

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MARY KAYE STYGAR,
 Complainant,

v.
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 Respondent.

Case Nos. 89-0033-PC-ER
 90-0040-PC-ER
 91-0165-PC-ER
 93-0208-PC-ER
 94-0016-PC-ER

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RULING
 ON
 MOTION FOR
 STAY

On January 26, 1995, complainant filed a Motion for Stay of Proceedings. Respondent was allowed an opportunity to respond to the motion and this response was received on February 3, 1995.

The procedural history of this matter consists of the following, in pertinent part:

1. Complainant has filed with the Commission the following five (5) complaints alleging sex discrimination or Fair Employment Act (FEA) retaliation:

- Case No. 89-0033-PC-ER filed April 6, 1989
- Case No. 90-0040-PC-ER filed March 8, 1990
- Case No. 91-0165-PC-ER filed November 11, 1991
- Case No. 93-0208-PC-ER filed December 3, 1993
- Case No. 94-0016-PC-ER filed February 7, 1994

2. The Commission issued an Initial Determination relating to the first three cases on September 22, 1992. On January 26, 1993, the Commission conducted a prehearing/conciliation conference in regard to these three cases. The parties agreed to hearing issues and to the scheduling of a hearing on September 20-24, 1993. The parties specifically requested such a lengthy pre-hearing period to allow the complainant primarily to complete extensive

pre-hearing discovery. Due to the illness of counsel for complainant, this hearing was rescheduled for April 4-8, 1994, pursuant to a scheduling conference conducted on September 20, 1993.

3. After the filing of Case No. 93-0208-PC-ER, complainant agreed to the waiver of investigation of this case, and the parties agreed to consolidating it for hearing purposes with the three previously filed cases. As a result, a prehearing conference was convened by the Commission on January 25, 1994, and the parties agreed to the hearing issue in Case No. 93-0208-PC-ER.

4. After the filing of Case No. 94-0016-PC-ER, complainant agreed to the waiver of investigation of this case, and the parties agreed to consolidating it for hearing purposes with the four previously filed cases. As a result, a prehearing conference was convened by the Commission on February 14, 1994, and the parties agreed to the hearing issue in Case No. 94-0016-PC-ER.

5. The hearing in the above-referenced five cases was conducted on April 4-8, 1994. A briefing schedule was established which was extended due to difficulties in obtaining tape copying services and at the request of the parties. The briefing schedule was ultimately concluded on October 21, 1994. The hearing examiner issued a Proposed Decision and Order on November 18, 1994.

6. A status conference was convened by the Commission on September 27, 1994, for the purpose of discussing an action which had been recently filed by complainant in federal district court. Counsel for complainant represented at this conference that there was very little overlap in the factual situations which were the subject of the five above-referenced cases which had been filed with and heard by the Commission and the federal court action. Complainant did not request a stay of the Commission's proceedings during the course of this conference or at any time prior to the filing of the instant motion.

One of the primary arguments advanced by complainant in support of her motion for a stay of proceedings is that, in reaching its decision, the Commission would not have available to it a decision by the Unemployment Compensation (UC) Division, Department of Industry, Labor and Human Relations relating to whether good cause existed for respondent's three-day suspension of complainant without pay in August of 1994 (which occurred four months after the close of the hearing). Most importantly in regard to this

argument, §108.101, Stats., would prevent the Commission from considering this decision on complainant's UC claim. Section 108.101 states as follows, in pertinent part:

Effect of finding, determination, decision or judgment.

(1) No finding of fact or law, determination, decision or judgment made with respect to rights or liabilities under this chapter is admissible or binding in any action or administrative or judicial proceeding in law or in equity not arising under this chapter, unless the department is a party or has an interest in the action or proceeding because of the discharge of its duties under this chapter.

Furthermore, even if such information were admissible, it would certainly not be dispositive of the discrimination/retaliation issues before the Commission since the "good cause" standard applicable to UC cases is not co-extensive with the standard of proof in discrimination/retaliation cases brought under the Wisconsin Fair Employment Act. Finally, the suspension occurred after February 28, 1994, and would not be relevant to the issues the parties agreed the Commission should decide as the result of the hearing conducted in April of 1994.

From the standpoint of good public policy and judicial economy, the interests of the public would not be served by permitting a party who has received an adverse proposed decision from a hearing examiner after five days of hearing encompassing 37 hours of testimony, more than 200 exhibits, and 30 witnesses, to re-litigate substantially identical claims in another forum. Furthermore, in a situation such as the present one where there is a continuing employment relationship, it would not serve the interests of the parties or the process to permit the avoidance of previous proceedings and the institution of new and duplicative plenary proceedings each time a new employment problem or dispute arose.

It should be noted here that the parties agreed to limit the scope of the hearing held in April of 1994 to events which occurred on or before February 28, 1994, in order to permit the parties to have notice as to what the hearing would encompass. Complainant did not file an objection to this approach at that time or thereafter. It should also be noted that complainant had an opportunity to file a subsequent complaint with the Commission relating to events which occurred after February 28, 1994. Although the events which were the subject of the 1994 hearing could not be re-asserted as acts of

discrimination/retaliation for which a remedy could be sought in such a subsequent action, they could be considered as relevant evidence in such an action.

Complainant also refers to certain delays in the process by which the Commission brought the subject five cases to hearing. Although it is not entirely clear for what purpose the complainant raises this point, it should be noted that the Commission finished its investigation of the first three cases within a year after the third complaint was filed and after advising the complainant in 1989 and thereafter that the Commission's caseload could result in "substantial delay" in investigating her complaints and offering her an option to waive the investigation of her cases. It should also be noted that the Commission was prepared in the fall of 1992, after the issuance of the Initial Determination, to place the hearing on its calendar but acceded to the request, primarily of the complainant, to delay the scheduling of the hearing until September of 1993 in order for the complainant to have an opportunity to conduct extensive pre-hearing discovery. The complainant then, due the illness of her counsel, requested further postponement of the hearing and the Commission granted her request. Complainant has, at all times, had the opportunity to move her cases along more quickly, so her present contention that delays in the Commission process have somehow compromised her ability to have a fair adjudication of her complaints appears incongruous.

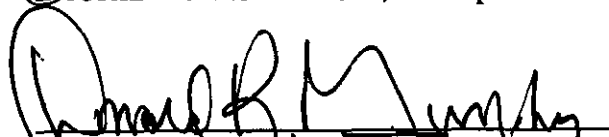
Order

Complainant's Motion for a Stay of Proceedings is denied.

Dated: February 8, 199~~7~~⁵ STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:irm


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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