

STATE OF WISCONSIN

PERSONNEL COMMISSION

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PREMA ACHARYA,  
 Complainant,  
 v.  
 Secretary, DEPARTMENT OF  
 ADMINISTRATION.  
 Respondent.  
 Case No. 88-0197-PC-ER

\* \* \* \* \*

FINAL  
 DECISION  
 AND  
 ORDER

This case involves a complaint of discrimination on the basis of national origin with respect to complainant being dropped from a van pool in violation of the Fair Employment Act (FEA)(Subch. II, Ch. 111, Stats.). Hearing on probable cause was convened on September 7, 1989, before the undersigned hearing examiner who had been invested by the Commission with authority to render a final decision pursuant to §227.46(3)(a), Stats.

FINDINGS OF FACT

1. This hearing was convened on September 7, 1989, at about 9:00 a.m. Complainant appeared personally and without counsel but represented by her husband.

2. After about two to three hours of hearing, and prior to complainant having rested her case, complainant's husband objected to the receipt in evidence of Respondent's Exhibit 15, which he considered libelous of him. After the examiner admitted the document in evidence, complainant and her husband left the hearing, notwithstanding the examiner's admonition that they were waiving complainant's right to proceed with this matter by leaving. Complainant's husband said they did not wish to participate further in the proceeding in light of the admission of said exhibit but would bring on a libel suit.

3. After complainant and her husband left, respondent moved to dismiss for failure of prosecution. The examiner granted the motion and indicated the decision would be reduced to writing.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §227.45(1)(b), Stats.

2. Complainant, by leaving the hearing in the manner she did, has failed to prosecute this matter and it must be dismissed.

#### DISCUSSION

Complainant's departure from the hearing and refusal to proceed under the circumstances that occur here justify a dismissal for failure to prosecute. See Marshall v. Sielaff, 492 F.2d 917 (3d Cir. 1974), where the action was dismissed for failure of prosecution after plaintiff refused to proceed with this case when the court denied his motion for a writ of habeas corpus ad testificandum for three inmate witnesses.

Complainant may have disagreed with the hearing examiner's ruling admitting Respondent's Exhibit 15 over objection, but the proper procedure would have been to continue with the hearing. The ruling was subject to review judicially following the issuance of a final decision had that course of action been followed. It is noted parenthetically that Respondent's Exhibit 15, which is a letter signed by van pool riders which sets forth their reasons for terminating the van pool membership of complainant and her husband, is of obvious relevance to this proceeding. That complainant's husband, who is neither a party to this proceeding nor a state employe, alleges that it is defamatory of him, has no bearing on its admissibility.

Complainant filed a document on September 18, 1989, which refers to actions taken in another proceeding (89-0014-PC-ER, 89-0015-PC-ER). However, it is also captioned with this case number. It appears to contend that since a copy of the complaint in this case was cross-filed with the U.S. Equal Employment Opportunities Commission (EEOC), this has somehow deprived the Commission of jurisdiction. Complainant cites no legal authority for this proposition and the Commission is aware of none. To the contrary, see Alexander v. Gardner - Denver Company, 415 U.S. 36, 47-49, 94 S.Ct.1011, 1019-1020, 39L.Ed.Ld 147(1974):

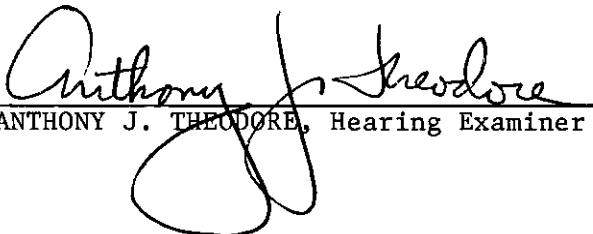
"... Title VII provides for consideration of employment-discrimination claims in several forums... and, in general, submission of a claim to one forum does not preclude a later submission to another. Moreover, the legislative history of Title VII manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes. The clear inference is that Title VII was designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination...." (footnotes omitted)

Finally, although it is unnecessary for this decision, it is noted that the record that was made at so much of the hearing as was held in this matter which included the testimony of complainant and two members of the van pool, would support a determination of "no probable cause" to believe complainant was discriminated against on the basis of national origin when her membership in the van pool was terminated, because the rationale for the termination provided by the testimony of the van pool members was not shown to have been pretextual.

ORDER

Respondent's motion to dismiss for failure of prosecution is granted  
and this complaint of discrimination is dismissed with prejudice.

Dated: OCTOBER 3, 1989 STATE PERSONNEL COMMISSION

  
ANTHONY J. THEODORE, Hearing Examiner

AJT:gdt  
JMF04/2

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