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PASTORI BALELE,
 Complainant,
 v.
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES, and
 Administrator, DIVISION OF MERIT
 RECRUITMENT AND SELECTION,
 Respondents.
 Case No. 91-0118-PC-ER

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RULING
 ON
 MOTIONS

This matter is before the Commission on complainant's motions to amend his complaint and to add certain individuals as parties.

Complainant's motion to amend filed November 18, 1991, primarily seeks to add a claim of FEA (Fair Employment Act) retaliation. Respondents have stated they have no objections to this, and therefore the complaint will be deemed amended by the addition of the charge of retaliation

Respondents do object to complainant's attempts to add a number of named individuals as parties-respondent. The statutes under which the Commission operates precludes the designation of named individuals as parties-respondent. Section 111.375(2), Stats., provides:

This subchapter applies to each agency of the state except that complaints of discrimination or unfair honesty testing against the agency as an employer shall be filed with and processed by the personnel commission under §230.45(1)(b). (emphasis added)

Section 111.32(6)(a), Stats., provides:

"Employer" means the state and each agency of the state and ... any other person engaging in any activity, enterprise or business employing at least one individual.

Complainant points out that these statutes do not state, in negative terms, that individuals cannot be named as respondents. However, the same point is made by defining employer for purposes of this agency's jurisdiction. The Commission cannot act without a basis in statutory authority, either express or implied, see City of Appleton v. Transportation Commission, 116 Wis. 2d 352, 357-358, 342 N.W. 2d 68 (Ct App. 1983).

Complainant also argues:

The claims in this action are both under state and federal statutes. The Wisconsin Personnel Commission is an agency of the Federal Government - agency no. 706, with powers to settle actions under Federal statutes. As such the PC can use both state and federal rules and procedures. Complainant's allegations under federal 42 section 1981 and 42 section 1983 should proceed under federal rules and procedures. For these reasons Complainant should be permitted to sue the named state officials both in their official and individual capacities.

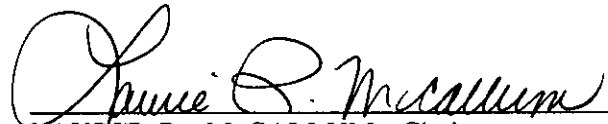
This Commission is not a federal agency. The Commission's designation under Title VII as a "706" agency means it works to some extent with federal agencies; it does not make it a federal agency. The Wisconsin legislature has not granted this agency either express or implied statutory authority to entertain claims under 42 USC §§1981 or 1983.

ORDER

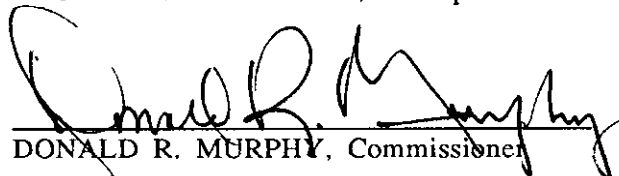
1. Complainant's motion to amend his complaint is granted to the extent that the addition of the allegation of retaliation set forth in the proposed amended complaint filed November 18, 1991, is allowed.
2. Complainant's motion to add named individuals as parties-respondent is denied.
3. The following notice is provided for the hearing now scheduled for April 13-14, 1992:

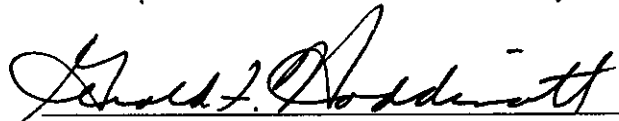
This is a class III proceeding pursuant to §230.45(1)(b), Stats. The issue for hearing is: whether respondent discriminated against complainant on the basis of color, race, national origin or ancestry, or retaliation with respect to the decision denying him the opportunity to participate in the competition for the positions of Human Services Administrator 5 - Deputy Administrator, Division of Vocational Rehabilitation, and Human Services Administrator 5 - Deputy Administrator, Division of Community Services.

Dated: March 19, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner