

NATHANIEL HARWELL,
Complainant,

v.

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

**RULING
ON
MOTION
TO COMPEL**

Case Nos. 98-0210-PC-ER, 99-0051, 0063,
0096-PC-ER

This matter is before the Commission on a discovery dispute. Complainant filed a motion to compel discovery after respondent did not respond to complainant's discovery request dated January 22, 2001. The parties have filed written arguments. The following findings are undisputed and are made solely for the purpose of ruling on the present motion.

FINDINGS OF FACT

1. Complainant has four separate complaints pending before the Commission.
2. He filed his first complaint on November 23, 1998.
3. In a letter dated December 28, 1998, complainant made what was, in essence, a discovery request of respondent.
4. By letter dated January 25, 1999, respondent responded to the December 28th letter
5. A prehearing conference was held on February 22, 1999. The conference report states, in part:

After considerable discussion of the status of this case the undersigned scheduled a telephone conference call for May 25, 1999, at 9:00 a.m. In the meantime, it is anticipated that the parties will conduct discovery and take such other steps -- e.g., amendment of the complaint, filing motions -- to prepare the case for hearing.

6. Another conference was held with the parties on May 25, 1999. The report from that conference includes the following language: "Both parties desire to carry out discovery and agreed to complete all of their discovery arising from these complaints by November 24, 1999."

7 Complainant directed another discovery request to respondent on June 28, 1999. This request was the subject of complainant's August 6, 1999, motion to compel that was addressed at a conference with the parties on August 18th as well as in a ruling by the Commission dated November 5th. The ruling granted the motion to compel as to Interrogatory 62 and otherwise denied the motion. The ruling also addressed complainant's request to extend the discovery period:

Complainant asks that the discovery period "continue until DPI finally submits to discovery." Complainant initially made this request by letter dated August 5, 1999. Respondent opposes the request to extend the discovery period and suggests that the 5 month period previously agreed upon should be sufficient.

Complainant's request should be analyzed in terms of a request to withdraw from a stipulation between the parties.

Therefore, the Commission will grant complainant an extension of the discovery deadline, but declines to establish an indefinite completion date. Instead, the Commission grants the parties until February 24, 2000, to complete discovery. While the Commission expects the new date to allow sufficient time for the parties to complete their discovery, the Commission is not precluding further extension should the facts warrant it.

Respondent will then have 30 days to file any preliminary motions.

8. The Commission convened a status conference on December 16, 1999, after complainant had made an open records request of the Commission and had asked for 30 days to review those materials upon receipt of them.

9. As a consequence of the December 16th conference, the Commission issued another ruling, dated January 19, 2000. The Commission modified the previously established January 24th date for completing discovery. The modification was explained in a cover letter to the ruling, dated January 20th.

The new deadline will be 45 days from the date the open records materials are made available to complainant. Respondent will then have 30 days to file any preliminary motions.

10. In a letter dated December 1, 2000, the Commission made clear that it had responded to complainant's extensive open records requests. The effect of the letter was to

provide [complainant] written notice, now, that all of the materials covered by your open records request are available for your review. This means that the new date for completing discovery is January 23, 2001. Thereafter, respondent will have 30 days to file any preliminary motions.

11. By materials dated January 22, 2001, and received by the respondent and the Commission on January 23rd, the complainant directed an additional discovery request to the respondent. These materials included 67 requests for admissions, 49 multi-part interrogatories and 22 demands for documents. This is the discovery request that is the subject of the present motion.

12. Respondent did not respond to the January 22nd discovery request.

13. By letter dated March 7, 2001, complainant filed his motion to compel discovery.

OPINION

Complainant, who appears *pro se*, takes the position that he is entitled to a motion to compel discovery because he sent a discovery request, dated January 22, 2001, to respondent, and respondent did not respond at all to the request within 30 days.

Respondent merely says it did not respond to the complainant's latest discovery request because it was "tardy".

Pursuant to the commission's order, the period for discovery was concluded on January 23, 2001, making the discovery demand tardy. [A] party is entitled to 30 days to respond to a discovery demand. Therefore, not only was his request tardy, i.e. outside the period of discovery, but there was not time within the discovery period to respond to the request. Thus, the department did not respond to his discovery.

Complainant's brief in response merely states: "[E]ach and every time, I have strictly adhered to each and every deadline."

The Findings set forth above show that the discovery "deadline", or the date for *completing* discovery, was periodically revised until it was finally set as January 23, 2001. Completing discovery encompasses the period within which the response to a discovery request is to be provided. Typically, responses to interrogatories are due "within 30 days after the service of the interrogatories," pursuant to §804.08(1)(b), Stats. Identical time limits apply to requests for production, §804.09(2), and requests for admission, §804.11(1)(b). Discovery is not *complete* if a party still has 30 days to prepare and submit a discovery response as provided by statute.

Based on complainant's motion and on his reply brief, the Commission concludes that he misunderstood the Commission's references to a discovery "deadline" and to the dates for "completing" discovery. Complainant incorrectly understood that he could comply with the January 23rd deadline by merely getting his discovery request to respondent by that date. In order for the request to have been timely, complainant would have had to provide it to respondent at least 30 days before January 23rd so as to recognize the statutory response period.

Therefore, the Commission declines to grant complainant's motion to compel discovery because respondent, technically, had no responsibility to respond to a late request.

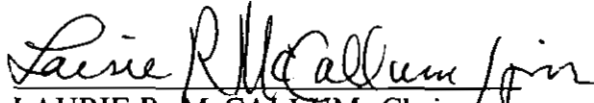
Complainant's motion can be interpreted as a request to modify the previously established January 23rd deadline so that requests served on respondent by that date would be considered timely.

The Commission notes that no date has been set for a hearing on complainant's allegations of discrimination and respondent has not shown it would be prejudiced in any other way by a modification of the deadline. Therefore, the Commission will modify the time period accordingly and will give respondent 30 days from the date this ruling is signed to formally respond to the complainant's discovery request served on January 23rd


ORDER

Complainant's motion to compel is denied. The previously established deadline of January 23, 2001, for completing discovery is modified so that complainant's request served on respondent on January 23rd is considered timely. Respondent will have 30 days from the date this order is signed to respond to the discovery request. The 30 day period may be modified without formal action by the full Commission.

Dated: June 28, 2001 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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JUDY M. ROGERS, Commissioner