

**PAULI TAYLORBOYD,**  
*Complainant,*

v.

**Chancellor, UNIVERSITY OF  
WISCONSIN-MILWAUKEE,**  
*Respondent.*

Case No. 03-0008-PC-ER

**RULING  
ON  
MOTION TO  
STAY DISCOVERY  
AND REQUEST  
FOR SANCTIONS**

Complainant filed a complaint of discrimination with both the Personnel Commission and the Federal Equal Employment Opportunities Commission (EEOC) alleging respondent discriminated against her based on age and/or color when she was not selected for the position of Executive Director for Workforce Diversity. The EEOC transferred the investigation to the Personnel Commission.

Complainant issued a discovery request, dated April 11, 2003, to respondent. The Personnel Commission's rules, §4.03, Wis. Adm. Code, permit discovery during the investigative stage of a complaint. *Germain v. DHSS*, 91-0083-PC-ER, 5/14/92. On May 12, 2003, respondent filed a motion to stay discovery, premising it on the following points:

(1) the Personnel Commission's removal of this complaint to the Equal Rights Division of the Department of Workforce Development (ERD) is inevitable; and (2) the ERD does not allow discovery until it has conducted its own investigation of the complaint pursuant to section DWD 218.14(1), Wis. Admin. Code.

Complainant opposed the motion and in its submission dated May 22, 2003, complainant asked that various sanctions be imposed against respondent.

I. Respondent's motion to stay discovery

Respondent notes that the Governor's proposed budget bill (Senate Bill 44) calls for the elimination of the Personnel Commission on June 30, 2003, and the transfer of

its pending responsibilities under the Wisconsin Fair Employment Act to the ERD. However, the budget bill is still before the legislature and it has not been signed into law. Therefore, the effective date of the bill cannot be determined at this point in time. In addition, the bill includes the following non-statutory provision in §9139(e)(2):

All rules promulgated, and all orders issued, by the personnel commission that are in effect on the effective date of this subdivision and that relate to the performance of its duties under section 230.45(1)(b), (g), (gm), (j), (k), (L), and (m), 2001 stats., remain in effect until their specified expiration date or until amended or repealed or modified or rescinded, whichever is appropriate, by the department of workforce development.

Even if June 30<sup>th</sup> was established as the effective date for abolishing the Personnel Commission, there is no way to predict when and if the Equal Rights Division would amend, repeal, modify or rescind the Personnel Commission's administrative rule that permits discovery during the investigative stage.

As noted in §PC 4.03, and where "good cause" is shown, the Commission "may issue orders to protect persons or parties from annoyance, embarrassment, oppression or undue burden or expense." The respondent has failed to establish good cause for such an order.

## II. Complainant's request for sanctions

As part of her response to respondent's motion for a stay, the complainant requested the Commission

(2) order UWM to answer without objection Taylorboyd's interrogatories and requests for production of documents within five business days, as well [as] to reschedule the deposition noticed by Taylorboyd concurrently with her discovery; and (3) sanction UWM for its dilatory discovery tactics by ordering that all requests for admission propounded by Taylorboyd be deemed admitted.

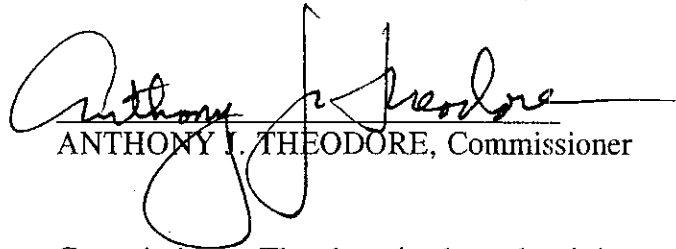
Complainant acknowledges that after she had filed her discovery requests on April 11, 2003, respondent informally asked complainant for a stay of discovery. Complainant declined. It was then that respondent filed its motion that is decided above. Complainant acknowledges that respondent's motion was timely filed.

Respondent chose to exercise its right to seek a stay of discovery and it did so in a timely manner. It then complied with the schedule established by the Commission's staff for arguing the motion. Under these circumstances, the Commission declines to sanction respondent.

ORDER

Respondent's motion to stay discovery is denied. Respondent is directed to comply with complainant's discovery request by 1) rescheduling, within 5 days of the date this order is mailed, the deposition for a date within 30 days of the date this order is mailed; 2) complying with complainant's other April 11<sup>th</sup> discovery requests within 15 days of the date this order is mailed. The parties may, by mutual agreement, modify these time limits if necessary. Complainant's request for various sanctions is denied.

Dated: June 6, 2003 STATE PERSONNEL COMMISSION

  
ANTHONY J. THEODORE, Commissioner

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Commissioner Theodore is the sole sitting commissioner; the other two commissioner positions are vacant. Therefore, Commissioner Theodore is exercising the authority of the Commission. See 68 Op. Atty. Gen. 323 (1979).