STATE OF WISCONSIN STATE PERSONNEL BOARD

RONALD OTIS, EDWARD GLIMME, AND JAMES DOLAN,

Appellants,

v.

VERNE KNOLL, Deputy Director State Bureau of Personnel, and MANUEL CARBALLO, Secretary, Department of Health and Social Services,

Respondents.

Case Nos. 73-104, 105 & 106

OPINION AND ORDER

Before: JULIAN, Chairperson, STEININGER and DEWITT, Board Members.

NATURE OF THE CASE

This is an appeal of the denial of a grievance. The parties have submitted this case on the basis of a stipulation of facts.

FINDINGS OF FACT

At a hearing held in this matter on November 19, 1975, the parties entered on the record an agreed statement of facts. Based on this stipulation we make the following findings of fact.

Appellant Glimme was and has been at all relevant times employed as a Building Maintenance Helper at the Mendota Mental Health Institute, Madison. In March 1973, a vacancy occurred and a selection process was conducted for a Power Plant Helper. The competition was open competitive and responsibility for recruitment and examination was delegated by the Director of the Bureau of Personnel to Mendota. Twenty-four individuals, including Mr. Glimme, who applied progressed to the oral interview stage. These individuals were orally examined by Myron Schuster, who at that time was the Assistant Personnel Manager at Mendota. The oral examination consisted of five or six questions prepared by Mr. Schuster following consultation with Louis Gasman, the immediate supervisor of the position sought to be filled. Mr. Gasman was not sought out because of his expert knowledge or experience in the area of either testing or measurement but because of his expert knowledge of the position.

Mr. Schuster could not remember the questions asked and they were not recorded in any way and the content of these questions is unknown at this time. The exam was not validated. There was no written exam given.

All of the persons examined passed the test. Mr. Glimme ranked seventh. Of the top ten, the persons ranked one through five and eight and nine were not then permanent Mendota employes. Persons ranked to six, seven and ten were permanent Mendota employes.

Paul Vollmer ranked first on the examination and with two other persons was certified for the appointment. Mr. Vollmer used as a reference in his employment application the name of Dr. L. A. Ecklund, who at all relevant times was the Superintendent at Mendota and the appointing authority with respect to the Power Plan Helper position.

At all relevant times Mr. Paul Vollmer's father was employed at Mendota as Superintendent of Buildings and Grounds and as such supervised Mr. Gasman. Mr. Gasman wanted Paul Vollmer as an employe in the Power Plant Helper position and expressed his desire to the Mendota personnel office after he had interviewed the three certified candidates.

Paul Vollmer was notified of his appointment to the Power Plant Helper position by a letter written by someone in the Personnel Office. Neither Mr. Schuster nor the Personnel Manager Mr. Dennis Dokken were appointing authorities.

With regard to Messrs. Otis and Dolan their counsel stated on the record and we find that they wish to withdraw their appeals.

CONCLUSIONS OF LAW

The Appellant has advanced several contentions of error in the selection and appointment processes, and we will take these up in the order he has raised them.

TEST VALIDITY

Appellant argues that the Respondent has the burden of establishing test validity and failed to do so with regard to this examination. This is consistent with our decision in Kuter, North & Wisconsin State Employees Union v. Wettengel & Lerman, Wis. Pers. Bd. No. 73-152, 159, 7/3/75, and we see no reason to depart from that approach at this

time. Cf. Pulliam & Rose v. Wettengel, Wis. Pers. Bd. No. 75-51. Here, the examination questions are unknown and apparently unascertainable. The facts as stipulated do not carry inherent indices of reliability in the development and administration of the examination. The Respondents have the statutorily-imposed responsibility for the exam process. Under these circumstances we conclude that the Respondents have the burden of establishing the validity of the examination. We further conclude that the Respondents failed to discharge that burden and that the examination was invalid.

AUTHORIZATION TO MAKE APPOINTMENT

Appellant argues that Mr. Vollmer was not appointed by an appointing authority and hence the appointment was invalid. There is nothing in this record to indicate by whom the appointment was actually made, as the stipulation only runs to the notification of the appointment. See 11/19/75 transcript, p. 14. The Appellant has the burden of proof on this point and in the absence of anything in the record to the contrary, we conclude that the appointment was not made by other than an appointing authority.

USE OF OPEN COMPETITIVE EXAM

Appellant argues that the vacancy in question should have been filled by competition limited to persons in the classified service, pursuant to S. 16.15, Wis. stats.:

> When, in the judgment of the director, the group of applicants best able to meet the requirements for vacancies in positions in the classified service, such vacancies shall be filled by competition limited to persons in the classified service who are not employed under S. 16.21.

Again, the burden on this point is on the Appellant. There is nothing in the record that would support a conclusion that the judgement of the director (or his designee) that utilization of S. 16.15 was inappropriate and that the position should be filled by open competitive examination was incorrect. Therefore, we conclude that the utilization of an open competitive exam to fill this position was not incorrect.

IMPROPER INFLUENCE

Appellant contends that the examination and selection process was improperly influenced by the use of the Superintendent as a reference by Mr. Vollmer and by the fact that Mr. Vollmer's father was the supervisor of Mr. Gasman, who supervised the position to be filled and who had the effective authority to make the selection from the three persons certified by the personnel office.

Mr. Vollmer filled out a standard state application for employment or promotion, form AD-PERS-35 (REV. 1/73), Appellant's Exhibit 1, in order to apply for the position. Under the section denominated "work experience," there is a box labeled "name and address of reference" for each employer. Dr. Ecklund was listed as a reference for Mr. Vollmer's employment as an LTE at Mendota. We conclude that this would not tend to exert any improper influence on the selection process.

With regard to Mr. Vollmer's father, there is nothing in this record that indicates that he played any role at all in his son's selection. We believe that it was a poor personnel practice to have put Mr. Gasman in a position of choosing an applicant from among a certification which included the name of his boss's son. We wish to make it clear that there is nothing in this record which impugns the motives, intentions, or actions of anyone. However, given the family and managerial relationships among the people concerned we conclude there was at least an appearance of conflict of interest inherent in the situation which should have been avoided, perhaps by having delegated the selection to someone other than Mr. Gasman.

REMEDY

Based on the foregoing findings and conclusions, we further conclude that the denial of the grievance must be reversed. The selection and appointment process which lead to the appointment of Mr. Vollmer as Power Plant Helper was improper. If Mr. Vollmer still holds the position, it must be reopened and filled in an appropriate manner which allows the appellant an opportunity to compete for the position if he desires. If Mr. Vollmer has left

the position as the Respondents indicate in their brief, then Appellant would not be entitled to have the position reopened if a selection process other than the one in question in this grievance were utilized to select the incumbent. The Appellant has requested attorneys fees but has not advanced any authority for the grant of such relief. In the absence of any explicit basis for the grant of such relief, we will deny it at this time.

ORDER

IT IS HEREBY ORDERED that appeals No. 73-104 and 73-106 are dismissed. In No. 73-105, Glimme v. Knoll & Carballo, the Respondents' denial of Appellant's grievance is reversed and this matter is remanded for action not inconsistent with these findings and conclusions.

Dated May 28, 1976. STATE PERSONNEL BOARD

Percy L. Julian, Jr., Chairperson