

GORDON LEHMAN,
Complainant,

v.

**Secretary, DEPARTMENT OF NATURAL
RESOURCES,**
Respondent.

FINAL
DECISION
AND
ORDER

Case No. 95-0033-PC-ER

The hearing examiner in the above matter issued a proposed ruling on respondent's objection to complainant's request to reschedule the hearing. The respondent objected to the proposed ruling. By letter dated April 27, 1999, the Commission directed the parties to answer various questions. The Commission has considered those responses and the proposed decision and has reviewed the relevant materials in the case file.¹ Based on its review, the Commission rejects the proposed decision, finds there was an agreement reached between the parties to settle the matter, enforces that agreement, grants respondent's objection to rescheduling the hearing and dismisses the complaint.

Much of the relevant procedural history is set forth in the designated hearing examiner's letter to the parties dated February 1, 1999, which reads, in part:

This case was scheduled for hearing in Spooner on October 8, 1998. At the commencement of the hearing, I initiated discussions between the parties in an effort to settle the dispute. I was present during those discussions without objection of the parties. The discussions resulted in agreement on terms for settling the case. I went on the record and summarized the agreement. While on the record, both parties agreed to the accuracy of my statement and were given an opportunity to make additional comments. Please note that there is no requirement that settlement

¹ In correspondence, complainant asked to "come to Madison and present my case." The Commission understands complainant was seeking to argue the merits of his claims against respondent, issues that are not before the Commission. The Commission notes that complainant has been given adequate opportunities to provide information regarding the narrow issue addressed in this decision.

discussions be formally recorded. In fact, it is the Commission's standard procedure not to make such recordings and there are significant policy reasons to not record the discussions.

Mr. Henneger [attorney for respondent] later drafted a settlement agreement and submitted it, by letter dated October 19th, to complainant for his signature. Complainant refused to sign the document and he has asked various questions of the examiner. Complainant has also submitted an electronic tape to the Commission. Complainant indicates that the tape is a recording of at least part of the discussions on October 8th. I have not listened to the complainant's tape.

In response to a telephone conference I held with the parties on November 6, 1998, Mr. Henneger prepared a revised settlement agreement and submitted it to complainant for his signature. Complainant has declined to sign this document.

As an attachment to a letter to the parties dated November 16, 1998, the examiner prepared a partial transcript of the record on October 8th. That transcript reads:

Examiner: While off the record, before the commencement of the scheduled hearing today, we had extensive discussion about, in an effort to settle this matter. It is my understanding that the parties reached an agreement to settle this case for a dollar amount of \$750 and in exchange for that provision, the appellant is withdrawing, I'm sorry, the complainant is withdrawing his complaint. And that the parties will execute a final settlement agreement to that effect. Mr. Henneger [respondent's attorney] will be responsible for drawing up that agreement. It will include standard provisions about withdrawal or closure, dismissal with prejudice. And upon receipt of that, the matter will be placed before the Personnel Commission. Presumably the Commission will issue a dismissal order which will then be sent out to the parties. First of all, is that all accurate, Mr. Henneger?

Mr. Henneger: Yes, that is accurate.

Examiner: And Mr. Lehman, is that accurate from your perspective?

Complainant: Yes.

Examiner: OK. Anything that either one of you wishes to add while we are on the record?

Mr. Henneger: I think we should add that there was some discussion regarding settlement of all other possible claims, and it was the position of the respondent that that should be pursued through the collective bargaining process, with representation by Mr. Redtke who is Mr. Lehman's union representative.

Examiner: OK. Anything further Mr. Lehman?

Complainant: I have nothing.

Examiner: Then thank you both very much and let's go off the record.

The examiner convened a telephone conference on March 4, 1999, and after the parties refused to change their positions regarding the settlement dispute, the examiner asked complainant if he wanted to reschedule the hearing. Complainant said he did. Respondent then objected to such a procedure and asked that the Commission honor or enforce the oral agreement reached by the parties.

The Commission concludes that the parties reached a meeting of the minds on October 8, 1998, as reflected in the transcript set forth above.

Various elements are required for a valid compromise agreement:

A compromise agreement is a contract and, like other contracts, requires among other things, a definitive offer and acceptance, consideration, and parties who have the capacity and authority to agree as they do. . . . [A] valid compromise requires the mutual assent of the parties, and a meeting of their minds on all the essential terms of the agreement. 15A Am.Jur. 2d *Compromise and Settlement* § 7, p. 779 (1976)

Here, there was a "meeting of the minds" of the parties on all of the essential terms of an agreement.

For the most part, the oral agreement reached on October 8th (as reflected in the transcript) was accurately described in respondent's draft settlement agreements. The Commission notes that much of the "boilerplate" language in the draft agreement was implicit in the verbal agreement. In addition, the subsequent submissions of the parties make it clear that while the complainant still has grievances pending, he does not intend

to file any further actions against respondent. It is clear the parties intended to resolve this case on the basis of the payment of \$750 to complainant. Implicit in such a settlement is the resolution of all the potential issues that are ancillary to such resolution. For example, the written settlement agreement makes it explicit that complainant does not retain the right to seek attorney's fees related to this proceeding, in addition to the \$750. It also makes it explicit that complainant releases respondent, its agents, etc., from liability that would flow from this case. These and the other provisions that are retained in the settlement agreement are corollaries to the underlying agreement to resolve this case by the payment to complainant of \$750.

Those areas of the more recent draft agreement submitted by respondent that are *inconsistent* with the meeting of the minds of the parties on October 8th are as follows:

a. The last clause of paragraph 2.a., stating that the complainant's grievances are not affected by this settlement "*except as to matters relating to Lehman's handicap or disability.*"

b. The references in paragraphs 2.a. and 3. to complainant's claim before the Equal Employment Opportunity Commission and to the dismissal of that claim.

c. The confidentiality provision, paragraph 4 of the agreement.

Therefore, the following provisions reflect the meeting of the minds of the parties on October 8, 1998, as qualified by their submissions and their responses to the Commission's letter dated April 27, 1999:

1. The Department of Natural Resources shall pay complainant the sum of Seven Hundred Fifty (\$750.00) Dollars as soon as administratively possible.

2. a. As a material inducement to the Department to enter into this Agreement, Lehman hereby releases, acquits and forever discharges the Department, its employees, managers, supervisors, officers, representatives, and attorneys from any and all claims, demands, liabilities, wages, benefits, suits, awards, damages, rights, losses, payments, attorney fees and causes of action arising indirectly and directly out of the facts stated in his complaint (Case No. 95-0033-PC-ER) filed March 16, 1995, with the Wisconsin Personnel Commission including all amend-

ments and additions thereto and the "Nature of the Case" and "Investigative Summary" of the Initial Determination signed by Anthony J. Theodore (General Counsel of the Wisconsin Personnel Commission) and dated October 1, 1997. It is understood that the grievance(s) filed by Lehman against the Department are not affected by this agreement.

b. It is the expressed intent of Lehman and the Department to resolve all known and unknown disputes, complaints, claims, and controversies between them.

3. Lehman agrees to immediately request dismissal with prejudice any currently pending complaints, causes of action, claims, petitions, or other requests dealing with charges or allegations related to any actions of the State of Wisconsin, the Department of Natural Resources, or any of its agents, employees, managers, supervisors, officers, representatives and attorneys arising indirectly or directly out of the facts stated in his complaint (Case No. 95-0033-PC-ER) filed March 16, 1995 with the Wisconsin Personnel Commission including all amendments and additions thereto and the "Nature of the Case and "Investigative Summary" of the Initial Determination signed by General Counsel Wisconsin Personnel Commission and dated October 1, 1997. Lehman agrees to prepare, sign and file any and all documents necessary to withdraw or cause to be dismissed with prejudice the pending appeals, complaints, claims, petitions, causes of action, or other requests. Lehman agrees that this Agreement when properly executed shall be authorization for dismissal. Lehman agrees not to file any complaint, cause of action, claim, petition, demand, appeal or request against the State of Wisconsin, Department of Natural Resources, their agents, employees, attorneys, supervisors, managers, officers or representatives, collectively or individually, arising directly or indirectly out of the facts stated in his complaint and the "Nature of the Action" and "Investigative Summary" in the Initial Determination before or with any federal, State, or local court, commission, board, agency, committee, forum or arbitrator.

4. It is agreed that this settlement is a compromise settlement and neither this settlement nor any actions hereunder shall be construed as an admission of liability, said liability being hereby specifically denied. Rather than litigate such questions of liability, this settlement is made with the understanding that while the total claims and damages of Lehman including attorney's fees, costs, and other damages may amount to more than the consideration paid, if any, Lehman hereby discharges the State of Wisconsin, the Department and its respective managers, supervi-

sors, employees, officers, representatives, attorneys, and all persons acting by, through, under or in concert with any of them.

5. The settlement of this pending complaint is also a complete and final settlement with regard to any right that Lehman or his attorneys may have to collect attorney's fees and costs; and Lehman knowingly and willingly gives up his right to any and all attorney's fees and costs.

6. Lehman affirms that the only consideration for this agreement are the terms stated above; that no other promise or agreement of any kind has been made to or with him by any person or entity, whomsoever to cause him to reach this agreement and that he fully understands the meaning and intent of this Agreement and General Release, including but not limited to its final and binding effect.


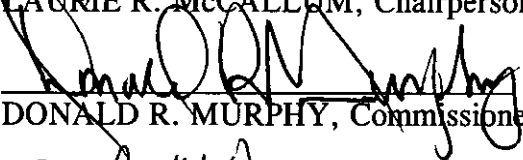

7. This Settlement Agreement and General Release sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter herein.

ORDER

The parties are directed to comply with the terms of the agreement set forth above. Respondent's objection to rescheduling the hearing is sustained. This matter is dismissed with prejudice.

Dated: May 19, 1999.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

KMS: 950033Cru14

Parties:
Gordon Lehman
10424 Elbow Lake Road
Grantsburg, WI 54840

George E. Meyer
Secretary, DNR
P.O. Box 7921
Madison, WI 53707-7921

NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.

2/3/95