

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

STEPHANIE JUEHRING, Complainant

VS.

**SCOTT COUNTY CIVIL SERVICE COMMISSION,
Respondent.**

CP# 11 -86-15439

FINDINGS OF FACT

1. On January 18, 1990, Administrative Law Judge Donald W. Bohlken received a "Motion to Dismiss Contested Case Hearing" from Teresa Baustian, Assistant Attorney General. The motion requested that this contested case proceeding be dismissed because "the Complainant has withdrawn the underlying charge of discrimination." This motion was not joined by the Complainant. Nor was a copy of the withdrawal by the Complainant provided to the Administrative Law Judge.

2. Because the motion to dismiss was not joined by the Complainant, she and all other parties to this case were given an opportunity for a hearing on this motion. See 161 Iowa Admin. Code 4.3(4), (7). By order dated January 18, 1990, any party desiring a hearing on this motion was required to file a written motion requesting a hearing, with a copy to the other parties or their legal counsel, with the Administrative Law Judge on or before January 29, 1990. The parties were informed that if no motion for a hearing was received on or before that date, a proposed decision would be prepared for consideration by the Commission so it may rule on the motion to dismiss based on the present record. No motion for hearing on the motion to dismiss has been received as of January 31, 1990.

CONCLUSIONS OF LAW

1. It is well-established that the Commission has the sole discretion to determine whether it is necessary take a complaint to hearing, i.e. the Complainant does not have a role in determining if litigation is necessary. Iowa Code 601 A. 15(5) (1989). See Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 766 (Iowa 1971)(Agency decides if litigation is necessary; Complainant's importance as an adversary party not established by the statute). The Commission has the discretion to select cases for prosecution which will, in its view, "better impact unfair or discriminatory practices." Estabrook v. Iowa Civil Rights Commission, 283 N.W.2d 306, 311 (Iowa 1979). Based on this authority, it would seem reasonable to conclude that the Commission not only has broad discretion to determine whether it wishes to initiate the prosecution of a case, it also has broad discretion to determine whether it wishes to continue the prosecution of a particular case. The Commission may, for example, dismiss a case if it cannot obtain the cooperation of a Complainant which is required for successful prosecution. Cf. Ronald Lewis, CP# 03-84-11456, Order (Iowa Civil Rights Comm'n. April 18, 1989)(Case dismissed due to Complainant's failure to obey Commission discovery order to produce income tax returns).

2. In light of these authorities, either the withdrawal of a complaint by the Complainant, or the Complainant's informing the Commission's representative that she has withdrawn the complaint, combined with a failure of the Complainant to resist a motion to dismiss based on the communication, constitutes sufficient reason for dismissal of the case even though the Complainant did not join in the request for dismissal.

3. For the reasons stated above, it is recommended that the Commission grant the Motion to Dismiss.

DECISION AND ORDER

IT IS ORDERED, ADJUDGED AND DECREED that this case is DISMISSED.

Signed this the 31 st day of January, 1990.

DONALD W. BOHLKEN
Administrative Law Judge
Iowa Civil Rights Commission
211 E. Maple
Des Moines, Iowa 50319

ADOPTION OF PROPOSED DECISION AND ORDER

1. On March 23, 1990, the Iowa Civil Rights Commission, at its regular meeting, adopted the Administrative Law Judge's proposed decision and order dismissing this case, which is incorporated in its entirety in this order as if fully set forth herein.

IT IS SO ORDERED.

Signed this the 4th day of April, 1990.

Ken Robinson
Chairperson
Iowa Civil Rights Commission

Copies to:

Thomas C. Fritzsche
Assistant Scott County Attorney
418 West Fourth Street
Davenport, Iowa 52803

Stephanie Juehring
1365 N.W. 93rd Court
Clive, Iowa 50322

Teresa Baustian
Assistant Attorney General

Scott County Civil Service Commission
c/o Colleen Goodall, Secretary
1000 First Bank Center
Davenport, Iowa 52801