

STATE OF WISCONSIN

PERSONNEL COMMISSION

**JOSEPH E. SABOL,**  
*Complainant,*

v.

**President, UNIVERSITY OF WISCONSIN  
SYSTEM (Eau Claire),**  
*Respondent.*

FINAL  
DECISION  
AND  
ORDER

Case Nos. 02-0020, 0024-PC-ER

#### NATURE OF THE CASE

This matter involves a charge of discrimination filed February 11, 2002, which alleges respondent, University of Wisconsin (Eau Claire) (UWEC), discriminated against complainant because of his age and retaliated against him for having engaged in fair employment activities (Case No. 02-0020-PC-ER), and activities covered by the state OSHA law (§101.055, Wis. Stats.; Public Employee Safety and Health Law) (Case No. 02-0024-PC-ER) when it failed to hire him for a tenure track faculty position (No. F-263) in January 2002. Following a hearing at UWEC held on May 9 and 10, 2002, a proposed decision pursuant to s. 227.46(2), Stats., was disseminated to the parties on June 5, 2002. Complainant filed objections to the proposed decision, and a motion to supplement the record. The Commission has considered the motion, the objections to the proposed decision, and the parties' subsequent filings, and consulted with the hearing examiner. The Commission denies the motion and adopts the proposed decision and order with a few minor changes.

The motion to supplement the record runs to the addition of certain minutes of the Chemistry Department for 2001. Complainant contends that as part of his discovery he requested records of the search<sup>1</sup>, but respondent did not supply all the records of the search.<sup>2</sup>

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<sup>1</sup> The relevant requests for production apparently involved are requests for "[t]he search committee records [and] [t]he record of candidate selection."

<sup>2</sup> The documents complainant submits in support of his motion show that respondent responded to the request for the search committee records by stating they would be made available for inspection and copying, and responded to the request for the record of candidate selection by indicating documents were provided to complainant as attachments to respondent's motion for summary judgment.

Apparently complainant asserts that the minutes in question, which include references to the search, should have been submitted in response to the request for search records. Laying to one side the question of whether complainant should have raised this issue before the hearing, the document requests in question do not run to the Chemistry Department minutes.

Complainant also contends the records tend to impeach Halfen's testimony during the hearing that he did not contact the AA Office as part of the search process. Both Halfen and AA Officer Stevens testified at the hearing. The minutes for the August 20, 2001, meeting include: "Discussion about search mechanics, does dept need to clarify its goals about Analytical versus Inorganic (need clarification from Affirmative Action)." This segment of the meeting minutes add little or nothing to this case, particularly since whether or not Halfen met with the AA Office has nothing to do with the decision Halfen made with regard to not considering complainant's application.

Complainant also contends the minutes contradict Halfen's testimony that "'applications [that were not] complete [until] after the priority date were not considered.'" The minutes indicate there were discussions about a number of candidates, but they do not identify any of the candidates considered as having submitted applications after the priority date. Complainant further contends that the records show "that never did the committee or the department determine it had received sufficient applicants on the priority date or vote to not review applications complete after the priority date." The minutes are obviously a summary of what occurred at the department meeting. While they have some probative value, they are not inherently inconsistent with Halfen's testimony, and would not lead the Commission to make a different finding about whether the any applications received after the priority date were considered.

#### FINDINGS OF FACT

1. Complainant was born in 1954. He worked for respondent in its Department of Chemistry as a lecturer during most of the period from August 1997 through about May 1999.
2. Complainant filed complaints of discrimination against respondent with this commission in September 1999 (99-0144-PC-ER), and May, July and August 2001 (01-0079-PC-ER, 01-0123-PC-ER, 01-0150-PC-ER) regarding respondent's failure to hire him for vari-

ous teaching positions in the Department. These complaints included charges of discrimination on the bases of age, sex, and marital status, in violation of the WFEA (Wisconsin Fair Employment Act; Subchapter II, Chapter 111, Wis. Stats.), and the state OSHA law (§101.055, Wis. Stats.; Public Employee Safety and Health Law). The OSHA subject matter relates to an email sent to fellow faculty members on November 13, 1998, calling to their attention the fact that complainant had discovered that a bottle of bromine in a chemistry lab did not have the cap tightly secured, and there were other bottles that did not have their caps tight.

3. In August 2001, respondent began recruiting to fill a vacancy for an Assistant Professor (Inorganic or Analytical Chemistry) in its Department of Chemistry. The Search Committee (hereinafter, Committee) consisted of Jason Halfen (Search Committee Chair and Associate Professor), Robert Eierman (Professor), James Phillips (Assistant Professor), and Michael Carney (Professor). The position announcement for the position stated, in part:

**ASSISTANT PROFESSOR, INORGANIC OR ANALYTICAL CHEMISTRY**  
The University of Wisconsin-Eau Claire invites applications for a tenure-track faculty position in inorganic or analytical chemistry. An earned doctorate in chemistry, expertise in inorganic or analytical chemistry, teaching experience and the ability to clearly communicate chemical concepts is required; post-doctoral experience is an asset. The successful candidate will teach courses in their field of expertise and in general chemistry, and is expected to develop a vigorous, externally funded research program involving undergraduate students; start-up funds are available. Student advising and service to the department and the University are also expected. Applicants will submit a curriculum vitae, statements of research and teaching plans, undergraduate and graduate transcripts, and arrange for three letters of recommendation to be sent to: Chair, Faculty Search Committee. For priority consideration, completed applications must be postmarked no later than October 19, 2001, however, screening may continue until the position is filled.

4. Respondent's approved recruitment plan involved an initial screening by the committee of all application files completed by the priority date—i.e., that were postmarked by the priority date. In this phase, the applications were to be separated into three groups (highly qualified, a middle group, and poorly qualified). Those applications not meeting the minimum published criteria would be eliminated from further consideration. At the Committee's recommendation, the Department would select a group of candidates with whom to conduct tele-

phone interviews which would be conducted by the Committee. The Committee would contact candidate references. Then, the Department would select the candidates for on-campus interviews. Respondent followed this plan.

5. Complainant's application materials were postmarked October 19, 2001 (the last possible date for filing a timely application), and received by respondent on October 22, 2001. His cover letter referred to, among other things, an enclosed curriculum vitae (CV).

6. Patricia Jenneman is a Program Assistant who provides administrative support to the Department. Consistent with her normal duties, she was responsible for the processing of applications for this search. She opened job application materials, date stamped the contents, created a file and number for each applicant, and kept the materials in a locked filing cabinet. She reviewed the applications for completeness and kept a database of what was received from each applicant. If an application was incomplete, Jenneman informed the Committee Chair. Eighteen applications (including complainant's) were not complete by the priority date.

7. Jenneman opened complainant's application materials when they arrived on October 22, 2001 and noticed they were missing his CV. She brought this to Halfen's attention who reviewed the received materials and confirmed Jenneman's conclusion. Halfen asked Jenneman to check the other application files and her desk to confirm that the CV had not been misplaced. After checking, she found no CV, and in a form letter to complainant dated October 23, 2001, Halfen informed complainant that his application was incomplete because it was missing his CV, a required component of the application. Halfen alone made the decision that complainant's application would not be considered with the priority group of candidates because of this. None of the 17 other applicants whose applications were not complete by the priority date were given further consideration. On November 6, 2001, complainant received respondent's letter advising that his application was incomplete. On November 7, 2001, complainant e-mailed his CV to Halfen and it was added to complainant's application materials. The committee did not consider complainant's application because the committee decided there was a sufficient pool of qualified candidates in the priority group. None of the committee members other than Halfen were aware that complainant had applied for this position.

8. Department Chairperson Pladziewicz neither handled the application materials nor was involved in any of the activities or decisions set forth in the previous finding. Neither Pladziewicz nor Halfen nor anyone else instructed Jenneman to remove anything from complainant's file.

9. Consistent with respondent's standard operating procedures, the committee decided that there were sufficient qualified applicants among the top five of those who submitted timely applications, and the committee did not consider any of the 18 applicants who submitted late applications, including complainant.

10. In this search, the top group of applicants (five individuals) with complete applications postmarked by the "priority date" received telephone interviews. On about November 9, 11 and 13, 2001, telephone interviews were conducted with these candidates, and on-campus interviews were conducted in December 2001.

11. Respondent offered the position to Joshua Farrell (born in 1971), but he declined the offer. The position was then offered to and accepted by Alan Gengenbach (born in 1972). Gengenbach was a former colleague of Halfen's. Their relationship was friendly.

12. In a sequence of e-mail exchanges during the period November 7, 2001 through December 12, 2001 between complainant and Halfen (R-108), complainant repeatedly sought specifics as to who had opened his application when it was received and whether his application was under active consideration. In reply, Halfen essentially replied that complainant's application was complete on November 7, 2001, when the CV which had been missing initially was received, and that the search was in progress. He also said it would be inappropriate to discuss the details of the search with any candidate while the search was in progress. This was consistent with respondent's general policy to limit responses to applicants' inquiries during the search process to information about whether and when their applications were complete, and whether the search was still in progress.

13. In a letter to complainant dated January 15, 2002, Halfen, acting as respondent's agent on behalf of the committee, advised complainant he had not been hired for the position in question.

14. Both Halfen and Pladziewicz were aware not only of complainant's email which

formed the basis of his prior OSHA disclosure (see finding 2), but also the subsequent complaints filed by complainant with this Commission, in which complainant had accused them of being involved in discrimination against him. They also had been called to testify at the hearing held on Case No. 99-0144-PC-ER in 2000. Jenneman was aware complainant had filed discrimination claims against the department with this Commission, and she also had testified in his previous proceeding. Complainant never alleged she had discriminated against him.

15. Halfen had notified two of the candidates (Gengenbach and Krogstad) in advance of the vacancy in question, but had not notified complainant. His reason for this is that he believed both of them were interested in such a job, and were qualified. He did not know whether complainant would be interested in this job, and he did not consider him qualified because of conclusions reached about his record during his previous tenure at UWEC, including his student evaluations, in the search that was the subject of Case No. 99-0144-PC-ER.<sup>3</sup>

16. Candidate Gengenbach sent Halfen an email on October 10, 2002, inquiring whether his application materials were complete, and Halfen replied that they were not complete at that point because he was missing one transcript and one reference letter, he (Halfen) provided the due date for the materials, and he advised that these items could be submitted by email or fax. (R-129)

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §§230.45(1)(b) and (g), Stats.

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<sup>3</sup> The matter of complainant's teaching record at UWEC was addressed in one of complainant's previous cases before the Commission, 99-0144-PC-ER. The Commission resolved that case against the complainant. A petition for judicial review followed, and the Court affirmed the Commission's decision on March 18, 2002, (R-101). Complainant appealed that decision to the Court of Appeals, where it is currently pending. In his post-hearing brief, complainant cites these two decision, and points out that both the Commission and the court concluded his email was a protected activity under OSHA. We agree that these holdings are conclusive on that issue, and further believe the other holdings in these decisions are binding, at least in the absence of some persuasive argument to the contrary with regard to any specific point.

2. The complainant has the burden of proof to establish by a preponderance of the evidence that respondent discriminated against him in violation of §101.055(8)(ar), Stats., when respondent did not select complainant for the position in question in January 2002.

3. The complainant did not sustain his burden of proof.

4. Respondent did not discriminate against complainant in violation of §101.055(8)(ar), Stats., when it did not select him for the position in question.

5. The complainant has the burden of proof to establish respondent discriminated against him on the basis of age in violation of the WFEA when respondent did not select him for the position in question.

6. The complainant did not sustain his burden of proof.

7. Respondent did not discriminate against complainant on the basis of age in violation of the WFEA when it did not select him for the position in question.

8. The complainant has the burden of proof to establish respondent retaliated against him for having engaged in fair employment activities, in violation of the WFEA, when respondent did not select him for the position in question.

9. The complainant did not sustain his burden of proof.

10. Respondent did not retaliate against complainant for having engaged in fair employment activities, in violation of the WFEA, when it did not select complainant for the position in question.

#### OPINION

Under the Wisconsin Fair Employment Act (FEA), the initial burden of proof is on the complainant to show a prima facie case of discrimination. If complainant meets this burden, the employer then has the burden of articulating a non-discriminatory reason for the actions taken which the complainant may, in turn, attempt to show was a pretext for discrimination. *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 5 FEP Cases 965 (1973), *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 25 FEP Cases 113 (1981).

Complainant alleges that respondent discriminated against him because of his age and

retaliated against him for engaging in fair employment and OSHA activities when it failed to hire him for an Assistant Professor position in the Department of Chemistry in January 2002. Complainant is protected against discrimination because he was born in 1954, which places him in the age-protected category. His various complaints with this Commission place him in the protected category with regard to retaliation under both the WFEA and the OSHA law. He also is protected under OSHA with regard to the email concerning the loosely-capped chemical bottles he sent in November 1998. Complainant applied for and was qualified for the teaching position because respondent had employed him in teaching positions in past years, and he met the minimum qualifications for the position in question. Complainant was rejected under circumstances which give rise to an inference of age discrimination because two individuals outside the age-protected classification were offered the position, and his rejection occurred within some proximity to the activities protected under the WFEA and the state OSHA law. Furthermore, where the case has been tried fully, it is unnecessary to analyze whether a prima facie case has been established,<sup>4</sup> and the Commission should go ahead and address the question of pretext. See *United States Postal Service Board of Governors v. Aikens*, 460 U. S. 711, 103 S. Ct. 1478, 75 L. Ed. 403, 1983 U. S. LEXIS 141 (1983).

Respondent must now present a legitimate, non-discriminatory reason for its hiring decision. Respondent explained that complainant's application materials were incomplete at the time of the priority deadline, i.e., October 19, 2001. Complainant did not include a curriculum vitae with his application and that disqualified him from priority consideration. None of the other seventeen individuals with incomplete applications on October 19, 2001 were included in the priority group and given consideration for appointment. All of the individuals in the most qualified group had complete application files by the priority deadline date. Respondent never considered applications completed after the deadline date because it found a sufficient number of adequately qualified individuals among those who had submitted timely com-

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<sup>4</sup> An exception to this approach is where there is a missing element of a prima facie case which is also an essential element for establishing liability. For example, if a person has not established that he is at least 40 years old and thus covered by the WFEA age discrimination provision, §111.33(1), Stats., it is not possible for that person to establish an age discrimination claim even if the employer's proffered



pleted applications.

After respondent presents a legitimate, non-discriminatory explanation for its hiring decision, the complainant may present evidence of why the respondent's explanation is a pretext for discrimination. There was some evidence of pretext, but insufficient to overcome respondent's legitimate explanation for its action.

Complainant testified that he included his CV in his application materials. Program Assistant Jenneman testified that she opened the application materials when they arrived in the office and the CV was not enclosed. Jenneman had never been implicated by complainant in his various complaints and activities, and there is no indication she had any animus against complainant. Complainant theorizes that either she made a mistake or she had been directed by either Pladziewicz or Halprin to remove complainant's CV from his application materials. Jenneman testified without contradiction that she followed a process when she discovered that complainant's CV was missing that made it highly unlikely that she had made a mistake. She also testified that neither Pladziewicz nor Halprin directed her to remove anything from complainant's file. In light of Jenneman's fairly specific testimony about the procedure she followed, her contention that the CV was missing when she opened complainant's application materials appears to be the most likely explanation,<sup>5</sup> as opposed to the CV having been misplaced or overlooked by Jenneman, or having been removed by Halprin or some other agent of respondent's. Furthermore, even if the CV had been misplaced or overlooked by Jenneman, this would not mean respondent deliberately discriminated against complainant under the WFEA or the state OSHA law, because this record supports the finding that Halfen's decision was based on a non-discriminatory belief that complainant had not submitted complete application materials by the deadline, and he treated complainant like the other 17 similarly situated applicants whose applications were not considered by the committee.

Complainant's alternative theory of liability under this heading is that Halfen or someone else acting on behalf of the department deliberately removed the CV from complainant's appli-

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reason for its action were pretextual, and there normally would be no rationale for analyzing the question of pretext.

<sup>5</sup> The Commission also notes that complainant inadvertently left documents out of his submission of hearing exhibits pursuant to §PC 4.02, Wis. Adm. Code, during the prehearing phase of this matter.

cation materials to sabotage his application. This is contradicted not only by denials by Halfen and Pladziewicz, but also by Jenneman's testimony that she was the only one who opened applications, and that when she opened complainant's application material envelope, it did not contain a CV.

In conclusion on the question of whether complainant filed a CV with his application, complainant did not satisfy his burden of proof. In his post-hearing brief, he states the "Commission cannot rule out [the] possibility that Sabol's application was complete when it arrived or that it was tampered with." P. 14. However, respondent does not have the burden of proof, complainant does. *See, e. g., Currie v. DILHR*, 210 Wis. 2d 380, 389-94, 565 N. W 2d 253 (Ct. App. 1997). He must do more than establish a possibility to sustain that burden.

Complainant also contends that even if he had accidentally omitted his CV from his application materials, respondent could and should have relied on either information found in other documents that were in his application materials that included the same information that would be on a CV, Halfen's pre-existing knowledge of his credentials, or a CV previously submitted by complainant with regard to other searches. This contention is plausible, but in light of other evidence of record it has not been established by a preponderance of the evidence. There was testimony that respondent did not try to extrapolate information when an application was missing necessary elements due to the number of applications received, and the need to follow a uniform policy to avoid charges of unfairly treating some applicants more favorably than others, and that this had been the policy on all the searches in which Halfen had been involved. Halfen also testified that job applicants frequently revise their CV's to tailor them for particular positions, and to reflect changes in the applicants' education and experience, and accordingly it was inadvisable to rely on other documents or previous understandings.

Complainant argues there was another applicant (Gangenbach) who was a friend of Halfen's, and who had an incomplete application, who was sent an email (R-129) by Halfen to advise him about some missing documents in his application materials prior to the submission deadline. However, Halfen was responding to a specific query from Gangenbach as to whether his application was complete, and the information he was sent was generally consistent

with the policy outlined by Barbara Stevens, the UWEC AA (Affirmative Action) Officer—responses to requests from applicants for information about the search are limited to whether the applicant's application is complete, and whether the search was continuing. Another reason this provides little if any evidence of pretext is that Halfen and Gangenbach were to some extent friends. Favorable treatment of Gangenbach by Halfen would be as consistent with that fact as it would be consistent with an unlawful animus against complainant.

Complainant also argues that another candidate (Farrell) was considered notwithstanding that one of his transcripts had not been submitted in a timely fashion. Complainant bases this argument on the fact that there was no date stamp on this document. However, the evidence does not support a finding the document was not submitted in a timely fashion. If it had a date more than a few days after the priority date, that would be one thing. However, not only did the document have no date stamp, but also Jenneman's contemporaneous records reflect that it was received in a timely fashion.<sup>6</sup> Also, Halfen and the committee relied on Jenneman's implicit assertion that the documents in the applications they were given were timely filed, rather than to have perused all the documents in the files for date stamps--i. e., there was no reason the committee members would have noticed the missing date stamp.

Complainant also contends that Farrell's CV was incomplete because it did not include his record of employment, and that it is probative of pretext that respondent did not reject his application on that basis. The record does not reflect that respondent considered this necessary in a CV, or that it subjected the contents of the applicants' CV's to any scrutiny to determine which applications would be considered complete by the priority date.

Another alleged indication of pretext is that Halfen had contacted two of the applicants (Gengenbach and Krogstad) to inform them of the vacancy, but that he had not so notified complainant. Halfen's explanation of this was that he perceived these two as potentially qualified persons who were interested in that type of employment. He testified he did not put complainant in the same category in terms of qualifications because of the evaluation of complainant with regard to an earlier search (A-238), which was the subject of complainant's earlier

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<sup>6</sup> Respondent contends that one possible explanation of the missing date stamp is that Jenneman might have date-stamped it on the reverse of the page. However, if this had occurred there is no reason on

case (99-0144-PC-ER). In that case, several departmental faculty members testified that complainant's student evaluations were low and a cause for concern, and the Commission made findings consistent with that evidence. Thus, little weight is given to the fact that Halfen did not take the positive step of notifying complainant about this position.

Related to the foregoing aspect of this case is complainant's argument that pretext should be inferred from the fact that Halfen did not recuse himself from dealing with the issues set in motion by Jenneman's discovery that complainant's CV was missing, and particularly in actually looking for complainant's CV in the application materials, due to a conflict of interest generated by Halfen's prior involvement in complainant's cases. The Commission puts little weight on the issue of recusal, because complainant did not establish that Halfen's role in this case involved a conflict of interest. All this record shows is a difference of opinion. Complainant's attempt to analogize to administrative law concepts of conflict with regard to adjudicative bodies or officers is inapposite. Furthermore, even if one were to accept for the sake of argument complainant's theory that there was a conflict, Halfen could simply have been wrong in his assessment of the matter. This is not a situation where there was a violation of a specific rule under circumstances which give rise to an inference that respondent ignored a rule to facilitate discrimination against complainant.

Complainant also argues that respondent "violated its own procedural policies" because "Pladziewicz approved a search with incomplete records and no verification that AA [affirmative action] procedures were followed." Complainant's post-hearing brief, p.17 Complainant is apparently referring to the fact that there were no search committee minutes or notes or written record of consultation with the AA office unearthed in the discovery process or otherwise put into the record. Halfen testified that he did not meet with the AA office and was not aware that anyone else did. Because he was the chair of the search committee, it can be inferred that there was no such meeting, which is inconsistent with UWEC policy, CX 39, p. 3. However, in light of the facts of this case, which involve a decision by Halfen not to consider complainant (i. e., not include him in the pool of candidates whose credentials would be evaluated<sup>A</sup>) be-

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this record that respondent did not produce the original as an exhibit.

<sup>A</sup> This parenthetical information is added to the proposed decision in the interest of clarity.

cause of his failure to have submitted a complete application by the priority deadline, not much weight can be attached to the failure to have consulted with the AA office.

With regard to the absence of written minutes of the search committee's activities, this provides little if any evidence of pretext because it was not shown that such documents were required by any policy of respondent's. Stevens testified that such records were not mandated, but records of the committee's activities would be reflected on the official forms that were completed by the committee. Moreover, there seems to be little likelihood that the absence of minutes of this nature would facilitate the kind of discriminatory activity alleged here, where Halfen alone made the decision not to include complainant's application in the priority group because of the missing CV

Complainant also contends that he was the best qualified candidate. There is no need to make findings about the comparative qualifications of the candidates, since complainant's application was never considered by the committee because it was eliminated from the priority group due to the absence of a CV in his application materials before any applicants were evaluated. Also, findings concerning complainant's qualifications were made in complainant's earlier case (99-0144-PC-ER). For example, the circuit court commented that "Sabol's two years of experience at UWEC may have worked against him given his poor student evaluations." *Sabol v. UWEC*, 01CV1366 (Dane Co. Cir. Ct., Br. 1, March 18, 2002).

With regard to age discrimination, complainant contends respondent had a motive to have discriminated against him because of his age, because a younger faculty member would have a better chance of obtaining certain types of research funding. There is no evidence in this record that would take this contention beyond the realm of speculation with regard to the members of the search committee.

In conclusion, complainant has the burden of proof, and he has not established by a preponderance of the evidence either that his CV was actually among his application materials, or that respondent's explanation for not considering his application because his application was not complete by the established priority date was a pretext for discrimination on the basis of WFEA or OSHA retaliation, or age. While the search committee conceivably could have given complainant an opportunity to submit his CV after the deadline, or relied on information

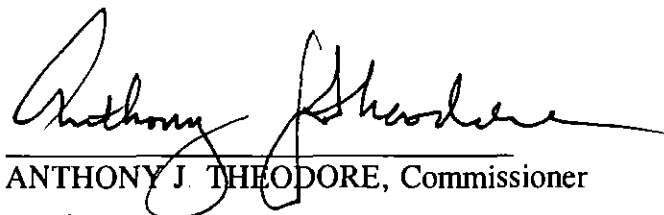
from other searches, it also had good reason not to do so. There were a total of 18 applicants who had not submitted complete applications by the deadline, and there were substantial policy reasons not to deviate from UWEC's established procedures by making exceptions for one of these applicants.

ORDER

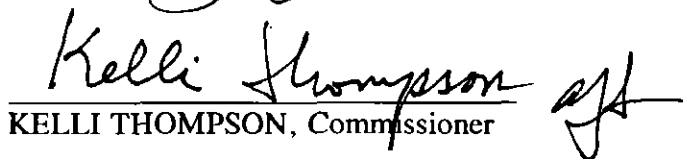
The Commission having concluded that respondent did not discriminate against complainant as alleged, these complaints of discrimination are dismissed.

Dated: August 9, 2002.

STATE PERSONNEL COMMISSION

  
ANTHONY J. THEODORE, Commissioner

AJT:020020C + dec1.2

  
KELLI THOMPSON, Commissioner

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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.)

2/3/95