

JEFFREY ALLEN, et al.,

Appellants,

v.

Administrator, DIVISION OF  
MERIT RECRUITMENT AND  
SELECTION

Respondent.

Case No. 89-0124-PC

RULING ON  
MOTION  
TO  
COMPEL

This appeal arises from the action of the respondent screening out the appellants during the Fiscal Supervisor 1 examination process pursuant to a review of their resumes. The Commission convened a prehearing conference on October 16, 1989. During the conference, a hearing was scheduled for November 20 and 21, 1989. On October 17th, the appellants filed a written request with the respondent for "voluntary disclosure" of 10 listed items:

- 1) Job expert's name and selection criteria
- 2) Instructions from [sic] job experts
- 3) Job criteria developed for Fiscal Supervisor I position
- 4) Resumes and letters of application for all applicants
- 5) Evaluation forms, rating system and ranking for all applicants (for first step)
- 6) Any statistical analysis for the first step
- 7) Names of 20 applicants selected for second step
- 8) Any written justification or analysis for using resumes as ranking instruments
- 9) Any written justification for selecting 20 applicants only.
- 10) Ranking for previous Fiscal Supervisor I examination (all applicants)

On October 25th, the parties agreed to the following issue for hearing:

Did the decision of the respondent to use a "resume screen" for the Fiscal Supervisor 1 vacancy announced on August 27 and September 1, 1989, violate §230.16, Stats.

Respondent responded to the appellants' October 17th request in a letter dated October 25, 1989, which was received by the Commission on October 26th. The

response stated in part: "As I understand it, you do not intend your request to be one made pursuant to PC 4.03, Wis. Admin. Code." The response to requests 4, 5, 7 and 10 read as follows:

This information may not be released pursuant to secs. 230.13 and 16(10) and (11), Stats., ER-Pers 6.08, Wis. Admin. Code, and MRS-19 (April 26, 1985)

The final paragraph of the response stated:

The respondent has objected based on applicable law to disclosing certain of the information requested. However, in cases such as this, it is the practice of the respondent to attempt to work with appellant(s) through the Commission information [sic] to reach agreement on under what circumstance and in what form the information may be disclosed.

On October 30, 1989, the appellants filed a motion for the Commission to compel discovery of the materials described in the October 17th request. The undersigned convened a conference with the parties on November 1st, in which the motion was discussed and an oral ruling on the motion was made. This document summarizes the conference and sets out the ruling in written form.

During the conference, the respondent made it clear that it had treated the October 17th request as a request under the Open Records Law rather than a discovery request made under §PC 4.03, Wis. Admin. Code, and ch. 804, Stats. Respondent also stated that to the extent it received a discovery request for those materials described in the October 17th letter, it would be willing to respond to the entire request except for 10), as long as appropriate safeguards (of the type set forth in Doyle v. DNR & DMRS, 86-0192-PC, 3/4/87 and 3/24/87) were imposed. The appellants agreed to the imposition of the safeguards and also agreed to modify request 10) so that a) the respondent would only have to provide the ranking of those applicants tested by the earlier exam who also took the later exam and b) so the identity of the individuals could be protected by a code consistent with the coding used to answer the other requests.

The respondent contended that the materials sought by request 10) were not discoverable because they were irrelevant to the matter at issue in that the prior Fiscal Supervisor 1 examination was a different exam, with different questions and with different graders, especially in light of the statutory protection accorded to exam results by §230.13, Stats. However, the material

sought appears to be relevant to the determination of whether the 1989 examination process violated the applicable statutory requirements: If someone passes examination A which is presumptively valid, then one could infer that the same person would pass another examination for a similarly classified position if that examination was also valid. Even if the material is not itself relevant, it "appears reasonably calculated to lead to the discovery of admissible evidence." §804.01(2)(a), Stats.

The respondent also contended that it should be allowed at least 30 days in which to respond to any discovery request filed by the appellants and sought some clarification as to when it would be deemed to have received such a request. In light of the nature of this case, the subject matter involved, the lack of authority for the Commission to grant interlocutory relief and the previously established dates for hearing, the respondent is provided until November 10, 1989, to supply the requested materials in the manner set forth below.

During the course of the conference, the appellants stated that they also intended to file a sets of interrogatories directed to Mr. Bell and Mr. Wallock at the respondent Division of Merit Recruitment and Selection. Those interrogatories are to be filed by November 3, 1989, and the responses are due no later than November 15, 1989.

ORDER

Respondent is ordered to submit to the Commission no later than November 10, 1989, the material (or copies thereof) sought in the appellants' request dated October 17th. The Commission will maintain this material on a sealed basis. The respondent may substitute some form of coding in lieu of the actual names of the examinees found in the materials sought in requests 4), 5), 7) and 10). The appellants will have access to the material and may photocopy it, but are directed not to divulge the material beyond the extent necessary for the processing of this appeal. The appellants are directed to inform the Commission of the name and address of any expert or attorney they intend to consult prior to divulging any of said material to any such person, so that the Commission may serve copies of this order on such person prior to disclosure of the material, and any such person is directed not to disclose the examination materials to the public or outside the confines of this proceeding.

Dated: November 2, 1989      STATE PERSONNEL COMMISSION

  
KURT M. STEGE, Hearing Examiner

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