

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ABDULLAH ASADI, \*

Complainant, \*

v. \*

President, UNIVERSITY OF \*

WISCONSIN SYSTEM (PLATTEVILLE)\*

Respondent. \*

Case No. 85-0058-PC-ER \*

\* \* \* \* \*

INTERIM  
DECISION  
AND  
ORDER

This matter is before the Personnel Commission to resolve a dispute regarding discovery. The complaint arises from respondent's decision not to renew complainant's tenure track employment in the Department of Industrial Engineering, College of Engineering, UW-Platteville beyond the 1983-84 academic year and to restrict his further employment to a terminal contract for 1984-85. Complainant appealed an initial determination of no probable cause and the case was set for hearing. In a letter dated September 2, 1987, complainant requested certain information from the respondent:

According to chapter 804 of the Wisconsin Statutes, I have the right to discover and gather evidence such as access to the UW-Platteville or UW system faculty evaluations, terms of individual faculty members' contracts, procedures for the DRB and CRST, and a list of previous and current lawsuits or charges of discrimination against the UW-Platteville or UW systems.

By letter dated September 23, 1987, respondent declined to grant any of complainant's requests except those DRB and CRST procedures that were "relevant to the time period at issue in this case."

Then, by letter of September 26, 1987, the complainant filed a motion to compel discovery of materials he described as follows:

According to [ch. 804, Stats.], I have the right to discover and gather evidence such as other faculty members' student evaluations, faculty peer evaluations, terms of individual faculty members' contracts, procedures for summer hiring (contracts), procedures for giving raises and hiring new faculty members, DRB and CRST procedures, and a list of previous and current lawsuits and charges of discrimination against the University of Wisconsin-Platteville and the University of Wisconsin system.

A briefing schedule was established on complainant's motion. Respondent subsequently filed a motion for protective order as to much of the materials sought by complainant. The complainant appears pro se in these proceedings.

The topics of complainant's discovery requests are discussed in related groups, below.

#### Faculty Evaluations and Contracts

According to his motion to compel, complainant is seeking student evaluations of faculty members, faculty peer evaluations, and the terms of individual faculty contracts. Complainant's request is insufficiently specific as to which faculty members he is referring to and the dates covered by his request. In a brief filed in support of his motion, complainant states that he is "asking to be allowed to collect evidence from individual faculty members' files for the last ten to fifteen years."

In its brief, respondent agreed to provide complainant access to student evaluations, faculty peer evaluations, and terms of individual faculty members' contracts for faculty members in the College of Engineering at UW-Platteville for the academic years 1982-83, 1983-84, and 1984-85 under seal.

Because the complainant appears pro se, his motion to compel will not simply be denied in toto because of its vagueness. Instead, and in an effort to eliminate unnecessary delays in the proceedings, this interim decision will go on to set forth the limits on respondent's responsibility

to provide discovery assuming the complainant redrafted his requests with greater specificity.

Discovery must be limited to a reasonable time prior to the date the claim was filed. Title VII cases provide a range of at least 10 to 2 years. Smith v. Comm. Fed. S & L Assn., 37 FEP Cases 923 (N.D. Miss., 1977); Zahorik v. Cornell Univ., 31 FEP Cases 1366 (N.D. NY, 1983). Establishing any such limit is somewhat arbitrary, but a 5-year period appears to be appropriate in this case. EEOC v. M.D. Pneumatics, Inc., 44 FEP Cases 521 (W.D. Mo., 1979), Cornier v. PPG Industries, Inc., 17 FEP Cases 1389 (W.D. La., 1978).

The complainant is entitled to discovery for the period subsequent to his filing, as well. Broderick v. Shad, 43 FEP Cases 532 (D.C. DC, 1987). Therefore the entire period subject to his discovery is from April of 1980 to the present.

The breadth of complainant's request is also not specified. In his brief, he appears to be arguing that discovery should extend throughout the University of Wisconsin System covering twenty-seven campuses. In Hinton v. Entex, Inc., 33 FEP Cases 1300 (E.D. Texas, 1981), the court denied complainant's discovery request relating to employment practices and policies at all of the employer's facilities in the State of Texas. Complainant had worked at only one of these facilities and had made no allegations of discrimination pertaining to any facility other than the one where she worked. Based on the precedent of Hinton, Mr. Asadi clearly is not entitled to discovery for all UW-System faculty.

The more difficult issue is whether complainant's discovery should extend to all UW-Platteville faculty or should be restricted to that university's College of Engineering faculty. In his brief, respondent

notes that a probationary faculty appointment may be granted only upon the affirmative recommendation of a particular department or its functional equivalent and a chancellor in a given university in the UW System. S. 36.13(1), Stats., and s. UWS 3.01(1)(b), Wis. Adm. Code. In addition, the initial determination in this matter states, in part:

The CRST [College of Engineering, Rank Salary and Tenure Committee] also reaffirmed its decision [for non-renewal] but decided to provide complainant with an additional year of employment for 1984-85 with the understanding that this would be terminal.... This decision was ultimately concurred in by the University Rank Salary and Tenure (URST) committee and the chancellor, and was effectuated.

Given the apparent role by the URST and the chancellor, the complainant is entitled to discovery of faculty evaluations and contracts for all of the UW-Platteville rather than only in the College of Engineering. However, the complainant may be provided this information with the restriction that information which comes from the files of other faculty members must be introduced into the record of this case in a manner that protects the identification of those individuals. The complainant will be directed not to divulge the material beyond the extent necessary for pursuing his claim. To the extent that the complainant, after reviewing the material, feels he needs to make notes or photocopies for the purpose of preparing for hearing or consulting with attorneys, he may do so.

Due to the large number of files involved, the respondent may choose to either photocopy the materials or to allow the complainant to review the files themselves at UW-Platteville.

Procedures for Summer Hiring, Giving Raises and Hiring New Faculty

The complainant's requests for "the procedures for summer hiring (contracts), procedures for giving raises and hiring new faculty members" first appeared in his motion to compel. Respondent has agreed to provide whatever procedures existed "for the time period at issue in this case" for

the hiring of summer faculty and hiring of new faculty members in the Department of Industrial Engineering in the College of Engineering.

Consistency with the remainder of this decision dictates that these procedures be supplied for all of the various departments at UW-Platteville and for a period commencing in April of 1980. These procedures will help explain the faculty evaluations, materials, and contracts to be supplied by the respondent.

DRB and CRST Procedures

The respondent has agreed to comply with this request. The response should be broad enough to cover the procedures in effect from April of 1980 to the present.

Previous and Current Lawsuits and Charges of Discrimination Against UW-Platteville and UW System

Respondent argues that the information is irrelevant to the case. Nevertheless, the standard is whether the information is "reasonably calculated to lead to the discovery of admissible evidence." S. 804.01(2)(a), Stats. It is certainly possible that cases or claims of discrimination filed against the UW-Platteville and involving the same individuals who decided not to rehire the complainant could provide relevant information to complainant's own case. Complainant is not, however, entitled to a list of cases involving any campus in the UW System. The list should be limited to claims or cases of discrimination based on national origin that have been filed by faculty members against persons at UW-Platteville since April of 1980.

Respondent also contends that it does not maintain a list of the type sought by the complainant and that to produce such a list would require

respondent's staff to spend countless hours reviewing files at numerous locations. It would appear likely that there are persons employed at UW-Platteville who would be sufficiently familiar with any litigation involving that campus to respond accurately to the discovery request. If that is not the case, the respondent's attorney should contact the hearing examiner so that a method can be agreed upon for providing this information to the complainant. Support for partially granting complainant's discovery request is found in Whalen v. McLean Trucking, 37 FEP Cases 836 (N.D. Ga., 1983), where the court granted plaintiff's request for copies of all complaints filed by the EEOC, the U.S. Department of Labor or supervisory personnel charging the defendant with age discrimination during the five years preceding plaintiff's discharge, and found the request neither too broad nor too burdensome.

ORDER

Complainant's and respondent's motion for a protective order are granted in part and are denied in part. The respondent is directed to provide complainant with copies of the materials he has requested, to the extent those requests have been found appropriate in the preceding decision, or to make the materials available to him for review, subject to the conditions noted above.

In the event either party has not contacted the Commission within 30 days of the date of this decision for the purpose of rescheduling the hearing in this matter, the Commission will contact the parties at that time.

Dated: November 13, 1987

STATE PERSONNEL COMMISSION

  
Kurt M. Stege, Hearing Examiner