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ASSOCIATION OF CAREER EMPLOYEES,
an unincorporated association,
WYNN DAVIES AND LLOYD RIDDLE,

Appellants,

v.

Secretaries, DEPARTMENT OF HEALTH
AND SOCIAL SERVICES, DEPARTMENT
OF TRANSPORTATION, DEPARTMENT
CORRECTIONS, DEPARTMENT OF
REVENUE; Administrators, DIVISION
OF EMERGENCY GOVERNMENT, DIVI-
SION OF MERIT RECRUITMENT AND
SELECTION; and Commissioners,
OFFICE OF THE COMMISSIONER OF
INSURANCE and OFFICE OF THE COM-
MISSIONER OF TRANSPORTATION;

Respondents.

Case No. 92-0238-PC

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RULING
ON
MOTION FOR
PROTECTIVE
ORDER

This matter is before the examiner on the motion of respondent DHSS, filed March 5, 1993, to quash a Notice of Oral Deposition as it pertains to Gerald Whitburn and Ann Haney. The background of this motion is as follows.

The parties previously had agreed at a December 9, 1992, conference, to a March 8, 1993, discovery cutoff, and hearing dates commencing on April 7, 1993. The final pre-hearing conference is scheduled for March 15, 1993. On Wednesday, March 3, 1993, counsel for appellants contacted DHSS counsel and requested that DHSS agree to extend the discovery deadline so that appellants' counsel could depose Division of Health Administrator Haney and DHSS Secretary Whitburn on or after March 17, 1993, or alternatively that he would notice both for deposition on Monday, March 8, 1993. After consultation with his client, DHSS counsel advised that he would not agree to extend the discovery deadline and that he would seek a protective order to preclude their deposition on March 8, 1993, due to the short period of notice involved: "Two working days notice is simply not reasonable notice of taking the deposition of the heads of major state agencies." A copy of this letter was faxed to appellants' counsel on March 4, 1993. Later that same day, the latter served a notice of deposition, which included the depositions of Ms. Haney and Mr. Whitburn

for March 18, 1993, on counsel for DHSS, who now seeks an order quashing this notice as to these individuals. Based on these circumstances, in the examiner's opinion the motion should not be granted.

As of March 3, 1993, appellants requested either that the discovery deadline be extended to the extent of permitting the depositions of Ms. Haney and Mr. Whitburn on or after March 17, 1993, or that they be deposed on March 8, 1993, the discovery deadline. Respondent DHSS objected to both alternatives, contending as to the latter that there was insufficient notice for taking the depositions of two highly-placed state officers. While in the examiner's view more extensive notice would have been desirable, it cannot agree that the notice given was unreasonable.

The Commission has by rule, §PC 4.03, Wis. Adm. Code, essentially adopted by reference Chapter 804, Stats. ("Civil Procedure - Depositions and Discovery"). Section 804.05(2) provides for "reasonable" notice of the taking of depositions. Prior to the adoption of this provision by the legislature, the law required notice of deposition "of at least 5 days," §887.12(4), Stats. (1973). Under federal law, which, like §804.05(2), provides for "reasonable" notice, "five days will ordinarily be considered reasonable," Moore's Federal Practice, §30.57[3]. See also FAA v. Landy, 705 F. 2d 624, 634 (2d Cir. 1983) (notice on Monday to counsel in New York of deposition on Friday in Florida held not unreasonable). Therefore, the examiner concludes that on this record it would not have been unreasonable to have proceeded with the depositions on March 8, 1993, based on actual notice on March 3, 1993. While it probably would have been preferable for appellants to have attempted to proceed with the March 8, 1993, deposition date, in light of respondent's objection to the March 8th depositions, based on what the Commission now concludes was not unreasonable notice, it is appropriate to allow these depositions on March 18th, which is 20 days prior to the commencement of the hearing.

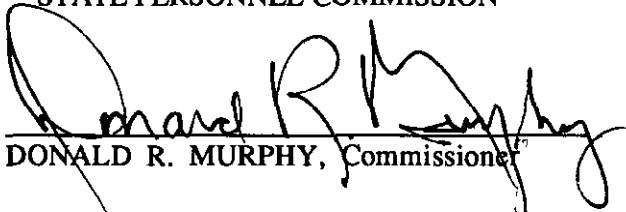
ORDER

The motion for protective order filed by respondent DHSS on March 5, 1993, is denied.

Dated: March 10, 1993

STATE PERSONNEL COMMISSION

AJT:rcr


DONALD R. MURPHY, Commissioner