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STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION

Dr. P.V.N. Acharya
729 Liberty Drive
DeForest, Wisconsin 53532
Complainant

ORDER
MEMORANDUM OPINION

vs.

Case #78-PC-ER-53

University of Wisconsin
Attn. Michael Liethen
361 Bascom Hall
Madison, Wisconsin 53706
Respondent

On September 13, 1978, Complainant filed a complaint of unlawful discrimination with the Personnel Commission alleging that the Respondent had retaliated against him because of his earlier national origin discrimination charges against Respondent when Respondent's Department of Pathology voted on May 2, 1978 not to consider him for an appointment as a Professor of Environmental Biochemical Pathology. Following an initial determination of no probable cause to believe that unlawful discrimination had occurred the Personnel Commission ultimately determined on September 3, 1981 that there was no probable cause to believe that the Respondent had discriminated against the Complainant and ordered his complaint dismissed.

In accordance with sec. 111.33(2), Wis. Stats., Laws of 1977, on October 2, 1981 the Complainant elected to file a petition with the Department of Industry, Labor and Human Relations (DILHR) for a review of the Personnel Commission's decision. On November 20, 1981 the DILHR Secretary, Lowell B. Jackson, issued the Department's decision, which affirmed the Personnel Commission's determination that the Complainant had not shown probable cause for belief that he was the victim of unlawful retaliation by the Respondent.

On November 23, 1981 Complainant continued his appeal rights under sec. 111.33(2) by requesting this agency, the Labor and Industry Review Commission, to review the Department's decision.

Based upon a review of the record in its entirety, the Labor and Industry Review Commission affirms the Department's decision that there is no probable cause to believe the Complainant was discriminated against by the Respondent because of retaliation on account of his having filed a previous charge of national origin discrimination when the Respondent's Department of Pathology voted not to consider him for appointment as a Professor of Environmental Biochemical Pathology on May 2, 1978.

Dated & mailed at Madison, Wisconsin, this 19th day of January, 1982.

David A. Pearson
David A. Pearson
Chairman

Virginia B. Hart
Virginia B. Hart
Commissioner

Pamela I. Anderson
Pamela I. Anderson
Commissioner

MEMORANDUM OPINION

To the extent the Department's decision implies that a showing of probable cause requires establishment of a prima facie case and the shifting of burdens as announced in McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973), we disagree with that implication. Chapter IND 88 of the Wisconsin Administrative Code sets forth the criteria necessary in determining whether probable cause to believe unlawful discrimination has been shown. The Administrative Code provides as follows:

"(2) Probable Cause Defined. Probable cause exists when there is reasonable ground for belief supported by facts and circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination has been or is being committed."
s. IND 88.03(2)

A complainant alleging unlawful retaliation by an employer because he has filed a complaint of discrimination must by necessity adduce evidence showing that the employer knew of his charge of discrimination before any reasonable ground can exist for belief that the adverse action complained of was in retaliation to his earlier complaint. In this case the adverse action Complainant, Dr. Acharya, claims to be in retaliation for having filed a previous complaint of discrimination was taken by the employer's Department of Pathology faculty on May 2, 1978.

The department faculty's action which was adverse to Dr. Acharya was agreed upon by 16 of the 17 members who participated in the faculty decision. Accordingly, the Complainant had to show that a majority of those 16 members knew of his earlier complaint against the University. This he has failed to do. Complainant has also failed to adduce sufficient evidence for belief that the faculty had received communication from the University Administration to the effect that he should not be considered for employment. Therefore, no reasonable ground exists for the belief that Respondent engaged in unlawful retaliation because he filed a previous complaint of discrimination against the Respondent.