

STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS McCLURE,
 Complainant,

v.

President, UNIVERSITY OF
 WISCONSIN SYSTEM (Madison),
 Respondent.

Case No. 88-0163-PC-ER

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DECISION ON MOTION
 TO HOLD PROCEEDINGS
 IN ABEYANCE

This matter is before the Commission on respondent's "Motion to Hold Personnel Proceedings in Abeyance until Federal Claim has been Resolved" filed August 22, 1990. The file reflects the following background to this motion.

Complainant filed a complaint of discrimination on the basis of handicap with respect to discharge on October 17, 1988. A conciliation session was held on August 9, 1989, but did not result in settlement. While certain information concerning the underlying transaction was sought, the case remained in the Commission backlog and no active investigation was being carried out.

On February 3, 1990, complainant, now represented by different counsel, filed an action in Dane County Circuit Court alleging that he had been discharged because of his handicap in violation of both 29 USC 504 and §111.34, Wis. Stats., and also alleging that he had been denied a timely administrative remedy under the Wisconsin Fair Employment Act.

By letter dated May 25, 1990, the Commission inquired of the parties whether they wanted to hold matters before the Commission in abeyance pending a decision in the Circuit Court matter. This was agreed to by respon-

dent but not by complainant. Subsequently, Commission staff proceeded in July 1990 to actively investigate the case, and respondent filed the aforesaid motion for a stay on August 22, 1990.

In support of its motion, respondent argues that complainant is not required to exhaust state administrative remedies under the Rehabilitation Act. It also argues that complainant would lose nothing if the Commission proceedings were held in abeyance because under both the federal and state laws he would be entitled to reinstatement, back pay and attorney's fees if he prevails. Respondent also asserts that complainant would not be injured if his claim that he has been denied an administrative remedy were not rendered moot, which presumably would occur if the Commission were to move ahead with this matter, and that complainant:

[S]hould not be permitted to prosecute identical claims simultaneously in two forums or to use the Personnel Commission to conduct his discovery for him.

Because the Complainant loses nothing by holding the Personnel Commission proceedings in abeyance, the Respondent cannot see why the Personnel Commission should expend time and energy for an investigation, the results of which may be rendered moot once the federal claim is resolved. Even if the claim before the Personnel Commission is not rendered moot by the resolution of the federal claim, the Complainant will not be harmed, for the Personnel Commission may simply resume its proceedings.

Complainant's position, in a nutshell, is that he prefers to proceed with the administrative proceeding before the Commission because this would be simpler and less burdensome, pointing out that he lacks the funds to conduct discovery in the judicial proceedings. He also contends that the respondent's arguments could just as well be made in support of staying the judicial proceeding.


The Commission sees little reason why this proceeding should be stayed pending the completion of the parallel judicial proceeding. On the one hand,

without going into the law involved at any length, it is more probable that the outcome of the judicial proceeding would have preclusive effect than the outcome of this administrative proceeding. On the other hand, if complainant is successful with his administrative claim, this should as a practical matter moot the judicial proceedings if respondent is correct that the potential remedies are identical. There certainly is no general rule or principle that the mere fact that a complainant in an administrative proceeding has filed a parallel judicial action, which he or she may or may not ultimately pursue to completion, should preclude such complainant from being able to proceed in the administrative proceeding. There are times when law suits are filed for what may be called defensive reasons, such as to avert a statute of limitations problem when an initially filed administrative proceeding is still pending and its outcome is still unknown. There is no reason in such situations to require the complainant to then forego the administrative remedy because of the possibility that he or she might proceed with the administrative proceeding, lose the case, and then relitigate the same transaction in the judicial proceeding. In a situation where a complainant is trying to advance on two fronts simultaneously, a different result might be indicated. For example, if a respondent simultaneously were responding to both an investigation in an administrative proceeding and to discovery requests in a judicial proceeding, it would be on firmer ground to request a stay of one or the other proceeding. However, this is not the situation in the instant matter, and in fact complainant asserts he lacks the funds necessary to conduct discovery.

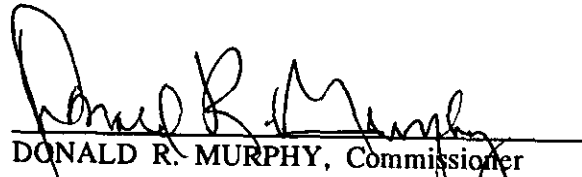
ORDER

Respondent's motion for a stay filed August 22, 1990, is denied and the investigation of this matter is to continue.

Dated: Sept. 19, 1990 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner