

# DPS

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and that her claim was invalid because the two-year statute of limitations had passed by the time she filed Sept. 30, 1999.

"Lawlor contends that she did not intentionally deprive Conaway of any constitutional rights, but more to the point, this claim was not commenced within the time limited by statute," Assistant Attorney General David Landrum said in a filed rebuttal.

Landrum, a legal expert in human resources cases, represented the University.

"The allegations of comments by Lawlor and failure to accommodate by the University do not rise to the actionable level of behavior that transgresses the bounds of socially tolerable conduct," Landrum said in his motion to have the case dismissed.

Part of the settlement forbids Conaway from speaking to the media about the case. Peter Cogswell, a spokesman for the Oregon Department of Justice, said Conaway also received a new University job and \$15,000 as conditions of the settlement. Cogswell said he wasn't sure if the money in the settlement went beyond covering legal costs.

Conaway now works in facilities services, and the University dismissed Lawlor about a year ago, University Vice President Dan Williams said. Lawlor did not return phone messages asking for comment about the case.

Despite the court's finding that Lawlor's comments could be considered socially acceptable, Williams said statements such as Lawlor's have no place at the University.

"It's not acceptable for anyone, especially a supervisor over employees, to speak like that," Williams said. "Just because something is not illegal doesn't mean it's acceptable."

He said the University has not been completely debriefed on what the case means, but said if her claim violated the Americans with Disabilities Act, it could mean future changes for the department.

Williams added he could not make specific comments, but said that there had been some "difference of opinions" and "conflict" in the department. He said he had heard reports of dissatisfied employees, but that in of itself does not substantiate the allegations.

"That doesn't mean that particu-

lar person's point of view is correct," he said about the charges.

Reached by phone Sunday at his hotel in Chicago, University President Dave Frohnmayer said he had not seen any information on the case, but said people should not presume wrongdoing by the department. He explained that often in cases such as Conaway's, a judge will make the assumption that there were laws broken to settle the case without actually conducting an investigation into the claims.

"Allegations aren't facts," he said.

## Contested environment

Part of the contention in the department surrounds the promotion of an officer into a new lieutenant position and the reassignment of another lieutenant.

Some officers claim that Marte Martinez, who was promoted to lieutenant after less than a year with the department, was put into the position illegally without a proper hiring period. Fitzpatrick adamantly denied that claim.

Martinez is on personal leave indefinitely and could not be reached for comment. Williams and Fitzpatrick refused to comment on the reasons of Martinez's leave, citing confidentiality issues.

Martinez's position "was internally open for recruitment," Fitzpatrick said. He added a total of four officers applied as part of the normal hiring process.

But Kim Maynard, who resigned from DPS about a month ago after five years as a patrol officer, disagreed. He said other applications were not accepted until he and fellow officer Terry Gaeta, who also resigned this summer after about five years in the department, complained that other officers didn't have a chance to get the job. Both thought a veteran officer should be promoted instead of Martinez, who had less experience in the department.

"We challenged the decision and went in for interviews, and the interviews were a total sham," Maynard said. "That was basically the start of all of the more mature officers getting nailed for everything."

Maynard listed a variety of incidents of alleged age discrimination, including last year when he said the department had officers complete a two-day defensive tactics training session. Maynard — who has physical disabilities from serving in Vietnam, but nothing that prevented him from doing his normal duties — said he and other officers were so

sore from the first training session they couldn't attend the second one a month later.

"My back got so bad I couldn't hardly walk, and so a month later they do it again," he said. "Because I was injured they took away my asp [baton] and pepper spray. I was certified for those things. And then when I complained, the director wrote a letter afterward saying that they have the right."

Maynard said Fitzpatrick eventually promised to reschedule a training so he could have his pepper spray back, but that time was never set.

Maynard also alleged that Lt. Joan Saylor made discriminatory comments about his age when he applied to be on bike patrol. He claims she said, sarcastically, "Well, we don't want Maynard to fall off and hurt himself."

Maynard said these and the incidences were so embarrassing and harassing that he decided to mail his letter of resignation to the office instead of delivering it in person.

"It was really humiliating," he said. "It was flat-out harassment. I couldn't go back into the office. You're walking on eggshells there. Everybody is afraid to say anything now."

"I've never seen such a hostile environment. The inmates are running the asylum."

But Fitzpatrick said the office is "absolutely not" a hostile environment where discrimination and harassment occurs. He added that, to the best of his knowledge, Maynard didn't take advantage of rescheduled tactics training times.

"The environment is positive," Fitzpatrick said.

## Standards of Conduct

But for Maynard, the environment was not positive enough to keep him from resigning. He said the last straw for him was when the department recently drafted "21 Standards of Conduct" that officers must follow, including standard office guidelines for conduct and restrictions of drug and alcohol use.

The policy is still in draft form, but it states that officers who break the rules can be reprimanded with "progressive disciplinary, up to and including termination."

Fitzpatrick said officers had a chance to read the draft and offer comments for revision, and he hopes to have a final copy in place as policy by Nov. 1. But he added he does not know if the punishment rules break current OPEU contract guidelines.

All DPS employees are members

## Court decision on Conaway's claim of "intentional infliction of emotional distress"

In Oregon, no statutory or common law claim exists for reckless infliction of emotional distress. In order to state a claim for intentional infliction of emotional distress, a plaintiff must plead:

- 1) the defendant intended to inflict severe emotional distress (IIED) on the plaintiff,
- 2) the defendant's acts were the cause of the plaintiff's severe emotional distress, and
- 3) the defendant's acts constituted an extraordinary transgression of the bounds of socially tolerable conduct.

Whether particular conduct rises to the necessary level of social intolerance is a fact-specific inquiry that requires a case-by-case examination of the circumstances as a whole. Whether a reasonable jury could find that the University's or Lawlor's conduct goes beyond the farthest reaches of socially tolerable behavior is a question of law for the court. The motivation of the University or Lawlor for any alleged action is not relevant to the question of whether the alleged action is sufficiently outrageous to make a claim. The actions themselves must be sufficiently outrageous.

Extraordinary transgressions of the bounds of socially tolerable conduct do not include mere insults, indignities, threats, annoyances, petty oppression or other trivialities. Conduct that is merely rude, boorish, tyrannical, churlish and mean does not exceed the bounds of social toleration. The essential distinction is between offensive and even emotionally hurtful behavior that is a normal incident of daily life and behavior that goes

beyond the bounds of what society would say reasonably must be endured. The employment relationship between Conaway and the University of Oregon is not relevant to this inquiry, because it has no bearing on the level of intent required to state and prove the claim.

Conaway alleges of the complaint that "defendant" denied her request for reasonable accommodations of a disability, and referred to her as "lazy thing," "lazy old woman," and "a fucking [something or other]," but makes no other factual allegations of conduct or behavior by either the University or Lawlor. The two allegations must be considered separately, because two separate lines of authority apply.

A principal's failure to respond to an employee's complaint is insufficient to constitute a claim of IIED. Therefore, Conaway's allegation that the University of Oregon failed to accommodate her disability cannot form the basis of an IIED claim....

...The crux of the issue is whether the behavior of Lawlor or the University could be considered commonplace friction and rudeness among people in day-to-day life, or whether a jury reasonably could find it offensive in some extraordinary way. Conaway's allegations are less egregious than the allegations in Oregon cases where plaintiff failed to state a claim for IIED. Defendants are entitled to judgment as a matter of law, or in the alternative Conaway's sixth claim for relief should be dismissed with prejudice.

Source: Court documents — Pauline S. Conaway, plaintiff v. University of Oregon and Paige Lawlor, defendants

of the union.

The draft also includes a number of guidelines about officers and management. Violations include: "Consistently challenging legitimate directions [from supervisors]," "refusing to work reasonable amounts of overtime," and "criticizing management decisions."

Maynard worried that the rules, which can be vague regarding what "reasonable overtime" and "legitimate directions" mean, could be enacted without enough notice to other officers.

Maynard said he isn't certain how the atmosphere at DPS changed to what he called hostile, but said he doesn't think Fitzpatrick

is the problem at all.

Fitzpatrick "is just out of the loop. He's basically retired," Maynard said. "The core of the problem is that management continues to operate in an adversarial role toward its own employees rather than a supportive role." But Fitzpatrick clearly stated that he is still the one in control of DPS, a department in which "nobody is discriminated."

"There have been enhanced levels of discipline since I arrived," he said. "A lot of people have left for different reasons. I'd leave it for them to describe."

Emerald reporter Rebecca Newell contributed to this report.

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