STATE OF WISCONSIN PERSONNEL COMMISSION

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*
FRED A. POOLE, *
*
Complainant, *
*
v. *
* ORDER
Secretary, DEPARTMENT OF *
INDUSTRY, LABOR AND HUMAN *
RELATIONS, *
*
Respondent. *
*
Case No. 83-0064-PC-ER *
*
* * * * * * * * * * * * * * * * *

After considering the record in this matter and consulting with the hearing examiner, the Commission adopts the proposed decision and order, a copy of which is attached, with the additional language set out below.

The Commission adds the following Conclusion of Law:

> 8. The Commission lacks jurisdiction to consider complainant's allegation that the Commission has discriminated against the complainant by delaying the investigation of the instant charge of discrimination.

The Commission amends the footnote on page 16 to read as follows:

> FN As noted in Conclusion of Law #8, the Commission lacks the authority under ss. 230.45(1)(b) and 111.375(2), Stats., to process complaints of discrimination filed against state agencies acting as employers. The Commission's relationship to the complainant was clearly not an employment relationship. Complainant's contentions therefore are beyond the Commission's authority to consider. However, for purposes of clarification, it may be helpful to note that the contentions had not been raised prior to the actual hearing in this matter and were not foreseeable by the Commission. The contentions were premised on complainant's allegation that a Commission employe by the name of Toya McCosh had called complainant soon after his complaint was filed to advise him there would be a delay of approximately one year in conducting the investigation. Complainant testified that until a few weeks before her call as an employe of the Commission, Ms. McCosh had been employed by DILHR as an executive assistant and in the

Secretary's office. However, respondent's testimony established that Ms. McCosh was never a Commission employe and continues to be an employe of DILHR.

Dated: December 6, 1985 STATE PERSONNEL COMMISSION

DENNIS P. McGILLIGAN, Chairperson

DONALD R. MURPHY, Commissioner

LAURIE R. McCALLUM, Commissioner

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STATE OF WISCONSIN PERSONNEL COMMISSION

* * * * * * * * * * * * * * * * *

FRED A. POOLE,

Complainant,

v.

Secretary, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,

Respondent.

Case No. 83-0064-PC-ER

* * * * * * * * * * * * * * * * *

PROPOSED DECISION AND ORDER

This matter is before the Commission as an appeal from an initial determination of no probable cause. During a prehearing conference held on May 29, 1985, the parties agreed to the following issue for hearing:

> Whether there is probable cause to believe that respondent discriminated against the complainant based on retaliation as set forth in his complaint of discrimination and, accordingly, whether the initial determination of "no probable cause" should be affirmed or reversed.

Respondent also has raised a timeliness objection to certain of the matters raised in complainant's charge.

FINDINGS OF FACT

1. At all relevant times prior to October 1, 1981, complainant was employed by organizations that were under contract with the State of Wisconsin to provide employment assistance to veterans as a Disabled Veterans Outreach Program (DVOP) worker. Complainant worked out of the Milwaukee-North office of the Job Service Division of the Department of Industry, Labor and Human Relations. Although he was actually employed by Vets House or Disabled American Veterans during this period, Job Service

employes were responsible for assigning work to the complainant and supervision of the work.

2. Somewhat prior to October, 1981, a change in federal law required the State of Wisconsin to end the contractual arrangement and to directly employ individuals (who at that time were Vets House employes) to perform the veterans outreach responsibilities. DILHR required Vet's House staff who had been performing these same responsibilities to pass an examination before they would be accreted into State civil service. §230.15(1), Stats.

3. A number of individuals did not attain the requisite score on the exam and were not hired on October 1, 1981 as civil service employes. Although the complainant passed the exam and was hired he provided advice and financial assistance to three black males who did not pass the exam. In mid-September, 1981, complainant assisted these persons in contacting the American Civil Liberties Union and paid the fee necessary to retain an attorney. They ultimately filed a case in Federal Court as well as actions with the Personnel Commission including a complaint of discrimination. DILHR staff within the Milwaukee-North Job Service office were aware that the complainant had provided the assistance.

4. From October, 1981 until he left the Milwaukee-North office in 1982, the complainant was directly supervised by the supervisor of the Job Placement Unit. At various times that person was Nancy Domeracci, Otto Pettersen, and Martha Zedowski Gersch. Complainant's second line supervisor was John Milisauskas, the office Manager. Mr. Milisauskas had also been office manager during complainant's employment with Vet's House.

5. Complainant's position description for this period provided that as a disabled veterans outreach worker (DVOP), complainant was to perform "functions directly related to meeting the employment needs of eligible

veterans," including provision of direct placement assistance, promoting Job Service programs and services to local employers, registering veterans applicants for employment and training assistance and providing outreach services to veterans. The last function represented 10% of complainant's total time and the individual activities comprising the function were described as follows:

D1. Develop and maintain an ongoing relationship with veteran organizations and other agencies providing services to promote the referral of veterans for Job Service assistance.
D2. Contact special veterans via phone and/or personal visit to arrange for level of service required.
D3. Refer veterans in need of special placement assistance to counseling and other supportive services to enhance veteran's employment potential.
A6. Maintain daily tallies of services provided to and for veterans.

6. The Vet's House definition of the term "outreach" provided:

A. An outreach contact of an individual veteran is when: a disabled veteran or other veteran is contacted for the purpose of informing him/her of available employment related services or programs OR for the purpose of obtaining information regarding veteran status, work history, physical limitations or other information which may help you or another Job Service staff person provide employment related services.

B. An outreach contact of an organization is when:
1. a veterans organization or other type organization is contacted for the purpose of informing the membership of available employment related services or programs which may benefit individual members.
2. an agency is contacted for the purpose of informing agency staff of employment related services or programs available to the clients that agency serves.

7. On at least four different occasions while employed by Vet's House, complainant had been counselled as to what activities properly fell within the definition of outreach and what activities did not. Complainant had an underlying disagreement with management as to the proper scope of his activities. Complainant felt that it was appropriate for him to provide whatever assistance he could to veterans, whether or not the

assistance was employment related. Management, i.e., Vet's House and DILHR, sought for the complainant to recognize a distinction between veterans job placement work and social work. At least one of these instances occurred when complainant represented veterans at an unemployment compensation appeal hearing.

8. On April 13, 1982, complainant was advised by his (Job Service) supervisor that he should not have represented a veteran in an appeal of a Food Stamp decision.

9. During approximately the latter half of May, 1982, Mr. Milisauskas received a written complaint stating that on May 13, 1982, complainant harassed the landlord of a veteran by taking the veteran to the landlord's home and demanding a homestead credit slip.

10. Mr. Milisauskas advised the complainant of the general nature of the complaint, that the complaint would be investigated and that the investigation might lead to the imposition of some discipline. Mr. Milisauskas also indicated to the complainant that he was entitled to have a representative present during the investigatory interview.

11. At the conclusion of the investigation, a letter was issued to the complainant by Pamela Fullerton, Acting Director of the Milwaukee Area Job Service and James Van Sistine, Job Service Administrator, suspending the complainant for a period of two working days (June 8 and 9) and describing the procedure for grieving the decision. The letter indicated that the suspension was based upon the May 13th incident described above in Finding of Fact #9 and for assisting the same Job Service applicant in a Food Stamp determination appeal hearing on the same date. The suspension was imposed on the complainant for performing tasks that were not within

the proper scope of Job Service outreach and for insubordination in disregarding prior directives on the subject.

12. Complainant grieved the suspension. Based on a statement by complainant at the grievance hearing held on June 25, 1982 that on June 18th, complainant had left his work site in order to assist a Job Service applicant in applying for Social Security benefits and other services, Mr. Milisauskas initiated a second investigation after advising the complainant of the same information found in Finding of Fact #10.

13. On July 19, 1982, David Pedro, Director of the Milwaukee Area Job Service and Mr. Van Sistine issued a letter suspending the complainant for five days (from July 26 through 30, 1982) for failure to follow oral or written instructions with respect to the June 18th incident. Again, the discipline was imposed for undertaking tasks that went beyond the limits of management's definition of outreach.

14. In a separate incident and based on an unsolicited comment that complainant had been drinking alcohol while visiting a VFW hall during the course of his outreach work. Mr. Milisauskas asked the complainant whether the report was true. Complainant denied the allegation and no discipline was imposed. Mr. Milisauskas used the same procedure when another employe was accused of drinking on the job.

15. On one occasion, when a paraprofessional Job Service employe took an employment registration from an applicant who was also a veteran, complainant refused to assist in processing the application until he was directed to do so by Mr. Milisauskas. It was standard office procedure for paraprofessional employes to walk a veteran over to a DVOP specialist for additional veteran services once the initial registration had been obtained.

16. Commencing in approximately September of 1982, complainant chose to seek to transfer to another Job Service area. On September 21, 1982, complainant was offered a transfer position in the Lancaster Job Service office. After a representative of the Lancaster office spoke with complainant's supervisor, the offer included the requirement that the complainant serve a permissive probationary period in the new position. As a consequence of the probationary condition, complainant withdrew his request to transfer to Lancaster. The same scenario occurred with respect to a transfer opportunity in Green Bay. A person with more seniority than the complainant was subsequently selected for transfer to a third vacant position in Baraboo, and a transfer opening in Rice Lake was withdrawn without being filled.

17. On September 28, 1982, complainant received an overall rating of "marginal" on his annual performance evaluation by his immediate supervisor.

18. Complainant ultimately took a voluntary transfer to the Waukesha office where he was to perform unemployment compensation work in a seasonal position. He subsequently served in both the West Bend and Grafton offices and was then laid off.

19. Complainant filed his complaint with the Personnel Commission on May 16, 1983. Within a few weeks of when he filed the complaint, complainant was notified by an employe of the Commission that there would be a delay of approximately one year before his complaint would be investigated. An initial determination of "no probable cause" was issued on March 25, 1985.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.

2. Only those portions of complainant's charge of discrimination alleging discriminatory actions occurring on or after July 20, 1982 are timely.

3. Respondent is an employer within the meaning of §111.32(6), Stats.

4. The complainant is eligible to file a complaint of discrimination on the basis of retaliation.

5. The complainant has the burden of showing there is probable cause to believe that the respondent illegally retaliated against him with respect to adverse employment actions occurring on or after July 20, 1982.

6. The complainant has failed to meet his burden of proof.

7. There is no probable cause to believe that the respondent retaliated against the complainant in violation of the Fair Employment Law when it took various adverse employment actions on or after July 20, 1982.

OPINION

At the hearing in this matter, the complainant contended that a series of actions taken by the respondent constituted illegal retaliation for having assisted three black veterans in pursuing claims of discrimination in federal court and before the Personnel Commission. The specific actions raised by the complainant are:

a. The June 12 and 13, 1982 suspension.

b. The procedure used to impose that suspension.

c. The July 26 through 30, 1982 suspension.

d. The procedure used to impose that suspension.

e. Limitation of complainant's outreach activities.

f. A requirement that complainant encode a specific Job Service application taken by another employe.

g. An accusation that complainant had been drinking on duty.

h. The September 28, 1982 performance evaluation.

i. The slowness of obtaining a promotion.

j. The four transfer requests that were either denied, closed or required permissive probation.

k. The excessive delay in obtaining an investigation by the Personnel Commission.

l. Lack of unemployment compensation training once the complainant transferred out of the Milwaukee-North office.

Timeliness

Prior to the hearing, the respondent filed a statement of jurisdictional objections. Respondent's objection was based on the 300 day time limit for filing complaints of discrimination. Respondent contends:

> The complainant's charge of discrimination was received by the Commission on May 16, 1983. The 300 day statute of limitations applicable to claims of discrimination therefore bars complaints about events that the complainant had knowledge of before July 15, 1982. This includes the two day suspension cited by the complainant, which was in effect on June 8 and 9, 1982. It also includes the grievance hearing on the two day suspension, where statements by the complainant led to another investigation and the five day suspension letter of July 19, 1982.
>
> I request a ruling that these events and any others that occurred (and were known to the complainant) before July 15, 1982 cannot be the basis for a finding of discrimination because of the 300 day statute of limitations.

Complainant's response included the following statement:

> It is my contention that the acts of Job Service Management between May 1982 and September 1982, regarding the imposition of a two-day suspension and a five-day suspension and their respective grievance hearings, constituted a continuous episode of discrimination against me. The final acts, ie: the imposition of the five-day suspension and the ensuing (second) grievance hearing fell within the 300 day Statute of Limitations (after July 15, 1982), while the first investigative interview, the

> first (two-day) suspension, the first grievance hearing, and the second investigative interview occurred prior to July 15, 1982.

The respondent apparently calculated that July 15, 1982, was the 300th day before the date of filing. The Commission's calculations show that the date of filing, May 16, 1983, was the 136th day of 1983 and that there were 164 days after July 20, 1982 in 1982. Therefore, July 20 is the 300th day before the May 16, 1983 date of filing.

The time limitation for filing a complaint of discrimination with the Personnel Commission is derived from §230.44(3), Stats:

> [I]f the appeal alleges discrimination under subch II of ch. 111, the time limit for that part of the appeal alleging such discrimination shall be 300 days after the alleged discrimination occurred.

See also §§111.375(2) and .39(1), Stats. The 300 day time limit is a statute of limitations rather than a statute concerning subject matter jurisdiction. Milwaukee Co. v. Labor & Ind. Rev. Comm., 113 Wis 2d 199 (1983).

Complainant has advanced a continuing violation theory in arguing that the Commission should review all of the complained of activities rather than just those that occurred within the 300 day time limit. In several prior cases, the Commission has adopted a continuing violation theory. In Hoepner v. DHSS, 79-191-PC (6/30/81), the Commission held:

> Ms. Hoepner has been and continues to be paid week after week at a lower rate than the male barber. That the respondent made a determination as to appellant's salary in 1977 when her position was reallocated does not take this case out of the continuing violation category. A case such as this which involves a basic issue of salary level can be distinguished from a case which involves a discrete personnel transaction which over the years has a continuing effect on an employe's salary as a result of the operation of a neutral personnel policy.

In the more recent case of Olson v. DHSS, 83-0010-PC-ER (4/27/83), the Commission applied the continuing violation theory to a policy established

in 1980 setting the procedures to be used for purchasing materials for the tailoring classes she taught at Oakhill Correctional Institution:

> In the present case it is clear that, although the purchasing policy was adopted over two years before the complaint was filed, the policy continued in effect during 1981, 1982 and 1983 and continued to dictate the methods used by the complainant for purchasing material during that period. Assuming, arguendo, the policy to be discriminatory, then the continuing refusal to permit the complainant to shop for materials in Madison would have to be considered as a continuing violation, rather than merely the continuing effects of a past violation. Delaware State College v. Ricks, 449 U.S. 250, 24 FEP Cases 827 (1980).
>
> The same conclusion is reached as to what the complainant alleges to be a failure by respondent to reasonably accommodate complainant's handicap, i.e., the assignment of the complainant to a second floor classroom and the lack of a telephone on the second floor. Based upon the theory of continuing violation, the complainant must be considered to have been filed within the 300 day limit set out in §230.44(3), Wis. Stats.

In contrast, the present case involves a series of distinct and different personnel actions. Some of the personnel actions fall within and some fall outside of the 300 day limit.

The continuing violation theory has been analyzed as consisting of three sub-theories: continuing course of conduct (or a series of acts with one independent discriminatory act occurring within the charge-filing period); maintenance of a system or policy which discriminates; and present effects of past discrimination. Schlei & Grossman, Employment Discrimination Law, 1983 Supplement, p. 119. While the first two sub-theories remain viable, the third has been effectively eliminated by the decision of the U.S. Supreme Court in United Air Lines, Inc. v. Evans., 431 U.S. 553 (1977). The first theory, which is the one advanced in the present case, has been summarized as follows:

> The continuing course of conduct sub-theory applies only to the discriminatory acts of an employer against an individual, rather than against an entire class. This sub-theory applies when a plaintiff alleges two or more related discriminatory acts, at least one of which took place during the limitation period. The requirement that the acts be related operates to toll the running

> of the limitation period as long as the acts continue. Because at least one discriminatory act must take place during the limitation period, the issue of timeliness of the charge never arises. The continuing course of conduct sub-theory thus serves the purpose of allowing a court to obtain jurisdiction over discriminatory acts taking place prior to the limitation period and to grant relief based on this broader range of conduct during the remedy phase. This sub-theory, which does not create substantive liability, is never automatically applicable, but has been applied in the following employment contexts: a layoff followed by repeated refusals to rehire; repeated denials of applications for employment, repeated denials of overtime, and repeated denials of promotion. The Continuing Violation Theory of Title VII After United Air Lines, Inc. v. Evans, 31 Hastings L.J. 929, 933 (1980). Citations omitted.

The vast majority of the cases in which this sub-theory has been adopted relate to one personnel action which has repeated both inside of and outside of the statutory time limit. Relatively few decisions have been issued where, as here, the complainant has alleged that a number of different transactions, including suspensions, an evaluation, and requiring a probationary period, have occurred. In Tarvesian v. Carr Div. of TRW, Inc., 16 FEP Cases 348 (D.C. Mass., 1976), the plaintiff alleged discrimination as to his salary, as to statements made during his employment, as to his January 1971 termination, and as to June 1972 employment references alleged to be erroneous and malicious. Plaintiff filed her complaint with EEOC in February of 1973. The court held that all charges relating to allegedly discriminatory events occurring more than 300 days prior to filing the complaint (i.e., all but the reference) were time barred and specifically rejected the complainant's continuing violation theory.

> The claims growing out of actions taken during plaintiff's employment are stale. The allegation of acts of a totally different nature occurring many months later cannot freshen them. The mere insertion of the word "continuing" into an otherwise unconnected sequence of events does not create a pattern of the kind necessary to suspend the normal time limitations on Title VII actions.
>
> Some violations are undoubtedly continuing in nature, and not subject to the normal statute of

> limitations for filing before the EEOC. However, while layoffs followed by failure to rehire, or systems of discrimination against particular groups may be "continuing," isolated and completed acts against a particular individual are not. Once a disparaging remark is made, or a transfer is denied, or a demeaning work assignment is given, it is, without more, a completed and isolated act: such practices do not give the plaintiff a perpetual right to file charges before the E.E.O.C.
>
> Loo v. Gerarge, 374 F.Supp. 1338, 1340, 8 FEP Cases 30,31 (D.Haw.1974)(citations omitted).

Tarvesian, 16 FEP Cases 348, 351

In the more recent case of Held v. Gulf Oil Co., 29 FEP Case 837(6th Cir., 1982), the court adopted complainant's continuing violation theory. There, complainant had been constructively discharged, effective in December of 1977. She filed her discrimination claim in February of 1978. The trial judge had made, inter alia, the following findings:

> 1. Because of her sex, the plaintiff was assigned to the least desirable job of self-service marketer, the more desirable jobs being those of marketing representative or retail marketer;
> 2. Plaintiff, as a self-service marketer, was required to work longer hours than her male counterparts;
> 3. Plaintiff was continuously treated in a discriminatory manner;
> 4. A separate personnel file was kept on plaintiff;
> 5. Plaintiff was given increased hours and other burdens that male employees did not receive;
> 6. Repeated warnings were given to the plaintiff not to socialize with male employees;
> 7. A course of treatment by management and fellow employees, with management's knowledge, involved frequent sex-based references; and
> 8. The plaintiff was constructively discharged from her job.

Held 29 FEP Cases 837, 838. However, the key to the circuit courts acceptance of the continuing violation theory was the conclusion that "the discriminatory acts found by the final court occurred throughout the term of plaintiff's employment." 29 FEP Cases 837, 840. Therefore, the Held

decision must be viewed as a case where as to each of the various forms of discriminatory actions, the actions occurred, in part, within the statutory time period.

Finally, in Donaldson v. Cofritz, 30 FEP Cases 436 (D.C. Dist. Col., 1981), the continuing violation theory was rejected with an important qualification. In Donaldson, the plaintiff had alleged:

> (1) that Defendant selected a white female in 1976 for a supervisory position in the Cashier Department without informing Plaintiff of the position vacancy; (2) that in 1976, following Plaintiff's complaints about the tenative selection of a white employee to an Assistant Supervisor position, Defendant abolished that position and assigned Plaintiff the same duties as those performed by an Assistant Supervisor, without giving Plaintiff a promotion; (3) that Defendant did not select Plaintiff in 1978 for the position of Supervisor in the Cashier Department but rather selected a white male; (4) that Defendant failed to give warnings to Plaintiff prior to her discharge whereas white and male employees were given such warnings; (5) that Defendant harassed Plaintiff by calling her a "useless old bitch"; and (6) that Plaintiff was discriminatorily discharged by Defendant on March 14, 1980.

Plaintiff then filed with the EEOC in April of 1980. The court held:

> With the exception of Plaintiff's unlawful harassment and discharge claims, her other claims are jurisdictionally flawed.
>
> * * *
>
> Plaintiff's claim of discriminatory acts in 1976 and 1978 were not the subject of timely charges with the EEOC and thus may not be the subject of a suit in this Court.
>
> Plaintiff's vague allegation and argument that the 1976 and 1978 Acts were part of a continuing policy and practice of discrimination is unavailing. Plaintiff complaints of specific acts of discrimination, each of which should have been the subject of a charge with the EEOC. See Delaware State College v. Ricks, 449 U.S. 250, 49 LW 4058, 24 FEP Cases 827 (December 15, 1980),.... In Ricks, the Supreme Court explained:
>
> > Mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination.
>
> 49 LW at 4060. Plaintiff has not alleged the discriminatory acts that continued until her

> termination nor has she alleged any relationship between her discharge and the earlier acts.

Donaldson, 30 FEP Cases 436, 437 (emphasis added, citations omitted).

These cases, when viewed together, suggest that the relationship that must exist between the events within and outside of the 300 day time limit, is a relationship based on the types of personnel actions involved. The closest possible relationship is where the transactions are identical, for example where there are repeated denials of promotion or overtime. Other events, though not identical may be sufficiently related so as to transcend the time limitations, e.g., layoff and refusal to rehire.

In the present case, the complainant has argued that the investigative interviews and the suspension occurring before July 20, 1982, relate to the suspension occurring after that date. The Commission is not persuaded that the relationship between these events is such that the continuing violation theory should operate. A suspension is a discrete event: notice is given and the suspension starts and stops on specified dates. The complainant was clearly in a position to file his complaint on the date of the first suspension. Because he did not do so within 300 days of that date, his complaint was not timely and that aspect of complainant's charge must be dismissed. The other aspects of the charge occurring outside of the 300 day limit are also not appropriately "related" so as to support a continuing violation theory.

Merits

In order to make a finding of probable cause, there must exist facts and circumstances strong enough in themselves to warrant a prudent person in believing that discrimination probably has been, or is being committed. PC 4.03(2), Wis. Adm. Code.

Typically, the Commission applies this standard in the context of the shifting burdens described in Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1984).

In this case, the complainant has provided sufficient basis on which the Commission can conclude that he assisted other individuals in a proceeding filed under the Fair Employment Law. §111.322(3), Stats., and that complainant's immediate supervisor in September of 1981 and Mr. Milisauskas, the office manager of the Milwaukee-North office were aware of complainant's activities. In addition, the complainant has established that numerous personnel actions taken by the respondent had an adverse effect on his employment. However, the complainant has failed to establish a causal link between the adverse actions and complainant's protected activity.

The evidence clearly indicated that complainant possesses an unwavering commitment to providing assistance to all veterans. The key to this case is that the complainant consistently refused to adhere to management's limitation as to the type of assistance that a DVOP worker could properly provide. While complainant felt that any and all assistance should be provided, management consistently required that only assistance related to job placement be given. The Commission is satisfied that complainant's unwillingness to accept respondent's view on this point resulted in the imposition of the two suspensions, and played a major role in the adverse evaluation and the requirement that complainant serve a period of permissive probation upon transfer to Lancaster or Green Bay.

With respect to all of the remaining allegations raised by the complainant that are timely, he has failed to establish that he was in fact treated any differently than any other DVOP worker. For example, there was

no showing that other employes received more training than complainant after his transfer out of the Milwaukee-North office, that other complaints were investigated more quickly by the Personnel Commission, [FN] that other DVOP's were in fact promoted more quickly or that Mr. Milisauskas handled the drinking allegation any differently than with other employes.

Because this is a complaint under the Fair Employment Act, the Commission will not address the complainant's allegations that respondents denied his constitutional rights of due process and protection against self-incrimination. For the reasons set out above, the Commission issues the following

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[FN] The complainant's contention that the Personnel Commission dragged its feet and therefore conspired to discriminate against the complainant is a very troublesome contention, because the complainant asks the Commission to review its own actions. During the hearing, complainant also asked the Commission, if appropriate, to conduct an independent investigation of its own records (none of which were made part of the record in this matter) to determine whether the time spent in completing the investigation was unusual. These contentions had not been made prior to the actual hearing in this matter and were not foreseeable by the Commission. The contentions were also premised on complainant's allegation that a Commission employe by the name of Toya McCosh had called complainant soon after his complaint was filed to advise him there would be a delay of approximately one year in conducting the investigation. Complainant testified that until a few weeks before her call as an employe of the Commission, Ms. McCosh had been employed by DILHR as an executive assistant and in the Secretary's office. However, respondent's testimony established that Ms. McCosh was never a Commission employe and continues to be an employe of DILHR. In light of this testimony and the very minor role that this allegation has in complainant's overall case, the Commission will reach a determination of no probable cause as to all issues.

ORDER

Those portions of complainant's charge alleging that actions taken before July 20, 1982 were discriminatory is dismissed and as to the remaining portions of the charge, the initial determination is affirmed, no probable cause is found and the matter in its entirety is dismissed.

Dated: _____,1985 STATE PERSONNEL COMMISSION

_____
DENNIS P. McGILLIGAN, Chairperson

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LAURIE R. McCALLUM, Commissioner

KMS:jmf
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