

STATE OF WISCONSIN

PERSONNEL COMMISSION

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WALTER FRIEDMAN,
 Complainant,
 v.
 President, UW - Center
 (Manitowoc County),
 Respondent.
 Case No. 84-0033-PC-ER

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INTERIM
ORDER

On March 15, 1984, the complainant filed a complaint of discrimination with the Commission, alleging that respondent discriminated against him when its University Renewals Committee decided, in May of 1982, not to renew his employment contract. Complainant alleges that the respondent's decision was improperly based upon his race, creed and/or arrest/conviction record. The complainant states, in part, as follows:

April/May 1982 the University Renewals Committee chaired by Professor Arendt with Dean Natunewiecz, ex officio, met in secret and considered confidential information about my arrest for shoplifting at a department store - improperly - brought to the Dean by a student who caught me. Another student just informed me of the dispicable occurrence - in confidence.

In a "Motion for Bill of Particulars" dated June 15, 1984, the respondent requested that the complainant be directed to supply (1) the identity of the student who "just informed" the complainant about the Committee meeting, (2) the date, time and location that the student provided the information, and (3) the manner in which the communication was made. Respondent specified that the purpose of its request was "to ascertain

when, in fact, [the complainant] was so advised and whether, in fact, he has filed his charge in a timely manner."

In a letter dated June 28, 1984, the complainant answered the respondent's three questions by stating:

1. The student wishes to remain anonymous. I respect the student's wishes.
2. To the best of my knowledge and recollection the student telephoned me early in January in a Manitowoc location at 8:00 p.m.
3. Oral - telephone.

By letter dated July 5, 1984, the respondent indicated that complainant's response was inadequate. The Commission advised the complainant that it would construe the respondent's letter as a motion to compel discovery and provided him an opportunity to submit written arguments.

The Commission's rules provide that parties appearing before the Commission may utilize the methods of discovery set forth in ch. 804, Stats. §PC 2.02, Wis. Adm. Code. The Commission's discovery rule is not restricted to appeals filed pursuant to § 230.44(1), Stats., and, therefore, should be applied to any contested case filed with the Commission under § 230.45, Stats., including complaints of discrimination.

Pursuant to § 804.01(2)(a), Stats., the scope of permissible discovery is very broad:

. . . Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. 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.

In the present case, the respondents request for information (in the form of a bill of particulars) appears to be designed to elicit information to determine whether or not the complaint was timely filed. The information clearly relates to a "defense of the party seeking discovery" as provided §804.01(2)(a), Stats. There is no recognized statutory privilege that would apply to the circumstances of this case and permit the complainant to decline to provide the information sought. Therefore, the requested information is discoverable and the complainant is required to respond completely to the questions posed by the respondent in its June 28, 1984 letter.

ORDER

The respondent's motion to compel is granted and the complainant is ordered to provide complete responses to the questions in respondent's June 28th letter.

Dated: Aug 1, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

KMS:jab


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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