

On June 10, 1980, a secretary from the Commission telephoned Mr. Beer to inquire whether he wanted certain witnesses re-subpoenaed for the upcoming hearing. Mr. Beer then informed the secretary that he had decided to retain counsel and requested postponement of the hearing. The hearing examiner was given this message and conveyed it to counsel for respondent, who then moved to dismiss for failure to prosecute. A briefing schedule was established and briefs were duly filed. Respondent argues that appellant's late decision to obtain counsel should not be accepted as a reason for postponing a hearing for which he had almost three months to prepare. Appellant argues that he has obtained new employment and has been devoting himself to establishing himself in his new position.

Unrepresented appellants not infrequently request continuances of hearing dates in order to complete preparations or to obtain counsel. The Commission does grant additional time when appropriate and reasonable to do so. The particular facts of this case raise some doubts as to the reasonableness of granting another extension.

The union representative apparently did some work on this case before the decision was made not to represent appellant further. In December, 1979, the representative submitted interrogatories to various individuals and apparently answers were supplied to some if not all questions. In January, 1980, respondent's counsel submitted to the Commission and to the union representative, copies of exhibits and names of witnesses for the then-scheduled January 15, 1980, hearing.

Appellant has not contended that he could not get hold of these documents and the Commission presumes that they were among the "paperwork accumulated" by the union which appellant was waiting to obtain when the strike against the Union was over, as he stated in his March 11, 1980 letter to the Commission. The appellant was apparently not compelled to start "from scratch" to prepare his appeal. The Commission feels that appellant has not shown persuasively an acceptable reason for his unpreparedness to go ahead with the scheduled hearing. The Commission fails to understand why he waited from mid-March, 1980, until mid-June, 1980, and then decided to retain counsel three or four working days before the scheduled hearing date.

The Commission is further puzzled why appellant did not initiate contact and request a continuance. The request for a continuance came up in the course of a telephone call to appellant initiated by a Commission secretary. Mr. Beer's subsequent letter-brief is equally puzzling. He refers to the fact that he has retained counsel. Counsel for appellant has not yet participated in the briefing on this motion to dismiss, and has not yet been identified to this Commission.

Although appellant states that he wants to proceed with his appeal, the Commission is not inclined to grant his request for a continuance of his hearing date, because he did not show cause and a substantial reason, as required in Sec. PC 3.02 Wis. Admin. Code.

ORDER

The motion of respondent to dismiss this appeal for failure to prosecute is granted and this appeal is hereby dismissed.

Dated July 17, 1980

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee
Chairperson

Gordon H. Brehm
Gordon H. Brehm
Commissioner

Donald R. Murphy
Donald R. Murphy
Commissioner

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