

* * * * *

WENDELL MCLESTER,

Complainant,

v.

UPPER GREAT LAKES REGIONAL
COMMISSION,

Respondent.

Case No. 79-PC-ER-38

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal from an Initial Determination of no probable cause to believe respondent discriminated against complainant on the basis of his race (Native American), in violation of §111.37, Wis. Stats. A hearing on the issue of probable cause was conducted by a hearing examiner appointed by the Commission.

FINDINGS OF FACT

1. Complainant, an American Indian, was employed by the Upper Great Lakes Regional Commission as a field representative, serving at the will of the Governor of the State of Wisconsin.

2. Complainant's position was not included in the state classified civil service and was a political appointment, with the result that Mr. McLester could be terminated with or without just cause.

3. Effective February 26, 1979, complainant, by letter from the Federal Co-Chairman of the UGLRC, William Bechtel, was terminated from his position with the state for the reason of "major reorganization and development of a different staffing structure." (R. Ex. 1)

4. In addition to the reasons for termination stated in the official letter of termination, there had been concerns with respect to aspects of

complainant's job performance; these concerns had been voiced by two prior directors of the UGLRC, (R. Ex. 11, 12), but in 1979, the Governor's Alternate to the UGLRC, Bruce Hendrickson, was hesitant to discuss these directly with complainant (R. Ex. 2).

5. The factual bases of discrimination alleged by complainant were:

- (1) Bruce Hendrickson's once angrily naming McLester as the person responsible for diversion to his "Indian friends" of certain grant funds which Hendrickson in his role as mayor of the City of Ashland had tried to obtain for Ashland; and
- (2) derogatory remarks directed by Hendrickson at Native Americans in general, in the course of Ashland City Council committee meetings.

6. There was no direct competition for project funds between the city traffic department and any particular Indian reservations.

7. The only two witnesses called by McLester to testify on his behalf about Hendrickson's alleged prejudice against Native Americans were not credible.

8. Richard Berweger and James Melin, complainant's witnesses, were Ashland City Council members in 1978, and testified that at two separate committee meetings, at which not all City Council members were present, Hendrickson made discriminatory statements.

9. Berweger had been warned on two occasions, and Melin once that in their roles as City Council members they had private business conflicts of interests on issues and should not vote on them; they voted in both instances against the advice of the city attorney, and Hendrickson brought criminal charges against them for one of the votes.

10. Berweger and Melin each had strong personal animosity against Hendrickson and had no personal or professional acquaintance with McLester.

11. It is not credible testimony by Berweger that he had read an article in the local newspaper reporting on McLester's termination and that he then remembered one comment which Hendrickson had made more than one year previously about a man neither Berweger or Melin had ever heard of before.

12. The testimony of other City Council members, including the City Treasurer, the Police Chief and Hendrickson is credible--that no discriminatory comments were made by Hendrickson.

13. Bruce Hendrickson did recommend to William Bechtel, federal co-chairman of the UGLRC, that McLester's position be left open after the proposed UGLRC reorganization--an accepted recommendation which effectively resulted in McLester's termination from his position with the UGLRC.

14. During the same time period in which complainant was terminated, Bruce Hendrickson was involved in working with Governor Lee Sherman Dreyfus to help to establish a Native American Desk to be attached to the Governor's Office to achieve improved relations between state government and Wisconsin Native American tribes.

15. The complainant had no personal experiences with Hendrickson which led him to believe Hendrickson held discriminatory views on Native Americans; the only basis for the complaint filed in this case was contact with Berweger and Melin which was initiated by Berweger.

16. Complainant's termination was not based in any part on discriminatory motives.

OPINION

On Appeal from an initial determination of no probable cause to believe that employment discrimination has occurred, the sole decision to be made by the Commission is whether:

"...there is reasonable ground for belief supported by facts or circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been or is being committed." Wis. Adm. Code, sec. PC 4.03(2).

This appeal involved a lengthy hearing and transcript and briefing period. The basic question in the case is whether the two witnesses upon whose testimony the determination of probable cause depends were credible. The Commission finds the witnesses were not credible. The evidence introduced by both parties was not evaluated with a view to making any factual or legal findings as to whether there were actually conflicts between personal interests of Berweger and Melin and their responsibilities as city council members, or whether the complaint filed against them by Hendrickson was sufficient and correct in fact and in law. The Commission likewise has not attempted to determine the merits of inter-tribal political disagreements or the merits of inter-tribal political disagreements or the merits of Governor Dreyfus' policies with respect to the Native American population of Wisconsin, or the merits of Hendrickson's personal commitment to a particular activity on behalf of Native Americans. Lastly, the Commission has not evaluated the relative merits of contested proposals which were the subject of debate among members of the Ashland City Council.

The Commission has determined that there were some serious disagreements between Hendrickson, Berweger and Melin while the three men were involved in Ashland city politics, and that Berweger and Melin developed a strong personal animosity toward Hendrickson as a result. The record is clear and unequivocal on the fact that neither Berweger or Melin new McLester prior to contacting him after his termination to talk to him about Hendrickson's allegedly discriminatory attitude and comments. The record is clear and unequivocal on the fact that without the information received from Berweger and Melin, McLester

would have had no reason to believe that discriminatory animus played any part in the decision to terminate him from his position. The record is clear and unequivocal on the fact that Hendrickson had no anti-Native American bias, and was, actually involved as a private citizen in at least one project with the office of Governor Dreyfus which was intended to be of benefit to the Native Indian population of the state of Wisconsin. Mr. McLester sincerely believed, based on the information received from Berweger and Melin, that discriminatory animus of Bruce Hendrickson played a part in his termination. Unfortunately, these two witnesses did not prove reliable.

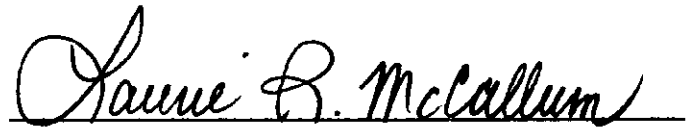
CONCLUSIONS OF LAW

1. The Commission has authority to hear this appeal pursuant to §230.45(1)(b), Wis. Stats.
2. The burden of persuasion is on the complainant to show the existence of probable cause, as probable cause is defined in §PC 4.03(2), Wis. Adm. Code.
3. Complainant has failed to carry his burden of persuasion.
4. There is no probable cause to believe that complainant was discriminated against on the basis of his race with respect to the termination of his employment, in violation of §111.31 to §111.37, Wis. Stats.

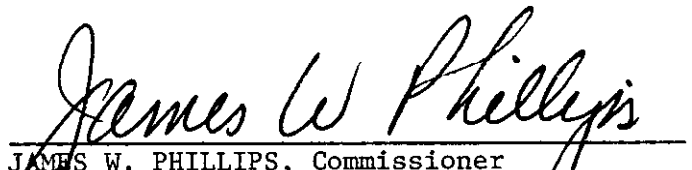
ORDER

The complaint is dismissed.

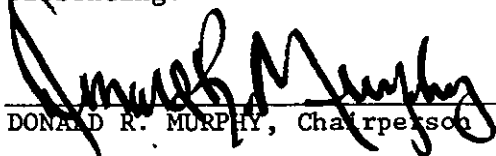
Dated: October 14, 1982 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Commissioner

AR:jmf


JAMES W. PHILLIPS, Commissioner

Dissenting:


DONALD R. MURPHY, Chairperson

Parties:

Mr. Wendell McLester
c/o Francis R. Skenandore
Attorney-at-Law
P. O. Box 129
Oneida, WI 54155

Chandler McKelvey, Secretary
Dept. of Development
123 W. Washington Avenue
Madison, WI 53702