

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 VERL R. W. FRANZ,  
                     Complainant,  
 v.  
 President, UNIVERSITY OF  
 WISCONSIN SYSTEM (Oshkosh)  
                     Respondent.  
 Case No. 86-0110-PC-ER  
 \* \* \* \* \*

INTERIM  
 DECISION  
 AND  
 ORDER

This matter is before the Commission on respondent's motion to dismiss filed August 21, 1989. In this motion, respondent contends that so much of this complaint as relates to the denial of complainant's application for a Summer Institute teaching position on August 28, 1986, was untimely filed.<sup>1</sup>

Respondent argues that since it is undisputed that complainant was informed of his nonselection for the Summer Institute position on August 28, 1986, and filed his complaint on September 2, 1986, it is not possible that the nonselection could have been in retaliation for having filed the complaint. Technically, this does not run to timeliness but to failure to state a claim upon which relief can be granted. It is obvious on the face of the complaint that complaintant could not have been

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<sup>1</sup> So much of this complaint as alleges that complaint was denied tenure because of his age in 1985 was dismissed as untimely by an order entered August 24, 1989.

discriminated against on August 28, 1986, in retaliation for filing a complaint on September 2, 1986, and so much of this matter as rests on this allegation should be dismissed for failure to state a claim upon which relief can be granted.

This complaint also alleges that the August 28, 1986, nonselection was retaliatory for "whistleblowing":

"... while on the Academic Computer Users Committee I was involved in opposing Hoffman and W. J. Leffin when they attempted to manipulate the committee to agree to very questionable allocations of computer equipment and computer use by social sciences students and faculty ...."

Respondent contends that the complaint was untimely filed under the Whistleblower Law, §230.85(1), stats. This subsection requires that a complaint be filed "within 60 days after the retaliatory action allegedly occurred ... or after the employe learned of the retaliatory action ... whichever is later." Since complainant learned of the retaliatory action on August 28, 1986, and filed his complaint on September 2, 1986, it was timely filed with respect to whistleblowing retaliation.

#### ORDER


Respondent's motion to dismiss filed on August 21, 1989, is granted in part and denied in part, and so much of this complaint as relates to the allegation that complainant was denied employment in a position in the Summer Institute on August 28, 1986, because of his filing of this complaint is dismissed for failure to state a claim under the Fair Employment Act upon which relief can be granted. Jurisdiction is retained over so

much of the complaint as alleges that he was denied said position in retaliation for having opposed Hoffman and Seffin while on the Academic Computer Users Committee.

Dated: October 4, 1989 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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