

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Wage and Hour
Violations of Petersen Home Care
Services, Inc.

FIRST PREHEARING ORDER

On August 11, 2005, Administrative Law Judge Steve M. Mihalchick conducted a telephone prehearing conference in the above-entitled matter. The following persons participated in the prehearing conference:

Dayle Nolan and Chris Harristhal, Attorneys at Law, Larkin, Hoffman, Daly & Lindgren, Ltd., 7900 Xerxes Ave. S., Minneapolis, MN 55431-1194, participated on behalf of Petersen Home Care Services, Inc. (Petersen).

Omar Syed, Julie Leppink, and Richard Varco, Assistant Attorneys General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101-2131, participated on behalf of the Department of Labor and Industry (the Department).

Based upon the discussions at the prehearing conference, the Administrative Law Judge made the following:

ORDER

1. By August 16, 2005, the Department shall mail consent forms to the 12 former or current Petersen employees it has identified as having submitted relevant responses to the Department questionnaire. The consent form shall authorize the Department to disclose the employee questionnaire responses to the Administrative Law Judge and counsel for Petersen.

2. By August 16, 2005, the Department shall mail to the Administrative Law Judge unredacted copies of the 38 questionnaire responses it has received from past and present Petersen employees.

3. For each executed consent form it receives, the Department shall make a typewritten copy of the employee questionnaire response, redact identifying information, and provide the typewritten copy of the response to counsel for Petersen.

4. A second prehearing conference to address additional discovery issues and further scheduling shall take place at 9:30 a.m. on Friday, August 26, 2005, at the Office of Administrative Hearings.

Dated this 23rd day of August, 2005

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

Minn. Stat. §§ 13.79, 175.27, and 595.02, subd. 1, generally classify data provided to Department by individuals as “private” data and prohibit employees of the Department from disclosing it. Other statutes may apply similar protections. Under Minn. Stat. § 13.02, subd. 8a, of the Minnesota Government Data Practices Act, such data is “not public data” because it is “any government data which is classified by statute . . . as confidential, private, nonpublic, or protected nonpublic.” The handling of the employee data is therefore governed by the Minnesota Government Data Practices Act.

Peterson has requested that it be provided with certain statements of employees gathered by the Department in its investigation of this matter. The Department objects to the disclosure of the documents under the statutes cited above. It has offered to seek written waivers from certain employees and provide typewritten versions of the statements of such employees with identifying data removed.

Discovery of not public data is governed by Minn. Stat. § 13.03, subd. 6, which provides:

Subd. 6. Discoverability of not public data. If a state agency, political subdivision, or statewide system opposes discovery of government data or release of data pursuant to court order on the grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer, arbitrator, or administrative law judge an action to compel discovery or an action in the nature of an action to compel discovery.

The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.

If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the agency maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by the parties. If the data are a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse, the presiding officer shall consider the provisions of section 611A.90, subdivision 2, paragraph (b).

The two-part analysis procedure of subd. 6 is a mandatory procedure, at least when constitutional rights are at stake.¹ It requires an *in camera* review of the not public documents. The Administrative Law Judge ordered the filing of the unredacted documents to begin that process. At the upcoming conference, the parties will be expected to submit additional argument on the factors listed in Minn. Stat. § 13.03, subd. 6.

S.M.M.

¹ ***Montgomery Ward & Co. v. County of Hennepin***, 450 N.W.2d 299 (Minn. 1990); ***Erickson v. MacArthur***, 414 N.W.2d 406, 408 (Minn. 1987).