

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANDREA BERTOTTO, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case 8
No. 62876
PA(sel)-3

Decision No. 31043-A

Appearances:

Jill C. Draeger, Attorney, Cross Law Firm, S.C., Lawyer's Building, 845 North 11th Street, Milwaukee, Wisconsin, appearing on behalf of the Appellant.

Gloria J. Thomas, Assistant Legal Counsel, State of Wisconsin, Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, Wisconsin, appearing on behalf of the Respondent.

**ORDER GRANTING APPELLANT'S MOTION
TO PLACE CASE 8, NO. 62876, PA(SEL)-3 IN ABEYANCE**

On August 29, 2003, Appellant filed a Personnel Appeal with the Wisconsin Employment Relations Commission alleging that Respondent had violated Sec. 230, Stats., by failing to reinstate Appellant to a position of correctional officer. Respondent timely filed an Answer and a pre-hearing conference was conducted on February 16, 2004. Respondent subsequently filed a Motion to Dismiss and an Amended Motion to Dismiss. Appellant filed a Motion to Place Case 8, No. 62876, PA(sel)-3 and Respondent's Motion to Dismiss in Abeyance pending a decision from the Department of Workforce Development, Equal Rights Division.

Dec. No. 31043-A

ORDER

Appellant's Motion to Place Case 8, No. 62876, PA(sel)-3 in Abeyance is granted.

Dated at Rhinelander, Wisconsin this 16th day of August, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lauri A. Millot /s/

Lauri A. Millot, Examiner/Arbitrator

DEPARTMENT OF CORRECTIONS

**MEMORANDUM ACCOMPANYING ORDER GRANTING APPELLANT'S
MOTION TO PLACE CASE 8, NO. 62876, PA(SEL)-3 IN ABEYANCE**

Appellant seeks to place her Personnel Appeal in abeyance pending the outcome of a discrimination complaint filed with the Department of Workforce Development, Equal Rights Division. Appellant asserts that the allegations in the discrimination complaint and the pending case are based on the same incident and that a decision from DWD could make the pending case moot. Appellant further sought to place Respondent's Motion to Dismiss in abeyance pending the DWD outcome. Respondent objects and asserts that Appellant's request would cause delay and Appellant's overlapping administrative rights should not affect the processing of Appellant's WERC complaint.

The Personnel Commission in *STONER V. DATCP*, CASE NO. 92-0041-PC 1/27/93, addressed the dual processing of cases concluding that:

It is not uncommon for the Commission to hold in abeyance a case that has been filed here while the employee 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. (Citations omitted.)

See also, *TYUS V. DER*, CASE NOS. 97-0078-PC, 98-0062-PC-ER; *TYUS V. DOT AND DER*, CASE NOS. 97-0146-PC-ER, 1/27/99 and *HONER V. DEPARTMENT OF TRANSPORTATION*, CASE NOS. 97-0005-PC-ER, 98-0122-PC-ER 9/22/99. Appellant's complaint before the Department of Workforce Development, Equal Rights Division alleges that she has been discriminated against on the basis of her conviction record and race when she was not reinstated to her correctional officer position. The harm alleged before Equal Rights is the same unlawful employment action asserted in this case. I concur with the usual practice of the Personnel Commission and conclude that judicial economy will be served by granting Appellant's motion. The granting of Appellant's Motion to Place Case 8, No. 62876, PA(sel)-3 in Abeyance by default places Respondent's Motion to Dismiss in abeyance. If and when the Commission addresses Respondent's Motion to Dismiss, the Appellant shall be provided a reasonable amount of time to file a response to Respondent's Motion.

Dated at Rhinelander, Wisconsin this 16th day of August, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lauri A. Millot /s/

Lauri A. Millot, Examiner/Arbitrator