

State of Wisconsin



Labor and Industry Review Commission

Shon S. Lewis
Complainant

Wauwatosa Public Library
Respondent

ERD Case No. CR202102257

Public Accommodation Decision¹

Dated and Mailed:

October 31, 2022

lewissh_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

This case is before the commission to consider the complainant's allegation that the respondent discriminated against her based upon her race and creed, in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter "WPAAL.") An administrative law judge for the Equal Rights Division of the Department of Workforce Development issued a decision dismissing the complaint for failure to state a claim under the WPAAL. 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 respondent, a public library, is a "public place of accommodation or amusement," within the meaning of § 106.52(1)(e)1. of the WPAAL. However, the commission agrees with the administrative law judge that the complainant's allegation that the respondent refused to include her book in its collection for discriminatory reasons is not covered by the statute.

The WPAAL prohibits the respondent from refusing the complainant entrance into or use of the library, or from denying her the full and equal enjoyment of the library's services based upon her protected status. It also prohibits the respondent from providing library patrons who are not in the protected class with preferential treatment with respect to their access to library services or facilities. *See*, Wis. Stat. § 106.52(3)(a)1. and 2. Here, the complainant does not contend that she was denied the right to visit the library, check out library materials, or avail herself of other services generally provided by a library, such as the use of a computer or the ability to reserve a public meeting space, nor does she contend that other library patrons were provided preferential treatment in their access to such library services or facilities. Rather, the complainant's contention is that the respondent declined to include a book authored by the complainant in its collection because of bias against her related to her race and creed.

The commission has considered and rejected similar types of allegations in previous cases. For example, in *Neldaughter v. Dickeyville Athletic Club*, ERD Case No. 8900539 (LIRC July 31, 1991), the commission found that membership on a softball team was not covered by the statute, stating in relevant part:

“. . . 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.”

Similarly, and more on point, in *McCann v. Midwest Family Broadcasting Group*, ERD Case No. CR2012100879 (LIRC Nov. 11, 2021), the commission rejected the complainant's claim that he was discriminated against by the respondent when it declined to play a song he had recorded on its radio station. The commission noted that having 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.

Here, the complainant's request to have a book she authored included in the respondent's collection is akin to the situation referenced in *McCann*: inclusion of a book in the library's collection is not a service normally offered to members of the public who visit the library but is instead a discretionary opportunity made available to authors on a selective basis. Because the commission agrees with the administrative law judge that the complainant's allegations do not state a claim under the WPAAL, the dismissal of her complaint is affirmed.

cc: Attorney Hanna Kolberg
Attorney Paul Schinner