

STATE OF WISCONSIN

PERSONNEL COMMISSION

KRISTINE GOETZ,
Complainant,

v.

**Secretary, DEPARTMENT OF
ADMINISTRATION, and
District Attorney, OFFICE OF THE
COLUMBIA COUNTY DISTRICT
ATTORNEY,**
Respondents.

**RULING
ON
MOTION**

Case No. 95-0083-PC-ER

This matter, involving a charge of sex discrimination and retaliation under the Wisconsin Fair Employment Act (WFEA), is before the Commission on complainant's request to hold this matter in abeyance pending the resolution of a parallel Title VII proceeding in Federal Court.

The following findings of fact, based on the record on file, are presumed to be undisputed.

On June 21, 1995, complainant Kristine Goetz filed with this Commission a charge of sex discrimination and retaliation under the Wisconsin Fair Employment Act against the Department of Administration (DOA) and the Office of the Columbia County District Attorney (OCCDA), respondents.

After investigating the matter, on January 31, 1997, the Commission issued an initial determination of "probable cause" to believe that respondents discriminated against complainant on the basis of sex and retaliated against complainant for engaging in protected fair employment activities.

On March 12, 1997, the Commission convened a pre-hearing conference and the parties agreed to a five-day hearing commencing on August 4, 1997. The conference report also reflected the following:

The parties agreed to hold a status conference at 2:00 p.m. on July 14, 1997. By that time, the complainant will indicate, definitively, whether

she will be pursuing this matter before the Commission or in a proceeding in another forum.

By letter dated June 2, 1997, complainant advised the Commission that she had decided to take the matter to court, and requested that the Commission "keep this matter in abeyance pending the outcome of the court action."

On June 20, 1997, respondents objected to complainant's request. A conference was convened in response to respondents' June 20, 1997 letter. As a result of this conference, the hearing set for August 4, 1997, was postponed pending a decision on complainant's request. Subsequently, in conformity with a briefing schedule, the parties submitted briefs on the question whether the proceedings before the Commission should be stayed. Later, on November 25, 1997, complainant advised the Commission that she was filing her discrimination charges against the respondents in federal court that week.

Complainant argues that this motion should be granted because she has a right to pursue her claim independently under both the WFEA and Title VII of the Civil Rights Act of 1964, and that, if the federal action was terminated for some reason other than the merits, claim preclusion (*res judicata*) would not apply and she could pursue her administrative remedies. In support, complainant cites *Schaeffer v. State Personnel Comm.*, 150 Wis. 2d 132, 441 N.W.2d 292 (Ct. App 1989).

Respondents argue that staying the proceeding "frustrates" judicial and administrative efficiency, allows complainant a second opportunity to pursue the same claim, causes unnecessary hardship on respondents, and prolongs the inevitable.

Regarding *Schaeffer*, respondents argue that the court found "no violence was done to the independent action principles underlying Title VII," where plaintiff could not anticipate the result ultimately received when moving a claim from the Commission to federal court. Respondents argue that certain language of the *Schaeffer* court implies disapproval of the Commission's action to stay the proceedings. The particular language is as follows: "During all this time, proceedings on Schaeffer's complaint to the personnel commission had been stayed at his request to allow him to pursue the federal court action."

Schaeffer was a handicap discrimination case, where plaintiff, after obtaining a stay of the Commission's proceedings, sued respondent in federal court, claiming handicap discrimination and deprivation of free speech. The respondent moved for summary judgment and the court adopted the federal magistrate's decision to dismiss

the complaint. The plaintiff appealed and the Seventh Circuit Court of Appeals affirmed the district court's decision. This process took approximately two years, which may have prompted the court's comments referred to by respondents.

Notwithstanding respondents' arguments, unlike *Schaeffer*, this matter was moved rather quickly to federal court and does not involve a constitutional question. Also, while respondents argue they will be harmed by the stay, they don't explain the nature of the harm.

There appears to be no dispute that complainant's claim of discrimination in federal court involves the same parties, the same set of facts and the same causes of action as in the WFEA matter before the Commission. The parties do not appear to dispute that a judgment on the merits of complainant's parallel Title VII action in federal court would be conclusive as to the WFEA action before the Commission. It is also apparent that, if the complainant's request were denied here, and this action before the Commission were to proceed to hearing and decision, such effort on the part of the Commission could be pre-empted by a subsequent decision of the federal court on the Title VII claim. This would not appear to be a judicious use of the Commission's resources.

While the proceedings in federal court might take some time, the Commission believes judicial efficiency and economy will be promoted by granting complainant's request. This result is consistent with the Commission's ruling in *Wanless v. VTAE*, 93-0058-PC-ER, 6/3/94, which quoted the following language from the Commission's ruling in *Jeglum v. UW-Madison*, 90-0173-PC-ER, 12/17/92:

In consideration of the pre-emptive effect a decision in a federal action has on a parallel Commission decision and in consideration of the goal of judicial and administrative economy, the Commission hereby grants complainant's request that this matter be held in abeyance and instructs the parties to notify the Commission of the filing and disposition of any federal action filed by complainant which is relevant to the instant matter.

It is also consistent with the Commission's ruling in *Doro v. UW*, 92-0157-PC-ER, 8/15/96. Each of the cited cases involved a situation comparable to that here, i.e., the filing of a parallel Title VII action in court, and a request that the Commission action be held in abeyance pending resolution of this federal action.

ORDER

Complainant's motion is granted and this matter will be held in abeyance pending resolution of the parallel proceedings in federal court. Complainant is directed to notify the Commission in writing no later than December 15, 1998, as to the status of these federal proceedings.

Dated: January 16, 1998.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:rjb
950083Crul1.2


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court

as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.

2/3/95