

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 ROSANN HOLLINGER. *
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 Complainant, *
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 v. *
 *
 Chancellor, UNIVERSITY OF, *
 WISCONSIN - MILWAUKEE, *
 *
 Respondent. *
 *
 Case No. 84-0061-PC-ER *
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 * * * * *

INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission on respondent's motion to make the complaint more definite and certain. The complaint alleged that respondent perceived that the complainant had assisted in disclosure of information under the Whistleblower Law (1983 Wisconsin Act 409). Complainant alleged that respondent had retaliated against her in violation of the Whistleblower Law and requested the following relief:

I want all harassment, retaliation, and reprisal, in any form - verbal and written - to stop immediately. The High School Equivalency Program is in an extremely unfortunate situation, but a professional director, handling federal money (and state money for a possible summer program), should have been able to handle this external investigation better. To walk around the building calling [the person who made the disclosure] names and not talking with "us" anymore, writing biting notes instead, etc. is just incredible and regrettable.

Complainant attached copies of two memo's written by her supervisor that complainant termed "examples of the general atmosphere of reprisal [and] harassment." Complainant also wrote that she had maintained a journal of daily occurrences of retaliation and that she would "show this to a state investigator at a later time."

Respondent offered the following arguments in support of its motion to make more definite and certain:

The referenced [complaint] contain[s] many ambiguities which not only render a response to the [complaint] impossible, but also preclude any affirmative action on the part of the University to rectify the difficulty if, in fact, one exists. Wis. Stats. §802.02(1)(a)(1983) requires that claims for relief contain:

a short and plain statement of the claim, identifying the transaction, occurrence or event or series of transactions, occurrences, or events out of which the claim arises and showing that the pleader is entitled to relief.

The standard for interpretation of this statute was established in Milwaukee Trust Company v. Van Valkenbergh, 132 Wis. 638, 112 N.W. 1083(1907). The court ruled that a complaint is deemed deficient and the proper object of a motion for a more definite statement when the complaint is so vague or ambiguous that it would be unreasonable to require the movant to frame a responsive pleading.

The nature of the alleged injury offered is unclear and uncertain from the allegations made in the above named [complaint]. The harm is listed as "harassment," "retaliation" and "reprisal." The [complaint] and supporting documents are rife with a variety of information that may or may not be relevant to specific sources of harm to [complainant]. The terminology used by [complainant] is equivalent to mere conclusions that lack specific support. The court has rejected similar legal conclusions for failure to provide support for the claim pleaded. Cheese v. Afram Brothers Co., 32 Wis.2d 320, 145 N.W.2d716 (1966).

The fault with respondent's arguments is that they rely on an interpretation of Wisconsin's Code of Civil Procedure ^{FN} and ignore the procedures applicable to administrative law as contemplated in the Whistleblower Law. Pursuant to §230.85, Stats (1984), a complaint filed under the Whistleblower law is to be in writing and is to specify "the nature of the retaliatory action or threat thereof" and to request relief. Once the complaint has been filed, it must be investigated. If the investigator finds probable cause to believe retaliation occurred or was threatened, and if conciliation is unsuccessful:

^{FN} Pursuant to §801.01(2), Stats., ch. 802 governs procedure and practice in circuit courts in "all civil actions and special proceedings."

the commission shall issue and serve a written notice of hearing, specifying the nature of the retaliatory action which has occurred or was threatened, and requiring the person named, in this section called the "respondent", to answer the complaint at a hearing. §230.85(2), Stats. (1984)


In the present case, the complainant has met the requirements of §230.85, Stats (1984), because she has identified the nature of the alleged retaliation by stating that the program director does not talk to complainant and writes "biting notes" instead. Complainant attached examples of the program director's notes. Complainant also stated that "during the course of the investigation [she] will specify actions taken, and the original complaint will be amended accordingly." (Letter dated August 22, 1984).

Therefore, in light of complainant's general compliance with §230.85(1), Stats., the respondent's motion must be denied.

ORDER

Respondent's motion to make the complaint more definite and certain is denied.

Dated: 9/28, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

KMS:jmf


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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