NICHOLAS CARBONE v. U.S. General Accounting Office

Docket No. 72-704-02-85

Date of Decision: October 7, 1986

Cite as: Carbone v. GAO, Docket No. 72-704-02-85 (10/7/86)

Before: James M. Brown, Presiding Member

Headnotes:

Discovery

Protective Order

ORDER

MTC

BEFORE THE
PERSONNEL APPEALS BOARD
U.S. GENERAL ACCOUNTING OFFICE
WASHINGTON, D. C.

NICHOLAS CARBONE, Petitioner	
v.	Docket No. 72-704-02-85
GENERAL ACCOUNTING OFFICE Respondent	

ORDER

On September 22, 1986 Petitioner filed a motion to postpone the hearing in this matter, or in the alternative, to compel Respondent to answer Petitioner's Interrogatories of June 6.

On October 3, 1986 Respondent filed its opposition to Petitioner's motion and alternative motion.

On June 23, 1986 Respondent moved for a protective order, and asked that GAO be excused from answering Interrogatory #13, but indicated that all other material would be provided.

On June 29, 1986 Respondent filed answers to Petitioner's Interrogatories, and specifically objected to Interrogatory #13.

Also, on June 29, 1986 Petitioner filed a response to the motion for a protective order, and explained why he felt the information requested - including that requested in Interrogatory #13 - was relevant.

On July 14, 1986 I presided over a telephone conference

between the parties and the discovery issues were discussed. I stated then that I would intervene in discovery matters if necessary, but expressed my desire that the parties settle the matter between themselves. I also stated that at the time of the hearing I would address all unresolved issues.

On September 9, 1986 a new scheduling order was entered in this matter, and the deadline for all discovery fileings was extended to September 23, 1986. On September 22, 1986 Petitioner filed his motion to compel, etc.

Resondent's comments and concerns regarding Petitioner's lack of expertise are noted for the record. However, I fail to see where Petitioner's actions in this case can be considered dilatory or taken with the intent to harass the Agency.

The role of the Presiding Member in resolving discovery disputes is set forth at 4 C.F.R. 28.19(e), which states in relevant part:

> "If the parties are unable to agree as to the scope of discovery, the Hearing Officer shall, upon the filing of a motion to compel, rule on such questions, having in mind the need to provide a full and fair consideration of the relevant and material facts of the case."

Here, it is my feeling that the Petitioner's discovery requests are reasonable, especially in light of established precedence regarding what evidence is material and relevant (and, therefore, discoverable) in discrimination proceedings.

The Agency is therefore directed to provide the information requested in Interrogatory #13. The Agency is further directed to provide any other information requested by Petitioner but not yet provided.

Discovery is to be completed by October 10 and prehearing briefs are to be filed by October 18 with exchange of exhibit lists as scheduled. The hearing date will remain the same.

James M. Brown
Presiding Member

Dated: October 7, 1986