

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 21 D.o.E. App. Dec. 257)

<i>In re Janet Weichers</i>	:	
Janet Weichers, Appellant,	:	
v.	:	
Hawkeye Community College,	:	DECISION
Appellee.	:	[Adm. Doc. #4390]

The above-captioned matter was heard in person on December 4, 2002, before designated administrative law judge Carol J. Greta. The Appellant, Janet Weichers, was personally present with her legal counsel, William R. Unger, of the Iowa State Education Association (ISEA). Also present on behalf of Ms. Weichers was an ISEA Uniserve Director, Roger White. Appellee, Hawkeye Community College, was represented by legal counsel, Steven A. Weidner of the Waterloo law office of Swisher & Cohrt, as well as by Trustee Luane Lorenzen and college administrators Pamela Bowman, Linda Nielsen, and Greg Schmitz.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Ms. Weichers seeks reversal of a decision of the board of trustees of Hawkeye Community College made on June 26, 2001, denying her application for benefits under the Special One-Time Early Retirement Incentive enacted by the board. She filed her timely appeal to this agency on July 25, 2001.¹

**I.
FINDINGS OF FACT**

Until her voluntary retirement on August 14, 2001, Janet Weichers had been an instructor and program coordinator at Hawkeye Community College [“Hawkeye”] for 14 years. She was 58 years of age at the date of her retirement.

Hawkeye has had a voluntary early retirement program, enacted by the local board as Policy 431, for several years. Testimony of Hawkeye’s witnesses showed that

¹ This agency did not immediately accept jurisdiction of this appeal, resulting in the delay between the filing of the appeal and the hearing. All jurisdictional issues were resolved prior to the hearing of December 4, 2002.

Policy 431 was meant to save money for the college. Typically, this occurred in one of two ways, either by not hiring a person to replace the retiree or by hiring a less experienced person whose salary rate and benefits are less expensive for the employer than those of the retiree.

To apply for early retirement under Policy 431, an employee must meet the following pertinent eligibility criteria²:

1. The employee must be a full-time employee.
2. The employee must be between the ages of 55 and 61 years by date of retirement.
3. The employee must have been employed by the College for at least 10 consecutive years immediately prior to retirement.

Exhibit 3. A further condition of Policy 431 is that the retirement must occur “by the end of the employee’s contract year or the College’s fiscal year... .” *Id.*

Uncontroverted testimony established that the fiscal year for Hawkeye is July 1 through June 30. The parties also agreed that many instructors employed by Hawkeye have a contract year that begins and ends in the month of August. These contracts state an annual salary, which is understood by employer and employees to apply to the fiscal year covered by a majority of the contract. For instance, a salary stated for a contract from August 15, 2000, to August 14, 2001, would be a fiscal year 2001 salary to be paid entirely from the fiscal 2001 budget, according to testimony of Linda Nielsen.

Ms. Weichers testified, and Hawkeye agreed, that her contract year, and not Hawkeye’s fiscal year, is the pertinent time period for purposes of the early retirement policy. She stated that the last contract she had with Hawkeye was for a term beginning August 14, 2000, and ending August 12, 2001, which both she and the college consider to be a fiscal year 2001 contract.

Pamela Bowman, Director of Staff Relations and Benefits for Hawkeye, testified that she sends an annual notification of eligibility for early retirement to eligible employees, along with a blank application form. In October of 2000, Ms. Bowman sent the notice and application to Ms. Weichers. *Exhibit 4* is a copy of Ms. Weichers’ completed application, requesting an early retirement date of August 14, 2001; this application is dated December 5, 2000, and was received by Ms. Bowman’s office on that same date. Ms. Weichers’ application for an early retirement date of August 14, 2001, was approved by the Hawkeye Board of Trustees at its regular meeting on December 12, 2000. *Exhibit 5.*

² This is not an exhaustive list of criteria.

Not long after its December 12, 2000, approval of Ms. Weichers' early retirement date, the board was faced with revenue shortfalls that precipitated cuts to the college's general operating fund. Specifically, all community colleges were faced with decreases in the amount of state aid that they would receive, making it necessary to also decrease expenses. Accordingly, Hawkeye's board approved a "Special One-Time Early Retirement Incentive" program ["One-Time program"] intended to supplement, not supplant, Policy 431.

To supplement the savings generated by Policy 431, the One-Time program was initiated in the spring of 2001. The program was amended twice to reflect changes not pertinent to this appeal. *Exhibits 9, 12, and 22*. All three exhibits bear the title "FY 2002 SPECIAL ONE-TIME EARLY RETIREMENT INCENTIVE for Faculty, Professional, Administrative, and Support Staff Employees." The essence of the program is that employees between the ages of 55 and 65 years with at least ten years of service to Hawkeye who retire either by August 31, 2001, or by February 28, 2002, receive – in addition to benefits pursuant to Policy 431 – certain enhanced health insurance benefits plus a certain percentage of the retiree's FY 2002 annual base salary.

Linda Nielsen of Hawkeye testified regarding by what means the One-Time program would save additional money for Hawkeye. The program was aimed at two groups of employees, (1) those of age to retire early who had not yet announced their intention to do so and (2) those who had previously been approved to retire in fiscal 2002 who were now willing to move up their retirement date.

Testimony on behalf of both parties showed that nine Hawkeye employees, including Ms. Weichers, applied for early retirement under Policy 431 when notified in October 2000 of their eligibility to do so. Of these nine employees, five requested a retirement date into fiscal year 2002. These five employees were given employment contracts for fiscal 2002, and, accordingly, were deemed eligible by Hawkeye for the special One-Time program as they were otherwise-eligible, and were going to be employed by Hawkeye during all or part of fiscal year 2002. Indeed, upon receiving notification of eligibility under the One-Time program, all five moved up their retirement dates from four months earlier than originally requested to ten months earlier.

Ms. Bowman testified that a total of 23 Hawkeye employees took advantage of the One-Time program. She further stated that each of these 23 employees had an employment contract with the college for fiscal or contract year 2002. Ms. Weichers and the three other employees who chose retirement dates in fiscal or contract year 2001 were not offered contracts for 2002 and were not deemed eligible for additional benefits under the One-Time program. Both Ms. Bowman and Ms. Nielsen testified that notice of the One-Time program was not sent to Ms. Weichers because Hawkeye only considered otherwise-eligible employees with a contract for fiscal 2002 to be eligible for the

additional incentive package. However, Ms. Nielsen admitted that the One-Time program does not state directly on its face that it is limited to employees with a fiscal 2002 employment contract.

Although she did not receive notice and application under the One-Time program, Ms. Weichers learned of the program through a colleague. She secured a copy of the application and submitted the same, noting her same intended retirement date of August 14, 2001. She turned in this application to Ms. Bowman's office. While acknowledging the existence of this completed application, Ms. Bowman testified that Hawkeye did not receipt for the application because the college considered Ms. Weichers not to be eligible for the additional retirement benefits. As explained earlier, all parties agree that August 14, 2001 was the end of contract year 2001 and therefore, within fiscal year 2001. By having earlier requested a retirement date effective prior to fiscal 2002, Ms. Weichers' early retirement had no possibility of saving Hawkeye any *additional* money.

Believing that she should be eligible for the One-Time program, Ms. Weichers eventually took this issue to the board of trustees of Hawkeye. She did so with the assistance of Roger White, ISEA Uniserve Director for the geographic area that includes Hawkeye Community College. The minutes of the board meeting of June 26, 2001, *Exhibit 24*, show that none of the directors who participated in that meeting voted in favor of approving Ms. Weichers "for the special one-time early retirement incentive for FY2002." This appeal followed.

II. CONCLUSIONS OF LAW

The Iowa Legislature has directed that the State Board, in regard to appeals to this body, make decisions that are "just and equitable." Iowa Code § 290.3. The standard of review, articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), requires that a local board decision not be overturned by the State Board unless the local decision is "unreasonable and contrary to the best interest of education." *Id.* at 369.

Ms. Weichers presented two issues in her appeal. She first argues that the plain language of the One-Time program (*Exhibits 9, 12 and 22*) does not preclude her as an eligible participant. Her second argument is that an inequality exists if she is not given additional retirement benefits under the One-Time program.

Language of the Special One-Time Early Retirement Incentive Program

Ms. Weichers does not dispute the testimony offered on behalf of Hawkeye that the *intent* of the One-Time program was that only those employees with fiscal or contract year 2002 employment contracts were eligible for the program's additional benefits. Her argument is that, as a reasonable person, she could not read the plain language of the

incentive program and ascertain that it did not apply to her. As this issue has been raised by Ms. Weichers, we attach to this Decision a copy of *Exhibit 22*, the most recent form of the One-Time program.

Hawkeye has already admitted that the program language does not specifically include a statement to the effect that “this program applies only to eligible employees with an employment contract for 2002.” However, the title of the program includes “FY 2002,” and the body of the program states that additional benefits are based on the employee’s “FY 2002 annual base salary.” Having applied for a retirement date of August 14, 2001, Ms. Weichers was not offered any further employment contract by Hawkeye. She testified that her actual last day of performing work for Hawkeye was in late July or early August of 2001. She had no “FY 2002 annual base salary” on which any benefits under the One-Time policy could be calculated.

Her position is not aided by the argument that the collective bargaining process sometimes renders the next fiscal or contract year salaries unknown until the fiscal or contract year has already commenced. In such cases, however, the salary is eventually known and is simply paid retroactively if there is an increase over the previous year’s salary. Here, however, an FY 2002 salary for Ms. Weichers is literally unknowable because she had no 2002 contract and no expectation of working under such a contract.

We conclude that the language of the program in *Exhibit 22* is not so ambiguous, vague or confusing as to render the question of interpretation one of fact. *Rector v. Alcorn*, 241 N.W.2d 196 (Iowa 1976). Therefore, our conclusion being that the language is clear, then as a matter of law we further conclude that the One-Time program affects only otherwise-eligible Hawkeye employees with an employment contract for either fiscal year or contract year 2002.

Inequality of Implementation of the One-Time Program as to Ms. Weichers

Early retirement programs may be enacted by a local board pursuant to authority in Iowa Code § 279.46, which applies to community college boards of trustees by virtue of Iowa Code § 260C.14(3). Section 279.46 states in pertinent part, “The board of directors of a school district may adopt a program for payment of a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging its employees to retire before the normal retirement date... .”

Ms. Weichers argues that she was treated unfairly and differently under the One-Time program in comparison with similarly situated coworkers. Her argument is similar to disparate impact, a theory of unlawful discrimination that, in the employment context, requires the employee “to show that a particular employment practice has an adverse impact on a protected group in ‘marked disproportion to its impact on employees outside

the group.”” *Dubuque City Assessor’s Office v. Dubuque Human Rights Commission*, 484 N.W.2d 200, 202 (Iowa App. 1992). As Ms. Weichers did not argue the theory of disparate impact, the analytical framework for that theory [modified somewhat from the framework first pronounced in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973)] shall not be applied here.

However, to successfully argue inequality here, Ms. Weichers must show that she was treated differently than were Hawkeye employees similarly situated to her. In comparing herself to coworkers, the law requires that the coworkers with whom Ms. Weichers wishes to be compared must have been similarly situated to her in all relevant respects. *Forrest v. Kraft Foods, Inc.*, 285 F.3d 688 (8th Cir. 2002); *Jenkins v. Wal-Mart Stores, Inc.*, 910 F.Supp. 1399(N.D. Iowa 1995). The coworkers with whom Ms. Weichers compares herself all had employment contracts for 2002 when they were declared eligible for the One-Time program. On the other hand, Ms. Weichers had asked for a retirement date prior to fiscal or contract year 2002. Any savings that Hawkeye would realize due to her early retirement were already known when the One-Time program was implemented; the college could not gain further financially from her retirement. On the other hand, the early retirement of employees with contracts for 2002 did have the potential of saving Hawkeye money. These employees were not similarly situated to Ms. Weichers.

True, there is an inequity in the way in which the special One-Time program affected Hawkeye employees. However, not all inequities are unlawful. For example, any former employee of Hawkeye who had retired at the same time or prior to Ms. Weichers could complain – unsuccessfully – that the 2002 retirees were receiving additional benefits not accorded to the earlier retirees. They would be correct; but this does not bestow a remedy upon them against Hawkeye any more than Ms. Weichers has a remedy against the college. The law allows an employer to make business decisions that arise out of business necessity (here, the need to reduce expenditures). Just because those decisions may fall more harshly on one person or group does not make the decision a bad one or even an unlawful one. If inequitable results alone were enough to allow an employee to successfully challenge a program such as Hawkeye’s One-Time program, the college would never be able to offer such a program. Some employee or group of employees is inevitably going to be impacted in a disadvantageous way. But, this is permitted by Iowa Code § 279.46. We cannot conclude that the Hawkeye board of trustees acted unreasonably or contrary to the best interests of education when it denied additional benefits to Ms. Weichers under the One-Time program.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Trustees of Hawkeye Community College made on June 26, 2001, denying Ms. Weichers' application for benefits under the Special One-Time Early Retirement Incentive, be AFFIRMED. There are no costs of this appeal to be assigned.

Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Gene E. Vincent, President
State Board of Education