Woman C.P.A.

Volume 48 | Issue 3 Article 2

7-1986

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The Hopkins v. Price Waterhouse Case

By Clifford E. Hutton, Michael J. Tucker, and Sheila M. Bradley

In *Hopkins v. Price Waterhouse*[1] the United States District Court for the District of Columbia recently found a major public accounting firm guilty of sex discrimination when it refused to promote a woman manager to partner. Only fifteen months earlier, the Supreme Court of the United States in *Hishon v. King & Spalding*[2] held that promotion to partnership in a law firm was subject to Title VII of the Civil Rights Act of 1964—the first application of Title VII to a professional partnership.[3] The *Hishon* and *Hopkins* decisions place the whole selection process for admission into an accounting firm partnership as it relates to the admission of minority candidates under intense judicial scrutiny.

Hopkins v. Price Waterhouse

In 1982, Ann Hopkins, the plaintiff, a female accountant and senior manager, was proposed for partnership in Price Waterhouse by her office, the Office of Government Services (OGS), a division of Price Waterhouse. Of the 88 candidates for partnership that year, plaintiff was the only woman. At that time all of the OGS partners were men, and by July 1984 there were only seven women among the 662 partners at Price Waterhouse.

The Court noted plaintiff's successful career as a senior manager and her significant role in developing business for the firm. None of the other partnership candidates competing that year had a comparable record in terms of successfully securing major contracts for the partnership. The record indicated that clients were very pleased with the plaintiff's work and that she had no difficulty dealing with them. Her proposal for partnership was fully endorsed by the partners in the OGS office. Price Waterhouse admitted that based upon technical qualifications the plaintiff's fitness to become a partner was never in doubt.

In its partnership selection process, Price Waterhouse asks all the partners to not only rank candidates on an exhaustive list of relevant, neutral criteria, but to make one of three recommendations: (1) for admission, (2) deny admission, or (3) hold for further consideration, and to comment on their appraisal. Of the 32 partners who submitted evaluations concerning the plaintiff, 13 recommended admission, 8 denial, 3 hold, and 8 had insufficient basis for opinion. Many commentators felt that Ms. Hopkins had problems dealing with fellow employees. These comments indicated the plaintiff had particular difficulty dealing with lower ranking staff members of the firm. Both supporters and opponents indicated the plaintiff "was sometimes overly aggressive, unduly harsh, difficult to work with and impatient with the staff."[4] Because of the number of negative comments by both supporters and opponents, along with the significant number of no votes, most by partners who had had limited contact with the candidate, the Admission Committee decided to recommend that the plaintiff's admission to the partnership should be held at least a year in order to afford her time to demonstrate the personal and leadership qualities required of a partner.

To improve her chances of making partner next year, and at the urging of her senior partner, the plaintiff underwent a Quality Control Review with favorable results. This was a process by which the plaintiff was given pointers to help repair any deficiencies prior to the time she was reviewed for partner again. Several partners also stated that they planned to give her opportunities to demonstrate her abilities, but apparently never followed through. Just four months after the Policy Board's recommendation that she should be held for a year, the partners in OGS decided not to repropose the plaintiff for partnership because two partners in the OGS office now strongly opposed her candidacy.

When Price Waterhouse advised the plaintiff of this decision, and of the unlikelihood of admission to partnership, she chose to resign in January, 1984, rather than try again for admission into the partnership or remain as a senior manager as proposed by the defendant. The plaintiff filed suit alleging sex discrimination in violation of Title VII, and asked the Court to order that she be made partner and to

Firms may not inject stereotyped assumptions about women into the selection process for partnership.

award back pay and other monetary relief.

Plaintiff's Argument

The plaintiff argued that the decision was discriminatory because (1) the criticisms of plaintiff's interpersonal skills were inaccurate and untrue; (2) even if Price Waterhouse believed her personal skills were deficient, the partnership routinely admitted male candidates having problems with interpersonal skills if they had strong qualifications in other areas; (3) Price Waterhouse's critique of the plaintiff's interpersonal skills was a result of sexual stereotyping by male partners. The firm's partnership selection process improperly gave full weight to these discriminatory evaluations. Price Waterhouse denied each of the allegations and claimed that the plaintiff was properly denied partnership because the firm, for legitimate business reasons, avoids admitting abrasive partners who might jeopardize morale and who were incapable of effectively supervising staff members.

The Court noted that Ms. Hopkins' inability to get along with staff members or peers is a legitimate, nondiscriminatory reason for refusing to admit her to the partnership. The Court accepted as accurate that the complaints about the plaintiff's interpersonal skills were not fabricated or a pretext for discrimination. The Court acknowledged the plaintiff was a hard-driving manager who pushed her staff and occasionally used profanity, but was not persuaded that such conduct was relevant to this inquiry.

In considering the plaintiff's allegations, the Court examined the records generated by the partnership selection at Price Waterhouse for 1982, 1983, and 1984. The Court found that Price Waterhouse had legitimate, non-discriminatory reasons for distinguishing between the plaintiff and the male partners with whom she was competing, and that the firm's emphasis on negative comments, did not, by itself, result in any discriminatory treatment. The practice of giving great weight to "no" votes was applied in the same way to male and female candidates. Statistics submitted by the plaintiff showing the small number of women partners at Price Waterhouse and the lower selection rate of women for partnership were found to be inconclusive because of insufficient data or lack of statistical significance.

The plaintiff claimed she was a victim of sexual stereotyping.

Major Focus on Sexual Stereotyping

The major focus of this case was the plaintiff's third argument: that she was a victim of sexual stereotyping, and that discriminatory evaluations were improperly used by defendant in the partnership selection process. The plaintiff claimed that she was not evaluated as a manager, but as a "woman manager," because those who evaluated her used sexual stereotypes that prompt men to regard assertive behavior in women as being more offensive and intolerable than comparable behavior in men.

Some of the comments noted included: "she may have overcompensated for being a woman," suggesting she "take a course at a charm school," came across as "macho," focusing on her profanity "because it's a lady using foul language." Her strongest supporter, the head partner at OGS, was responsible for telling her what problems she needed to overcome with her candidacy, and he advised her to "walk more femininely, talk more femininely, dress more femininely, wear makeup, have her hair styled, and wear jewelry."[5]

The Court analyzed the comments made about other women candidates for admission to the Price Waterhouse partnership and found these comments supported the inference that the partnership evaluation process used by Price Waterhouse was affected by sexual stereotyping. The Court felt that Price Waterhouse did nothing to discourage sexually biased evaluations. The Court used as an example of this negligence the comments of a partner who repeatedly said he could never consider a woman seriously for partner and did not think a woman was capable of being a senior manager. Apparently the court felt that Price Waterhouse never acted to discourage such comments, and that this recommendation was given equal consideration with other partner's comments.

The Court took note of the testimony of plaintiff's expert witness on stereotyping, and held that stereotyping played an undefined role in blocking plaintiff's admission to the partnership in this instance. The evidence indicated that the partner's stereotyping behavior though not conscious was nonetheless efficacious in blocking the plaintiff's admission to partnership. Prior case law required proof of discriminatory motive or purpose to establish a claim of disparate treatment based on subjective evaluations.[6] Under these prior holdings Price Waterhouse could not be found guilty of discrimination since any sexual bias in its promotions process was unconscious. The District Court held however that the use of a system that gave weight to such biased criticism was a conscious act of the partnership as a whole. Furthermore, they indicated that Price Waterhouse should have been aware that women might well be victims of discriminatory stereotypes when being evaluated by male partners. The firm made no effort to investigate or address this issue. A general policy statement of equal employment opportunities for all minorities issued by Price Waterhouse in 1983 was not considered a significant attempt since it did not address the special concerns of discrimination against women in an overwhelmingly male partnership.

The Court's Findings

The Court found that although firms are free to use subjective evaluations as criteria in selecting employees for partners, they are not free to inject stereotyped assumptions about women into the selection process. The firm's failure to take the steps necessary to alert partners to the possibility that their judgments may be biased, to discourage stereotyping, and to investigate and discard, where appropriate, comments that suggest a promotion and evaluation policy constitutes a violation of Title VII. The Court noted the presence of three factors which working in combination produced the Title VII violation: 1) comments influenced by sex stereotypes were made by partners, 2) Price Waterhouse's evaluation process gave substantial weight to such comments, 3) Price Waterhouse failed to address the conspicuous problem of stereotyping in its partnership evaluations. While these three factors might have been mitigatory in denying plaintiff admission to the partnership when taken separately, when acting in concert, they produced Ms. Hopkins' rejection as a partner. The Court found the Policy Board's decision not to admit the plaintiff to partnership was tainted by discriminatory evaluations that were the direct result of its failure to address the evident problem of sexual stereotyping in partners' evaluations.

Acknowledging the plaintiff might still not have been elected to partnership without the stereotyped evaluations, the Court stated that once discrimination has been proved, the burden of proof is on the employer to prove that the decision would have been the same, and that Price Waterhouse did not present that proof. Therefore the defendant was found guilty of sex discrimination.

Because the plaintiff had voluntarily resigned, and was unable to prove constructive discharge, the Court denied her request for an order that she be made a partner. Because the parties agreed privately to defer consideration of backpay until after the issue of liability was resolved without the knowledge or consent of the Court, the Court found that it could not consider that issue, and awarded only attorney fees to the plaintiff.

Conclusion

Title VII requires affirmative action to root out discriminatory promotion standards, not just neutrality or a lack of discrimination. The Court's focus on Price Waterhouse's selection process in *Hopkins* showed that the choice of neutral criteria in the evaluation process is not sufficient, the criteria must be *used* neutrally. In repeatedly citing the defendant for failure to recognize and act upon obvious bias, the Court demonstrated that a company has a positive responsibility to prevent such bias in its employment practices. The Court did not find a general statement of a policy of equal opportunity at all adequate, but indicated a need for a policy that addressed the specific concerns of women.

It is apparent the Courts are seeking, and will be satisfied with no less than a comprehensive program to ensure that minorities are treated equally in the entire employment process. This will require more than reacting to evidence of bias, and the education of personnel to the existence of stereotyping and its consequences. Companies will need to assess whether in their training practices, selection of assignments, etc., minorities are not penalized by outmoded perceptions. An often unconsciously held notion about women is that pregnancy means resignation or that women will leave after a few years of marriage. Several surveys have shown, however, that women change jobs for the same reasons as men—professional, work-related considerations.[7]

"Client resistance" to women is another widespread perception with which the Courts may have little patience, and may find that the company has a duty to provide their women employees with at least equal exposure to clients, and even with educational programs structured to make up for a lack of such experience.

Public accounting firms may need to look to the experience of firms like Merck which "has a program that identified 10 percent of its women and 10 percent of minorities as 'most promising.' The company prepares a written agenda of what it will take for them to move up to the next level. Progress upward may mean changing jobs or switching functions, so Merck circulates their credentials throughout the company. 'We have a timetable and we track these women carefully,'...Since 1979 almost 40 percent of the net growth in Merck's managerial staff has been women."[8]

Support and encouragement by management is crucial in retaining talented employees of both sexes.

Firms may use subjective evaluations as criteria in selecting employees for partners.

Perceived prejudice of any accounting firm against women may encourage women to look elsewhere for opportunities to use their talents. All the traditionally male dominated professions are having to adapt, often reluctantly, to the growing presence of women.

These issues have implications for minorities other than women, who might argue that neutral standards may be misued by white males who unconsciously rely upon stereotypes when making promotion decisions. There is no doubt that neutrality in applying promotion standards will be essential in avoiding costly lawsuits and the loss of valued professionals. Ω

NOTES

[1] Civil Action No. 84-3040, filed September 20, 1985.

[2] 104 S. Ct. 2228 (1984).

[3] The relevant portion of Title VII states that:
a. It shall be unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge an individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

[4] No. 1 supra., page 5.

[5] No. 1 supra., pages 15-16.

[6] *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 335 n. 15 (1977).

[7] No. 8 supra., p. 31 and Melanie Walkup and Debra Fenzau, "Women CPA's: Why Do They Leave Public Accounting," *The Woman CPA*, October, 1980, page 4.

[8] Susan Fraker, "Why Women Aren't Getting To The Top," *Fortune*, April 16, 1984, p. 45.

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