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 JUDITH THALHOFER, \*  
 \*  
 Complainant, \*  
 \*  
 v. \*  
 \*  
 President, UNIVERSITY OF \*  
 WISCONSIN SYSTEM, \*  
 \*  
 Respondent. \*  
 \*  
 Case No. 79-PC-ER-22 \*  
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 \* \* \* \* \*

ORDER

This matter is before the Commission on consideration of the hearing examiners proposed decision and order on probable cause. The Commission has consulted with the hearing examiner and considered the objections and arguments of the complainant.

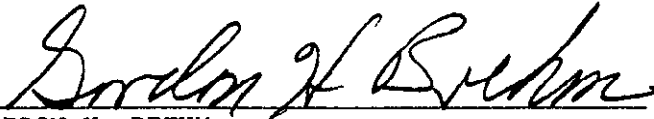
With respect to the complainant's argument that the decision was not issued within 90 days of the completion of the hearing, pursuant to s.230.44(4)(f), stats., the Commission notes that this provision by its terms applies only to actions "under this section," and this is not an action under §230.44 but rather under s.230.45(1)(b), stats. Furthermore, the Commission rules provide that the 90 day period commences to run from the date of filing of the last brief or argument, see §PC 3.03(11), Wis. Adm. Code, and the complainant's objections and argument with respect thereto were filed September 8, 1981.

The Commission hereby adopts as its final disposition of this matter the proposed decision and order, a copy of which is attached, with the following amendment to finding #10 to better reflect the record:

"February 1, 1979, is changed to January 31, 1979."

Dated: Sept. 23, 1981

STATE PERSONNEL COMMISSION

  
\_\_\_\_\_  
GORDON H. BREHM  
Chairperson

  
\_\_\_\_\_  
CHARLOTTE M. HIGBEE  
Commissioner

AJT:ers

(Commissioner Murphy did not participate in the decision or consideration of this matter because of his employment by the University of Wisconsin-System at the time this proceeding was commenced.)

PARTIES

Judith Thalhofer  
686 Franklin Street  
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Robert O'Neil  
1700 Van Hise Hall  
1220 Linden Drive  
Madison, WI, 53706

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 JUDITH THALHOFER, \*  
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 President, UNIVERSITY OF \*  
 WISCONSIN-OSHKOSH, \*  
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 Respondent. \*  
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 \* \* \* \* \*

PROPOSED  
 DECISION  
 AND  
 ORDER

NATURE OF THE CASE

Ms. Judith Thalhofer filed a charge of discrimination with the Personnel Commission on February 14, 1979. She alleged that the University of Wisconsin-Oshkosh failed to hire her as an instructor in the Geography Department because of her sex, age (41), and in retaliation for having earlier filed a discrimination complaint against the respondent, all in violation of Wisconsin Statutes, Sections 111.31 to 111.37. Following an investigation, Commission Equal Rights Officer George Callan-Woywod issued an Initial Determination on October 5, 1979, that there was No Probable Cause to believe that the Complainant was discriminated against on the basis of sex, age, or retaliation. Ms. Thalhofer appealed the Initial Determination finding, and a hearing was conducted in Oshkosh on February 26-27, 1981, before Commissioner Gordon H. Brehm. The parties subsequently filed briefs.

FINDINGS OF FACT

1. The statement of issue in this case, which was sent to the parties by the then Hearing Examiner, Agnes Rona, on June 23, 1980, is:

"Is there probable cause to believe that the University failed to hire the complainant as an instructor in the winter or spring of 1979 because of her sex and age and/or in retaliation against her for having filed a charge of discrimination against the Geography Department at the UW-Oshkosh in 1974?"

2. Shortly before Christmas, 1978, a member of the University of Wisconsin-Oshkosh Geography Department faculty suffered a heart attack. By early January, 1979, it became apparent that this faculty member would not be able to teach during the Spring, 1979 semester, which began January 29, 1979.

3. Geography Department faculty member Paul Johnson contacted the department chairman, Dr. Donald Bruyere, by telephone since the latter was in Oregon at the time. Dr. Bruyere gave Johnson permission to attempt to find a replacement for the position as soon as possible.

4. Johnson placed an ad in the Oshkosh Daily Northwestern, which stated the respondent was accepting applications for the teaching position which would be for the Spring, 1979 semester, only, with a starting date of January 29, 1979. The closing date for applications was January 16, 1979. The ad further stated that a Masters Degree was required for the position. (Complainant's Exhibit 2)

5. Complainant saw the ad in the Daily Northwestern on January 11, 1979, and subsequently telephoned Dr. Johnson about the position. Complainant had been employed by the respondent as an instructor in the Geography Department from 1965-1967. Dr. Johnson told Ms. Thalhofer that "he assumed" she would be eligible for the vacant position.

Ms. Thalhofer asked Dr. Johnson if it was necessary for her to submit her "credentials" and was told by Dr. Johnson "not at this time".

6. Complainant did not submit an application, resumé, or any credentials for the position prior to the deadline date of January 16, 1979, as listed in the newspaper ad.

7. On January 16, 1979, the Geography Department Staffing Committee members that were available between semesters met to consider the applicants for the position. Only three persons had inquired about the position, Ms. Thalhofer, a graduate student from the University of Wisconsin-Madison, and Mr. Robert Ader. Only Mr. Ader had submitted a written application, resumé, and credentials. The Committee thus only considered Ader and decided to recommend hiring him.

8. Upon learning that she had not been selected for the position, Ms. Thalhofer contacted the University's Affirmative Action Officer, Ms. Phyllis Liddell. Ms. Liddell contacted Dr. Bruyere immediately, and he agreed to reopen the selection process in order to consider Ms. Thalhofer's candidacy for the position. By this time, Ader had been offered and had accepted the position, but had not signed a contract.

9. Dr. Bruyere contacted the complainant and asked her to submit a resume and her credentials immediately. Ms. Thalhofer explained that she could not submit all her credentials immediately, but that she would send in what she had. She subsequently did so (Complainant's Exhibits 4, 5, 6).

10. The Staffing Committee met again on February 1, 1979, and considered the two candidates, Mr. Ader and Ms. Thalhofer. They reaffirmed their recommendation to hire Ader, and he was subsequently employed in the position for the Spring, 1979 semester.

11. Four of the Staffing Committee members, Dr. Bruyere, Johnson, Todd Fonstad, and Herbert Gaede had been on the Geography Department Staff when complainant taught there previously. All of them had poor opinions of her as an instructor.

12. Ader had recently received his Master's degree in Geography from the University of South Carolina. He had no previous teaching experience except as a teaching assistant while in college. He had exceptional grades in school and good letters of recommendation.

13. Ms. Thalhofer also has a Master's degree in Geography and outstanding grades. She had two years teaching experience at the University of Wisconsin-Oshkosh, but according to the information she furnished the Staffing Committee, she had not been active professionally in the 10 years prior to 1979.

14. There were no women members of the UW-Oshkosh Geography Department in 1979. At least five women had been employed by the department previously, but none had ever gained tenure.

15. In the approximately eight years preceding 1979, about 5% of the persons receiving doctoral degrees in Geography in the United States were women, and about 9½% of those receiving Master's degrees were women.

16. Neither sex, age, or retaliation were considered by the respondent in the decision not to hire Complainant.

#### CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to Section 230.45(1)(b), Wis. Stats.

2. The complainant has the burden of proving that respondent discriminated against her as charged in the complaint of discrimination, filed February 14, 1979.

3. Complainant has not met that burden of proof.

4. Respondent did not discriminate against the complainant on the basis of sex, age, or retaliation in not hiring her and this complaint must be dismissed.

#### OPINION

Complainant saw an ad in the Oshkosh Daily Northwestern on January 11, 1979, seeking an instructor at the University of Wisconsin-Oshkosh Geography Department, where she had taught for two years, from 1965-1967. She then telephoned Paul Johnson, whose name and telephone number were listed in the ad, to inquire about the position.

Ms. Thalhofer and Mr. Johnson agreed in their testimony that she was told she did not have to send in her "credentials" "at this time". Consequently, complainant sent nothing in writing to Johnson about her interest in the position, despite the fact that the ad stated a closing date of January 16, 1979, for applications to be in.

It wasn't until January 29, 1979, the date of the start of the Spring semester, when the position had to be filled, that Ms. Thalhofer contacted the University of Wisconsin Affirmative Action Officer, Ms. Phyllis Liddell, to complain about not being selected for the position. After Ms. Liddell confirmed that complainant had spoken to Johnson on the telephone and indicated an interest in the position before the selection of Robert Ader

for the job, she immediately saw that the selection process was reopened, in order to consider Ms. Thalhofer's application.

Complainant furnished respondent with a resume' and a transcript of her grades while an undergraduate student. She also gave the names of some references to Dr. Bruyere. The Staffing Committee then met again on February 1, 1979, and again selected Ader for the position rather than the complainant.

Ms. Thalhofer contended that she interpreted Johnson's telephone comment that she did not have to send in her credentials "at this time" to mean that she did not have to make any application of any kind before the January 16, 1979, deadline stated in the ad. It is inconceivable to the Commission that a person applying for this type of position could realistically believe that she would seriously be considered for the position simply by expressing an interest in the job during a telephone conversation. She certainly should have at least submitted an up-to-date, complete resume' before the deadline.

Even after the selection process had been reopened, Ms. Thalhofer's resume that she had submitted did not include any information other than her education background. She stated that this was the only information necessary for her to submit because a Master's degree was the only qualification for the position. This is hardly a professional attitude, and it limited the Staffing Committee to being able to consider only this limited information.

Members of the Committee naturally assumed that Ms. Thalhofer had been inactive professionally in recent years. At least four members of the Committee had low opinions of her as an instructor, which were formed by them while they served with her on the UW-Oshkosh faculty during 1965-1967.



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There was no evidence offered that would indicated that the Committee members considered her age or sex in not selecting her. Complainant did not establish in the record that she had ever filed a previous charge of discrimination against the respondent, so retaliation could not have been a consideration of the Committee.

Testimony offered by Ms. Liddell established that nearly 90% of those qualified to teach Geography in the United States are men. This would account for the fact that there are no tenured women on the faculty at the University of Wisconsin-Oshkosh.

For all of the above reasons, there is no probable cause to believe that complainant was discriminated against for reasons of sex, age, or retaliation by respondent when it failed to hire her as an instructor.

ORDER

It is ordered that the Complaint of Discrimination for reasons of sex, age, and retaliation against the University of Wisconsin-Oshkosh is hereby dismissed.

Dated: \_\_\_\_\_

STATE PERSONNEL COMMISSION

GHB:nwb

Parties:

Judith Thalhofer  
696 Franklin Street  
Oshkosh, WI 54901

\_\_\_\_\_  
GORDON H. BREHM  
Chairperson

Edward M. Penson  
UW-Oshkosh  
Oshkosh, WI 54901

\_\_\_\_\_  
CHARLOTTE M. HIGBEE  
Commissioner

\_\_\_\_\_  
DONALD R. MURPHY  
Commissioner