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JOSEPH J. CaPAUL,  
 Complainant,

v

President, UNIVERSITY OF  
 WISCONSIN EXTENSION (Madison),  
 Respondent.

Case No. 92-0225-PC-ER

\* \* \* \* \*

RULING  
 ON  
 MOTION  
 TO DISMISS

This matter is before the Commission on respondent's motion filed December 29, 1992, to dismiss this complaint as untimely filed. The parties have filed briefs.

This complaint of age and handicap discrimination (with attachments) was filed on November 16, 1992. Complainant alleges that following the appointment of a new supervisor sometime in 1988:

I have been systematically stripped of all duties and I have been relegated to an office with no duties other than approx 1/2 hour of data entry each day.. I began my diary of work 1 Nov. 89. Since that time I have been without work. In May of 91 I was physically moved to the photo media center... I was assigned the task to setting up a PC based system to automate Accounts Receivable (external) & completed this task in approx. 7 weeks. I was then reassigned to move furniture, boxes, clean storage areas (etc.). Since Nov. 91 I have had no work or function other than approx 1/2 hour of data entry each day.

Complainant's "diary of work" has daily entries ending on November 11, 1992, with: "3/4 HR. DATA ENTRY." Complainant's response to this motion asserts, among other things, that respondent's conduct forced him to accept early retirement.

In support of its motion to dismiss, respondent contends that the alleged discrimination began either in 1988 or 1989, both of which are more than 300 days prior to the filing of the complaint, which thus is untimely pursuant to §111.39(1), Stats. To the extent this issue has not been rendered essentially moot by complainant's assertion that respondent's conduct eventually caused

him to resign,<sup>1</sup> the complaint asserts a continuing violation that makes it timely. Complainant alleges that respondent engaged in a course of discriminatory conduct which largely involved stripping away his duties and not giving him any significant amounts of work. This alleged conduct may have begun in 1988 or 1989, but it continued (according to the complaint) at least until November 11, 1992. See Bueno v. Western Electric Co., 829 F. 2d 957, 44 FEP Cases 1419, 1420-21 (10th Cir. 1987).

Under the continuing violation theory, a plaintiff who shows a continuing policy and practice that operated within the statutory period has satisfied the filing requirements... The continuing violation can be either a company-wide policy of discrimination or a series of related acts taken against a single individual...

Plaintiff alleges that the acts are related because they are part of defendant's plan to force plaintiff to take voluntary or involuntary retirement. The key, then, to determining whether plaintiff has shown a continuing violation is whether defendant's intent was to take any action necessary to get rid of plaintiff. The parties apparently recognize that this is a question of fact.

Complainant has alleged a continuing violation sufficient to survive this motion, and therefore it must be denied.

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<sup>1</sup> An amended complaint would need to be filed before this latter transaction would be cognizable.

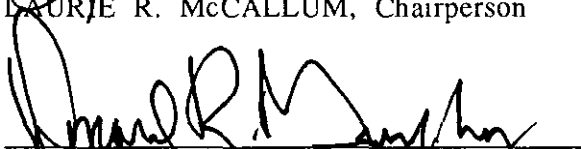
ORDER

Respondent's motion to dismiss filed December 29, 1992, is denied. Complainant will have 20 days from the date of service of this order to file and serve any amendment to the complaint he intends to advance. Respondent is directed to file and serve an answer within 20 days of service of the amended complaint, or within 20 days of the last date for such service, if no amended complaint is filed.

Dated: January 27, 1993      STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:rcr

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner