State of Wisconsin

Labor and Industry Review Commission

Derrick McCann Complainant **Midwest Family Broadcasting Group** Respondent ERD Case No. CR202100879	**Public Accommodation Decision**[1] **Dated and Mailed:** November 11, 2021 mccande_rsd.doc:164

The decision of the administrative law judge is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/
Michael H. Gillick, Chairperson

/s/
Georgia E. Maxwell, Commissioner

/s/
Marilyn Townsend, Commissioner

[1] **Appeal Rights**: See the pink enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website, http://lirc.wisconsin.gov.

Procedural Posture

On April 26, 2021, the complainant filed a complaint with the Equal Rights Division (hereinafter "Division") of the Department of Workforce Development in which he alleged that the respondent discriminated against him based upon his race and sex, in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter "WPAAL"). On April 30, 2021, an equal rights officer from the Division issued a preliminary determination dismissing the complaint for failure to state a claim under the WPAAL. The complainant filed a timely appeal and the matter was assigned to an administrative law judge. On May 24, 2021, the administrative law judge issued a decision affirming the dismissal of the complaint. The complainant has filed a timely petition for commission review of that decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the information that was before the administrative law judge. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own.

Memorandum Opinion

The complainant's complaint is somewhat difficult to decipher, but it appears that he is alleging that the respondent, a radio station, denied him access to radio play by refusing to play one of his songs on the air.

Wisconsin Stat. § 106.52(3)(a)1. provides that that no person may:

> Deny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry.

The statute further provides, at Wis. Stat. § 106.52(3)(a)2., that no person may:

> Give preferential treatment to some classes of persons in providing services or facilities in any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry.

The definition of a "public place of accommodation or amusement" in the statute is as follows:

> "Public place of accommodation or amusement" shall be interpreted broadly to include, but not be limited to, places of business or recreation; lodging establishments; restaurants; taverns; barber or cosmetologist; aesthetician, electrologist or manicuring establishments; nursing homes; clinics; hospitals; cemeteries; and any place where

> accommodations, amusement, goods or services are available either free or for a consideration. . .”

Wis. Stat. § 106.52(1)(e)1.

The administrative law judge found that the respondent’s business, a radio station, was not a place of public accommodation or amusement, within the meaning of the statute. The commission agrees.

In order to be a place of public accommodation covered by the statute, the business in question must be comparable to or consistent with those enumerated in the statute. *Hatheway, et al v. Gannett Satellite Information Network, et al.*, 157 Wis. 2d 395, 459 N.W.2d 873 (Ct. App. 1990)(finding that the classified advertising section of a newspaper was not covered by the statute). A business is not covered by the statute if it is “entirely different in character” from the places of accommodation or amusement specifically named in the law. *Jones v. Broadway Roller Rink Company*, 136 Wis. 595 (1908)(finding that a roller skating rink was a public place of accommodation or amusement). The accommodations listed in the statute are generally offered by businesses that are classified as service industry businesses. *Young v. Trimble,* ERD Case No. 9253479 (LIRC July 11, 1994)(finding that a business that leased real property to entrepreneurs for the establishment of their own places of business was not covered by the statute). Further, the statute relates to “places,” or physical locations where goods and services are provided. *Neldaughter v. Dickeyville Athletic Club*, ERD Case No. 8900539 (LIRC July 31, 1991)(finding that membership on a softball team was not covered by the statute).

In *Neldaughter*, the commission stated:

> . . . apart from the matter of “place,” the right to be on a softball team is dissimilar from the other things mentioned in the statute because it relates to something which is in the normal course not offered to members of the public at large subject only to ability to pay, but is rather offered with great selectivity.

In the instant case, a radio station is not a “place,” nor is it similar to or consistent with the types of businesses enumerated in the statute. The right to have a song played on the radio is not a service that is offered to the public at large based upon ability to pay, but, like membership on the softball team in *Neldaughter*, is something offered with great selectivity. The commission agrees with the administrative law judge that the complainant’s allegation that he was denied an opportunity to have his song played on the respondent’s radio station does not set forth a claim that is covered by the WPAAL. The dismissal of the complaint is, therefore, affirmed.