

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 GABRIELLE ALWIN, \*  
 \*  
 Complainant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 HEALTH AND SOCIAL SERVICES, \*  
 \*  
 Respondent. \*  
 \*  
 Case No. 83-0122-PC-ER \*  
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DECISION  
 AND  
 ORDER

This matter arises from a charge of discrimination alleging discrimination based on sex with respect to transfer and discharge. On December 15, 1983, the parties executed a settlement agreement that provided for the withdrawal of all pending actions in exchange for reinstatement, payment of a lump sum and removal of all references in complainant's personnel file relative to the discharge. On February 1, 1984, the Commission ordered the case dismissed "[b]ased upon a settlement agreement reached between the parties."

In a letter dated May 16, 1985, the complainant requested the Commission to reopen the case because her "personnel (P) file had not been purged of any of the material relating to the termination of my employment."<sup>FN</sup> The parties were provided an opportunity to file arguments regarding complainant's petition to reopen.

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<sup>FN</sup> In subsequent correspondence to the Commission, the respondent stated that complainant's personnel file "had not been expunged as a result of an oversight," but that as a consequence of a grievance filed by the claimant, the file was expunged in November of 1984. Complainant then contended that the December 15, 1983, settlement agreement remained in her file. In response, respondent indicated that complainant's employing institution had (as of June, 1985) been told to remove the agreement from the file.

Pursuant to s.111.375, Stats., complaints of discrimination against an agency of the state as an employer "shall be filed with and processed by the personnel commission." As provided in s.111.39, Stats., (and clarified in s.111.395, Stats.), there are two procedures available for enforcing an order by the Commission: "as provided in ch 101" and "by suit in equity." According to s.101.02(13)(a), Stats.:

If any employer. . .fails, neglects or refuses to obey any lawful order given or made by the [Commission]. . .such employer. . . shall forfeit and pay into the state treasury a sum not less than \$10 nor more than \$100 for each such offense.

By applying the legal maxim of "expressio unius est exclusio alterius" (the expression of one is the exclusion of others), the Commission concludes that the listed enforcement methods are the exclusive methods that are available. Therefore, complainant's petition to reopen must be denied.

If complainant wishes to have the Commission apply the penalty provisions found in s.101.02(13), Stats., against the respondent, she should file such a request with the Commission, in writing.

ORDER

The complainant's petition to reopen is denied.

Dated: July 12, 1985 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

KMS:jmf  
ID6/2

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

Parties:

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