

**EQUAL OPPORTUNITIES COMMISSION  
CITY OF MADISON  
210 MARTIN LUTHER KING, JR. BOULEVARD  
MADISON, WISCONSIN**

<p>Regina Rhyne 1805 Fisher St. Madison WI 53713</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Employment &amp; Training Association 1819 Aberg Ave. Madison WI 53704</p> <p style="text-align: center;">Respondent</p>	<p>HEARING EXAMINER'S DECISION AND ORDER ON RESPONDENT'S MOTION TO DISMISS</p> <p>Case No. 22723</p>
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### **BACKGROUND**

On September 1, 1997, the Complainant, Regina Rhyne, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission). The complaint alleges that the Respondent, the Employment & Training Association, discriminated against the Complainant on the bases of race, sex and handicap/disability when it did not hire her in the position of Project Coordinator for the Local Collaborative Planning Team (LCPT). The LCPT administers a grant from the federal government through the Wisconsin Department of Workforce Development (DWD). The purpose of the grant is to coordinate the job placement efforts of public and private agencies at the local level with the intent to establish a "one stop" job placement center.

While the Respondent does not dispute the Commission's jurisdiction over the subject matter of the complaint, it contends that it is not properly named as the Respondent. The Complainant asserts that the Respondent is a proper party. This jurisdictional dispute was transferred to the Hearing Examiner for resolution.

The parties were given the opportunity to provide additional information in support of their respective positions. Based upon the materials provided to the Investigator/Conciliator and to the Hearing Examiner, the Hearing Examiner concludes that the Respondent is not properly named.

### **DECISION**

The Respondent makes two arguments in support of its contention that it should not be named as a Respondent. First, it asserts that the position for which the Complainant applied was funded entirely by a grant from the federal government passed through the DWD. As such, the Respondent asserts that it would have no funds to pay a judgement because the funding was entirely controlled by the granting authorities.

The Hearing Examiner is entirely unpersuaded by this argument. If the Hearing Examiner were to accept this position, the Commission would never be able to accept a complaint against any not-for-profit organization that relies upon grants for its funding source. While it is true that such

organizations may face extreme financial consequences in the event of a determination of discrimination, that is an unfortunate consequence of their limited funding base. It is not a basis for relieving them of their responsibilities not to discriminate against members of the various protected classes named in the ordinance.

Nothing in the ordinance indicates an intention to excuse a recipient of grants from liability under the ordinance. In fact, Section 3.23(7)(a) of the ordinance does not limit its coverage strictly to employers. It states that it shall be illegal for any person or employer to . . . discriminate . . . (emphasis added). Section 3.23(2)(a) defines "person" broadly to include association. The Respondent is clearly an association and nothing in that section limits coverage of the ordinance to for profit associations.

The second argument raised by the Respondent is more persuasive however. The Respondent asserts that it is only the financial agent for the LCPT and its functions are strictly ministerial and limited to essentially bookkeeping functions. It asserts that it did not control the hiring process, make the hiring decision and has no management authority over the position of Project Coordinator. The record seems to bear this out.

The position description/notice of vacancy indicates that resumes should be sent to the employer. That form lists the DWD as the employer. Resumes were reviewed by a committee consisting of Mary Witt, Dane County Job Service; Mary Ann Cook, Dane County Human Services and Jim Erlenborn, Employment & Training Association. Interviews were conducted by a committee consisting of Dale Hopkins, Dane County Private Industry Council; Mary Pasholk, Dane County Job Service; Dan Kittel, Dane County Human Resources and Jim Erlenborn, Employment & Training Association. It should be noted that Kittel did not participate in the Complainant's interview because of the potential for a conflict of interest between his employer and the Complainant. While Jim Erlenborn participated in this process as a member of the committees, the process is not consistent with a position solely or primarily under the control of the Respondent.

The organizational documents including bylaws indicate that the Project Coordinator would be supervised on a day to day basis by the Chairperson designee of the LCPT. Personnel matters relating to the position were to be handled by a subcommittee of the LCPT. Again, this indicates that the Respondent, though a fiscal agent, was not in a position to affect or to discriminate against the Complainant in hiring or any of the usual areas of concern such as terms and conditions, privileges and benefits of employment.

The one item in the record that creates concern for the Hearing Examiner is a memorandum dated July 25, 1997, from Mary Pasholk. The memorandum purports to describe the hiring process for the Project Coordinator. That documents indicates that the Employment & Training Association was designated to be the "employer of record." This contradicts the other documents in the file including the job announcement. It is not clear on this record what is meant by the term "employer of record."

Despite this one statement, the weight of the evidence in the record indicates that the Respondent did not exercise the type of control or authority over the position for which the Complainant applied such that it can be considered the employer for purposes of the ordinance.

Section 3.23(7)(a) also prohibits discrimination "by any person." Section 3.23(2)(a) defines person to include an association. Clearly the Respondent is a person as that term is contemplated by the ordinance. The question is whether the Respondent is a person who could discriminate against the Complainant in a manner prohibited by the ordinance. For the reasons stated above, the Hearing

Examiner concludes that it is not. The Respondent did not have the authority to make a hiring decision and it clearly would not have had any direct authority over the Project Coordinator's daily work or conditions. The record indicates that the Respondent, though a person within the meaning of the ordinance, falls outside of the intended coverage of the ordinance with respect to this complaint.

The Complainant asserts that the Commission has jurisdiction because the advertisement that she responded to had been placed by the Respondent. She also asserts that the Respondent was somehow in charge of the position. This latter contention goes as mere speculation on the part of the Complainant.

These points are not sufficient to overcome the remaining material in the record. Taken as a whole, the record supports the Respondent's position that it is not a proper party.

Despite the fact that the Respondent must be dismissed, the Hearing Examiner does not believe that it would be appropriate to dismiss the complaint without permitting the Complainant the opportunity to amend her complaint to properly name a new Respondent. This is particularly true in light of the Respondent's statements that it does not contest the Commission's general jurisdiction over the complaint.

The record is not clear about the Commission's jurisdiction over other possible parties. On this record, it appears that there could be jurisdiction over the LCPT because it is a private/public entity. However, it also seems to be consistent with an arm of a governmental unit over which the Commission would not have jurisdiction. While such jurisdictional conjectures may be interesting, they need only need be resolved in the event that the Complainant decides to amend her complaint.

### **ORDER**

The Hearing Examiner will hold the complaint in abeyance for fifteen (15) days from the date of receipt of this decision and order. The Respondent will be dismissed from the complaint either once the complaint is amended to add a new Respondent or at the end of the fifteen (15) day period, whichever is earlier. This Decision and Order may be appealed pursuant to the accompanying Notice of Right to Appeal.

Signed and dated this 6th day of April, 1999.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III  
Hearing Examiner