

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 PREMA ACHARYA, *
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 Complainant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 82-PC-ER-53 *
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INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission as an appeal of an initial determination of "no probable cause" to believe that respondent had discriminated against the complainant on the basis of her national origin, race, color and age. The complainant alleged discrimination relating to a discharge decision as well as terms and conditions of employment.

During a prehearing conference held on July 19, 1984, the parties agreed to hold the case in abeyance for a period of time pending resolution of a related circuit court proceedings. Based on that agreement and due to the absence of a final resolution of the case in circuit court, this case is currently in the same status.

By motion dated April 28, 1986, the complainant has requested that District Council 24, AFSCME, AFL-CIO (hereinafter referred to as the union) be added as a party to the proceeding. The motion states:

In the above complaint before the personnel Commission, the plaintiff charged the State of Wisconsin with discrimination. The complainant did it because she was advised by the union, AFSCME: COUNCIL to do so. Actually Ms. Chris Thomas, the union Stewardess [sic] the plaintiff to the Personnel Commission to file that complaint.

However, the conspiracy of the union became clear when the arbitrator faulted the union for not filing the grievance in a timely manner.

Apparantly, [sic] the union, having anticipated that the arbitrator would make such a finding wanted to shift the blame on the State.

The Union further demanded before the WERC that the plaintiff should prove that she was discriminated by the union though the arbitrator did not address the question of discrimination either against the state or against the union.

Plaintiff believes that while DHSS discriminated against the plaintiff in her employment, the union conspired to encourage and abet such discrimination. The union, the complainant believes, is on its own account, guilty of having discriminated against the complainant, by (1) not filing the grievance in time (2) not admitting its negligence before the arbitrator (3) misleading the complainant by bringing up the charge of discrimination against the state in the first step of the grievance procedure, knowing fully well that such a charge would properly lie with the Personnel Commission (4) and advising the plaintiff to proceed only against the state in order to cover up its own guilt.

The union filed notice that it resists being named as a party.


The Commission's jurisdiction over complaints of discrimination is limited to agencies of the State of Wisconsin acting as an employer. §111.375(2), Stats. The complainants motion seeks to add a respondent that is neither a state agency nor an employer. Therefore, the motion must be denied. Clearly, this result does not deprive the complainant of the right to call witnesses who are associated with the union and who may present relevant testimony relating to complainant's charge filed against the Department of Health and Social Services.

ORDER

The complainant's motion to add District Council 24, AFSCME, AFL-CIO
as a party is denied.

Dated: May 29, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

KMS:jmf
JMFO1/1

Parties:

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