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EUGENE GRAVES,

Complainant,

v.

President, UNIVERSITY OF  
WISCONSIN SYSTEM (Parkside),

Respondent.

Case No. 96-0055-PC-ER

\* \* \* \* \*

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 for failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction. The subsequent facts are based on complainant's complaint, including supplemented information, and respondent's un rebutted assertions of fact provided in its motion to dismiss, which included copies of official documents.

The complainant, Eugene Graves, is of the black race. He is employed by the respondent, University of Wisconsin-Parkside (UW-Parkside), in its Physical Plant Department as a custodian.

On May 7, 1996, the UW-Parkside Police Department received a report from the Director of Physical Plant, a supervisor of complainant's, that carpeting used for the commencement platform was missing from the Physical Education Building. He indicated that another (unidentified at this point) employee had information about the matter.

The investigation of this incident was assigned to Officer Steven Rawson. Rawson went to the Physical Education Building, where he spoke with an unidentified employee claiming to have information about the missing carpet. This employee identified complainant as a possible suspect for this alleged theft. A record check disclosed that complainant was wanted on a warrant held by Kenosha County Joint Services.

That evening, shortly after arriving for work, Graves was questioned by UW-Parkside Officer Moeller about the carpet. Officer Moeller informed complainant about the active warrant, that he would have to post bail and that his driving privileges were suspended in Wisconsin. Complainant Graves

denied seeing or taking the carpet. He was released by Officer Moeller after he posted the required bail.

On May 16, 1996, the Commission received a discrimination complaint from Graves, which originally had been misfiled with the Department of Industry, Labor and Human Relations, Equal Rights Division, on May 13, 1996. In this complaint Graves alleges he was harassed by UW-Parkside because of his race. He claims that he was questioned by the UW-Parkside police regarding a missing rug and required to pay \$100 for an unrelated warrant, which was discovered by the police when they checked his police record. Graves states he believes race was a factor in his treatment by the police because no white employees were questioned about this incident.

Respondent argues that (1) complainant fails to state a claim upon which relief can be granted and (2) respondent's actions were the product of its law enforcement function and not related to the employment relationship between it and complainant. As to the second argument, respondent notes that complainant was not disciplined or terminated because of this action and no terms or conditions of complainant's employment, other than carrying out its law enforcement function, were affected by its action. Next, respondent argues that the Commission lacks subject matter jurisdiction because the applicable section of the WFEA--§111.375(2), Stats.--limits its jurisdiction to discrimination complaints where the alleged violations relate to the agency as an employer. Respondent submits that the UW-Parkside Police Department was acting as a law enforcement agency as defined in §165.83(1), Stats., and not as an employer, and therefore the complaint must be dismissed.

The respondent cites Mehler v. DHSS, 94-0014-PC-ER (12/22/94), in support of its position. In Mehler, the respondent denied certification of the complainant as a mental health professional, resulting in complainant's termination from his employment with private business. The complainant initially filed with the Equal Rights Division of the Department of Industry, Labor and Human Relations, which referred it to the Commission. The Commission dismissed the complaint as an FEA claim, saying that it lacked jurisdiction as limited by §111.375(2), Stats., because the alleged misconduct related to the "regulatory authority exercised by the state, rather than its authority as an employer." Here, unlike in Mehler, the respondent is complainant's employer. Here, unlike Mehler, where the complainant, a Rabbi, made no claim of discrimination, the complainant claimed race

discrimination. On these two bases alone, Mehler can be distinguished from this case.

It must be remembered that this case involves a report by complainant's supervisor to the UW-Parkside Police Department implicating complainant as a criminal suspect, on the basis of a report by a coworker. It was not, for example, a case of a traffic stop while complainant was driving home from work but still on university property, a case which could lead to a different result on this motion.


Finally, respondent argues that complainant has failed to establish a prima facie case of discrimination and is unable to do so or to sustain a finding of probable cause. This case is in the investigative stage, prior to the initial determination regarding complainant's claim of discrimination. In Masuca v. UW-SP, 95-0128-PC-ER, 11/14/95, the Commission denied a motion to dismiss for failure to state a claim where complainant alleged discrimination on the basis of race with respect to criticism of his work and a transfer. In denying the motion, the Commission said that pleading requirements for an FEA discrimination complaint are "extremely minimal" and that this complaint was sufficient to withstand the motion. Here, complainant claims racial harassment with respect to being treated as a suspect of theft in the work place. The Commission believes complainant's complaint is sufficient to withstand respondent's motion to dismiss.

ORDER


Respondent's motion to dismiss is denied.


Dated: October 2, 1996

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

DRM:rcr

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner