

STATE OF WISCONSIN

PERSONNEL COMMISSION

**PASTORI M. BALELE,**  
*Complainant,*

v.

**Secretary, DEPARTMENT OF  
ADMINISTRATION,  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS, and  
Administrator, DIVISION OF MERIT  
RECRUITMENT AND SELECTION,**  
*Respondents.*

**RULING ON MOTION  
FOR PRELIMINARY  
INJUNCTION**

Case No. 00-0077-PC-ER

This is a complaint of discrimination on the basis of color, national origin or ancestry, and race, and of retaliation for engaging in protected fair employment and whistleblower activities in regard to a decision not to certify complainant for the position of Director, State Bureau of Procurement, Department of Administration (DOA). On May 30, 2000, complainant filed a motion to enjoin respondents from making a permanent appointment to this position until this complaint was decided. The parties were permitted to brief the motion and the schedule for doing so was completed on June 26, 2000. The following findings are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion.

#### FINDINGS OF FACT

1. On or around May 26, 2000, complainant was notified that respondent DMRS was not going to place his name on the register of certified candidates for the vacancy in the subject Director, State Bureau of Procurement, DOA, position. Respondent DMRS took this action based on a request from respondent DOA.

2. On June 6, 2000, complainant filed this charge of discrimination/retaliation challenging this decision not to certify him.

3. At least as of June 26, 2000, the subject vacancy has not been filled by a permanent appointment.

4. Although he has not specifically identified what he considers to be his protected whistleblower disclosure, complainant, in his charge of discrimination/retaliation, references previous fair employment charges he has filed with the Commission; statements he made to the then-Director of the State Bureau of Procurement Jan Hamik during a staff meeting; and an email he sent to Ms. Hamik in which he stated that her decision to discontinue the Procurement Data Processing System (PDPS) was in violation of the law. Complainant did not identify the date of this email.

5. Complainant alleges, and respondents have failed to rebut, that Ms. Hamik had input into respondent DOA's request to DMRS that complainant not be certified for the subject vacancy

6. The subject position is unique in state service and is not frequently vacant.

#### OPINION

Respondent asserts here that the Commission does not have the authority to enjoin agency action while a complaint is pending before it.

An administrative agency in Wisconsin has only those powers that are expressly conferred or that are necessarily implied from "the four corners of the statute under which it operates." *See, Racine Fire and Police Comm. v. Stanfield*, 70 Wis. 2d 395, 234 N.W. 2d 307 (1975). Relying on this principle, the decision in *Van Rooy v. DILHR & DER*, 87-0117-PC, 87-0134-PC-ER, 10/1/87, held that the Commission lacked the authority to issue a temporary injunction in a case filed pursuant to the Fair Employment Act (FEA) but had such authority, pursuant to §230.85(3)(c), Stats., in a whistleblower action. It is concluded, as a result, that the Commission lacks the authority here to issue a temporary injunction in regard to complainant's allegations of