

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal Nos. 65-09, 69-09, 73-09, and 75-09

ORDER ON DISCOVERY

IN THE MATTER OF THE APPEAL OF:

**JULIE MONTOYA, ANNIE COLEMAN, CLARA OWENS-MANIS, ANGELICA
PETTWAY**, Appellants,

vs.

DEPARTMENT OF FINANCE, ASSESSMENT DIVISION
and the City and County of Denver, a municipal corporation, Agency.

The Appellants in this consolidated appeal have moved for discovery. The Agency has filed a response objecting to certain of the requests. Upon review of the motion, response, pleadings, and exhibits, the following findings and order are entered on the motion.

Procedural Background

This is a consolidated direct appeal of four Information Management Technicians' layoffs by the Assessment Division of the Department of Finance. Appellants allege that the layoffs involved discrimination based on age. Appellants Owens-Manis and Pettway also assert a race discrimination claim. Appellants allege that the Agency violated the layoff rules by overlooking seniority and not properly measuring job proficiency in arriving at the rank order of layoffs. Appellants also allege that they were targeted on the basis of age (4 claims) and/or race (2 claims).

Appellants made identical discovery requests on the following subjects: 1) requests for production of statistics related to the work of Information Management Technicians for one year in ten listed categories, and 2) five unnumbered interrogatories. The Agency objects to the request for statistics on the grounds that they are not narrowly limited to the issues in the appeal, and call for the production of voluminous and possible nonexistent records. The Agency has stated it will produce the PEPs of the individuals affected by the layoff. As to the interrogatories, the Agency indicates that it will answer all but the fourth interrogatory, which reads: "How do you decipher situs address changes from returned mail, post office address change stats if both appear the same on activity screen?" The Agency objects to answering that question based on its claim that it is not calculated to lead to the discovery of admissible evidence.

Analysis

In an appeal challenging a layoff action, an employee has the burden to prove the action taken was arbitrary, capricious, or contrary to rule or law. In re Foley, CSA 19-06, 8 (11/10/06), *citing In re Romberger*, CSA 89-04, 5 (6/13/05); Velasquez v Dept. of Higher Education, 93 P3d 540 (Colo. App. 2003).

1. Statistics on Work of Information Management Technicians

Appellants seek production of statistics related to all Information Management Technicians for the past year. The Agency's exhibits include its layoff plan submitted to the CSA Personnel Director. [Exh. 7] Appellants' request is not supported by an explanation of why these statistics would tend to prove any issue in the appeal.

2. Information regarding address changes

Appellants' fourth interrogatory seeks information about deciphering situs address changes. Appellants have not demonstrated how such information would tend to prove any fact relevant to their appeal or disprove any potential defense. The layoff plan indicates that job proficiency was evaluated based on the amount of successful work complete and entered into the Division database, as shown on a spreadsheet which weighed productivity by means of an eight-element formula. [Exh. 7-3.] Appellant have not explained how the manner of deciphering two types of address changes on an activity screen may assist the parties to challenge their layoffs.

ORDER

Based on the foregoing findings and conclusions, Appellants' request for production and Interrogatory discovery is denied. The Agency is directed to respond to Appellants' Interrogatories 1, 2, 3, and 5, and produce the PEPs of the affected individuals.

DONE this 13th day of November, 2009.


Valerie McNaughton
Career Service Hearing Officer