

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ANDREW HODOROWICZ,

Petitioner,

v.

Executive Director, WISCONSIN  
RACING BOARD [WISCONSIN GAMING  
COMMISSION],

Respondent.

Case Nos. 91-0078-PC, 91-0177-PC-ER

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RULING  
ON  
STAY  
REQUEST

These matters are before the Commission on the petitioner's request for an indefinite stay of the proceedings.

The case files indicate that the petitioner was suspended from his employment with respondent in May of 1991. The suspension was the basis for petitioner's appeal, Case No. 91-0078-PC. A prehearing conference was held in that matter on August 20, 1991. The conference report states that respondent "acceded to appellant's request that this matter be held in abeyance pending the filing of related actions in other forums." Then, in November of 1991, the petitioner was discharged. He subsequently filed a claim of marital status discrimination relating to both the suspension and the discharge. The discrimination claim was assigned Case No. 91-0177-PC-ER. A prehearing conference was held on March 30, 1992 in both matters, issues were established for hearing and a hearing was scheduled for September 21-24, 1992. On September 1, 1992, respondent moved for a continuance. Respondent's motion was granted over the objection of the petitioner, and the hearing was rescheduled for December 11, 15, 16 and 18, 1992. At the commencement of the hearing, settlement discussions were held and the parties subsequently agreed during a conference on December 15th to reschedule the hearing to January 26, 27 and 28, 1993. Subsequent events were described in a letter dated February 25, 1993, from the designated hearing examiner to the parties:

On or about January 25, 1993, Mr. Gingras [petitioner's counsel] called me and state that his client had decided to pursue his case in federal court, so there was no reason to go ahead with the

hearing scheduled for January 26th. Mr. Gingras requested a stay of the Commission's proceedings. Later the same day, I advised Mr. McClure [respondent's counsel] of this conversation. Mr. McClure stated that he did not know if he would agree to an indefinite stay, but he did agree that the January 26th hearing should be cancelled.

The parties were provided an opportunity to offer arguments as to whether an indefinite stay would be appropriate. Respondent opposes such a stay, noting that no federal action has been filed, that it is unaware of the nature of the claims that will be asserted in that action and that its "ability to meet its burden of proof [in the instant case] will be prejudiced by a stay of a duration sufficient to allow for disposition of a federal court proceeding" due to the diminution of witness memory and the risk that not all witnesses will be available for hearing. Respondent proposes that this matter be stayed only until the earlier of September 1, 1993 or 30 days from service of any federal court proceeding, at which time the parties may make "appropriate motions regarding a hearing date, once all relevant information is equally accessible to both parties."

In Stoner v. DATCP, 92-0041-PC, 1/27/93, the Commission offered the following observations regarding a request for a stay in order to pursue claims in another forum:

It is not uncommon for the Commission to hold in abeyance a case that has been filed here while the employe proceeds through a trial in another forum (usually judicial) of a claim involving the same subject matter. Frequently the results in the other forum will either moot or preclude further proceedings before the Commission. Thus, staying proceedings before the Commission can in many cases effect judicial/administrative economy by avoiding a multiplicity of proceedings. (Citation omitted)


The Commission went on to deny the stay request because the hearing before the commission had already been about two-thirds completed, thereby undercutting the prospects of promoting judicial/administrative economy.

Here, while no hearing has been held before the Commission, the federal proceeding has not yet been filed and it is the respondent rather than petitioner who has the burden of proof in the appeal from the suspension. Given these circumstances, an indefinite stay would be inappropriate at this time. Once the federal proceeding is filed, an indefinite stay may be justified.

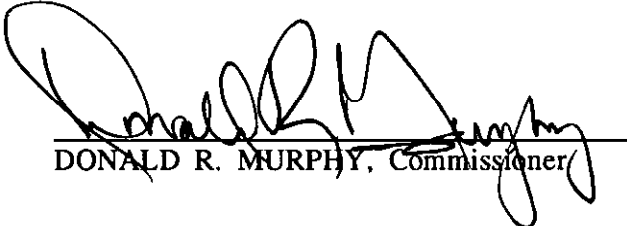
The Commission will modify the respondent's proposal and stay the proceedings in these matters until the earlier of September 1, 1993 or 30 days from service of any federal court proceeding, at which time the respondent is directed to set forth its position regarding a hearing date in the Commission proceedings.

In the event the petitioner is not satisfied with this temporary stay until September 1st, he may withdraw his request and these matters will then be rescheduled for hearing.

Dated: April 23, 1993      STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms  
K:D:temp-5/93 Hodorowicz

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner