


BEFORE AN ADMINISTRATIVE LAW JUDGE  
FOR THE PUBLIC EMPLOYEES' RETIREMENT FUND

IN THE MATTER OF DENNIS DYE.	)	PUBLIC EMPLOYEES' RETIREMENT
	)	FUND
PORIOT DYE, Petitioner,	)	
	)	
v.	)	
	)	
BOARD OF DIRECTORS, PERF,	)	
Respondent.	)	



**ORDER**

This matter came before the ALJ on PERF's Motion for a Protective Order served and filed on October 5, 2007. A telephone hearing was held on October 12, 2007. Attorney Charles Davis appeared for petitioner, and attorney Linda Villegas appeared for PERF. Petitioner acknowledged receipt of the motion and waived written response.

PERF seeks a protective order barring petitioner from taking the depositions of eight PERF employees on the ground that subjecting them to deposition would cause undue burden and disruption. The eight are among 13 witnesses whom petitioner desires to depose. Two of the 13 are no longer employed by PERF and PERF does not oppose deposition of the remaining three. PERF contend that the employees merely acted as receptionists, scanned documents, or performed ministerial duties with respect to benefit applications. PERF suggests that the employees' testimony may be obtained by "submission of written questions."

Petitioner responds that the employees whose depositions are requested are identified in documents produced by PERF as having had involvement in this matter. Petitioner's counsel desires to learn the extent of that involvement, whether they were directed by others, etc. Counsel assures that if a witness had no or little involvement, his or her deposition will last five to ten minutes. He has offered to conduct the depositions at PERF's offices all on the same day. Counsel states that interrogatories or requests for admission will not serve the purpose of finding out what these employees recall or know about this matter.

Discovery in administrative proceedings is controlled by the Trial Rules. AOPA authorizes the ALJ to issue "discovery orders . . . in accordance with the rules of procedure governing discovery, depositions, and subpoenas in civil actions in the courts." Ind. Code § 4-21.5-3-22(a). Trial Rule 28(F) states:

Whenever an adjudicatory hearing, including any hearing in any proceeding subject to judicial review, is held by or before an administrative agency, any

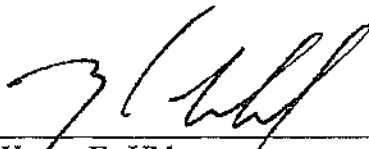
party to that adjudicatory hearing shall be entitled to use the discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure.

Trial Rule 30(A) permits a party to take the deposition of "any person." This is limited by T.R. 26(B)(1), which restricts the scope of discovery to any matter relevant to the subject matter. There is no contention here that the eight employees do not have potentially relevant information. Instead, PERF seeks a protective order under T.R. 26(C), which permits any party from whom discovery is sought, "for good cause shown," to move for any order "which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." The party seeking the protective order has the burden of showing good cause. Bridgestone Americas Holding, Inc. v. Mayberry, 854 N.E.2d 355, 361 (Ind. App. 2006), vacated by grant of transfer, 869 N.E.2d 453 (Ind. 2007) (argued 5/18/07).

Good cause has not been shown. The employees have been identified as having potential knowledge about the matter--this does not appear to be a fishing expedition. Petitioner has the right to choose the method of discovery. I share PERF's concern about the potential for undue burden and in particular the disruption of agency business. However, petitioner's counsel has offered to take the depositions at PERF's offices, and has assured that the witnesses who profess minimal knowledge or involvement will be "in and out." The use of "written questions" (by which I presume is meant interrogatories rather than depositions on written questions, which would be even more burdensome than live depositions), is not a reasonable alternative under these circumstances. Counsel are encouraged to schedule all the depositions so as to avoid disruption of agency business. PERF's motion for a protective order is DENIED.

Counsel reported that they will need additional time to complete discovery. It is therefore ORDERED, by agreement of the parties, that the deadline for completion of all discovery is extended to November 30, 2007. As a result, the prehearing status conference now scheduled for November 1, 2007, is RESET and will be held on December 4, 2007, at 10:00 a.m. The purpose of the conference will be to set a hearing date and/or a schedule for the filing and briefing of summary judgment motions. Counsel for the PERF Board shall set up the call.

ORDERED on October 12, 2007.



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Wayne E. Uhl  
Administrative Law Judge  
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