

STATE OF WISCONSIN

OFFICIAL

BOARD OF PERSONNEL

ABRAHAM N. WAXMAN,

Appellant,

v.

C. K. WETTENGEL, DIRECTOR.
STATE BUREAU OF PERSONNEL.

OPINION
AND ORDER
Case No. 43

Respondent.

Before Ahrens, Chairman; Serpe, Steininger and Julian.

OPINION

Abraham N. Waxman, the appellant, filed an application for a newly created position entitled Administrator, Division of Educational Opportunity, Wisconsin Higher Educational Aids Board. The person appointed to the position would be responsible for the administration of the various state and federal programs designed to assist members of disadvantaged minorities attend college. According to the job announcement, the person sought should have a college degree, followed by "five years of administrative management" and possess "ability to communicate with, and to gain and hold the confidence of, members of disadvantaged groups . . . "

On November 10, 1972, an oral examining board convened to examine the 13 applicants. Prior to the board's examination of the candidates, a representative of the HEAB reviewed with the board members the qualifications of the person the agency is looking for. He stressed that the agency wanted a person who was both a qualified administrator, familiar with the various programs with which he would be dealing and, also, a person who could work with all disadvantaged minorities, since an important aspect of the job would be the allocation of grants in aid to pursue higher education to young people with different minority backgrounds.

The facts that give rise to this appeal are not in serious dispute.

The oral board consisted of Francisco Camacho, Adrienne Davis, and Thomas Moran. The board examined 13 candidates for the position, questioning them all regarding their experience as administrators and their contact with community-based organizations for disadvantaged minorities and related matters. All of the candidates had some administrative experience and ties to such minority groups and some of the candidates had exceedingly impressive credentials in these respects.

The appellant was sixth on the roster of candidates and the sixth candidate to be interviewed by the oral board. He was asked to review his background and experience, which he felt qualified him for the position. He mentioned his current employment in the Department of Industry, Labor, and Human Relations as a counselor in the WIN program and before that his work as a program specialist in the Department's Equal Rights Division and before that a number of years experience as a high school principal. He was asked whether he had any experience dealing with a large staff and indicated that as a counselor he was not in a supervisory position, but that, formerly, as a principal he had supervised as many as 50 teachers and other school personnel. Ms. Davis then asked him, "What specific organizations have you worked with, when we talk about minority organizations?" to which appellant enumerated the various state committees concerned with the problems of American Indians and migrant workers, which he helped organize and some of the school projects for Indians with which he had been associated. In response to the same question, he commented that he had a minority background himself and had been involved with many Jewish organizations. Ms. Davis then asked, "Have you had any contact with any Black organizations, such as OIC, Urban League?" Appellant replied that his work with the WIN program brought him into contact with OIC, but that he had not worked with any other Black organizations. Mr. Camacho then asked the appellant how long he had lived in Milwaukee, and he said three years. Mr. Camacho then said, "Now let me ask

you the same question for the South Side, are there any organizations that you can name that you have specifically worked with?" Appellant then enumerated a number of community-based organizations aimed at improving the lot of the Latin community located on the South Side of Milwaukee.

After all of the candidates had been questioned, the oral board members assigned each candidate a ranking, number one being the most qualified applicant for the position, number two the next best qualified, and so forth. The individual rankings of each of the three board members was then averaged to determine the candidate which the board ranked first, second, and so forth; and then all of the candidates were assigned numerical scores ranging from 92 to 70. The board ranked the appellant eleventh of the 13 applicants competing in the examination.

On November 27, 1972, the appellant challenged the validity of the examination, claiming that he was discriminated against in the examination process for not being Black, so far as at least one member of the examining board was concerned, and for not being of a Latin national origin, so far as another member of the board was concerned, and for being Jewish.

The appellant, in his appeal letter, based his claim of discrimination, in large measure, on the fact that according to his recollection of his appearance before the board, after Ms. Davis had asked him about his work with minority groups and he had responded, she commented that "what she had meant was experience with Black groups." Appellant testified to this effect at the hearing. We have found as a fact that Ms. Davis did not say that when she had previously referred to minority groups that she meant only Black groups but that Ms. Davis, after hearing the appellant relate his experience with American Indians and with migrant workers in Wisconsin, was seeking to ascertain whether appellant

would be able to work with all minority groups in the state, including Blacks, a major disadvantaged minority group, and therefore inquired regarding his contact with Black organizations. Appellant further relies on the fact that after asking him those particular questions, Ms. Davis did not ask him any other questions during the remainder of the interview, which appears from the tape record of the interview to be true, and, further, that Ms. Davis appeared to be disinterested with his candidacy, which assertion is not controverted in the record, and which we will assume to be true.

We find that the appellant was ranked eleventh in a field of 13 candidates by reason of his relatively less qualifying background as an administrator and a fair assessment of his relative ability to work effectively with members of all disadvantaged minorities in Wisconsin. We find that appellant was not discriminated against because he was not Black, since the question relating to Black community organizations was a proper question pertaining to his qualifications for the position involved. We find that the fact that Ms. Davis, who is Black, asked only one set of questions in the interview and may have appeared to the appellant to be disinterested in what he was saying throughout the remainder of the interview, constitute insufficient circumstances from which to infer or find racial discrimination, when it clearly appears that appellant's ranking amongst the candidates accurately reflects his background as an administrator, as contrasted with the other candidates, and his ability to establish rapport in working with disadvantaged minorities, as contrasted with the other candidates.

Appellant also claims that his ranking was affected by discrimination against him for not being of a Latin national origin, which he bases on Mr. Camacho's inquiry concerning his work with Spanish-speaking community organizations on the South Side of Milwaukee. We find that Mr. Camacho's inquiry was proper in light of the requirements of the position, and there is no evidence in the record

whatsoever to indicate that the appellant was discriminated against because of his national origin. Neither is there any evidence to support a finding of religious discrimination, and we find that the appellant was not discriminated against because of his religion.

The board concludes that the respondent's action in ranking appellant eleventh in a field of 13 candidates for the position of Administrator, Division of Educational Opportunity, Higher Educational Aids Board, was because of his relative qualifications for that position and, not because of his race, national origin, or religion, as alleged and, therefore, the examination is upheld as proper.

ORDER

It is ordered that this appeal be, and hereby is, dismissed.

STATE BOARD OF PERSONNEL

BY

William Adams
Chairman

Aug 13, 1977

JG:do