

STATE OF WISCONSIN

PERSONNEL COMMISSION

**LYNN T. EGAN,**  
*Complainant,*

v.

**Secretary, DEPARTMENT OF  
CORRECTIONS,**  
*Respondent.*

**RULING ON HEARING  
LOCATION**

Case No. 96-0111-PC-ER

This case is before the Commission to resolve a dispute as to the hearing location. The parties filed written arguments, with the final argument received by the Commission on March 3, 1998.

A prehearing conference was held on February 4, 1998, at which time the parties agreed to hearing on July 22-23, 1998, in Waupun, Wisconsin. The conference report dated February 4, 1998, included the following discussion:

The exact location of hearing is to be determined. Attorney Rychlowski (respondent's attorney) agreed to locate a hearing room at the Dodge Correctional Institution. Attorney Heitzer (complainant's attorney) wishes to discuss the matter with his client and, if necessary, explore the potential of a hearing location in Waupun but not at the correctional institution.

Respondent mentioned at the prehearing conference that inmates were expected as witnesses at the hearing. By letter dated February 4, 1998, the Commission requested that DOC make arrangements for the security of the hearing participants by pat-searching each inmate prior to entering the hearing room and by having a security officer present in the hearing room while each inmate testifies.

Respondent informed the Commission by letter dated February 24, 1998, that a room had been reserved for conducting the hearing at the Dodge Correctional Institution (DCI). Respondent further indicated DCI's Security Director had been notified of "the probability of inmate testimony and the request for a pat search and the presence of a security officer."

Complainant requested a hearing location other than DCI, by letter dated February 24, 1998. The content of the letter is shown below in pertinent part:

Please be advised that I have checked regarding a neutral location for the hearing . . . I have confirmed that the Waupun City Hall has a hearing room available, in their Common Council Chamber, which has been reserved and is currently being held for us for both of those hearing dates.

My client and I have discussed this matter, and we strongly feel that since the Respondent intends to call inmate as well as employee witnesses, to hold this proceeding in the prison administration building as the DOC has offered, would be highly intimidating and thus is not acceptable to us. I understand that this building is adjacent to the inmate resident dormitories or cells, and within the prison gates. In such a circumstance, one could not reasonably expect inmates to freely testify in a case against the prison management.

Respondent filed its response by letter dated February 27, 1998, which stated in pertinent part as shown below:

The respondent strongly recommends holding the hearing at (DCI). It would be more convenient for the witnesses who are employees of the Institution. More importantly, if the hearing is held at the institution, the security risk to the public is much less than if the hearing is held in a public setting.

It is true that DOC plans to call inmates as witnesses in this case. There would be an unnecessarily increased risk to the public if the inmates were required to be transported to a public location and leave the institution grounds. DOC would need to provide additional security in transporting the inmates outside of the institution and in monitoring the inmates in a public setting. The possibility for an escape would increase.

Attorney Heizer argues that inmates could not freely testify against prison management in a prison setting, so he proposes that the inmates be transported to a public location for the hearing. I do not believe there is merit to this argument. The inmates will be sworn under oath and will be required to tell the truth. The (respondent) wants nothing other than for these inmates to testify truthfully.

It is common for inmates to file complaints and lawsuits against prison management. Inmates feel free to do so even though they are in an institution. Wisconsin inmates file thousands of complaints a year.

I believe the location of the hearing will have no impact on the truthfulness of the testimony provided by the inmates. However, if the hearing is held in a public place, there will be an increased risk to the public.

### DISCUSSION

The Commission is unpersuaded that the potential for more truthful testimony from inmates exists if the hearing is held off institution grounds.

The Commission could limit the number of individuals in the DCI hearing room while each inmate testifies which could help to alleviate complainant's concern about inmate intimidation. Specifically, the Commission could limit the individuals in the hearing room to the testifying inmate, complainant and her counsel, respondent's counsel and respondent's representative, and the security officer whose presence was requested by the Commission. Complainant should make such request at hearing if she wishes to pursue this option.

This ruling is made without prejudice, meaning the question of hearing location could be re-visited if circumstances change significantly.

### ORDER

The hearing will be held on July 22 and 23, 1998, at DCI.

Dated: March 11, 1998.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

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