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NANCIE YOUNG,

Appellant,

v.

Administrator, DIVISION OF
PERSONNEL,

Respondent.

Case No. 81-7-PC

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INTERIM
DECISION
AND
ORDER

This matter is before the Commission to resolve disputes between the parties regarding scheduling and hearing procedure. The parties have filed written arguments.

By way of background, following a prehearing conference held on February 24, 1981, the Commission held an evidentiary hearing on March 25, 1981, on the issue of whether the appeal was timely filed. Following the promulgation of a proposed decision and order, the Commission issued an interim decision and order, dated June 3, 1981, which found that the appeal had been timely and denied the respondent's motion to dismiss.

A second prehearing conference was convened on July 28, 1981. At this point the respondent requested a hearing date in December and the appellant objected to such a delay. The parties also disagreed as to whether one of the respondent's witnesses should be excluded from the hearing for that part of the hearing that she is not actually testifying.

In respondent's letter to the Commission, dated July 29, 1981, it is pointed out that:

The Personnel Commission is aware that Ms. Anderson is the only attorney representing the Department and the Division before the Commission. In addition, it need only refer to its own calendar to verify that Ms. Anderson has at least two hearing dates scheduled each week through June 1982. The only exception to this schedule is . . . the week of December 7, when there is only one hearing scheduled."

The Commission is well aware of these facts, but does not believe that they are dispositive of the question before it.

The respondent has obvious logistical problems not of its own making, in that Ms. Anderson is the sole attorney for DER, which includes the Division of Personnel. This factor must be weighed against the interests of having appeals heard in a timely fashion.

The Commission notes that there have been a number of hearings emanating from the appeals of reallocations following the "Hays" or clerical survey, at which the respondent herein has appeared by counsel from the Department of Justice. Further, while the respondent may have scheduled two hearings a week through June, it has been the Commission's experience that many appeals are compromised or withdrawn shortly before hearing, frequently too late to permit scheduling other appeals in their place. Two hearings per week on the calendar usually do not translate into two hearings per week actually heard.

Under all of these circumstances, the Commission is of the opinion that it is appropriate to advance this matter on the calendar, notwithstanding that it may result in a situation wherein the respondent may have more than two hearings in a week on the calendar.¹

The Commission is aware that this may cause some hardship to the respondent, and is hopeful that eventually the Legislature or the Attorney General would consider providing the respondent some relief.

1. At least as far as the Commission can ascertain from its own calendar, the Division of Personnel has only one other matter on the calendar for hearing during the week selected for hearing, with the exception of two of the aforementioned clerical survey appeals, which are handled by the Department of Justice.

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The appellant has requested a closed hearing pursuant to ¶PC 3.03(2), Wisconsin Administrative Code (WAC), and the respondent seeks to have Ms. Walluks exempted from the exclusion requirement on the ground that she is both a witness and an assistant to counsel.

Section 3.03(2), WAC, provides in part:

"Hearings shall be open to the public except that the Commission may hold a closed hearing at the request of the appellant (see §230.44(4)(a), Wis. Stats.) . . . "

Section 230.44(4)(a), Wis. Stats., provides:

"A hearing under this section shall be open to the public unless the appellant requests that the hearing be closed."

In the Commission's opinion, this statute and rule were intended to deal with the closing of hearings to the public, i.e., those persons not involved in the matter in an official capacity. The appellant's request runs essentially to sequestration, which is covered by a separate rule.

¶PC 3.03(3), WAC, provides:

"At the request of either party, the hearing examiner may order the exclusion of witnesses in accordance with the provisions of §906.15, Wis. Stats."

The Commission will permit Ms. Wallucks to be present throughout the course of the hearing as an exception to the sequestration rule pursuant to ¶PC 3.03(3), WAC, and §906.15, Wis. Stats.

ORDER

This matter will be heard on October 13 and 14, 1981, commencing at 9:00 a.m. each day in a room to be designated at 131 West Wilson Street, Madison, Wisconsin.

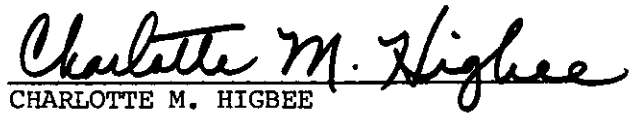
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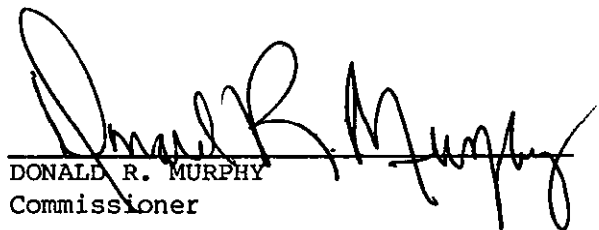
Witnesses will be sequestered with the exception of Ms. Wallucks.

Dated: Aug. 26, 1981

STATE PERSONNEL COMMISSION


GORDON H. BREHM
Chairperson


CHARLOTTE M. HIGBEE
Commissioner


DONALD R. MURPHY
Commissioner

AJT:nwb

Parties

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