

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JAMES MARTIN, *

Complainant, *

v. *

Secretary, DEPARTMENT OF CORRECTIONS, and
Chancellor, UNIVERSITY OF WISCONSIN - Madison, *

Respondents. *

Case Nos. 90-0080, 0086, 0087, and
0115-PC-ER *

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JAMES MARTIN, *

Complainant, *

v. *

Secretary, DEPARTMENT OF CORRECTIONS, *

Respondent. *

Case Nos. 90-0093, 0151-PC-ER *

* * * * *

RULING ON MOTION
TO DISMISS
UW-MADISON AS
PARTY-RESPONDENT

This matter is before the Commission on the motion of respondent UW-Madison, filed November 2, 1990, to dismiss the complaints as to it on the ground that it is not an employer of complainant. Both parties have filed briefs through counsel.

It appears to be undisputed that complainant has been employed by respondent DOC (Department of Corrections) as a CO3 (Corrections Officer 3) assigned to the Security Ward at the UW-Hospital and Clinic (UWH&C). Complainant makes a number of allegations in his charges of discrimination, but apparently the primary allegation is that he and other officers were reassigned from the UWH&C Security Ward to OCI (Oakhill Correctional Institution) and harassed as a result of complaints of sexual harassment by UWH&C

employees. These charges invoked the Fair Employment Act (FEA) (Subchapter II, Chapter III, stats.), the "whistleblower" law (Subchapter III, Chapter 230, stats.), and the Wisconsin Occupational Health and Safety Law (OSH) (§101.055(8), stats.).

In support of its motion, UW-Madison asserts that complainant is a DOC employe and that UW-Madison has no authority to hire, transfer, discipline or discharge complainant. Complainant does not contest these assertions, but argues that complainant's reassignment to OCI "was precipitated, in part, by the actions of the Superintendent of UWH&C Mr. Gordon D[e]rzon." The complainant also asserts in an amended complaint filed November 21, 1990, presumably in connection with the pending motion, that "on information and belief, it was Mr. Derzon, who individually or as a co-conspirator with others, caused my reassignment/transfer."

For purposes of ruling on this motion, the Commission will assume complainant's factual allegations. Therefore, the issue presented is, assuming that the UWH&C superintendent played a role in causing complainant's reassignment, whether UW-Madison is a proper party-respondent in these proceedings.

The Commission's jurisdiction under the FEA runs to state agencies as employers, §111.375(2), stats.¹ Its jurisdiction under Wisconsin OSHA similarly is limited to agencies as employers, §§101.055(8)(b), stats. The whistleblower law's prohibition on retaliation conceivably extends beyond the employing agency to cover an "agent" of an appointing authority, as §230.83(1), stats. provides:

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.

However, the complaint process administered by this Commission is limited by §230.85(1), stats., as follows:

An employe who believes that a supervisor or appointing authority has initiated or administered, or threatened to initiate or administer, a retaliatory action against that employe in viola-

¹ The Commission also has jurisdiction over agencies as prospective employers in the case of complaints from applicants for employment.

tion of §230.83 may file a written complaint with the Commission (emphasis added)

The conspicuous deletion of the term "agent of an appointing authority" from §230.85(1), stats., compels the conclusion that this Commission's authority does not extend to an individual outside the employing agency who may have played some precipitating role in a disciplinary action but who has no legally-recognized role as an appointing authority or employer.² This case neither involves a situation where an agency is properly a party because it has authority over a condition of employment of an employe of another agency, Phillips v. DHSS & DETF, Wis. Pers. Comm. No 87-0128-PC-ER (3/15/89), nor a situation where an agency is properly a party in order to grant effective relief, Prill v. DETF & DHSS, Wis. Pers. Comm. No. 85-0001-PC-ER (1/23/89).

Furthermore, the Commission does not perceive any policy impediments to the conclusion that UW-Madison is not a proper party in these proceedings. It is to be expected that any agency may receive complaints about its employes from a variety of sources, including state employes in and out of the agency as well as from people outside of state service. Laws governing state employment discrimination are oriented, as might be expected, to dealing with the employer's treatment of the employe, and not with the employe's grievances that run to third parties who might have complained about the employe, requested discipline, etc., but who have no employment relationship vis-a-vis the employe.

² Cf. §895.65(2), stats., authorizing a whistleblower action in circuit court against an "employer or employer's agent."

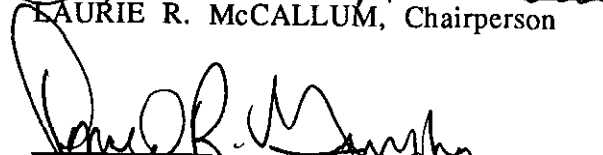
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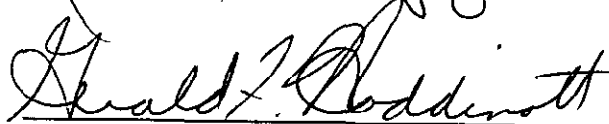
Respondent UW-Madison's motion to dismiss is granted and said respondent is dismissed as a party.

Dated: January 11, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner