

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JACQUELYN THOMAS,

 Complainant,

v.

MADISON AREA TECHNICAL
COLLEGE,

 Respondent.

Case No. 95-0065-PC-ER

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RULING ON
RESPONDENT'S
MOTION TO
DISMISS

The Commission received Ms. Thomas' charge of discrimination on May 11, 1995, which alleged that the Madison Area Technical College (MATC) discriminated against her. As for the alleged bases of discrimination she checked the boxes on the complaint form entitled "race", "retaliation based on Fair Employment Activities" and "retaliation based on Whistleblowing".

On May 30, 1995, the Commission sent Ms. Thomas' attorney and MATC a letter which included the statement shown below, as well as a schedule for submission of briefs on the identified jurisdiction issue.

. . . On May 15th, [complainant's attorney] was informed [that] it appeared as if the Commission did not have jurisdiction over MATC and that [complainant's attorney] should file the charge with DILHR, Equal Rights Division. [Complainant's attorney] informed [the Commission] that he thought a decision had been issued which led him to believe that the Commission could possibly have jurisdiction and he wanted the Commission to issue a formal decision as to whether or not the Commission has jurisdiction over the charge. . .

Both parties filed written arguments, with the final submission received by the Commission on July 17, 1995.

DISCUSSION

The question presented is whether the Commission has jurisdiction over MATC. Jurisdiction over employment-based discrimination complaints under the Fair Employment Act (FEA) is divided between DILHR and the Commission as follows: the Commission has jurisdiction over discrimination complaints filed against a state agency acting as the employer, while DILHR has jurisdiction over complaints filed against other entities (non state agencies) acting as the employer. See s. 111.375(2), and 230.45(1)(b), Stats. Accordingly, in Ms. Thomas' case the Commission would have jurisdiction if MATC is a state agency acting as an employer under the FEA.

The Commission's FEA jurisdiction is described in s. 111.375(2), Stats., as shown below in pertinent part.

{The FEA} applies to each agency of the state except that complaints of discrimination . . . against the agency as an employer shall be filed with and processed by the personnel commission . . . (Emphasis added.)

The meaning of an "agency of the state" is clarified further by the FEA's definition of "employer", found in s. 111.32(6)(1), Stats., and shown below in relevant part.

"Employer" means the state and each agency of the state and . . . any other person engaging in . . . [a] business . . . "[A]gency" means an office, department, independent agency, authority, institution, association society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

Wisconsin state government is comprised of three branches. The legislative branch establishes policies and programs. The executive branch carries out policies and programs established by the legislature. The judicial branch adjudicates conflicts from the interpretation and/or application of the laws. (See s. 15.001, Stats.) MATC clearly is not a member of the legislative or judicial branch of state government. Accordingly, the focus of this inquiry is narrowed to whether MATC is a member of the executive branch of state government.

Chapter 15 of the Wisconsin Statutes creates the structure of the executive branch of state government, including the departments and other agencies which are part of the executive branch. While the Technical College System Board is part of the executive branch (pursuant to s. 15.94, Stats.) and while the board is staffed by positions under the state classified service (pursuant to s. 38.04(3), Stats.), MATC is not. Rather, MATC is a district technical school authorized under Ch. 38, Wis. Stats., as part of the Technical College System. Further, hiring authority and day-to-day control rests with the district boards, not with the Technical College System Board. (See s. 38.12(1) & (3), Stats.)

This ruling is consistent with prior Commission decisions. For example, see Niroomand-Rad v. Medical College of Wis., Inc., 88-0044-PC-ER (5/5/88), where the Commission found that the Medical College was not a state agency for FEA purposes; Novak et al. v. Wisconsin Supreme Court, 90-0111-PC-ER (2/7/91), where the Commission found that the Wisconsin Equal Justice Task Force was not a state agency for FEA purposes; and Conner v. WHEDA, 93-0154-PC-ER (12/14/94), where the Commission found that the Wisconsin Housing and Economic Development Authority was not a state agency for FEA purposes.

Ms. Thomas argued the Commission has jurisdiction pursuant to a stipulation entered into between MATC and the Madison Equal Opportunities Commission (MEOC) concerning discrimination cases filed with MEOC against MATC. The Dane County Circuit Court honored the stipulation in issuing an Order Granting Absolute Writ of Prohibition in which the court found that the MEOC lacked jurisdiction over discrimination claims filed against MATC. State ex rel. Area Vocational, Technical and Adult Education District No. 4, by its District Board v. Equal Opportunities Commission of the City of Madison, 91-CV-1537 (7/29/91).

Specifically, the stipulation between MATC and the MEOC included a statement describing MATC as an "agency of the state for purposes of allegations of employment discrimination". Even if such statement were intended to place jurisdiction with the Commission, it is insufficient to create commission jurisdiction beyond the statutory grant of authority. MATC is not an employer under the Commission's statutory grant of authority.

ORDER

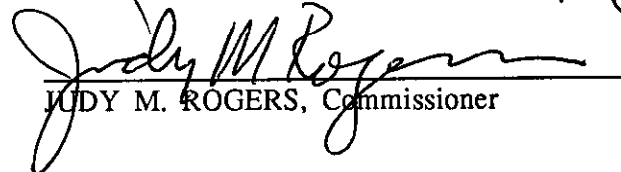
That this complaint be dismissed for lack of jurisdiction.

Dated August 4, 1995.

JMR


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Jacquelyn Thomas
816 Lincoln St.
Madison, WI 53711

Madison Area Technical College
c/o President Beverly Simone
3550 Anderson St.
Madison, WI 53704

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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.)

2/3/95