

**LORI CYGAN,**  
*Complainant,*

v.

**Secretary, DEPARTMENT OF  
CORRECTIONS,**

*Respondent.*

Case No. 96-0167-PC-ER

**RULING ON MOTION  
FOR SANCTIONS**

**NATURE OF THE CASE**

This matter is before the Commission for resolution of respondent's motion for sanctions against complainant for violating a protective order, filed November 20, 1997. Both parties have filed briefs.

On July 16, 1997, the Commission entered the following protective order:

The respondent filed a motion for a protective order covering certain materials related to this proceeding. The complainant had no objection to this request. The Commission grants the motion and the following conditions are placed upon access and use of the materials:

The nature of Sgt. Onie Walker's discipline described in a memorandum dated February 13, 1997, from Brad Nuss to Greg Smith and evaluation materials in Walker's personnel file may be used by the complainant or complainant's representative only for the purpose of preparing litigation of this case . . . and may not be disclosed by complainant or complainant's representative for any other purpose.

Respondent's motion for sanctions includes the following:

On September 28, 1997, the complainant sent a letter . . . to Gary Lonzo, Local 32 Union President at the Green Bay Correctional Institution. In the letter she quotes word for word from material found in the pre-disciplinary investigative interviews which are the foundation for the discipline mentioned in the February 13, 1997, memo from Brad Nuss to Greg Smith.

The material contained in this letter include statements about complainant attributed to the union representative at the Walker hearing, such as “Cygan is always playing games with the inmates. She tries to play them off against staff . . . she is not real credible . . . .” Respondent’s motion includes the following argument:

This use of the confidential disciplinary-related material by the complainant for this purpose in a situation that does not involve the same parties is, the respondent believes, a violation of the letter and spirit of the protective order . . . the material she quotes came from a record of a disciplinary investigatory interview. It uses material gathered in the context of the disciplinary investigation and broadcasts it to someone not a party to this case, thus harming the respondent. The respondent is harmed because the hearing at which such statements are gathered are confidential in nature in order to encourage honesty, thus enabling respondent to better manage its prisons.

In her response to the motion, complainant asserts that respondent provided the material in question in response to a discovery request, and that respondent did not at the time it responded indicate the material was considered confidential, but rather had stated at that time that: “ [t]he non-confidential portion of the file is enclosed. The discipline and evaluation portions of the file will be provided once the Personnel Commission issues its protective order . . . .” This is the only mention of confidential material in the respondent’s response and it does not include any confidentiality requirements on the information released.”

Based on the parties’ arguments and the documents in this file, it appears that the document from which complainant quoted in her letter to the union had been provided to her without having been identified as confidential, but rather with the implication it was *not* considered confidential. Also, it was not one of the documents provided complainant in connection with the protective order. While some kind of argument could be made that the document falls within the ambit of the language of the protective order as “evaluation materials in Walker’s personnel file,” this is a debatable proposition. Without attempting to delineate a conclusive standard as to what type of action would be subject to sanctions, the commission concludes that complainant’s

action in this case falls well outside the boundary of behavior that should be subject to sanctions.

ORDER

Respondent's motion for the imposition of sanctions against complainant is denied.

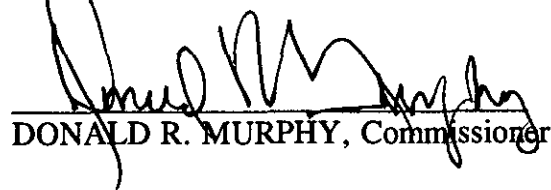
Dated: January 28, 1998.

STATE PERSONNEL COMMISSION



LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner