

CHRISTINE DORO,

Complainant,

v.

President, UNIVERSITY OF  
WISCONSIN SYSTEM,

Respondent.

Case No. 92-0157-PC-ER

RULING ON  
MOTION  
TO  
DISMISS

This matter is before the Commission on respondent's motion to dismiss, filed February 29, 1996, claiming complainant has filed an identical case in Kenosha County Circuit Court under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000(e) *et seq.*

BACKGROUND

On June 25, 1992, complainant filed a charge of discrimination against respondent in this forum, alleging respondent sexually harassed her and discriminated against her on the basis of marital status and pregnancy in violation of the Fair Employment Act (FEA), and terminated her in retaliation for activities protected by the FEA. In an Initial Determination dated April 19, 1993, the Commission concluded there was "probable cause" to believe respondent sexually harassed complainant in certain instances as alleged, but there was "no probable cause" to believe respondent discriminated against complainant on the basis of her marital status or pregnancy, or retaliated against complainant when it terminated her employment.

At the prehearing conference held July 29, 1993, complainant stated she was consulting with an attorney and was considering proceeding in federal court. After counsel was retained by complainant, the hearing was scheduled to be held on March 10 and 11, 1994, but later was postponed because counsel

could not locate complainant, and after locating complainant, rescheduled for September 11 and 12, 1995.

The hearing was rescheduled to September 1995 with the understanding that complainant intended to pursue this claim in federal court and had requested a right to sue letter from the Equal Employment Opportunity Commission (EEOC) and anticipated a response from EEOC within 180 days. That did not occur and on July 25, 1995, the parties agreed to cancel the scheduled hearing, pending a response from EEOC to complainant's request for a right to sue letter. That was followed by periodic status reports and conferences until late November 1995 when complainant received a Notice of Right to Sue from the U.S. Department of Justice.

In December, 1995, there was correspondence between counsel regarding the status of the case. Complainant advised respondent that she was required to file her Title VII claim in court by early February, 1996.

After respondent filed its motion to dismiss on February 29, 1996, attempts were made to informally address respondent's motion through status conferences held in April, May and July, 1996. At the July 9, 1996 status conference, complainant reported that her Title VII claims to be heard by the court would not be determined until after the period for filing motions on such claims concluded on December 15, 1996 and the court ruled on them. The parties agreed to continue the suspended formal processing of respondent's motion and set a briefing schedule which ended August 2, 1996.

#### DISCUSSION

In support of its motion, respondent argues that it is being irreparably harmed by the continual delays in this matter—delays which respondent alleges are solely attributable to complainant. Also, respondent argues that *Wanless v. VTAE*, Case No. 93-0058-PC-ER (06/03/94), which was discussed during the status conferences is not dispositive of this motion, because it involves the Age Discrimination in Employment Act, not Title VII. Further, respondent argues, in *Harris v. DHSS*, Case Nos. 84-0109-PC-ER, 85-0115-PC-ER (08/18/87), the Commission declined to grant a motion to stay complainant's claims of handicap discrimination and harassment, where much of the evidence was common to his claims filed in federal court under the ADEA.

*Harris* involved issues of sex, age and handicap discrimination and retaliation under the FEA. Subsequent to a full hearing on these issues, but before a decision was rendered, respondent filed a motion to stay. Under the ADEA, §633(a), federal age discrimination lawsuits supersede any state action in progress. Consistent with this federal law, the Commission stayed complainant's FEA age claim and proceeded with the sex and handicap discrimination claims. Here, unlike *Harris*, there has been no hearing on complainant's FEA claims and complainant has filed identical claims under Title VII in circuit court. It would appear a stay of these proceedings would be consistent with *Harris*. In opposition, complainant requests this matter not be dismissed until after a determination that her Title VII claims will be heard in the other forum.

While it is conceded this matter has taken considerable time, respondent fails to explain how it will be "irreparably harmed" by a stay of these proceedings. Respondent does not dispute that it is the defendant in complainant's ongoing Title VII action in Kenosha County Circuit Court involving claims of discrimination identical to those filed here under the FEA, and it has cited no law indicating a parallel Title VII action would not be pre-emptory.

ORDER

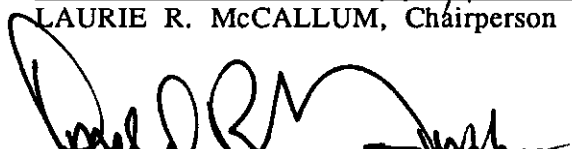
Respondent's motion for dismissal is denied and this matter is stayed.

Dated: August 15, 1996

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

DRM:dpd

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner