
WILLIAM C. GOEHRING,

Appellant,

v.

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

Respondents.

Case No. 74-128

OPINION
AND
ORDER

OFFICIAL

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

The Respondents have moved to dismiss this case as moot. The Appellant appeals the denial of his entry to an examination for Social Services Specialist II. Since the appeal was filed the register created by the examination was voided because of a hiring freeze. See memorandum dated October 17, 1975, attached hereto.

Notwithstanding, Appellant has indicated his desire to continue to pursue the appeal. He points out in a letter dated July 15, 1975, that:

My appeal concerns my exclusion from competition for an examination and class of employment for which I feel am qualified not necessarily for a specific job. . . . My 'injury' occurred by not allowing me to compete in the examination process, not in my failure to attain the position.

Prior to the decision of the Wisconsin Supreme Court in Watkins v. DILHR, 69 Wis. 2d 782 (1975), we would have been inclined to agree with the Respondents that the voiding of the register mooted this appeal. However, that case appears to control the question.

Ms. Watkins was denied a transfer from a position as a basic zone caseworker, Milwaukee County Department of Public Welfare, to a position as a service zone caseworker. The latter position differs from the former position in that there is a reduced caseload and more

attention given to individual cases in the latter. There is no difference in pay. She eventually filed a complaint with DILHR, alleging racial discrimination, on May 25, 1971. She was transferred unilaterally to a service zone position on November 1, 1971. Her complaint was eventually dismissed, in part, on the grounds of mootness.

In holding that the case had not been mooted by her transfer, the court took an expansive view, somewhat comparable to a holding that she was entitled to a declaration of rights regardless of whether or not a decision could "have any practical legal effect on the existing controversy," citing Wisconsin Employment Relations Board v. Allis-Chalmers Workers' Union, 252 Wis. 436, 440, 441 (1948). The court did hold an agency order could require that she be considered fairly for future transfers and that she be treated fairly and equally in the processing of future grievances. However, it went on to hold:

She is entitled to know whether or not this [the denial of the transfer] was due to racial discrimination or to some other cause. It would be inequitable to hold that a person who must have suffered deep personal frustration over an extended period of time is not entitled to a determination of the cause of that frustration, while a person who failed to receive a minor pay differential because he or she was not transferred is in all cases entitled to a full legal determination.
69 Wis. 2d at 794.

Both of these factors are present in the instant case. Although the register has been voided, a determination as to the adequacy of Appellant's qualifications could have an effect on his participation in a future selection process for the same or a similar position. This presumes that he might in the future apply for such a position that would be open and would have the same qualifications, but these assumptions are similar in dimension to those found in Watkins. Furthermore, the Appellant is entitled on the basis of Watkins for an explanation of the reason for his exclusion from the examination.

Finally, the court in Watkins also based its decision on the consideration that a mootness holding could encourage employers to avoid mandatory orders by delaying compliance, then complying just before a hearing, and having the proceeding dismissed as moot. That consideration does not appear to be present here because the

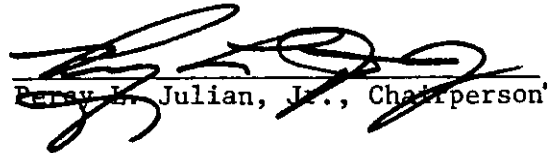
register was voided for reasons which ostensibly are outside Respondents' control. However, the two considerations discussed above provide ample basis for the conclusion that the appeal is not moot.

ORDER

IT IS HEREBY ORDERED that Respondents' motion to dismiss on the grounds of mootness is denied.

Dated December 22, 1975.

STATE PERSONNEL BOARD


Percy H. Julian, Jr., Chairperson

RECEIVED

OCT 20 1975

DEPARTMENT OF
ADMINISTRATIVE SERVICES

DIVISION OF FAMILY SERVICES

TO: Dave Riehle
Bureau of Personnel *WEK*

FROM: William E. Kuntz, Director
Bureau of Manpower

RE: William Goehring Complaint

DATE: October 17, 1975

The Social Services Specialist 2, County Liaison position, Fond du Lac District of the Division of Family Services, Department of Health and Social Services, was announced in the Current Opportunities Bulletin on October 21, 1974. A register was created on December 16, 1974 for the position. This register has been voided because various freezes resulted in our not being able to fill the position until September of 1975.

The register resulting from the announcement of October 21, 1974 has not and will not be used for any appointment to state service.

WEK/fk

cc: Ed Main ✓ *B-114*
Jeanne Neesvig