

STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS F. KING,
 Complainant,
 v.
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 Respondent.
 Case No. 86-0085-PC-ER

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DECISION
 AND
 ORDER

This matter was filed with the Commission on June 27, 1986. The complainant alleges that he was subjected to sexual harassment in his position at the Taycheedah Correctional Institution and that the harassment resulted in his discharge effective August 13, 1985. In a letter from the Commission dated July 2, 1986, the complainant was invited to submit arguments as to whether his complaint was timely filed in light of the period of more than 300 days from the August 13, 1985 termination and the June 27, 1986 date of filing. Complainant responded by stating:

I was waiting for an answer on my third step grievance; the 3rd step grievance was held at the Taycheedah Correctional Institution 16 January 1986, with a promise to me of an answer and decision within 3 weeks. Answer: decision the 3rd step grievance was delayed over 5 months; Finally the grievance was denied mailed and returned to me -- 27 June 86. Received 28 June 86. And of course now I'm waiting for arbitration, I understand that these things take time; so I'm asking for a little extra time for filing.

The time limit for filing complaints of discrimination is derived from §111.30(1), Stats:

The [Commission] may receive and investigate a complaint charging discrimination or discriminatory practices or unfair honesty testing in a particular case if the complaint is filed with the [Commission] no

more than 300 days after the alleged discrimination or unfair honesty testing occurred.

The issue raised by the complainant is whether the 300 day time period is tolled by the filing of a grievance of the same transaction. In Electrical Workers v. Robbins & Myers, Inc., 429 US 229, 50L Ed 2d 427, 97 S. Ct. 441 (1976), the Supreme Court held that a charge of race discrimination arising from complainant's discharge was untimely when it was filed with the EEOC 84 days after the denial of her contractual grievance but 108 days after her discharge where the time limit for filing with the EEOC was within 90 days "after the alleged unlawful employment practice occurred" as set forth in §706 of Title VII of the Civil Rights Act of 1964.

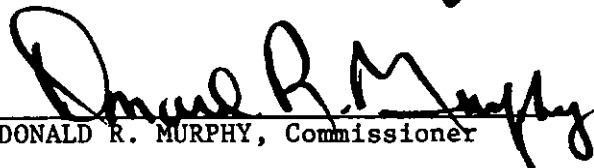
Based on the similarity of the language construed in the Electrical Workers case, and the Court's holding that grievance procedures do not toll the time within which a Title VII claim must be filed, the Commission issues the following

ORDER

This matter is dismissed as untimely filed.

Dated: August 6, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

KMS:jmf
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