

STATE OF WISCONSIN

PERSONNEL COMMISSION

WILLIAM RAY,
Complainant,

v.

President UNIVERSITY OF
WISCONSIN SYSTEM (La Crosse),
Respondent.

INTERIM
DECISION

Case No. 84-0073-PC-ER

RICHARD GRAY,
Complainant,

v.

President UNIVERSITY OF
WISCONSIN SYSTEM (La Crosse),
Respondent.

Case No. 84-0086-PC-ER

The parties have asked the Commission to consider whether it has the authority to grant reasonable attorney's fees as a remedy upon a finding of illegal discrimination under the Wisconsin Fair Employment Act.

In Watkins v. LIRC, 117 Wis. 2d 753, 765, 345 N.W. 2d 482 (1984), the Wisconsin Supreme Court held that:

under sec. 111.36(3)(b), Stats., 1975, [the Department of Industry Labor and Human Relations] has the authority to award reasonable attorney's fees to a complainant who prevails in an action brought pursuant to the Fair Employment Act.

Section 111.36(3)(b), Stats., 1975, provided in relevant part:

If, after hearing the department finds that the respondent has engaged in discrimination, it shall make written findings and order such action by the respondent as will effectuate the purpose of this subchapter, with or without back pay. Back pay liability shall not accrue from a date more than 2 years prior to the filing of a complaint with the department....

This provision has subsequently been amended and renumbered so that it now appears as s. 111.39(4)(c), Stats., and reads in relevant part:

If, after hearing, the examiner finds that the respondent has engaged in discrimination or unfair honesty testing, the examiner shall make written findings and order such action by the respondent as will effectuate the purpose of this subchapter, with or without back pay. If the examiner awards any payment to an employee because of a violation of s. 111.321 by an individual employed by the employer, under s. 111.32(6), the employer of that individual is liable for the payment. Back pay liability may not accrue from a date more than 2 years prior to the filing of a complaint with the department....

The changes to the statute are not significant in terms of the court's holding in Watkins which was written broadly enough to include the statute as it appears in 1985 as well as in 1976.

The authority to administer the Fair Employment Act is divided between DILHR and the Personnel Commission, as provided in s. 111.375, Stats.:

— (1) Except as provided under sub. (2), this subchapter shall be administered by the department. The department may make, amend and rescind such rules as are necessary to carry out this subchapter. The department of the commission may, by such agents or agencies as it designates, conduct in any part of this state any proceeding, hearing, investigation or inquiry necessary to the performance of its functions. The department shall preserve the anonymity of any employee who is the aggrieved party in a complaint of discrimination in promotion, compensation or terms and conditions of employment or of unfair honest testing against his or her present employer until a determination as to probable cause has been made, unless the department determines that the anonymity will substantially impede the investigation.

(2) This subchapter applies to each agency of the state except that complaints of discrimination or


unfair honesty testing against the agency as an employer shall be filed with and processed by the personnel commission under s. 230.45(1)(b). Decisions of the personnel commission are subject to review under ch. 227.

Based upon the precedent of Watkins, the Commission, as well as DILHR, has the authority to award reasonable attorney's fees to a prevailing complainant under the Fair Employment Act.

Dated: May 9, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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