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EUGENE J. MINCY,
BRIDGET EMERY et al.,

Appellants,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case Nos. 90-0229-PC
90-0257-PC

* * * * *

RULING ON
DISCOVERY
MOTION

These are appeals of reallocations that followed a survey. This is a ruling on appellants' request for an order compelling discovery, filed January 9, 1991. A hearing on the motion was held before the undersigned hearing examiner on February 7, 1991. The discovery requests and the agency's responses will be set forth and discussed individually.

1. Copies of the Job Content Questionnaire for use in the Department of Revenue mini-survey for the classes of positions within the Department of Revenue, I & E, that were reallocated to Pay Range 13, 14, and 15.

Response: I have been advised that all employees in DOR who were covered by the survey, were given information on the Job Content Questionnaire. Unless you indicate that you no longer have this information, and would like us to issue you another copy, we believe you already have this information.

At the motion hearing, it was clarified that this request ran to copies of all completed job content questionnaires. Respondent augmented its response by objecting on the ground that this material was neither relevant to the issue for hearing nor would it be reasonably calculated to lead to the discovery of relevant evidence, as it relates to the methodology of how the new class specifications were created. Respondent further asserted that the completed job content questionnaires were not retained by either DOR or DER.

Given the assertion that respondent does not possess documents, the motion to compel discovery must be denied. Appellants could renew this

motion if they were able to support it with adequate evidence that such documents indeed were in respondent's possession, but there is no evidence in the record of the hearing held on the motion that disputes respondent's contention in this regard.

2. Copies of the Composite Evaluation Form (CEF) Survey completed by all fiduciary and inheritance tax section audit staff in pay range 12.

Response: DER declines to provide you this information on the grounds that it is confidential, that it goes to the issue of the methodology of the survey, and that it is therefore not relevant to the issues before the Commission.

After further discussion of this item at the hearing on the motion, respondent asserted that these documents also were not in its possession. Therefore, the ruling on this item is the same as item #1.

3. Copies of the corrected and original Job Content Questionnaire Department of Revenue Survey Composite completed for all Fiduciary and Inheritance Tax Section audit staff in pay range 12 (Auditor II, Audit Specialist IV).

Response: DER declines to provide the above information on the grounds that it is not relevant to the issues before the Commission because it goes to the issue of the methodology of the survey, and the Commission does not have jurisdiction to review survey methodology.

Appellants' motion to compel discovery will be granted as to this item for the following reasons.

It is a correct statement of law that the Commission does not have jurisdiction to review survey methodology per se, see Kaminski v. DER, No. 84-0124-PC (12/6/84). This is because the Commission's jurisdiction over personnel decisions by the Secretary of DER under §230.44(1)(b), stats., is limited (as relevant to this case) to decisions under §230.09(2)(a), stats., which provides in part:

[T]he secretary shall allocate each position in the classified service to an appropriate class on the basis of duties, authority, responsibilities or other factors in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis. (emphasis supplied)

Therefore, the Commission has authority (again, as relevant here) to hear appeals of decisions to reallocate positions.

The Secretary's authority to conduct personnel surveys and to establish new classification specifications or to modify existing ones is set forth in §230.09(2)(am), stats:

The secretary shall maintain and improve the classification plan to meet the needs of the service, using methods and techniques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the secretary after taking into consideration the recommendations of the appointing authority, or at his or her own discretion. The secretary shall establish, modify or abolish classifications as the needs of the service require.

Since the Commission's authority to hear appeals under §230.44(1)(b), stats., includes decisions under §230.09(2)(a), but does not include decisions made under §230.09(2)(am), it is clear the Commission lacks the authority to hear appeals of those decisions set forth in §230.09(2)(am) — e.g., decisions to "establish, modify or abolish classifications."

Now, returning to the particular situation presented by this motion, respondent's argument that appellants' discovery request for copies of these composites is outside the boundaries of relevance "because it goes to the issue of the methodology of the survey, and the Commission does not have jurisdiction to review survey methodology," rests basically on two premises. The first is that the information relates only to something called "survey methodology." The second is that the term "survey methodology" runs to, and only to, the subjects set forth in §230.09(2)(am) — i.e., the establishment, modification and abolishment of classifications. However, the information submitted by the parties in connection with this motion suggests that there are a number of question marks surrounding these premises.

To begin with, information concerning the evaluation of positions in terms of the QES factors has obvious relevance to the evaluation of positions on the basis of the classification factors. The hearing record supports the conclusion that there is a good deal of similarity between the QES factors and the classification factors, and the classification factors obviously would come into play in a hearing of an appeal of a specific reallocation decision. This provides a basis of relevancy for the discovery of this material, and, assuming for the sake of argument respondent's contention that such material "goes to the issue of the methodology of the survey and the Commission does not have

jurisdiction to review survey methodology," this factor does not make the discovery request objectionable since it also goes to an unquestionably relevant subject matter — the class factors.

Second, even laying to one side the foregoing basis of relevancy, the information presented in connection with the motion raises questions about the basic premises underlying respondent's position — i.e., that the information sought runs solely to something called "survey methodology," which in turn relates only to the subjects set forth in §230.9(2)(am) — particularly the establishment, modification and abolishment of classifications. Based on the description provided at the hearing by the DOR personnel manager about what occurred in the survey process, it appears that the rating panel utilized the information about the jobs covered by the survey as well as program information and knowledge to evaluate the jobs on the basis of the 10 FES factors. This evaluation process produced raw data which was fed into a DER computer that "clustered" various jobs at various levels. Pay ranges then were assigned to the various clusters of jobs. Class specifications then were assigned based on the positions' occupational area. The descriptions or definitions found in the class specifications simply described the various job groups based on the jobs' position descriptions. Mr. Marx stated as follows at the motion hearing:

[W]e took all the raw data from the raters and . . . entered [it] into a tape, the tape was then taken over to DER with the raw data, fed into a software program that DER has, and it came out with clusters, and let's say there may have been an auditor job, there may have been . . . a tax collection position that may have clustered out at the same level, I'm just using this as an example . . . That just meant to us that the rating panel had determined that, based on the information that they had, that those, and the software, the way it was formulated . . . put them into the same cluster, that those two jobs should go with the same pay range. And then DER did a compensation analysis of entry and objective level jobs and said, OK, the entry level cluster is going to be at a range 11, and simply what we did is we attached a pay to range then, to each of those cluster levels and we took all the jobs that fell into one cluster . . . and we said, which of those jobs should go into the same classification specification and should we break them up into different classification specifications, because they're two totally different types of jobs. Like a collector and an auditor wouldn't be in the same class spec, and that's the reason we have two sets of specifications there, and we in essence took the descriptions of the jobs right off the position descriptions and

drafted the classification specifications. So, in essence, that's really how the process worked.

It appears from this description of the process that the work of the rating panel resulted directly in the decision to reallocate appellants' positions "on the basis of [their] duties, authority, responsibilities or other factors in the job evaluation process," §230.09(2)(a), stats. It further appears that this activity cannot be considered outside the boundaries of relevance merely because it also resulted in the establishment of class specifications, which, at least on the basis of the record established on this motion, appear to have been established at the end of the process and to amount to simply labeling the assessment of positions which already had occurred. Therefore, to the extent that the information sought on this discovery request runs to an attempt by appellants to show that the panel's FES evaluation was erroneous and resulted in their positions being placed in the wrong cluster and hence at a lower class level than should have been the case, it falls within the boundaries of relevance to a reallocation decision under §230.09(2)(a), stats., and is properly discoverable.

It should be noted that this decision on discovery has been made on the basis of a limited record, is limited to the issues raised by this discovery motion, and is not meant to be dispositive as to so much of the issues discussed above that may be involved in the hearing on the merits.

4. Copies of the original and any corrected Job Content Questionnaire Department of Revenue Survey Composite for positions now reallocated to Revenue Auditor 3, 4, 5; Revenue Tax Specialist 1, 2; and Revenue Agent 3, 4, 5.

Response: For the same reasons as stated above in requests 2 and 3, DER declines to provide this information.

For the same reasons discussed above, this discovery request will be granted.

5. Provide full details and copy of documents on how my position was initially classified and any changes in that determination to Revenue Auditor 3.

Response: Mr. Mincy's position was classified as Revenue Auditor 3 based on the specifications for that classification established as a result of the survey. Any other information about the methodology used by the rating panel is considered by DER to be outside the proper scope of discovery for this appeal to the Commission.

At the motion hearing it was clarified that this inquiry was precipitated by Mr. Mincy's belief, based on a statement he attributed to his supervisor, that DER originally had decided to reallocate his position to the higher level Revenue Tax Specialist series rather than to Revenue Auditor 3. However, respondent denies that such a decision occurred. Therefore, in the absence of other evidence, no discovery can be ordered here.

6. Provide the position descriptions for all positions reallocated to Revenue Auditor 3, 4, 5; Revenue Tax Specialist 1, 2; and Revenue Agent 3, 4, 5.

Response: There are over 300 position descriptions which fall within this request. To respond to this request, we will make these position descriptions available for your review, and you may then indicate whether you want copies of all the position descriptions or not. You should be aware that you will be charged 10¢ per page for each page copied, and if fees for locating the records exceed \$50, you will also be charged a fee for that service. (For additional information on these charges, please refer to DOR Policy Directive, 153-1.4, dated November 1990, titled, "SUBJECT: CHARGES FOR SERVICES.")

To make arrangements to view the position descriptions, you should first call Mr. Tom Marx at 266-8875. He will then make arrangements for you to view the requested position descriptions at the PD Files area, on the 2nd floor of the GEF 3 office building.

Appellants take the position they should be provided copies of all these PD's without cost to them. There is no authority for the proposition that copies of these documents are to be provided without cost, and copying costs typically rest on the party seeking discovery, Asadi v. UW-Platteville, 85-0058-PC-ER (4/7/88). Therefore, the motion to compel will be denied as to this item and respondent's answer will stand.

7. Provide the composite ratings by the group of nine for my position for each category: knowledge, complexity, discretion, consequence of error, effect of actions, physical effect, surroundings, hazards, personal contacts, and supervisory responsibilities.

Response: DER declines to provide this information on the grounds it is not a proper subject for discovery in this case, it concerns the methodology of the survey process which is outside the scope of the Commission's jurisdiction in this case, and that it is confidential.

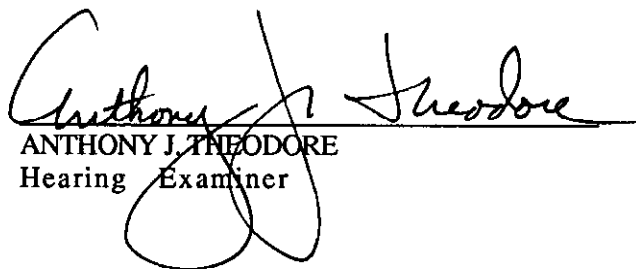
This response appears to cover the same ground as has been discussed above under item #3, and therefore the motion will be granted. While respondent mentions confidentiality in its response to this item, it cites no authority or basis for this claim, and the Commission is aware of none. During the discussion at the motion hearing, respondent asserted that the raw data involved in this item would be unintelligible without explanation. The motion will be granted as to this item without specification of the format in which the information is to be provided. If appellants are dissatisfied with the format of the information provided and unable to work this out with respondent, they can bring on another motion.

Finally, it is noted that appellants have objected to information concerning the QES process that respondent filed after the hearing. This information is relevant to the issues discussed at the hearing, and a review of the hearing tape shows that the examiner left the door open to further submissions. Therefore this objections is overruled.

ORDER

Appellants' motion to compel discovery filed January 9, 1991, is granted in part and denied in part, as set forth above, and respondent is directed to provide the information with respect to which discovery has been granted within 10 days of the date of this order.

Dated: FEBRUARY 21, 1991 STATE PERSONNEL COMMISSION


ANTHONY J. THEODORE
Hearing Examiner

AJT/gdt/2