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WILLIAM C. GOEHRING,
 Appellant,

v.

Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES, and
 Administrator, DIVISION OF MERIT
 RECRUITMENT AND SELECTION,
 Respondents.

Case No. 92-0735-PC

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PROTECTIVE ORDER

This matter is before the Commission on the request by respondent DMRS that the Commission issue a protective order with respect to the certain exam materials at DMRS. As reflected in a conference report dated January 10, 1993, respondent DMRS initially requested that the appellant be limited to reviewing the exam materials "at DMRS and that he be prohibited from copying the materials." Appellant asked that he be sent a copy of the materials rather than having to travel to Madison to view them.

In a letter dated January 19, 1994, respondent DMRS acknowledged that a prior Ruling on Motion for Protective Order, dated February 8, 1993, had ordered respondent DHSS to provide appellant with a copy of the "written exam with benchmarks." Based upon the existence of that prior order, respondent DMRS agreed in its letter to provide, under seal, the following documents to appellant:

- (1) copies of the completed AHQs, including the benchmarks; and
- (2) the number of points assigned to and awarded to each answer for Appellant and the other three candidates.

The effect of this agreement by DMRS was to eliminate the basis for dispute described in the January 10th conference report. DMRS then went on to request that the same protective conditions set forth in the Commission's February 8, 1993 order be imposed relative to the documents provided him by DMRS. In addition DMRS requested that

Appellant be given a deadline to determine which, if any, sealed documents he will use at hearing and then return those sealed documents which he will not use. Then, once this matter is closed, the Appellant will return to Respondent DMRS, all other sealed documents used by him at hearing.

Appellant objects to these further conditions, arguing that his preparation for the case is a "dynamic process" and that there might be confusion as to what constitutes the closure of this case in the event judicial review proceedings are initiated. Appellant also contends that the interview questions and benchmarks, which have previously been released to him by DHSS pursuant to the February 8th protective order (without the conditions now proposed by DMRS), are more sensitive than the exam materials which he will obtain from DMRS.

The Commission notes that DMRS was not a party in this matter at the time the Commission issued its February 8, 1993, ruling, and is entitled to input as to appropriate conditions on the release of examination information to the appellant. The interests of DMRS are consistent with the language of §230.16(10), Stats., which provides:

Every reasonable precaution shall be taken to prevent any unauthorized person from gaining any knowledge of the nature or content of the examinations that is not available to every applicant.

The Commission finds that the additional protections proposed by DMRS are consistent with limiting the possibility of unauthorized access to the exam materials. Therefore, the Commission grants respondent DMRS' request for additional protections to be applicable to the AHQ materials which are to be provided to the appellant.

ORDER

The motion by respondent DMRS for a protective order is granted. The respondent is directed to provide the appellant with a copy of the requested material. Those documents may not be copied and may be used by the appellant or his representative solely for the purpose of preparing for litigation of this case and may not be disclosed by the appellant or his representative for any other purpose, including that of applying for employment. The appellant

is directed to inform the Commission of the name and address of any expert or representative he intends to consult prior to divulging any of this material to that person so that the Commission can serve a copy of this order on such person prior to disclosure of the material. No later than the first day of hearing, the appellant shall return to respondent DMRS any of the material which appellant does not intend to use at hearing. In addition, the appellant shall return to respondent DMRS all remaining material he retains no later than the day on which this matter is finally closed, such closure date to reflect any period for pursuing an appeal of the underlying decision.

Dated: February 3, 1994 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner