

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ANANTA M. DASGUPTA,
 Complainant,

v.

UNIVERSITY OF WISCONSIN-
 EAU CLAIRE,
 Respondent.

Case No. 78-PC-ER-22

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ORDER

The Proposed Decision in the above captioned case, dated December 21, 1979, is hereby amended as follows, for the following reasons:

1. Conclusion of Law no. 1 is amended to reflect the language of Wis. Admin. Code, . sec. Ind. 88.03(2).

There have been no substantive changes from the Proposed Decision in the Final Decision issued by the Commission on this date.

Dated Feb. 19, 1980

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
 Charlotte M. Higbee
 Commissioner

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 UNIVERSITY OF WISCONSIN-
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DECISION
 AND
 ORDER

NATURE OF THE CASE

This case was heard on an appeal from the equal rights officer's initial determination of no probable cause with respect to a complaint alleging that the University of Wisconsin-Eau Claire had discriminated against complainant on the basis of his national origin with respect to his application for promotion from assistant professor to associate professor in the department of psychology. The hearing was held on November 27, 1979, before Agnes Rona, Hearing Examiner.

FINDINGS OF FACT

1. Complainant, Dr. Ananta M. Dasgupta, is and has been at all relevant times, a tenured assistant professor in the psychology department (department) at the University of Wisconsin-Eau Claire, (Eau Claire).

2. Dr. Dasgupta received tenure while teaching at the University of Wisconsin-Platteville (Platteville) and transferred from Platteville to Eau Claire beginning in the 1974-75 academic year; the transfer was made necessary because he was laid off in Platteville as part of a system-wide

layoff of tenured faculty.

3. In the spring of 1973, the Eau Claire administration was informed that complainant was available to teach at Eau Claire as a result of the Platteville layoff.

4. Faculty appointments at Eau Claire are normally made by the administration upon the recommendation of the faculty of the department in which the new faculty member is to teach; in the case of Dr. Dasgupta, the department did not have an effective choice in recommending the candidate since he exercised his transfer rights as a tenured faculty member. There were, and there continue to be, some negative attitudes toward complainant among some department members because of the feeling that he was "forced" on the department.

5. The minimum requirement for eligibility for promotion in rank at Eau Claire is that a faculty member have not less than seven years service at Eau Claire, although at the discretion of the promotion committee, credit may be given for years of service elsewhere; in the fall of 1975, the beginning of his second year at Eau Claire, complainant received credit for his years at Platteville and therefore met the minimum eligibility requirement for promotion.

6. In 1975, a faculty member could nominate himself or herself for promotion and that nomination would be considered by the committee; in the fall of 1977, this procedure was changed so that an individual could no longer advance his or her name for consideration for promotion review; the 1977 procedure began with circulation to the tenured faculty of a list of those individuals eligible for promotion, from which list an

individual would have to be nominated for further consideration; in the fall of 1979 another procedure was introduced, under which a faculty member must first be judged eligible for consideration for promotion by the administration, and then have his or her qualifications reviewed by the committee and a recommendation made with respect to promotion, no later than four years after eligibility is established, with a review no later than every four years thereafter.

7. Complainant first applied for promotion at Eau Claire in the fall of 1975, one year after his arrival, but was not recommended for promotion at that time.

8. Dr. Dasgupta was turned down by a nearly unanimous vote. The reasons given for the decision were: 1) problems in communication; 2) problems in classroom control; 3) using students to teach class; 4) giving wrong information to students; and 5) student complaints.
(Resp. Ex. 2)

9. The promotion committee for any candidate for promotion is composed of all tenured faculty members of a higher rank than the candidate; in complainant's case, the committee was composed of associate and full professors.

10. The procedure for evaluation of a candidate for promotion included classroom observation by three faculty members - one chosen by candidate, one chosen by the promotion committee, and the chairman of the department (not a member of the promotion committee); in the fall of 1975, Dr. Elroy Condit, a full professor in the department, was chosen by the Committee to visit Dr. Dasgupta's classroom as one of his evaluators.

Dr. Condit was not satisfied with Dr. Dasgupta's classroom performance, and reported his opinion to the promotion committee, and also discussed the situation with Dr. Dasgupta.

11. Student evaluations are also used to review a candidate for promotion, and it is standard procedure to gather student evaluations at the time a candidate is considered; while a faculty member may gather student evaluations for his or her own use, there is an official evaluation form which is the only one accepted by the promotion committee when reviewing a candidate. (Resp. Ex. 1) Student evaluations of Dr. Dasgupta were gathered sometime in November, 1975, close to the time of the classroom visit by Dr. Condit and close to the time the promotion committee voted on Dr. Dasgupta's application. Dr. Condit considered the evaluations lower than he would have liked to see.

12. After he was turned down, in 1975, Dr. Dasgupta met with or wrote to several faculty members and administrators, including the department chairman, the promotion committee chairman, the three faculty members who observed his class, Dean Haug, Dr. Leonard Haas of the Vice Chancellor's office, and Vice Chancellor Dr. John Morris. Complainant did not initiate a formal written grievance procedure, however. The result of this series of conferences was that the administration told Dr. Dasgupta that there was nothing it could do with respect to getting him a promotion.

13. No evidence was presented at hearing as to how many other faculty were considered for promotion in the fall of 1975, or as to the quality of the classroom and student evaluations for any candidates other than complainant, or as to when such evaluations may have been gathered.

14. Other professors in the department had been considered for promotion to associate professor several times before being promoted, and not all those considered were promoted; there have been two promotions in the department between 1974 and 1979.

15. According to Dr. Condit, the 1977 change in promotion review procedure was intended to prevent yearly review of all staff who wanted to be reviewed. An average of two or three faculty are reviewed for promotion each year.

16. Complainant applied for promotion in the fall of 1977 but was not reviewed under the new procedure.

17. From the fall of 1975 onward, Dr. Dasgupta felt isolated from his colleagues in the department and felt that two or three of them in particular, including Dr. Condit, acted with animosity toward him in day-to-day interactions, including uttering taunting remarks, as well as one incident in which Dr. Dasgupta felt he had been spat upon by one of his colleagues; Dr. Dasgupta told others about the incident, but did not directly discuss it with the alleged perpetrator.

18. At various undetermined points in time, several members of the department suggested self-improvement programs to complainant, which programs were geared to correct perceived problem areas such as communications difficulties; Dr. Dasgupta testified that most of the individuals with whom he discussed his grievances, particularly in the university administration, were kind and attempted to be helpful.

CONCLUSIONS OF LAW

1. In an appeal from an Initial Determination of no probable cause to believe discrimination has occurred, the complainant has the burden to show probable cause by establishing reasonable ground for belief supported by facts and circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been or is being committed.

2. Complainant has failed to carry his burden of persuasion.

3. There is not probable cause to believe that complainant was denied promotion on the basis of his national origin.

OPINION

There is convincing evidence that Dr. Dasgupta is resented by some members of his department. There is not, however, sufficient evidence to lead the Commission to believe that the decisions of the promotion committee were probably the result of discriminatory attitudes toward complainant's national origin. There were several phases in the development of complainant's relations with the department, and the quality of the relationship in each was the likely result of factors other than complainant's national origin.

The attorneys for the parties stipulated that a certain amount of resentment toward the complainant was engendered during the hiring process, due to the fact that the department felt it had no real option but to accept him. At this stage, it is unlikely that national origin was a factor in the attitude of the department, and no evidence was introduced to support any such contention.

The second phase of the relationship between complainant and the rest of the department is defended by the events surrounding complainant's 1975 application for promotion and the denial of his application. There was testimony that the department did not and still does not promote on the basis of a single year at Eau Claire, since one year is not considered sufficient time for the candidate and the rest of the department to become acquainted. Dr. Dasgupta was, however, given credit for his years of service at Platteville, which decision is discretionary with the department. There is evidence, both from the testimony of Dr. Dasgupta and from the testimony of Dr. Condit, that in the fall of 1975 Dr. Condit did not approve of Dr. Dasgupta's classroom style. There is also evidence that the two witnesses differed in their opinions of what constitutes tolerable levels of students' dissent concerning the merits of American public school education system, during the course of classroom discussion. Dr. Condit found no fault with the substantive content of Dr. Dasgupta's lecture on the day he sat in on the class. The difference of opinion about the limits of free discussion in the classroom may be related to any number of factors. There is not evidence upon which to base a finding that the difference of opinion is probably the result of discrimination based on Dr. Dasgupta's national origin. The demeanor and testimony of both witnesses suggests that there is no love lost between them; this fact alone cannot be the basis of a determination of probable cause to believe that the psychology department, in committee, illegally discriminated against complainant.

After the denial of his promotion in 1975, Dr. Dasgupta contacted many people in the department and in the administration and made known his view that the decision of the promotion committee was unfair and unjust. He continued to voice this opinion for at least six or seven months after the promotion decision. (Resp. Ex. 2) Dr. Dasgupta, in his testimony, named two or three individuals in the department whom he considered to be prejudiced against him on the basis of his national origin. He considered the university administration kind and sympathetic to his grievances, although he was told that they could not dictate to the psychology department. The majority of the faculty on the promotion committee were not mentioned as being opposed to complainant's promotion on the basis of his national origin. Complainant offered no evidence in support of the possibility that in the fall of 1975 the discriminatory opposition of two or three faculty members was communicated to the entire promotion committee and that the denial of his promotion was the result of discrimination based on his national origin. In a letter to Dr. Leonard Haas, in July, 1976, (Resp. Ex. 2), complainant states that the vote to deny his promotion was 9-1. In that case, the "no" votes of the two or three named faculty members was not a majority of those voting.

The third phase of the relationship between complainant and the department centers around the fall of 1977 when complainant next applied for promotion under the changed procedures. Dr. Condit testified that the purpose of the change was to prevent yearly review of all staff who wanted to be reviewed. Dr. Condit also testified that only two or three

faculty were reviewed each year. Therefore the reason given for the change in procedure is somewhat suspect, in so far as it did not appear to be necessary to close the floodgates to a large number of faculty. The only major change in the department mentioned at the hearing was the addition of Dr. Dasgupta in 1974. He reacted strongly to the denial of his application for promotion in 1975 and made his feelings public within the department and with the university administration. It is conceivable that the department wanted to avoid future repetition of the same kind of reaction. This is not to say that institution of the new procedures was necessarily reasonable or proper, but rather to say that even if the intent was to keep Dr. Dasgupta from pressing his promotion requests, the evidence suggests reasons other than discrimination based on national origin. Differences between personalities and differences in expectations seem to be major factors in the creation of the uncomfortable relations which apparently exist between at least some members of the department and the complainant. On the basis of the evidence presented at the hearing, however, it does not appear probable that the situation was the result of discrimination against complainant on the basis of his national origin.

ORDER

The Commission having found no probable cause to believe that discrimination has occurred in violation of ss.111.31 through 111.37, Wis. Stats., the complaint is hereby dismissed.

Dated Feb. 19, 1980

STATE PERSONNEL COMMISSION

CMH:AR:mgd

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner