

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ROBERT MASUCA,  
                     Complainant,

v.

UNIVERSITY OF WISCONSIN -  
 Stevens Point,  
                     Respondent.

Case No.    95-0128-PC-ER

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RULING  
 ON  
 MOTION

This complaint of race discrimination under the WFEA (Wisconsin Fair Employment Act) is before the Commission on respondent's motion to dismiss. Although respondent's motion is denominated as a motion to dismiss for failure to state a claim, it is accompanied by several affidavits.

This complaint contains the following statement of discrimination:

Prior to August 1, 1994 I worked in the maintenance department of the UW-SP at the Collins Classroom Center. I was transferred to the College of Professional Studies Building in August, 1994 where Joan North, Dean of the College of Professional Studies, works. Dean North repeatedly criticized my work performance as being inadequate to my supervisors without any factual foundation. My supervisors checked on my work and found it was totally satisfactory. It is my belief that Dean North made unfounded complaints about my work performance because I am hispanic and she does not like me because of that fact. Because of the situation I was transferred to the College of Natural Resources Building in connection with my employment at the end of February, 1995.

The pleading requirements for an FEA complaint of discrimination are extremely minimal. See, e.g., Goodhue v. UWSP, 82-PC-ER-24 (11/9/83) (document stating that complainant felt she was treated differently because of her sex with respect to denial of tenure and promotion a sufficient complaint). Neither the WFEA nor this Commission's rules require that a complainant identify in the complaint the elements of a WFEA claim. The complaint in this case alleges that complainant was discriminated against because of his race with respect to criticism of his work and a transfer. This complaint is sufficient to withstand a motion to dismiss for failure to state a claim under the WFEA.

In this motion, respondent is attempting to contest complainant's allegations of discrimination on the merits by presenting evidence such as the racial composition of the work force, and otherwise attempting to controvert complainant's case. For example, complainant's attorney provided the following in response to the Commission's request for additional information as part of the initial stages of the investigative process:

As to the transfer in February, 1995 to the College of Natural Resources Building, Mr. Masuca's supervisors, Peter Krause and Rich Riggs met with Mr. Masuca and suggested that because of the situation it may be best for him to work in another building. A second-shift opening was available at the time at the College of Natural Resources Building because another employee was on sick leave. Therefore, he took the position.

Respondent argues that this, plus some information in an affidavit<sup>1</sup>, establishes that it was complainant's voluntary decision to transfer, and that there is no evidence that race was a factor in this transaction.

These kinds of issues -- whether the complaints about complainant's work were racially motivated, and whether his selection of one of three options presented by management amounted to a voluntary transfer -- should not be resolved in a dispositive fashion in FEA cases on what amounts to a motion for summary judgment except in unusual cases. Even in judicial proceedings, the standard for granting a motion for summary judgment is rigorous:

On summary judgment the moving party has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. On summary judgment the court does not decide the issue of fact. A summary judgment should not be granted unless the moving party demonstrates a right to a judgment with such clarity as leave no room for controversy; some courts have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt. Doubts as the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment.

The papers filed by the moving party are carefully scrutinized. The inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion. If the movant's papers before the court

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<sup>1</sup> The affidavit asserts that the transfer was one of three options presented to complainant to resolve the conflict between the complainant and Dean North.

fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied. If the material presented on the motion is subject to conflicting interpretations or reasonable people might differ as to its significance, it would be improper to grant summary judgment. Grams v. Boss, 97 Wis. 2d 332, 338-39, 294 N.W. 2d 473 (1980) (citations omitted).

The WFEA contemplates that a person who believes that he or she has been the victim of employment discrimination can file a complaint alleging this, and is entitled to an investigation and/or hearing on the allegations. See, e.g., §§111.39(1), 230.45(1m), Stats. In cases where it is clear that the complaint fails to state a claim -- e.g., the complainant is not a member of a protected category, the complainant's retaliation complaint rests on an activity not covered by the FEA -- it may be appropriate to dismiss the complaint on the basis of a motion supported by a factual showing establishing the defect in the claim. However, in a case like this, where the parties differ about such things as whether a supervisor's complaints about complainant's work were racially motivated and whether complainant's choice of options presented by management rendered the personnel transaction in question voluntary or involuntary, the claim cannot be resolved dispositively on this motion. Complainant is entitled to have his complaint investigated and then to proceed to a hearing.

ORDER

Respondent's motion to dismiss is denied.

Dated: November 14, 1995

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:rcr

  
JUDY M. ROGERS, Commissioner