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MICHAEL J. SADLIER, *

Complainant, *

v. *

Secretary, DEPARTMENT OF *

HEALTH AND SOCIAL SERVICES, *

Respondent. *

Case No. 87-0046, 0055-PC-ER *

* * * * *

INTERIM
DECISION
AND
ORDER

This matter is before the Commission on a dispute as to the proper issue for hearing. The parties were provided an opportunity to file briefs¹ and the following facts appear to be undisputed.

FINDINGS OF FACT

1. On May 1, 1987, complainant, Michael J. Sadlier, filed a charge of discrimination with the Personnel Commission alleging he had been retaliated against in violation of §101.055(8), Wis. Stats. and Ch. 230 Wis. Stats., with respect to disclosures under the Occupational Health and Safety Act and whistleblowing. Specifically, complainant alleged he was unfairly denied publication of a thank-you note in the institution newsletter and then unfairly disciplined in regard to the distribution of that note. Furthermore, complainant alleged he was denied certain rights of representation in the pre-disciplinary investigation; denied pay status

¹ In reaching a decision in this matter, the Commission did not consider respondent's brief dated December 14, 1987 and received during the afternoon of December 16, 1987. The briefing schedule called for briefs to be filed by December 14th and this matter was reviewed by the Commission at its meeting on December 16, 1987.

during disciplinary proceedings, was the target of another investigation; and that his supervisor refused to respond to his call for help during a disturbance on April 6, 1987.

2. On May 20, 1987, complainant filed a second complaint alleging that respondent committed additional adverse employment actions in retaliation for his May 1st complaint by substituting a day of suspension for a previously scheduled day of vacation and by being denied admittance on the institution grounds to act as a union representative on grievance matters.

3. On August 28, 1987, an investigation for the Commission issued an initial determination in the case.

4. A conciliation/prehearing conference was held on October 29, 1987. The conference report prepared pursuant to §227.44(4)(a), Stats., indicates that the hearing examiner presiding at the Conference proposed the following issue for hearing:

Whether respondent retaliated against the complainant in violation of §§101.055(8) and/or 230.83, Stats., with respect to any of the following actions:

- a. Denial of complainant's request for publication of a thank-you note in the institution newsletter, on March 31, 1987;
- b. The decision not to allow inclusion of the union steward or attorney requested by the complainant to represent the complainant at an investigative meeting held on April 4, 1987;
- c. The decision to deny complainant pay status for the period he was in attendance at the investigative meeting on April 4, 1987;
- d. His ten day suspension from April 25 to May 1, and May 6 to May 9, 1987 for unauthorized distribution of literature on the institution grounds;
- e. His supervisor's response to complainant's call for help on April 6, 1987;
- f. The decision to investigate complainant's activities relating to an incident on April 14, 1987 involving the removal of a mattress from a resident's room;

- g. The decision to substitute a day of suspension for a previously scheduled day of vacation on May 5, 1987;
- h. The decision to deny complainant admittance to the institution grounds during the period of his 10 day suspension.

The parties have 10 days from the date this conference report is signed to object to the proposed issue or to suggest revisions [sic]. If no objections are received, the parties will be deemed to have agreed to the issue and to proceed to hearing on the merits of the complainant's charges as to all 8 allegedly retaliatory actions, irrespective of any contention that the initial determination found "no probable cause" as to any one or more of the actions.

The conference report was signed on October 30, 1987.

6. In a letter dated November 10, 1987 and received by the Commission the same date, the respondent wrote:

I believe the proposed issue as stated by you in the October 30, 1987 pre-hearing conference report is insufficient in the following respect.

The respondent believes that the initial determination shows that the investigator concluded that there was no probable cause concerning actions as described in your prehearing conference report as "b" and "f," and the issue should be amended to reflect that.

OPINION

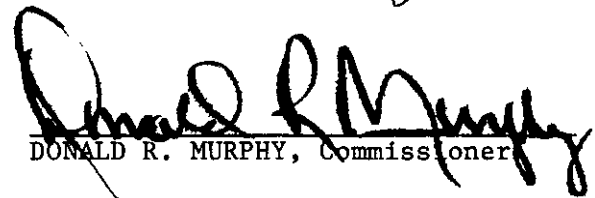
The conference report required the parties to file objections within 10 days from the date the conference report was signed or the parties would be deemed to have agreed to the issue as proposed. Respondent's objections were filed on the eleventh day after the conference report was signed. Because the respondent failed to fulfill the terms established for objecting to the proposal, the issues as set forth in the conference report shall serve as the issue for hearing in this matter.

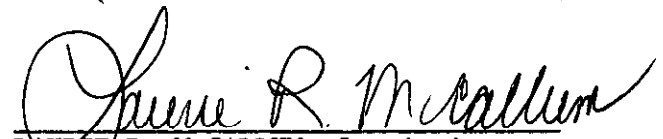
ORDER

The issue for hearing in this matter shall be as set out in the conference report issued on October 30, 1987.

Dated: December 17, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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