STATE OF WISCONSIN PERSONNEL COMMISSION

TOM L. McFARLAND,
MARTINUS J. JOUBERT,

Complainants,

v.

President, UNIVERSITY OF WISCONSIN SYSTEM (Whitewater)

Respondent.

Case Nos. 85-0167-PC-ER
86-0026-PC-ER

INTERIM DECISION AND ORDER

NATURE OF THE CASE

These are two complaints of discrimination on the basis of national origin. They arise out of the respondent's denial of a teaching exchange between complainant McFarland, a member of the UW-Whitewater faculty, and complainant Joubert, a member of the faculty at the University of Zululand in the Republic of South Africa. When the first complaint was filed, the Commission decided there were a number of significant threshold legal issues that should be explored prior to undertaking an investigation into the substantive aspects of the matter. It requested the parties to submit briefs on the following issues:

1. Whether the respondent's denial of the faculty exchange falls within the parameters of "terms, conditions, or privileges of employment" as these terms are used in the Fair Employment Act, §111.322(2), Stats.

2. Whether the respondent's denial of the faculty exchange can be considered to be an action based on Professor M. J. Joubert's "national origin," as that term is used in the Fair Employment Act, §111.321, Stats.

3. Whether the complaint [sic: complainant] has standing with respect to a national original contention based on the national origin of Professor M. J. Joubert.

The parties also were asked to address any other issues they perceived to be present. Subsequently, complainant Joubert submitted a complaint of discrimination on his own behalf, and all of the parties have submitted written briefs. The Commission will address the above issues plus certain other issues peculiar to complainant Joubert's case. The following findings, which appear to be undisputed, are based on the parties' submissions and are made for the sole purpose of addressing these preliminary issues.

FINDINGS OF FACT

1. Complainant McFarland teaches in the Department of Mathematics and Computer Science at the University of Wisconsin at Whitewater (UW-Whitewater). Like other faculty members, he is allowed to request permission to arrange "exchanges" with faculty members from other institutions, whereby the two individuals exchange places for a determined period of time. The preliminary arrangements for such exchanges are made by the individuals themselves, but that they are subject to approval by the University.

2. In the Spring of 1985, complainant McFarland agreed to many of the details of a proposed exchange with complainant Joubert, a teacher in the Department of Applied Mathematics at the University of Zululand in the Republic of South Africa. The exchange was planned for a period of several months beginning in January 1987.

3. However, in early August 1985, complainant McFarland received a letter from Richard Schauer, his Department Chairman, in which Schauer stated, in part:

> "I write this letter to inform you that I can no longer maintain a position of neutrality on the matter of your proposed exchange

> visit to the Union of South Africa. ... It could be argued that faculty exchanges are beneficial and are largely private arrangements between the participating individuals. My present view is that the important unresolved social issues raise moral and political questions that transcend exchanges with South African Universities. The symbolic content of your proposed visit has risen so that it is no longer unconnected to the moral and political standing of this department.... In the department meeting this Fall when your proposed exchange is considered, I will oppose department approval. Last year a Faculty Senate resolution of mine was adopted that asked that the State Investment Board sever its connections with companies doing business in South Africa. It is my intent this year to ask that all faculty exchanges between UW-Whitewater and South Africa be discontinued...."

The letter indicated that copies were being sent to the Chancellor, the Vice Chancellor, and the Dean.

4. On September 5, 1985, H. Gaylon Greenhill, Vice Chancellor and Dean of Faculties of the University, wrote to complainant Joubert in South Africa, stating:

> Professor Tom McFarland of our Department of Mathematics and Computer Science had informed me of your discussions about a faculty exchange to begin in January of 1987. While his discussions have been in good faith, the current situation in South Africa makes the possibility of an exchange unwise. In fact, UW-Whitewater has adopted a policy of not approving any future exchanges with the Republic of South Africa.
>
> I regret any inconvenience that this termination of discussions about a possible exchange might cause you, but hope you understand why this action is taken.

The Vice Chancellor's letter indicated that copies were being sent to the Chancellor, to Acting Dean Faulton, and to the complainants.

5. The faculty meeting Schauer mentioned was held on September 17, 1985. Minutes of the meeting state that Professor Schauer himself did not attend because he was ill. At the meeting, a motion was made which approved complainant McFarland's particular exchange but registered disapproval of the South African government's policies of racial segregation.

The motion passed 9 in favor, 2 against, with 3 abstentions. The precise wording of the motion was:

> THE MATHEMATICS DEPARTMENT hereby approves the exchange of faculty, in which Thomas McFarland will teach at the University of Zululand in Natal, South Africa, and Dr. M. J. Joubert will come to the University of Wisconsin-Whitewater, each faculty member performing approximately the teaching duties of the other during the spring semester of 1987. As is the tradition with visiting faculty, it is understood that Dr. M. J. Joubert will teach approximately 9 credits per semester while he is here at Whitewater. The Mathematics Department hereby grants to the Chairman, Richard Schauer, the authority to pursue the best interests of the department in arranging specific details of this faculty exchange.
>
> it is further understood that the University of Wisconsin-Whitewater shall have no obligations, written or implied, direct or indirect, to the government of the Republic of South Africa, whose policies of racial segregation are abhorrent to the Mathematics Department, and it is sincerely hoped that the long-standing tradition of FREEDOM OF ASSOCIATION and SPIRIT OF UNCENSURED INQUIRY which has heretofore characterized this university's exchange program will aid in the dismantling of South Africa's racial barriers.

6. The next day, complainant McFarland wrote to Vice Chancellor Greenhill, asking for a response to this request for approval of the proposed exchange. In a letter dated September 20, the Vice Chancellor responded:

> Please be advised that I do not approve of any faculty exchanges with institutions in South Africa for the reasons I indicated when I initially indicated University policy not to approve any exchanges with South African universities given conditions there. My decision can be appealed to Chancellor Connor.

7. Complainant McFarland did appeal the decision, claiming among other things that the refusal to approve the exchange constituted discrimination in employment. The Chancellor on October 15, 1985, replied that he was advised by the "System legal counsel" that the denial of the exchange did not constitute discrimination in employment, and stated:

> Since the legal basis for your appeal of Vice Chancellor Greenhill's decision does not exist and since this is a matter

> for institutional judgement, I am reaffirming and concurring in the Vice Chancellor's decision to deny this exchange.

The Chancellor's letter encouraged complainant McFarland to pursue the possibility of an alternative exchange.

8. Thereafter, complainant McFarland filed this complaint, alleging that the University's action constituted illegal discrimination against him "because of the national origin of my exchange colleague," and complainant Joubert subsequently filed a complaint on his own behalf.

DISCUSSION

No 85-0167-PC-ER (McFarland)

Issue 1: Whether the faculty exchange is a "term, condition or privilege of employment."

The FEA states that it is an act of employment discrimination:

> To refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization membership any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment or labor organization membership because of any basis enumerated in §111.321. (emphasis added)

This raises the question of whether the faculty exchange sought by complainant McFarland is included within the phrase "terms, conditions or privileges of employment."

The Commission has been unable to find any direct precedent on this question, and there appears to be little authority from any jurisdiction dealing with the meaning of this or similar language. This is perhaps not surprising given the rather broad sweep of the language in question. Several federal courts have discussed on a substantive level whether Title VII[1] was violated with respect to a wide range of matters. While not

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[1] Title VII uses identical language, 42 USC §2000e-2.

actually addressing the question of whether such matters fell within the meaning of "terms, conditions or privileges of employment," these holdings obviously suggest that they do. See, e.g., Abrams v. Baylor College of Medicine, 581 F. Supp. 1570, 34 FEP Cases 229 (S.D. Texas 1984) (medical staff rotation to Saudi Arabia); Geisler v. Folsom, 735 F. 2d 991, 34 FEP Cases, 502 (6th Cir. 1984) (office and furniture assignments); Plummer v. Aman, 36 FEP 960 (E.D. Pa. 1984) (work assignments, help and assistance, office space).

The respondent stresses the fact that approval for exchanges is not automatic:

> At the UW-Whitewater, all faculty members are eligible to apply for faculty exchanges, but participation in the program requires the approval of the department, department chair, dean, the vice chancellor and the chancellor. (Letter, January 21, 1986).

The respondent adds:

> "... A faculty exchange is by no means automatic and available to all faculty members who choose to participate.... Approval is not a benefit which an employer can expect merely by virtue of being an employee...."

The fact that some sort of qualification or pre-condition is applied would not seem to change the characterization of the exchange as at least a "privilege". Furthermore, although the University may apply criteria or a standard of some sort in approving requests for faculty exchanges, in this particular case the University does not contend that approval was withheld because of a failure to meet any particular requirement. The sole basis stated for refusing the exchange is that it had become University policy not to approve future exchanges with institutions in South Africa.

The University also argues that "an exchange with a South African employer is not a privilege of any Whitewater faculty member's employment" because the University's "policy precludes participation by any faculty

member in an exchange with South Africa." However, the statement that the University's policy "precludes an exchange with South Africa" simply assumes the conclusion of the very question this complaint raises: whether such a policy as it affects complainant, constitutes illegal discrimination in employment because of national origin.

Finally, the Commission also must be mindful of the legislative admonition to liberally interpret the FEA, §111.31(3), Stats.

In light of all the foregoing, the Commission concludes that the faculty exchange is a "term, condition or privilege of employment."

Issue 2: Whether the refusal to allow the faculty exchange was an action "on the basis of ... national origin....", 111.321, Stats.

The respondent contends that the refusal to approve the faculty exchange was not on the basis of complainant Joubert's national origin[2] as that term is used in the FEA; it sees it as a refusal to have contact with the South African nation. Respondent argues:

> ... the UW-Whitewater has adopted a uniform policy of denying faculty exchanges with the Republic of South Africa. This policy has nothing to do with the status of any individual as a South African, nor with any perceptions of South Africans as a class of people. It is based, instead, on an administrative determination that contact with the South African nation is unwise, given the well-known political situation in that country. The FEA prohibits discrimination against individuals on the basis of national origin. It does not prohibit an employer from deciding that it does not wish to have contact with a particular country.

In other words, the University characterizes the policy as "facially neutral" with respect to national origin: it contends it would apply equally to prohibit exchanges with any individual at a university whether

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[2] Addressed below is the question of whether complainant McFarland has standing as to a claim based on complainant Joubert's national origin.

he was South African, British, or French. And the complainant contends that in reality, the effect of the policy is to exclude faculty exchanges with South Africans as individuals. At first blush, the University's argument is appealing, for it is true that it would deny participation in the faculty exchanges to any academic from South Africa, not just those who are themselves South African. On the other hand, in cases under both the 14th Amendment and Title VII, where a policy or statute is claimed to be discriminatory, courts have for many years looked beyond the language of the text involved to consider its actual effect.

A leading case which illustrates this point is Espinoza v. Farah Manufacturing Company, Inc., 414 U.S. 86, 92-93, 94 S. Ct. 334, 338-339, 38 L. Ed. 2d 287 (1973). This was a Title VII proceeding involving a claim that the employer had illegally discriminated against a resident alien who was a Mexican citizen by rejecting her employment application because of its policy against the employment of aliens. The Court held that the term "national origin" in Sec. 703 of Title VII did not apply to citizenship requirements per se. However, the Court made it clear that if the employer's citizenship requirement had been shown to have the effect of discriminating on the basis of national origin, then it would be a different matter:

> Certainly Title VII prohibits discrimination on the basis of citizenship whenever it has the purpose or effect of discriminating on the basis of national origin. 'The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. 'Griggs v. Duke Power Co., 401 U.S. 424, 431, 91 S.Ct. 849, 853, 28 L.Ed. 2d 158 (1971).
>
> It is equally clear, however, that these principles lend no support to petitioners in this case. There is no indication that Farah's policy against employment of aliens had the effect of discriminating against persons of Mexican national origin. It is conceded that Farah accepts employes of Mexican origin, provided the individual concerned has become an American citizen. Indeed, the District Court found that persons of Mexican ancestry make up

> more than 96% of those doing the work for which Ms. Espinoza applied...." (footnote omitted) (emphasis added)

Therefore, a policy that on its face is completely neutral with respect to an individual's national origin is not automatically shielded from scrutiny.

The Title VII case most similar to the matter before the Commission appears to be Molerio v. Federal Bureau of Investigation, 749 F.2d 815, 36 FEP Cases 586, 590-591 (D.C. Cir. 1984). That case involved a person of Cuban origin who was denied employment with the FBI for security reasons. The agency's security concerns included the fact that Molerio had relatives in Cuba and that the agency "...generally 'would attach special weight to the fact that an applicant had relatives residing in any foreign country controlled by a government whose interests or policies are hostile to or inconsistent with those of the United States'..." Molerio attacked this rationale on the basis of both disparate treatment and disparate impact with respect to national origin.

The court held that since the agency's policy was facially neutral, there was no indication of disparate treatment:

> "Neither the general policy nor its particular application to Cuba is any evidence of discrimination on the basis of race or national origin, since it would apply to any person, of any race or nationality, with relatives in the pertinent country."

This part of the Court's analysis is very similar to the respondent's argument in the instant case, since the respondent's policy is facially neutral and could apply to persons of any national origin who happened to be teaching at a South African institution.

The Court then addressed the disparate impact issue as follows:

> ...Molerio also asserts that the practice has a disparate impact on applicants of Cuban ancestry -- since they are more likely to have relatives in Cuba -- and therefore must be justified by a showing of business necessity. Of course the general practice in

> question has not more impact on Cubans than it does on East Germans or Iranians or North Vietnamese. In any case, 42 U.S.C. §2000e2(g) specifically acknowledges the general validity of national security clearance requirements, and we hold as a matter of law that the mere fact that such requirements impose special disabilities on the basis of connection with particular foreign countries is not alone evidence of discrimination.

This analysis rests on two significant distinctions between that case and the one before the Commission.

First, the FBI policy in question did not focus on a particular country, while here the respondent's policy has to do with only one country, and any disparate impact presumably would be restricted to persons of South African origin.

Second, and more importantly, there is no Wisconsin analogue to 42 U.S.C. §2000e-2(g), which in effect exempts a refusal to hire on security clearance grounds from potential liability under Title VII:

> "Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position... if
> (1) the occupancy of such positions, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and
> (2) such individual has not fulfilled or ceased to fulfill that requirement."

Therefore, even if the FBI policy in question were found to have a disparate impact on persons of Cuban origin, there still would be no unlawful employment practice. Again, there is no exemption under the Wisconsin FEA which would have a similar effect with respect to the respondent's policy here in question.

In light of the foregoing, the Commission cannot conclude as a matter of law that there is no possibility that the respondent's policy could be deemed an action taken on the basis of national origin under the Wisconsin

FEA. Accordingly, it would be inappropriate to dismiss this complaint now on this basis.

Issue 3: Whether complainant McFarland himself has standing to bring a complaint.

The University contends complainant McFarland cannot file a complaint 1) because it is not his own national origin which resulted in the refusal and 2) because he cannot bring a claim based upon the national origin of complainant Joubert. Complainant McFarland contends that he can file a claim because he was "injured" because of discrimination based on the national origin of his prospective "exchange colleague."

The Wisconsin FEA does not by its terms state that a complaint about discrimination can be made only where it is the complainant's own sex, race, national origin, etc., which is involved. Rather, in several places, it states it is concerned with discrimination

> "against any individual on the basis of age, race, creed,... national origin..."

§111.31(2), 111.31(3), and 111.321.

This is in contrast to Title VII itself, which provides that it is unlawful for an employer:

> ...to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.... (emphasis added)

However, even under Title VII, EOOC guidelines concerning discrimination because of national origin state:

> The Commission will examine with particular concern charges alleging that individuals within the jurisdiction of the Commission have been denied equal employment opportunity for reasons which are grounded in national origin considerations, such as (a) marriage to or association with persons of a national origin group; (b) membership in, or association with an organization identified with or seeking to promote the interests of national

> origin groups; (c) attendance or participation in schools, churches, temples or mosques, generally used by persons of a national origin group; and (d) because an individual's name or spouse's name is associated with a national origin group. In examining these charges for unlawful national origin discrimination, the Commission will apply general Title VII principles, such as disparate treatment and adverse impact. 29 C.F.R. 1606 (as of December 29, 1980) (emphasis added)

Furthermore, there is precedent under both the FEA and Title VII for recognizing the standing of individuals who are not themselves members of the protected group in question, but who suffer injury because of discrimination against others.

Under the FEA, this Commission decided that a white man divorced from a black female could file a discrimination complaint on the basis of race. Lee Ozanne v. Department of Health and Social Services, Case No. 83-0067-PC-ER (March 25, 1985).

In cases under Title VII (and under the Civil Rights Act of 1866) many courts have accorded standing to persons whose claim is based upon injury which occurs because of another individual's race or sex.

Generally they state that:

> Overly technical judicial doctrines of standing or election of remedies may not be used to frustrate national public policy reflected both in Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866. If a plaintiff is sufficiently aggrieved so that he claims enough injury in fact to present a genuine case or controversy within the meaning of Article III of the U.S. Constitution, he should have standing to sue in his own right and as a class representative. Hackett v. McGuire Bros., Inc., 3 FEP Cases 648, 445 F.2d 443 (CA 3 1971).

In the language of the traditional Article III "standing" cases, this means that complainants should have "a personal stake in the outcome of the action," or "sufficient personal stake in the outcome to assure that concrete adverseness will occur."

Accordingly, courts have recognized the standing of a white woman who claimed her employer discharged her because of her marriage to a Black man,

Gresham v. Waffle House, Inc., 35 FEP 763 (DC GA 1984); of a white man who was not hired for a job because he was married to a Black woman, Faraca v. Clements, 10 FEP Cases 718 (DC GA. 1973); and of white employees who claim that hiring practices which discriminate against Blacks deny the whites a job atmosphere free of discrimination (EEOC No. 68-8-257E and 68-9-329E, 2 FEP Cases 79, July 8, 1969), or deny them the benefits of associating with Blacks, EEOC v. Bailey Co., Inc., 15 FEP Cases 972 (CA6 1977) and NOW v. Sperry-Rand Corp, 18 FEP Cases 455 (DC Conn 1978). Standing has also been accorded truck drivers who claimed their employer's discrimination against Blacks violated their personal right to work in an environment unaffected by racial discrimination and also were deprived of the same employment opportunity denied to black truck drivers. EEOC v. T.I.M.E.-D.C. Freight, Inc., 27 FEP Cases 10, 659 F.2d 690 (CA5 1981).

Complainant McFarland clearly was injured by the application of the respondent's policy, and, in light of the foregoing authority, it appears he has standing to raise a claim of national origin discrimination based on the national origin of the would-be visiting faculty member, complainant Joubert.

Case No. 86-0026-PC-ER (Joubert)

Issue 1: Whether the relationship complainant Joubert would have had to the University at Whitewater would have been such as to constitute "employment", §111.322(1), Stats.

If complainant Joubert were not considered an employe of the respondent while serving as an exchange professor, this would raise a serious question as to whether respondent's action to deny him that status would be cognizable under the FEA. See, e.g., Gutierrez v. Aero Mayflower Transit Co., 22 FEP Cases 447 (N.D. Cal. 1979).

The University argues that complainant Joubert would have been merely a "visitor", and, as such, would not have been in an employment relationship within the scope of the FEA. It states that faculty participating in the faculty exchange program remain in the employ of their "home" universities and "continue to be paid by and receive fringe benefits from their 'home' universities." They contend that the exchange academic does not "apply" for employment and the University does not "offer" him employment.

The complainants view the matter differently. Complainant Joubert writes:

> In regard to the question of whether my faculty exchange falls within the parameter of "employment" as that term is used in Wisconsin's Fair Employment Act, please note that through Thomas McFarland, prior to Mr. Greehnill's blunt discouragement, I had sought from Prof. Schauer the position of "Visiting Professor" at UW-Whitewater, as have other exchange professors. Presumeably, [sic] Prof. Schauer would have granted me this position in a formal letter, as he has done for others in the past. As stipulated in the minutes of the Mathematics Dept. at UW-Whitewater [B], I would have been REQUIRED to teach at least 9 hours per week at Whitewater, as well as perform the other duties of a professor such as hold office hours, mark examinations, and conduct a seminar or talk; I would have been given an office and secretarial help; all of these are activities of employment. The fact that I may simultaneously retain employment rights elsewhere would not dilute the fact of employment at UW-Whitewater.

In addition to these points, complainant McFarland states that as an exchange professor, complainant Joubert would have been afforded the use of University facilities and would have held a staff identification card.

In the Commission's view, that complainant Joubert retains his employment relationship with the sending institution is not in itself mutually exclusive with the status of being considered respondent's employe for purposes of the FEA. There is nothing in the law that would compel this result.

For example, Amarnare v. Merrill Lynch, 36 FEP Cases 6, 8-9 (S.D. N.Y. 1984), involved a Title VII claim by a person who was at Merrill Lynch for

two weeks through a temporary help agency (Mature Temps). She claimed Merrill Lynch then discharged her because of her race, sex, and national origin. Merrill Lynch moved to dismiss for failure to state a claim upon which relief could be granted, contending that her salary was paid by Mature Temps and that there was no employer-employe relationship between Merrill Lynch and Ms. Amarnare.

In denying the motion to dismiss, the Court pointed out that under Title VII, it is possible to have dual employment:

> Merrill Lynch and Mature Temps are not so cooperative with one another as to constitute a consolidated or integrated enterprise; as such, they are not "joint employers" under Title VII in the strict sense of that term. See Baker v. Stuart Broadcasting Co., 560 F.2d 389, 391-92, 15 FEP Cases 394 (8th Cir. 1977); Linskey v. Heidelberg Eastern, Inc., 470 F.Supp. 1181, 1183-84, 19 FEP Cases 1183 (E.D.N.Y. 1979). However, this does not mean that Amarnare could not have been an employee of both concerns simultaneously, see Beaver v. Jacuzzi Bros., Inc., 454 F.2d 284, 285 (8th Cir. 1972) (per curiam).... 36 FEP Cases at 8, n.11.

The Court's further analysis of the matter contained the following:

> That plaintiff was paid directly by Mature Temps is not conclusive that she was solely its employee. That she was subject to the direction of Merrill Lynch in her work assignments, hours of service, and other usual aspects of an employee-employer relationship permits an inference that she was an employee of both Mature Temps and Merrill Lynch during the two-week period in question. Her status differs from that of most other Title VII plaintiffs in that her services were obtained through a temporary employment agency. At common law, the status of a person employed under such circumstances would be determined under the loaned servant doctrine, which provides that "an employee directed or permitted to perform services for another 'special' employer may become that employer's employee while performing those services." Federal courts have applied this common law rule in other contexts and held that a person whose salary is paid by one entity while his services are engaged on a temporary basis by another is an employee of both entities. The key factor in these loaned servant cases was the "special" employer's exclusive right to supervise the employee's work during the period of temporary service. These cases lend further support to the plaintiff's allegation that she was an employee of both Merrill Lynch and Mature Temps for purposes of Title VII. 36 FEP Cases at 9 (footnotes omitted)

Given the complainants' allegations concerning the nature of a visiting professor's status at UW-Whitewater, the foregoing analysis appears to a large extent to be applicable to the Joubert complaint. At this stage of the proceeding, it cannot be said that as a matter of law complainant Joubert would not be considered respondent's employe for FEA purposes if in the status of a visiting professor.

Issue 2: Whether the refusal to allow the faculty exchange was an action "on the basis of... national origin...", 111.321, Stats.

This issue is discussed above as Issue 2 in analyzing complainant McFarland's complaint.

Issue 3: Whether a non-resident non-citizen can invoke the protection of the Wisconsin Fair Employment Act (FEA)?

Although this issue was not raised by the University, the Commission has looked into the question. There is no indication in the statutes that the protections of the FEA are limited to state residents, nor even to people who are within the United States[3].

CONCLUSION

At this state of the proceeding, it appears that the Commission has personal and subject matter jurisdiction, and there further does not appear to be anything that as a matter of law would act as a bar to the Commission proceeding with these complaints.

It should be emphasized that the legal determinations set forth above are based on what amount to the pleadings, as well as the facts advanced by the parties in their arguments, and therefore these determinations are subject to change in the event that further proceedings reveal that the

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[3] The same is true for Title VII.

material factual underpinnings are not as assumed for the purpose of making these preliminary rulings.

Finally, it should also be emphasized that this decision is merely a preliminary decision on certain threshold legal issues, and is neither directly nor indirectly any kind of judgment on the substantive aspects of respondent's policy with respect to South African exchanges. The Commission would reach the same conclusions regarding these preliminary legal issues regardless of whether the University's faculty exchange policy involved South Africa, Libya, Israel, the USSR or Canada.

ORDER

In light of the foregoing determinations, the Commission staff is directed to proceed with the investigation of these matters.

Dated: Sept. 9, 1986 STATE PERSONNEL COMMISSION

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DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner