

STATE OF WISCONSIN

PERSONNEL COMMISSION

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LLOYD PRILL, *

Complainant, *

v. *

Secretary, DEPARTMENT OF *

EMPLOYE TRUST FUNDS, and *

Secretary, DEPARTMENT OF *

HEALTH AND SOCIAL SERVICES, *

Respondents. *

Case No. 85-0001-PC-ER *

* * * * *

RULING
ON
MOTION
TO
RECONSIDER

On January 23, 1989, the designated hearing examiner in the above matter issued a ruling on a motion by the Department of Health and Social Services to dismiss it as a party. The examiner denied the motion. A copy of that decision is attached hereto. By letter dated January 26, 1989, DHSS requested the Commission to reconsider the examiner's ruling and offered written arguments in support of the request.

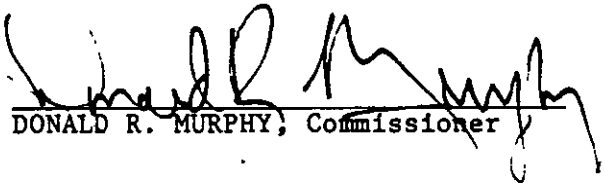
The Commission has considered DHSS's arguments and denies the request to reconsider. Inclusion of DHSS in the matter is supported by the decision in US v. Pabst Brewing Co., 183 F. Supp. 220 (ED. Wis, 1960). There, two defendants were retained as parties pending determination of the relief to be granted, even though the plaintiff conceded that they had been charged with no offense, where the plaintiff contended that they were proper parties for the purposes of relief. The court ruled that their argument that "no conceivable remedy could ... be granted against them" was premature: "[T]he question of whether any effective relief can be granted against the movants must await the determination of the substantive issues."

Based on the above, DHSS's motion to reconsider is denied.

Dated: January 30, 1989 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:rcr
VIC01/1


DONALD R. MURPHY, Commissioner


GERALD HODDINOTT, Commissioner

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This case involves a charge of age discrimination with respect to retirement benefits. The original charge of discrimination listed both the Department of Health and Social Services and the Department of Employee Trust Funds as respondents. It appears to be undisputed that at the time he submitted his charge, the complainant was employed by DHSS at the Dodge Correctional Institution. A supplemental initial determination was issued on October 12, 1988 finding "no probable cause to believe [respondent] DETF discriminated against complainant on the basis of age with respect to advice given to him by DETF counselors regarding the effects on him of the Benefit Improvement Bill."

A prehearing conference was held on December 16, 1988. The conference report provides, in part:

The parties agreed to drop DHSS as a party respondent to these proceedings. Therefore, in future correspondence, this matter should be referred to as Prill v. DETF.

The remaining parties to the proceeding agreed to a hearing on February 3, 1989 and to a statement of issue which reads as follows:

Whether there is probable cause to believe respondent DETF discriminated against the complainant based on age with respect to advice given to him by DETF counselors regarding the effects on him of the Benefit Improvement Bill.

By letter dated December 28, 1988, the complainant wrote the representative for DHSS:

I have been advised not to release the Dept. of Health and Social Services from my claim.

My claim clearly states that I wanted to be reinstated as a protective service employee as sergeant in the gatehouse at the Dodge Correctional Institution along with back pay and benefits.

Complainant subsequently advised the Commission that he wished to retain DHSS as a party respondent. Telephone conferences were held on both January 18 and 20, 1989, and the parties were provided an opportunity to offer arguments relative to whether DHSS should be a party in this matter.

The complainant has clearly indicated that he is not alleging that DHSS discriminated against him. However, the complainant does contend that if he is successful in his claim against DETF, DHSS will be a necessary party in order to effectuate his requested remedy of reinstatement. DHSS contended that as long as the complainant failed to claim that DHSS had discriminated against him, there is no basis on which to include DHSS as a party to the matter. DHSS moved to dismiss it as a party.¹

The determination of appropriate parties is an aspect of the Commission's inherent authority as an administrative agency.

According to 59 Am. Jur. 2d Parties §188:

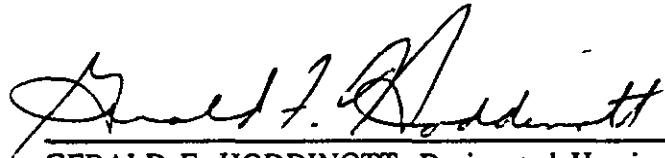
Generally, the practice provisions are liberally construed to authorize courts to bring before them all persons necessary to a complete determination of the matters involved and to the granting of appropriate relief, to the end that substantial justice may be done. (citations omitted)

Here, the complainant has clearly indicated that if successful in his claim of discriminatory conduct by DETF, which administers the retirement system for state employees (including those employed by DHSS), he will seek reinstatement to his former position of employment with DHSS, presumably as part of a con-

¹In light of the relatively short period of time between the December 16th conference and the complainant's December 28th letter as well as the absence of any showing of prejudice by DHSS, the examiner concludes that the complainant has effectively withdrawn his prior agreement to drop DHSS as a respondent in this matter. See, generally, Novak v. DER, 83-0104-PC, 2/29/84

ention that such reinstatement is necessary in order for him to be made whole for the alleged discriminatory conduct of the State. Given that the complainant was employed by DHSS, the alleged discriminatory conduct was carried out by DETF and complainant's contention that he should be reinstated as the remedy upon a finding of discrimination, the examiner concludes that DHSS is an appropriate party in this matter. Therefore, DHSS's motion to dismiss it as a party is denied.

Dated: January 23, 1989 STATE PERSONNEL COMMISSION



GERALD F. HODDINOTT, Designated Hearing
Examiner

KMS