

in employment by moving from one LTE position to another. He reached the ET 3 level.

3. From the time he was hired in 1987 until his employment was terminated in 1991, the complainant was the only person employed as a LTE in the Bridge Section.

4. From the time he began at DOT until January of 1989, complainant's supervisor was Leon Schuchardt. From January of 1989 until January of 1990, complainant was supervised by James Pautzke. From approximately June of 1990 until March of 1991, David Genson was complainant's supervisor.

5. Once a bridge design engineer fleshes out the design for a bridge, the Engineering Technicians/Specialists (hereafter referred to as ET) draw in detail the structure. The ETs submit a print of their drawings to the checker who checks them for accuracy and completeness. If something needs correction, the checker places red marks on the drawings.

6. At all relevant times, John Klemm has served as the primary checker for the Bridge Section.

7. Respondent had some Computer Assisted Drafting and Design System (CADDs) stations in the Bridge Section, but did not have enough stations for its permanent employees. Because of complainant's status as an LTE, he was never provided training on CADDs.

8. Both Mr. Pautzke and Mr. Genson spoke with Mr. Klemm about delays which were occurring in the production of drawings for certain projects. Mr. Klemm indicated that he spent an inordinate amount of time checking complainant's work because it included a large number of errors.

9. In an effort to reduce complainant's errors, Mr. Pautzke and Mr. Genson often provided complainant with completed drawings from a similar project to the one complainant was working on, to be used as a guide.

10. Mr. Genson wrote the following memo to the complainant on January 31, 1991:

As we discussed on January 28th and 29th, 1991, you have not attained an adequate level of proficiency in drafting and detailing bridge plans. The projects you have drawn have contained numerous and repeated errors and omissions. Many of these errors and omissions have continued to occur despite the ongoing direction from the Plans Examiners, other engineering specialists,

and your unit supervisor. Bridge Office personnel have been working with you since your employment began on September 27, 1987 to help you correct these deficiencies, but they have seen very little change.

If your future does not show substantial improvement by March 29, 1991, we will terminate your LTE contract in the Bridge Office.

11. In March of 1991, the Bridge Section was ending a period of substantial overtime, and had a significantly reduced workload.

12. By memo dated March 22, 1991, Mr. Genson informed complainant as follows:

This memo is to inform you that the Wisconsin Department of Transportation Bridge Office no longer has a need for your services. You will be given 3 weeks to complete the numerous corrections to your current project. Thus, April 12, 1991 will be your last day of employment.

The decision to end the complainant's employment was based upon workload levels within the Bridge Section rather than on complainant's work performance.

13. During the period at the end of his employment, the complainant worked approximately 30 hours per week.

14. In a memo dated April 9, 1991, the Chief Bridge Design Engineer advised employees of the bridge design units that no overtime would be permitted on bridge projects scheduled for completion after May of 1991.

15. No LTE was hired to replace complainant.

16. The workload in the Bridge Office remains at a reduced level.

CONCLUSIONS OF LAW

1. This matter is within the Commission's jurisdiction pursuant to §230.45(1)(b), Stats.

2. The complainant has the burden to show that there is probable cause to believe he was discriminated against by respondent on the basis of his age, race or national origin.

3. The complainant has not sustained his burden.

4. There is no probable cause to believe that respondent discriminated against the complainant on the basis of his age, race or national origin, as alleged.

OPINION

"Probable cause" is defined in §PC 1.02(16) as follows:

"Probable cause" means a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe, that discrimination, retaliation or unfair honesty testing probably has been or is being committed.

As to all of the issues before the Commission, the complainant established that he was born in 1941 and, therefore, is in a protected category in terms of a claim of age discrimination, and is a native of Mexico, thereby granting him protected status with respect to his allegations of both race and national origin discrimination.

Terms and conditions of employment

During the hearing, complainant appeared to be arguing that he should have been paid during the period he served as a volunteer in the Bridge Section. Respondent raised a timeliness objection to this assertion. The complainant was a volunteer for three months in 1987. He filed his complaint on April 15, 1991. With respect to the period of his service as a volunteer, the complaint was not filed within the 300 day period specified in §111.39(1), Stats., so the Commission will not consider this allegation.

The complainant also argued that he was denied CADDs training while employed by respondent. Assuming that the complainant has established a prima facie case as to this claim, the respondent has explained that it did not train the complainant in CADDs because it had insufficient CADDs stations for even its permanent employees. Complainant, as the sole LTE in the unit, would have lowest priority in terms of accessing the CADDs stations. The complainant did not present any evidence that the respondent's training rationale was pretextual, and there is no basis for a finding of probable cause.

Termination

The focus of complainant's questions at hearing was his allegation that he performed his work at a high level and that the criticism of his work evi-

denced by the January, 1991 memo from Mr. Genson (Finding 10) was unfounded. However, complainant offered no evidence which undercut the respondent's assertion that the decision not to continue his employment was based on work load considerations rather than Mr. Genson's previously identified concerns relating to the quality of complainant's work. Nothing in the record suggested that the workload did not decrease in the Spring of 1991. Given a reduction in work, it is logical to expect the respondent not to continue the employment of the sole LTE employe in the unit, the complainant.

Even if the focus of the respondent's decision could be said to have rested on the complainant's work performance rather than the unit's workload, the evidence presented would support a conclusion that, during the relevant time period, the complainant made numerous errors and his work was of lesser quality than that of the permanent employes who performed similar responsibilities. This conclusion is confirmed by the testimony of Mr. Pautzke and Mr. Genson, both of whom served as complainant's supervisor, as well as by Mr. Klemm, who served as the checker during the period.

The complainant argued this issue as if the respondent had to show that there was just cause for the decision not to continue his LTE employment. Limited term employes are not entitled to the same job security as permanent employes, and the only basis on which the Commission can review the termination of LTE employment is in terms of an allegation of discrimination or retaliation prohibited by, for example, the Fair Employment Act. See, Klopp v. UW, 79-33-PC, 5/7/79.

Here, the complainant identified no conduct or comments which implicated complainant's age, race or national origin. The evidence established that no one was hired to replace the complainant, and that the workload of the Bridge Section continues to be low. The complainant was nearly to the end of his LTE period. Given the record before it, the Commission concludes that there is no probable cause as to the termination issue.

Selection decision


Complainant offered no evidence whatsoever relating to third issue for hearing relating to his "non-selection for an Engineering Specialist position in January, 1991." There is no evidence that such a vacant position existed, that the complainant applied for it, that he was certified and considered for it, that he was rejected or that there were circumstances which give rise to an

inference of discrimination. The complainant failed to establish a prima facie case and there is no basis for a finding of probable cause.

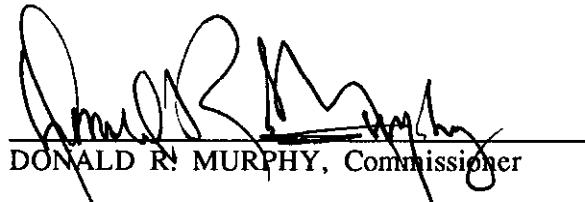
ORDER

The complaint of discrimination is dismissed.

Dated: September 24, 1993 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:Merits-ER (Villalpando)


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Juan Villalpando
1938 Scott Lane
Madison, WI 53704

Charles Thompson
Secretary, DOT
P.O. Box 7910
Madison, WI 53707

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.