

STATE OF WISCONSIN

PERSONNEL COMMISSION

GARY BENSON,
Complainant,

v.

**President, UNIVERSITY OF WISCONSIN
SYSTEM (Whitewater),**
Respondent.

DISMISSAL

Case No. 98-0179-PC-ER

This matter is before the Commission in light of the language used by the complainant in his charge of retaliation filed with the Commission. The following findings appear to be undisputed.

FINDINGS OF FACT

1. Complainant, who has filed numerous other complaints with the Personnel Commission, filed another complaint with the Commission on October 8, 1998. The complaint alleged whistleblower retaliation and included the following language:

The University continues to play musical chairs with their moron legal counsels in this matter to hide their corruption and incest etc. First it was [attorney] Tallman, then Alschitz, then Spielman, then Bradley and so on. And everytime I catch one of these legal morons doing something illegal, unethical or immoral and file complaints against them with the State Supreme Court - they change legal counsel. Alschitz, himself, said in a letter to the EEOC, in response to a complaint I had filed against the University there, that the University had been very careful to follow all of their own procedures in trying to get rid of me. . . .

They [respondent] continue to move forward with their plans to hold the above mentioned hearing despite the fact that . . . [they] have complaints pending against them with both your bullshit Commission, the Federal EEOC, the State Supreme Court and others.

2. In his complaint, complainant used the word "Alschitz" to refer to Edward Alschuler, a staff attorney with respondent.

3. In a letter to the complainant dated October 22, 1998, a member of the Commission's staff acknowledged receipt of the complaint, and noted that "it contains offensive language." The letter directed complainant to file a sanitized version of the complaint with the Commission or face dismissal of the case: "If you do not submit a revised complaint without offensive language by *November 6, 1998*, I will put the matter before the Commission, which may decide to dismiss your complaint." (Emphasis in original.)

4. On October 27, 1998, complainant sent, via facsimile, a response to the October 22nd letter but he did not file a revised complaint in Case No. 98-0179-PC-ER.

5. By letter dated October 27, 1998, the Commission staff member reiterated that the complaint could be dismissed if complainant did not submit a "revised complaint without offensive language" by November 6th.

6. Complainant never filed a revised complaint.

7. The Commission has advised complainant on prior occasions that offensive language in his correspondence is inappropriate and may cause the Commission to disregard the correspondence.

8. In a letter dated July 24, 1998, issued in Case No. 98-0017-PC-ER, a member of the Commission's staff wrote complainant, in part: "[I]t is unnecessary for you to attempt to insult or demean me or to use expletives in your correspondence. I ask you to refrain from them."

9. In a letter to the complainant dated September 28, 1998, a member of the Commission's staff wrote:

You sent, via facsimile, letters to the Commission on September 14, 1998, a letter dated September 18, and two letters dated September 25th.

In my letter to you dated September 9, 1998, I wrote you the following:

Your letter contained offensive language that is inappropriate for correspondence with an administrative agency performing a quasi-judicial function. You have been asked by the Commission on several prior occasions not to use such language. Similar conduct by you in any future correspondence to the Commission (in

any of your cases) may cause the Commission to disregard that correspondence.

Your September 14th letters (which included my September 9th letter as an attachment), and the September 18th and 25th letters also contained offensive language. Therefore, the Commission is disregarding those letters. The Commission will not respond to them other than by sending you this notice.

Similar conduct by you in any future correspondence to the Commission may cause the Commission to disregard that correspondence, without written confirmation to you.

CONCLUSIONS OF LAW

The Personnel Commission has the authority to require a certain standard of decorum in its proceedings.

The complaint in this matter fails to meet that standard.

OPINION

Complainant has been warned repeatedly about using inappropriate language in his filings with the Commission. In his complaint assigned Case No. 98-0179-PC-ER complainant referred to Attorney Alschuler as "Alschitz." He also referenced the "bullshit Commission."

Given the complainant's repeated misconduct and his failure to make use of the express opportunity to correct the inappropriate language, the Commission exercises its discretion and dismisses this complaint in light of complainant's failure to maintain an appropriate level of decorum in these proceedings.

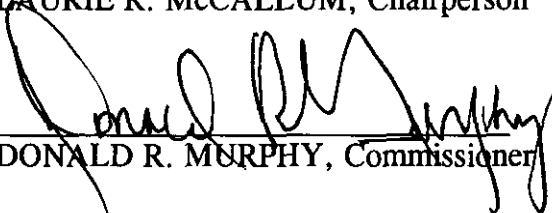
ORDER

This matter is dismissed.

Dated: November 20, 1998. STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:980179Crull


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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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.

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