

UNIV
SHELF

BERKELEY, CA 94720
(415) 642-0323

UNIVERSITY OF CALIFORNIA, BERKELEY
CENTER FOR LABOR RESEARCH AND EDUCATION
INSTITUTE OF INDUSTRIAL RELATIONS



LABOR CENTER REPORTER

Number 217
July 1987

UNION MEMBER WINS CRUCIAL SUPREME COURT DECISION

by Mary King

In a ground-breaking decision this March, the U.S. Supreme Court upheld a woman road-worker's promotion that had been challenged by a male co-worker's "reverse discrimination" suit. In a 6-3 ruling, the Court held that the Santa Clara County Transportation Agency had appropriately considered affirmative action goals in promoting Diane Joyce rather than Paul Johnson to the job of Road Dispatcher. Joyce is a member of Service Employees International Union (SEIU) Local 715. Both Joyce and Johnson were ranked as well-qualified for the position.

According to *The New York Times*, people on both sides of the affirmative action debate "agreed that the Johnson ruling was the most significant affirmative action case to be decided by the Court thus far." This decision is important because it allows employers to implement voluntary affirmative action plans without admitting to discriminatory behavior in the past. Such an admission leaves employers wide open to lawsuits.

Both the facts of the case and the specific role of Local 715 illustrate some important lessons for unions dealing with affirmative action and job segregation by sex.

What was the Union's Role in this Case? -- When Agency Director James Graebner recommended that Joyce be promoted to the dispatcher position, Johnson filed an EEOC complaint and sued the County in Superior Court for sex discrimination. The union stayed out of the first round in Superior Court, when advised that Johnson could not win his case.

Shocked when Judge Ingraham found for Johnson, Local 715 urged the County to appeal and joined the suit as an Intervenor, becoming a co-defendant with the County. To become an Intervenor, the union demonstrated to the Court that the union had an interest in upholding the affirmative action plan, although Johnson had brought the suit only against the County. The Executive Secretary of Local 715, Kristy Sermersheim, says that the media ignored the union's role as a partner in the case in proceedings at the Appeals Court and the Supreme Court.

The County and union won at the Appeals level, and were taken on to the Supreme Court by Johnson, now aided by the conservative Mountain States Legal Foundation (according to Pat Fierro, Deputy County Executive in charge of Personnel). Joyce credits the union for aiding her Supreme Court victory in several ways. First, she says the union is responsible for her "lasting 15 years in the roads department." As a female pioneer in male territory, Joyce had been routinely harassed by her co-workers and supervisors. After being verbally abused, run down with a fork-lift, and written up for breaking rules which others break with impunity, Joyce says that she filed grievance after grievance, and "won and won and won."

Next, she cites the union with encouraging the County to appeal the decision of the Superior Court, when the resolve of the County was "a little shaky." And finally, due to her position as shop steward and sometime negotiator for the union, Joyce says she knew the rules and how to use the process.

When the case went to the Supreme Court, union attorney David Rosenfeld convinced the AFL-CIO to submit an amicus brief -- its first -- on behalf of affirmative action for women, according to Sermersheim.

What Were the Facts of the Case? -- In 1978, the Santa Clara County (California) Transit District Board of Supervisors adopted an Affirmative Action Plan for the County Transportation Agency to help the Agency attain "equitable representation of minorities,

6 31 1987

women and handicapped persons." The Plan authorized people doing the hiring for jobs in which minorities, women and the handicapped are under-represented to consider affirmative goals.

The County found women to be drastically under-represented in five of seven of the Agency's job categories. Although women accounted for 36% of the local labor pool, they held only 7% of Official and Administrator positions; just 10% of Technician posts, 9% of Professional jobs, 22% of Service and Maintenance positions, and none of the Skilled Craft Worker jobs.

When the Skilled Craft Worker position of Radio Dispatcher opened in late 1979, 12 people including Joyce and Johnson applied for the job. After written and oral exams, Johnson and Joyce ranked among the top seven candidates, any of whom the County was allowed to choose, according to terms of the union contract. Johnson tied for second place; Joyce ranked fourth.

After a second interview was scheduled, Joyce alerted the County Affirmative Action Office to the upcoming decision. She feared that she would not be impartially judged, due to her previous experiences with two of the three interviewers. One of them was Joyce's first supervisor in road maintenance, who refused to issue her coveralls while outfitting the rest of the crew (all men). Only after Joyce ruined four pairs of pants and filed a grievance did this supervisor give Joyce protective clothing.

The second member of the interview panel had purposely scheduled Joyce's interview at a time when he knew that she would be attending a disaster preparedness class. He had described her elsewhere as a "rebel-rousing, skirt-wearing person." According to Joyce, this epithet was sanitized in the testimony, "person" standing in for the term "shit disturber" which he'd actually used. In Joyce's opinion, this man was as irritated by her union activism as by her gender.

What Can Unions Learn from this Case? -- Sermersheim says that it is crucial for unions to be represented on any committees or task forces that employers set up to act on affirmative action. That way the union can participate in constructing a plan and monitoring the program. Sermersheim emphasized that union policies, such as seniority rules, which are often thought to be detrimental to the progress of minorities and women, have actually benefited women and minorities in the Transportation Agency.

Joyce agrees, saying that in Santa Clara County there is support for affirmative action in upper echelons, where an unusual proportion of women hold office and top appointments, but little support in the lower echelons. Seniority provisions ensure that women with seniority are considered for promotion despite their invisibility to the "old-boy network" doing the hiring.

The Transportation Agency's affirmative action plan is referred to in SEIU's contract. Joyce thinks that the union joined the case more readily than it might have if it weren't committed to the plan in the contract. According to Sermersheim, there was some argument inside the union when affirmative action was incorporated into the contract, but there was no quibbling from members about supporting the case, despite the expense involved.

Joyce recommends that both the union and the County do more to encourage the recruitment of women into traditionally male jobs, such as establishing more training programs. Joyce also sees a need for unions to re-examine the way different job qualifications are weighed in hiring. For instance, valuing time in jobs which men are more likely to have held than women with equal or greater seniority will work against the promotion of well-qualified women.

What also emerges from Joyce's case is the critical need for unions and employers to do more to stop the sexist harassment on the job faced by women in non-traditional occupations. Only energetic use of the grievance process and tremendous determination has kept Joyce in the road department. After 15 years, she still combats hostility from co-workers every day.

Finally, unions need to push for comparable worth pay, or pay equity as it's sometimes called. Joyce says that she became a road worker and dispatcher "for the money," and would go straight back to bookkeeping if bookkeepers weren't paid so poorly.

Meanwhile, she says, "For a woman, it's either organize or go for a man's job."

-- Mary King