



On September 18, 1985, respondent moved for an expedited hearing in the Hollinger matter. The motion provided, in part: "The expedited hearing is requested without contesting liability except as to the issue of remedy." The motion was attached to a written offer of settlement. The complainant responded by rejecting the settlement offer, opposing the motion for expedited hearing and filing a motion to amend the complaint.

In her motion, complainant seeks to add the following language to her complaint:

1. On 13 September 1985 UWM served upon Ms. Hollinger what it purports to be "an offer of settlement". A copy of said settlement is attached hereto and made a part hereof as Exhibit "A".

2. The "offer", aside from its monetary inadequacy, constitutes a further attempt by UWM to penalize Ms. Hollinger because of her role in alerting the appropriate authorities to its wrongdoing, seeks to penalize her by:

(a) Demanding, as a condition of settlement, that she refrain from telling the truth about the circumstances giving rise to her return to her teaching position while UWM retains the power to characterize that settlement in any terms it wishes;

(b) Demanding, as a condition of settlement, that it retain the right to present in other litigation information in her files detrimental to her that UWM knows or should know is false and that is inconsistent with its motion to expedite the hearing for it concedes liability--that is, it concedes it non-renewed her unlawfully because of her exercise of free speech.

The parties were provided an opportunity to submit additional arguments regarding the two motions. Those arguments raised an additional question of whether the Hollinger case had been consolidated with the Gertsch case and, if consolidation had occurred, what effect did it have on determining the pending motions.

#### 1. Consolidation

During certain stages of the Hollinger and the Gertsch proceedings, these two cases have been treated together. However, Ms. Hollinger and Mr. Gertsch are now represented by different counsel and settlement discussions have been carried on separately. The Commission has never formally ordered

the two cases to be consolidated nor have the various parties agreed to such consolidation. In light of the fact that settlement discussions are still on-going in the Gertsch matter, it would be improvident to grant consolidation at this time. If both cases proceed to hearing and raise similar factual and legal issues so that a consolidation will generate a saving of resources, the Commission will consider a motion to consolidate at that time.

At the present time, the Hollinger and Gertsch cases are not consolidated.

## 2. Motion to Amend the Complaint

The complainant moves to amend her complaint, by adding an allegation that the respondent's offer of settlement dated September 13, 1985, constituted a "further attempt ... to penalize" her for her prior whistleblower activities.

The prohibition against retaliation in the Whistleblower Law is found in §230.83(1), Stats:

No appointing authority, agent of an appointing authority or supervisor may initiate or administer, or threaten to initiate or administer, any retaliatory action against an employe.

The term "employe" is defined in §230.80(3), Stats. in include "any person employed by any governmental unit...." Because Ms. Hollinger was not an employe of the respondent at the time the allegedly retaliatory settlement offer was made, she fails to fall within the protection granted in §230.83(1), Stats. Complainant's motion, therefore, must be denied.

## 3. Motion to Expedite Hearing

Respondent has conditioned an admission of liability in this matter on the holding of an expedited hearing on the issue of appropriate relief. The Commission concludes that the respondent should be permitted to limit

its damages in this proceeding and will grant the motion under the conditions set out below.

The complainant raised five arguments in opposition to respondent's motion. Complainant's first argument, that the motion to amend the complaint raises additional issues of liability, is moot. Complainant also argues that she needs to carry out certain discovery in order to explore the respondent's apparent intention to retain the use of certain documents in complainant's personnel file. The Commission recognizes that discovery on this point could be relevant to a hearing on appropriate relief in this case. Therefore, the complainant will be provided a period of 30 days from the date of this order in which to complete discovery on this and any other issues that relate to the question of appropriate relief. The respondent is directed to respond to complainant's written discovery requests within ten days of the date they are received. The Commission encourages the parties to use the prehearing conference which will be held within one week of the date of this order in which to attempt to reach an understanding as to the appropriate use of the personnel file documents. Complainant's third and fourth arguments in opposition to respondent's motion refer to 1) the "novelty" of issues presented at a hearing on appropriate relief and 2) to the concept that justice rather than the will of either party should control the pace of litigation. In order to insure that the parties have an opportunity to fully prepare for a hearing on the appropriate relief so that a just result may be reached in this matter, the hearing will not be scheduled until more than thirty days after the date of this order. However, at a prehearing conference held within one week of the date of this order, the hearing will be scheduled for as soon as is feasible after the expiration of the 30 day discovery period.

Complainant's fifth argument, that the motion is inappropriate until the Gertsch and Hollinger cases are formally separated, has been addressed elsewhere in this decision.

ORDER

The complainant's motion to amend is denied and respondents motion for an expedited hearing is granted pursuant the following schedule:

A prehearing conference will be held within seven days of the date of this order. Complainant has thirty days from the date of this order in which to complete any discovery necessary for the hearing on appropriate relief. Respondent has ten days in which to respond to complainant's discovery request(s).

The hearing on appropriate relief will be held as soon after the thirty day discovery period as is feasible.

This order is subject to modification if circumstances so dictate.

Dated: October 14, 1985 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

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