

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ANDREW J. TOMASZEWSKI, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0001

Case Type: PA

DECISION NO. 35077-A

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**Appearances:**

James C. Koppelman, Schmitt & Koppelman, S.C., 1029 E. Main Street, P.O. Box 176, Merrill, Wisconsin, appearing on behalf of Appellant Andrew J. Tomaszewski.

Karl R. Hanson, Office of State Employment Relation, 101 E. Wilson Street, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

**DECISION AND ORDER ON MOTION FOR SANCTIONS**

In April of 2014, Tomaszewski lost his job at the Department of Corrections for allegedly kissing a female coworker on the neck. He was awarded unemployment compensation benefits after a contested hearing at which he appeared by legal counsel and the DOC appeared by its security director. Tomaszewski then pursued his § 230.44, Stats., appeal through the grievance procedure and ultimately to the Wisconsin Employment Relations Commission. The matter was assigned to Examiner Lauri A. Millot. Examiner Millot established November 14, 2014, as the discovery deadline. On October 9, 2014, counsel for DOC submitted 7 requests for admission pursuant to § 804.11, Stats.; 7 requests for production pursuant to § 804.09, Stats.; and 23 interrogatories pursuant to § 804.08, Stats. The discovery requests were voluminous and the interrogatories included a number of subparts further extending the volume. While we may well have concluded that, given the largely undisputed factual circumstances (a video of the incident existed), the discovery may have needed some refining, counsel for Tomaszewski choose to simply ignore the requests. If Tomaszewski objected to some or all of the discovery, he had the option of seeking a protective order under § 804.01(3), Stats. Ignoring discovery requests is never warranted and not surprisingly resulted in a request for sanctions.

We understand that on January 27, 2015, some responses were provided, but the interrogatories were not submitted under oath as required. DOC is entitled to full and complete responses to all discovery requests submitted to Tomaszewski. Any right to object has been waived by prior inaction. The conduct of counsel for Tomaszewski is inexcusable and demonstrates a lack of respect for the process. The “explanation” for the failure to respond includes statements to the effect that “everything is in the unemployment compensation record” and that there are “no surprises.” Attendance at two funerals is also offered as a partial excuse.

The “explanation” is woefully inadequate and underscores the need for action. We are somewhat limited in our ability to fully sanction the conduct of counsel by the lack of ability to award financial sanctions. *See Wisconsin Department of Transportation v. Personnel Commission*, 176 Wis.2d 731, 500 N.W.2d 664 (1993). Nevertheless, Wis. Admin. Code § 93.03 does permit us to take action to compel discovery and protect the moving party from undue burden or expense. Accordingly, we will treat the motion for sanctions as a motion to compel discovery and grant the motion. Pursuant to Wis. Admin. Code § 93.03, we issue the following:

### ORDER

- a) Tomaszewski shall fully and completely respond to all of the discovery previously submitted by DOC.
- b) Any wage loss occurring from December 1, 2014 through the date of the hearing will be excluded from any back pay calculation.
- c) All discovery responses will be filed with Examiner Millot and the Commission;  
and
- d) The Commission will retain jurisdiction over this matter until it is satisfied that the discovery responses are complete at which time the matter will be scheduled for hearing.

Signed at the City of Madison, Wisconsin, this 14th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner