

STATE OF WISCONSIN

PERSONNEL COMMISSION

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CHRISTINE JAQUES,

Complainant,

v.

Secretary, DEPARTMENT OF
CORRECTIONS,

Respondent.

Case No. 94-0124-PC-ER

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RULING
ON MOTION FOR
PROTECTIVE
ORDER

This matter is before the Commission on the complainant's motion for a protective order. The complaint was filed on August 29, 1994. In it, complainant alleges she was discriminated against based on her sex. The complaint includes the following statements:

1. Ms. Jaques has been employed by the Wisconsin Department of Corrections since October 18, 199[3] and has been stationed at the Racine Correctional facility since December 20, 199[3] in the capacity of an Officer 1.

2. During the course of a performance review given to Ms. Jaques by her immediate supervisor, Captain Milliren gender discriminatory remarks were made to her; to wit:

- "Its harder for us (women) to adjust".
- "Its difficult in an institutional setting for a woman".
- Ms. Jaques was advised not to "touch, toss or fix her hair" (while on duty).
- Ms. Jaques was advised not to "sit with legs apart" so as not to "show her crotch". (The standard uniform for female guards is comprised of pants and shirt.

* * *

5. Ms. Jaques was terminated for being tardy on five (5) occasions.

* * *

7. The Department has taken the position that termination of probationary employees is discretionary with the Department. Thus, it was the decision of the warden acting together with Captain Milliren to terminate Ms. Jaques.

* * *

9. Ms. Jaques, therefore, alleges that there is a pattern and practice of gender discrimination at the facility and that this discrimination resulted in her dismissal.

Complainant submitted Interrogatories and a Request for Production of Documents to the respondent on or about November 17, 1994. Respondent has raised objections to one of the interrogatories and to one of the requests for documents. Among the interrogatories was the following:

4. Please identify and describe in detail complaints by Plaintiff or other employees regarding gender discrimination or harassment by supervisory officers at Racine Correctional Institution, whether any internal investigations were held and the results of those investigations.

Respondent requests that discovery not be permitted and premises its request on the following contentions: 1) Because complainant's complaint "does not address any harassment," any discovery relating to harassment is neither relevant nor likely to lead to relevant evidence; 2) a protective order is necessary "to avoid unnecessary embarrassment and annoyance for and of RCI [Racine Correctional Institution] supervisors"; 3) complainant already possesses information relating to a previous complaint she had filed against a male supervisor; 4) respondent assumes that complainant's request relates to "internal RCI complaints" and requests a protective order, allowing respondent to redact the names of individual employees and limiting the disclosure to complainant's attorney, rather than complainant herself, and limiting the use of the materials to this complaint.

The request for documents included the following:

8. All documents pertaining to any complaints filed with the Wisconsin Personnel Commission; with such personnel as are designated to receive personnel complaints at the Racine Correctional Institution; or litigation, pending or completed pertaining to charges or allegations of gender discrimination at the Racine Correctional Institution or charges of harassment brought against Captain Milliren during the year 1992, 1993 and the period of January 1, through June 30, 1994.

Respondent's motion for a protective order from the Commission relating to these documents is premised on the following contentions: 1) "[I]nasmuch as Captain Milliren had nothing to do with the decision to terminate the complainant's probation..., the records the complainant seeks, if they exist, do not contain anything that is relevant to this matter or that is likely to lead to relevant evidence"; 2) that a protective order is necessary to "protect Captain Milliren from annoyance and embarrassment" and to preserve the attorney-client privilege and protect attorney work product; 3) the request is unclear in terms of the litigation and forum(s) to which it refers; 4) to the extent that complainant's request relates to "internal RCI complaints" respondent requests a protective order, allowing respondent to redact the names of individual employees and limiting the disclosure to complainant's attorney, rather than complainant herself, and limiting the use of the materials to this complaint.

Respondent filed an affidavit by Capt. Milliren to support its allegation that Capt. Milliren had no substantive involvement in the decision to terminate the complainant's employment. The affidavit states that Capt. Milliren "had no involvement in recommending to Acting Warden Dan Buchler that the complainant be discharged for tardiness or in Dan Buchler's decision to discharge her" and that Capt. Milliren's involvement in the transaction was limited to handing the discharge letter to complainant and briefly explaining why complainant was discharged.

Parties are entitled to carry out discovery, as provided in ch. 804, Stats., in matters pending before the Commission. The Commission's rules provide that the Commission "may issue orders to protect persons or parties from annoyance, embarrassment, oppression or undue burden or expense." §PC 4.03, Wis. Adm. Code.

The Commission understands the complaint in this matter to relate to the decision to terminate the complainant's employment as well as alleged harassment based upon the various "gender discriminatory remarks" attributed by complainant to Capt. Milliren.¹ Therefore, whether or not Capt. Milliren had a substantive role in the decision to terminate the complainant's employment,

¹In its answer to the complaint, respondent acknowledges that Capt. Milliren made the remarks referenced in the complaint. Respondent contends that the remarks were made "in a good faith attempt to advise new female officers... on ways of minimizing [sexual comments from] male prison inmates."

the complainant's request for information relating to other charges of discrimination/harassment which may have been lodged against Capt. Milliren clearly falls within the scope of permissible discovery because it relates to the harassment claim. The Commission concludes that the records and information sought by complainant are "reasonably calculated to lead to the discovery of admissible evidence." §804.01(2)(a), Stats.

The Commission next addresses respondent's contention that the documents request will generate "unnecessary embarrassment and annoyance" to Capt. Milliren. Respondent's only justification for this contention is that the material would be a "gross invasion of Ms. Milliren's privacy." While production of the documents should not be a burden to Capt. Milliren, complainant has agreed to respondent's request that these documents be provided to complainant's counsel and be used solely for purposes of this litigation.

The complainant's interrogatory requesting information relating to complaints regarding "gender discrimination or harassment" by supervisory officers at RCI, without limitation, is so broad as to constitute an "annoyance." The complainant must limit the request in terms of time and also to those supervisory personnel who were involved in the decision and the other conduct that is the subject of the complainant's charge of discrimination. Unless the complainant modifies her request within 15 days of the date of this ruling, the respondent should assume that the request is limited to complaints against Capt. Milliren, Acting Warden Buchler, and Wayne Cina (or any other individual identified by respondent as having participated in the decision to terminate complainant's probationary employment). Respondent should also assume that the request relates to complaints initiated during the period from January 1, 1992 through June 30, 1994.²

Respondent also contends that the documents request is unclear. The Commission interprets the request to refer to documents relating to claims of gender discrimination/harassment brought against Capt. Milliren in any forum or internally at RCI. Unless the complainant modifies her request within 15 days of the date of this ruling, the respondent should interpret the request in this manner. The Commission notes that in its response to the documents request, respondent stated that the "Personnel Commission records are open to

²This period is consistent with the period specified by the complainant in her request for documents #8.

public inspection and the complainant may inspect them at her leisure." This is not responsive to the complainant's discovery request which relates to the documents found in respondent's possession. It also fails to provide complainant with any method by which she may identify any complaints filed with the Commission which might relate to Capt. Milliren's conduct.

In responding to this and any other discovery request, the respondent may assert the attorney-client privilege or any other privilege that may apply to the particular document/information being sought by the complainant. To the extent the respondent has previously supplied the complainant with a portion of the requested documents, the respondent is not required to provide complainant with a second copy of those documents but is directed to specify those materials it is relying upon as having been previously supplied to complainant.

Finally, the respondent requests a protective order, allowing it to redact the names of individual employes on "internal RCI complaints," limiting the disclosure of that information to complainant's attorney rather than complainant herself, and limiting the use of those materials to this complaint. The complainant has not objected to this request, and the Commission will grant it as it does not appear to be unreasonable and is consistent with the goal of providing protection to information/material of a disciplinary nature.

ORDER

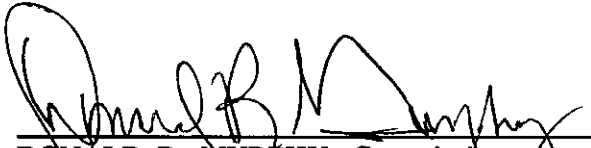
The respondent's motion for protective order is granted in part and denied in part, as indicated above. In providing documents relating to internal RCI complaints, respondent may redact information consistent with this ruling and information and documents relating to internal RCI complaints or other discrimination complaints or charges regarding Capt. Milliren shall be disclosed to complainant's attorney rather than directly to complainant. The information/documents may be used by the complainant solely for the purpose of litigating this matter (or related cases involving identical or similar

issues in other forums and involving the same parties), and may not be disclosed by complainant or her representative for any other purpose.

Dated: March 31, 1995 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner