

## STATE OF WISCONSIN

## PERSONNEL COMMISSION

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JOHN W. BAKER,

Appellant,

v.

SECRETARY OF STATE,

Respondent.\*

Case No. 80-183-PC

\* \* \* \* \*

OFFICIAL

DECISION  
AND  
ORDER

## NATURE OF THE CASE

This is an appeal from a decision of the Secretary of State, respondent, on or about June 4, 1980, not to appoint the appellant to the vacant Data Entry Operator 2 position. This case is before the Commission pursuant to s.230.44(1)(d), Stats.

## FINDINGS OF FACT

1. The appellant has worked in the Office of the Secretary of State, respondent, for four and a half years. His current status is that of a Data Entry Operator 1. He also is the President and Chief Steward of Local 1, WSEU.
2. During March, 1980, the Office of Secretary of State announced an intra-agency competitive promotional examination for Data Entry Operator 2, a Classified Civil Service position.
3. On May 23, 1980, the appellant and two other applicants were certified for the Data Entry Operator 2 position by the Division of Personnel. All were employees of the respondent. Although no examination was required for certification, upon respondent's request an examination was given. The appellant scored the highest grade on the examination.
4. Next an oral interview was conducted of the three applicants. This was administered by a three person panel selected by the Secretary of State.

The panel members were employees of the respondent, who comprehended the duties to be performed by the successful applicant.

5. Questions asked in the oral interviews were proposed in written form before the interview together with suggested answers for the more technical questions.

6. Each applicant was interviewed individually and asked the same questions. The applicant's answers were graded individually and independently by each oral interview panel member before computing the final scores.

7. Subsequently, as directed by the Secretary of State, a written supervisory analysis was made of each of the applicants. The ten point analysis was prepared in writing by respondent's personnel specialist and reviewed by its general counsel prior to use.

8. The choice of the particular applicant to fill the vacant Data Entry Operator 2 position was made solely by the Secretary of State. Her decision was based upon the scores received by each applicant in the entire selection process. Various weights were given to the scores of the applicants in each of the three selection processes. In each instance the successful applicant had the highest total score.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction to hear this matter pursuant to s.230.44(1)(d), Stats.

2. The appellant has the burden of proving that respondent's failure to select the appellant for the Data Entry Operator 2 position was illegal and an abuse of discretion.

3. The appellant failed to sustain that burden. Respondent's conduct in the selection of the successful applicant for the Data Entry Operator 2 position was not illegal or an abuse of discretion under Wisconsin civil service laws.

OPINION

The appellant maintains that respondent's selection process was subjective, thereby invalidating the final decision. It is agreed there was some measure of subjectivity in the selection process. While the oral interviews may have had a low quotient of subjectivity, it is clear that the supervisor's analysis was based upon observations of the applicants over a period of years, intuitive responses to the applicants and developing opinions regarding their respective abilities. It does not follow inexorably that a valid decision is less likely to flow from this process than from a more detailed procedure. It's not fundamentally unfair for the respondent to give weight to subjective opinions of the applicant's work abilities formed over knowing and observing them.

Appellant alleges that the members of the panel for the oral interviews were biased against the appellant because he is a member and officer in the union. Testimony by appellant's witnesses related allegations of disparate treatment of union member employees by various members of the oral interview panel, in their respective roles as supervisor, operations officer and legal counsel. Testimony was also elicited citing incidents of implicit insubordination by a union member without any disciplinary action.

It is apparent that the daily work relations between employee and supervisor can be contentious and lack of the diplomacy warranted. The relations between the appellant as a union representative and his supervisors as management periodically undoubtedly may have become strained. Despite the description of these events, there is insufficient evidence to conclude the appellant was discriminated against during the selection process for the Data Entry Operator position.

Finally, it might be well to note that the appointing authority has some discretion in the consideration of appointment criteria, after certification and is not required by statute to utilize a totally objective process as is required for the examination process by s.230.16, Wis. Stats.

ORDER

IT IS HEREBY ORDERED that respondent's decision be affirmed and that this appeal be dismissed.

Dated December 17, 1980

STATE PERSONNEL COMMISSION

Charlotte M. Higbee / mek  
Charlotte M. Higbee, Chairperson

Donald R. Murphy / mek  
Donald R. Murphy, Commissioner

Gordon H. Brehm / mek  
Gordon H. Brehm, Commissioner

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