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)

ORDER FOR FINAL APPROVAL OF CLASS SETTLEMENT AGREEMENT

Tammy Friederichs, Esq., Dorothy Buhr, Esq., and Edwin Sisam, Esq., Sisam & Watje, 6600 France Avenue South, Suite 360, Minneapolis, MN 55435; and Ronald Futterman, Esq., Futterman & Howard, 122 S. Michigan Avenue, Suite 1850, Chicago, IL 60603, appeared on behalf of Plaintiffs.

Gary Cunningham, Assistant Attorney General, Minnesota Office of the Attorney General, Suite 1100, 445 Minnesota Street, St. Paul, MN 55101, appeared on behalf of Defendants St. Cloud State University and Minnesota State University System.

Ramnath Sarnath and William Meehan, Executive Director of the Minnesota Association of Scholars, appeared on their own behalf.

The above-entitled matter came on for hearing before the undersigned United States District Judge on March 16, 2001, pursuant to the parties' request for final approval of the class settlement agreement. Having considered the parties' motion and supporting materials; having reviewed the Motion for Preliminary Approval and supporting materials; having examined the proposed settlement agreement; having been advised by both parties that the proposed settlement

agreement is intended to effect a full and final settlement of all employment-related claims, other than worker compensation claims, that were or could have been asserted by the Plaintiffs[1] and of all employment-related claims, other than potential claims related to failure to timely promote or workers compensation claims, that were or could have been asserted by the Class members; and being otherwise duly advised in the premises, the Court hereby makes the following:

FINDINGS OF FACT

1. Counsel for both parties have vigorously defended the interests of their respective clients throughout the five-year tenure of this litigation, and the negotiations leading to this settlement were conducted at arms' length.

2. As this Court has previously noted, the Plaintiff Class has established through the use of aggregate statistical data that women at St. Cloud State University are paid less than men for doing substantially similar work.

3. Despite the merits of the Plaintiff Class' case, the Court recognizes that bringing this litigation to trial would, in light of the complexity and costs associated, involve tremendous risk and expense to both parties.

4. The terms of the settlement agreement address the statistically demonstrable gender-based disparity in compensation, but the resulting salary adjustments do not result in over-compensating women relative to men, either individually in their own departments or in the aggregate.

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[1] This settlement is not intended, however, to effect a mutual release of any claims by or against Named Plaintiff Lora Robinson arising out of the facts alleged by the complaint, counterclaim, or third party complaint in *Robinson v. Asquith*, Civil Court File No. C7-00-1851.

5. The terms of the settlement agreement, through the provision of back-pay and injunctive relief, address the issue of hostile work environment and harassment as raised in the record, and the compensation for that harassment is commensurate with the gravity of the harassment alleged.

6. There has been relatively little opposition to the proposed settlement. Only eight objections were filed with the Court, and one of those was from an organization that may well not have standing to challenge the proposed settlement. As discussed in the attached memorandum, the Court denies those objections.

7. The Court finds that the proposed settlement is fair, reasonable, and adequate in light of all the facts and circumstances surrounding the case.

8. The Court specifically finds that there is an adequate factual basis for awarding relief to the Class members and that the relief provided by the terms of the settlement agreement is narrowly tailored to address the demonstrated harm.

9. The Court further finds that the notice to interested parties and the opportunity for those parties to be heard was adequate.

Based upon the forgoing findings of fact, the Court hereby makes the following:

CONCLUSIONS OF LAW

1. The proposed settlement agreement is fair, reasonable, and adequate, and it is narrowly tailored to achieve the goals and objectives of Title VII.

2. The settlement meets the standards of Section 108 of the 1991 Civil Rights Act, and it should thus be afforded that section's finality protection.

Based upon the forgoing conclusions of law, the Court hereby makes the following:

ORDER

1. The proposed Class Settlement Agreement is **APPROVED**;

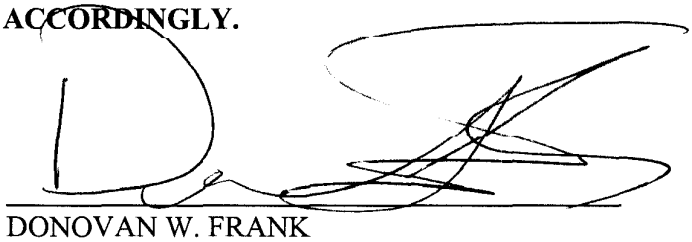
2. The objections of Ramnath Sarnath, Dale Buske, Ravindra Kalia, Sneh Kalia, Jo Ann Asquith, Janelle Kurtz, Rona Karasek, and William Meehan (as executive director of the Minnesota Association of Scholars) are **DENIED**.

3. This matter is hereby **DISMISSED WITH PREJUDICE**, consistent with the terms of the Class Settlement Agreement.

4. All future collateral challenges to the settlement by current male faculty or any other parties who had actual notice of the proposed settlement and a reasonable opportunity to present objections are precluded by Section 108 of the Civil Rights Act of 1991.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 26, 2001



DONOVAN W. FRANK
Judge of United States District Court

MEMORANDUM

This litigation has a long history before this Court, a history which is better described in past Court Orders. For purposes of granting final approval to the settlement agreement, it is sufficient to note that Plaintiffs were prepared to offer aggregate statistical evidence that women at St. Cloud State University were paid less than men for doing substantially similar work.[2]

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[2] Plaintiffs' expert utilized multiple linear regression, with salary as the dependent variable, to demonstrate that, even when controlling for rank, experience, years in rank, and the (continued...)

Although the Defendants deny any intentional discrimination, the Defendants concede that a gender-based wage differential does exist. Plaintiffs had also amassed significant anecdotal evidence of a gender-based discrimination, harassment, and hostility; the harassment and discrimination documented were sufficiently severe and pervasive to allow a reasonable fact-finder to conclude that St. Cloud State University constituted a "hostile work environment" within the meaning of Title VII.

In light of the significant evidence of Title VII violations presented by the Plaintiffs, weighing the costs and risks of litigation, and in the interests of bringing closure to this contentious chapter in the University's history, the parties have reached a settlement agreement. The terms of that agreement are detailed in the agreement itself. Basically, though, the agreement provides for back pay for each qualifying member of the class[3] in the amount of $211 for each year the class member has been employed by St. Cloud State University. The agreement further provides for salary adjustments for certain class members.[4] Most of the women who had

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[2](...continued)
market premium that some departments attract, gender is a statistically significant determinant of salary. In short, controlling for the legitimate determinants of salary, women still make less than men.

[3] Pursuant to an order by Magistrate Judge Erickson, in late summer of 1998 counsel for the Plaintiff Class sent each potential class member a set of three interrogatories; these interrogatories queried whether the potential class member alleged discrimination with respect to salary, tenure and promotion, and gender harassment. Eight potential class members responded "no" or "I don't know" to all three of the interrogatories. Because these eight women failed to affirmatively allege any discrimination, they were disqualified from receiving any monetary compensation.

[4] Again, the process for the salary adjustment is more fully explained elsewhere in the record. In short, data on the qualifications and salaries of male faculty members was used to generate, via regression analysis, a "male model" for salary distribution at St. Cloud State. The "male model" was then applied to data on the qualifications of the female faculty to generate
(continued...)

alleged discrimination in tenure and promotion had, since the onset of the litigation, attained the rank they desired; with respect to the few remaining women, their claims for failure to timely promote are being dismissed without prejudice so they may independently pursue injunctive relief.

In reviewing the proposed settlement agreement, the Court notes the limits on its power to micromanage the parties' resolution. The Court must review the settlement to determine that it is fair, reasonable, and adequate and that it comports with Title VII. *See Gruinin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975). In so doing, the Court should consider the merits of the plaintiff's case, weighed against the terms of the settlement; the defendant's financial condition; the complexity and expense of further litigation; and the amount of opposition to the settlement. *Id.* at 124. The Court must also protect against the possibility of "reverse discrimination" by ensuring that the settlement is narrowly tailored to correct an imbalance manifested in the salaries. *See Johnson v. Transportation Agency, Santa Clara County, Cal.*, 480 U.S. 616, 617-18 (1987).

Here, the Court has considered the factors articulated in *Gruinin* and finds that the proposed settlement is fair, reasonable, and adequate. Plaintiffs have presented compelling

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[4](...continued)
predicted salaries for the female faculty (i.e., what we would predict the women would be making if gender was not a factor). Those predicted salaries were then compared to the actual salaries of the female faculty; to qualify for a salary adjustment, a woman's actual salary had to be at least one standard deviation below her predicted salary. As an additional check to prevent over-adjustment, the salaries of qualifying women were compared against the salaries of men in their department; thus, interdepartmental variation was accounted for. It should be noted that not all women qualified for salary adjustments. After the adjustments were made, the qualifications for all of the faculty, male and female, were regressed on the new salaries; in this last regression, gender was still negatively signed (women made less than men), but the coefficient was not statistically significant.

evidence to support their claim, but the complexity of their evidentiary burden and the vagaries and expense of trial weigh in favor of a settlement. The amount of the settlement, while not precise because of the prospective nature of some of the relief, seems generally consistent with the nature and strength of Plaintiffs' claims. Similarly, given the record, the expense of litigation, and the risks of litigation, the settlement seems to be a reasonable one for the Defendants. Finally, there has been relatively little objection to the settlement; only seven faculty-members have expressed any objection at all. While the substance of their objections is discussed below, the Court simply notes that the objectors represent a very small fraction of the individuals effected by the settlement.

Moreover, the Court finds that the parties have taken adequate steps to ensure that the settlement is narrowly tailored to correct the salary imbalance manifested in the statistical analysis. All salary adjustments dictated by the statistical analysis were checked against actual intra-departmental male comparators to limit the risk that the statistical adjustment procedure would "correct" for interdepartmental salary variance rather than simply gender-based salary variance. After the adjustments were made, the initial analysis was recreated to verify that the "sign" on the gender coefficient had not reversed; in other words, holding qualifications constant, women *do not* make more than men in the aggregate.

Given that the Court finds the settlement agreement to be acceptable on its face, the Court now turns to a consideration of the individual objections which have been filed.

A. Rona Karasek

Professor Karasek voiced an objection on the basis that she did not receive a salary adjustment, that other similarly situated women did receive such an adjustment, and that no one could identify any male comparator for her. In response, the parties have indicated that, based

solely on the regression analysis, Professor Karasek did qualify for a salary adjustment because her actual salary was more than one standard deviation below the salary predicted for her by the male model. Thus, to the extent that Professor Karasek noted other similarly situated women in other departments getting salary adjustments, she was correct.

However, after noting the discrepancy in her salary compared to the predicted value, her salary was then compared to men *in her department*. Professor Karasek's salary was only about $4,400 less than the most similar man in her department; this male professor held a rank above Professor Karasek and had twice as much experience. As a result, it was determined that Professor Karasek's low pay is more likely a result of her department than her gender; raising Professor Karasek's salary to comport with the university-wide male model would result in her making disproportionately more than the men in her department.

It appears that the process for determining her eligibility for salary adjustment was not fully explained to Professor Karasek. The Court hopes that that failure of communication has been remedied by the parties. In the event that there is still any question in her mind about why she did not receive a salary adjustment, the Court hopes that this Order will clarify the situation. It must certainly be frustrating for Professor Karasek to see other women, in apparently the same situation, benefitting from this settlement in a way that she does not. However, the Court hopes that Professor Karasek–and all of the faculty at St. Cloud State–understands that this settlement is intended to cure only gender discrimination, and not any other type of salary inequity.

B. Sneh Kalia

Professor Kalia has objected to the back pay calculation provided by the settlement. Professor Kalia notes that her back pay award is calculated in the same manner as is that of a woman with far less experience. Specifically, each woman will receive $211 for each year she

was employed for St. Cloud State. Thus a woman who worked for eight years will receive $1,688, and a woman who worked for two years will receive $422. Professor Kalia has suggested that the effects of discrimination are cumulative, that discrimination and harassment experienced in the 1992-1993 academic year should now be compensated more than discrimination and harassment experienced in the 1998-1999 academic year.

Frankly, Professor Kalia makes a good point. One can easily imagine that discrimination and harassment in 1992-1993 will have "snowballed," undermining intervening opportunities for advancement as well as causing contemporaneous harm. *See* Mary Gray, "Pay Equity: The Role and Limitations of Statistical Analysis," 25 *The Canadian Journal of Statistics* 281 (1997) ("Generally it is the most senior women whose salaries are the most depressed."). Thus it might be more ideal to provide a non-linear back pay formula, where, for example, faculty are compensated $300 for the 1992-1993 academic year but only $150 for the 1998-1999 academic year.

Such a non-linear compensation scale *might* be better, *might* make more sense, but the Court does not need to find that the settlement is the *best* possible settlement; rather, it is enough that the Court find that the proposed settlement falls within a range of acceptable outcomes. *See White v. State of Ala.*, 867 F. Supp. 1519, 1557 (M.D. Ala. 1994). The Court finds that the proposed back pay calculation falls squarely within the range of acceptable alternatives. In the absence of any concrete evidence that older discrimination is somehow worse, either in quality or in consequences, the linear back pay calculation is entirely reasonable. Moreover, the linear back pay calculation has the benefit of being simple to apply and simple to explain. The Court finds that Professor Kalia's objection, while duly noted, should be overruled.

C. Professors Jo Ann Asquith and Janelle Kurtz

Professors Asquith and Kurtz were denied any monetary compensation from this settlement because, in response to the interrogatories discussed above, they answered "no" or "I don't know" to each of the questions. Thus, because they did not affirmatively allege any discrimination, they were excluded from eligibility for monetary compensation. Professors Asquith and Kurtz now assert that they were not fully informed of the consequences of their answers, that they were not fully informed of the evidence the Plaintiffs had acquired demonstrating discrimination, that they were not given an opportunity to amend their answers, and that they were excluded in retaliation for a dispute between them and one of the named Plaintiffs.

First, the Court notes that exclusion of Professors Asquith and Kurtz on the basis of their response to interrogatories was reasonable. Counsel for Plaintiffs has provided the Court with letters sent to Professors Asquith and Kurtz which clearly explain the aggregate statistical evidence of discrimination, the existence of anecdotal evidence of harassment, and, in the case of Professor Kurtz, a male comparator who made more than Professor Kurtz. In addition, the letter indicates the importance of affirmatively alleging discrimination to preserve any right to monetary compensation. Thus, the evidence indicates that Professors Asquith and Kurtz were fully informed of the status of the case and their rights and responsibilities as potential class members.

With respect to amendment of their responses, it is apparently true that Counsel for Plaintiffs did not approach Professors Asquith and Kurtz about possible amendment after the initial interrogatories had been completed and submitted. By the same token, however, Professors Asquith and Kurtz have not alleged that they attempted to amend their answers and

were denied an opportunity to do so. Class members share in the responsibility of protecting their interests as members of the class; there is no evidence that Counsel for the Plaintiffs was derelict in its responsibilities by failing to repeatedly ask for interrogatory amendments.

Finally, the Court notes that Professors Asquith and Kurtz were not alone. There were eight women who failed to affirmatively allege discrimination, and they were all treated the same with respect to monetary compensation. There is no evidence that Professors Asquith and Kurtz were excluded because of a dispute with Lora Robinson. Rather, the act which led to their exclusion took place long before the dispute arose, and there is simply no evidence that their exclusion was motivated by anything other than their interrogatory responses.

The Court finds that the objections by Professors Asquith and Kurtz are not supported by the record and do not justify invalidating the settlement agreement. Accordingly, those objections are denied.

D. Professors Dale Buske, Ravindra Kalia, and Ramnath Sarnath, and the Minnesota Association of Scholars

At the outset, the Court notes that the Minnesota Association of Scholars ("MAS") is not a party to this case and, in all likelihood, lacks standing to assert an objection to the settlement. Indeed, at the fairness hearing, the parties formally registered their objections to the Court considering the written and oral arguments of William Meehan, the executive director of the MAS. However, Mr. Meehan's objections echo those of Professors Buske, Kalia,[5] and Sarnath (collectively "the male faculty").

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[5] The Court is given to understand that Professor Ravindra Kalia and Professor Sneh Kalia are husband and wife. In any event, it is worth noting that there are two objectors referred to as "Professor Kalia," one female (whose objection is noted above) and one male.

Basically, the objections of the male faculty and the MAS raise two points: (1) because the Defendants have not admitted to any discrimination, it appears that the female faculty are being given pay increases for no legitimate reason and (2) the "salary adjustment formula" applied to the women as part of the settlement should be applied to male faculty as well, so as to prevent reverse discrimination. The Court will address each of these points in turn.

First, the Defendants do not contest the existence of a gender-based wage imbalance; the statistical evidence provided by the Plaintiffs is compelling and clearly points to such an imbalance. Rather, the Defendants merely contend that the existing wage imbalance is not the result of any overt, intentional discrimination. Under the law, it is enough that the Defendants concede to, and the record supports a finding of, an actual "manifest imbalance" in wages; it is not necessary that Defendants admit that the imbalance is the result of intentional discrimination. *See Maitland v. University of Minnesota*, 155 F.3d 1013, 1016-17 (8th Cir. 1998). The settlement agreement is, essentially, in the nature of a voluntary plan designed to correct a manifest imbalance. As such, it is legally sufficient.

Second, with respect to the Objectors' contention that the salary adjustment formula should be applied to male faculty as well as female faculty, the Court cannot agree. Professor Buske argues that the settlement agreement "has applied certain criteria to decide what would be fair compensation for a faculty person, taking into account their professional attainments." This is not exactly true. The formula only purports to predict what a woman at St. Cloud State would make if she were not, in fact, a woman; there is no contention that the formula generates an otherwise "fair" salary.

The salary adjustment process was specifically designed to prevent over-compensation of the female faculty, so-called "reverse discrimination."[6] First, the current salaries of the male faculty were used to fit the regression line used to generate the expected salaries of similarly situated women, and the women were only given pay adjustments if they fell significantly below that line. This is not to suggest that, if you put the male faculty into the male model, it would accurately predict male salaries. It would not; most men would fall off the regression line, either under- or over-paid. However, that residual variation in male salaries is not the result of illegal gender discrimination. It may have many sources: inequities between departments,[7] intra-organizational political slights or favors, simple human fallibility, or some abstract non-quantifiable or even inarticulable characteristic of the individual outliers.

The Court's power and obligation is to correct for gender discrimination, not to create a perfectly fair salary process. The Court's approval of this settlement precludes future gender discrimination litigation arising out of the pay structure at St. Cloud State for the time period at issue. However, it does not preclude union action and bargaining to attempt to correct for interdepartmental inequalities or individual action based on discriminatory factors other than sex. The Court finds that it would be inappropriate to force-fit all of the faculty, male and female, to

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[6] As evidence that the salary adjustment procedure did not simply create another type of imbalance, the parties note that, holding legitimate salary factors constant, women still make less than men at St. Cloud State–the imbalance is simply no longer statistically significant. Moreover, contrary to the representations of the objectors, most of the female faculty did not receive any sort of pay adjustment; only 65 of the female faculty are receiving pay increases. Indeed, no women in Professor Sardath's department are receiving raises.

[7] An additional check on the salary adjustment process prevents interdepartmental inequalities from being compensated for women but not for men. After underpaid women were identified statistically, they were manually compared to men within their department so that women in generally underpaid departments did not reap a windfall from the settlement process.

the so-called "male model." More importantly, the salary adjustment process, as implemented, creates very little risk that any woman will be "overpaid" relative to similarly situated men in her department. Residual discrepancies in salaries, while perhaps not fair, are not the result of gender discrimination against either men or women, and are thus not within the Court's purview and do not undermine the fairness of the settlement.

In conclusion, the Court finds that the objections of the male faculty and the MAS should be denied. The Court understands their concerns and wishes them well in their quest for a truly fair system of compensation. However, the Court's concern is only that neither gender be prejudiced in the salary structure; the salary adjustment process proposed in the settlement accomplishes that paramount objective.

D.W.F.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CIVIL NOTICE

DATE MAILED TO COUNSEL/PRO SE PARTIES: MAR 26 2001

The purpose of this notice is to summarize the time limits for filing with the District Court Clerk's Office a Notice of Appeal to the Eighth Circuit Court of Appeals from a final decision of the District Court in a civil case.

This is a summary only. For specific information on the time limits for filing a Notice of Appeal, review the applicable federal civil and appellate procedure rules and statutes.

Rule 4(a) of the Federal Rules of Appellate Procedure (Fed. R. App. P.) requires that a Notice of Appeal be filed within:

1. Thirty days (60 days if the United States is a party) after the date of "entry of the judgment or order appealed from;" or

2. Thirty days (60 days if the United States is a party) after the date of entry of an order denying a timely motion for a new trial under Fed. R. Civ. P. 59; or

3. Thirty days (60 days if the United States is a party) after the date of entry of an order granting or denying a timely motion for judgment under Fed. R. Civ. P. 50(b), to amend or make Additional findings of fact under Fed. R. Civ. P. 52(b), and/or to alter or amend the judgment under Fed. R. Civ. P. 59; or

4. Fourteen days after the date on which a previously timely Notice of Appeal was filed.

If a Notice of Appeal is not timely filed, a party in a civil case can move the District Court pursuant to Fed. R. App. P. 4(a)(5) to extend the time for filing a Notice of Appeal. This motion must be filed no later than 30 days after the period for filing a Notice of Appeal expires. If the motion is filed after the period for filing a Notice of Appeal expires, the party bringing the motion must give the opposing parties notice of it. The District Court may grant the motion, but only if excusable neglect or good cause is shown for failing to file a timely Notice of Appeal.