

STATE OF WISCONSIN

PERSONNEL COMMISSION



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 JOHN BIDDICK,  
                   Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 HEALTH & SOCIAL SERVICES,  
                   Respondent.  
 Case No. 82-127-PC  
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INTERIM  
 DECISION  
 AND  
 ORDER

On or about May 27, 1982, the appellant filed an appeal with the Commission seeking review of respondent's career executive reassignment decision. At a prehearing conference held on July 14, 1982, the parties agreed to the following issue for hearing:

Was the appointing authority's reassignment of the appellant from Human Services Administrator 3 to Human Services Administrator 2 an unreasonable and improper exercise of discretion.

On August 2, 1982, the appellant submitted a series of twenty interrogatories to the respondent. The interrogatories read as follows:

1. State the name, address and official position or positions, with the Department of Health and Social Services of the person answering these interrogatories on the Departments behalf.
2. Identify all documents and give the details of all communications, written and oral, upon which the Department and Division based its decision to appoint Beth Hiestand to the position, Director, Bureau of Operations.
3. Identify all documents and give the details of all communications, written and oral, with Olaf Brekke regarding his employment status in the Department and the Division.
4. Identify all documents and give the details of all communications, written and oral, relative to the development of the organizational structure of the Bureau of Operations within the Vocational Rehabilitation Division, Department of Health and Social Services.

5. Identify all documents and give the details of all communications, written and oral, upon which the Department and Division based its decision to reorganize the Division.
6. Identify all documents and give the details of all communications, written and oral, relative to the deferment, and later, the filling of the Madison Field Office Supervisory Position since it was vacated by Susan Boyd Kidder.
7. Identify all documents and give the details of all communications, written and oral, relative to the selection of the two regional administrators to remain in that position.
8. Identify all documents and give the details of all communications, written and oral, relative to the selection of the three regional administrators to be laid off or demoted.
9. Identify all documents and give the details of all communications, written and oral, relative to the reassignment of John Biddick to a H.S.A. 2.
10. Identify all documents and give the details of all communications, written and oral, relative to naming William Newberry the field office supervisor in Madison.
11. Identify all documents and give the details of all communications, written and oral, relative to naming Donald Snyder the filled office supervisor in Kenosha.
12. Identify all documents and give the details of all communications, written and oral, relative to exempting Mila Plosky and Mike Greco from displacement by Martin Eft.
13. Identify all documents and give the details of all communications, written and oral, relative to denying exemption for Willie Riley for displacement by Don Snyder in Kenosha.
14. Identify all documents and give the details of the policy relative to determining the appropriate number of supervisors for each office.
15. Identify all documents and give the details of all communications, written and oral, relative to naming Martin Eft to a supervisory position in Milwaukee.
16. Identify all documents and give the details of the staff seniority within the employing unit for:
  - A) Human Services Administrator 1, 2, 3
  - B) Rehabilitation Supervisor 1, 2, 3
17. Identify all documents and give the details relative to the

chronological ages of:

- a) John Biddick
  - b) Olaf Brekke
  - c) Patrick Mommaerts
  - d) Kenneth McClarnon
  - e) William Newberry
  - f) Donald Snyder
  - g) Martin Eft
  - h) Douglas Fregetto
  - i) Paul Rasmussen
  - j) Mila Plosky
  - k) Mike Greco
18. Identify all documents and give the details of the Comparative federal funding levels for the Vocational Rehabilitation Program for the past ten years.
19. Identify all documents and give the details of the comparative state funding levels for the Vocational Rehabilitation Program for the past ten years.
20. Identify all documents and give the details of the duties before reorganization and after reorganization of:
- a) Patricia Kallsen
  - b) Kenneth McClarnon
  - c) John Biddick
  - d) Olaf Brekke
  - e) Rod Van Deventer
  - f) Ray Truesdell

The Department responded by answering one of the interrogatories completely (Question 1) and another only to the extent that it requested information regarding the appellant (Question 20) and by objecting to all of the other questions. The respondent's objections consisted of three different theories. The first, hereafter referred to as the "relevancy objection," was submitted in lieu of a response to questions 2 through 8, 10 through 17 and question 20. The objection reads:

Respondent objects on the grounds that the matter sought is not relevant to the subject matter of the pending proceeding.

Respondent offered a second theory of objection for questions 3 through 15:

Respondent objects further because this interrogatory does not actually ask any factual information but requires the Respondent to draw conclusions as to what communications are or are not relative to the employment status. The Respondent is entitled to know the fact or facts as to which it is to answer, and is not required to take the responsibility of selecting or imagining them.

For lack of a better descriptive word, this objection will subsequently be referred to as the "conclusionary objection." The respondent's final objection will be referred to as the "equal burden objection" and was raised as to questions 18 and 19:

The answer to this interrogatory may be derived or ascertained from the business records of the respondent and the burden of deriving or ascertaining the answer is substantially the same for the appellant as for the respondent.

The respondent further specified that the answer to question 18 could be obtained from the "grant award" file maintained in the Office of the Administrator, Division of Vocational Rehabilitation and that the "annual reports of the department" files in the Office of Administrator, Division of Policy and Budget would answer question 19.

On September 7, 1982, the appellant moved that the Commission issue an order compelling the respondent to answer the interrogatories as initially propounded. Upon the request of the respondent, a hearing on the motion was held, exhibits were filed, testimony was taken and both parties were provided an opportunity to submit briefs.

#### FINDINGS OF FACT

1. As of March 9, 1982, the appellant served as the Director of the Bureau of Client Services, Division of Vocational Rehabilitation (hereafter DVR), Department of Health and Social Services. The appellant's position was classified at the Human Services Administrator 3 (HSA3) level.

2. In a letter dated March 9, 1982 to Secretary Lindner, Department of Administration, Secretary Percy of the respondent department proposed a reorganization of the central office administrative structure of the Division of Vocational Rehabilitation:

Functional description of the present and the proposed structure:

The Division of Vocational Rehabilitation is proposing the merger of its planning and management support functions. Presently, these two functions are separated into the Bureau of Planning, Evaluation and Program Development and the Bureau of Management Services. This merger would consolidate (1) budget planning, (2) budget development, (3) budget monitoring, (4) program evaluation, (5) data and management information systems, and (6) management support activities. This new bureau would be called Bureau of Operations and Planning. The objective for implementing this structure is to allow for a more coordinated approach to planning, budgeting, and technical assistance activities within the Division.

DVR would also restructure the Bureau of Client Services. At the present time, the Bureau of Client Services is a separate entity reporting to the Deputy Administrator. The proposed reorganization would create an Office of Client Services under the direct supervision of the Deputy Administrator. This reorganization of client services involves necessarily the delegation of some decision-making authority to field office supervisory staff. These actions will not result in a reduction in direct field services.

Under the proposed reorganizational plan the Office of Client Services would be staffed by an Assistant and two Human Services Administrators (HSA 1s) who would function as Regional Program Administrators. This change would necessitate the layoff of three existing Regional Administrators who have displacement rights to field office supervisory positions. The vacant Regional Administrator position would also be eliminated.

In this proposed reorganization, the Bureau of Operations and Planning would be directed by an Administrative Officer 3. This position is presently vacant and would be staffed through competition. The present Director of the Bureau of Planning, Evaluation and Program Development (HSA 2) would temporarily manage the functions of the Bureau for the Blind while the Director's position is frozen, as well as provide special consultation on the reorganization of the Office of Client Services and the Bureau of Planning and Operations.

With the decreased level of program and supervisory responsibility, the present Director of the Bureau of Client Services (HSA 3) would be reassigned to a Career Executive position (HSA 2) functioning as

an Assistant to the Deputy Administrator with primary emphasis towards directing regional client services including supervision of two HSA 1s.

Included with the proposal were organization charts of the Division's existing and proposed structure.

3. Secretary Lindner approved the reorganization in a letter dated March 22, 1982, stating in part:

I reviewed your proposal of March 9, 1982 to reorganize the Division of Vocational Rehabilitation in response to federal and state cutbacks. Several aspects of the proposal are largely individual personnel transactions, and I am sure you are checking those with DER. I will limit my response to the structural aspects of your proposal.

Overall, I consider the reorganization proposal an appropriate way to cope with diminishing resources. You may proceed with (1) merging the Bureau of Management Services and Bureau of Planning, Evaluation and Program Development with a Bureau of Operations, and (2) rearranging the division's regional structure, changing the number of regions from six to three (plus an interim region). Though the proposed DVR regional structure will not now match those of the other DHSS divisions, I am assured that the change will not reduce the effectiveness of vocational rehabilitation services.

Your staff indicated that they will be evaluating the need for the separate Bureau of the Blind. I endorse this evaluation because it is also my feeling that this bureau may be able to deliver services more effectively if structurally integrated with the other client services.

One thing I would suggest is that you not change the title of the Bureau of Client Services. The designation "office" is normally reserved for organizational units that provide internal services rather than direct services to the public.

4. Secretary Percy subsequently sought and obtained approval from Secretary Lindner for a reorganization amendment affecting the Bureau of the Blind. This later amendment, as approved by Secretary Lindner on May 3, 1982 had no substantive effect on the Bureau for Client Services.

5. After the reorganization of DVA was approved, the appellant was reassigned to HSA2 (Assistant Director, Bureau of Client Services).

OPINION

The respondent has identified three separate objections to the interrogatories propounded by the appellant. In ruling on the appellant's motion to compel, the Commission will consider each of the objections separately.

As a general matter and in recognition of the policy favoring full discovery, the Commission will assign the burden of persuasion to the respondent as the party objecting to the interrogatories. See Powerlock Systems, Inc. v. Duo-Lok, Inc., 54 F.R.D. 578 (E.D. Wis, 1982).

A. Relevancy Objection.

The respondent argues that the information being sought via the appellant's interrogatories fails to relate to the issue as agreed at the prehearing conference, i.e. whether the appellant's reassignment was unreasonable and improper. However, case law indicates that the determination of relevancy for purposes of discovery should be based on the "subject matter of the action" rather than the specific issue that was agreed to at the prehearing conference.

The test for relevancy is very broad. It is relevancy to the subject matter of the action, and not the narrow test of the relevance to the precise issues formed by the pleadings. Brunswick Corp. v. Chrysler Corp., 291 F. Supp. 118 (E.D. Wis, 1968).

The respondent argues that any discovery relating to the recent reorganization of the Division of Vocational Rehabilitation is inappropriate because the reorganization decision is not subject to review by the Commission or by any other forum. Pursuant to §15.02(4), Wis. Stats:

(4) INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS.

The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic

and efficient administration and operation of the department of independent agency. The head may delegate and redelegate to any officer or employe of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

In this case, the respondent presented satisfactory evidence that the Governor had delegated to the Secretary of DOA the authority to approve reorganizations involving the "[c]reation or elimination of offices, bureaus or comparable units," and that Secretary Lindner of DOA actually had approved the reorganization of DVR.

In response, the appellant offered eight separate arguments or theories in an attempt to show that his interrogatories were appropriate. Most of the arguments raised by the appellant are attacks on the reorganization of DVR, i.e. that the reorganization had not been adequately studied or planned, was illogical or was the result of a "personal agenda." However, these arguments are beyond the Commission's authority to consider. The Commission has previously ruled that it lacks subject matter jurisdiction to consider whether a reorganization violated provisions of the statutes and administrative code. Schiffer v. DOT & DP, Case Nos. 81-4-PC & 81-342-PC (2/18/82). In the instant case, the respondent has shown that the reorganization proposal was approved by Secretary Lindner in accordance with responsibilities delegated under §15.02(4), Wis. Stats. Because the Commission has no authority to alter the existing organizational structure, the appellant is barred from arguing that the structure that exists as a result of the reorganization is somehow inappropriate.

While the reorganization arguments are clearly outside of the Commission's authority, some of appellant's other theories regarding the appropriateness of the interrogatories are entitled to closer scrutiny.



Appellant argues that "one of the reasons stated for the appellant's reassignment was the need for flexibility given the fluid status of funding."

Pursuant to §30.07(2), Wis. Adm. Code:

(2) When an appointing authority determines that the agency's program goals can best be accomplished by reassigning an employe in a career executive position within the agency to another career executive position in the same or lower classification level for which the employe is qualified, the appointing authority may make such reassignment, provided it is reasonable and proper. All such reassignments shall be made in writing to the affected employe, with the reasons stated therein.

Even though the letter of reassignment is not part of the record in this matter, the Commission must assume that fluidity of funding was one of the reasons expressed in the reassignment letter. The appellant should be permitted to obtain background information relied upon by the respondent in developing the stated reasons for the reassignment. In this case, the appellant can probe into the respondent's conclusion that the funding for DVR programs would be fluid rather than constant.

The appellant also argues that the respondent may have been practicing age discrimination. Pursuant to §Pers 30.10(2), Wis. Adm. Code, a career executive reassignment may be appealed to the Personnel Commission "if it is alleged that such reassignment either constitutes an unreasonable and improper exercise of an appointing authority's discretion or is prohibited by §230.18, Stats." The latter provision prohibits discrimination in the "recruitment, application, examination or hiring process." Even though age discrimination has not been identified as an issue for hearing in this matter, it is relevant for purposes of reviewing a career executive reassignment which is the subject

matter of the appeal. Therefore discovery with respect to appellant's allegation of age discrimination must be allowed.<sup>FN</sup>

Finally, the appellant argues that "the duties assigned to appellant's position did not change sufficiently to justify reclassification." This case was filed as an appeal from a career executive reassignment decision, as is reflected in the issue that has been identified for hearing. In order to obtain review of the decision to classify the position in question at the HSA2 level, the appellant would have to file an amended letter of appeal referring to a classification or reclassification decision. The Administrator of the Division of Personnel would have to be added as a party. Even so, questions relating to the timeliness of the appeal/amendment might arise. As long as the subject matter of the current appeal is appellant's reassignment, discovery relative to classification or reclassification is properly objected to as being irrelevant.

B. Conclusionary Objection

Respondent objected to interrogatories 3 through 15 by stating that each interrogatory

"does not actually ask any factual information but requires the respondent to draw conclusions as to what communications are or are not relative to the employment status. The respondent is entitled to know the fact or facts which it is to answer, and is not required to take the responsibility of selecting or imagining them."

The respondent suggested the objection was self-explanatory and neither party addressed the objection other than in passing.

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<sup>FN</sup> The Commission notes that the appellant has also filed a separate complaint of discrimination, Case No. 82-PC-ER-73, alleging that his reassignment constituted age discrimination.

As currently written, some of the interrogatories are too broad. Specifically, interrogatory 9 directs the respondent to:  
Identify all documents and give the details of all communications, written and oral, relative to the reassignment of John Biddick to HSA2.

In the case of Mort v. A/S D/S Svendborg, 41 F.R.D. 225 (E.D. Pa, 1966), a personal injury action, the plaintiff had propounded an interrogatory asking the defendant to "[s]tate in detail the information you ... have ... relating to the accident, as to how the accident occurred, and the facts leading up to the accident ..." In Mort, the court sustained the defendant's objection to the interrogatory after concluding that the introductory phrase ("relating to the accident") was entirely too broad.

The appellant may amend interrogatory 9 (and other questions found not to be completely irrelevant) in order to eliminate the objectionable language. The amended interrogatories shall be more specific, although the Commission is aware that the appellant can only know the general nature and type of the information he wants rather than the exact answer that he is seeking. The appellant cannot be expected to phrase his questions with "mathematical precision." See Banana Service Co. v. United Fruit Co., 15 F.R.D. 106 (D. Mass, 1953).

C. "Equal Burden" Objection

Neither party has addressed this objection. However, the Commission is satisfied that the respondent has provided the appellant with the specific location of documents containing the information being sought. This is an appropriate response when the information being sought has never been compiled but can be readily determined from documents found in specific locations.

ORDER

Appellant's motion to compel is denied as to interrogatories 2 through 15, and 18 through 20, and is granted as to interrogatories 16 and 17. Appellant may amend to make more specific and may refile interrogatories 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 20.

Dated: October 14, 1982

STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
JAMES W. PHILLIPS, Commissioner

KMS:ers

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