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JOHN FLEMING,
 Complainant,

v.
 President, UNIVERSITY OF
 WISCONSIN SYSTEM,
 Respondent.

Case No. 92-0012-PC-ER

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DECISION
 AND
 ORDER

Nature of the Case

This is a complaint of alleged retaliation for engaging in activities protected by the Fair Employment Act. On May 26, 1992, one of the Commission's Equal Rights Officers issued an Initial Determination finding probable cause to believe that retaliation had occurred as alleged. A hearing was held on May 4 and 5, 1993, before Laurie R. McCallum, Chairperson. The parties were required to file briefs and the briefing schedule was concluded on October 26, 1993.

Findings of Fact

1. Complainant began his employment at the University of Wisconsin-River Falls (UW-RF) in September of 1988 as an Associate Professor of business administration in the Department of Business Administration (Department), College of Arts and Sciences. This was a probationary tenure-track faculty position. The chief focus of this position as well as the chief mission of the Department and the UW-RF was then and continues to be the teaching of undergraduate students. Complainant had extensive teaching experience at the college level prior to assuming this position. Complainant had earned a Ph.D. from Pennsylvania State University in 1969.
2. The members of the Department faculty were responsible for evaluating the performance of their probationary non-tenured fellow faculty

members each year and voting on whether they should be retained in their positions. A retention vote in relation to complainant was first taken on January 17, 1989, and resulted in a vote of 5 in favor (Rogers, Monical, Aabel, Popelka, and Kim) and a vote of 2 in opposition (Foust and one other). It was very unusual for a faculty member to receive 2 negative votes on his or her first retention vote, i.e., the first retention vote was typically a unanimous vote to retain. By this time, several of the faculty members who participated in this vote had received feedback from students that complainant was not an effective teacher. The written evaluation prepared by the Department Chairman which was intended to distill the impressions voiced by the faculty members relating to complainant's performance was generally favorable. The rating of 6 performance factors in the evaluation resulted in a rating in the top quartile for complainant in 5 of the factors and a rating in the second quartile for "effectiveness of communicating subject matter to students in class."

3. A retention vote in relation to complainant was taken on November 7, 1989, and resulted in a vote of 6 in favor (Lohman, Rahgozar, Tschetter, Kim, Rogers, and Aabel) and a vote of 3 in opposition (Popelka, Foust, and Monical). The primary concern expressed about complainant's performance again related to his teaching effectiveness and was based on personal contacts from students as well as written student evaluations. The written evaluation prepared by Dr. Kim, the Department Chair, was generally favorable although it was noted that ". . . the voting members of the department are concerned about his low student evaluations. Some of the senior faculty members of the department, including the chairman, will work with Dr. Fleming to improve his teaching effectiveness." Complainant was rated in the top quartile for "cooperation with the department in meeting university educational goals;" in the second quartile for four other factors; and in the third quartile for "effectiveness of communicating subject matter to students in class."

4. In a memo dated January 30, 1990, to Dr. Suzanne Hagen, Assistant Dean, College of Arts and Sciences, Dr. Young J. Kim, Department Chair, stated as follows, in pertinent part:

This is in response to your memorandum, dated January 25, 1990, concerning the department plans to help Professor Fleming improve his situation.

It was decided by the eligible voting members of the department, during the closed portion of the retention meeting, that the Department Chair would work with John to improve his teaching effectiveness.

Immediately after the retention meeting, John and I discussed ways to improve the situation. By a mutual agreement, the following plans were developed to be implemented this quarter:

1. Self-administered evaluation by using the following measures: a. instructor's knowledge in subjects, b. appropriateness of exams, and c. organization of lectures.

2. Self-generated feedback.

3. Professor Fleming will incorporate self-generated feedbacks in his lectures.

4. Monitoring on a timely basis.

Dr. Kim met with complainant several times to discuss concerns relating to complainant's teaching effectiveness. During these discussions, Dr. Kim advised complainant that he should make an effort to achieve a composite student evaluation score that exceeded 3.00.

5. Student evaluations of each faculty member were compiled and averaged into a composite score. During the 1988-89 academic year, the composite scores of Department faculty members other than complainant for the teaching of undergraduate courses ranged from a low of 3.13 to a high of 3.58 (using a scale of 0 to 4). Complainant's composite score for this period of time was 2.83.

6. A retention vote in relation to complainant was taken on March 9, 1990, and resulted in a vote of 7 in favor (Rogers, Aabel, Lohman, Popelka, Rahgozar, Tschetter, and Kim) and a vote of 2 in opposition (Foust and Monical). The written evaluation prepared by Dr. Kim, the Department Chairman, was generally favorable although it did refer to continuing concerns about complainant's teaching effectiveness. Complainant's performance was rated in the top quartile for two factors; and in the second quartile for four factors, including teaching effectiveness.

7. During the 1989-90 academic year, the composite scores of Department faculty members other than complainant for the teaching of undergraduate courses ranged from a low of 2.90 to a high of 3.71. Complainant's composite score for this period of time was 2.87.

8. In May of 1990, the Department was involved in the hiring of a new probationary faculty member. A search and screen committee narrowed the field of applicants to two finalists: Patricia Redding, a white female who had been serving in the Department as an instructor with academic staff status; and Huie Lee, an Asian male. Ms. Redding did not have a Ph.D.; Mr. Lee was close to earning his Ph.D.

9. On May 7, 1990, Dr. Kim sent a memo to each faculty member in the Department asking them to pick up a ballot and vote on the candidate of their choice. Ms. Redding received a majority of the votes in this balloting. However, Dr. Kim voided this result since the faculty members had not met to discuss the candidates prior to voting as required by the Faculty Personnel Rules.

10. Dr. Kim rescheduled the balloting for May 14, 1990. On that date, the faculty met to discuss the candidates. After this discussion, the faculty voted and the result was a tie--6 votes for each candidate. Due to this tie vote, Dr. Kim decided that another vote should be taken on May 15, 1990. However, this balloting had to be postponed due to scheduling conflicts and was rescheduled for May 18, 1990.

11. On May 15, 1990, complainant spoke with faculty member Thomas Tschetter about the Redding/Lee vote. Complainant told Mr. Tschetter that, in his opinion, Mr. Lee was by far the better candidate and should be offered the position, particularly when the UW-RF's "Design for Diversity" goals and Mr. Lee's Ph.D., research activities, and good teaching reviews were considered. Mr. Tschetter stated that he felt that Ms. Redding's considerable quantitative skills and her proven teaching success in the Department were strong considerations as well. Complainant and Mr. Tschetter then began to discuss whether or not the Redding/Lee situation would contribute to the Ph.D. versus non-Ph.D. conflict in the Department. Mr. Tschetter offered the opinion that, since the tenured faculty consisted of 4 non-Ph.D.'s (Popelka, Aabel, Monical, and Rogers) and 1 Ph.D. (Kim) and since Rogers, Monical, and Popelka had voted for Redding, the controversy over the selection of Mr. Lee or Ms. Redding could result in a backlash by the tenured faculty against Ph.D. faculty members seeking tenure.

12. Complainant interpreted Mr. Tschetter's comments during this discussion as a "threat" that, if complainant voted for Mr. Lee, it could affect a subsequent vote on his tenure.

13. Complainant and Mr. Tschetter spoke in Mr. Tschetter's office on May 16, 1990. Complainant advised Mr. Tschetter that he felt that Mr. Tschetter was trying to intimidate him during their previous day's discussion into voting for Ms. Redding. Mr. Tschetter denied any such intent. He also reminded complainant that he didn't have any control over the grant or denial of tenure to complainant since he, too, was non-tenured and only tenured faculty vote on tenure decisions.

14. On May 16, 1990, complainant brought his concerns relating to his conversation with Mr. Tschetter to the attention of Dr. Kim. Dr. Kim went with complainant to Mr. Tschetter's office and encouraged them to shake hands and to settle their differences especially since they had been good friends up to this incident. They shook hands and Mr. Tschetter and Dr. Kim presumed that any misunderstanding or hard feelings had been resolved.

15. Subsequently, complainant asked Mr. Tschetter for a letter of apology. Although Mr. Tschetter indicated that he didn't feel he had done anything wrong, he agreed to write a letter. This letter was dated May 21, 1990, and stated as follows, in pertinent part:

As per your request, I would like to apologize for any upset I caused you from our conversation of Tuesday, May 16, 1990. I am very sorry that you took our discussion the wrong way, as I have no intent of influencing your vote or any other faculty member's vote.

My concern this past year has been that this split in the faculty over the Ph.D.--non-Ph.D. issue not lead to a serious permanent split that would result in irreconcilable differences. This Lee/Redding problem seems to be fueling this fire, and can only lead to more turmoil within our department.

John, as you know, I have no vote on tenure decisions. But, I do again apologize for causing you anguish over this matter.

Mr. Tschetter presented this letter to complainant in person. Complainant read the letter and gave it back to Mr. Tschetter because Mr. Tschetter didn't admit in the letter that he had tried to intimidate complainant into voting for Ms. Redding.

16. Ultimately, Neal Prochnow, the Dean of the College of Arts and Sciences, upon the recommendation of UW-RF Vice Chancellor Nancy Parlin, suspended the Department's hiring process. Department faculty took an advisory vote which resulted in the majority of votes being cast for Ms. Redding. Dean Prochnow, without considering the results of this advisory

vote, decided independently to offer the position to Ms. Redding. Dean Prochnow communicated this decision to the members of the Department faculty in a memo dated May 23, 1990, which stated as follows, in pertinent part:

I believe that it is important for you to understand my position on the hiring issue.

As I indicated in our meeting (5-10-90), this is a difficult decision. We have been over the issues; Ph.D., non-Ph.D., assessment of communication skills, teaching, research, affirmative action, Design for Diversity, International relationships, industry relationships, etc.

I have made the following decisions.

1. The initial offer will go to Ms. Redding for the advertised position.
2. If Ms. Redding does not accept the offer, Mr. Lee will be extended the offer for the advertised position.

The rationale is as follows: We need to work hard to provide the best possible climate for underrepresented groups. The dominant underrepresented group at this time with respect to matching faculty to students is women. Almost 60% of the students on campus are women. A subset of 800 students in the Department of Business Administration must be reasonably representative of the University. At the Honors convocation on May 22, 1990, almost 70% of the recipients of the awards were female. The overriding factor in my decision is based upon the need to make an affirmative hire now.

This factor and this decision is further underscored by the recent resignation of Ms. Lohman and the fact that the Department's historical track record with respect to affirmative action is at best less than stellar.

17. Since his appointment to the Department faculty in 1988, complainant had served on the Design for Diversity Committee of the College of Arts and Sciences. This Committee set goals for the appointment and retention of ethnic minorities to faculty and academic staff positions.

18. During the fall semester of the 1990-91 academic year, the composite scores for the teaching of undergraduate courses by Department faculty members other than complainant ranged, with one exception, from a low of 3.08 to a high of 3.36. The exception was a faculty member named Peterson who was new to the faculty that fall and who appears from the record not to have been retained following the 1990-91 academic year. Complainant's

composite score for this semester was 2.86 overall and 3.13 if the new course in Organizational Behavior which he had started teaching in the fall was not included. When the fall semester started, complainant requested of then-Department Chairman Tschetter that the student evaluation score for this course not be included in his composite and Mr. Tschetter granted this request. Complainant had taught a graduate course on organizational change and development and had taught undergraduate courses in which the topic of organizational behavior was covered at other institutions prior to his appointment to the UW-RF faculty.

19. A retention vote in relation to complainant was taken on March 4, 1991, and resulted in a vote of 4 in favor (Rahgozar, Aabel, Kim, and Corcoran), a vote of 4 in opposition (Rogers, Monical, Brynteson, and Foust), and a vote to abstain by 2 (Tschetter, Popelka). As the result of this vote and the denial of subsequent appeals, complainant's appointment was terminated effective May 24, 1992. The written evaluation prepared by then-Department Chair Tschetter indicated that, although complainant had made some improvements in his teaching effectiveness, there was still significant concern by certain faculty members about this factor; and that, although complainant was generally professional, congenial, and sociable in his relationships with faculty and staff, "some faculty did mention his lack of interest in maintaining cooperative relationships with the faculty" and "some concern was expressed that he did not show much concern or initiative in making substantial improvements in his teaching." Complainant's performance was rated in the third quartile for four factors and in the bottom quartile for the two factors most closely related to teaching effectiveness.

20. The following is a chart of the Department faculty retention votes relating to complainant:

	<u>1/17/89</u>	<u>11/7/89</u>	<u>3/9/90</u>	<u>3/4/91</u>
Aabel (tenured, non-Ph.D)	yes	yes	yes	yes
Brynteson (non-tenured)	-	-	-	no
Corcoran (non-tenured, Ph.D)	-	-	-	yes
Foust (non-tenured, non-Ph.D)	no	no	no	no
Kim (tenured, Ph.D.)	yes	yes	yes	yes
Lohman (non-tenured)	-	yes	yes	-
Monical (tenured, non-Ph.D)	yes	no	no	no
Popelka (tenured, non-Ph.D)	yes	no	yes	abst
Rahgozar (non-tenured, Ph.D)	-	yes	yes	yes
Rogers (tenured, non-Ph.D)	yes	yes	yes	no
Tschetter (non-tenured, non-PhD)	-	yes	yes	abst

21. In the initial Lee/Redding balloting, Mr. Corcoran voted for Mr. Lee. Mr. Corcoran, however, felt pressure from the tenured faculty to vote for Ms. Redding so, in the final balloting, he changed his vote to Ms. Redding. Mr. Corcoran felt this pressure as the result of strong support for Ms. Redding expressed by the tenured faculty. Mr. Tschetter was not a tenured faculty member at the time and Mr. Corcoran did not feel pressured by Mr. Tschetter to vote for Ms. Redding. Mr. Corcoran was subsequently denied tenure by a vote of the tenured Department faculty.

22. Starting in the fall of 1988, Dean Prochnow and Ms. Hagen received numerous complaints from students relating to complainant's teaching effectiveness. Dean Prochnow considered this unusual because students usually don't have an opportunity to meet with him unless they have very strong feelings about an issue. Dean Prochnow expressed concern about this to Ms. Hagen and to Mr. Kim.

23. Mr. Popelka abstained from voting on complainant's retention in the spring of 1991 because the mood among faculty members in the Department was so adversarial that he felt that any difference of opinion would lead to legal action in which he didn't want to be involved. Mr. Popelka

would have voted not to retain complainant if he had not abstained, he did not feel that the discord in the Department was due to any particular issue or person, and no one suggested that he vote against complainant's retention or against the retention of any faculty member for any reason.

24. Mr. Foust voted against retaining complainant due to concerns relating to his teaching effectiveness. These concerns arose as the result of his review of student evaluation scores as well as concerns brought directly to his attention by students. Mr. Foust was denied tenure in the spring of 1991 but was subsequently granted tenure in the spring of 1992.

25. Ms. Rogers voted not to retain complainant in the spring of 1991 due to serious concerns she had relating to complainant's teaching effectiveness. Since complainant began teaching at the UW-RF in the fall of 1988, Ms. Rogers had received numerous complaints from students about his teaching effectiveness. In her experience at UW-RF, it was extremely unusual to receive this number of complaints about a faculty member. As a result of her concerns, Ms. Rogers observed complainant teaching one of his classes some time prior to March of 1991. She observed that he had a lack of rapport with his students, that he had difficulty getting them to respond to him, and that the students had a negative, if not hostile, feeling toward complainant. Ms. Rogers had voted in favor of complainant's retention in his first year because she believed in giving new faculty members the benefit of the doubt, and in the second year because it had come to her attention that complainant was having some family and personal problems. In March of 1991, Ms. Rogers was of the opinion that no extenuating circumstances any longer existed and that, since he had many years of teaching experience, the effectiveness of his teaching was unlikely to improve over time. Ms. Rogers, at the time of complainant's retention vote in the spring of 1991, was aware that complainant had supported the hire of Mr. Lee, that he was a member of the Design for Diversity Committee, and that complainant was upset with Mr. Tschetter as the result of a conversation they had had. Ms. Rogers was under the impression that, during this conversation, Mr. Tschetter had told complainant that, in making a choice between Mr. Lee and Ms. Redding, consideration needed to be given to the underrepresentation of females on the Department faculty and to the fact that the Department was not underrepresented for minority males; that the tenured faculty was concerned about the female underrepresentation; and that these comments had upset complainant.

26. Mr. Monical voted against complainant's retention in the spring of 1991 due to the fact that he had received many complaints about complainant's teaching effectiveness which had increased over the years that complainant was in the Department. Mr. Monical was not aware at the time whether complainant had supported Mr. Lee or Ms. Redding for appointment to the Department faculty.

27. During the entire period of complainant's employment by UW-RF and preceding his appointment, the Department had been characterized by discord and disagreement among the members of the faculty. Dean Prochnow considered the Department the most significant problem area in the College of Arts and Sciences. One of the primary causes for the discord was the controversy between those who believed that Ph.D.'s should be favored for faculty positions over non-Ph.D.'s with superior teaching credentials. Dean Prochnow became so concerned over this discord that he brought in a consultant in dispute management and resolution to meet with Department faculty in the spring of 1990. This consultant noted the substantial discord created by the Ph.D./non-Ph.D. controversy. Department faculty relations did not improve after the consultation and, in 1992, Dean Prochnow effected a reorganization of the Department.

Conclusions of Law

1. This matter is properly before the Commission pursuant to §230.45(1)(c), Stats.
2. The complainant has the burden to show that he was retaliated against for engaging in protected FEA activities as alleged.
3. The complainant has failed to sustain this burden.

Opinion

The issue to which the parties agreed is:

Whether respondent retaliated against the complainant on the basis of his fair employment activities as alleged in the charge of discrimination.

Under the Wisconsin Fair Employment Act (FEA), the initial burden is on the complainant to show a prima facie case of discrimination. If complainant meets this burden, the employer then has the burden of

articulating a non-discriminatory reason for the actions taken which the complainant may, in turn, attempt to show was a pretext for discrimination. See McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 5 FEP Cases 965 (1973); and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 25 FEP Cases 113 (1981).

In order to establish a prima facie case in the context of an FEA retaliation charge, the complainant must show that: (1) he participated in a protected activity and the alleged retaliator was aware of that participation, (2) there was an adverse employment action, and (3) there is a causal connection between the first two elements. "Causal connection" is shown if the record shows that a retaliatory motive played a part in the adverse employment action. Jacobson v. DILHR, Case No. 79-28-PC (4/10/81); Smith v. University of Wisconsin-Madison, Case No. 79-PC-ER-95 (6/25/82).

Although it is not entirely clear from the record how obvious or how vocal complainant's support of Mr. Lee was or how many of the Department faculty members were even aware of such support, it will be assumed for purposes of this analysis that complainant made out a prima facie case of FEA retaliation here.

The burden then shifts to respondent to articulate a legitimate non-discriminatory reason for its decision not to retain complainant. Respondent contends that complainant was not retained because he was not an effective teacher. This reason is legitimate and non-discriminatory on its face.

The burden then shifts to the complainant to show that the reason offered by respondent for not retaining him is a pretext for retaliation.

The focus of complainant's allegation of retaliation is the non-retention vote taken by the faculty on March 4, 1991. (See Finding of Fact 19, above). To determine whether complainant's support of Mr. Lee's candidacy influenced the faculty's vote on complainant's retention, the changes in faculty votes from the previous balloting need to be examined. Two of the negative votes in the 1991 balloting were cast by faculty members Foust and Monical. However, Mr. Foust had cast a negative vote each of the previous three times and Mr. Monical had cast a negative vote the previous two times. This, in combination with the fact that both of these faculty members had harbored and expressed significant concerns relating to complainant's teaching effectiveness prior and subsequent to the Lee/Redding hire lead the Commission to conclude that pretext has not been demonstrated in relation to their non-retention votes.

One of the other negative votes was cast by faculty member Brynteson. The record shows that faculty member Brynteson did not cast a previous vote in regard to complainant's retention. The record fails to show that faculty member Brynteson was aware of or should have been aware of complainant's support of Mr. Lee's candidacy and complainant has failed to show, therefore, that faculty member Brynteson's vote was influenced by or was in retaliation for such support.

The other negative vote was cast by faculty member Rogers. This represented a change from her three previous votes in favor of complainant's retention. However, two facts militate against a conclusion that this change in vote demonstrates pretext. The first is that Ms. Rogers had harbored and had expressed concerns relating to complainant's teaching effectiveness ever since the time that complainant had joined the Department faculty. This conclusion is reinforced by the fact that Ms. Rogers, on her own initiative, went into one of complainant's classes for the purpose of observing and evaluating complainant's teaching effectiveness. The second fact is that Ms. Rogers' explanation for her three previous positive votes, i.e., complainant's newness to the Department and her knowledge of personal and family problems he was experiencing, was very credible and was not successfully rebutted.

In addition to the four negative retention votes, there were two absentions, one cast by Mr. Tschetter and one by Mr. Popelka. Mr. Popelka's abstention was consistent with his previous votes in which he had demonstrated uncertainty about retaining complainant as a member of the Department faculty, i.e., he had cast two previous votes in favor and one against complainant's retention. It is also clear from the record that Mr. Popelka chose to abstain rather than to vote not to retain complainant so that he could avoid any further involvement in the discord within the Department. To the extent, therefore, that the Lee/Redding controversy contributed to the discord within the Department, in regard to Mr. Popelka's vote, it actually appears to have operated in complainant's favor.

Mr. Tschetter was the other faculty member who abstained. Viewing the record as a whole, the Commission concludes that it is more likely, given the history of faculty relationships within the Department, the obvious split between Ph.D.'s and non-Ph.D.'s, and the friendship between Mr. Tschetter and complainant, that Mr. Tschetter intended to alert complainant in their May of

1990 conversations to the fact that the tenured faculty members (which did not include Mr. Tschetter), the majority of whom did not have Ph.D.'s, tended to support Ms. Redding, and that the selection of Mr. Lee could result in a backlash by the tenured faculty against Ph.D. faculty members, such as complainant, seeking tenure. This appears to have been a logical conclusion given the highly charged split between Ph.D. and non-Ph.D. faculty members within the Department; and not to have been any type of threat but instead a frank and friendly elucidation of competing agendas which could influence complainant's opportunity to achieve tenure. The record supports the conclusion that it was complainant's emotional and angry reaction to this conversation, his insistence that Mr. Tschetter had threatened him, his elevation of the matter to include the chairman of the Department as well as higher level administrators, and his seemingly childish insistence on an apology from Mr. Tschetter, as opposed to his support of Mr. Lee's candidacy per se, that led Mr. Tschetter, in combination with concerns relating to complainant's teaching effectiveness, to abstain from voting on complainant's retention.

In proceeding through the steps of the McDonnell-Douglas analysis, it is important not to lose sight of the overall picture created by the hearing record. In the instant case, it is clear from the record both that complainant was an experienced teacher at the time of his hire by the UW-RF and that this was a primary consideration in his hire. It is also clear that concerns relating to his teaching effectiveness arose almost immediately, that the frequency and depth of these concerns were unusual, that complainant was counselled to improve his teaching effectiveness, and that complainant consistently ranked at or near the bottom in teaching effectiveness (as measured by student composite scores) during the entire period of his employment by UW-RF. The Commission concludes that the record shows that complainant was not retained because certain Department faculty members did not consider him a sufficiently effective teacher.

The record also shows that, if there was a factor in addition to his teaching ineffectiveness which contributed to the decision not to retain him, it was the Ph.D. versus non-Ph.D. factor. This factor, as evidenced not only by the testimony of Department faculty and UW-RF administrators but also by the observations of an independent consultant, had a pervasive influence on Department relationships and decisions. In the March of 1991 retention vote


relating to complainant, 3 of the 4 negative votes and both of the abstention votes were cast by non-Ph.D.'s. and the record does not indicate whether the faculty member casting the other negative vote was a Ph.D. or a non-Ph.D. In contrast, three of the four votes in favor of retention were cast by Ph.D.'s and only 1 by a non-Ph.D. This pattern was also evidenced in the tenure vote in relation to faculty member Corcoran. Mr. Corcoran, who has a Ph.D. but who, unlike complainant, voted for Ms. Redding in the final balloting, was denied tenure by a vote of the tenured faculty, the majority of whom were non-Ph.D.'s.

The Commission concludes that complainant has failed to sustain his burden that he was retaliated against on the basis of his FEA activities.

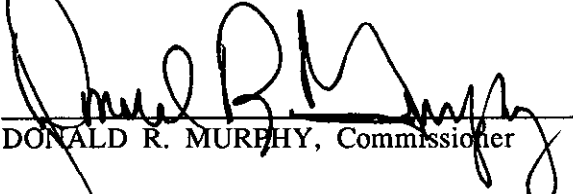
Order

This complaint is dismissed.

Dated: December 13, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats.,

and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis Act 16, amending §227.44(8), Wis. Stats.)