

STATE OF WISCONSIN

PERSONNEL COMMISSION

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P.V.N. ACHARYA,  
                         Complainant,

v.

UNIVERSITY OF WISCONSIN,  
                         Respondent.

Case No. 79-PC-ER-51

\* \* \* \* \*

DECISION  
 AND  
 ORDER

This case is before the Commission on a complaint of discrimination filed pursuant to §230.45(1)(b) and §111.31 thru §111.37, Wis. Stats. Respondent has challenged the subject-matter jurisdiction of the Commission. This decision addresses only the issue of jurisdiction and is based on written briefs submitted by the parties.

OPINION

Respondent contends that the decision of the University of Wisconsin Press (Press) to decline to publish complainant's manuscript was related to a proposed transfer of a personal property right and had no connection with an employer-employee relationship. Accordingly, respondent concludes that the Commission lacks subject-matter jurisdiction. The second argument offered by respondent is that, even if it assumes, without conceding, that the refusal to publish was retaliatory in nature, that the retaliatory action was still not related to any term, condition or privilege of employment.

Appellant argues the Commission should exercise a broader jurisdiction in a manner similar to exercises of federal jurisdiction pursuant

to Executive Order 11246 and 12044 relative to federal employment selective guidelines. Additionally, complainant argues for the existence of a conspiracy between the Press and other departments of the University of Wisconsin - Madison. In his complaint dated April 3, 1979, complainant alleges retaliatory denial of a privilege of employment under §111.32(5)(a), Wis. Stats., and refers specifically to his privilege for employment as full professor in the Department of Pathology. The Press belatedly joined the conspiracy to find an excuse not to hire complainant. In his August 16, 1979 response to respondent's motion for summary dismissal, complainant alleges a calculated attempt by the Press, to impair his employment opportunity in the University.

The Fair Employment Act prohibits any employer from discriminating against any employe or any applicant for employment or licensing, in regard to hire, tenure or term, condition or privilege of employment or licensing, §111.32(5)(a) and §111.325, Wis. Stats. The statute on its face refers to an employer and an employe as persons whose relationship is regulated by statute. The first question to ask therefore, is whether respondent and complainant are employer and employe as required by statute. The Press is, generally speaking, an employer according to the definition of employer in §111.32(3), Wis. Stats., which includes "each agency of the state ...." Agency is defined only in §230.03, Wis. Stats., and is "any state ... department or unit thereof ... if such ... department, or head thereof is authorized to appoint staff by the constitution or statute ...." The Press does have authority to hire and fire staff, but has never had and is not expected to have such

authority over complainant. Complainant in the past has been affiliated with the Department of Pathology of the University of Wisconsin-Madison. While both the Press and the Department of Pathology are part of the University of Wisconsin-System, that alone is an insufficient nexus to create an employer-employee relation between the parties to this complaint.

The complainant has not alleged that the Press has any input into a hiring decision by another department of the University but only asserts that publication generally is a element considered in faculty hiring decisions. Complainant alleged that the decision of the Press not to publish his manuscript was belatedly calculated to adversely affect his employment opportunity with the University. Respondent had been employed by the University well prior to his submission of his manuscript to the Press so that a hiring decision is not at issue here. There is no need to decide whether achieving full professor status is a privilege of employment. The issue here concerns the decision to publish, not the decision to grant tenure. Respondent stated in its brief and attached affidavit that publication by the Press is not a privilege associated with University employment. Complainant has not contested that in his reply.

While the policy considerations set out in §111.31 Wis. Stats. clearly favor liberal construction of F.E.A. within the realm of employer-employee relations, the present complaint asks the Commission to assert jurisdiction in an area it finds to be outside that realm..

CONCLUSIONS OF LAW

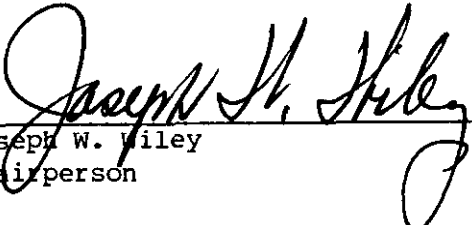
1. The University of Wisconsin Press is not an employer with respect to complainant under the relevant statutes.

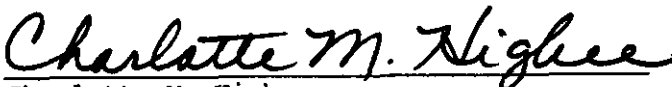
2. The Commission does not have jurisdiction over the subject matter of the complaint.

ORDER

Respondent's motion for summary dismissal is granted and the complaint is hereby dismissed.

Dated: October 1, 1979. STATE PERSONNEL COMMISSION

  
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Joseph W. Wiley  
Chairperson

  
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Charlotte M. Higbee  
Commissioner

AR:jmg

9/27/79