STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

RONALD WARREN,

Petitioner,

vs.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,

Respondent.

DECISION ON REVIEW

Case No. 128-101

DANE COUNTY WIS. DEC 21 4 16 PM '70 CIRCUIT COURT

BEFORE THE HON. RICHARD W. BARDWELL, CIRCUIT JUDGE

This is an action for review of an order of the Department of Industry, Labor, and Human Relations dated June 12, 1969, affirming the initial determination of the examiner dated January 29, 1969, wherein it was found that no probable cause existed that petitioner, Ronald Warren, was terminated from employment with Mt. Sinai Hospital because of race. Accordingly, the complaint was dismissed.

On October 15, 1968, petitioner, a black man, filed an initial complaint with the Equal Rights Division of the Department of Industry, Labor and Human Relations pursuant to the provisions of Wis. Stat. sec. 111.36, alleging that Mt. Sinai Hospital, 948 N. 12th Street, Milwaukee, Wisconsin, had committed an act of discrimination against him on the basis of race.

Mr. Warren was employed by Mt. Sinai Hospital as a physical therapist during June, 1968. On June 19, 1968, the hospital's chief therapist gave notice of resignation and recommended Mr. Warren for his position. Petitioner's credentials and technical qualifications for the job were never at issue. After some preliminary inquiries into alleged past incidents and relationships, Mr. Warren was offered the position on July 17, 1968, at a starting salary of $11,000.

Mr. Warren expressed dissatisfaction with the starting salary and suggested a $1,000 increase. He contends that during subsequent

negotiations repeated reference was made to a relationship between himself and a white, married member of the staff. Hostilities increased between the parties, and at a subsequent meeting an acceptance of the original offer was rejected by the hospital. Mr. Warren's employment was terminated on July 26, 1968. Warren contends that because his credentials are impeccable and because of the repeated inquires with respect to his relationship with a white member of the staff, the only factor operative in the denial of the position of Chief Therapist and his subsequent discharge was racial discrimination.

Mrs. Harry Rose, field representative for the department, conducted an ex parte investigation of the complaint and on January 24, 1969, issued an initial determination holding that there was no probable cause to believe that an act of racial discrimination had been committed against Mr. Warren. She concluded that Warren had been discharged because of the hostilities which developed between the parties during the course of their negotiations. She found that their relationship had deteriorated to the point where it would be difficult to work together because of Mr. Warren's "authoritarian manner". The inquiry into the relationship with a white member of the staff was purportedly conducted only because both were married, and not because of race.

On February 14, 1968, the Equal Rights Division issued an order sustaining the initial determination of January 29, 1969, and dismissing the complaint.

On May 16, 1969, a meeting was held with department commissioners and the parties for the purpose of review. An order was issued on June 12, 1969, affirming the initial determination of no probable cause and dismissing the complaint.

Petitioner contends that the ex parte investigation of the department coupled with the meeting with the commissioners on May 16, 1969, was insufficient to satisfy the requirements of due process. We agree.

The informal meeting of May 16, 1969, did not give petitioner an opportunity to present witnesses and testimony in support of his claim. Warren was effectively foreclosed of the opportunity to present any evidence on his behalf. The letter of April 18, 1969, notifying the parties of the scheduled meeting expressly states that "no additional evidence will be considered by the Commission at this meeting".

The only record before the commission for its review was comprised of petitioner's complaint and the investigatory conclusions of examiner, Rose. There is nothing in the record to substantiate either her conclusions or the diligence or fairness with which she conducted the investigation.

When the commissioners determined that the evidence before them was insufficient to establish probable cause, they acted in a quasi-judicial manner. In this state when a public administrative body in Wisconsin acts in a "quasi-judicial" rather than in a "legislative" capacity, it must base its decision on judicial evidence which can be reviewed as to sufficiency by a competent reviewing authority. State ex rel. LaCross v. Rothwell, 25 Wis. 2d 228, 238 - 239, 130 N.W. 2d 547 (1964); 1 Davis, Administrative Law Treatise, p. 412, sec. 7.02. See also, State ex rel. Cities S.O. Co. v. Board of Appeals, 21 Wis. 2d 516, 124 N.W. 2d 809 (1963). In accord, see Ashwaubenon v. Public Service Comm., 22 Wis. 2d 38,46, 126 N.W. 2d 567 (1963).

The question presented is whether an ex parte investigation coupled with an argumentative type hearing satisfies the requirements of due process. We conclude that it does not. There is nothing in the record which can be judicially reviewed. Lacking that we cannot pass on the issue of probable cause. Mrs. Rose concluded there wasn't any. The department commissioners agreed but we are left totally in the dark as to the evidence, viz sworn testimony which might or might not support the conclusion reached. If the state's equal rights law is to have any meaning, one who alleges wrongful discrimination must

be given an opportunity to be heard fairly and impartially with the right of judicial review.

The decision and order of the department of June 12, 1969, is reversed and remanded to the Commission with instructions to hold a formal hearing on the issue of probable cause.

Dated: December 21, 1970.

BY THE COURT:

Richard W. Bardwell
Circuit Judge