

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ABDULLAH ASADI, *

Complainant, *

v. *

President, UNIVERSITY OF *

WISCONSIN SYSTEM (Platteville)*

Respondent. *

Case No. 85-0058-PC-ER *

* * * * *

INTERIM
DECISION
AND
ORDER

This complaint of national origin discrimination is before the designated hearing examiner because of a dispute between the parties relating to the production of certain documents.

In an interim order dated November 13, 1987, the examiner considered complainant's motion to compel and respondent's motion for protective order. The interim order directed the respondent to provide complainant with either copies of certain generally-described materials or to provide him access to the respondent's files containing those materials.

After the examiner issued a ruling on December 14, 1987, denying complainant's request to modify the prior order, the complainant and respondent's counsel finally met at the University of Wisconsin-Platteville so that the complainant could commence reviewing the files containing the materials in question.¹

¹ In a letter dated March 5, 1988, complainant specified that his agreement to review the files on March 22, 1988 "should not be mistaken for the idea that I have agreed to the interim decision and order which was issued on November 13, 1987."

On March 25, 1988, respondent filed a letter indicating that the parties had spent about six hours reviewing files on November 22, 1988, and that many more hours would be necessary to complete the review. Respondent also requested the following:

1. Discussion of setting a date by which the parties must complete discovery.
2. Agreement by the complainant that
 - a. the respondent would make one copy of each document requested by complainant;
 - b. the complainant would pay for the copies at the time they are given him; and
 - c. complainant would preserve the confidentiality of documents from the personnel files of respondent's employees.

A telephone conference was conducted with the parties and the examiner on April 5, 1988. Once it became clear that the parties could not agree as to the above request, the examiner provided the parties an opportunity to offer oral arguments in support of their positions.

A. Method and Cost of Copying

Complaint has proposed four alternatives for obtaining copies of the requested documents.

1. Once complainant identifies each document he wants copied, respondent is to mail the documents from Platteville, Wisconsin to complainant's home in Davenport, Iowa, where complainant has access to a photocopier that he may use without cost.
2. Respondent's counsel is to hand-deliver the documents to complainant's home in Davenport, Iowa.

3. Complainant will provide respondent with ink and paper and perform the photocopying himself on a machine provided by respondent at the site of the documents in Platteville.
4. Complainant will pay \$0.01 per page for respondent to make the copies using respondent's material and labor.

Respondent agrees to use its own employes and photocopier to provide complainant with a copy of each requested document at the cost of \$0.05 per page, payable at the time of receipt of the documents.

The cost of copying items as part of a discovery request typically rests with the party requesting production of the documents. Niagra Duplicator Co. v. Shackelford, 160 F 2d 25 (DC App., 1947). Also see Discovery Practice, Haydock & Herr, Little Brown, 1982. In terms of the place and manner for inspection and copying, there are a variety of factors that can be identified:

1. the feasibility of physically moving the requested items to some designated place.
2. the availability of copying machines at the place to be designated.
3. whether additional personnel will be necessary to facilitate production and inspection.
4. whether the requested discovery will be disruptive of the responding party's daily operations.

Bender's Forms of Discovery, §4.09[3][d][iii].

As is explained in the November 13, 1987, order, and due to the sheer volume of the materials sought in complainant's discovery request, the respondent was given the option of either photocopying the requested files or allowing the complainant to review the files themselves in Platteville. The other consideration here is that many of the files contain personnel records of a confidential nature.

Based on consideration of the above factors as well as the reasonableness of a \$0.05 per page copying charge, the examiner directs that any

photocopying of documents requested by the complainant from the respondent pursuant to the order of November 13, 1987, be provided by the complainant at the cost of \$0.05 per page plus any applicable state sales tax. This amount is to be paid by the complainant at the time the documents are provided to him.

In reaching this conclusion, the examiner has considered the complainant's arguments that the result will place an unreasonable financial burden on him. However, it would be unreasonable to require the respondent to finance the preparation of the complainant's case.

B. Confidentiality of Copied Documents

Respondent's letter of March 25, 1988 specifically requests restriction on the complainant's use of the copied documents.

[C]onsistent with the provision in your November 13, 1987 Order that: "The complainant will be directed not to divulge the material beyond the extent necessary for pursuing his claim..." documents from personnel files of UW-Platteville employees may be used only for this hearing; the contents of those confidential documents may not be disclosed to any party except a party associated with this hearing, such as Mr. Asadi's attorney or Personnel Commission staff involved in this matter; at the hearing, confidential information which the parties seek to introduce into evidence must be done in such a way as to protect the anonymity of such persons referred to in the information; the complainant may not make additional copies of confidential documents without the expressed approval of the Commission; and provision be made to return or destroy confidential documents provided for discovery but not admitted into the record at the hearing in this matter.

Complainant's primary concern regarding the respondent's request was that it might interfere with his ability to contact prospective witnesses.

The respondent's request appears to be unnecessarily restrictive in several areas. The examiner finds it more effective to clarify and, as necessary, modify, the language in the November 13th decision and order to read as follows:


The personnel documents which respondent provides to the complainant are to be introduced into the record of this case in a manner designed

to prevent the identification of those individuals. The complainant is directed not to divulge the personnel materials beyond the extent necessary to pursue his claim. Therefore, the complainant is expressly permitted to utilize the materials when consulting with an attorney, the Commission's staff or, as may be necessary to pursue his claim, a witness. Additional copies of the materials may only be made by the complainant as are necessary to pursue his claim. The documents are to be destroyed or returned to the respondent when they are no longer necessary to the complainant's claim.

As to the respondent's first request, relating to a date for completing discovery, the parties set three additional dates (May 3, 10 and 17, 1988) for continuing their review of files in Platteville. If their review is not completed by the last of these dates, either party may contact the examiner for a discussion regarding the establishment of a date for completing all discovery.

Dated: April 7, 1988 STATE PERSONNEL COMMISSION

KMS:rcr
RCR02/2


KURT M. STEGE, Hearing Examiner