

STATE OF WISCONSIN

PERSONNEL COMMISSION

MICHAEL CARRATT,
Appellant/complainant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**
Respondent.

**RULING ON MOTION
TO COMPEL
DISCOVERY**

Case Nos. 98-0063-PC, 98-0143-PC-ER

This is a civil service appeal and a complaint of arrest/conviction record discrimination relating to a failure to hire. At a prehearing conference conducted on February 7, 2000, appellant/complainant filed a motion to compel discovery. The parties were permitted to file written arguments in regard to the motion and the schedule for doing so was completed on March 20, 2000. The following findings are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion.

FINDINGS OF FACT

1. The position under consideration here is that of Institution Treatment Specialist 1 at Taycheedah Correctional Institution (TCI), for which appellant/complainant interviewed on May 28, 1998. The members of the interview panel were Mark Heise, William Turner, and Marcy Wittek. The final hiring decision was made by Kristine Krenke, TCI Superintendent. These are the only individuals alleged by appellant/complainant to have participated in the final hiring decision for this position.
2. The information sought by appellant/complainant through the subject discovery request is as follows:

Any interview notes that have my name attached, which may include: selection, non-selection, arrest and conviction, and oral interview notes from interviews that I participated in. Specifically, those conducted on 5/11/94 and 4/22/93.

The panel on 4/22/93 was comprised of Kris Krenke, Collen Zettle and Bob Owens. The panel on 5/11/94 was comprised of Jeff Jeager, Sue Eberhardt, and Barbara Earle. Both interviews were for a Social Services Specialist 1 position.

OPINION

Section PC 4.03, Wis. Adm. Code, states as follows:

All parties to a case before the commission may obtain discovery and preserve testimony as provided by ch. 804, Stats. For good cause, the commission or the hearing examiner may allow a shorter or longer time for discovery or for preserving testimony than is allowed by ch. 804, Stats. For good cause, the commission or the hearing examiner may issue orders to protect persons or parties from annoyance, embarrassment, oppression or undue burden or expense, or to compel discovery.

Section 804.01(2)(a), Stats., provides, in relevant part, that

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Appellant/complainant has explained that he would like an opportunity to review these earlier interview notes to determine whether they include anything about his arrest/conviction record. However, in order to be relevant here, there would have to be some link between the membership of these earlier panels and the individuals involved in the subject hiring decision. The only link is provided by Ms. Krenke. As a result, it is concluded that the interview notes from the 4/22/93 interview of appellant/complainant could lead to the discovery of admissible evidence pursuant to

§804.01(2)(a), Stats. This would include not only Ms. Krenke's notes but those of the other panel members as well since such notes, as complainant has argued, could include statements made by Ms. Krenke during panel discussions of the candidacy of appellant/complainant. As a result, it is concluded that the motion to compel should be granted as to the interview notes from the 4/22/93 interview of appellant/complainant, but denied as to the remainder of the subject discovery request.

CONCLUSIONS OF LAW

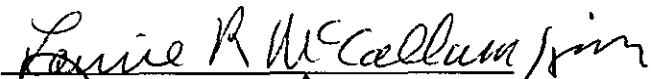
1. This matter is appropriately before the Commission pursuant to §§230.44(1)(d), and 230.45(1)(b), Stats.
2. Appellant/complainant has the burden to show that the requested information is discoverable pursuant to Ch. 804, Stats.
3. Appellant/complainant has sustained this burden only in regard to the 4/22/93 interview notes.


ORDER

The subject motion to compel is granted in part and denied in part as discussed above. Respondent is ordered to provide appellant/complainant the panel members' notes from the 4/22/93 interview of appellant/complainant within 30 days of the date of this ruling.

Dated: April 7, 2000

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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