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EUGENE MINCY,
 BRIDGET EMERY et al.,
 MELVIN L. HEISER,
 RICHARD A. HUNTINGTON,
 EUGENE J. MINCY,
 RONALD WHITE,
 LAUREEN THOEMKE,
 CARL HOEL,

Appellants,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 90-0229-PC, 90-0257-PC

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RULING ON
 PETITION FOR REHEARING
 AND REQUEST FOR
 ORDER TO STAY DISCOVERY
 RULING

On February 21, 1991, the hearing examiner issued a ruling on appellants' discovery motion. On March 1, 1991, respondent filed a "petition for rehearing and request for order to stay discovery ruling," and appellants filed a response on March 7, 1991.

Pursuant to §804.01(2)(a), stats., "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 Commission has reached the conclusion that based on the limited record before it the discovery permitted by the examiner's order falls within the boundaries of permissible discovery. The Commission is of the opinion that this conclusion can be reached on the first basis of the examiner's decision, and independently of the second basis for the examiner's decision, which begins at page four, first full paragraph, and continues through the second full paragraph on page five. Therefore, the Commission does not need to, and will not address respondent's contention that the second part of the decision involves an intrusion into an area outside the Commission's subject matter jurisdiction, and by denying this petition the Commission is neither reaching nor addressing the merits of that part of the examiner's decision.

The first basis for the examiner's ruling is summarized at page three of the decision as follows:

[I]nformation concerning the evaluation of positions in terms of the QES factors has obvious relevance to the evaluation of positions on the basis of the classification factors. The hearing record supports the conclusion that there is a good deal of similarity between the QES factors and the classification factors, and the classification factors obviously would come into play in a hearing of an appeal of a specific reallocation decision. This provides a basis of relevancy for the discovery of this material.

Respondent contends that, while the class factors are similar to the QES factors, they are not identical, and that the class factors will not be relevant at the hearing because appellants' positions are clearly identified by the classification definitions. In the Commission's opinion, the fact that the QES factors and the class factors are not identical is not a basis for denying discovery on relevancy grounds under §804.01(2)(a), stats. As to the second argument, the Commission is being asked, as part of the initial discovery proceedings, to reach a conclusion that would in effect decide a key issue regarding the merits based solely on the class specifications and the limited information about these positions that appellants have submitted in advance of the hearing. This limited record does not provide a sufficient basis for a conclusion that appellants' positions are so clearly defined by the class definition that discovery relative to the class factors would be outside the boundaries of relevance applicable to discovery.


ORDER

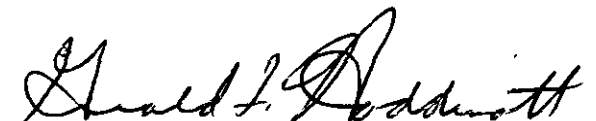
Respondent's petition for rehearing, filed March 1, 1991, is denied.

Dated: March 12, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner