Beyond the Advancement Decision Itself: When Lack of Opportunities and Resources May Constitute Sex Discrimination

BY LYNETTE PACZKOWSKI • OCTOBER 26, 2018

Altha Cravey, a female geography professor, is suing the University of North Carolina and three administrators for gender discrimination and retaliation (for raising concerns of sex and racial discrimination). In part, her lawsuit alleges that she has been denied promotion to full professor, while male professors with similar or lesser credentials and experience have been promoted; that she was assigned less Teaching Assistant ("TA") support than male faculty members with similar seniority, teaching loads, course sizes and course laboratory requirements; and that she was not assigned to teach any graduate courses or seminars, thus reducing her opportunities for career growth and advancement.

The Defendants moved for dismissal of, among other things, any claim based upon course or TA assignments. At the Motion to Dismiss stage, the Court must take all of a plaintiff's allegations as true. Thus, the inquiry for the Court was whether, if proven, Cravey's allegations give rise to a claim. The Court found that they do.

As to Cravey's discrimination claims, the Defendants first argued that course and TA assignments are not adverse employment actions. The Court disagreed, finding it plausible that TA and graduate course assignments could constitute adverse employment actions, as they could result in reduced opportunities for career advancement and promotion. Cravey argued that having less TA support means women have less time than men to devote to the research and publication necessary for professional advancement, including promotion, and that fewer opportunities to teach graduate courses and seminars means less interaction with graduate students and fewer opportunities for professional development than male colleagues.

The Court also disagreed with the Defendants' contention that Cravey had failed to plausibly allege that she received less favorable TA and graduate course assignments than similarly situated males. Cravey alleged, among other things, that in the 3 years prior to filing suit, she had been assigned TAs only two times, while allegedly comparable male professors were provided with, respectively, seven, three, and five TAs during the same period; that she had been told upon her hiring in 1994 that she would have the opportunity to teach at least one graduate seminar per year; that in the 3 years prior to filing suit, she was not assigned to teach any graduate courses or seminars; and that each of four allegedly comparable male professors taught at least two graduate courses over that same period.

For purposes of Cravey's retaliation claims, she must also show that a reasonable employee would have found the allegedly adverse employment action(s) materially adverse. The Court found that reduced opportunities for promotion and professional development caused by an alleged lack of assignments is a "tangible employment consequence;" such a consequence could dissuade a reasonable employee from making or supporting a charge of discrimination in the workplace.

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The Court also disagreed with the Defendants' argument that Cravey had not alleged sufficient facts to show that protected First Amendment conduct was a substantial factor motivating the decision to assign her fewer TAs and graduate courses. Cravey alleged that she met with UNC officials and raised issues of sexual discrimination; on several occasions she publicly criticized UNC decisions via op-ed articles, public rallies, and public protests; because she spoke out, Defendants denied her employment rights and protections including, but not limited to, the regular benefits and opportunities afforded to male professors (e.g., graduate course and seminar teaching assignments and the support of TAs); and such conduct was in response to, and in retaliation for, her exercise of her First Amendment rights and to discourage her and other employees from exercising their First Amendment rights.

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