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GEORGE THOMAS,

Appellant,

v.

VIRGINIA HART, Chairperson,
Dept. of Industry, Labor & Human Relations,
VERNE KNOLL, Deputy Director,
State Bureau of Personnel,

Respondent.

Case No. 76-37

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Before: DEWITT, Chairperson, WILSON, MORGAN and HESSERT, Board Members
(WARREN, Board Member, abstaining)

Findings of Fact

This case combines an appeal of an examination with a request for investigation into certain management practices of the Department of Industry, Labor and Human Relations (DILHR) relating to the assignment and other personnel management practices relating to management level black employees. Following the prehearing conference the appellant entered into a written stipulation with respondent Knoll which contains, in part, the following language:

"3. In the event that appellant is not selected for the above position, he will reactivate his appeal to the Personnel Board.

* * *

6. Appellant agrees to withdraw the charge filed against respondent Knoll with the Equal Employment Opportunity Commission and with the State Personnel Board in the event that he is appointed to the position of Job Service Supervisor 4 - Employment Assistance in Milwaukee."

The file reflects and appellant concedes that he was offered employment in this position but refused it, due apparently primarily, to economic considerations relative to salary level and the fact that he would have had to commute.

OFFICIAL

INTERIM
OPINION
AND
ORDER

Conclusions of Law

Respondent Knoll at this juncture takes the position that the terms of the stipulation have been satisfied by him by the offer of employment and that therefore the appeal should be dismissed as to him. The stipulation quoted above contains an internal ambiguity inasmuch as one paragraph utilized the language "selected for the position" while another the language "appointed to the position." However, information concerning the intent of the parties is contained in a letter from the appellant to the board dated January 25, 1977:

" . . . even though I did receive a job offer for a Supervisor 4 job in the Milwaukee District Office, to accept a job which would have required a monthly expenditure of approximately \$75 per month in travel costs, would not have been economically feasible. My reaction now is, I am aware that I agreed to drop my charges of discrimination in the event I was offered either a Supervisor 4 or 5 job in the Milwaukee area, but I feel that through some technicality which prohibited negotiation of starting salary, the wrong which was done me, has not adequately been rectified."

Therefore, it is concluded that the offer of employment at the agreed classification level satisfied the terms of the stipulation as to respondent Knoll, and he should be dismissed as a party respondent pursuant to the stipulation.

The appellant has requested that the board investigate a number of matters, which have been identified in outline form as follows:

1. Appellant alleges there is a practice of racial discrimination in the assignment of black employes to supervisory positions, concentrating them in the WIN component of Job Service where they do not get as comprehensive experience in Job Service Offices. It is alleged that this pattern and practice impairs the ability of black supervisory employes to advance to higher level positions because they are deprived of the requisite experience.
2. Appellant questions whether a written exam would be fairer to applicants, whose race or color are in the minority or are not represented at all, than an

oral exam panel. He further requests investigation or exploration of the possibility of an optional panel (black majority) that could be requested by a black applicant.

3. Appellant alleges that the "rule of three" in certification is unfair and serves to discriminate against minority races.

4. Appellant alleges that the mandatory use of veterans' points is unfair and serves to discriminate against blacks.

The board's response to this request for investigation is as follows:

1. The respondent Hart is directed to file a substantive written response to this allegation within 30 days after the date of entry of this opinion and order. The board will then determine what further proceedings, if any, are indicated.

2. The bureau of personnel has replied to this charge that scientific research in this field does not support the appellant's concerns. In the absence of a more specific factual setting we decline to conduct any further investigation.

3. This question was studied in depth by the Employment Relations Study Commission (Stevens/Offner) which will recommend new legislation. We decline to conduct further investigation on this point.

4. We reiterate the comments made under the preceding paragraph.

Order

It is ordered that respondent Knoll be dismissed as a respondent and that respondent Hart serve and file a response as set forth above.

Dated July 22, 1977 STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson