

STATE OF WISCONSIN

PERSONNEL COMMISSION

**ALLEN BEDYNEK-STUMM,**  
*Complainant,*

v.

**Superintendent, DEPARTMENT OF  
PUBLIC INSTRUCTION,**  
*Respondent.*

RULING  
ON MOTION  
FOR  
PROTECTIVE  
ORDER

Case No. 99-0186-PC-ER

This matter is before the Personnel Commission as a complaint of discrimination based on age, disability, race and sex and retaliation for engaging in fair employment activities with respect to the failure to hire the complainant for an Education Specialist-Senior position.

By letter dated January 19, 2000, the Commission directed respondent to provide certain information, including applications and/or resumes of the top three candidates, interview notes, benchmarks/criteria used by the interview panel and copies of references.

Respondent responded by letter dated February 24, 2000, and asked for a protective order:

The Personnel Commission has requested that the Respondent provide copies of the oral exam, benchmarks and interview notes as it relates to the above case. In order to protect the exam and allow its use in subsequent recruitments, the department is requesting a protective order precluding the release of this information by the Personnel Commission. In the alternative, the respondent is requesting a protective order forbidding the Complainant from divulging these documents or information to any person outside the context of this proceeding and prohibiting Complainant from making any use of such materials for any purpose except preparation for this proceeding before the Commission.

Complainant opposed the motion, stating, in part:

*I submit, as respectful objections; that the language, and reach of the Respondent[']s motion] is overbroad, and unfairly burdensome in its en-*

tirety, and disproportionately impacting an unrepresented Complainant. .

. .

1) The Complainant believes that a reasonable, by necessity, protection could be accorded the interview Questions (which probably have been construed to mean "Exam" materials. All other matters are so generalized as to have been derived from other interviews, or materials, supplied to DPI from other administrative entities, e.g., DOA, i.e., the responses do not contain the questions, etc.

2) The identified, but not limited to, witnesses may be called, i.e., See Exhibit 2 (Respondent's); and should be, by your offices, supplied with preliminary information that a discrimination, retaliatory, etc., law suit has been filed against DPI, should they desire to enter into (a class action) litigation. . . .<sup>1</sup>

These contacts, etc., i.e., witness, are imperative for the Complainants adequate procedural preparations before the Commission and are believed to be permitted for any, procedural preparations before the Commission and are believed to be permitted for any, and all such preparations. Inasmuch as the Complainant does not have legal representation it may be necessary to share (preliminary-preparatory) with persons and entities yet unknown at this juncture to secure such Counsel.

Respondent asks that the information not be provided at all to the complainant. If the Commission followed the respondent's suggestion, the complainant would be unable to respond to at least certain aspects of the answer and would have a much-reduced basis on which to analyze the initial determination. The Commission recognizes there is an important policy reason in favor of restricting access to certain examination and selection materials. Section 230.13(1)(a), Stats., provides that "[e]xamination scores and ranks and other evaluations of applicants" may be closed to the public. This statutory language is consistent with a need to protect the applicant evaluation process from public access so that applicants for future vacancies cannot gain an unfair advantage by requesting certain information relating to a completed selection process. However, the

---

<sup>1</sup> The Commission interprets this paragraph as a request by complainant that the Commission invite persons to file related claims against respondent. Complainant's request is wholly inconsistent with the Commission's role as a quasi-judicial administrative agency and it falls outside of the Commission's statutory authority.

closed record protections of §230.13, Stats., do not apply to bar access to a complainant in the context of litigation where the information is relevant to the complainant's claims. *Balele v. DOR et al.*, 98-0002-PC-ER, 7/7/98.

Complainant notes that he may want to talk with witnesses or with prospective legal counsel and that he will want to discuss with those persons the information that respondent seeks to protect. The language of this protective order, set forth below, should permit the complainant to prepare his case or to retain an attorney in this matter. However, the protective order also establishes limitations on complainant's use of the information. Complainant may only use the information for the purpose of litigating this case and may not use it for some other purpose, such as giving it to someone as an aid in preparing for an interview. In addition, the complainant must contact the Commission before divulging any of this information to anyone. However, this does not prevent the complainant from making the information available to an attorney who is reviewing the file for the purpose of evaluating whether or not to represent the complainant.

ORDER

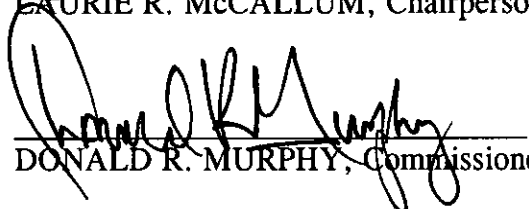
Any materials filed by respondent and provided to complainant or his representative relating to the interview and evaluation of job candidates for the vacancy in question (including, but not limited to copies of the oral exam, benchmarks and interview notes) may be used by the complainant or complainant's representative only for the purpose of litigating this case or related cases involving identical or similar issues in other forums and involving the same parties, and may not be disclosed by complainant or complainant's representative for any other purpose.

The complainant is directed to inform the Commission of the name and address of any expert or other witness complainant intends to consult prior to divulging any of this material to any such expert or other witness, so that the Commission may serve copies of this order on such person prior to disclosure of the material, and any such person is directed not to disclose the materials to the public or outside the confines of this proceeding.

Dated: April 7, 2000 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

KMS:9901986Cru11

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner