

pline and harassment (No. 99-0063-PC-ER). This complaint states that it covers the period of November 24, 1998, through March 17, 1999, although it mentions incidents that were part of complainant's "history" with DPI, starting in 1991.

The Commission's May 12th ruling dismissed complainant's whistleblower complaint in Case No. 98-0210-PC-ER as untimely.

A representative of the Personnel Commission held a prehearing conference with the parties to Case Nos. 98-0210-PC-ER, 99-0051, 0063-PC-ER on May 25, 1999. The conference report reflects the following:

Complainant stated he will file another complaint arising from respondent's decision to terminate his employment on April 8, 1999. He also stated he will waive the investigation with respect to that new complaint.

The parties noted that the complainant has several grievances that are pending and that the grievances are scheduled to be heard at the 3rd step in June of this year. Complainant stated he did not want the grievances to delay pursuing his complaints.

The question of consolidation of these three cases (as well as any new complaint filed by complainant) was discussed. Respondent supported consolidation. The complainant opposed consolidation but stated he was not prepared at the time of the prehearing to offer arguments. He asked to be provided an opportunity to file his arguments in writing. The undersigned referred the parties to §PC 1.10, Wis. Adm. Code. Complainant is provided until June 8, 1999, to file written arguments objecting to consolidation of his complaints. Respondent has until June 14, 1999, to file a response.

The complainant filed a fourth complaint of discrimination with the Commission on May 26, 1999. Complainant requested waiver of the investigation. The complaint includes allegations of race discrimination, Fair Employment Act retaliation and whistleblower retaliation. The narrative portion includes the following language:

From the beginning of my employment until today, I have been subjected to severe, persistent racial discrimination from DPI management and DPI staff. . . .

On April 8, 1999, I was ostensibly terminated for not signing a medical release.

In his written submission relating to the issue of consolidation, complainant states, in part:

I suggest that the cases be consolidated into the following segments:

1. Racial discrimination/racial harassment,
2. Failure to promote.
3. Whistleblowing retaliation.

DPI specializes in these types of cases. . . .

On my side, I have merely a pencil and a pad of paper and a hard row to hoe. . . .

It is unreasonable to expect a novice to be able to defend against the enormity created by consolidating all of these cases. That is why I have suggested that the cases be consolidated into bite-sized, manageable morsels.

Respondent supports consolidation of the complainant's four pending cases. Respondent offered the following reasons for its position:

1. While the complainant has filed four separate complaints, the factual information he alleges in support of each complaint is nearly identical. Thus, litigation of one complaint would involve the same facts as every other complaint. In the event a piece of evidence is relevant to only a portion of his claim, the Commission is able to make that determination and consider the evidence accordingly.
2. It would be a wasteful use of resources to conduct separate fact finding hearings concerning virtually identical facts.
3. Contrary to the suggestion by the [complainant], consolidation would make the case more manageable and cohesive by avoiding duplication and re-litigation. The issues can be identified and focused, thereby making the case "bit-sized, manageable morsels."
4. The complainant would not be prejudiced by consolidation. In fact, the consolidation, as mentioned above, would make the case more manageable for all parties.

The Commission's rules specifically provide for consolidation "of any case with any other case involving the same parties or one or more issues arising substantially out

of the same circumstances or closely related circumstances." §PC 1.10, Wis. Adm. Code. The present cases all involve the same parties, appear to be based upon many of the same facts and involve many of the same legal theories. While the complainant may feel he is at a disadvantage appearing without an attorney, the fact that a party appears *pro se* or by an attorney is not determinative in terms of the issue of consolidation. Here, judicial economy strongly supports consolidation for hearing and for decision. *Harden & Nash v. DRL & DER*, 90-0106-PC-ER, etc., 1/23/96. If complainant were permitted to litigate these cases as suggested in his written arguments, the parties would be forced to create three separate and extensive hearing records.


ORDER

These four matters are consolidated for purposes of hearing and decision.

Dated: June 21, 1999 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner