

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JAMES HARDEN and DALE NASH,

Complainants,

v.

Secretary, DEPARTMENT OF
REGULATION AND LICENSING, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case Nos. 90-0106-PC-ER (Harden
v. DRL & DER)
90-0107-PC-ER (Nash v. DRL
& DER)
91-0184-PC-ER (Harden &
Nash v. DRL & DER)

INTERIM
RULING
ON ISSUE OF
CONSOLIDATION

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JAMES L. HARDEN JR., et al.
Willie E. Garrette,
Dale S. Nash,

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0358-PC

* * * * *

These matters are before the Commission on the question of whether the appeal (Case No. 90-0358-PC) should be consolidated for hearing purposes with the above referenced complaints of discrimination/retaliation.

A prehearing conference was held on November 28, 1995, as to all four cases. As a consequence of the conference and subsequent exchange of correspondence with the parties, the following issues have been established for hearing:

1. Case Nos. 90-0106, 107-PC-ER

Whether respondents discriminated against Mr. Harden on the basis of color or race or against Mr. Nash on the basis of handicap or sexual orientation, with respect to the following terms and/or conditions of employment:

- a. Respondent DRL denied Harden's initial request for reclassification to RCI 3;
- b. Respondents audited Harden and Nash's positions in response to their requests for reclassification to RCI 5;
- c. Respondents failed to reclassify Harden and Nash to RCI 5 but instead reallocated their positions to CS 1;
- d. Since January 1990, Harden was paid less by respondents for doing the same work as CSs in the CRU;
- e. Respondents denied Harden and Nash promotional opportunities;
- f. Nash and Harden allege a pay discrepancy because CS 1 positions have less sophisticated duties than those performed by Garrette, Nash and Harden; and
- g. Respondent DER revised the classification specifications for RCIs and CSs in September 1990.

2. Case No. 91-0184-PC-ER

Whether respondents retaliated against the complainants with respect to the following:

- a. Respondents reallocated their positions to CS 1; and
- b. Respondent DER revised the classification specifications for RCIs and CSs in September 1990.

3. Case No. 90-0358-PC

Whether DER's decisions to reallocate the appellants' positions to Consumer Specialist 1, effective January 28, 1990, were correct. If not, whether the appellants' positions were more appropriately classified at the RCI 5 level.

A hearing was scheduled on all four cases for June 10, 11 and 12, 1996.

Respondents reserved the right to raise an objection to consolidation of the cases for hearing. Respondent DER subsequently objected to the consolidation of Case No. 90-0358-PC, respondent DRL joined in DER's request to segregate that case¹ and complainants/appellants stated they had no objection to consolidation of the appeal with the other matters if it would expedite the processing

¹Respondent DRL also reserved the right to object to consolidation of the three complaints. (Letter from examiner to parties dated December 21, 1995.)

of the cases. The parties were advised that the question would be placed before the Commission and were provided an opportunity to file additional arguments.

Pursuant to §PC 1.10, Wis. Adm. Code:

The commission may, on its own motion, consolidate 2 or more cases involving the same parties or one or more issues arising substantially out of the same circumstances or closely related circumstances. Consolidation may be for investigation, hearing, decision or a combination thereof.

Respondent correctly points out that the parties are not the same in the appeal as in the other cases. Mr. Garrette is one of the three appellants in Case No. 90-0358-PC. Mr. Garrette was initially a co-complainant with Mssrs. Harden and Nash in Case No. 91-0184-PC-ER. He also had filed a separate claim, Case No. 90-0092-PC-ER (Garrette v. DRL & DER). One initial determination of no probable cause was issued by the Commission covering all four complaints (90-0092, 0106, 0107-PC-ER, 91-0184-PC-ER). Mr. Garrette did not timely appeal from the initial determination and in a ruling dated August 4, 1995, the Commission dismissed Case No. 90-0092-PC-ER and dismissed Mr. Garrette as a party to Case No. 91-0184-PC-ER. Respondent argues that the reallocation issue in Case No. 90-0358-PC will be unnecessarily cluttered if that case is combined with the numerous allegations of discrimination and retaliation that are part of the remaining equal rights proceedings. Respondent DER also points out that the burdens of proof are different in these cases.

The Commission agrees that there are various distinctions between the reallocation appeal and the three remaining discrimination/retaliation claims in terms of parties, issues and burdens of proof. However, the key similarity is that two of the three personnel transactions that are the subject of the appeal, i.e. the reallocation of Mr. Nash's and Mr. Harden's positions, are also the subject of the equal rights proceedings. In terms of judicial economy, it makes a great deal of sense to combine the cases for one hearing on all issues, rather than holding two hearings, one limited to the correctness of the reallocation decisions and the other deciding the question of whether the same decisions were discriminatory or retaliatory under the Fair Employment Act.

Respondent DRL cites the Commission's decision in Thorn v. DHSS, 81-401-PC, 12/18/81, in support of keeping the appeal separate from the complaints. In Thorn, the complainant filed one document, a complaint form, with

the Commission and asked that it also be treated as an appeal and that the complaint and the appeal not be separated. The appeal arose from a denial of a merit increase. In its 1981 decision, the Commission concluded that it lacked subject matter jurisdiction over such an appeal and then went on to discuss the request that the discrimination complaint and the appeal not be separated:

It is the Commission's standard practice to keep appeals separate from companion discrimination complaints unless and until a consolidated hearing becomes appropriate. By keeping the cases separate, the Commission can more readily deal with any jurisdictional problems that arise. Separation is also consistent with the fact that different statutory standards must be applied. Despite appellant's argument to the contrary, separating an appeal from its complaint does not necessarily result in any duplication of effort. The Commission is, therefore, unaware of any reason justifying a change in its practice of treating these matters separately.

The decision in Thorn related to an appeal with a companion discrimination case still in the investigative stage, where an issue of subject matter jurisdiction arose relating to the appeal. Those circumstances are completely different from those presented in the instant cases, where an initial determination has already been issued and the appeal and the discrimination/retaliation claims are now ready for hearing.

The Commission concludes that these matters involve "one or more issues arising substantially out of the same circumstances" as contemplated in §PC 1.10, Wis. Adm. Code., and that judicial economy justifies their consolidation.

ORDER

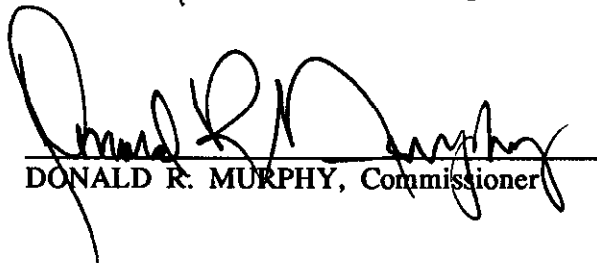
Case No. 90-0358-PC is ordered consolidated with the captioned equal rights proceedings, subject to respondent DRL's reservation of objections to the consolidation of the three complaints. Any such objection must be filed no later than April 10, 1996.

Dated: January 23, 1996 STATE PERSONNEL COMMISSION



LAURIE R. MCCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner