

STATE OF WISCONSIN

PERSONNEL COMMISSION

MICAH A. ORIEDO,
Complainant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**

Respondent.

RULING

Case No. 98-0124-PC-ER

This is a complaint of discrimination on the basis of color, race, and national origin and ancestry. A Proposed Decision and Order was issued by the hearing examiner on October 25, 1999. On November 24, 1999, complainant, through his representative, filed written objections and a request for oral argument. This ruling addresses the request for oral argument. The following findings are based on information in the case file, appear to be undisputed, and are made solely for the purpose of drafting and issuing this ruling.

1. The cover letter accompanying the Proposed Decision and Order stated as follows, in pertinent part:

Enclosed is a proposed decision and order in this case pursuant to §227.46(2), Stats., which provides in part:

Each party adversely affected by the proposed decision shall be given an opportunity to file objections to the proposed decision, briefly stating the reasons and authorities for each objection, and to argue with respect to them before the officials who are to participate in the decision. The agency may direct whether such argument shall be written or oral.

If you believe that oral argument would be appropriate in this case, you may request oral argument. You should state the reasons for your request. Please file any objections with written arguments or with a

request for oral argument, and serve a copy on the other parties no later than November 24, 1999. In the event written objections are filed, the opposing parties are provided ten days to file any written response to the objections unless, upon application, the hearing examiner or the Commissioner concludes that some other period is more appropriate. §PC 5.06(1), Wis. Adm. Code.

2. On November 24, 1999, complainant filed thirty-five pages of written objections to the Proposed Decision and Order. In this filing, complainant also requested oral argument before the Commission. In his objections, complainant indicated that the matters set forth in his written objections would be the matters raised by him at oral argument.

3. In the cover letter accompanying the written objections, it is stated that the objections were written by Pastori Balele, complainant's representative.

4. In his written objections, complainant states that the hearing examiner acted with malice and fraud, deliberately misrepresented the facts of record, attempted to hide the truth, and deliberately misstated the law.

5. In a report of a June 14, 1999, status conference, the hearing examiner stated as follows, in pertinent part:

When the conference was convened, it was the consensus of the parties as well as the hearing examiner that to entertain further the motion for default judgment or the motion for sanctions was counter-productive to the resolution of the subject complaint. The hearing examiner did indicate, however, that she would no longer tolerate the inability of the parties to work together in a professional manner, and specifically admonished complainant's representative to cease his personal attacks on respondent's counsel or others involved in this litigation, reminded him that he has been cautioned about this in the past, and advised him that further similar conduct on his part would lead to the imposition of sanctions against his client and/or to his removal as complainant's representative.

It is within the Commission's discretion to grant or deny a request for oral argument. Specifically, §PC 5.06(2), Wis. Adm. Code, states that:

ORAL ARGUMENTS. A request for oral argument may be granted if the commission determines, in its discretion, that an issue or question is better addressed by oral argument rather than written argument.

In addition, the Commission has recognized and exercised its authority to require parties to maintain an appropriate level of civility in its proceedings and to take action if this level is not maintained. *Benson v. UW*, 78-0179-PC-ER, 11/20/98.

Here, not only has complainant filed lengthy written objections accompanied by an indication that these would be the matters offered at oral argument, but the conduct of his representative throughout this litigation has exceeded the bounds of reasonably aggressive advocacy. These two factors lead to the conclusion that permitting further argument would not be productive.

ORDER

The complainant's request for oral argument is denied.

Dated: January 19, 2000

LRM-980124Cru14

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


JUDY M. ROGERS, Commissioner

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