

STATE OF WISCONSIN

PERSONNEL COMMISSION

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FRANK ANDRITZKY,

Complainant,

v.

Chancellor, UNIVERSITY OF
WISCONSIN SYSTEM (Milwaukee),

Respondent.

Case No. 88-0137-PC-ER

* * * * *

INTERIM
DECISION
AND
ORDER

This matter involves a complaint of age discrimination with respect to hire. It is before the Commission in connection with a dispute as to the location for the hearing. This case originally had been scheduled for hearing at UW-Milwaukee over the complainant's objection,¹ who then was proceeding without counsel. The hearing was postponed due to complainant's military duty. A conference report dated August 30, 1991, reflects that complainant (again without counsel) stated "that he would not be pursuing his motion to change the location of the hearing to a neutral location outside of the UW-Milwaukee campus." Subsequently complainant retained counsel who renewed this motion, and seeks to have the hearing held at the Milwaukee State Office Building, 6th and West Wells Streets.

Complainant's basic rationale for holding the hearing at this site may be summarized as follows:

- 1) An interest in having a "hearing atmosphere free from bias and the 'home court advantage;'"
- 2) He now anticipates calling witnesses from outside the state who will be lodged in downtown Milwaukee, which is where the State Office Building is located, and where more adequate parking is available;
- 3) Holding the hearing at UW-M under the circumstances will create an appearance of bias.

¹ Complainant had wanted the hearing held in Madison.

By way of legal support for his motion, complainant cites a number of cases which address the question of venue for judicial trials. These cases have little if any relevance to the issue raised by this motion in this administrative proceeding. The general rule in this area is set forth in 73A CJS Public Administrative Law and Procedure §137 as follows:

The place of the hearing generally rests in the discretion of the administrative agency . . . [and] remains one of discretion unless and until the proceeding is robbed of an essential element to its fairness, and the discretion of the administrative agency in this respect should be exercised with due regard for the convenience of the parties. (footnotes omitted)

Complainant has identified a basis in convenience for his witnesses for having the hearing at the State Office Building in Milwaukee. Respondent previously pointed out that the UW-M location would be preferable for its faculty witnesses who are teaching classes. Other factors involve issues concerning psychological dynamics, the general principle of the "home court advantage," and the related issue of "appearance of fairness." Notwithstanding that in cases involving an institution the size of UW-M, these factors usually are minimally implicated, in the Commission's opinion they should be given some weight. After considering all of the criteria discussed above, the Commission concludes it is more appropriate to hold the hearing at the State Office Building in Milwaukee. This is a neutral site that is accessible to both parties, and will avoid even a possible appearance of unfairness. The Commission adds the proviso that the hearing examiner is to conduct the hearing in a manner that will avoid, to the extent reasonably possible, the interruption of the UW-M witnesses' teaching schedules.

ORDER

Complainant's motion to hold the hearing at the Milwaukee State Office Building rather than on UW-M campus is granted, subject to the foregoing proviso that the examiner conduct the hearing in a manner that will avoid, to the extent reasonably possible, the interruption of the UW-M witnesses' teaching schedules.

Dated: December 23, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/1


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner