

STATE OF WISCONSIN

PERSONNEL COMMISSION

PASTORI BALELE,
Complainant,

v.

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

FINAL DECISION AND
ORDER

Case No. 99-0169-PC-ER

NATURE OF THE CASE

This case involves a complaint of discrimination under the WFEA (Wisconsin Fair Employment Act; Subch. II, Ch. 111, Stats.), on the bases of national origin or ancestry, color, race, and WFEA retaliation. The issues are as follows:

1. Whether respondent discriminated against complainant on the basis of color, national origin or ancestry, or race and/or retaliated against the complainant for having engaged in fair employment activities, with respect to the decision not to hire him for the position of Administrative Manager [Director, Business and Staff Services] (BASS Director).

2. Whether the interviews and post-certification decisions relating to this position had a disparate impact on the complainant based on his race and national origin. Prehearing conference report dated April 5, 2000.

FINDINGS OF FACT

1. Complainant is black and was born in Tanzania.
2. Complainant received a Certificate in Public Administration and Finance from the Mzumbe School of Management in 1970.
3. Complainant's resume (Complainant's Exh. C1a) shows that from January of 1971 until December 1972, he was employed as an administrative officer in Maswa County and had the following responsibilities:

Assisted the County Executive in planning and implementation of all County affairs; authorized purchases for the county; deputized the

County Executive in review of the county budgets including revenue budgets; received and reviewed progress reports from all departmental programs and in turn briefed the County Executive on sensitive program issues; supervised staff in the executive branch (300-400); was responsible for hiring, discharge and grievance handling of employee in executive branch.

4. Complainant's resume shows that from January 1973 to June 1975 he worked as an accountant and supervised a staff of 12 or more for the Shirecu Association, a cooperative in Tanzania, and that among his responsibilities, he was "answerable for external audits regarding financial policies and procedures."

5. Complainant's resume shows that for the remainder of 1975, he was the general manager of Kigoma cooperative in Tanzania.

6. Complainant attended the University of Wisconsin-Platteville from 1976 until 1980 and was awarded both a bachelor's degree in Ag-business administration and a master's degree in agriculture management.

7. Complainant began working with DOA in May of 1981 as marketing coordinator for the Federal Property Program.

8. From September of 1985, complainant has been employed by DOA as a contractual services management assistant in the Bureau of Procurement.

9. Complainant has previously filed one or more Fair Employment Act claims of discrimination against respondent with the Personnel Commission.

10. The position in question was announced in the March 15, 1999, current opportunities bulletin, Complainant's Exhibit C1. This announcement includes the following:

JOB DUTIES: Assists Assistant Vice Chancellor with Division management, policy development and implementation, organizational issues and processes, and with internal, external and campus organizational issues and processes, and with internal, external and campus relationships. Provide leadership, direction and management to departments within BASS which include Personnel/Payroll, Finance/Budget, Management Information Systems, Administrative Support and Training. **KNOWLEDGE AND SKILLS:** Management of financial, information systems, and human resources; principles and practices of business management, public administration, and

supervisory principles; budgeting principles and practices; policy analysis; oral and written communication skills; long range and strategic planning; and complex analysis, problem solving, and decision making.

11. At the time the BASS Director position was being filled, the job group in question was underutilized for minorities. There was a short term affirmative action goal in effect.

12. Applicants were supposed to submit an application form, a resume, and an AHQ (achievement history questionnaire) addressing experience in:

1) Management and administrative skills, including supervision, team leadership, budgeting, and strategic planning; 2) Supervision of managers and professional staff including Personnel/Payroll, Finance/Budget; Management Information Systems, Administrative Support, and Training managers and staff; 3) Program development and implementation including monitoring and evaluation; and 4) Establishing and maintaining effective communication with high level officials/professionals.

13. This position is a classified position in the career executive program. Recruitment for the position was pursuant to Career Executive Option 4—i. e., anyone could apply. As an Option 4 staffing, it also could be filled using Options 1-3—i. e., present career executives employed by respondent, present career executives within state service, and present employes within the classified civil service, respectively.

14. Complainant applied for this position by submitting an application form, an AHQ (achievement history questionnaire), and a resume. Following a review of the application materials, complainant was among 27 applicants certified (Complainant's Exhibit C17) for further consideration.

15. Certification represented a determination by respondent that each applicant certified was at least minimally qualified for the position.

16. The staffing process for this position was directed by Paulette Harder. She also was then the incumbent of the position in question.

17. The next step after certification was an interview by a three member panel chosen by Harder.

18. Harder decided she wanted panel members who would be peers of the position in question. This is because, based on past experience, she was concerned about acceptance of the person hired by the high level people who would actually be involved with the position on a day to day basis. In her opinion, acceptance would be facilitated if these people were involved in the hiring process. All of the peers of this position were white.

19. She selected three panelists—herself; John P Harrod, Jr., Director of the Physical Plant Department; and David W Drummond, Safety Department Director. All of these people are white. All of these people were very knowledgeable about the position.

20. Due to the large number (27) of candidates to be interviewed, it was decided to conduct the interviews by telephone, and this is the method that was used.

21. The panelists developed a list of written interview questions. The panelists determined that these questions were job related, and the Commission finds that they were job related. All applicants were asked the same questions.

22. Harder knew that complainant was black. The panelists could have inferred that complainant was black and of Tanzanian origin from his accent and the application materials he had submitted, which included a resume.

23. No benchmarks were developed or used by the panel to score applicants. Each applicant was ranked by each panelist on a scale of one to five, on the basis of the panelist's understanding of the nature of the position and the knowledges, skills, and abilities that were deemed desirable for successful performance.

24. It had been decided that the panel should reduce the list of applicants to the top five to be forwarded to the appointing authority and direct supervisor of the position, Bruce Braun, who is white.

26. The panel selected five applicants, all of whom were white, for further consideration by Braun. Complainant was not one of the five finalists, and his score was substantially less than the scores of the five finalists.

27 The panel determined that complainant was not well qualified with regard to most of the criteria for the position that were incorporated in the interview question. Complainant's application materials and interview answers were lacking in the areas of team leadership, the development, implementation and evaluation of programs, modern management information systems, and management experience in training. Much of his management experience was not recent. It also was relatively short in duration, and his present experience did not demonstrate a relevant continuation or further development of his past management experience. Inasmuch as the position manages other managers and supervisors, high level management experience was desirable. Complainant did not have any recent experience of this kind. At least part of the reason that complainant's evaluation was negatively influenced by the age of his experience is that management concepts have changed, and the management information field has changed since complainant acquired much of his higher level management experience in the early 70's.

28. Mr Lovejoy, the candidate eventually hired, had substantially better qualifications for the BASS Director position than complainant. Lovejoy's Department of Transportation (DOT) position was similar to the BASS Director, and Lovejoy had a great deal of relevant high level management experience including having been the DOT budget director, and after that the administrator of the Division of Business Management in the Department of Industry, Labor and Human Relations (DILHR). That division included budget, personnel, data processing, procurement, and space management functions. He also had experience as Executive Assistant to the Administrator of the Division of Highways in DOT, and as head of the Office of Highway Management in the Division of Highways, which involves personnel, planning, budget, and automation functions for that division. At the time he applied for the BASS Director position, Lovejoy was the DOT Human Resource Services director

29. The other four finalists whose names were forwarded to Braun for consideration were also significantly better qualified for the BASS Director position than complainant, *see* Respondent's Exhibit R9 (application materials of four other

finalists). Cynthia Morehouse was the Director of the Bureau of Financial Services at DOT and had served as the Director of the Bureau of Human Resource Services and Director of the Bureau of Environmental Analysis and Review before that. These jobs entailed the supervision of 70, 25, and 18 employees, respectively. Tracy K. Bredeson was the Director of Education in the Department of Corrections with responsibilities including oversight of budget and fiscal functions, oversight of human resource functions, and oversight of technology initiatives for education programs. She supervises 13 professional and paraprofessional staff. Vicki L. Neuman is the Assistant Director/Management, Waisman Center, UW-Madison, where she has responsibility for human resource management, facilities management, budget development, planning initiatives, organizing and coordinating program activities and functions, and technology functions. James A. Zegers is Chief of Policy and Program Development, Office of Disadvantaged Business Enterprise Programs, DOT. He also has eight years of experience as Chief of Administration, Division of Highways, where he directed division administrative services and human resource programs, allocated resources, directed or provided executive policy services, directed special division programs, supervised staff, and coordinated administrative matters and programs with district offices and central office bureaus. Prior to that he served as Senior Personnel Manager in DOT.

30. After the panel completed their evaluations, Braun interviewed the five applicants that had been forwarded to him, including Michael Lovejoy, who is white and of non-African origin.

31. Lovejoy and Braun were close personal friends. At the time the position was announced, Lovejoy held a high level career executive position in the Department of Transportation (DOT). This DOT position was at the same level as the BASS Director position which meant that Lovejoy was eligible to transfer into that position. Braun thought of Lovejoy as a good fit for the BASS position, and both he and Harder mentioned the opening to Lovejoy, and Braun encouraged Lovejoy to apply. When he originally heard about the job Lovejoy was not interested in it and did not apply.

However, he reconsidered and eventually submitted application materials prior to the deadline.

32. In addition to deciding to appoint Lovejoy because of his qualifications set forth above, Braun believed that Lovejoy was able to get along well with others, which Braun considered to be a valuable attribute for the position in question.

33. Braun appointed Lovejoy to the position effective June 21, 1999, via a transfer from his DOT position.

34. The Equal Employment Opportunity/Affirmative Action Policy and Procedure Standards issued by the Division of Affirmative Action (DAA) in the Department of Employment Relations (DER) effective January 1, 1997-June 30, 1999 (Complainant's Exhibit C6a), include the following: "In order to achieve a consistent statewide affirmative action effort, it is the objective of DER/DAA that all state agencies, institutions and universities shall adhere to these Policy and Procedure Standards." *Id.*, p. 1 This document includes the following standards for positions with short term affirmative action goals¹.

- D.
 - 1) All agency staff involved in the hiring process must be informed in writing when there is a short-term goal for racial/ethnic minorities
 - 2) For positions with short-term goals, the agency EEO/AA officer or designee shall meet with staff responsible for developing interview questions to review the appropriateness of the proposed interview questions and the related benchmarks for evaluating the candidates.
 - 3) Prior to the start of the selection interviews, the EEO/AA officer or designee will discuss the EEO/AA objective in the hiring decision with the selection interview panel

- E. Anytime there is a short term AA goal and an AA group candidate(s) is certified or eligible . for consideration for an appointment but not recommended for hire:
 - 1) An informal discussion will be held prior to any offer of appointment between the agency EEO/AA Officer and the highest

¹ There was a short term affirmative action goal with regard to this position, see Finding #11.

level hiring official who is responsible for the recommendation(s) not to hire.

They will review the explanations or circumstances regarding the recommendation not to hire and strive to reach a consensus on the decision. If the EEO/AA Officer does not agree with the recommendation made by the hiring official, they proceed to step E. 2.

2) If a consensus or agreement is not reached between the agency EEO/AA officer and the highest level hiring official, both parties shall jointly consult with the agency appointing authority or designee regarding the appropriateness of the recommendation not to hire and the final decision reached.

3) If an agreement to make the affirmative hire is not reached in Steps E. 1 or E. 2. above, prior to any offer of appointment, the appointing authority or designee responsible for the hiring decision shall draft and submit a written justification that explains the nonselection to the EEO/AA Officer. The EEO/AA Officer or designee will review the written justification and acknowledge his/her agreement or disagreement in writing.

NOTE: Whenever there is a decision not to hire an AA candidate, even if there is agreement in step E. 1., a written justification for the nonhire of the AA candidate is required. Complainant's Exhibit C6a, pp. 5-6.

35. The foregoing steps would have been appropriate under the EEO/AA policy and procedure standards set forth in the preceding finding but respondent did not do these things.

36. The UW-Madison Equal Employment Opportunity/Affirmative Action Plan effective January 1, 1997-June 30, 1999 (Complainant's Exhibit C5) includes the following:

If there is a short-term goal for women and/or racial/ethnic minorities for a classified position which is being filled, the university should undertake special recruiting efforts and should inform all staff involved in the hiring process, preferably in writing, of this affirmative action goal. (Complainant's Exhibit C5, p. 5)

37 All staff involved in the hiring process were not advised, either in writing or otherwise, about the short-term goal that was in place with regard to the BASS Director position.

38. Respondent's personnel policies (Complainant's Exhibit C4) require that the appointing authority fill out a Written Hiring Reason form (Appendix 5K, Complainant's Exhibit C4) for new and promotional appointments. This form is not required to be filled out for transfers, and the appointment to the BASS Director position was a transfer for Lovejoy. This form was not completed with regard to Lovejoy's appointment.

39. Harder was aware of complainant's WFEA activities (see Finding of Fact 9) at the time of this selection process. Neither Harrod, Drummond, nor Braun was aware of any WFEA activity by complainant at the time they were involved in this process.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.
2. Complainant has the burden of proof to show by a preponderance of the evidence the facts necessary to establish his claims.
3. Complainant has not satisfied his burden of proof.
4. Respondent did not discriminate against complainant on the basis of color, national origin or ancestry, or race, with respect to the decision not to hire him for the position of Administrative Manager [Director, Business and Staff Services] (BASS Director).
5. Respondent did not retaliate against the complainant for having engaged in fair employment activities with respect to the decision not to hire him for the BASS director position.
6. The interviews and post-certification decisions relating to this position did not have a disparate impact on the complainant based on his race or national origin.

OPINION

ADVERSE TREATMENT—RACE, COLOR, NATIONAL ORIGIN

In a case of this nature, the initial burden of proceeding is on the complainant to show a prima facie case of discrimination. If the complainant meets this burden, the employer then has the burden of articulating a legitimate, nondiscriminatory reason for the action taken which the complainant then attempts to show was a pretext for discrimination. The complainant has the ultimate burden of proof. *See Puetz Motor Sales Inc. v. LIRC*, 126 Wis. 2d 168, 172-73, 376 N.W.2d 372 (Ct. App. 1985).

In a failure to hire case such as this, the complainant may establish a prima facie case by showing: (1) he is a member of a group protected by the WFEA, (2) he applied and was qualified for a job which the employer was seeking to fill, (3) despite his qualifications he was rejected, and (4) the employer continued with its attempt to fill the position. *See, e.g., McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 36 L. Ed. 2d. 668, 93 S. Ct. 1917, 5 FEP Cases 965 (1973). Here, complainant is a black person whose country of origin is Tanzania. He applied and was interviewed by a screening panel for the position in question. He was rejected due to his failure to have attained a grade from the rating panel that would have placed him near the top of the 27 applicants. After his rejection, respondent continued with the selection process and appointed a white person to fill the position. The parties disagree about whether complainant was qualified for the position. However, the record supports a finding that he was at least minimally qualified for the position as evidenced by his certification for further consideration following an AHQ screen. In any event, since complainant clearly has established the other elements of a prima facie case of race discrimination, and this case was heard fully on the merits, the Commission can proceed directly to the issue of pretext, *see, e.g., United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715, 75 L. Ed. 2d. 403, 103 S. Ct. 1478 (1983).

In this case, respondent's rationale for its decision to hire Lovejoy rather than complainant is that complainant's qualifications were evaluated as significantly below

the group of the top five applicants, including Lovejoy, whose names were forwarded to Braun for further consideration.

Complainant makes a number of arguments in support of his claim of pretext. He argues that respondent's assertion that complainant was substantially less qualified than the applicants who were forwarded to the next stage (interviews with Braun) is meaningless:

Indeed in its answers to interrogatories, UW-Madison admitted that performance at interview was meaningless. This is because an appointing authority can choose anybody from the certification list regardless of performance at interview. Therefore, UW-Madison reason that Balele did not do well at interview was not the real reason for not forwarding Balele's name for equal appointment consideration. Complainant's Post-hearing brief, pp. 15-16.

The interrogatory to which complainant refers asks: "Can an appointing authority pick anybody on the certified list regardless of ranking at AHQ and interview stages?" Respondent answered: "In general, yes." Interrogatory 31, Complainant's Exhibit 15, p. 8. The long-established concept involved in this question and answer is that the appointing authority has the discretion to select whom to appoint among those certified, and is not constrained to hire the candidate who scored highest in the previous screening. *See, e. g., State ex rel Buell v. Frear*, 146 Wis. 201, 131 N. W. 832 (1911). This question and answer in no way supports complainant's argument that performance on the interviews with the panel is meaningless. Complainant was screened out by the panel and not selected for further consideration by the appointing authority (Braun) because he was substantially less qualified than the five highest ranking candidates.

Complainant also argues that "UW-Madison['s] reason that Balele did not do well at interview because his management experience was old was also a pretext of discrimination because none of the interviewers testified that they read anywhere or a [sic] research that old management experience was non-job related or that current management experience was job related." Complainant's post-hearing brief, p. 16. It by no means follows that because none of the panelists had read that current

management experience was job related, that respondent's position regarding the currency of complainant's management experience is pretextual. They pointed out in their testimony that management theory has changed over the years, as has the entire field of information management. Complainant's resume reflects that he had a job in 1973-1975 where he oversaw the conversion of an accounting system from manual to computerized, and the panelists certainly had a basis to have discounted the usefulness of this experience in the light of changes in this field since then. Respondent also pointed out that complainant's past experience was relatively short in duration, and his more recent experience did not show a relevant continuation or further development of his past management experience.

Complainant also contends that Harder testified that she wanted to hire someone in a "peer" position to the BASS Director. This is a misrepresentation of her testimony. She said she wanted to use peers for the selection panel. These people had an excellent working familiarity with the position, and she also believed involving them in the selection process would facilitate their "acceptance" of the ultimate appointee. Since her decision entailed using an all white panel, it can be argued that it is probative of pretext, but this is offset by the fact that she had a reasonable basis for having made this decision.

Complainant's pretext case also is supported by the fact that respondent did not follow established affirmative action requirements for a position which was underutilized for minorities and for which there was a short term affirmative action goal. The DER (Department of Employment Relations) Policy and Procedure Standards, Complainant's Exhibit C6a, pp. 5-6, requires that all agency staff involved in the hiring process be informed in writing that there is a short term affirmative action goal, but this did not occur.² It is also required that the agency EEO/AA officer or designee meet with the staff responsible for developing interview questions to review

² Furthermore, the UW-Madison's own affirmative action plan (Complainant's Exhibit C5) reiterates that where there is a short term affirmative action goal, "the university should inform all staff involved in the hiring process, preferably in writing, of this affirmative action goal." *Id.*, p. 5.

the appropriateness of the proposed interview questions and the related benchmarks. Not only did this review not occur, but also there were no benchmarks used. It is further required that prior to the start of the selection interviews, the EEO/AA officer or designee will discuss the EEO/AA objective in the hiring decision with the interview panel. This was not done. Also, these standards require a relatively elaborate process of interaction between the appointing authority and the EEO/AA officer whenever there is a short term affirmative action goal and a minority candidate is eligible for consideration but is not recommended:

E. Anytime there is a short term AA goal and an AA group candidate(s) is certified or eligible for consideration for an appointment but not recommended for hire:

1) An informal discussion will be held prior to any offer of appointment between the agency EEO/AA Officer and the highest level hiring official who is responsible for the recommendation(s) not to hire.

They will review the explanations or circumstances regarding the recommendation not to hire and strive to reach a consensus on the decision. If the EEO/AA Officer does not agree with the recommendation made by the hiring official, they proceed to step E. 2.

2) If a consensus or agreement is not reached between the agency EEO/AA officer and the highest level hiring official, both parties shall jointly consult with the agency appointing authority or designee regarding the appropriateness of the recommendation not to hire and the final decision reached.

3) If an agreement to make the affirmative hire is not reached in Steps E. 1 or E. 2. above, prior to any offer of appointment, the appointing authority or designee responsible for the hiring decision shall draft and submit a written justification that explains the nonselection to the EEO/AA Officer. The EEO/AA Officer or designee will review the written justification and acknowledge his/her agreement or disagreement in writing.

NOTE: Whenever there is a decision not to hire an AA candidate, even if there is agreement in step E. 1., a written

justification for the nonhire of the AA candidate is required.
Complainant's Exhibit C6a, pp. 5-6.

These steps, including the written justification, did not occur in this case.

An employer's failure to follow its internal affirmative action policy is evidence that can be probative of pretext. *See, e. g., Antol v. Perry*, 82 F. 3d 1291, 1301, 70 FEP Cases 993, 999 (3d Cir 1996) (employer's failure to follow its own affirmative action rules is evidence of discriminatory intent); *Yatvin v. Madison Metropolitan School Dist.*, 840 F. 2d 412, 415-16, 45 FEP Cases 1862, 1864-65 (7th Cir 1988) (where there is substantial compliance with affirmative action plan, occasional departures do not have evidentiary significance). In the instant case there were a number of departures from state affirmative action standards and the respondent's own affirmative action plan in the selection process. The weight of this evidence must be weighed against the fact that the complainant's qualifications for this job were substantially less than both Lovejoy's qualifications and those of the other four finalists. It is difficult to realistically hypothesize a scenario in which Braun would have seriously considered someone with complainant's comparatively lower qualifications for this position, and that had to have been evident to the other people involved in the selection process, most significantly Harder, who was responsible for directing the selection process.³ If complainant's qualifications had been more comparable to the five finalists, the evidence of pretext conceivably could have led to a different result. Under the circumstances of this case, the evidence does not support a conclusion that respondent's explanation of why complainant did not get this job was pretextual, and that the panel members who evaluated complainant were motivated by considerations of complainant's race, color, or national origin.

ADVERSE TREATMENT—RETALIATION

Complainant has created at least a minimal prima facie case by establishing that

³ This sentence was changed for clarification.

he had pursued WFEA claims against respondent; that Harder, who was both a panelist and the director of the selection process, was aware of this; and that he was certified as eligible for appointment but not hired. *See, e. g., Chandler v. UW-LaCrosse*, 87-0124-PC-ER, 8/24/89. Evidence that there was a causal link between the protected activities and the failure to hire can be supplied by the evidence probative of pretext discussed above. The rest of the *McDonnell Douglas* analysis tracks the discussion of the race, color and national origin claims discussed above and leads to the same result. One additional consideration under this heading is that Harder was the only one of the panelists who was aware of complainant's protected activities, and her assessment of the applicant's qualifications was similar to the other two panelists.

DISPARATE IMPACT

Under a disparate (or "adverse") impact theory, an employer's facially neutral policy or practice may be unlawful -- even without a showing of discriminatory intent -- because it has a significantly adverse impact on a protected group. Federal case law discussing the disparate impact theory is "relevant and persuasive" in analyzing a claim under Wisconsin's Fair Employment Act. *Racine Unified School Dist. v. LIRC*, 164 Wis. 2d 567, 595 n. 14, 476 N.W.2d 707 (Ct. of App., 1991). The allocation of the burden of proof in a disparate impact case is as follows:

(1) *The prima facie case*: A court will consider statistical evidence offered by both the plaintiff and the defendant to determine whether, on the basis of those statistics that are most probative, the challenged practice or selection device has a substantial adverse impact on a protected group. The burdens of production and persuasion at this stage are on the plaintiff.

(2) *Business necessity*: If impact is established, the inquiry becomes whether the practice or selection device is "job-related for the position in question and consistent with business necessity." The burdens of production and persuasion at this stage are on the defendant.

(3) *Alternatives with a lesser impact*: To rebut the employer's proof of business necessity, a plaintiff can show that the employer refused to implement an effective alternative practice or selection device that would

have a lesser adverse impact. (Footnotes omitted) Barbara Lindemann & Paul Grossman, *Employment Discrimination Law* 87 (3^d ed. 1996)

In the instant case, complainant presents neither any statistics nor other evidence of disparate impact as defined above. Complainant does not really have a case for disparate impact other than to the extent he is arguing that since he did not get selected for the BASS Director position, respondent's decision had an adverse effect on him. *See, e. g.*, Complainant's post-hearing brief, pp. 9-10:

At the hearing Balele identified that post certification practices which include interviews and decisions after interviews had disparate impact on him as in individual applicant and for his race and national origin. Indeed, during the hearing Respondent's agents, Ms. Harder, Harrod and Drummond testified that Balele's name was not forwarded for equal appointment consideration because he did not do well at the interview. Therefore Balele was correct in his complaint that interview and decision to forward only five names for equal appointment consideration had disparate impact on Balele as an individual and for his protected status.

This line of thinking simply does not amount to an adverse impact. *See, e. g.*, *Balele v. DOT*, 99-0103-PC-ER, 11/15/00 (commission rejected argument that Mr Balele was a "group" of one sufficient for a disparate impact analysis).

ORDER

The Commission having concluded that respondent did not discriminate against complainant as he alleged, this complaint is dismissed.

Dated: February 26, 2001.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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JUDY M. ROGERS, 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