

STATE OF WISCONSIN

PERSONNEL COMMISSION

WILLIAM STAPLES,
Complainant,,

v.

STATE PUBLIC DEFENDER,
Respondent.

**RULING ON
OBJECTION TO
AMENDMENT**

Case No. 95-0189-PC-ER

On November 14, 1995, complainant filed a charge of discrimination with the Commission alleging that he had been discriminated against by respondent on the basis of race in regard to five hiring decisions, notice of which complainant had received between September 25, 1995, and October 14, 1995.

In a letter to complainant dated October 22, 1996, one of the Commission's investigators stated as follows, in pertinent part:

Upon reviewing the file, it appears that the Personnel Commission received a letter from you in March 1996 that raised an allegation of arrest/conviction discrimination. Enclosed is a complaint form in the event that you wish to formally amend your complaint. If you decide to file an amended complaint, you must complete the enclosed complaint form and sign it in the presence of a Notary Public. You must submit your amended complaint within 20 days of the date of this letter (on or before Monday, November 11, 1996.)

Failure to respond to a Commission request for information may result in the imposition of the sanctions (penalties) set forth in §PC 2.05(4)(b), Wis. Adm. Code:

If a complainant fails to answer or to produce requested information necessary for an investigation, the commission may dismiss the complaint or make an appropriate inference and issue an initial determination. In the alternative, at any hearing arising out of the complaint the hearing examiner or commission may

exclude any evidence which should have been offered in response to the discovery request.

In a letter to complainant dated November 15, 1996, one of the Commission's investigators stated as follows, in pertinent part:

The Personnel Commission previously wrote to you on October 22, 1996, and informed you that you had to file an amended discrimination complaint if you wanted the Personnel Commission to consider any of the arrest/conviction allegations that you raised in written material that you provided to the Commission in March 1996. To date, we have received no response. Your failure to respond suggests that you do not wish to file an amended complaint on the basis of arrest/conviction record. Therefore, your complaint will be investigated on your originally cited basis of race discrimination.

On November 21, 1996, complainant filed a charge of discrimination in which he failed to check the Arrest/Conviction Record box but in which he stated as follows:

In addition to race, complainant further states that he was discriminated against because of a prior conviction on June 2, 1976, some twenty years ago.

In a letter to the Commission dated December 10, 1996, respondent objected to accepting the charge filed by complainant on November 21, 1996, as an amendment to his original charge of race discrimination. The parties were provided an opportunity to file written arguments relating to this objection and the final argument was filed on January 13, 1997.

Section PC 2.02(3), Wis. Adm. Code, states as follows:

(3) AMENDMENT. A complaint may be amended by the complainant, subject to approval by the commission, to cure technical defects or omissions, or to clarify or amplify allegations made in the complaint or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendments shall relate back to the original filing date.

This language has generally been interpreted by the Commission to permit, at a relatively early stage of the proceedings, an amendment which states that the factual allegations set forth in the original charge also constituted discrimination/retaliation on

some additional basis. *See, e.g., Jones v. DNR*, 78-PC-ER-12, 11/8/79; *Adams v. DNR & DER*, 80-PC-ER-22, 1/8/82; *Butzlaff v. DHSS*, 90-0162-PC-ER, 11/13/92. Here, complainant is apparently alleging in the charge filed on November 21, 1996, that respondent, in making the five hiring decisions which were the subject of the original charge, discriminated against him not only on the basis of race as originally charged, but also on the basis of arrest/conviction record. Given the fact that the original charge is still in the investigatory stage and that the latter charge fits within the scope of amendment permitted by the Commission's rule and precedent, it is concluded that the charge filed on November 21, 1996, is to be treated as an amendment to the charge filed on November 15, 1995, and, consistent with §PC 2.02(3), Wis. Adm. Code, the date of filing of this amendment shall relate back to the date of filing of the original charge.


Respondent argues that the charge filed by complainant on November 21, 1996, is not sufficiently specific to satisfy pleading requirements. However, given the requirement that pleadings under the Fair Employment Act be liberally construed, it is concluded that the charge is sufficiently specific. As discussed above, given the permissible scope of amendment, the Commission has interpreted this charge to allege discrimination on the basis of arrest/conviction record only in regard to those hiring decisions which were the subject of the original charge.


Respondent also argues that the complainant failed to meet the filing deadline imposed by the Commission in its correspondence to him of October 22, 1996, and, as a result, the amendment should not be allowed. However, given that the complainant appears in this matter *pro se*, that his failure to meet the imposed deadline was not egregious or part of a pattern of action, and that there has been no showing that the additional ten-day period prejudiced in any significant way the investigation of this matter or the respondent's ability to defend this matter, the Commission exercises its discretion under §2.05(4)(b), Wis. Adm. Code, and accepts the amendment filed by complainant on November 21, 1996.

Dated: January 30, 1997

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STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner