

STATE OF WISCONSIN

PERSONNEL COMMISSION

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BETTY THOMPSON,

Appellant,

v.

President, UNIVERSITY OF
WISCONSIN SYSTEM (Madison -
Medical School),

Respondent.

Case Nos. 88-0058, 0103-PC

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INTERIM
ORDER

These matters are before the Examiner on a dispute as to consolidation for hearing.

Case number 88-0058-PC arises from a 10 day suspension imposed on the appellant. The suspension letter specifies that the discipline was based on seven separate areas of responsibility or specific incidents during the two month period ending May 4, 1988. At a prehearing conference conducted on June 16, 1988, the parties agreed to issues for hearing and set July 20, 1988 as a hearing date. The appellant identified four witnesses (Thompson, Lee, Sackett and Anvoots) and made reference to the possibility of calling two additional witnesses. On July 13, 1988, Commissioner Murphy was designated as the hearing examiner for the case. A 30 day continuance was granted on or about July 15, 1988, for the purpose of exploring settlement. Then, by letter dated August 30, 1988, the parties were informed that the hearing had been rescheduled for October 26, 1988.

On August 23, 1988, appellant filed case number 88-0103-PC which arises from a July 21, 1988 letter of discharge. The letter of discharge

lists fifteen alleged "transaction processing delays and administrative errors" that had occurred since the May 5, 1988 suspension letter. A prehearing conference was held on September 29th. The parties identified Thompson, Lee, Sackett and Anroots as witnesses. The conference report provided, in part:

The respondent made a motion to consolidate this case [88-0103-PC] with Case No. 88-0058-PC for hearing. Appellant's attorney objected to the consolidation. The presiding officer at the prehearing conference tentatively ruled that the two cases should be consolidated for hearing but provided appellant an opportunity to file written objections to consolidation.

A consolidated hearing was scheduled for November 17 and 18, 1988 and on October 6, 1988, Kurt M. Stege was designated the hearing examiner for the consolidated cases.

The appellant stated her objections to consolidation as follows:

We do not argue with the commission's ability or need to consolidate cases which appear identical. We are arguing fundamental fairness or due process. The employee is always at a disadvantage in these matters and to join these two cases has a shotgun effect on meeting the charges as well as simply increasing the focus of alleged violations in a way which blurs the process and makes it difficult to separate the issues. Being more specific, it would probably be the end of the litigation if the appellant was successful in challenging the suspension. As it stands, the suspension and the firing will blend together in a barrage of charges so that even the best of judges would consider the axiom, "Where there is smoke, there is fire." In order to keep these hearings on as even keel as possible, we request that you sever these cases and order a hearing on the suspension case first. We can keep the November 17, 1988 date. The appellant urges this because she honestly and dearly believes that the consolidation would be unfair and prejudicial to her interests.

There are valid arguments on both sides of this matter. There are two different transactions involved that are separated by two months. However, the transactions are clearly related, involve the same witnesses, background facts and, possibly, defenses. It is at least conceivable that a decision on the suspension would cause a hearing on the discharge to be unnecessary. On balance, the reasons for consolidation outweigh the

reasons against consolidation. Because these cases are not being tried before a jury, potential for confusion due to the number of incidents underlying the suspension and the discharge is minimized.

The appellant requests in the alternative that the consolidated cases be assigned to the original examiner, Commissioner Murphy, rather than to Mr. Stege. Appellant argues that nothing in the Commission's rules provides for reassignment of examiners upon consolidation for hearing. Respondent does not object to the assignment of the consolidated cases to Commissioner Murphy.

Commissioner Murphy was initially designated examiner in the suspension appeal but not in the discharge appeal. The Commission has broad discretion in designating who shall preside in a given case. Nothing indicates, nor has there been any suggestion, that Examiner Stege is unqualified to serve as the examiner in these matters. Furthermore, a review of the appellant's letter of discharge reveals a potential conflict of interest by Commissioner Murphy relative to a potential witness.

ORDER

Appellant's requests to sever these matters or, in the alternative, to have Commissioner Murphy redesignated as the hearing examiner are denied.

Dated: October 31, 1988 STATE PERSONNEL COMMISSION


KURT M. STEGE, Hearing Examiner