

RESOLUTION IN SUPPORT OF OMAHA LIBRARY WORKERS

WHEREAS a class of about 100 library employees of the City of Omaha (over 75% of whom are female) ~~who were~~ <sup>were</sup> disadvantaged by a reclassification scheme implemented by the City of Omaha six years ago, ~~and~~

WHEREAS in July 1990 the Omaha City Council implemented a change in the wage structure of its management, professional and technical employees by dividing them into four groups, each of which received varying raises for the first year of the new contract. All the library employees --regardless of prior classification, were placed in the group receiving the lowest wage increases. That group contained 87 of the 103 women represented by the union, the Civilian Management Professional Technical Employees Council (CMPTEC), and

WHEREAS the other three groups all received higher wage increases. Those groups contained 171 of the 250 men in CMPTEC. There were no women in the group which received the highest <sup>raise</sup> raise. Plaintiffs' statistical analysis of this selection concluded that there was less than a 1 in a 1,000 chance that the impact on women in the groupings would occur by chance alone, and

WHEREAS this group sued the City for sex discrimination in January of this year and lost on claims of disparate treatment (intentional discrimination) and disparate impact, ~~and~~

THEREFORE BE IT RESOLVED that the American Library Association write an amicus curiae brief in support of the appeal to the 8th Circuit Court.

Moved by Diedre Conkling  
Seconded by

*Diedre Conkling*  
home: dconkling@qnet.net.org  
home: Hotel Westworth

*Diana G. Lechri*  
home: dg.lechri@cte.edu  
local: hotel beverly

Councilor Bernard Margolis spoke against the motion because he said he felt the section of the Operating Agreement on "unity" was in conflict with other parts of the agreement. He said he did not wish to reaffirm the Operating Agreement as it existed, but rather, he suggested that the principles in the Agreement be revisited.

After a lengthy discussion on the motion, Council

*VOTED*, To defeat CD#50, Resolution on the Reaffirmation of the ALA Operating Agreement.

*RESOLUTION ON NETDAY 96, CD#51, Exhibit 58.* Councilors Judy Arteaga and Donna Gilliland moved that the American Library Association encourage all librarians and library advocates, and in particular school library media specialists and children's services librarians, to participate in and support the national NetDay 96 effort and to share their knowledge, skills and leadership expertise with others in this endeavor; and that ALA become an official partner in NetDay 96 and encourage chapters to support this effort; and that AASL, YALSA, ALSC, LITA and OITP develop, in consultation with the NetDay96 sponsors, a suggested outline of preliminary planning steps before wiring is installed in school buildings and distribute this outline to chapters.

Councilor Pamela Spencer proposed to amend the first resolved clause, third line by replacing the *and* with a comma after the words *media specialists* and adding the words *and youth's* after the word *children's*. Councilor Arteaga agreed to the amendment. By *CONSENT*, Council adopted CD#51, RESOLUTION OF NETDAY 96, as amended.

*RESOLUTION IN SUPPORT OF OMAHA LIBRARY WORKERS, CD#52, Exhibit 59.* Councilors Diedre Conkling and Debra Gilchrist moved that the American Library Association write an amicus curiae brief in support of the appeal of the libraries of the City of Omaha to the eighth Circuit Court of Appeals. By *CONSENT*, Council voted to refer CD#52 to the Executive Board for a determination of the manner in which ALA would become involved in the support of the Omaha Library Workers.

*ALA PUBLISHING COMMITTEE REPORT, CD#54, Exhibit 60.* Councilors Mary Jane Anderson and Patricia Hogan moved and Council

*VOTED*, That while in principle Council supports needed structural change, it expresses to ALA's President and Executive Board its deep concern with two issues: 1) The editorial independence of *American Libraries*, and 2) the need for respect for the authority and responsibility delegated by ALA Council to its Publishing Committee. Council urges that these issues be addressed expeditiously with a report back to Council as soon as possible.

Just prior to adjournment, Councilor Samuel Morrison, BARC chair, asked Council to join him in congratulating and thanking outgoing ALA Treasurer Ann K. Symons for her hard work during the past four years. Symons received a standing ovation.

*ADJOURNMENT.* The meeting was adjourned at the completion of the agenda.

*INFORMATION ITEMS.* The following items were distributed for information only: Division Annual Reports, CD#57-57.9, Exhibit 61: American Association of School Librarians (AASL), CD#57; Association of College and Research Libraries (ACRL), CD#57.1; Association for Library Collections and Technical Services (ALCTS), CD#57.2; Association for Library Service to Children (ALSC), CD#57.3; Association of Specialized and Cooperative Library Agencies (ASCLA), CD#57.4; Library Administration of Management Association (LAMA), CD#57.5; Library and Information Technology Association (LITA), CD#57.6; Public Library Association (PLA), CD#57.7; Reference and User Services Association (RUSA), CD#57.8; Young Adult Library Services Association (YALSA), CD#57.9; ALA Conference Program Procedures & Policy Review Committee, CD#58, Exhibit 62; Workforce Analysis, CD#44, Exhibit 63; Council and ALA Committees, CD#45, Exhibit 64; and Executive Board Norms, CD#30.2, Exhibit 65.

ALA RESOLUTION FORM

Please fill out this form as completely as possible and submit it with your resolution to the ALA Resolutions Committee for processing.

TITLE OF RESOLUTION: Resolution in support of Omaha library workers

BACKGROUND: (see attached letter which describes details of lawsuit)

ISSUE: sex discrimination against female library workers in Omaha

ACTION PROPOSED: Amicus curiae brief letter from ALA in support of female library workers

ALA UNITS AND/OR COMMITTEE CONSULTED (IF ANY): Feminist Task Force of Social Responsibilities Round Table

ENDORSEMENTS BY ALA UNITS AND/OR COMMITTEES (IF ANY): Feminist Task Force of SRRT

FISCAL IMPLICATIONS: cost of legal assistance in preparation and filing of amicus  
none curiae brief

DATE REFERRED TO COPEs (IF NECESSARY) \_\_\_\_\_

**POLICIES AND POSITIONS:**

1. If this resolution necessitates a change in existing policy, state the policy number and the change.

2. If this resolution establishes policy, state the policy.

3. If this resolution conflicts with existing policy, state provisions for resolving the conflict.

4. If this resolution proposes an ALA position statement, indicate the position's relationship to libraries and library service.

This resolution proposes <sup>direct</sup> action in accord with ALA policy 54.4 (Comparable Rewards), ~~and~~ 54.8 (The Library's Pay Plan), and 54.10 (Equal Opportunity and Salaries) which says that "ALA particularly supports the efforts of those library workers who have documented and are legally challenging the practice of discriminatory salaries and whose success will benefit all library workers throughout the nation"

INITIATING COMMITTEE OR UNIT: (IF ANY)

SRRT / Feminist Task Force

**VER/SECONDER INFORMATION:**

Mover's Name and Local Telephone Number: Diedre Conkling Hotel Wentworth

Secunder's Name and Local Telephone Number: Debra Gilchrist Hotel Beverly

BROOM, JOHNSON, AND CLARKSON

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ROBERT V. BROOM  
VARD F. JOHNSON  
MARY P. CLARKSON

RECEIVED

JUN 25 1996

*Kristi CARLSON  
HEADS THE INFO  
ON Beryl Davy*

*Legislative Committee  
Policy - Chair  
Pay Equity*

June 19, 1996

Linda Kimsey  
Chairman, Feminist Task Force  
Dawes Memorial Library  
Marietta College  
Marietta, Ohio 45750

Post-it* Fax Note	7871	Date	6/25/96	# of pages	4
To	KRISTIE CARLSON	From	LINDA KIMSEY		
Co./Dept.		Co.	MARIETTA COLLEGE		
Phone #		Phone #	(614) 376-4537		
Fax #	(312) 413-0424	Fax #	(614) 376-4843		

Dear Ms. Kimsey:

We are writing to you, hoping to reach the Feminist Task Force of the ALA Social Responsibilities Round Table because of its long-standing support of pay equity for women and plaintiffs' employment rights.

We represent a class of about 100 library employees of the City of Omaha (over 75% of whom are female) who were disadvantaged by a reclassification scheme implemented by the City of Omaha six years ago. Our clients sued the City for sex discrimination and their case was heard by a judge and jury in January of this year. There were claims of both disparate treatment (intentional discrimination) and disparate impact. They lost on both claims and have continued their fight by appealing to the Eighth Circuit Court of Appeals. The purpose of this letter is to seek your support of their cause via an amicus curiae brief. We'd like to outline the case and the main issues so that you can review the possibility of supporting our efforts before the Eighth Circuit.

We believe the district court made several errors which, if not challenged and overturned, create harmful precedents for similarly situated plaintiffs.

In July 1990 the Omaha City Council implemented a change in the wage structure of its management, professional and technical employees by dividing them into four groups, each of which received varying raises for the first year of the new contract. All the library employees--regardless of prior classifications, were placed in the group receiving the lowest wage increase.

*Cora Sullivan*

May 30, 1996

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That group contained 87 of the 103 women represented by the union, the Civilian Management Professional Technical Employees

Council (CMPTEC). The other three groups all received higher wage increases. Those groups contained 171 of the 250 men in CMPTEC. There were no women in the group which received the highest raise. Plaintiffs' statistical analysis of this selection concluded that there was less than a 1 in a 1,000 chance that the impact on women in the groupings would occur by chance alone.

The City defends the disparate wage increases by pointing to wage surveys that were done pursuant to Nebraska's public sector bargaining law. During the year prior to the July 1990 re-classification, the City and CMPTEC had been engaged in a dispute before the Commission of Industrial Relation (CIR). As part of that process surveys were done of employers in "comparable" cities (e.g., Akron, Tulsa, Lincoln) and of local employers (Douglas County, State of Nebraska, and University of Nebraska Medical Center). Using the results of these surveys, the City's Labor Relations Director made decisions about which employees were to be placed into each of the four new classifications. He testified that the employees in the groups receiving the lowest wage increases under the new classification system were employees found by the surveys to be paid the best, and vice versa.

Plaintiffs appeal several rulings by the District Court:

- 1) *Applicability of the Civil Rights Act of 1991 (CRA).*

The City's decision to increase wages was made before the CRA went into effect. Plaintiffs, however, continue to receive lower wages with every paycheck. The District Court relied on Landsgraf v. USI Film Products to hold that the CRA did not apply to any part of plaintiffs' claim. Plaintiffs contend that the CRA should apply to all payments made after November 21, 1991 (the effective date of the CRA), and, under Bazemore v. Friday,

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even to prior decisions of the City. Application of the CRA of 1991 would have made a difference in certain instructions to the jury and in the judge's view of the disparate impact case.

The District Court's refusal to apply the CRA is extremely cramped and should be reversed. The District Court failed to recognize that wage cases are prototypically continuing violations. Unless overturned, the District Court opinion will unduly limit the applicability of the CRA, and jeopardize the viability of all continuing violation claims.

2) *Business Justification Defense.*

The District Court agreed with plaintiffs that there is a prima facie case of disparate impact, but held that the City had established a business justification by showing that the new classifications resulted in "fair and equitable" wages. We believe this finding of business necessity is erroneous for several reasons.

First, the City never articulated "fairness" or "equity" as its business justification. Throughout the case, the City has said the classifications were necessary to reach a negotiated collective bargaining contract. The first time plaintiffs heard of the "fair and equitable" justification was when they read it in the District Court's opinion. The District Court erred by relying on a business justification that had never been forwarded by the defendant.

Second, neither the comparable wage surveys done during the CIR process, nor the "fair and equitable" justification meet the "job necessity" requirement of the business justification defense mandated once a prima facie disparate impact is shown. There is nothing about either the CIR surveys or the "fair and equitable" defense which is relevant to the performance of the plaintiffs in their jobs. There is no connection between the actual jobs done by any of the people placed in the lowest wage raise group and the reason for the placement. Job relatedness as defined in

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Griggs v. Duke Power Co. requires such a connection and the City never established this.

Third, the "fair and equitable" rationale is too vague and broad. It begs the question, (fair and equitable on what basis?) and it is reminiscent of the rejected claim in Griggs v. Duke Power Co., i.e. that the application tests used by the employer "generally would improve the overall quality of the work force."

Fourth, the justification is insufficiently supported. The classifications were "fair and equitable," according to the judge, based on the wage surveys that were done. But the evidence is undisputed that those surveys were done in labor markets quite different than the ones that applied to the jobs at issue. Some of the library jobs were filled from a local market, and some were filled from a national market. The wage surveys were of a regional market, a different labor market entirely.

Fifth, the Court rejected proof presented by plaintiffs of a less discriminatory alternative of providing "fair and equitable" wages i.e. paying all members of the groups an equal percentage increase. This was the method the City had used in virtually all prior cases, and was the alternative that the plaintiffs presented to the City Council as the most fair approach.

The District Court's holding on business justification is extremely favorable to employers and should be challenged and overturned. The District Court found a justification when the employer could not define one on its own. Employers are responsible for stating their business justification and district courts cannot be permitted to provide one for them. Also there is no way a plaintiff can address a business justification that is first disclosed when the court announces its decision. Moreover, the business justification accepted by the District Court ("fair and equitable wages") is so broad and vaguely-stated that it threatens to undermine virtually any disparate impact claim. This whole class of claims is threatened if employers can



REPORT ON THE IMPLEMENTATION OF THE 1996 ANNUAL CONFERENCE COUNCIL ACTIONS

ALA Policy 5.4 requires the Executive Board or its delegate to report to Council on the status of implementation of motions and resolutions passed by Council during the preceding year. The report shall be entered in the Council minutes.

ACTION APPEARS IN MINUTES ON PAGE	IMPLEMENTATION	RESPONSE & FURTHER ACTION
Resolution on the Reaffirmation of the ALA Operating Agreement, Minutes, pp. 16 & 17.	Council's action was transmitted to all ALA divisions.	Council's action was transmitted to all ALA divisions. The discussions of the Operating Agreement will take place at Division Presidents Breakfast and the Budget Analysis and Review Committee during midwinter.
Resolution on NetDay 96, CD#51, Minutes, p. 17.	The Office Information Technology Policy (OITP) communicated with AASL, ALSC, LITA, and YALSA. ALA Press release sent out on ALA support for NETDAY on 8/26; info placed on NETDAY site as of 8/16 acknowledging ALA's endorsement. OITP has a link to NETDAY on its web page. A letter was sent to John Gage NETDAY organizer in late July informing him of the ALA support.	
Resolution in Support of Omaha Library Workers, CD#52, Minutes, p.17	On July 31, 1996, the ALA Executive Board voted the ALA sign-on to the Davey v. City of Omaha Amicus Curiae brief filed by the American Civil Liberties U that nion of behalf of the Omaha library workers.	Currently awaiting decision from the 8th District Court of Appeals..
ALA Publishing Committee Report, CD#54 , Minutes, p17.	Transmitted to the ALA Executive Board.	The Executive Board responded to the ALA Publishing Committee per letter on January 13, 1997. Liaisons in the Publishing Committee include: Peggy Barber, Associate Executive Director, Communications, representing <i>American Libraries</i> , Don Chatham, Associate Executive Director, Publishing, representing the ALA Publishing Department, and Charles Beard, representing the ALA Executive Board.

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