, the Court declines to address the merits of an

individual Plaintiff's claim in the context of a motion for summary judgment of a class action suit.

Defendants argue, first, that Plaintiffs have failed to identify with specificity the aspect of the subjective promotion process which is allegedly responsible for the disparity as required by *Watson v Fort Worth Bank & Trust*, 487 U.S. 977 (1988). In *Watson*, the Supreme Court determined that disparate impact analysis could be applied to promotion schemes which involve a subjective decision-making process. Specifically, the *Watson* Court noted that subjective decision-making practices can perpetuate discrimination by providing a mechanism through which unconscious racism can have effect. Moreover, such subjective factors, when used by employers in conjunction with objective tests, may provide a shield to otherwise actionable behavior. Although the *Watson* Court noted that part of a plaintiff's prima facie case involves stating with some specificity what aspect of the subjective process causes the disparate impact, the Supreme Court offered no examples. Indeed, it is difficult to fathom how one could provide a specific breakdown of a subjective process which, by definition, is not formulaic.

In the instant case, the Plaintiffs have alleged that the subjectivity of the promotion process involves fluidity in the calculus of factors relevant to promotion as defined in the CBA. From the perspective of the Court, this fluidity, some individuals weighing certain factors more heavily than other individuals, is the "aspect" of the process which the Plaintiffs allege causes the disparate impact. Given this understanding of the allegations and the record before the Court, the Court declines to grant summary judgment on this claim at this time. If it proves that the Court has misconstrued the Plaintiffs' allegations, the Court will reconsider the issue at a later date.

Defendants further argue that, even if Plaintiffs can establish a prima facie case of disparate impact, Defendants are entitled to summary judgment because the subjective criteria used in making promotion decisions are a legitimate business necessity in the context of academic institutions. *See Brousard-Norcross v. Augustana College Ass'n*, 935 F.2d 974 (8th Cir. 1991); *Zahorik v. Cornell University*, 729 F.2d 85 (2nd Cir. 1984); *Kumar v. Board of Trustees University of Massachusetts*, 774 F.2d 1 (1st Cir. 1985). The Court agrees that subjective evaluations of teaching ability, academic excellence, and contributions to the university community are a legitimate business necessity in the context of a university. However, Defendants have not shown as a matter of law that differential weighting of these factors serves any legitimate business function.

While the Court concede that Plaintiffs face a real challenge in proving their disparate impact promotion claim, the Court declines to grant summary judgment on that claim at this juncture.

F. Terms and Conditions of Employment

With respect to Plaintiffs' claims of hostile work environment or discrimination in the terms and conditions of employment, Defendants argue that Plaintiffs have failed to offer evidence of a pattern or practice of hostile behavior which is severe and pervasive enough to be actionable under Title VII. Without reciting the litany of examples of hostile behavior proffered by the Plaintiffs in support of their claim, the Court concludes that Plaintiffs have created a sufficient record to survive summary judgment on this claim. Whether Plaintiffs will prevail upon the merits is another question altogether, but at this juncture the claim survives this Court's review. The Court further notes that, contrary to Defendants' contention, instances of gender

hostility and discrimination which fall outside the statutory time frame remain actionable so long as the Plaintiffs can demonstrate that such instances are part of an ongoing pattern or practice of gender hostility.

3. Plaintiffs' Motion for Partial Summary Judgment

Plaintiffs have moved for partial summary judgment with respect to their compensation claims, asserting that the Defendants have offered no rebuttal to the Plaintiffs' evidence of gross statistical disparity between the compensation of male and female faculty. The Defendants' expert report which has been offered in rebuttal to the Plaintiffs' statistical evidence does not include the *Craik* class members in the analysis. Plaintiffs argue that, because the *Craik* class members are appropriately included in the classes involved in this litigation, Defendants' statistical evidence should be disregarded; thus, Defendants have effectively offered no evidence to contradict the findings of Plaintiffs' expert, and so Plaintiffs should be granted summary judgment on the question of compensation liability.

As the Plaintiffs note, once they meet their prima facie burden, the Defendants must rebut the Plaintiffs' evidence by showing that it is "either inaccurate or insignificant." *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 360 (1977). Although the Defendants have not offered statistical evidence which addresses the claims of the compensation class as it is defined, Defendants have raised questions of fact regarding the accuracy and significance of Plaintiffs' evidence.

Specifically, Defendants' expert (Dr. Stoikov) operationalizes a control for market influences that is different from that defined by Plaintiffs' expert (Dr. Gray). Dr. Gray's analysis included a dummy variable for faculty in computer science, engineering, and business to control

for the market premium paid to faculty in these departments. While, Dr. Stoikov does not directly challenge this specification, her analysis identifies a market premium for faculty in mass communications as well as the disciplines identified by Dr. Gray. In short, the Court finds that there is a genuine issue of fact regarding the adequacy of Dr. Gray's statistical controls for market factors and, thus, the accuracy of her results.

Moreover, while the *Craik* class members are appropriately included in the Plaintiff class, they are precluded, under the terms of the consent decree, from pursuing claims based upon salary and promotion decisions pre-dating the decree. A question of fact remains regarding whether Plaintiffs' expert has adequately distinguished between lingering effects of pre-*Craik* discrimination and disparity which is the result of post-*Craik* actions and decisions.

4. Motion to Join Male Faculty

The Defendants have moved to join a class of male faculty as an indispensable party to this litigation. Specifically, Defendants express concern any relief granted to the female faculty could aggrieve the male faculty and expose the Defendants to further litigation.

Plaintiffs argue, in contrast, that § 108 of the Civil Rights Act of 1991 shields the Defendants from such exposure and renders joinder of the male faculty unnecessary. Section 108 of the Civil Rights Act of 1991 prohibits any collateral challenge to "an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination" by any person who has actual notice of the proposed judgment or order and a reasonable opportunity to present objections. 42 U.S.C. § 2000e-2(n).

While Defendants' concerns are understandable, they are unfounded. Defendants point to a recent action involving the University of Minnesota in which a male professor brought a Title

VII action challenging the legality of relief granted to a class of female faculty pursuant to a consent decree. *See Maitland v. University of Minnesota*, 155 F.3d 1013 (8th Cir. 1998) (finding genuine issue of material fact regarding whether relief granted in consent decree violated Title VII); *Rajender v. University of Minnesota*, 563 F. Supp. 401 (D. Minn. 1983) (underlying class action suit). However, in the *Maitland* litigation, the trial court originally determined that § 108 precluded the cause of action; the Eighth Circuit reversed that determination solely on the grounds that the alleged discriminatory behavior (enforcement of the *Rajender* consent decree) took place before the effective date of § 108 and § 108 could not be applied retroactively. *See Maitland v. University of Minnesota*, 43 F.3d 357 (8th Cir. 1994). In the instant action, any judgment, order, or consent decree would be protected from collateral challenge by § 108.

Defendants argue that joinder of the male faculty affords them greater protection from subsequent litigation than does § 108. At the margins, this *may* be true. Yet, as Plaintiffs point out, even joinder of the male faculty cannot provide complete protection against subsequent litigation. The slight possible advantage that joinder might give to the Defendants does not justify joinder of the male faculty and the attendant burden on the Plaintiffs, the Court, and even the male faculty themselves.

The Court finds that § 108 of the Civil Rights Act eliminates the necessity of joining the male faculty as an indispensable party. Accordingly, Defendants' motion is denied.

5. Defendants' Motion to Strike Testimony

Defendants have brought a motion to strike portions of the record before the Court on a variety of grounds. The Court has reviewed the challenged documents and portions of documents. The Court finds that the inclusion or exclusion of any or all of the challenged

documents does not affect the Court's decisions with respect to summary judgment and class certification. The Court's decisions on the summary judgment and certification motions do not rely in whole or in part upon the challenged documents. While the question of the admissibility of these documents will doubtless arise in the context of motions *in limine*, the Court now denies the motion to strike as moot.

6. Defendants' Motion to Strike Supplemental Memorandum

The Plaintiffs have filed with the Court a document entitled "Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment." MnSCU has moved the Court to strike this memorandum and the attached documents on the grounds that the memorandum is untimely, that the memorandum makes insupportable legal inferences, and that the attached documents have not been properly authenticated.

Because the Court denies MnSCU's motion for partial summary judgment, in opposition to which the supplemental memorandum was submitted, without reference to the supplemental memorandum or attached documents, the Court need not reach the issue of the memorandum's propriety. The Court denies the motion to strike as moot.

For the reasons stated, **IT IS HEREBY ORDERED:**

1. Defendant MnSCU's Motion to Decertify the Plaintiff Class (Doc. No. 167) is **DENIED**;

2. Defendant MnSCU's Motion for Partial Summary Judgment (Doc. No. 166) is **DENIED**;

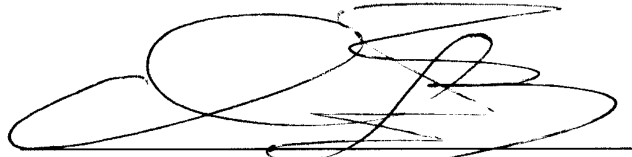
3. Plaintiffs' Motion for Partial Summary Judgment (Doc. No. 157) is **DENIED**;

4. Defendants' Motion for Joinder of the Male Faculty as an Indispensable Party (Doc. No. 144) is **DENIED**;

5. Defendant MnSCU's Motion to Strike Testimony (Doc. No. 170) is **DENIED**;

6. Defendant MnSCU's Motion to Strike Plaintiffs' Supplemental Memorandum (Doc. No. 186) is **DENIED AS MOOT**.

Dated: September 28, 1999



DONOVAN W. FRANK
Judge of United States District Court