

position by Ron Singer, Assistant Chairman of the Division; Art Dudycha, Chairman of the Division; Virginia Shelly, Dudycha's secretary and Fran Reynolds, a typist in the Division office. The five candidates interviewed were Susan Luke, Judith Beyer, Lucille Vahradian, Eleanor Suwalski, and Carrie Peters. The sixth candidate on the certification list voluntarily dropped out of the competition (Respondent's Exhibit 3).

4. Susan Luke was offered and subsequently accepted the position in the Office of the Vice Chancellor. This reduced the certification list to four candidates for the remaining open position in the Division of Business and Administrative Science.

5. Dudycha then met with Dick Cummings, UW-Parkside Personnel Manager, and requested that another person be added to the certification list to bring it back up to five candidates. This time the position was announced on a statewide open competitive basis and another examination was subsequently held (Respondent's Exhibit 2). The remaining four candidates on the original certification list were notified that there was going to be a delay in filling the remaining open position.

6. On August 6, 1980, four persons were ranked in order of their examination scores on a new register established for the open position (Respondent's Exhibit 4).

7. In September, 1980, Susan Minton, who ranked highest on the new register, was interviewed for the open position. At about that point in time, Eleanor Suwalski, voluntarily dropped out of the competition. Betty Bogart, who was ranked second on the new register, was scheduled to be interviewed but also dropped out of the competition.

8. Evelyn Barth, who was an LTE in the position of Program Assistant 1 in the Division, was ranked third on the new register.

9. A second interview panel was established when Ms. Barth became eligible for the position according to a policy established by the UW-Parkside Chancellor which applies when an incumbent LTE employe becomes a candidate for permanent employment in the position that he or she occupies. This policy provides that at least two members of the three-member interview panel must be from outside the department where the vacancy is to be filled.

10. The new interview panel consisted of Dudycha, Cummings, and Nick Burckel, an Assistant to the Chancellor. The new panel interviewed Minton, Barth, Peters, Beyer, Vahradian, and Christine Donahue, a reinstatement candidate, on October 7-8, 1980.

11. Ms. Barth was offered and accepted the position during the second week of October, 1980. Her selection was agreed upon by the new interview panel.

12. During the first round of interviews, on May 8, 1980, Dudycha asked Beyer, Peters, Vahradian, and Suwalski a general question concerning what kinds of questions were contained in the written examination. This was an improper question since the candidates had been informed by a notice on the examination paper that they were not to divulge information about the test.

13. On June 10, 1980, appellants Toigo and Tower filed a grievance with respondent concerning the delay in filling the position in the

Division of Business and Administrative Science. An appeal of the same action was filed with the Commission on June 18, 1980.

14. Following the filing of the grievance and subsequent appeal with the Commission, Cummings conducted an investigation on behalf of respondent into the personnel transaction. The Division of Personnel also conducted an investigation before it agreed to send the new register with additional candidates for the second position.

15. No evidence was presented at the hearing that Ms. Barth was furnished any information concerning the examination for the position prior to her taking the test.

16. Respondent University of Wisconsin-Parkside had the right to request additional candidates for the certification list once the list was reduced to less than five candidates under Pers. 12.04, Wis. Adm. Code.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to §230.44(1)(d), Wis. Stats.

2. The appellants have the burden of proving that there was an illegal act or abuse of discretion in the filling of the positions of Program Assistant 1 at the University of Wisconsin-Parkside.

3. The appellants have failed to meet that burden.

4. There was no illegal act or abuse of discretion in the filling of the positions of the Program Assistant 1 positions at the University of Wisconsin-Parkside.

OPINION

The pertinent statutes and administrative rules in this case are as follows:

§230.25, Wis. Stats. Certification, appointments and register.

(1) Appointing authorities shall give written notice to the administrator of any vacancy to be filled in any position in the classified service. The administrator shall certify, under this subchapter and the rules of the administrator, from the register of eligibles appropriate for the kind and type of employment, the grade and class in which the position is classified, the five names at the head thereof if the register is less than 50...

Pers. 12.04, Wis. Adm. Code. Use of related registers.

(1) Lacking a complete certification, the appointing authority may request additional names to complete the certification. Additional names may be certified and shall be considered in rank order following those originally certified.

There is no question here that respondent University of Wisconsin-Parkside had the right to request additional names for the second position once the certification list dropped below five candidates. There also was nothing improper in the decision to hold the second examination on statewide open competitive basis in order to expand the list of candidates for the open position.

As indicated in Finding of Fact 12, Dudycha did ask an improper question of four of the candidates during the first round of interviews. However, the testimony of the candidates and the other members of the interview panel clearly established that the question and responses were of a general nature and did not reveal any specific information concerning the examination. In any event, there was no evidence presented that Dudycha ever discussed the examination with Ms. Barth at any time.

The evidence also shows that all three members of the second interview panel, two of whom were not members of the Division of Business and Administrative Science, agreed on the selection of Ms. Barth. For all of the aforementioned reasons, the Commission finds there was no illegal act or abuse of discretion in the filling of the positions of Program Assistant 1 at the University of Wisconsin-Parkside.

Respondents moved at the beginning of the hearing to bar the admission of testimony and evidence on behalf of the appellants because of the failure of appellants to comply with Rule PC 2.01. This motion is rejected on the basis of Gary Hausen's affidavit indicating appellants made a good faith attempt to comply with the rule.

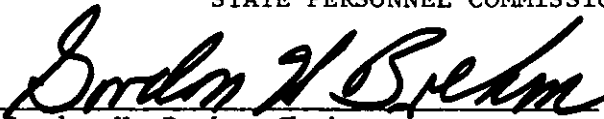
Counsel for respondent University of Wisconsin-Parkside moved at the conclusion of appellant's case to dismiss this appeal on the basis that the appellants had not established a case of an illegal act or abuse of discretion. This motion is also denied.

ORDER

The action of respondent in filling the positions of Program Assistant 1 at the University of Wisconsin-Parkside is affirmed and this appeal is dismissed.

Dated June 3, 1981

STATE PERSONNEL COMMISSION


Gordon H. Brehm, Chairperson


Donald R. Murphy, Commissioner

Toigo, Tower et al. v. UW & DP
Case No. 80-206-PC
Page 7

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