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STATE OF WISCONSIN

PERSONNEL COMMISSION

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ALICE LIPFORD,

Appellant,

v.

President, UNIVERSITY OF
 WISCONSIN SYSTEM (La Crosse), and
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondents.

Case No. 91-0118-PC

* * * * *

INTERIM
DECISION
AND
ORDER

This matter is before the Commission on respondent's motion to dismiss the appeal on the ground that it was untimely filed. Both parties have filed briefs and affidavits.

The background of this case involves a classification transaction concerning appellant's Stock Clerk 1 position at UW-LaCrosse. Appellant alleges, in summary, that papers were submitted to the UW-LaCrosse personnel office with a requested classification transaction effective date of 1987, and that she was verbally informed in 1989 that her position would be reallocated to Library Services Assistant 2 without a pay increase, but that she was not told about any right to appeal. She further alleges that she continued to receive no written information about the transaction, and she finally checked her personnel file in the first week of April 1990, and found a notice of reallocation. She alleges she then filed a discrimination complaint with this Commission on April 17, 1990.¹ Her complaint alleges an extensive pattern of sexual harassment over a number of years and, with respect to the reallocation transaction, alleges that she "was denied a reclassification of my position and not informed of my appeal rights. My position was reallocated instead." The complaint further alleges she was discriminated against because of her sex and because of her opposition to sex discrimination.

¹ This complaint was assigned Case No. 90-0065-PC-ER. This file reflects that this complaint was signed on April 17, 1990, and actually was filed on April 20, 1990, with the Equal Rights Division of DILHR (Department of Industry, Labor and Human Relations), and with this Commission on April 24, 1990.

On July 3, 1991, she filed a request to have a civil service appeal opened with respect to the reallocation. Attached to this request is an affidavit by complainant which includes the assertion, mentioned above, that she never had written notice of the reallocation until she looked at her personnel file in April, 1990.

In support of its motion to dismiss, respondent has submitted the affidavit of associate personnel director James S. Quick who alleges, among other things, that in June 1989 he forwarded to complainant's supervisor a cover memo and complainant's reallocation notice, that Mr. Quick held a one-hour meeting with complainant in August 1989, and another meeting, including the UW-LaCrosse affirmative action officer, on December 4, 1989, where the transaction was discussed, and that "[t]here is absolutely no question in [his] mind that [complainant] had received a copy of the reallocation prior to the December 4, 1989, meeting." In addition to arguing that complainant's appeal is untimely because she had notice of the reallocation prior to December 4, 1989, respondent also contends that it was untimely even assuming, arguendo, that she had no real notice until April 1990, because she did not attempt to pursue a civil service appeal of the reallocation until July 3, 1991, when she filed the aforesaid request to have her complaint treated as an appeal. Complainant filed a reply brief in opposition to respondent's motion, which has attached to it an affidavit in which she again denies ever having had any written notice of the reallocation prior to the point that she examined her personnel file in April, 1990.

The Civil Service Code requires that notices of reclassifications and reallocations be in writing. Section ER 3.04, Wis. Adm. Code. Notice of such a transaction under §230.44(3), Stats., does not occur until there has been written notice of the reallocation or reclassification decision. Piotrowski v. DER, 84-0010-PC (3/16/84).

The parties disagree as to when complainant received written notice of the reallocation decision. Assuming, for the moment, that she received written notice during the first week in April 1990, which is the latest possible date of notice under the circumstances, her appeal would be timely. That is because she filed an equal rights complaint on April 24, 1990, which contested the reallocation decision, and pursuant to §PC 2.02(3), Wis. Adm. Code, a complaint can be amended "to set forth additional facts or allegations related to the

subject matter of the original charge, and those amendments shall relate back to the original filing date."

Therefore, while the Commission cannot rule out the possibility that complainant effectively filed a timely appeal of the reallocation of her position, the conflicting factual allegations concerning the question of whether complainant actually had written notice of the reallocation prevents a complete resolution of this issue. The parties will be consulted on the question of whether to convene a hearing to resolve the disputed facts concerning timeliness, or whether to defer this issue to the time of any hearing that may be held with respect to the discrimination complaint. In the meantime, respondent's motion to dismiss will be denied without prejudice pending the development of the underlying facts material to timeliness.

The file reflects disagreement as to the proper parties respondent. Since it cannot be determined on the material submitted in connection with this motion that there are no facts in dispute concerning the role that UW-La Crosse or UW-System played in this matter, this issue will be left open and the parties will have the opportunity to present facts on this point at a future proceeding.

ORDER

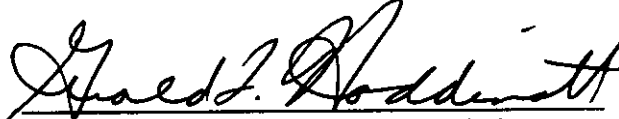
Complainant's request, filed July 3, 1991, to amend her complaint filed April 24, 1990, and assigned Case No. 90-0065-PC-ER, to include a civil service appeal (pursuant to §230.44(1)(b), Stats.), is granted (Case No. 91-0118-PC). Respondent DER's motion to dismiss this appeal on the ground of untimely filing, filed October 2, 1991, is denied without prejudice, as explained in more detail above.

Dated: December 23, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner