

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

YVETTE WHITE-WACKETT, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0159

Case Type: PA

DECISION NO. 36420

Appearances:

Sean Daley, AFSCME Wisconsin Council 32, Post Office Box 19, Ashippun, Wisconsin, appearing on behalf of Yvette White-Wackett

Michael J. Gentry, Department of Administration, 101 E. Wilson Street, 10th Floor, Post Office Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Corrections.

DECISION ON MOTION TO COMPEL

Appellant Yvette White-Wackett is challenging the denial of hazardous duty benefits which are provided for under § 230.36, Stats. She has a hearing scheduled before a Commission examiner.

White-Wackett's agent has requested that the state make twelve state employees he believes have relevant information regarding this matter available for interviews during the employees' normal work schedules and in paid status. The state has refused to do so and White-Wackett filed this motion to compel them to do so.

No authority is offered in support of this assertion and the argument is generally that it is just not fair that counsel for the state has easy, unfettered access to state employee witnesses and White-Wackett does not enjoy that benefit.

There is nothing to prevent White-Wackett's agent from contacting witnesses when they are not working and interviewing them.¹ As for those witnesses who will not cooperate or

¹ The direct contact without going through counsel is permissible only for non-management personnel. For purposes of this decision, we are assuming the employee witnesses are not managers or supervisors of

those in a managerial capacity, they may be forced to give testimony under oath in a deposition. § 804.05, Stats. A less expensive alternative would be written interrogatories under § 804.08, Stats., or requests for admissions under § 804.11, Stats. There is no question that counsel for the state has an easier time contacting employee witnesses than outside adversaries. That, however, is true of anyone bringing a claim against an entity. It would be a rare organization that would allow counsel for a party bringing suit against it to wander the halls during business hours interviewing employees.

Finally, even if we thought such access was required to level the playing field, we likely lack the authority to order the state to allow access to its employees during the workday while they are on paid time. *Cf. Wisconsin Dept. of Transportation v. Personnel Commission*, 176 Wis.2d 731, 500 N.W.2d 664 (1993).

Accordingly, we enter the following:

ORDER

Appellant Yvette White-Wackett's motion to compel is denied.

Signed at the City of Madison, Wisconsin, this 31st day of August 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

White-Wackett.