

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 DAVID WING, *
 *
 Appellant, *
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 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM, *
 *
 Respondent. *
 *
 Case Nos. 85-0077-PC & *
 85-0104-PC-ER *
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RULING
 ON
 MOTION
 TO
 COMPEL

These matters are before the Commission on a motion to compel discovery filed by appellant/complainant (hereafter referred to as appellant). Case No. 85-0077-PC was filed under §230.44(1)(c), Stats., as an appeal of a suspension and Case No. 85-0104-PC-ER sought review under the whistleblower law, §230.83, Stats., of various personnel actions, including the suspension.

A prehearing conference was held in 85-0077-PC on June 24, 1985. The conference report reflects that the parties agreed to an issue for hearing and agreed "to hold this matter in abeyance pending investigation of a whistleblower complaint to be filed by the appellant".

In a letter to the respondent dated August 13, 1985, and referring to Case No. 85-0077-PC, the appellant asked the respondent to respond to "his first set of discovery questions". By letter dated August 22, 1985, respondent postponed any response to the discovery request:

I received your letter dated August 13, 1985 concerning the above case. In that document you purport to make a discovery request. You may, however, recall that we have agreed -- and it is reflected in the prehearing conference report -- that proceedings in this case will be held in abeyance pending the investigation of your

whistleblower complaint concerning the same subject matter. Accordingly, my response to your discovery request will also be postponed.

Appellant objected to the postponement and in a letter dated September 5, 1985, said that the information he requested was "needed for this pending investigation for [his] whistleblower complaint [85-0101-PC-ER]". Appellant went on to make the following request:

May I have an immediate order from the Commission per PC 2.02 directing the UW to timely and properly respond to all of my discovery and investigative needs thus granting me full and timely due process?

The parties were provided an opportunity to submit arguments on appellant's request as it related to both 85-0077-PC and 85-0104-PC-ER.

The Commission's rules provide, in relevant part, as follows:

PC 2.02 Other means of disclosure. Parties shall have available all the means of discovery that are available to parties to judicial proceedings as set forth in ch. 804, Stats., to the extent that the same are not inconsistent with or prohibited by these rules of the Wisconsin Statutes or the Wisconsin Administrative Code.

Nothing in the Commission's rules or in the relevant statutes suggests that parties to only certain types of the cases filed with the Commission can utilize the discovery procedures referred to in §PC 2.02, Wis. Adm. Code. Although the Commission has not yet issued any rules under §230.89(1), Stats., for carrying out its responsibilities under the whistleblower law, the language of §PC 2.02, Wis. Adm. Code, is broad enough to include the parties to a whistleblower complaint.

Respondent contends that discovery in 85-0077-PC is inappropriate in light of the parties' agreement to hold the matter in abeyance. In Webster's Third New International Dictionary, "abeyance" is defined as "temporary inactivity or suppression, cessation or suspension". Appellant's discovery

request in 85-0077-PC is inconsistent with the state of inactivity agreed to by the parties. The motion to compel should, therefore, be denied as to that case.

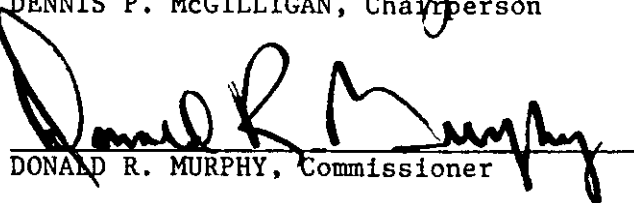
ORDER

Appellant's motion to compel is granted in part and is denied in part. As to 85-0104-PC-ER, the respondent is directed to prepare a response to appellant's August 13, 1985 discovery request within 30 days of the date of this order. This order does not preclude the respondent from raising objections to specific questions posed in the appellant's request. Appellant's motion as to 85-0077-PC is denied.

Dated: February 6, 1986

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

Commissioner Laurie R. McCallum did not participate in the consideration of this matter.

KMS:jgf
JGF002/2

Parties

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