

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 MARQUIS HARRIS, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 INDUSTRY, LABOR & HUMAN \*  
 RELATIONS, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 81-PC-ER-52 \*  
 \*  
 \* \* \* \* \*

ORDER

This matter is before the Commission on consideration of a proposed decision and order pursuant to §227.09(2), stats. The Commission has read and considered the complainant's written objections and arguments received May 27, 1983.

The proposed decision and order, a copy of which is attached hereto, in summary, states that at the hearing the complainant failed to produce any admissible evidence that would support his complaint of discrimination, despite the fact that the hearing examiner had advised him that he had the burden of proof and that he needed to produce evidence from which the appropriate findings and conclusions could be drawn.

The main thrust of the complainant's arguments at this point is that he had been led to believe by the Commission that the case was still in the conciliation stage, and that he had not been aware prior to the hearing that he would be required to proceed with his evidence and satisfy his burden of proof at that time.

The Commission notes that these arguments were not presented at the aforesaid hearing. Furthermore, the Commission notes the following procedural background on this matter.

A prehearing conference was held on April 8, 1982. The prehearing conference had been preceded by a letter to the complainant which included, in part, the following:

The next step in processing your discrimination complaint is to hold a prehearing conference, an informal meeting (or conference telephone call) wherein you and the respondent agency named above attempt to agree on the issue(s) in dispute, exchange documents to be presented in evidence, and identify witnesses who are to give testimony. The conference also affords the parties an opportunity to resolve the matter without resorting to formal proceedings, if this is appropriate.

Mr. Harris appeared at the prehearing conference without counsel. No settlement was reached. An issue for hearing was determined, witnesses were listed, and a hearing scheduled for August 16th and 17th, 1982. The conference report, a copy of which was sent to the complainant, states that the hearing would be a class 3 proceeding, and that the parties agreed that the issue for hearing would be "Did the respondent discriminate against the complainant on the basis of race and/or retaliation as set out in the charge of discrimination?".

The conference report also includes precautionary instructions to the parties that pursuant to the Commission's rules, "... all additional exhibits and names of witnesses must be served on the opposing party and filed with the Commission more than 2 working days before the day established for hearing or will be subject to exclusion." It further states: "You are reminded that each party is responsible for securing the presence at the hearing of his or her own witnesses..." and proceeded to provide detailed information as to how to obtain the attendance of witnesses.

Subsequently, on August 5, 1982, the hearing was postponed at the respondent's request to September 29, 1982. The latter hearing date subsequently was postponed at the request of the attorney the complainant had retained due to the attorney's illness.

By letter of November 11, 1982, complainant's attorney withdrew from the case. By letter of February 22, 1983, a new hearing date of March 29, 1983, was confirmed.

The complainant failed to appear at the March 29th hearing and indicated that this had been caused by car trouble. By letter of April 12, 1983, the Commission confirmed a new hearing date of May 4, 1983.

By letter of April 27, 1983, the complainant enclosed several exhibits and stated: "Please find enclosed copies of the exhibits I intend to use in my discrimination hearing May 4, 1983 at 10:00 a.m.... My witnesses will be the same that I sent for the hearing that was postponed."

Against this background, it can be seen that in effect what the complainant is now requesting, in his objections and arguments with respect to the proposed decision, is another postponement of this hearing while he seeks to retain another attorney. This request must be evaluated in light of the several postponements already had in this matter. Also, the statements in the prehearing conference report and ensuing correspondence referred to above are inconsistent with the argument that the complainant neither knew nor should have known that he would be required to present witnesses and exhibits in support of his charge of discrimination at the hearing.

The Commission is sensitive to the difficulties that can be encountered by persons who pursue charges of discrimination without counsel. At the same time, the Commission is aware of the need to process cases in a reasonably expeditious manner, and to avoid unwarranted delay. An unrepresented complainant must be given some leeway on that account, but ultimately must be responsible for moving his or her case along. Against the procedural background of this case, the Commission can only conclude that the complainant's objections to the proposed decision, and his request to schedule yet another hearing, should not be granted.

ORDER

The proposed decision and order of the hearing examiner, a copy of which is attached hereto, is incorporated by reference and adopted as the final decision and order of the Commission, and this complaint of discrimination is dismissed.

Dated: June 21, 1983 STATE PERSONNEL COMMISSION

AJT:lmr

Marquis Harris  
4046 N. 15th Street  
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DONALD R. MURPHY, Chairperson

Howard Bellman  
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P.O. Box 7946  
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LAURIE R. McCALLUM, Commissioner



this could be accomplished by means such as the introduction of additional sworn testimony and documentary evidence; and suggested to complainant that he may wish to make a more complete record by at least offering his own sworn testimony and introducing the exhibits he had filed with the Commission in anticipation of the hearing.

3. Complainant indicated that he wanted the Commission to adopt as part of its final decision the findings in the initial determination of probable cause. The hearing examiner explained that these findings could not be adopted by the Commission in such a summary fashion in the absence of a stipulation to that effect by the respondent or in the absence of the introduction of evidence at the hearing confirming the factual basis of these findings because, among other reasons, these findings were not reached pursuant to a proceeding in which certain procedural safeguards were in effect.

4. After the above discussions, complainant indicated that he did not wish to call any further witnesses or introduce any exhibits or other evidence.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §§230.45(1)(b) and 111.33(2), Wisconsin Statutes.

2. The respondent is an employer within the meaning of §111.32(3), Wisconsin Statutes.

3. The complainant has the burden of proving that the respondent discriminated against him on the basis of race.

4. The complainant has not satisfied his burden of proof.

OPINION

The complainant has the initial burden of establishing a prima facie case of discrimination on the basis of race. In general, complainant would have to establish: (1) that he belongs to a racial minority, (2) that he was the subject of an adverse personnel action by respondent, and (3) facts from which a reasonable inference could be drawn that the adverse personnel action was caused by his membership in the protected class.

Despite the fact that he was given ample opportunity to introduce additional evidence and even encouraged to do so by the hearing examiner, complainant failed to introduce evidence sufficient for the Commission to make any significant or relevant findings of fact or to conclude that complainant has proved any of the elements of a prima facie case.

ORDER

This complaint is dismissed.

Dated: \_\_\_\_\_, 1983      STATE PERSONNEL COMMISSION

\_\_\_\_\_  
DONALD R. MURPHY, Chairperson

LRM:lmr

\_\_\_\_\_  
LAURIE R. McCALLUM, Commissioner

\_\_\_\_\_  
JAMES W. PHILLIPS, Commissioner

Parties:

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