

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LEONARD A. TOKUS, BRUCE D. SCHRIMPF, JOYCE E. BORKENHAGEN, and JOHN J. DOLL,	:	
	:	
Complainants,	:	Case VII
	:	No. 23343 PP(S)-53
	:	Decision No. 16487-B
vs.	:	
	:	
NANCY NEWBURY, Administrator, Equal Rights Division, and THOMAS W. DALE, Director, Legal Service Bureau, Equal Rights Division, Department of Industry, Labor and Human Relations,	:	
	:	
Respondents.	:	
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ORDER DENYING MOTION TO COMPEL DEPOSITIONS

Leonard A. Tokus, Bruce D. Schrimpf, Joyce E. Borkenhagen and John J. Doll; herein Complainants, having, on July 31, 1978, filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission, wherein they allege Nancy Newbury and Thomas W. Dale, of the Department of Industry, Labor and Human Relations, State of Wisconsin, herein Respondents, have committed certain unfair labor practices; and the Commission, on August 7, 1978, having appointed Thomas L. Yaeger, a member of the Commission's staff, to act as Examiner in the matter; and Complainants having filed a motion to compel depositions and accompanying same with an affidavit in support thereof; and the Complainants having filed a supplemental affidavit in support of said motion as ordered by the Examiner; and Respondents having filed a statement in opposition to said motion; and the Examiner having considered said motion, accompanying affidavits and statement of opposition;

NOW, THEREFORE, it is

ORDERED

That the motion to compel deposition filed by Complainants in the above entitled matter be, and the same hereby is, denied.

Dated at Madison, Wisconsin this 26th day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
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 Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO COMPEL DEPOSITIONS

Complainants' affidavits contend that Respondents have in the past concealed and suppressed documents and are likely to destroy said documents and similar data in the near future unless same and related testimony is presented in connection with Respondents' depositions. Further, Complainants argue that unless Respondents' testimony is perpetuated through deposition prior to hearing, same will, in concert with others, vary the truth prior to hearing. Both assertions are based primarily upon alleged prior conduct of Respondents involving matters which will be the subject of the instant complaint.

Respondents oppose granting Complainants' motion because "good cause" for deposing them has not been established. They argue that they are available for hearing on the complaint which has been scheduled, that evidentiary rulings may not be made during the taking of depositions, that there has been no basis established for believing that material evidence will be destroyed, and that Federal and State courts have previously denied similar motions made by Complainants.

Section 227.08(7), Stats. makes depositions available as a matter of right in class 3 1/ proceedings with respect to a witness

- "(a) Who is beyond reach of the subpoena of the agency;
- (b) Who is about to go out of the state, not intending to return in time for the hearing;
- (c) Who is so sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing; or
- (d) Who is a member of the legislature, if any committee of the same or the house of which the witness is a member is in session, provided the witness waives his or her privilege."

Complainants herein, however, have not advanced any of the foregoing reasons as the basis for their motion to compel Respondents' depositions, and there is no basis for concluding that either of the Respondents fits any of the aforesaid categories.

However, in addition to taking depositions of certain witnesses as a matter of right as provided for in Section 227, Stats., the Commission will order same where "good cause" has been shown.

"ERB 20.15 Depositions. Upon application and good cause shown, the commission or any individual authorized to take testimony, may order that the testimony of any person, including a party, be taken by deposition in the manner prescribed by and subject to the provisions of chapter 326, Wis. Stats."

Clearly, the four considerations outlined in Section 227.08(7), Stats., present good cause. But, there may also be other instances of "good cause shown" where the Commission would order depositions.

In this instance, however, Complainants have not presented "good cause" for the taking of Respondents' depositions. A careful examination of Complainants' affidavits respecting the anticipated destruction of relevant documents, reveals that said belief arises from Respondents'

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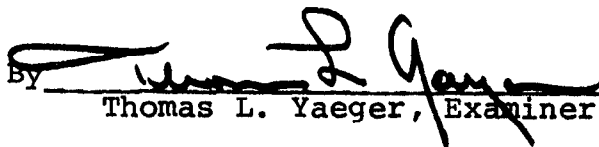
1/ The instant complaint is a class 3 proceeding within the meaning of Section 227, Stats.

previous refusal to permit Complainants access to or denial of the existence of same. However, earlier denials and refusals of access to said documents does not establish the reasonable likelihood that same are or will be destroyed prior to the scheduled hearing. As to Complainants' contentions that Respondents are likely, in concert with others, to vary the truth as to relevant matters prior to hearing, the Examiner notes that same could also be accomplished prior to the taking of the requested depositions. Consequently, there is no reasonable likelihood that taking Respondents' depositions would contribute to precluding same.

Based upon the foregoing, the Examiner has determined that Complainants' Motion to Compel Depositions should be denied for lack of "good cause shown".

Dated at Madison, Wisconsin this 26th day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  \_\_\_\_\_  
Thomas L. Yaeger, Examiner