

STATE OF WISCONSIN

PERSONNEL COMMISSION

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LINDA PULLEN,

Appellant,

v.

Secretary, DEPARTMENT OF IN-
 DUSTRY, LABOR, AND HUMAN RE-
 LATIONS, and Administrator,
 DIVISION OF PERSONNEL,

Respondents.

Case No. 79-197-PC

* * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This case involves the appeal of an action of respondents wherein the appellant was required to take a new examination on July 28, 1979, for Job Service Supervisor (JS Supv.) after having passed a civil service examination for the same classification in April, 1979.

The issue noticed for hearing is: "Did the establishment of a new register, based on a new examination for Job Service Supervisor 2 or 3, violate the Civil Service Law?"

FINDING OF FACTS

1. The appellant, Linda Pullen, was employed by the Department of Industry, Labor, and Human Relations (DILHR) as a Job Service Specialist 2; she had worked with the WIN program since October 3, 1970.

2. In April, 1979, Pullen took a civil service examination for Job Service Supervisor (JS Supv.), which was given in Madison, Wisconsin, to fill vacancies at the JS Supv. 3 level, Adjudications, in the Milwaukee and Stevens Point areas (JOA #79-6, Resp. Ex. 1); a second Stevens Point area JS Supv. 3, Branch Manager (JOA #79-7, Resp. Ex. 2); and a JS Supv. 2, Branch Manager, in the Green Bay Area (JOA #79-8, Resp. Ex. 3).

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3. At the time employees inquired about JOA's #79-6, 7, & 8, they were advised not to apply unless they were interested in the specific position at the location specified in the JOA and that other exams would be given at a later date for other specific positions when vacancies occurred.

4. On May 18, 1979, a register was established for JS Supv. 2 at Sheboygan (Green Bay Area employing unit), on which Pullen ranked 10th; for JS Supv. 3, Branch Manager, at Stevens Point, on which Pullen ranked 22d; and for JS Supv. 2, Branch Manager at Green Bay, on which Pullen ranked 10th. (App. Ex. 1a)

5. All three JOA's contained the same special note:

"SPECIAL NOTE: The examination may consist of two parts, an Oral examination and a Situational exercise. Candidates who apply now will be required to reuse their scores if this examination is used to establish registers for similar vacancies in such classifications as Job Service Supervisor 2 or 3 UI, ES, WIN or Branch Manager, Job Service Supervisor 1, or Job Service Supervisor 4. Candidates will be allowed to retake the examination only if six months have elapsed since they were initially tested." (emphasis added)

6. Former §Pers.11.03(1), Wisconsin Administrative Code (WAC), which was in effect at the time of this appeal, provides:

"Pers 11.03 Term of eligibility on an employment register.
(1) OPEN COMPETITIVE OR PROMOTIONAL REGISTERS. (a) Eligibility on a register continuous for 6 months from the date the register was established or, on an integrated register, 6 months from the date the individual is placed on the register.

(b) The director may reactivate or extend a register up to 3 years from the date it was established. Names on the reactivated register may be integrated with those on a subsequent register established."

7. In June, 1979, Dan Wallock, Chief of Assessment Section, Division of Personnel, was assigned to a special project to coordinate the staffing function, for the DILHR personnel office, to eliminate the backlog of unfilled vacancies.

8. Wallock determined that the problem in the Job Service Supervisor series was caused by DILHR's method of implementing the Assessment Center selection process: recruitment was limited by the JOA's to a specific location, and it was DILHR's intention to integrate the resulting list of eligibles with the registers developed when future exams were given as additional vacancies occurred. The Assessment Center process was time-consuming, taking two days, bringing candidates to a central location on the second day for the oral portion of the exam. It is Wallock's opinion that this type of exam is fine for a small group of non-recurring vacancies but it is not practical for positions in which there are a large number of recurring vacancies.

9. Wallock recommended a two-part written exam for levels 1, 2, and 3 of the Job Service Supervisor series, statewide, which could be given in a half day at scattered sites, and which would be given for all geographic locations and all functional positions within the series.

10. On June 28, 1979, JOA #79-23 was issued, announcing promotional job openings for "Job Service Supervisor 1, 2, 3 - UC, ES, WIN, Branch Manager - Statewide." None of the vacancies listed in this JOA were for the specific positions covered by JOA's #79-6, 7, and 8.

11. Employees on the May 18, 1979, register, including appellant, were advised of the new exam by letter, dated July 16, 1979:

"Those of you who are currently registered for specific positions from the March exams, will continue until those registers expire November 17, 1979. In order to be considered for any new openings, you must establish eligibility based on a new exam. Therefore, you are being advised to apply and compete in this recruitment in order to obtain future consideration." (Resp. Ex. 5)

12. This procedure was in conformity with SPers.11.03(1)(a), WAC.

13. Pullen took the new exam on July 28, 1979. Her final grades were under 70, and she was not eligible for placement on the new state-wide register established September 13, 1979, for Job Service Supervisor 1, 2, 3 - WIN, UC, or Branch Manager - Statewide.

14. The May 18, 1979, registers were not integrated with the September 13, 1979, register. Registers can be integrated only if the same exam was used for the integrated registers.

15. The establishment of the new register based upon the new examination for Job Service Supervisor 2 or 3 did not violate Civil Service Law.

CONCLUSIONS OF LAW

1. The Personnel Commission has jurisdiction over this appeal pursuant to §230.44(1)(a), Wisconsin Statutes.

2. The burden of proof is on the appellant to establish to a reasonable certainty by the greater weight of credible evidence, that the action complained of is a violation of civil service law. Reinke v. Personnel Board, 53 Wis 2d 123 (1971).

3. The appellant has failed to establish that respondent's action is a violation of civil service law.

OPINION

The evidence is clear that the respondent agencies did not violate Civil Service law in establishing a new register based on a new examination for Job Service Supervisor 2 or 3. Although the "Special Note" on the original JOA's (79-6, 7, and 8) stated that, if the exams were used to establish registers for similar vacancies, the candidates

would be required to reuse their scores for a six month period, there was no assurance that this would be the case. Although originally DILHR did intend to integrate these exams with subsequent registers, their procedures were changed when the Chief of the respondent's Division Assessment Section recommended a change in DILHR's selection process.

The decision whether or not to integrate registers is entirely within the discretion of the Administrator, Division of Personnel, previously the Bureau of Personnel, pursuant to §Pers 11.01(3), WAC, which was in effect at the time this appeal was filed. Nor was §Pers 11.03(1)(a) violated, in that the appellant was advised that her eligibility for specific positions, based on the May 18, 1979, registers, would continue until those registers expired on November 17, 1979, six months from the date on which they were established.

It is not the role of the Commission to determine whether or not the decision to give a new statewide exam was correct. Wallock's testimony was persuasive, namely that DILHR's earlier use of the Assessment Center procedure had resulted in a never-ending series of exams for specific vacancies, causing a backlog of unfilled positions that were taking six to nine months to fill. Nor will the Commission determine whether or not the decision not to integrate the registers was correct; to do so would merely substitute its judgement for that of the respondent Division.

Pullen v. DILHR & DP
Case No. 79-197-PC
Page 6

ORDER

IT IS HEREBY ORDERED that the action of the respondents is affirmed,
and this appeal is dismissed.

Dated: October 2, 1981

STATE PERSONNEL COMMISSION

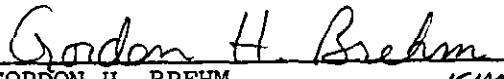
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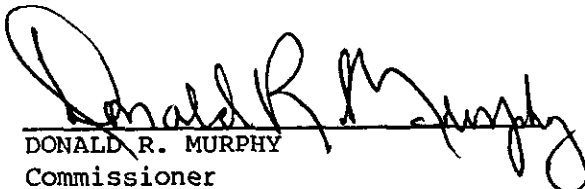
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