EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MONONA AVENUE
MADISON, WISCONSIN

Roberta Meyer 5122 Tomahawk Trail Madison, Wisconsin 53705 Complainant vs. Area Board of Vocational, Technical and Adult Education 211 North Carroll Street Madison, Wisconsin 53703 Respondent	FINAL ORDER Case No. 2603

The Hearing Examiner of the Madison Equal Opportunities Commission (MEOC) issued the Recommended Findings of Fact, Conclusions of Law and Order on June 17, 1981. Timely exceptions were filed, written arguments were submitted, and oral arguments were heard by the Commission (eleven Commissioners were present).

Based upon a review of the record in its entirety, the MEOC issues the following:

ORDER

That the attached Recommended Findings of Fact, Conclusions of Law and Order is affirmed in its entirety, except that the words "plus 6 percent annual interest" shall be deleted from the fifth line of #2 of the Recommended Order. As modified in the previous sentence, the attached Recommended Findings of Fact, Conclusions of Law and Order shall stand as the FINAL ORDER herein.

Commissioners Abramson, Amato, Basurto, Galanter, Goldstein, Hisgen, McShan, Mendez, Swamp and Thome all join in affirming the Examiner's decision as modified above. Commissioner Hall chaired the session at which the vote was taken and did not exercise his prerogative to vote.

OPINION

The Commission finds no explicit legal authority to warrant an award of interest and has deleted the portion of the Recommended Order relating to interest. Otherwise, the Examiner's decision reflects that of the Commission.

Signed and dated this 9th day of November, 1981.

EQUAL OPPORTUNITIES COMMISSION
A. Gridely Hall, President

cc: Attorney Cheryl Weston
Attorney Donald Johnson
Wisconsin Equal Rights Division

EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
351 WEST WILSON STREET
MADISON, WISCONSIN

Roberta Meyer 5122 Tomahawk Trail Madison, Wisconsin 53705 Complainant vs. Area Board of Vocational, Technical and Adult Education 211 North Carroll Street Madison, Wisconsin 53703 Respondent	RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER Case No. 2603

On March 14, 1980, a complaint was filed with the Madison Equal Opportunities Commission (MEOC) alleging discrimination by the Respondent against the Complainant on the basis of sex in regard to employment, specifically, in regard to compensation.

The complaint was investigated by MEOC Human Relations Investigator, Mary Pierce, who issued an Initial Determination, dated September 4, 1980, finding Probable Cause to believe that the Respondent discriminated against the Complainant as alleged.

Conciliation failed or was waived, and the matter was certified to public hearing. A hearing was held on March 25, 1981, at the offices of the MEOC. Attorney Cheryl Weston of Cullen and Weston, S.C. appeared on behalf of the Complainant, Roberta Meyer, who also appeared in person. Attorney Susan M. DeGroot of Lee, Johnson, Kilkelly and Nichol, S.C. appeared on behalf of the Respondent, who also appeared by its designated employee-representative, Norman Mitby, its District Director. Based upon the record of the hearing and after consideration of the post-hearing briefs, the Hearing Examiner proposes the following Recommended Findings of Fact, Conclusions of Law and Order:

RECOMMENDED FINDINGS OF FACT

1. The Complainant, Roberta Meyer, is an adult female residing in the State of Wisconsin.
2. The Respondent, Area Board of Vocational, Technical and Adult Education, District No. 4 (hereinafter referred to as the "Board") operates the Madison Area Technical College (hereinafter referred to as "MATC") which is located in the City of Madison. MATC is a "two-year" school of higher education.
3. The Complainant was hired by the Respondent in July of 1974 for a position as a full-time commercial art teacher at MATC and continues to be employed by the Respondent in that position. The Complainant had taught at MATC on a part-time basis for two years immediately preceding her hire as a full-time teacher.
4. Donald Johnson was hired by the Respondent in August of 1974 for a position as a full-time commercial art teacher at MATC.

5. Barbara Borders was hired by the Respondent in July of 1974 for a position as a full-time commercial art teacher at MATC.
6. The Complainant, Johnson and Borders all began teaching during MATC's 1974-75 school year and were the only three full-time commercial art teachers hired for the 1974-75 school year.
7. The Complainant, Johnson and Borders had the following pertinent qualifications at the time of their respective hires in 1974:

	COMPLAINANT	JOHNSON	BORDERS
EDUCATIONAL BACKGROUND	B.A. 130 credits M.A. 30 credits post M.A. 17 credits M.F.A. 60 credits	B.A. 153 credits M.A. 47 credits post M.A. 44 credits	B.S. 127 credits M.S.-42 credits
TEACHING EXPERIENCE	9-1/2 years secondary and elementary	5-1/2 years college	3 years secondary
WORK EXPERIENCE	2-1/2 years Art	4 years Art	10 years design and selling in floral shops

Johnson actually possessed two B.A. degrees, one in German and one in Art. Also, 21 of Johnson's 44 post M.A. credits were used to obtain an education certification.

8. The initial salary classification of the Complainant was G4-5; i.e., Group 4, Step 5. Johnson's initial salary classification was G4B-7; i.e., Group 4B, Step 7. Borders' initial salary classification was G4-3; i.e., Group 4, Step 3.
9. Once a teacher is hired, the initial salary classification which is determined at the time of hire is never reviewed or altered by the Respondent under any circumstances. However, annual adjustments may be made by the Respondent to the initial salary classification (and subsequent adjusted salary classifications) as follows:

(a) A teacher may advance in Group (horizontally) only by earning academic credits completed after the time of hire and approved by the Respondent;
(b) A teacher may advance in Step (vertically) only by teaching at MATC: one vertical step is added for each school year of full-time teaching until the highest step in the teacher's Group is attained.

10. At the time of hire for a full-time position at MATC, each teacher submitted a personnel application detailing the teacher's educational, occupational and teaching experience to the date of hire. The personnel application was reviewed and evaluated by the Respondent's Assistant Director, Instructional Services, who in turn made a recommendation to the Respondent's District Director as to the particular salary classification of the collective bargaining contract with the Madison Area Technical College Teacher's Union Local 243 that the Assistant Director felt was appropriate for the prospective hire. The Assistant Director, Instructional Services met with each prospective hire to examine the personnel application, at which time the Assistant Director advised the prospective hire of the salary classification that the Assistant Director felt was appropriate.
11. The Complainant's application for a full-time commercial art teaching position was processed in the manner described in Finding of Fact 10 above. At the time of the Complainant's hire, Dean Wessels was the Assistant Director, Instructional Services, and Norman P. Mitby was the District Director for the Respondent. Both Wessels and Mitby have been employed by the Respondent at their respective positions at least since 1972, and both continue to serve at their respective positions.
12. In arriving at a recommendation of salary classification, the Respondent may consider up to seven criteria:

(a) education of the applicant including the relevancy of the education
(b) teaching experience of the applicant including the relevancy of the teaching experience
(c) work experience of the applicant including the relevancy of the work experience to the teaching assignment
(d) condition of the job market at the time of hire
(e) budget considerations
(f) salaries being paid by other "two-year" schools of higher education
(g) salary that the applicant was receiving at the time of employment

13. According to the applicable collective bargaining agreement, educational background and practical work experience are the factors upon which a full-time teacher's salary is based (see Joint Exhibits 2 through 8, Article IX). Notwithstanding the collective bargaining agreement, the Respondent has taken into account any or all of the seven factors listed in Finding of Fact 12 above in arriving at the initial salary classification for a new hire in a given year. The Respondent has used these seven factors continuously since 1960.
14. The condition of the job market at the time of hire and the salaries being paid by other "two-year" schools of higher education were all the same at the time of hire of the Complainant, Johnson and Borders in 1974.
15. The salary that the applicant was receiving at the time of hire was not a factor taken into account by the Respondent in determining the initial salary classifications of either the Complainant, Johnson or Borders.
16. Budget considerations were not a factor in the initial salary classifications of either the Complainant, Johnson or Borders.
17. Dean Wessels has no expertise in the field of commercial art. At the time he made a determination of the relevancy of the Complainant's education to her teaching assignment, he did not have available the transcripts of her college courses. It is not unusual for Wessels not to have college course transcripts available at the time he makes recommendations for the initial salary classifications of applicants for full-time teaching positions.
18. By terms of Article IX of the applicable collective bargaining agreement, the Complainant should have been classified in Group 4B at the time of her hire, Johnson should have been classified in Group 4B, and Borders should have been classified in Group 4A for their respective initial salary classifications. Both the Complainant and Borders were classified in a group horizontally below the classification required by the collective bargaining agreement. Both the Complainant and Borders are females. Johnson, a male, was classified in the same group as required by the collective bargaining agreement.
19. Respondent's three highest salary group classifications are, from highest to lowest: 4B, 4A, and 4 (the collective bargaining agreement denotes 4B and 4A as subgroups and 4 is referred to as Group IV). Article IX, Section A7 of the applicable collective bargaining agreement stated that newly employed teachers shall be given credit in their placement on the salary schedule for all previous degrees and credits earned.
20. The Complainant's education was relevant to her teaching position within the Respondent's own (unwritten) criteria.
21. Kenneth Rich, a male, was hired by the Respondent in 1975 and was classified as a G4B-5 for salary purposes. Rich's initial salary classification in regard to group (4B) was consistent with the terms of the applicable collective bargaining agreement. Rich's qualifications at the time of his hire were as follows:

EDUCATIONAL BACKGROUND: B.S. 126 credits / M.F.A. 63 credits / Art Center School - 30 credits
TEACHING EXPERIENCE: 5 years of high school and college
WORK EXPERIENCE: 7 years photography

13. In order to be classified in the G4B group salary classification, per the terms of the collective bargaining agreement, an individual needed either a Bachelor's degree plus 54 credits or a Master's degree plus 24 credits. The Complainant had a Bachelor's degree plus 107 credits at the time of her hire, including a Master's degree and a Master's of Fine Arts degree (M.F.A.). An M.F.A. in art is equivalent to a Ph.D. in other disciplines. The Complainant had 18 more total credits than Rich at the time of their respective initial salary classifications. The Complainant had 7 less credits than Johnson at the time of their respective initial salary classifications.
14. Once a teacher's initial salary classification had been negotiated, the prospective hire was offered a position on the MATC staff in a letter signed by the District Director. The letter specified the salary classification being offered and a contract for signing was included in the letter as well as a copy of the collective bargaining agreement.
15. The teacher's salary classification, including the adjustments referred to in Finding of Fact 9 (for taking courses and teaching at MATC) is noted each year on an annual review which the teacher is asked to sign.
16. Wessels' recommendations for the initial salary classifications of the Complainant, Johnson, Rich and Borders and all other full-time commercial art teachers hired by the Respondent since Wessels has been serving as Respondent's Assistant Director Instructional Services have been consistently approved by Mitby without modification and have subsequently been formally adopted by the Respondent (the "Board") without modification.
17. Practical work experience is a component of the Step classification. Practical work experience includes relevant teaching experience. The Respondent valued past college teaching more highly than past high school teaching which in turn was valued more highly than past elementary school teaching in determining the initial step classification of a new full-time commercial art teacher.
18. Joint Exhibit 1B is hereby incorporated as Finding of Fact 27 regarding the name, sex, position, date of hire, educational background, teaching experience, work experience and grade and step of salary from date of hire through the 1980-81 school year of each full-time commercial art teacher hired by the Respondent since 1972.

19. All provisions of Article IX of the collective bargaining agreement relating to salary have been effective since 1970 and have continued to be effective in the same form and with the same meaning through the 1980-81 MATC school year.
20. Although they do not teach exactly the same courses, the Complainant has been performing work in her position as a full-time commercial art teacher for the Respondent that is substantially similar to that of Johnson's, Rich's, Borders' and all other commercial art teachers that the Respondent has employed since 1972. Further, the Complainant's job requires equal skill, effort and responsibility under substantially similar working conditions as Johnson's, Rich's and Borders' jobs as well as all other commercial art teachers' jobs since 1972.
21. An individual who would have started at the same salary as the Complainant in 1974 but who would have been placed in a higher group would have advanced more rapidly in salary increases than the Complainant. Teachers classified in groups higher than Group 4 (i.e., 4A or 4B) receive a higher amount of salary increases (vertically) for their post-hire teaching at MATC.

RECOMMENDED CONCLUSIONS OF LAW

1. The Complainant is a member of a protected class, sex, within the meaning of Section 3.23, Madison General Ordinances.
2. The Respondent is an employer within the meaning of Section 3.23, Madison General Ordinances.
3. The Complainant was discriminated against by the Respondent on the basis of sex in regard to compensation in violation of Section 3.23(7)(a), Madison General Ordinances; specifically, the Complainant was discriminated against on the basis of sex by the Respondent's failure to pay to her as much in salary as a man would have received for doing the same work she performed as a commercial art teacher for the Respondent. Said violation is of a continuing nature.

RECOMMENDED ORDER

1. That the Respondent cease and desist from discriminating against the Complainant on the basis of sex.
2. That the Respondent pay to the Complainant all additional amounts of salary that she would have received had she been initially classified in 1974 as a G4B-5 for salary purposes; specifically, the Respondent shall pay to the Complainant the following amounts of money plus 6% annual interest:

   (a) the additional amounts that she would have received for the 1977-78 school year from March 14, 1978 to the end of the school year had she been classified as a G4B-8;
   (b) the additional amounts that the Complainant would have received had she been classified as a G4B-9 for the 1978-79 school year;
   (c) the additional amounts that the Complainant would have received had she been classified as a G4B-10 for the 1979-80 school year;
   (d) the additional amounts that the Complainant would have received had she been classified as a G4B-11 for the 1980-81 school year;
   (e) any additional amounts that she would have received until this Order becomes final for any subsequent school year based on a G4B group classification and any succeeding step beyond 11.

3. That the Complainant immediately be reclassified and that she be paid salary and granted future step increases from the close of the 1980-81 school year as if she had been classified as a G4B-11 for the 1980-81 school year.
4. That the Respondent make additional pension contributions and/or increase any other employee benefits related to the Complainant's salary to which she would have been entitled since March 14, 1978 had she been classified and paid in accordance with Recommended Order 2 and Recommended Order 3.
5. That the Respondent submit proof of payment to the Commission within 30 days of the date this Order becomes final.

OPINION

I. Continuing Violation - Motion to Dismiss on Grounds of Laches

The Respondent moved to dismiss this case on the grounds that the Complainant had failed to timely file her complaint. The motion was denied orally at a motion hearing before the Examiner on March 24, 1981. For purposes of the record, I will expand on my oral denial. I rely primarily on Jenkins v. Home Insurance, 24 EPD 31,405 (1980). Jenkins was decided in the Fourth Circuit Court of Appeals and holds that an equal pay violation (or, more specifically, discrimination on the basis of sex in regard to compensation) is a continuing violation. Jenkins distinguishes United Airlines v. Evans, 431 U.S. 553, 14 EPD 7577 (1977), a case which presented different factual circumstances. Most relevant, Jenkins held that the initial salary classification of an employee by an employer was not the pertinent act from which the time to file must be measured. Rather, Jenkins held that each bi-weekly paycheck for which sex was a factor in determining salary could be considered a separate violation of Title VII.

My holding is more extensive. I hold that every moment of accrued pay for which sex is a factor in determining salary can be considered a separate violation of the Madison Equal Opportunities Ordinance, Section 3.23, Madison General Ordinances. Further, I hold that said ordinance, like Title VII, was intended to remedy the present effects of past discrimination.[1] Accordingly, where an employee's initial salary classification has a present effect on the salary the employee is receiving, the employee can show present discrimination by proving that the initial salary classification was discriminatory on the basis of sex.[2]

And if, as I have ruled, the complaint is timely (i.e., the alleged sex discrimination has occurred within 300 days of the filing of the complaint), the argument and motion regarding laches must fail. The Respondent contends that there are three essential elements to a laches defense:

(1) Unreasonable delay in commencing the action;
(2) Knowledge of a course of events and acquiesence therein;
(3) Prejudice to the party asserting the defense.[3]

Without discussing the second reason, I state briefly that the Respondent has failed in showing the first and third reasons. If the complaint is timely, particularly where it must be made within 300 days of the alleged violation, it can hardly be said that a 300-day delay is unreasonable. Also, the Complainant's failure to assert her rights earlier than March 14, 1980 resulted in prejudice only to her and not to the Respondent. Even if the Complainant can show a continuous sex discrimination violation since 1974, her backpay remedy is limited to recovery no more than two (2) years prior to the filing of her complaint.[4] Consequently, the Complainant's potential backpay in this case is limited to go back no further than March 14, 1978. While backpay is not the only remedy that the Complainant may seek, clearly she is the party who has been prejudiced by the delay; arguably, the Respondent has benefitted by her delay. The motion to dismiss this case on the grounds of laches is hereby DENIED.

II. Merits of the Case

Briefly, my holding is that the Respondent discriminated against the Complainant on the basis of sex in regard to her initial salary classification, specifically her group classification, in 1974 and that said discrimination has been of a continuing nature and has affected the Complainant's salary throughout her employment and continues to affect her salary. My holding does not say that the Respondent has necessarily violated its collective bargaining agreement with Local 243. My holding does not say that it is necessarily a violation for the Respondent to consider factors outside the explicit language of the collective bargaining agreement in determining teacher salary classifications. However, my holding does say that the Complainant presented adequate evidence to carry her burden of proof that sex was a factor in her initial salary classification, whatever the criteria applied, and continues to be a factor in the amount of salary she receives. While it is not impermissible for the Respondent to pay a male more than a female (or vice versa) where the salary is based on non-discriminatory factors (in fact, I have found it was not unreasonable for the Respondent to pay Johnson more than the Complainant), the Complainant has shown that steps alone and not group should have distinguished her salary from Johnson's. Although other acts by the Respondent are probative of discrimination in this matter (particularly the underclassification of Borders in the same year, and, to a lesser extent, the classification of Rich in the following year) the Complainant could have proved her case of disparate treatment on the basis of sex by comparing her classification to that of Johnson's (one month apart in the same year) alone; i.e., the evidence regarding Johnson's classification was most persuasive in substantiating the Complainant's sex discrimination claim.

The relevant portion of Section 3.23, Madison General Ordinances applicable to this case is as follows:

> (7) Employment Practices. It shall be an unfair discrimination practice and unlawful and hereby prohibited:
>
> > (a) For any person or employer individually or in concert with others to . . . otherwise discriminate against any individual with respect to . . . compensation . . . because of such individual's sex . . .

It is immaterial to this case whether or not the precedents of the Equal Pay Act or of Title VII are construed to apply here, as I believe the Complainant has carried her burden of proof in any event.[5] However, as a matter of ordinance construction, I hold that it was not intended that a Complainant be limited to the strictures of the Equal Pay Act in establishing a violation of sex discrimination in regard to compensation under Section 3.23(7)(a), Madison General Ordinances. The language of the ordinance conforms more closely to Title VII than to the Equal Pay Act, and the Complainant's burden is to show by a preponderance of the evidence that sex was a factor (not necessarily the factor) in her compensation during the relevant time period (within 300 days of filing). The two-year pre-filing backpay recovery is a remedy issue contingent on proof that a violation occurred during the relevant time period.

A. The Group and the Step: The Components of the Salary Classification

An employee's salary classification essentially consists of two components:

(1) the Group (horizontal placement)
(2) the Step (vertical placement)

Pursuant to the terms of the collective bargaining agreement[6], the group placement and the step placement are not clearly delineated. However, the collective bargaining agreement does state that education and practical work experience are the bases for salary schedule placement.[7] Notwithstanding the collective bargaining agreement, the Respondent has customarily considered seven factors in determining a teacher's initial salary classification (see Finding of Fact 12). It is the Respondent's contention that it considers all of these factors in totality at the time of a new teaching employee's hire to arrive at a salary that is negotiable. While this may be true, the comparison that is most revealing in this matter is that comparison between the Complainant and Donald Johnson, both of whom were hired as full-time commercial art teachers a month apart (July and August, respectively) in 1974 for the 1974-75 school year. Finding of Fact 7 gives a comparison of their respective qualifications at the time of hire.

1. Group Classification

A reading of Findings of Fact 14 through 16 indicates that the only differentiating factors between these two employees at the time of hire could have been educational background, teaching experience and work experience. It is also clear from Finding of Fact 30 that it is advantageous for an individual to be placed in a higher group as it leads to more rapid salary advancement.[8]

The comparison of the Complainant's and Johnson's qualifications indicate the following distinctions of their educational background:

(a) the Complainant has 7 less total credits than Johnson (237 to 244)
(b) the Complainant had a more advanced degree than Johnson, an M.F.A. which is the equivalent of a Ph.D.
(c) Johnson, though possessing two Bachelor's degrees (German and Art) had only 44 credits beyond his Masters (21 of them to obtain a teaching certification) compared to 77 credits beyond a Masters earned by the Complainant (including 60 to attain her M.F.A.)

Both individuals, by the terms of the applicable collective bargaining agreement, should have been classified in Group 4B (see Finding of Fact 18 and refer to Joint Exhibit 6, Article IX). However, the Respondent contends that the Complainant's 77 post-M.A. credits were not job-related (or at least not as job-related as Johnson's). The testimony of the Complainant and Wessels refutes this contention, however. It was shown that the credits were in fact job-related within the Respondent's criteria, and further that Wessels has virtually no expertise in the field of commercial art (his expertise is in other academic areas) yet made a recommendation for the Complainant's salary classification without the benefit of her academic transcripts to assist him in assessing the job-relatedness of her credits. (There is no dispute that Wessels recommendations of the Complainant's and Johnson's salaries were approved by Mitby and adopted by the Board without modification).

Not only did the Respondent fail to adequately evaluate Meyer's educational background, but the Respondent also contends that Meyer's work experience was a factor in her lower salary classification. The Respondent would have one believe that because Meyer had less job related work experience than Johnson, such a fact would permit the Respondent to reduce Meyer's initial group placement by two horizontal units from the group placement that her educational background required by the terms of the collective bargaining agreement. I reject the argument as lacking in credibility. In the first place, education is the only factor affecting horizontal advancement after a teacher is hired (specifically, academic credits earned with the Respondent's approval). In the second place, if work experience were a factor, a teacher with Meyer's credentials would be required to earn 24 credits beyond her M.F.A. (equivalent to a Ph.D.) in order to obtain Group 4B classification. Such de-ranking of Meyer's group classification based on her relative work experience seems highly improbable if not incredible, particularly considering that Johnson's most advanced degree was a Masters.

The classifications of Borders and Rich are also probative that the Complainant was discriminated against in regard to her initial group salary classification. Borders, a female, was also hired in 1974 and was classified one level below (horizontally) what her education warranted by the terms of the collective bargaining agreement. Rich, a male hired in 1975, was classified in accordance with his education by the terms of the collective bargaining agreement (see Findings of Fact 18 and 21). While the Respondent argues that other factors were involved to justify these placements, the proximity in time of hire of the Complainant, Johnson, Borders and Rich effectively refutes Respondent's arguments that other differentiating factors existed.

2. The Step (Vertical Placement)

While the Complainant has established that she should have been initially classified as a G4B, she has not effectively shown that she should have been classified at a higher step than Step 5. There is no dispute that work experience and teaching experience were components of the step classification (although the Respondent would certainly argue that other criteria may also have been a factor). Assuming all other criteria were equal, however, it is clear that it was not unreasonable nor discriminatory of the Respondent to have classified Johnson at a higher step than Meyer; i.e., it was not discriminatory per se to give Johnson more credit for his teaching and work experience than Meyer. While Meyer had more cumulative combined experience (12 years to Johnson's 9-1/2 years), Johnson had more work experience (4 years to 2-1/2 years for Meyer) and more relevant teaching experience (5-1/2 years of college to Meyer's 9-1/2 years of secondary and elementary). While the Complainant argues that she was not given adequate credit for her teaching experience, I do not find any inherent discrimination in the Respondent's valuation of college teaching experience more highly than secondary or elementary teaching experience where the job in question was teaching at a two-year college. While the Respondent had neither a written policy nor an objective conversion formula for its valuation, the burden is on the Complainant to show Respondent's discriminatory motive.

The Complainant attempts to show discriminatory motive by illustrating that women received less credit in general than men for combined teaching and work experience. However, as I have indicated above, it was not unreasonable per se to classify Johnson at a higher step. Also, Rich, who was a male and hired a year after Complainant, was classified at Step 5. Rich, like Complainant, had 12 years of cumulative combined work and teaching experience including 7 years of work experience (even more than Johnson) and 5 years of high school and college teaching experience. Further, Borders, a female, had 13 years of cumulative combined work and teaching experience. The Complainant argues that Borders' placement at Step 3 is probative of discriminatory motive. I find, however, that it was not unreasonable for the Respondent to reject Borders' 10 years of design and selling in floral shops as largely irrelevant in determining her step placement. It is the hiring of Rich, Borders, and Johnson to which a comparison of Complainant's hiring is most relevant because of time proximity, and the Complainant has offered no further persuasive evidence that sex was a factor in her step classification.

III. Conclusion

The Complainant has proven discrimination on the basis of sex in regard to her group classification. Respondent's own testimony is that initial salary classifications are never altered (except for annual adjustments for academic credits and teaching experience earned after hire). Accordingly, sex has been a factor in Complainant's compensation throughout her employment with the Respondent. A continuing violation exists, and an appropriate remedial order has been entered.

Signed and dated this 16th day of June, 1981.

Allen T . Lawent
EOC Hearing Examiner

FOOTNOTES

[1]This concept was originally applied in a Title VII disparate impact case and has equal applicability in a case of disparate treatment under the Madison ordinance where a continuing violation has been alleged. That the ordinance was intended to remedy continuing violations is evidenced by the provisions in Section 3.23(9)(c), Madison General Ordinances. Section 3.23(9)(c)1 prescribes a 300-day filing limit. Yet, Section 3.23(9)(c)2.b permits backpay to accrue up to two years prior to the filing of the complaint. In order for both sections to have meaning, I conclude that the concept of a continuing violation was intended or at least is not inconsistent with the intent of the two subsections.

[2]The key is that some violation has occurred within 300 days of the filing of the complaint. Hypothetically, the Complainant in this case may recover backpay up to March 14, 1978 if she can prove that discrimination occurred within 300 days of March 14, 1980 (the date her complaint was filed). However, had the Respondent revamped its salary classification scheme in 1979 to eliminate any discrimination against the Complainant, her complaint would not have been timely and no recovery would be available (assuming the revamping took place prior to May, 1979).

[3]The Respondent cites Korleski v. Korleski's Estate, 126 N.W. 2d 492, 22 Wis. 2d 617.

[4]Section 3.23(9)(c)2.b., Madison General Ordinances states in part: "Back pay liability shall not accrue from a date more than two (2) years prior to the filing of a complaint with the Commission."

[5]The "Equal Pay Act" is found in 29 U.S.C. and states in relevant part: 29 U.S.C., Sec. 206 (d) (1) No employer having employees subject to any provisions of this section shall discriminate within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where . . . (four exceptions listed)

Title VII of the Civil Rights Act of 1964, as amended, is found at Sec. 2000e-2, 42 U.S.C. and states in relevant part:

It shall be an unlawful employment practice for an employer--to discriminate against any individual with respect to his ***compensation*** because of such individual's ***sex***.

[6]See Joint Exhibits 2 through 9 which are copies of the collective bargaining agreements since 1970 in effect between the Respondent and the Madison Area Technical College Teacher's Union Local 243.

[7]See Article IX of any of the agreements cited in Footnote 6 (particularly Joint Exhibit 6 which was in effect at the time of the Complainant's hire).

[8]Assuming only vertical advancement, an individual hired at Group 4, Step 5 (as the Complainant was) and receiving $12,202 in 1974 would have received $18,341 in the 1978-79 school year as a G4-9 (see Joint Exhibit 8). An individual hired at Group 4B, Step 3 (a higher group and lower step with a lower starting salary than the Complainant received) would have received $11,879 for the 1974-75 school year. By the 1978-79 school year, said individual would have been classified as G4B-7 and would have received $18,372 (more than the Complainant). Subsequently, said individual would continue to earn more than the individual classified initially at G4-5, and the earnings gap would continue to increase in amount.

This example is presented solely to illustrate the salary advantage of being placed in a higher group (and also to show that higher group placement is more advantageous than higher step placement).