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Anti-Bias Laws Don't Prohibit Job Promotion to a Girlfriend

12/19/86 WYLS
Supervisors who give promotions to persons to whom they are romantically attached do not violate federal laws barring sex discrimination, the U.S. Court of Appeals for the Second Circuit has ruled.

The Court's ruling, in *Decintio v. Westchester County Medical Center*, No. 86-7522, reversed a trial judge's award of \$63,000 in back pay and attorneys' fees to seven male respiratory therapists, who claimed they were bypassed for promotion when their supervisor appointed his woman friend to a position in a newly formed neonatal intensive-care unit.

Narrow Reading Required

In reversing the lower court, the Court of Appeals ruled that the conduct complained of could be actionable only if the ban on "sex" discrimination contained in Title VII of the Civil Rights Act were read in an "overbroad" and "wholly unwarranted" fashion to include "sexual liaisons" and "sexual attractions."

The seven male therapists had prevailed, after a two-day trial in June in U.S. District Court for the Southern District of New York, in establishing that their supervisor at the Westchester County Medical Center

had tailored job specifications for the new position in the neonatal unit so that only his woman friend would qualify.

The relevant facts, as found by the trial judge, Charles L. Brieant, and assumed to be true for purposes of the appeal by a panel of the Court of Appeals, were that the head of the Center's Respiratory Therapist Unit, James Ryan, had played a key role in defining the new position at the new unit. According to Judge Brieant's findings, Mr. Ryan had been "instrumental" in designating the new position as "Assistant Chief" and in setting registration with a national certifying body as a qualification for the position.

'Unfair,' But Not Illegal

None of the male therapists were at the time qualified by the National Board of Respiratory Therapists and Mr. Ryan's woman friend was. Previously, the one other "Assistant Chief" therapist and the head of the department had both been hired without having to demonstrate that they were board certified.

In an opinion for the Circuit Court,

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Discrimination Suit

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Judge Roger J. Miner concluded that Mr. Ryan's actions, "although unfair, simply did not violate Title VII." Judges James L. Oakes and J. Daniel Mahoney concurred.

The Court reasoned that the seven male therapists were not prejudiced in their status as males because Mr. Ryan extended preferential treatment to his friend, Jean Guagenti. Any female therapist would have been in the same position as the men, Judge Miner stated, because "no one but Guagenti could be considered for the appointment because of Guagenti's special relationship to Ryan."

Were the plaintiffs' position to be adopted, Judge Miner added, the courts would become involved "in the policing of intimate relationships," — a course which he said would be "both impracticable and unwarranted."

The therapists were represented by Anne Golden, of Silverman & Sapir. The Medical Center was represented by Assistant County Attorney Colleen Lundwall Kellman.