

STATE OF WISCONSIN

PERSONNEL COMMISSION

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KEN VANDER ZANDEN,
 Appellant,

v.

Secretary, DEPARTMENT OF
 INDUSTRY, LABOR AND HUMAN
 RELATIONS,
 Respondent.

Case No. 84-0069-PC-ER

* * * * *

INTERIM
 DECISION
 AND
 ORDER

This complaint of retaliation under the "Whistleblower Law," Chapter 230, Subchapter III, Stats., is before the Commission on respondent's motion to dismiss, filed in letter form on July 23, 1984. Said letter contains, in part, the following:

DILHR hereby moves to dismiss this complaint on the grounds that it does not come under §§230.80 to 230.89, Stats. Specifically, the individual named in the complaint (Walter Marty) has no supervisory relationship to the complainant.

* * *

I submit that Mr. Marty is simply not an appointing authority, agent of an appointing authority or supervisor under §230.83(1), Stats., in terms of his relationship to Mr. Vander Zanden. I would not be making this objection if the complaint was directed at the DILHR Secretary or one of Mr. Vander Zanden's supervisors, but the allegations are directed only at Mr. Marty.

It appears to be undisputed that Mr. Vander Zanden is employed in the Division of Apprenticeship and Training, and is not directly supervised by Mr. Marty, who is the Director of the Oshkosh District Job Service Office. Mr. Vander Zanden's complaint of discrimination included the following:

I disclosed information to the Sec [sic] of the DILHR concerning what employes in the DILHR Job Service Oshkosh office saw as improper management practices. Upon the completion of the

investigation, the Oshkosh Job Service Director set in place work restrictions which make it difficult, if not impossible to carry out my assigned job duties....

Section 230.83(1) provides as follows:

Retaliatory action prohibited (1) No appointing authority, agent of an appointing authority or supervisor may initiate or administer, or threaten to initiate or administer, any retaliatory action against an employe.

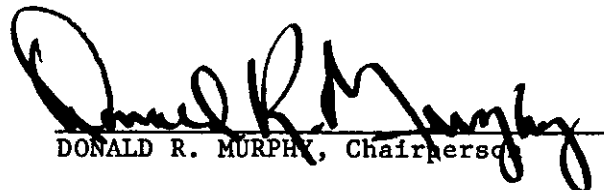
Mr. Marty presumably was acting in his official capacity and in legal effect was an agent of the appointing authority when he allegedly took the action set forth in the complaint. However, the thrust of the respondent's motion is that under the statute Mr. Marty would have had to have been in some kind of supervisory relationship with respect to the complainant.

The plain language of the statute does not contain this requirement. Section 230.83(1), Stats., prohibits retaliatory action by an "agent of an appointing authority" with no requirement that the agent be in the supervisory chain over the complainant. The Commission can discern no basis for implying that the statute requires such a relationship. To the contrary, such a reading of the law could severely vitiate the manifest legislative interest underlying the statute. For example, an employe in an agency personnel unit might decide to punish an employe in another unit for having disclosed embarrassing information about the agency by denying a reclassification request and the attendant salary increase, and such action would not be prohibited. There does not appear to be a persuasive basis for the interpretation of the statute indicated by the respondent.

ORDER

The respondent's motion to dismiss filed July 23, 1984, is denied.

Dated: September 12, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jmf
JPDO6


LAURIE R. McCALLUM, Commissioner

Parties:

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DENNIS P. MCGILLIGAN, Commissioner

Howard Bellman, Secretary
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