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SHARON A. CARROLL,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 94-0434-PC

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RULING ON  
RESPONDENT'S  
MOTION TO  
COMPEL DISCOVERY  
AND EXPENSES  
AND  
APPELLANT'S  
MOTION FOR  
PROTECTIVE ORDER

This matter involves an appeal by appellant Sharon A. Carroll of a decision by the Secretary of the Department of Employment Relations (DER) to reallocate her position to Financial Specialist 2, effective June 26, 1994.

Subsequently, after several prehearings, on November 1, 1995, the issue determined for hearing was whether respondent's decision reallocating appellant's position to Financial Specialist 2 rather than Financial Specialist 4 or Administrative Assistant 4 was correct. Shortly afterwards, respondent submitted its first set of interrogatories, including nineteen questions to the appellant. In answer, appellant made a general objection to the interrogatories and failed to answer interrogatories 8, 10, 12, 13, 14, 16, 18 and 19.

This current matter was initiated by respondent's motion filed on December 20, 1995, to compel appellant to answer questions 8, 10, 12, 13, 14, 16, 18 and 19 in its first set of interrogatories. A briefing schedule on respondent's motion was established. In response, the appellant submitted a supplemental answer to interrogatories 8, 10, 11, 14, 15, 18 and 19, and a motion for a protective order limiting discovery. The reply by respondent acknowledged appellant's second response to its interrogatories, but asserted that appellant still has failed to answer interrogatories 12, 14, 15, 16, and 18 and continued in its motion to compel discovery.

The issue is whether respondent's interrogatories 12, 14, 15, 16 and 18 are proper and subject to answers by the appellant under the provisions of discovery in ch. 804, Wis. Stats. Each of these interrogatories, including the positions of the parties, will be discussed in turn.

Interrogatory 12 asks:

Do you contend that your position is comparable to any of the Representative Positions, which follow the Financial Specialist 4 definition? If your answer is "yes," please identify the specific position and give any and all reasons why you contend that your position and each such position which you identify are comparable. Your answer should indicate which of the duties listed for the Representative Position your position are assigned and perform and where, by goals, worker activities and time allocations, those specific duties are found in your position description.

Answer:

The Answer to Interrogatory 9 states that comparable positions have not yet been explored or identified. That answer also applies to the positions listed above. Without greater detail on any of the Representative Positions than is provided in the generic description in the specifications, it is also impossible to answer the question in any meaningful way.

Had a position been identified as of yet, Appellant would assert the same general objection as to overbroad, etc.

Appellant argues that she is not required to answer this interrogatory because it is a multiple question, covering several positions and would require the appellant to conduct interviews and gather information to answer. In response, respondent states appellant should answer Interrogatory 12 by using the language describing the seven Representative Positions listed in the definition for Financial Specialist 4 positions (in the classification specifications). This response nullifies much of appellant's argument. Clearly, this information is relevant to the issue in the pending action, not privileged, is available to the appellant and will not cause any undue burden or expense.

Interrogatory 14 asks:

Please state any and all reasons why you contend that your position was wrongly reallocated to the Financial Specialist 2 level. Your answer should reference the language of that classification specification and the goals, worker activities and time allocations of your position description.

In answer, appellant objected to this question on the basis that it was overbroad, unduly burdensome, called for protected work product and for the appellant "to develop Respondent's potential defense." Later, in reply to

respondent's motion, appellant provided a supplement to its initial answer and renewed her objections. Respondent's reply asserts that appellant's answers to interrogatories 14 and 15 failed to identify the time allocations for the worker activities she listed in support of her answer and that the questions did not seek the attorney's work product. This interrogatory is relevant to the issues in this matter. It asks the appellant to tell what she knows about her position with respect to Financial Specialist 2 classification specification. Such information is not excluded from discovery on the basis of privilege or attorney's work product.

Interrogatory 16 states:

Attached are the position descriptions of two Financial Specialist 2 positions (Kathy Costa and Cynthia Gudel) in two DNR district offices. Please compare the duties assigned to your position with the duties assigned to each of those positions. For each position, your answer should indicate which duties are assigned to that position which are similar to duties assigned to your position, referencing the duties by the goals, worker activities and time allocations which are in the respective position descriptions.

Appellant's answer was an objection. It was as follows:

The Appellant has not yet identified any "comparable" positions for use in her presentation, and is not obligated to engage in analysis of any other positions.

The Respondent is improperly shifting the burden of proof. Appellant, if she so chooses, may present analysis of her job in light of jobs at the levels she is seeking. It is not her burden to analyze jobs at some other level. Further, Appellant has not interviewed the incumbents in the positions identified in this interrogatory, and has insufficient knowledge of what the jobs actually entail to be able to answer with anything but assumption and surmise.

Later, in response to the motion to compel, appellant made a series of arguments: Appellant is being asked a hypothetical question. Questions about the two Financial Specialist 2 (FS 2) positions referenced in the interrogatory require burdensome research. The referenced FS 2 positions are not relevant to appellant's burden of proof. In response, respondent noted that appellant was not being asked to compare the position but whether the listed duties were similar to those assigned to her position.

To answer Interrogatory 16, appellant only needs to juxtapose the goals and worker activities of her position with those in the position descriptions

for the two FS 2 positions, which were provided appellant. The questions asked are relevant and the value of the information sought outweighs the burden of its production.

Interrogatory 18 states:

Does your position have any pre-audit delegation authority? If your answer is "yes," please explain in detail the precise limitations of your delegated authority, including a detailed description of the authority, who gave you the authority, in what manner the authority was granted to you (verbal or documentary) and when such authority was granted to you.

The appellant objected to the interrogatory as being "overbroad, unduly burdensome and vague," but answered as follows:

"To my knowledge, all other duties of my job are vested in the position. They are not vested in any part of the organization, and then delegated down to me. My position has full authority, on its own, for the responsibilities of the job.

I was given authority to sign vouchers processed in the Bureau by my section chief and Bureau director. I do this without overview."

After respondent's motion to compel, appellant provided the following supplemental answer:

This answer is supplemental by also referring to the preceding Answers to Interrogatories 8, 10, and 14. I was given authority to sign vouchers in early 1993. I do not recall whether it was verbal or written.

Respondent's reply to the supplemental answer to this interrogatory was:

Again, Appellant's answer is evasive. At no time does she answer the question "Can she pay submitted vouchers without review by DNR's central office-fiscal?" It is Respondent's understanding that signing "for vouchers" is not equivalent to paying submitted vouchers without review by someone in DNR's central office-fiscal. Additionally, Appellant does not identify the name of the Section Chief and Bureau Director who allegedly gave her the alleged authority.

It appears that appellant misconstrued Interrogatory 18, but was willing to answer it. Therefore, appellant is directed to answer this interrogatory as clarified by respondent in its response quoted above.

Regarding respondent's motion for award of expenses, including attorney fees, the hearing examiner finds that an award of expenses is not justified by the circumstances in this matter.

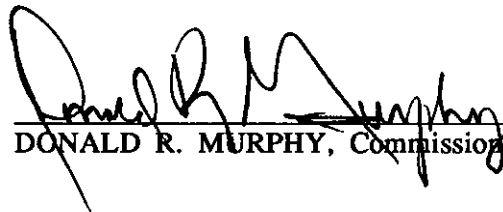
Regarding appellant's motion for protective order limiting discovery, the basis for same were also raised in appellant's response to respondent's motion to compel discovery. Because those assertions were already considered and decided, and because the parties motions are corollary, further discussion is not required.

ORDER

The motion of respondent is granted in part and denied in part in accordance with the above decision. Accordingly, appellant's motion is denied.

Dated: March 20, 1996 STATE PERSONNEL COMMISSION

DRM:rcr

  
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DONALD R. MURPHY, Commissioner