

CARLOS SANTIN)	
Complainant)	
)	
v.)	Remedial Case 203-3
)	
THE CHURCH VOCATIONS UNIT)	
Respondent)	

This case came before the Permanent Judicial Commission of the General Assembly as a result of a Complaint filed by the Reverend Carlos Santin against the Church Vocations Ministry Unit of the General Assembly Council.

In accordance with D-6.1200(a) of the Book of Order, the Commission determined that the Complaint was timely filed, this Commission does have jurisdiction

(D-6.0600g), the Complainant does have standing to file, and the Complaint states a claim upon which relief can be granted.

This case resulted from a failure of the "Equal Employment Opportunity Complaint Procedure" of the "Personnel Policies for General Assembly Entities" to resolve the EEO Complaint, initiated by the Complainant, to the satisfaction of the parties involved. The Judicial Complaint filed on July 6, 1990, removed the matter from the administrative policies of the General Assembly entities and placed it before the Permanent Judicial Commission of the General Assembly.

HISTORY

The following summary attempts to clarify the trail leading to the adjudication of this case.

During the late Fall of 1989, it was announced that two staff members of the Church Vocations Ministry Unit (CVU) had resigned their positions. These unexpected vacancies prompted the Director of the Unit to consider changes in the alignment of the functions within the Unit.

In close proximity to these events, and somewhat preceding them, concerns had been raised about the number of Hispanics employed in General Assembly level positions. The Association of Hispanic Presbyterian Administrators (AHPA) initiated several efforts to collect employment and

deployment data from offices within the structure which had oversight for the Church's Equal Employment Opportunity programs. Delayed responses, incomplete or inaccurate information, un-interpreted data, and failures to respond led some to conclude there was a reluctance to cooperate with the data gathering.

The protestations of shock and concern over the under- utilization of Hispanics generally, and at the salary grade levels of 8 to 10 specifically, helped set the stage for confrontation when a capable and apparently qualifiable Hispanic was not promoted to fill a grade 8 vacancy created by one of the announced resignations.

The Reverend Carlos Santin, an Hispanic, is employed as Coordinator For Human Resource Development formerly under the supervision of an Associate Director For Human Resource Management and Development within the Church Vocations Ministry Unit of the General Assembly Council. When this Associate Director resigned, it was a reasonable assumption that the person doing the Human Resource Development portion of this sub-unit's responsibilities, might be given the Associate Director's job and a new person employed to do the Human Resource Management portion of the sub-unit's responsibilities. In light of the acknowledged under-utilization of Hispanics in the higher management levels of the Church, the denomination's commitment to inclusiveness, and the personal commitment of the Unit Director to Equal Employment Opportunity and Affirmative Action, the "reasonable assumption" took on more significance for some.

Questions of discrimination against Mr. Santin specifically, and Hispanics generally, followed when the CVU changed its management structure so that what had been a "reasonable assumption" was removed from consideration. Efforts on the part of Mr. Santin to "discuss" the changes and possible alternatives seemed to him to be blocked at every turn. The exchange of memoranda and letters did not produce the opportunity for the in-person discussion he sought. The proposed change in management structure was announced and won the support of the CVU Executive Committee on its way to full CVU Committee approval and implementation.

In April of 1990, Mr. Santin initiated the grievance procedures described in the Personnel Policies for General Assembly entities. These procedures provide a series of steps for addressing problems between Church employees. Mr. Santin identified the Director of the Church Vocations Unit as the person with whom he was having problems, because the Unit had changed its structure and had not assisted him to develop skills for possible advancement within the Unit. The advancement potential which seemed possible under the old structure seemingly had been removed without his direct input to the process.

The CVU and its Director complied with the grievance procedures as outlined. The search for the new Associate Director, under the revised structural design, proceeded as the grievance procedures did not include provisions for halting that process while the grievance was being addressed. Under the pressures of a very demanding work load and a vacant high level position, the CVU pursued every opportunity to move on with its assigned tasks. The last effort to resolve the problems through the grievance process was completed in early July of 1990. The formal mediation between the Unit Director and Mr. Santin failed to resolve the issues of concern about the change in structure which apparently reduced the likelihood of Mr. Santin being promoted to the Associate Director's position, and the Church's responsibility and commitment to developing the potential of all persons toward the goal of an inclusive Church in mission. The final step in the Personnel Policies' grievance process, binding arbitration, was waived as a result of the agreement between the Complainant and the Respondent in pre-trial session to seek resolution through the adjudication process.

SPECIFICATIONS OF ERROR

1. Respondent has erred in failing to follow the Personnel Policies dealing with complaints by refusing to address the grievances Complainant raised in his letter of appeal to Respondent (May 8, 1990).

The Commission finds that the policies, as outlined, were adhered to, although the grievance answers were not satisfactory to the Complainant.

Specification No. 1 is not sustained (12-0-0).

2. Respondent erred in failing to answer the charges in Complainant's complaint much less to demonstrate their non-validity. Respondent, instead, has made a sweeping judgment that they are unsubstantiated. It further has ignored its responsibility for several aspects of professional development, has pleaded budgetary limitations as excuse for failure, has transferred the responsibility for employee development assigned to the Chief Administrative Officer (CAO) to the employee and has stated wrongly that a professional development strategy was not in place.

The Commission finds that the evidence does not establish the charge that the CVU failed to provide employee development. The evidence is undisputed that training programs were, in fact, provided by way of seminars and conferences in the face of limited financial resources provided by the General Assembly Council.

Furthermore, D-6.0300 specifically provides that a complaint of a delinquency may be filed only after a written request of the Respondent to act and the Respondent has not acted. There was no evidence presented that the Complainant ever made a written request of the Respondent to provide him with additional opportunities for professional development or that the Respondent failed to act.

Specification No. 2 is not sustained (12-0-0).

3. Respondent erred in affirming the CAO as being in compliance with Personnel Policies. Complainant has not charged the CAO with not complying with a 20% racial/ethnic quota but with not honoring the Book of Order, the principle of inclusion, and the Personnel Policies.

This Commission finds that the Book of Order mandates at G-9.0704 that all executive and administrative staff positions in all governing bodies above the session shall be filled in accordance with the principles of participation and representation found in G-9.0104. In G-9.0104 governing bodies are charged with the responsibility for implementing the Church's commitment to inclusiveness and participation as stated in

G-4.0403. Governing bodies are further charged with working to become more open and inclusive and to correct patterns of discrimination on the basis of race, sex, age, marital condition or disability.

The Church Vocations Ministry Unit in acting as an agent of the General Assembly has attained the 20% hiring standard for racial/ethnic persons, established by the General Assembly Council. It has not, by its own admission, reached the level of inclusiveness mandated by the Book of Order.

The evidence shows that the job description for the Associate Director for Personnel Services does not meet the requirements of The General Assembly's Manual of Operation For Human Resource Management section on "Writing Qualifications" for a Position Analysis Form. Specifically the qualifications listed state:

(b) Will the qualifications listed tend to eliminate those who have not had the opportunity to demonstrate ability because they have not held similar or preparatory positions in the past? With regard to women and racial/ethnic persons, consider that few women have had pastoral experience beyond the assistant, associate, or small congregation level, and that neither women nor racial/ethnic persons have had many opportunities to gain administrative or program director experience beyond positions that are often considered "women's work," or "racial/ethnic ministries."

In the Respondent's Answer to Complaint it states that the job description as posted and advertised produced twenty-one candidates; 15 white males, 3 white females, 2 Hispanics and 1 Asian female. This was confirmed in testimony before the Commission. Furthermore, one candidate was told she was not qualified for the position before she applied. If the job description had been written in accordance with the "Writing Qualifications" for a Position Analysis Form, consideration should have been given to whether the qualifications listed tended to eliminate those who have not had the opportunity to demonstrate ability because they have not held similar or preparatory positions in the past. If this had been done, the mix of candidates might have been different. This conclusion is supported by the testimony. Specifically, Section 10, Experience, Knowledge and Skills, subsection a, of the job description required a "minimum of eight (8) years

successful experience managing personnel administration in an organization of comparable complexity (emphasis added)." This requirement made it difficult to find qualified racial/ethnic and women candidates because of the "comparable complexity" requirement. There are few organizations of comparable complexity and even fewer racial/ethnic or women managerial candidates in such organizations.

Specification No. 3 is sustained (11-1-0).

4. Respondent, having already refused to consider Complainant's grievances, also erred in refusing to consider an important part of Complainant's complaint, making a judgment that it is inappropriate to the complaint process without saying why.

The evidence presented before this Commission indicates that the issues raised by the Association of Hispanic Administrators (AHPA) communication (dated April 6, 1990) dealing with the under-utilization of Hispanics were referred to the CVU with recommendation that the Unit address the matters raised in consultation with the GAC.

Specification No. 4 is not sustained (12-0-0).

5. Respondent erred in failing to submit to the General Assembly Council (GAC) a revised staff rationale for the Unit as required by the Structural Design for Mission and referred to in pages 3-4 of A Manual of Operations for Human Resource Management. The GAC has responsibility not only to approve staff rationales but also to monitor Equal Employment Opportunity. Since the change in the staff rationale had adverse effects on the EEO opportunities of the Complainant, a Hispanic, Respondent failed to provide the GAC opportunity to fulfill its responsibility according to its mandate and also deprived Complainant of a "check and balance" to oversee his interest.

This Commission finds from the testimony that a revised staff rationale has been submitted to the GAC for action in November, 1990, in accordance with GAC procedures.

Specification No. 5 is not sustained (12-0-0).

6. Respondent erred in cloaking its Director, against whom Complainant had grievances, with impregnability by not only judging on his behalf but also and most importantly, by taking upon itself responsibility for his actions thereby making itself both defendant and judge and converting the complaint procedures into a political game and a farce. Respondent has done this by ignoring all of the correspondence refuting the errors and ill-

founded defense statement of both the CAO and Chair of the Respondent.

This Commission finds from the evidence that both the Respondent and the Director acted appropriately within the areas of their responsibility.

Specification No. 6 is not sustained (10-2-0).

7. Respondent erred in not acceding to Complainant's request (AHPA's memorandum and part of my complaint which was ignored) to meet though there was ample opportunity to do so. This omission deprived both Respondent and Complainant of an opportunity to reconcile their differences.

This Commission finds from the evidence that the Respondent did not deny access of the Complainant to the CVU Committee (the Respondent), nor was there a request for such a meeting.

Specification No. 7 is not sustained (11-1-0).

This Commission observes evidence of significant communication breakdown between the Complainant, the Director of the Unit, and the elected members of the Unit Committee involved. The following quote from the report of the Formal Mediation step in the grievance process typifies the problem:

"The most recent microcosm of communication break down was the meeting of CVMUC [Church Vocations Ministry Unit Committee] elected persons in Salt Lake City (May 30, 1990) and you [Carlos Santin] not being invited to speak with them regarding a series of communications then of some five months duration. That 'oversight' underscores the difficulty in effecting meaningful communication around these issues."

8. The Respondent, by taking the responsibility of appointing staff and determining to proceed with the search and hiring process, has absolved the CAO of such responsibility. This has rendered the complaint procedures of the Personnel Policies ineffective as mediation must be shifted from the CAO to the Respondent which has placed itself above the procedures.

This Commission finds that the grievance procedure of the CVU, under the authority of the GAC, does not adequately address the appeal by staff of a decision by CVU elected persons.

The grievance procedure in the Personnel Policy provides for Complaints of staff against staff, but there is no provision for the situation where the Complaint is against the actions or non-actions of elected CVU persons.

Specification No. 8 is sustained (11-1-0).

ORDER

This Commission ORDERS that:

1. The position description for the proposed Associate Director of the Church Vocations Ministry Unit be re-written in conformity with the General Assembly's Manual of Operation For Human Resource Management section on "Writing Qualifications" for a Position Analysis Form. After these revisions have been made the Unit shall re-advertise this position. The Stay of Enforcement is lifted at that time.

2. No retaliatory action against Complainant shall be taken by Respondent.

3. The General Assembly Permanent Judicial Commission is the last step or terminal point of dispute settlement in the Church. A happy situation exists when the preliminary steps of dispute-settlement machinery function effectively, resulting in settlement of a high percentage of disputes prior to appeal to the General Assembly Permanent Judicial Commission. If the preliminary steps do not function smoothly the General Assembly Permanent Judicial Commission may be overburdened with cases, which, in turn, may lead to a breakdown of the system.

The grievance procedure for General Assembly staff has a very important role. It is the "safety-valve" which gives a flexibility to the whole system of Employer/Employee relations. To be effective, the procedure established should be so clearly stated as to be readily understood by all employees, staff management officials, and elected management officials. The procedure should be adaptable to the handling of the various types of grievances and disputes which come under the terms of the Personnel Policy. The procedure should be designed to facilitate the settlement of grievances and disputes as soon as possible after they arise.

This Commission ORDERS the Church Vocations Ministry Unit, to correct inadequacies of the current procedure so that it becomes an effective procedure for the settlement of grievances and disputes within the staff structure as it relates to elected bodies in the management hierarchy and report to the 204th General Assembly (1992).

4. With regard to other concerns raised by the Complainant in his amended pleadings, the Commission finds that its actions above are dispositive of these issues.

The Rev. William M. Kelly, Hon. Edward P. Snead Jr., Hon. Charles L. Weltner, and Mr. Marcos Feliciano, Esq. were not present and took no part in the proceedings. The Rev. Milton S. Carothers and Rev. Ervin D. Rymes participated in the trial, but did not vote on the specifications of error.

Signed and dated this 9th day of October, 1990.