STATE OF WISCONSIN PERSONNEL COMMISSION

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*
MARY ANN PARRISH, *
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Appellant, *
*
v. *
*
President, UNIVERSITY OF *
WISCONSIN SYSTEM (MILW), *
*
Respondent. *
*
Case No. 84-0163-PC *
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* * * * * * * * * * * * * * * * *

DECISION
AND
ORDER

This matter is before the Commission on respondent's motion to dismiss. On August 9, 1984, the appellant filed a letter of appeal with the Commission seeking review of a decision rendered at the third step in the non-contractual grievance process. The third step grievance states, in part:

> On Thursday, May 3, 1984 at approximately 12:45 pm, I was subjected to a meeting in which I had been denied representation twice by Mr. Salazar. During this meeting, Mr. Salazar three (3) times demanded and shouted aloud to SHUT UP.
>
> * * *
>
> I am requesting that some type of punitive action be taken against the three (3) individuals named in the grievance.

In her letter of appeal, the appellant states: "The violation here is quite clear. This was a disciplinary meeting and therefore I am allowed representation. I was denied this twice (2) times." During a prehearing conference held on September 11, 1974, the appellant requested, as her relief, that the Commission impose some discipline against two of her superiors identified in her grievance.

The respondent has moved to dismiss the matter for lack of jurisdiction, arguing that "the grievant does not have standing, the matter is not grievable under the Rules of the Department of Employment Relations in regard

to non-represented classified employes and the Personnel Commission is without authority to order the remedy requested." In its brief in support of the motion, the respondent stated that the appellant "was a project employee whose appointment was terminated as of close of business on September 7, 1984." , The respondent went on to argue that because the appellant was no longer employed by the respondent and was "no longer subject to the working conditions complained of," the case was moot.

The appellant has not contested the respondent's allegation that she is no longer employed at UW-M. Therefore, the Commission will accept this statement as being true.

The definition of mootness to be applied in this case is as set forth in Wisconsin Employment Relations Board v. Allis-Chalmers Workers Union, 252 Wis. 436, 440, 31 NW 2d 772, 32 NW 2d 190 (1948):

> A moot case has been defined as one which seeks to determine an abstract question which does not rest upon existing facts or rights, or which seeks a judgment in a pretended controversy when in reality there is none, or one which seeks a decision in advance about a right before it has actually been asserted or contested, or a judgment upon some matter which when rendered for any cause cannot have any practical legal effect upon the existing controversy.

The respondent in the present case presumably is claiming that a determination of the appellant's grievance "cannot have any practical legal effect upon the existing controversy."

In Watkins v. ILHR Department, 69 Wis. 2d 782, 233 NW 2d 360 (1975), the Court held that a discrimination complaint filed against complainant's employer and union was not moot. Ms. Watkins, who is black, was hired in 1968 as a "basic zone case worker" for Milwaukee County. In 1969, Ms. Watkins and her co-workers were asked if they wished to become "service zone caseworkers" which involved a reduced caseload but no change in pay. Ms.

Watkins indicated that she was interested in such a position. After not being appointed to any of several service zone vacancies, Ms. Watkins filed a racial discrimination complaint in 1971 and five months later, before a hearing on the complaint had been held, she was transferred to a service zone position. The Court reasoned:

> Watkins is still employed by the same employer that had allegedly discriminated against her on the basis of race, and she is also still a member of the same union. It cannot be said that, if discrimination is found, an order of DILHR would be useless. DILHR can order, as the hearing examiner recommended, that Watkins be considered for all future transfers on the basis of her qualifications and ability, and without regard to race. A similar order can be made requiring the union to process Watkins' grievances without regard to her race, if it is found that the union has discriminated. Such orders would have a practical, legal effect upon the relation of the parties to this case. 69 Wis. 2d 782, 796.

In the subsequent case of State ex rel. Ellenburg v. Gagnon, 76 Wis. 2d 532, 251 NW 2d 773 (1977), the Court applied the definition of mootness to facts analogous to those before the Commission. Mr. Ellenburg, while an inmate at a state prison, had alleged wrongdoing by certain prison employes and filed a complaint with the warden. After a staff investigation had concluded that the allegations were unfounded, Mr. Ellenburg was found to have violated an institution rule stating: "No man shall in any way communicate false information to anyone knowing the same to be untrue." As a result, Mr. Ellenburg was given seven days of isolation confinement and lost three days of good time. He sought to have the rule, the discipline and the disciplinary procedure reviewed. The Supreme Court held:

> We conclude that all issues are now moot and that the appeal should be dismissed.
>
> At the time of oral argument the appellant, Paul R. Ellenburg, was no longer an inmate of any Wisconsin correctional institution and not subject to institutional disciplinary rules. He had been

> released on parole. Because he is on parole, a decision of this court could in no manner affect the provision for institutionalized isolation. At this stage nothing this court could do would affect the isolation one way or the other. As to the loss of three days good time, whether it was taken or not, is de minimis. Ellenburg was serving an eleven-year sentence -- three days is de minimus. 76 Wis. 2d 532, 535.

In the present case, the appellant is no longer employed by respondent UW-Milwaukee. Any ruling by the Commission at the fourth step of the grievance procedure could not affect the appellant's current or past working conditions. Unless the appellant was to be reemployed by the respondent sometime in the future, the circumstances that generated the appeal could not recur. These facts are readily distinguishable from those in Watkins (supra), where the complainant was still employed by the same employer, still represented by the same union and in a position to be affected by future transfer decisions. In State ex rel. Ellenburg (supra), the mere possibility that Mr. Ellenburg would again be incarcerated and again be disciplined for violating the false communication rule[FN] was apparently not enough for the Court to change its conclusion. For the same reason, the instant case meets the definition of mootness.

[FN] There had also been at least some changes in the wording of the false communication rule by the time the Supreme Court issued its decision in State ex rel. Ellenburg.

ORDER

The respondent's motion to dismiss is granted and this case is dismissed as moot.

Dated: Dec. 6, 1984

STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Chairperson

LAURIE R. McCALLUM, Commissioner

DENNIS P. McGILLIGAN, Commissioner

KMS:ers
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