

STATE OF WISCONSIN

PERSONNEL COMMISSION

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GETSINGER et al.,
 (Stephen Getsinger, Cregg Kuri,
 Cynthia Chelcun, Patricia Doherty),

 Complainants,
 v.
 President, UNIVERSITY OF
 WISCONSIN SYSTEM (Stevens Point),

 Respondent.

 Case Nos. 91-0140-PC-ER,
 91-0141-PC-ER,
 91-0159-PC-ER,
 92-0037-PC-ER

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RULING ON
 COMPLAINANTS'
 MOTION FOR
 INTERLOCUTORY
 ORDER

This matter is before the Commission with respect to complainants' request for restraining order filed March 31, 1992, which requests (as amended), "a Restraining Order against representatives of the University of Wisconsin Stevens Point, and in particular Chancellor Sanders, to preclude any further public statements concerning the complaints." The parties have presented briefs and arguments with respect to the motion.

Initially, while the Commission has no authority under the Fair Employment Act (FEA) (Subchapter II, Chapter 111, Stats.) to issue interlocutory orders, Van Rooy v. DILHR & DER, 87-0117-PC, 87-0134-PC-ER (10/1/87), such authority is available under the "whistleblower" law (Subchapter III, Chapter 230, Stats.) at §230.85(3)(c), Stats. Therefore, there is authority to issue a temporary restraining order with respect to so much of these matters that involve whistleblower claims. The Commission will address the question of whether the complainants have made a threshold showing that such a restraining order would be appropriate.

The underlying basis for the motion is an alleged series of statements by respondent's agents, which have been calculated to denigrate not only the merits of the complaints but also the good faith of the complainants and their attorney and to intimidate them. These statements may be summarized as follows:

Commission's authority to issue "gag" orders of this nature. The mere fact that there is authority to issue an interlocutory order does not address the matter of the scope of the Commission's injunctive powers. Complainants have cited no specific authority for the proposition that the Commission has such power. The Commission does have certain implied powers, but there is more than a "reasonable doubt," State ex rel Farrell v. Schubert, 52 Wis. 2d 351, 358, 190 N.W. 2d 529 (1971), that it has the implied power to prohibit a party from making any public statements about a pending proceeding. There are substantial policy issues that would be implicated by such an order. It is significant that in neither the Administrative Procedure Act, the Fair Employment Act, nor the "whistleblower" law, has the legislature provided for restrictions on the right of a party to speak out on pending proceedings. Given the policy factors involved in such restrictions, particularly free speech issues, it seems unlikely that the Commission's implied powers include the right to issue such draconian orders.

The "whistleblower" law prohibits an appointing authority from threatening a retaliatory action against an employe, §230.83(1), Stats. If complainants had alleged such a threat, it is possible that an interlocutory order tailored to the particular conduct could be available under §230.85(3)(c), Stats. However, complainants have not alleged such a threat,² and they are seeking a blanket order prohibiting all statements by respondent.

² Complainants have alleged that they are concerned about their physical safety, but have not alleged any specific facts that would demonstrate a causal link between this fear and actions by respondent's agents, and they have admitted in argument on the motion that "it may be a fear that is totally unreasonable."

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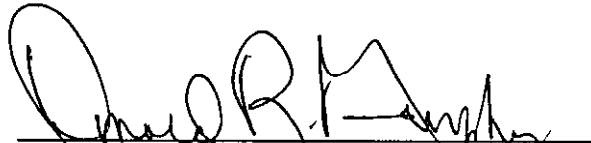
ORDER

Complainants' motion for a restraining order filed March 31, 1992, is denied.

Dated: June 11, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner