

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 RICHARD V. BRATLEY, \*  
 \*  
                   Complainant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 INDUSTRY, LABOR AND HUMAN \*  
 RELATIONS, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 83-0036-PC-ER \*  
 \*  
 \* \* \* \* \*

INTERIM  
 DECISION  
 AND  
 ORDER

This matter was filed as a complaint of discrimination under the Wisconsin Fair Employment Act. The complaint, filed on April 8, 1983, states in relevant part as follows:

Christine Everson used her position as a Job Service Director to bring undue pressure, harassment and outright cruelty in forcing the early retirement of two 62 year old employes, one of whom was a supervisor. She also caused the demotion of another supervisor. Having accomplished the aforementioned, she turned her attention to me, the only remaining supervisor in the office, I might add. Her goal was to get rid of us older supervisors--I have numerous witnesses who will reiterate this fact. I left Job Service of my own accord, but desire to undue all the wrongdoings of Ms. Everson.

Although the turnover and new hires in the Ashland District has been extremely high, Ms. Everson prefers to hire younger workers and not those considered as "older workers."

The relief I seek is the discharge of Ms. Everson and reinstatement to my job.

\* \* \*

My resignation was tendered on June 18, 1982. I have since asked to be reinstated twice--once in January, 1983, and again on March 28, 1983.

On May 25, 1983, the respondent filed a motion to dismiss the complaint on the ground that it fails to state a claim on which relief may

be granted. In its accompanying arguments, respondent stated that the complainant failed to specify the allegedly improper actions and sought to assert the claims of others. The complainant responded by stating, in part:

My complaint of age discrimination by DILHR concerns discrimination against me. The discrimination I cited against others is to establish that a pattern of discrimination has existed in Ashland since Everson became Director. Everson has referred to me as an "old" employe, an "old bastard", etc.

A broad prohibition against discrimination is established by §111.322, Stats., which provides:

Subject to §§. 111.33 to 111.36, it is an act of employment discrimination to do any of the following:

(1) To refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization membership any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment or labor organization membership because of any basis enumerated in §111.321. (emphasis added).

Pursuant to §111.31(3), Stats., the provisions of the Fair Employment act are to be liberally construed "to encourage and foster to the fullest extent practicable the employment of all properly qualified individuals regardless of age...."

In light of the rule of liberal construction, the allegations of statements made by complainant's supervisor could, if proven, be said to fall within the prohibition against discrimination in conditions of employment.

Respondent argues that "no effective relief" can be awarded to the complainant in this case:

When a continuing employe is the complainant, a cease and desist order could have some value. But in this case, all relations between employer and employe have already ceased.

While respondent may not consider a cease and desist order to be an "effective" remedy for the complainant, it is still a remedy that would affect respondent's future conduct with respect to employes generally. See also, Watkins v. DILHR, 69 Wis. 2d 782 (1975) The Commission is unwilling to accept the argument that because the complainant has resigned from his position that he gave up his rights to file a complaint under the Fair Employment Act. In addition, the complainant has specifically identified reinstatement as a remedy which he is seeking in this case. It may be that, given complainant's statement that he "left Job Service of [his] own accord," reinstatement is not an appropriate remedy. However, that determination would be better made after a hearing on the merits.

It is unnecessary for the Commission to address the question of whether an employe has standing to file a complaint on behalf of his co-workers. In this case, the complainant specifically stated that his complaint concerns discrimination allegedly practiced against him and that his reference to the retirement and demotion of other employes was merely to show that his allegations were supported by a prior pattern of discrimination.


ORDER

Respondent's motion to dismiss for failure to state a claim on which relief can be granted is denied.

Dated: July 21, 1983 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

KMS:jmf

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

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