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WILLIAM DEPPEN,

Complainant,

v.

Chancellor, UNIVERSITY OF
WISCONSIN - MADISON,

Respondent.

Case No. 90-0110-PC-ER

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RULING
ON
PETITION
FOR
INTERVENTION

This is a complaint under the Family Leave and Medical Leave Law, §103.10(2), Stats. The complaint alleges that complainant was denied a merit award and an "outstanding" performance evaluation because of his use of parental leave.

On July 26, 1990, Douglas J. Smith filed a petition to intervene as a party. On August 6, 1990, respondent filed an objection to the petition.

The Administrative Procedure Act provides at §227.44(2m), Stats.:

Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party.

Mr. Smith's petition states in pertinent part as follows:

Petitioner has substantial interest in creating a reviewable record in relation to this case which may otherwise be waived by the Plaintiff in a settlement agreement.

Petitioner is an associate of the Plaintiff and has or will be filing several highly related retaliation charges against the same supervisor -- Mr. Keith Burdick of the U.W.-Safety Department. Petitioner has knowledge of this case and wishes to assure testimony is rendered showing Mr. Burdick did "willfully and maliciously" with[h]old information from the Plaintiff in a "deliberate" effort to deny him the various pay increases as stated in his complaint. Mr. Burdick "intentionally" misinterpreted a policy statement and "wantonly" tried keeping it from the plaintiff until such time as he would have lost his rights to remedy. Petitioner wishes to call witness to prove the deliberate discrimination acts of this supervisor. In addition, petitioner requests a letter of reprimand be placed in the defendants personnel

file to document misconduct in public office upon finding in favor of the Plaintiff.

Information related to the intentional withholding of information by Mr. Burdick will aid in my retaliation cases, as it shows Mr. Burdick repeatedly abuses his discretion in attempts to proverbially beat his subordinates into (in his words) "getting with the program." Mr. Burdick has used entrusted discretionary responsibilities to financially harm subordinates in an effort to show them his displeasure at their exercising various protected rights, this must be stopped and redress awarded.

While Mr. Smith was not involved in or directly affected by the transaction which forms the subject matter of this case, he basically views the supervisor's actions concerning this transaction as part of a pattern of conduct which will be probative evidence in his own proceedings. Mr. Smith asserts that his asserted interests in this regard will somehow be waived if the complainant herein, Mr. Deppen, were to settle this case. This does not follow, because if Mr. Smith is correct in his assertion that the supervisor's actions towards Mr. Deppen are part of a pattern or practice that is relevant to Mr. Smith's proceedings, he presumably would have the right to present such evidence at his own hearing. Cf. Cornwell Personnel Associates v. ILHR Dept., 92 Wis. 2d 53, 60-62, 284 N.W. 2d 706 (Ct. App. 1979). Therefore, Mr. Smith's substantial interests could not be affected by the decision of this matter, and he should not be admitted as a party.

Mr. Deppen filed a response in support of the petition on August 7, 1990, in which he states, in part, as follows:


I believe Mr. Smith has direct knowledge of, and a substantial interest in, numerous aspects of my case and he should at least be permitted to express this knowledge to a hearing examiner.

These arguments do not affect the foregoing analysis. If Mr. Smith has direct knowledge of the facts concerning Mr. Deppen's case, he presumably can be called as a witness in Mr. Deppen's hearing.

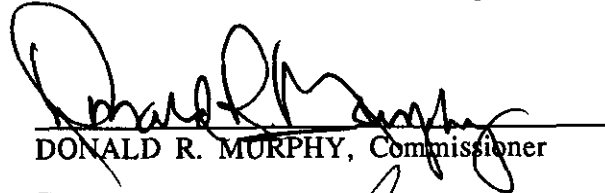
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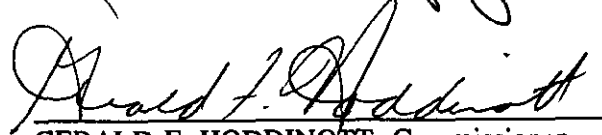
Mr. Smith's petition to intervene filed July 26, 1990, is denied.

Dated: August 8, 1990 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

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