

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

DWIGHT BEAVERSON, \*

Complainant, \*

v. \*

Secretary, DEPARTMENT OF \*

TRANSPORTATION, \*

Respondent. \*

Case No. 88-0109-PC-ER \*

\* \* \* \* \*

RULING  
ON  
MOTION  
TO COMPEL  
DISCOVERY

This matter is before the Commission on complainant's motion to compel discovery filed June 14, 1989. Both parties have filed briefs.

The instant charge of discrimination was filed on June 30, 1988. It alleges age discrimination with respect to hire. Complainant alleged, inter alia, that he "participated in a civil service exam for the position of Motor Vehicle Supervisor 9 (Nine) on 4/5/88 and ranked second with a score of 95.23. The candidate who ranked first withdrew, yet two younger individuals with less experience and lower scores were hired." Complainant also alleged that this was part of a pattern of discrimination against complainant and, "that on at least two prior occasions he was qualified for similar promotional types of positions and was rejected for same."

On September 15, 1988, DOT (Department of Transportation) responded to complainant's "First Set of Interrogatories." It objected pursuant to Sec. 804.08(1)(b), Wis. Stats., to questions numbered 5, 8, and 10, respectively, on the ground that such questions were "irrelevant" to the issue raised in the Complaint. Respondent also asserted that the information requested in questions numbered 5 and 10 respectively was confidential. The questions

objected to by respondent are set forth below:

5. For the classification MVS9 list the educational requirements, training, experience, tests, evaluations, or other criteria used as factors in determination of suitability for appointment or promotion, the relative weight of each, and the grade, analysis, or other indicia requisite to acceptability for permanent appointment.

\* \* \*

8. Specifically identify the written examinations given for the classification MVS9, including at least the following information:

- (a) What agency or official is responsible for the preparation of such examinations;
- (b) What official or agency is responsible for administering such examinations;
- (c) What official or agency is responsible for scoring or grading such examinations;
- (d) What official or agency is responsible for establishing eligible lists based on such examinations;
- (e) What official or agency is responsible for evaluating the results of such examinations and determining their validity; and
- (f) What official or agency is responsible for receipt, investigation, and disposition of complaints concerning the grading, scoring, or ranking of persons taking such examinations.

\* \* \*

10. For the three (3) most recent examinations for the classification MVS9, provide the following information separately for each exam:

- (a) A list of all persons by name, address, and date of birth, who took the examination;
- (b) The score of each person listed in the answer to (a) above on the examination; and
- (c) The position, if ranked, of each person listed in (a) above on the eligible list established pursuant to the examination."

Complainant brought the present motion in order to compel production of the information requested above.

Section 804.01(2)(a), Stats., provides in part:

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter in the pending action...." (emphasis supplied)

Respondent's brief includes the following argument:

What is the subject matter of Dwight Beaverson's complaint? The complaint involves the failure of David Kussow, Director of the Bureau of Field Services, and Norbert Anderson, Administrator of the Division of Motor Vehicles, to select the Complainant from among 9 certified candidates for each of two vacancies in the Bureau of Field Services. Mr. Kussow and Mr. Anderson did not receive the examination score or rank of the certified candidates and that information therefore played no role in the post-certification selection procedure and appointment decision. The post-certification hiring process was a completely de novo procedure involving a structured employment interview and ratings by the three interview panel members. Final appointment was made from among the top five candidates following the employment interview. The Complainant was not one of these five finalists. Mr. Beaverson's complaint is one of individual disparate treatment in the post-certification decision of David Kussow and Norbert Anderson to appoint someone other than the complainant.

The complainant does not allege that the examination had a disparate impact upon him because of his age. The Complainant passed the examination with a score sufficiently high to be certified.

Question #5, concerning criteria for appointment or promotion, is not by its terms limited to the examination process. To the extent it seeks the criteria utilized by the appointing authority in the post-certification promotion decision, such information is clearly relevant. Furthermore, complainant should be allowed to compare the criteria used in the exam to the criteria used for the appointment. Even though he is not attacking the exam, per se, such a comparison has relevance to the pretext phase of this proceeding. Respondent also raises concerns about the confidential nature of the examination information, citing §§230.16(11), Stats., and ER-Pers 6.08, Wis. Adm. Code. Such concerns can be addressed by having the material submitted under seal to the Commission where it will be made available to complainant's counsel pursuant to an appropriate protective order.

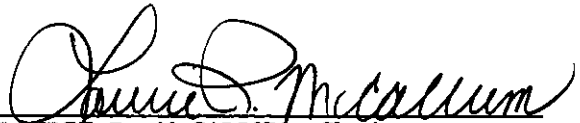
Question #8 seeks information concerning the officials or agencies responsible for the examination process for this classification. In light of the decision concerning Question #5 and the fact that complainant is alleging a pattern of discrimination against him, this information is also appropriately discoverable and does not appear to involve any confidential information.


Question #10 seeks information about persons who were examined in the last three examinations for this classification, including score, rank and date of birth. Since complainant is alleging a pattern of discriminatory conduct against himself, including at least two previous occasions where he was qualified but not promoted, but he has neither alleged a pattern or practice of discrimination against older workers generally nor attacked the examination process on either a disparate treatment or disparate impact theory, the Commission can discern no possible relevance of the information concerning those who took the exam but were not certified and were not eligible for appointment. Therefore, discovery will not be granted as to so much of Question #10 that relates to persons who were not certified as eligible for appointment following examination.


ORDER

Complainant's motion to compel discovery is granted in part and denied in part. Respondent is ordered to answer interrogatories #5, #8, and so much of #10 as relates to persons who were certified as eligible for appointment following examination. Any examination information falling within the confines of §ER-Pers 6.08(2), Wis. Adm. Code, may be submitted under seal to the Commission, where it will be available for inspection by complainant's counsel. Complainant and complainant's counsel are ordered not to disclose said information beyond the extent necessary to pursue this proceeding.

Dated: June 29, 1989 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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