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 *
 DAVID WING, *
 *
 Complainant, *
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 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM (Stout), *
 *
 Respondent. *
 *
 Case No. 85-0104-PC-ER *
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RULING
 ON
 MOTIONS

This matter is before the Commission on disputes between the parties as to the proper scope of discovery. The complainant has filed a motion to compel and the respondent has filed a motion for protective order. The parties have submitted briefs in support of their respective positions.

The underlying complaint was filed with the Commission in letter form on June 14, 1985, and is based on alleged violations of the "whistleblower law." Through various correspondence with the complainant, it has become apparent that he alleges he made disclosures or otherwise engaged in activities protected by the whistleblower law on the following occasions:

1. 1975 "Whistleblowing" regarding concealing costs.
2. 3/28/84 Correspondence to Rep. Shoemaker seeking assistance in getting a copy of certain documents.
3. 7/18/84 Written disclosure to Jerry Anderson regarding unspecified violations of grievance procedure.
4. 11/7/84 Disclosure to Anderson regarding timeliness of grievance procedure.
5. 12/20/84 Disclosure to Anderson regarding unspecified violations of grievance procedure.
6. 1/24/85 Disclosure to Anderson regarding grievance procedure violation.

7. 2/1/85 Disclosure to Anderson regarding grievance procedure violation.
8. 4/5/85 Disclosure to Anderson regarding grievance procedure violation.
9. 4/30/85 Disclosure to Anderson regarding grievance procedure violation.
10. 5/12/85 Disclosure to Anderson regarding grievance procedure violation.

Complainant contends that the following alleged conduct constituted illegal retaliation under the whistleblower law:

- a. 4/15 to 6/15/88 Refusal to restore/reinstate.
- b. 4/16/85 Required to sign a new position description, which represented a removal of duty assignments.
- c. 4/16/85 Two verbal threats by Anderson relating to the consequence of not signing the position description and of going to the Office of the Governor for a meeting.
- d. 4/17/85 Letter of suspension. The suspension letter alleged that the complainant had failed to complete two specific job assignments (indirect cost rates compilation and Extramural Fiscal Manual revision), failed to carry out the job responsibility of providing satisfactory review of proposals and failed to completely validate the accuracy of monthly long-distance telephone call billing information for the complainant's office telephone.
- e. 5/6/85 Denial of complainant's request for computer training.
- f. 5/13/85 Written threat in form of correspondence from Anderson.
- g. 5/13/85 Verbal threat by Anderson.

Complainant made discovery requests of the respondent by letters dated August 13, 1985, December 10, 1986, and March 10, 1987. On April 3, 1987, complainant filed a 22-page document described as his "first set of interrogatories plus demand for production of documents." Respondent filed

answers to these requests on June 12, 1987, and supplemented its answers on June 22, 1987.

On June 26, 1987, complainant mailed to respondent a 25-page document which was described as complainant's "first set of Demands to Admit or Deny and demands for production of documents." On July 30, 1987, respondent filed a motion for protective order and on August 19, 1987, the complainant filed a motion to compel discovery. Efforts to resolve the dispute informally were unsuccessful and the parties proceeded to file briefs.

By order dated September 9, 1988, the Commission granted Kurt M. Stege as the authority to issue a final decision of the Commission as to the motion to compel and the motion for protective order. In an interim order dated October 12, 1988, complainant's objection to providing respondent an additional period (for clarifying how complainant's June 26th and March 31st documents allegedly overlapped) was overruled. The respondent then failed to file any clarification during the period for doing so.

The complainant's June 30th discovery request is divided into two components. The first is a demand for the production of four sets of documents. The second is a series of approximately 100 requests for admission. In its brief in support of its motion for protective order, the respondent contended that the complainant's June 30th discovery requests were "oppressive, expensive or would result in an undue burden" on the respondent. The respondent goes on to offer four arguments in support of its contention.

I. Previously Answered

First, respondent contends that it has "already answered virtually all the matters inquired into, in its response to appellant's previously filed interrogatories." Respondent goes on to provide several examples in

support of its argument. All but one example deals with the complainant's request for admission.

The purpose of requests for admission is not necessarily to obtain information, as with other discovery devices, but rather to narrow the issues for trial. Webb v. Westinghouse Electric Corp., 81 FRD 431 (ED Pa, 1978). In contrast to information derived from other methods of discovery, any matter admitted under s. 804.11, Stats., "is conclusively established unless the court on motion permits withdrawal or amendment of the admission." S. 804.11(2), Stats. Therefore, nothing prevents a party from first obtaining information via a deposition or interrogatories and then seeking an admission covering the same information.

The complainant's June 30th discovery request also included a demand for production of documents. Respondent does not allege, nor does it appear, that the respondent has previously provided complainant with copies of 1) telephone receipts for a six-month period in 1985; 2) "all RPS A.O.A. financial reports" used by Ann Frank during a specified period; or 3) "telephone receipts for the required hand delivery of Mr. Wing's co-workers [sic]." The respondent alleges that complainant's fourth request (for copies of correspondence between UW-Stout and Rep. Shoemaker as described in respondent's June 22nd supplemental answer to complainant's April 3rd interrogatories) had "already been answered." However, there is no indication that the respondent had previously provided the complainant with copies of these letters. Respondent had merely stated:

Our files reveal that only three letters were sent to Richard Shoemaker in 1984. None dealt in any way with Mr. Wing.

Therefore, respondent's objections based on having previously supplied answers to complainant's June 26th discovery request are an insufficient basis for issuing a protective order.

II. Complainant Already in Possession of Materials

Respondent also contends that the complainant "is himself in possession of certain of the items he is asking respondent to produce." The argument again fails to recognize the purpose of a request for admission, as discussed above. The examiner has also reviewed the complainant's demand for production of documents and finds that none overlap the several documents that complainant appended to his discovery request.

Therefore, respondent's objection based on complainant already possessing materials which were sought in the subject discovery request is an insufficient basis for issuing a protective order.

III. Requests Relate to Other Proceedings

Respondent argues that "a number of [complainant's discovery] requests concern matters which are the subject of other proceedings." The fact that a request may relate to another proceeding is immaterial to determine the issue of whether a request relates to the instant proceeding. The separate issue of relevancy is reviewed in detail, below. However, respondent's objection based on requests relating to other proceedings is an insufficient basis for issuing a protective order.

IV. Irrelevancy

The respondent's final contention is that the complainant's requests for admission are irrelevant to the instant proceeding:

Further, many of the other matters about which appellant inquires in the "Demand to Admit or Deny" are totally irrelevant to the subject matter of the captioned case, or are simply arguments which respondent should not be expected to answer. The subject of Mr. Wing's use of a tape recorder in conversations with his supervisors at UW-Stout (see p. 11 of the "Demand to Admit or Deny") falls into this category. Not only is this topic not in issue in relation to Mr. Wing's disciplinary suspension, but many of the "admissions" sought are nothing more than Mr. Wing's own arguments as to what inferences should be drawn from

various pieces of documentary evidence. Other relevancy questions arise with respect to Mr. Wing's inquiries on events that occurred prior to the 60-day period of limitations set in s. 230.85(1), Stats., or which have been litigated in other cases. The frequently referenced incident involving office keys, for example, was considered in other proceedings before the Personnel Commission and resolved. Wing v. UW, Case No. 85-0122-PC. Matters of this kind have no bearing on the issues in this case, and will not lead to the discovery of potentially relevant evidence. Accordingly, respondent should not be required to answer questions on these subjects, and should be afforded the protection of an order to that effect.

* * *

Additionally, on p. 14 of the "Demand to Admit or Deny," appellant begins a series of questions related to events in 1986, twelve to eighteen months after he filed the instant case. Clearly, these matters are beyond the scope of allowable discovery here.

Pursuant to s. 804.01(2)(a), Stats., the general provisions setting forth the scope of discovery read as follows:

(a) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The examiner will interpret the respondent's irrelevancy objection as relating to all of the discovery requests contained in complainant's June 26th filing. Each of the requests is discussed below.¹

Entwined with respondent's objection based on relevancy is the contention that the matters inquired into are "simply arguments which respondent should not be expected to answer.... [M]any of the 'admissions'

¹ The following analysis focuses solely on the respondent's objection based on irrelevancy and, except where the request was so unclear as to preclude any analysis of relevancy, no other bases for objection to the requests have been considered.

sought are nothing more than Mr. Wing's own arguments as to what inferences should be drawn from various pieces of documentary evidence." If this contention were adopted, the primary purpose of requests for admission would be thwarted. The examiner is unable to locate any authority for the respondent's contention. Therefore, it is rejected.

1. Demand for production of documents

Items 1)² and 3)³ appear to have potential relevance to the letter of suspension. As to item 2),⁴ respondent has already taken the position that none of the three letters sent to Rep. Shoemaker deal "in anyway with Mr. Wing." The examiner concludes that the complainant's request fails to comply with s. 804.01(2)(a), Stats. Complainant's fourth itemized demand for production,⁵ though inartfully drawn, also relates to one of the allegations raised in complainant's letter of suspension.

² "1) Copies of all:
telephone receipts for the required hand delivery of Mr. Wing's telephone bills for the period of January 1, 1985 through and including June 30, 1985. Said telephone receipts were required to be given by Mr. Wing upon receiving his monthly telephone bill printout."

Note: In this and all subsequent footnotes in this ruling, the text of the complainant's discovery requests is set out verbatim and without corrections of spelling, grammatical or other errors.

³ "3) Copies of all RPS A.O.A., financial reports with any and all related documents or working papers used by Ms. Ann Frank for the period of March 1, 1985 through and including June 30, 1985."

⁴ "2) Copies of all correspondence between state legislator Richard Shoemaker and any and all UW Stout employees their agents referred by Ms. Hodulik in her response to Mr. Wings interrogatories."

⁵ "4) Copies of all telephone receipts for the required hand delivery of Mr. Wings co-workers for the period of January 1, 1985 through and including June 30, 1985 (see #1 above)"

2. Demand to admit or deny

Items I a)⁶ and b)⁷ could lead to admissible evidence if they establish a procedure which could affect the need to submit a separate monthly report of telephone calls.

Items I c),⁸ d),⁹ e),¹⁰ f)¹¹ and i)¹² are clearly relevant to the letter of suspension imposed against the complainant in April of 1985 which was based, in part, on the validation of telephone call billing information.

⁶ "I Telephone

a) Pat Hodulik on 12/21/83 and Jerry Anderson on 5/8/84 in writing both demanded Mr. Wing report to Stout monthly who Mr. Wing was contacting in his quest for reinstatement."

⁷ "b) Jerry Anderson in his 5/8/84 demand stated ' Provide a monthly report on your university phone and mail use which is unrelated to your assigned university responsibilities.'"

⁸ "c) Jerry Anderson did develop a procedure in writing which required Mr. Wing's monthly telephone bill to be hand delivered to Mr. Wing and Mr. Wing was to sign a receipt as to its delivery."

⁹ "d) On more than one occasion the hand delivery of Mr. Wing's monthly telephone bill with a required receipt was violated by persons other than Mr. Wing."

¹⁰ "e) Mr. Wing telephone bill for the period in question was not hand delivered to Mr. Wing and a written receipt was not attained as required by the written procedure."

¹¹ "f) The telephone bill in question was alleged to be deposited in Mr. Wing's mail box in lieu of being hand delivered as required per the written procedures."

¹² "i)The written procedures as to the monthly telephone bill prepared by Anderson which included among other things, the hand delivery of the monthly telephone bills and a required receipt of its delivery and a required response within (5) days was only required of Mr. Wing and not of his co-workers."

Items I g)¹³ and h),¹⁴ VII b)¹⁵ and h),¹⁶ X b),¹⁷ XVI,¹⁸ XVIII a)¹⁹ and b),²⁰ and XX²¹ are irrelevant because they seek an admission relating to a prior discovery request rather than to the substantive issues involved in the claim.

Items I j)²² and k)²³ request admissions relating to whether the

¹³ "g) Mr. Wing has in writing requested copies of all telephone receipts for the hand delivery of Mr. Wing monthly telephone bills for the purpose of perparing for case 85-0104-PC ER."

¹⁴ "h) Mr. Wing has not been provided with his request mentioned above."

¹⁵ "b) Ms. Hodulik [respondent's counsel] has refused to respond to questions as to the denial of work materials so Mr. Wing could complete his work assignments."

¹⁶ "h) Based upon the facts metioned in g above and Ms. Hoduliks response to Mr. Wings interrogatories dated 3/31/87, Question III, Ms. Hodulik has made a false claim."

¹⁷ "b) Mr. Anderson refusal of Mr. Wing's investigation rights memo dated 1/23/85 is proof that Ms. Hodulik made another false claim with her response to Mr. Wing interrogasory question."

¹⁸ "XVI Respondents have failed to answer appellants interrogatories questions IV n through Y."

¹⁹ "XVIIIa) Mr. Jerry Anderson has denied Mr. Wing's investigative rights in writting both on 9/27/84 and 1/23/85, contrary to Ms. Hoduliks written claim in responce to Mr. Wing's interrogatories."

²⁰ "b) Mr. Wing has been denied requested information, evidence for this case, namely receipts of hand delivered telephone bills."

²¹ "XX Based on the following evidence and existing documents:

- a) Jerry Anderson 5/13/85 written threat
- b) Jerry Anderdson written denial of Mr. Wing's investigation rights date 1/23/85

Ms. Hodulik has in responce to Mr.Wing's interrogatories questions IV and Z provided false claims or statements."

²² "j) Respondent have in their possession copy of all telephone monthly receipts for:

- 1) Mr. Wing
- 2) All of Mr. Wings co-workers"

²³ "k) Respondents have destroyed the monthly required telephone receipts, evidence in this case."

respondent has maintained receipts filled out for the delivery to complainant and/or his co-workers of monthly telephone billings. Although they are inartfully drawn, these requests could lead to admissible evidence.

Items II a)(1) through a)(4)²⁴ all relate to whether respondent caused "work related stress" at various times prior to the suspension. The examiner is unable to perceive how these requests might lead to admissible evidence given that the sole claim in this proceeding is under the whistleblower law.

Items III a) through v)²⁵ all relate to the statements in

-
- ²⁴ "II Work Created distress
- a) Work created distress was caused by Stout through:
- (1) refusal to timely provide Mr. Wing access to needed work material eg. per LAPP 82-31 so Mr. Wing could timely complete the Wang Project.
 - (2) Refusal to withdraw the created written reprimand 1/11/85 after finally providing Mr. Wing with the needed work materials 1/25/85 the Wang Project.
 - (3) Mr. Wing was forced to file a grievance complaining Stout to discontinuing to demand to know who he was contacting in his quest for reinstatement and he was successful.
 - 3) Making now proven false manufactured claims eg.the key affair which was finally force to be with drawn on 1/11/85.
 - 4) Vice Chancellor Wes Face Stipulated to proposal buy off attempt, 9/20/84, which included keeping Mr. Wing on state payroll for (1) year while searching for other employment and the condition he resign."

- ²⁵ "III Completion of work assignments
- a) A employee can not complete work assignments when he or she is denied access to work materials.
- b) Robert Alesch while speaking for the UW System President on audio tape stated in summary to Mr. Wing's question why can't I have access to needed work materials stated because you may have a differednt agenda than your supervisor whistleblowing.
- c) UW Stout refused Mr. Wing access to various records and information needed to complete, fullfill his work assignments was due to their fear Mr. Wing might blow the whistle, Mr. Wing's tendency to whistleblow.

complainant's letter of suspension that he did not complete certain work

d) Mr. Wing refused to violate LAPP 82-31 procedures in preparing the Wang chargeback [indirect cost] rate.

e) Mr. Robert Alesch in writing stated that all employees are required to comply with all rules regulations, statutes, which are pertaining to his or her work assignments.

f) Ms Joleen Dunn was responsible for providing Mr. Wing with data for completing the Grants Manual [Extramural Fiscal Manual].

g) The Grants Manual would not be complete without the data from Ms. Dunn.

h) Mr. Wing did not receive the needed materials from Ms. Dunn until 4/2/85 so he could complete the Grants Manual by 4/1/85.

i) Ms. Dunn copied Mr. Anderson with a memo dated 3/28/85 thus Mr. Anderson was fully aware Mr. Wing could not complete the Grants Manual by 4/1/85.

j) Jerry Anderson in a memo dated 1/24/85 stated in reference to the statement of rates and policies on indirect costs ' If you turn in two days in advance of February 4, the two over due assignments indicated above for me to review and see that they are in conformity with what is needed in accordance with how the assignment was made (that is that they are done fully and completely). and with those two assignments completed, consult with me regarding work load during the time you would be absent, so arrangements can be made, I will then consider another request from you for vacation for the period February 4-8.'

k) Mr. Anderson did approve Mr Wing vacation for the period of February 4 to the 8th, 1985.

l) Mr. Anderson did see, review and approved Mr. Wing's submission of both the Wang Project and rate of policies on indirect costs prior to approving Mr. Wing's vacation.

m) MR. Wing did 'turn in' said items mentioned in J, K, and M for Anderson to see, review and approve, prior to allowing Mr. Wing to take vacation for the period of 2/4 through 2/8, 1985.

(Indirect Costs)

n) Chancellor Robert Swanson suspension letter states: 'On February 8, 1985 (note Wing on vacation 2/8/85) he indicated in a memo to you the completed assignment was to be turned in to him by April 1, 1985. In that memo, he restated what he had stated to you in previous communications as to what was needed and not yet been received.'

assignments or comply with existing telephone policies/procedures and, therefore, are not irrelevant.

Item IV a)²⁶ is relevant to the extent that it seeks to establish who drafted the letter of suspension. Item IV b)²⁷ could produce an admission which might affect the reliability of the charges found in the suspension

O)Mr. Anderson had received the Indirect cost assignment on 2/1/85, seen it, reviewed it and approved it thus the statement in Chancellor Swanson letter is a false claim, because Mr. Wing had already completed and turned in the assignment prior to be allowed vacation 2/4 - 2/8/85.

p)Chancellor Swanson suspension letter states, as to the Grants Manual, 'You have not provided your supervisor with any redrafts of the manual by April 1, 1985, and not explained why.

q)Mr. Anderson was well aware of the fact Mr. Wing did not have in his possession the required material/data from Ms. Dunn necessary to complete the redraft of the Grants Manual by 4/1/85.

r)Mr. Wing received a written Thank you from Anderson after completing the Indirect cost assignment in January 26,1983 more than two (2) Years before the suspension.

(TELEPHONE)

s)Chaancellor Swanson's suspension letter states in reference to the telephone, 'and doing so within five working days of receipt of the printout.'

t)Mr. Wing did initial his monthly telephone bills after a written receipt of them.

u)Mr. Wing can not initial his monthly telephone bills as to being accurate untill both receiving them and or checking them as to being accurate.

v) Ms. Ann Frank failed to comply with established procedures by not hand delivering the monthly telephone bill to Mr. Wing. She placed the bill in Mr. Wing's mail box and did not secure a required receipt from Mr. Wing.

²⁶ "IVa) Mr. Jerry Anderson has admitted he wrote the wrongful retaliatory letter of suspension for Chancellor Robert Swanson."

²⁷ "b)Mr. Jerry Anderson has made false claims against other co-workers at UW-Stout."

letter. Item V²⁸ relates to the sequence of the suspension letter and alleged knowledge of whistleblowing activities and, therefore, meets the applicable standard of relevance. Items VI a) through c)²⁹ are within the permissible scope of discovery in that they relate to an alleged directive by complainant's supervisor not to invoke the whistleblower law. Items VII a),³⁰ XVII d)³¹ and XXIII b)³² seek admissions that certain topics are "relevant" to, or are issues in, the instant case. The examiner is unable to ascertain how such a request is "reasonably calculated to lead to the discovery of admissible evidence." Items VII c) through f)³³ all relate to the complainant's rights to make requests for public information. These

²⁸ "VThe suspension letter was dated 4/17/85, the following day Mr. Wing was informed of and told Anderson of his whistleblowing and second pending meeting with the Governors office, 4/16/85."

²⁹ "VIa)Jerry Anderson on audio tape directed Mr. Wing not to talk with state legislators.

b)Both Jerry Anderson and Rober Alesch have demanded that Mr. Wing produce the Anderson tape metioned in VIa.

c)Jerry Anderson has stipulated to such a discussion in early summer 1984, on audio tape, 10/12/84."

³⁰ "VIIa) The completion of work assignment and the denial of work materials is relevant to the suspension letter dated 4/17/85, thus this case 85-0104PC ER."

³¹ "d) The Grants Manual and/telephone bills are issues in this case."

³² "[b]) Facts and information concerning one Grants Manual is clearly relevant to this case 85-0104 PC ER."

³³ "c)Vice Wes Face in a momo dated 11/26/84 instructed Mr. Wing not to make requests for information.

d)Mr. Wing does have the right per the Wisconsin Open Records Laws to make requests for information.

e)Mr. Wing nor any other state employee does not lose his rights during working or non-working hours, such as under the Open Record;s Laws.

f) Mr. Wing can make requests per the Wisconsin Open Records law during, lunch or break periods."

requests are relevant in that such rights could relate to the complainant's protected activities under the whistleblower law. Item VII g)³⁴ is a request relating to respondent's knowledge, allegedly obtained after the instant claim was filed, of records maintained by complainant. The examiner cannot perceive the relevance of this request.

Items VIII a) through c)³⁵ refer to complainant's use of a tape recorder. This conduct appears to be the basis for complainant's allegation that he was threatened by Mr. Anderson on May 13, 1985. Therefore, the requests are relevant to the claim.

Item IX³⁶ seeks to establish conduct by respondent prior to the complainant's protected activity that was inconsistent with respondent's subsequent conduct. As such, the request is relevant.

Item X a)³⁷ appears to relate, at least in part, to the respondent's reaction to what was, arguably, a protected activity. The request is, therefore, permissible.

³⁴ "g) Ms Hodulik and or the respondents to have knowledge of what records Mr. Wing did maintain because they have a list of the records now held by the Menomonie Police Department."

³⁵ "VIIIa) Mr. Wing used his hand held tape recorder to protect himself from discrimination and Retaliatory actions including harassments, threats, false manufactured claims and in attempts to secure needed work information so he could be timely in completing all his work assignments.

b) There is not any UW System rule, regulation which prohibits the tape recording of certain work related meetings or discussion per Ms. Hodulik letter.

c) Jerry Anderson in writing threaten Mr. Wing with action beyond suspension for continuing to use his hand held tape recorder, dated 5/13/85."

³⁶ "IX Jerry Anderson recommended Mr. Wing for merit increase prior to Mr. Wing whistleblowing per Chapter 230 subch. III."

³⁷ "Xa Jerry Anderson refused Mr. Wing vacation time so Mr. Wing could attend a job interview, meet with a member of the Governors office and investigate Vice Chancellor Wes Face's buy off proposal dated approxly 9/20/84."

All of the items XI a) through i)³⁸ appear to relate to the complainant's contention that he was prevented from completing the work assignments mentioned in the suspension letter because he was denied necessary work materials. All of these requests are relevant given that theory.

Item XII³⁹ relates directly to the first of the seven alleged retaliatory actions identified by the complainant and listed at the beginning of the ruling.

Respondent contends that the series of questions beginning on page 14 of the complainant's discovery request related to events in 1986. The

³⁸ "XIa) Mr. Wing refused to violated LAPP 82-31 procedures in preparing the Wang charge back rates.

b) ON 1/11/85 Mr. Wing force Jerry Anderson to withdraw Anderson's false manufactured claim dated 1/9/85 that Wing violated local procedures in requesting keys for his office.

c) On the same day 1/11/85 Anderson issued two letters in reprisal, letters of reprimand to Mr. Wing.

d) On approx. 1/25/85 Jerry Anderson finally after more then a six month delay provided to Mr. Wing the work materials needed per LAPP 82-31 so Mr. Wing could complete the Wang project.

e) UW Stout refused to withdraw the work created distress letter of reprimand 1/11/85 after finally providing the required work materials on 1/25/88.

f) UW System attorney Pat Hodulik claimed its managements rights to provide or deny a employee with work materials so he or his can timely complete assignments.

g) Prior to Mr. Wing's whistleblowing per ch. 230 subchIII, Mr. Wing timely received needed work materials so he could complete work assignments such as chargebacks, computer rates, the Grants manual etc.

h) Mr. Wing did receive a hand written note of Thank you from Jerry Anderson for completing the Indirect cost information request dated 1/26/83.

i) On 1/11/85 Mr. Wing received a false letter of reprimand claiming Mr. Wing did not complete the Indirect cost information request."

³⁹ "XII Jerry Anderson has on more than one occasion refused Mr. Wing education or training per his request, also Mr. Anderson refused Mr. Wing education and training request between April 16 and June 16, 1985."

complainant did not contest this contention. As a result, item XIII,⁴⁰ which refers to respondent taking away complainant's tape recorder, is considered to postdate the instant complaint. Therefore, the scope of that request is inappropriate. Item XV⁴¹ also postdates the complaint and is inappropriate. Item XIV⁴² appears to refer to a statement allegedly made by complainant prior to his suspension. To the extent the request relates to that time period, it is relevant.

Items XVII a) through c)⁴³ all relate to the alleged threats on May 13, 1985, which are one of complainant's claims in this case. Therefore, these requests are within the permissible scope of discovery. For the same reason, item XIX,⁴⁴ which relates to complainant's claim of refusal to restore/reinstate, is appropriate.

⁴⁰ "XIII Jerry Anderson did take away Mr. Wing's state owned tape recorder that Mr. Wing was using to:

a) Protect himself from verbal false manufactured claims
b) Threats, harassments and
c) for requesting, securing work materials such as for the Grants manual etc. so he could be timely and accurate in all his work assignments."

⁴¹ "XV Respondents did receive a copy of Mr. Wing's 12/4/86 public disclosure which contained facts which they have now denied as being true."

⁴² "XIV Mr. Wing did on audio tape made a compliant that his typing support for items like the Grants manual was deliberately being delayed so he could be falsely accused of being untimely with his work assignments."

⁴³ "XVIIa) Jerry Anderson in a memo dated 5/13/85 made the following written threat: ' If you persist in continuing to tape record non-formal personnel meetings, action will be necessary beyond suspension.'

b)Mr. Wing did not violate any rule, regulation by continuing to use his hand held tape recorder in protecting himself from verbal threats, harassments and in efforts to attain needed work materials because accordidng to Ms. Hodulik letter dated 5/10/85 no such rule, regulation exists.

c)Wisconsin stats., 230.83(1) clearly prohibits threats as stated by Jerry Anderson in his 5/13/85 memo to Mr. Wing"

⁴⁴ "XIX Mr. Wing has been denied reinstatement to his former status by Pat Hodulik, Robert Alesch and Wes Face following Mr. Wing's properly filed disclsures."

Item XXI⁴⁵ relates to the protections of the whistleblower law. This request is relevant to the proceeding. Item XXII⁴⁶ is a request relating to the timing of the suspension letter relative to certain conduct, apparently alleged to be protected by the whistleblower law. This request is also within the scope of discovery.

Items XXIII a)⁴⁷ and XXIV⁴⁸ are requests as to whether respondent "discriminated" against the complainant. These requests are so vague as to prevent any determinations of potential relevance. Therefore, they are inappropriate.

⁴⁵ "XXI An employe has the right to protect themselves from any and all efforts to create false manufactured claims, harassments, threats and/or any other form of retaliation because he or she has a tendency to whistle(blow) per the encouraged disclosure laws, chapter 230, subchapter III."

⁴⁶ "XXII The suspension letter was dated 4/17/85, approxly (2) two weeks after the 4/1/85 date and the next day after Mr. Wing had both received word and informed Anderson of the pending meeting meeting, whistle blowing with the Governor's office, 4/16/85."

⁴⁷ "XXIII[a]) Mr. Wing was discriminated against, only Mr. Wing was required to submit to the procedures developed by Jerry Anderson which required he sign a monthly receipt for his telephone bill."

⁴⁸ "XXIV UW Stout has delibertely discriminated against Mr. Wing by refusing him access to required work materials, then issue letter of reprimand, making false manufactured claims against him, the key affair, then refusing to allow Mr. Wing to investigate the false manufactured claims, suspening him following Mr. Wing use of his constitutional rights at freedom of speech, March 1985 and planned whistleblowing and properly filed disclosures to his supervisor which have been investigated and proven to have been violated the Wisconsin Administrative code by least Stouts Vice Chancellor Wes Face."

Item XXIII c) through e)⁴⁹ relate to the Grants (or Extramural Fiscal Manual) Manual, which was one subject of the suspension letter. These requests are permissible.

Item XXV⁵⁰ refer to alleged comments by Mr. Alesch which arguably could indicate a view by respondent towards complainant's whistleblower activities.

Item XXVI⁵¹ seeks a survey of the attitudes of those individuals comprising the Board of Regents. The examiner cannot perceive of how the request could meet the requirements of s. 804.01(2)(a), Stats.

Finally, item XXVII⁵² is so vague that the examiner is unable to reach a determination as to possible relevance. Therefore, the request is inappropriate.

⁴⁹ "[c]) Ms. J. Dunn did state in her memo of 3/28/85 that Mr. Wing, received on 4/2/85 the following:

' I realize that the statements will have to be put into your format for the manual'

[d]) Such statements from Ms. Dunn needed for the manual would take at least (2) days to have reformatted and typed prior to the due date of 4/1/85.

[e]) Mr. Wing did present Mr. Anderson with the Grants manual on 4/4/85, the date Anderson returned to campus, without the J.Dunn materials.

⁵⁰ "XXV Mr. Robert Alesch on audio tape while speaking for the UW System President showed the Presidents resentment towards Mr. Wing by stating in regard to Mr. Wing's use of his freedom of speechWing was playing hard ball by going to the legislature, media and press."

⁵¹ "XXVI A majority (means 51% or more) of the Board of Regents agree with the following:

a) Whistleblowers such as Mr. Wing should be denied access to work materials then issued a letter of reprimand for not completing their work assignments.

b) With Wes Face buyoff - proposal approx. 9/20/84 now stipulated to through interrogatories.

c) False manufactured claims and the refusal to investigate them.

d) Deliberate created work distress."

⁵² "XXVII Stout gave rewards & punishments for testifying in cases before the Personnel Commission and Chanc. Swanson refused to allow an investigation into rewards & punishments."

ORDER

The complainant's motion to compel is granted (and respondent's motion for protective order is denied) as to the following:


- A. Demands for production of documents 1), 3), and 4)
- B. Demands to admit or deny I a) through f), i) and j); III; IV; V; VI; VII c) through f); VIII; IX; X a); XI; XII; XIV; XVII a) through c); XIX; XXI; XXII; XXIII c) through e); and XXV.

The respondent's motion for protective order is granted (and complainant's motion to compel is denied) as to the following:

- A. Demand for production of documents 2)
- B. Demands to admit or deny I g) and h); II; VII a), b), g) and h); X b); XIII; XV; XVI; XVII d); XVIII; XX; XXIII a) and b); XXIV; XXVI; and XXVII.

Pursuant to ss. 804.01(3)(b) and .12(1)(c)3, Stats., the examiner will contact the parties regarding possible further proceedings.

Dated: January 9, 1989 STATE PERSONNEL COMMISSION


KURT M. STEGE, Hearing Examiner

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RCR03/2