

STATE OF WISCONSIN

PERSONNEL COMMISSION

**SUSAN C. NICHOLS,**  
*Complainant,*

v.

**Chancellor, UNIVERSITY OF WISCONSIN-MADISON,**  
*Respondent.*

ORDER DISMISSING  
COMPLAINT PURSU-  
ANT TO §230.88(2)(c),  
STATS.

Case No. 96-0084-PC-ER

This is a complaint of “whistleblower” retaliation filed pursuant to §230.85(1), Stats., on July 15, 1996. The complaint alleges retaliation because of certain disclosures made by complainant concerning management’s alleged abuse of authority, mismanagement, and violation of law. On February 14, 1997, respondent filed with the Commission a copy of a complaint filed by complainant in federal court pursuant to 42 USC 1983 and the First Amendment to the United States Constitution. Respondent requests that the complaint before this Commission be either dismissed or stayed pending that federal proceeding.

Section 230.88(2)(c), Stats., provides, *inter alia*:

[A]n employe shall notify the commission . . . if he or she has commenced . . . an action in a court of record alleging matters prohibited under s. 230.83(1). . . . Upon commencement of such an action in a court of record, the commission has no jurisdiction to process a complaint filed under s. 230,85 except to dismiss the complaint.

The federal court complaint covers essentially the same subject matter as the complaint before this Commission. For example, the federal pleading includes the following allegations:

9. On or about May 6, 1996, and on other occasions, Nichols complained of matters of public concern, including, but not limited to . . . misconduct . . . and . . . fraudulent misappropriation of public funds . . . .

12. Nichols suffered retaliation because she complained of . . . issues of a public concern. . . .

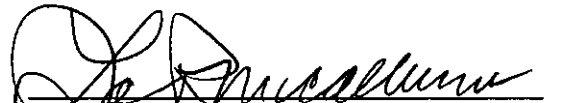

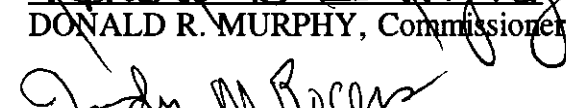
These allegations involve matters "prohibited under s. 230.83(1)," which prohibits retaliatory action against an employe because of that employe's disclosure of "information," which includes "[m]ismanagement or abuse of authority," §230.80(5)(b), Stats., and the "violation of any state or federal law," §230.80(5)(a). Therefore, the Commission must dismiss this complaint pursuant to §230.88(2)(c), Stats.

ORDER

Pursuant to §230.88(2)(c), Stats., this complaint is dismissed.

Dated: March 12, 1997 STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson  
  
DONALD R. MURPHY, Commissioner  
  
JUDY M. ROGERS, Commissioner

Parties:

Susan C. Nichols  
4329 Britta Drive, Apartment #3  
Madison, WI 53711

David Ward, Chancellor  
UW-Madison  
158 Bascom Hall  
500 Lincoln Drive  
Madison, WI 53706-1314

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