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LOIS BETZ,

Complainant,

v.

President, UNIVERSITY OF
WISCONSIN - EXTENSION,

Respondent

Case No. 88-0128-PC-ER

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DECISION
AND
ORDER

This case is before the Commission on a charge by complainant that respondent constructively discharged her by reason of her age, in violation of the Wisconsin Fair Employment Act

FINDINGS OF FACT

1 Complainant, Lois Betz, who at all times relevant to this matter was over the age of 40, started work in the La Crosse County Extension Office as an Account Clerk in October 1963.

2 Under the authority provided in §59.15(2)(d) and §59.87, Wis. Stats., respondent, University of Wisconsin-Extension (UWEX) participates with La Crosse County in operating and conducting county extension programs.

3. In this joint effort, UWEX is responsible for providing professional staff, who develop and oversee the program services. But by statute, §59.87(3)(a) and (b), Wis. Stats., the professional staff are employees of both the county and the university. The county provides 40% of their salaries.

4. As Account Clerk, complainant's duties included serving as office receptionist, producing typed copy of minutes and other documents, assisting with informal mailings for the agents and doing accounting work.

5. Throughout her employment at the county extension office, complainant was supervised by the office chairperson.

6 On January 1, 1987, Mary Meehan-Strub, a home economist, was assigned as chairperson of the La Crosse County Extension Office and became complainant's supervisor.

7. Meehan-Strub reported to the Western District Director for Corporate Extension, UWEX, regarding matters governing U.W. faculty at the extension office, and to the county's Committee on Agriculture and Extension Education, regarding matters of program and office management.

8. Ms. Meehan-Strub had supervisory authority over all office staff, except the county extension agents (UWEX faculty) in matters not related to her function as office manager. In that regard, she was a peer of the county agents.

9. In December 1986, prior to beginning her position as chairperson, Meehan-Strub met with the office staff and requested information about their jobs and the work place.

10. On August 10, 1987, Meehan-Strub met with the clerical staff to discuss office procedures and directions, and the specific responsibilities of each person.

11. Also in August 1987, because of work and attitude problems, Meehan-Strub engaged in individual counseling sessions with the clerical staff, completing them on August 14, 1987.

12. In the counseling session with complainant, Meehan-Strub reviewed complainant's responsibilities, discussed comments by extension faculty regarding her work performance, and advised complainant of work performance expectations for her.

13. As the extension office was moving toward increased use of automated technology in anticipation of ensuing budget cuts and staff reduction, complainant was advised to develop her micro-computer skills, (specifically, word processing), to make sure the receptionist function was provided at all times, i.e., breaks, lunch hour, and to check the work baskets for work not directly assigned to her.

14. On or about November 3, 1987, Ms. Meehan-Strub met with complainant and completed an annual employee performance review. Meehan-Strub rated complainant's work performance as poor in several areas: work attitude, attitude toward other employees, capacity to develop, ability to understand directions, quality of work, and volume of work.

15. In addition, complainant was cited for making excessive phone calls and was reminded to develop micro-computer skills.

16. In February 1988, three months after her annual evaluation, complainant received a letter from Meehan-Strub informing her that her work performance remained unsatisfactory.

17. This letter included a detailed account of seven problem areas: work attitude, lack of initiative, ability to follow directions, quality of work, use of office telephones, microcomputer usage and time schedules.

18. Complainant was urged to improve her clerical and accounting skills, use the microcomputer and improve her time management.

19. Also, complainant was advised that her six-month evaluation must show improvement.

20. In a letter dated March 1, 1988, Meehan-Strub provided instructions to complainant and other clerical staff on documenting clientele visits and posting revenues and expenses.

21. This was followed up with a meeting with complainant on March 14, 1988, and a letter dated March 19, 1988, clarifying complainant's responsibilities regarding budget record-keeping.

22. On May 1, 1988, Ms. Meehan-Strub wrote to complainant advising her that she would have to take further action if the complainant continued to ignore deadline duties. Meehan-Strub cited several incidents: failure to complete assigned bookkeeping tasks by May 4, 1988, refusal to use microcomputer, disruption of office regarding use of mimeograph machine and wasting excessive amounts of copy paper. Also, complainant was advised that her work would have to improve for continued employment.

23. On June 10, 1988, Ms. Meehan-Strub wrote complainant advising her that her work remained unsatisfactory. Again Meehan-Strub cited specific work problems, including running the mimeograph machine and continued excessive waste of paper. Complainant was advised that future work problems would result in action toward her dismissal.

24. Ms. Meehan-Strub wrote complainant a formal "First Warning Letter" on June 30, 1988. Three reasons were cited for the warning letter: (1) failure to meet deadlines, (2) reassigning work to others, and (3) excessive waste of mimeograph paper.

25. On July 5, 1988, complainant grieved the warning letter, as provided under her employee collective bargaining contract. The grievance was denied by the county personnel director, and complainant took no further action.

26. During this same time, on July 6, 1988, Ms. Meehan-Strub gave complainant written instructions to begin 40 hours of micro-computer training, 2 hours each day, on specified dates, from July 6 to August 8, 1988.

27. In response to this assignment, complainant filed a grievance. It too was denied by the county personnel director.

28. On August 11, 1988, complainant filed a charge of discrimination with the Commission alleging respondent discriminated against her in conditions of employment because of her age.

29. Complainant resigned her position on August 15, 1988. The next day she resumed work in the county's Human Services department as a transfer.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §§230.45(1)(b) and 111.32(2), Stats.

2. Complainant has the burden of proving respondent discriminated against her because of her age, resulting in her being constructively discharged from her position at the La Crosse County Extension Office

3. Complainant has not sustained her burden of proof.

4. Respondent did not discriminate against complainant as alleged and cause her to be constructively discharged from employment as alleged.

DISCUSSION

Complainant, Lois Betz, claims the University of Wisconsin-Extension discriminated against her during the course of her employment, because of her age, causing her to resign.

Using the burden of proof and prima facie case model expressed in McDonnell-Douglas v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973); and Texas Dept. of Comm. Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089 (1981), which will not be set out here, it is clear that complainant was a member of the age protected classification. Also, since complainant had worked as an Account Clerk for the Extension Office for over twenty years, it is apparent that she was qualified for the position. But a critical question is whether complainant was treated differently than co-employees because of her age.

Complainant contends that she had no difficulties with her job until Meehan-Strub became head of the office, at which point, Meehan-Strub placed job requirements on her that were child-like and demeaning. In support of

these charges, complainant testified that Meehan-Strub failed to provide computer training or practice until July 1988, but criticized her for not being at the computer. Also complainant testified that she was criticized for wasting too much paper operating the mimeograph machine and for making too many personal calls, and she was forced to make such calls outside at a pay telephone. Finally, in support, complainant references the testimony of Roberta Weber, who testified Meehan-Strub gave her the impression that younger employees were wanted in that office.

The evidence confirms that Mary Meehan-Strub had reasons for her various criticisms of complainant's work performance. Complainant's own witness, former co-worker Karen Willinger, who left in June 1987 to join the county's District Attorney's office, on cross-examination testified that complainant made lots of personal phone calls, dumped work on her, and that extension agents complained about complainant's work. Another complainant's witness, co-worker Leslie Gustad, who was in the age protected group, while questioning frequency, acknowledged that complainant made personal telephone calls and left her post without telling her backup. Gustad testified that office tension began building with Meehan-Strub's arrival as office chair, mostly connected with complainant; that Meehan-Strub was hard to work for; and that, as a result, she decided to seek another position. In April 1988, Gustad took a position as secretary to a La Crosse County Circuit Court judge, which was a higher classification than her former position.

Respondent's witnesses included extension agents. One agent, Marc Schultz, who preceded Meehan-Strub as office chair, testified that during his term, there were concerns about work coming from the secretarial pool and these complaints continued after Meehan-Strub became chair. Another agent, Robert Matysik, for whom complainant did clerical work, testified to specific incidents which caused him to complain to the chair about complainant's attitude and work performance.

Only Roberta Weber, a co-employee under 30, who failed to pass probation and was terminated by Meehan-Strub, testified to hearing Meehan-Strub say that she wanted younger employees. Weber's testimony on this during cross-examination, was reduced to her impression or interpretation of statements made by Meehan-Strub, while being interviewed for the position and subsequently conversing with her one-on-one. Conversely, Marc Schultz testified that he attended Weber's job interview and never heard Meehan-Strub

say that she wanted younger employees. Other witnesses were asked about this claim that Meehan-Strub spoke of wanting younger employees, but none corroborated Weber's testimony.

Based on the credible evidence produced at the hearing, the Commission concludes that respondent's actions were not discriminatory as alleged causing complainant to be constructively discharged. To the contrary, the evidence establishes that prior to beginning her appointment as chair, Meehan-Strub was advised of work problems in the office. She met with the clerical staff, inquired about their concerns, and asked for suggestions for improvements. After she assumed her duties, Meehan-Strub met with complainant and the other clerical staff, Leslie Gustad and Roberta Weber, and detailed office procedures, directions, and the responsibilities of each of the staff.

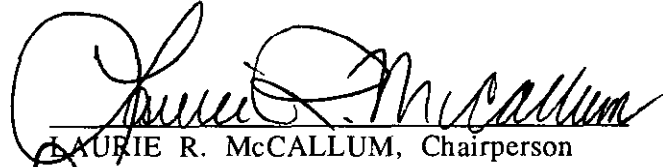
The office staff resisted the new administration. Complainant, Gustad and Weber filed a grievance with little, if any, success. Complainant had worked in the office for over 20 years and found it difficult to adapt to the newly instituted procedures. Although complainant was regularly provided feed-back on her work performance, she failed to adequately respond. The work relationship between complainant and Meehan-Strub deteriorated, and the mounting pressures of work performance expectations continued, causing her to resign. Roberta Weber failed to meet work expectations of her position and subsequently failed probation. Leslie Gustad, a senior employee who testified to the stressful office atmosphere, adapted to the new procedures, but in April 1988, she took a secretarial position with the county circuit court. She was replaced by Michelle Kotek.

Based on the record, there is insufficient evidence to find complainant was constructively discharged by respondent on the basis of age. Ms. Meehan-Strub's criticisms of complainant appear to have been based solely upon her work performance.

ORDER

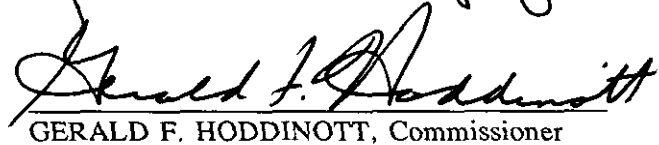
This complaint is dismissed.

Dated: December 17, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

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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 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.