

**BARTHEL HUFF,**  
*Complainant,*

v.

**President, UNIVERSITY OF WISCONSIN  
SYSTEM (La Crosse),**  
*Respondent.*

**RULING ON  
COMPLAINANT'S  
MOTION TO COMPEL  
DISCOVERY**

Case No. 95-0113-PC-ER

Complainant filed a motion to compel regarding respondent's October 7, 1997, answer to his interrogatories. A briefing schedule was established by Commission letter dated October 30, 1997, with the final brief due by December 8, 1997.

The hearing issue was agreed to by the parties at a prehearing conference on September 3, 1997, as reflected by the Conference Report of the same date as follows:

Whether probable cause exists to believe that respondent discriminated against complainant due to his age when he was rejected in March 1995, as a candidate for a tenure-track position.

It may be useful in understanding the current discovery dispute to review portions of the initial determination (ID) dated July 11, 1997, as shown below. The numbered paragraphs refer to the numbered paragraphs in the Investigative Summary of the ID.

3. The Committee (search and screen committee) developed the criteria to review candidates' qualifications. The criteria was consistent with the qualifications recited in the advertising for the position. (See Exh. 3, attached to UWL arguments dated 11/2/97.) The criteria is noted below: . . .

- c. Evidence of scholarly activity. A recent Ph.D. must show the potential for continued scholarly activity. A candidate whose Ph.D. is not recent must demonstrate evidence of continuing scholarship.
- d. Preference will be given to candidates with a degree in, or evidence of substantial experience in, Applied Statistics or Applied Mathematics (with a background in mathematical modeling). . . .

5. The Committee did not forward complainant's name because he did not satisfy the screening criteria. . . . His application materials did

not evidence adequate scholarly activity as he published only three articles in the prior 17 years. He attended conferences, but not as a presenter or speaker. His main area of work was in probability and infinite divisibility rather than the preferred areas. . . .

7. Complainant disputes that his scholarly area of concentration is different than the area preferred under the criteria. . . . The undersigned does not have a sufficient background in mathematics to enable her to determine which party's assessment is correct. The matter is resolved in complainant's favor at the probable cause level of scrutiny.

8. The undersigned concludes, however, that complainant did not meet the scholastic standard established by the Committee. While he attended many conferences as a method of keeping current in the field, he was not a speaker or presenter at conferences. Furthermore, his scholastic publications were not recent. Accordingly, the Committee correctly concluded that complainant did not meet item "c" of the selection criteria (noted in ¶3 above).

9. The Committee determined that three candidates met the selection criteria. Those candidates were invited to participate in a 2-day interview process. Ultimately, UWL hired Robert H. Hoar for the position. Mr. Hoar's application materials (Exh. 1 attached to UWL argument dated 11/2/95) indicated he was a recent Ph.D. with recent submissions for scholarly publications, as well as several presentations at conferences. . . .

Based upon the above findings, it was concluded in the ID that there was no probable cause to believe that complainant was discriminated against on the basis of age when he was rejected in March 1995, as a candidate for a tenure-track position.

#### OPINION

Complainant's discovery consisted of interrogatories numbered 1-4. There is no dispute concerning the first interrogatory. The remaining interrogatories are discussed separately below.

Interrogatory 2: Resumes of current faculty in the Department of Mathematics at the University of Wisconsin - La Crosse. The resumes should contain the following information: date of Ph.D.; date hired by UW-La Crosse; legitimate publications in refereed journals including date and place of publication and coverage by Math Reviews.

Response: Objection. The professional qualifications of the members of the UW-La Crosse faculty are not in issue in this case, and are irrelevant. Further, the requested information is not reasonably calculated to lead to the discovery of admissible evidence.

Complainant contends he is entitled to discover the field of interest and publications of current faculty because respondent claims the hiring decision at issue was based upon those two criteria. He believes that if current staff do not meet the same criteria then the criteria are not job-related and are not consistently applied from which he concludes the criteria were used as a pretext for age discrimination. Complainant also contends he is entitled to discover the date of Ph.D. and date of hire for current faculty to determine whether or not there has been a past hiring pattern of discrimination demonstrating a preference for hiring recent graduates. He suspects such preference was present in the hiring at issue in his case and that such preference demonstrates age discrimination.

Complainant has not established that the field of interest of current faculty is relevant to his case or reasonably calculated to lead to the discovery of admissible evidence. Respondent established the field of interest prior to solicitation of candidates. Further, complainant has not articulated a persuasive argument to believe that the field of interest of current staff bears any real or potential relationship to his claim of discrimination. Complainant also is not entitled to receive the information about current faculty publication dates. Scholarly activity was a hiring criteria but was defined to include more than recent publications. (See, for example, ¶¶5 and 8 of the ID's Investigative Summary.) The requested information as just a part of the standard applied lacks sufficient probative value to be considered as relevant or as reasonably calculated to lead to the discovery of admissible evidence.

The remaining information requested includes the date of Ph.D. and date of hire for current faculty members. Such request without any linkage to the faculty member's age at the time of hire or to the age of the entire pool of applicants for each hiring decision is not relevant may have little probative value, but the Commission is unable to conclude that such information is not reasonably calculated to lead to the discovery of admissible evidence. Accordingly, complainant is entitled to receive this information..

Interrogatory 3: Resumes of all finalists and semi-finalists for the position in applied mathematics in question. That search was conducted in the Spring of 1995 and Robert H. Hoar was hired. The finalists were Erick Hendrickson, Robert H. Hoar, and Frank Marzano. The November 2, 1995, response by UW-La Crosse indicates that there were

up to 20 semi-finalists who were given more serious consideration than I.

Response: Respondent provided complainant with a copy of Robert Hoar's resume as part of Attachment 1 to its Answer to the complaint, dated November 2, 1995. Copies of the resumes of the only other persons interviewed for the position, Erik Hendrickson and Frank Marzano, are attached. Respondent objects to complainant's request to provide resumes of other candidates as irrelevant, overbroad and unlikely to lead to the discovery of admissible evidence.

Complainant contends he is entitled to the resumes of all finalists and semi-finalists because he wants to see for himself whether respondent consistently applied the hiring criteria to the candidates for the job. The Commission agrees he is entitled to receive the requested information because if respondent did not apply its hiring criteria consistently, this could be admissible evidence at hearing. The Commission rejects respondent's argument that only the interviewed candidates are the relevant pool for comparison in the context of discovery.

Interrogatory 4: A specific statement as to whether or not UW-La Crosse participated in the 1995 Mathematical Sciences Employment Register held at the joint mathematics meetings. If the school did participate in the Register, I am requesting the Employer Form submitted to the Register and a list of the candidates (together with their academic status; i.e., when the Ph.D. was expected or received) with whom UW-La Crosse requested interviews. I also request the resumes of such candidates.

Response: Five faculty from the respondent's mathematics department attended the 1995 Mathematical Sciences Employment Register. Pursuant to the Register's established matching process, faculty attendees met informally with about twenty job seekers. Faculty attendees maintain no notes, resumes or other paperwork from their interactions and discussion with job seekers. The Register provided faculty an informal opportunity to talk to interested job seekers about the University of Wisconsin-La Crosse. Faculty handed out copies of the department's "position vacancy" listing to the persons they met with at the Register, a copy of which was provided to complainant as Attachment 3 to respondent's Answer, dated November 2, 1995.

Complainant contends respondent's answer is insufficient because respondent failed to produce a copy of the Employer Form which must be submitted to participate in the Register. Complainant further contends such form is relevant as it may state a

preference for recent graduates or less experienced candidates. (Complainant's arguments dated 10/28/97, p. 2) Respondent did not deny the existence of the form and also did not address complainant's objection to this interrogatory. (Respondent's arguments dated 11/24/97).

Summary of Ruling on Discovery Disputes

Complainant's request to compel respondent's answer to interrogatory #2 is denied. Complainant's request to compel respondent's answer to interrogatories #3 and #4 is granted and respondent must mail the same to complainant by January 13, 1998.

Complainant (by letter dated 12/1/97) requested a reversal of the no probable cause ID as a type of sanction for respondent's failure to provide complete answers to his discovery. Such request is denied. The next step in these proceedings is the hearing. There is no procedural mechanism for reversal of the ID without going through the hearing.

Complainant did not request costs related to this motion. Even if he had, such costs could not be assessed against a state agency respondent. *DOT (Beaverson) V. Wis. Pers. Comm.*, 176 Wis. 2d 731, 500 N.W.2d 545 (1993)

ORDER

Complainant's motion is granted in part and denied in part as detailed in this ruling. Respondent must mail to complainant by January 13, 1998, its response to interrogatories #3 and #4, as well as its response regarding the Ph.D. and hiring dates of current faculty members requested as part of interrogatory #2.

Dated: December 17, 1997.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner