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 FRED LOTT,
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 Complainant,
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 v.
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 DEPARTMENT OF HEALTH & SOCIAL
 SERVICES and DEPARTMENT OF
 EMPLOYMENT RELATIONS,
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 *
 Respondent.
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 Case No. 79-PC-ER-72
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INTERIM
 DECISION
 AND
 ORDER

NATURE OF THE CASE

An Initial Determination was issued in this case after an investigation of the complaint filed with the Commission in which Mr. Lott alleged certain violations of the Wisconsin Fair Employment Act, s. 111.31 thru 111.37, Wis. Stats. The Initial Determination found probable cause to believe that complainant had been discriminated against based on his race with respect to certain personnel transactions, but no probable cause to believe he had been similarly discriminated against with respect to other personnel transactions. Mr. Lott did not appeal the no probable cause findings within the 30 days provided in Wis. Adm. Code, ch. Ind 88. This decision goes only to the motions made by Mr. Lott to grant him alternative remedies for his failure to timely appeal. The findings set out below are based on material which appears to be undisputed.

FACTS

1. On or about October 17, 1979, complainant was sent a copy of the Initial Determination issued after investigation of his complaint and was

also notified by letter that probable cause had been found to believe that respondent had engaged in unlawful discriminatory practices, and that a 10-day conciliation period was afforded to the parties; and that if conciliation was not effected, "the case will be scheduled for hearing."

2. Complainant did not receive a letter concerning the no probable cause findings in the Initial Determination, or concerning the appeal rights available under Wis. Adm. Code, ch. Ind. 88.

3. Complainant did not timely appeal the Initial Determination of no probable cause.

4. The Commission has for some time followed a practice of sending cover letters to accompany copies of Initial Determinations issued in employment discrimination complaint cases; these cover letters include those which advise complainants of the right to request a hearing where a finding of no probable cause has been issued; in cases where findings of both probable and no probable cause are issued, the complainant is advised by letter of the rights accompanying both determinations.

CONCLUSIONS OF LAW

1. The Commission has no statutory obligation, nor any obligation imposed by administrative rule, to notify complainant of the 30-day appeal period commencing upon issuance of finding of no probable cause to believe that discriminatory practices have occurred.

2. The complainant relied to his detriment upon the incomplete notice actually received, namely that probable cause had been found to believe that discriminatory practices had occurred; the detrimental reliance occurred when complainant failed to timely request a hearing on the finding of no

probable cause pursuant to Wis. Adm. Code, ch. Ind. 88.

3. Equitable estoppel lies against this Commission and requires that complainant be allowed additional time within which to request a hearing on the no probable cause portions of the Initial Determination issued in this case.

OPINION

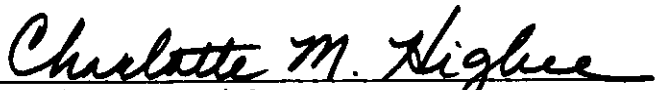
Respondent is correct in its assertion that the Commission has no obligation to inform complainants of the rights contained in Wis. Adm. Code, ch. Ind. 88. The facts of this case nevertheless require the Commission to correct the effects of the detrimental reliance of the complainant on the incomplete notice actually given by the Commission. Instead, complainant received a letter which only told him that if conciliation failed "the case would be scheduled for hearing." The quoted phrase can easily be read to mean that the case as complainant perceived it would be scheduled for hearing. The phrase contains no explanation of the legal effect of the no probable cause finding in the Initial Determination. Rather than clarifying the legal effect of the Initial Determination, the single letter which was sent could easily have led complainant to an incorrect conclusion as to what his rights were and how he could protect them. If only the Initial Determination had been issued, without additional explanatory correspondence of any kind, the detrimental reliance could not have occurred.

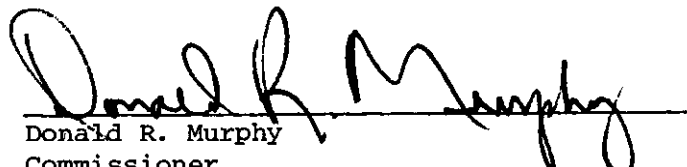
ORDER


It is ordered that the complainant may petition the Commission within 30 days of the date of service of this Interim Decision and Order for a hearing on the issue of probable cause with respect to those findings in the Initial Determination in this case which state there is no probable cause to believe that race discrimination has occurred.

Dated May 16, 1980

STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner


Gordon H. Brehm
Commissioner