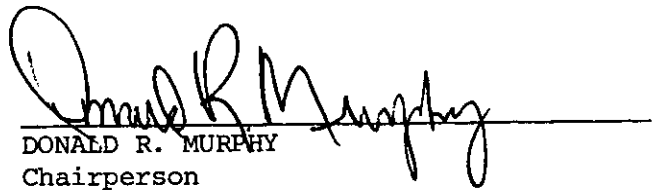


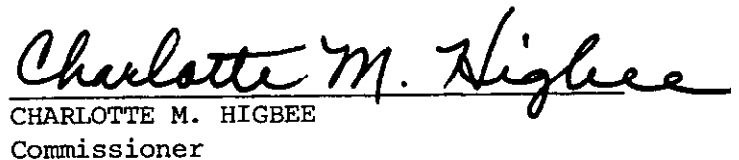


could have either established a new register or reactivated the old one. We cannot say that the decision to reactivate the register was an abuse of discretion.

Dated: October 29, 1981

STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY  
Chairperson

  
CHARLOTTE M. HIGBEE  
Commissioner

ers

Parties

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1770 Madison Rd.  
Kenosha, WI 53140

Lowell Jackson  
DILHR Secretary  
Rm 441  
201 E. Washington Ave.  
Madison, WI 53702

Charles Grapentine  
DP Administrator  
149 E. Wilson St.  
Madison, WI 53702



decided to identify the position at the JSS 4 level because the two positions in Racine and Madison were to have the same duties and responsibilities because a new program -- WIN Laboratory -- was being phased in and which was expected to last for five years.

4. The two Job Service Supervisor 4 - WIN positions in Racine and Madison were announced on August 23, 1979 with applications to be returned by September 5, 1979 (Respondent's Ex. 3).

5. An oral examination for the two positions was held October 23, 1979 for the 12 eligible candidates and 11 persons took the examination.

6. The Job Service Supervisor 4 - WIN - Racine register was established by the Department of Employment Relations (DER) on October 29, 1979.

7. On October 31, 1979, certification lists were established by DER for the positions (Respondent's Ex. 38).

8. Elizabeth Blessinger was subsequently appointed to the Madison JSS 4 position effective December 30, 1979 (Respondent's Ex. 8).

9. Sometime in late 1979, Robert Polston, administrator of the DILHR Job Service, decided to put a hold on filling the Racine JSS 4 position because the WIN Laboratory Project was being phased out early which raised a question concerning the proper classification level for the position. At the same time, the former incumbent in the position was being investigated concerning an unrelated allegation concerning his job.

10. The investigation of the former incumbent was completed in

early 1980, but the classification issue concerning the position was not resolved until early July, 1980.

11. On April 30, 1980, the original register for the positions expired.

12. On July 2, 1980, the DILHR personnel office received a new certification request to fill the Racine JSS 4 position (Respondent's Ex. 6).

13. On July 7, 1980, DILHR personnel requested DER to reactivate the old register until September 29, 1980 to fill the Racine position. DER approved the request on July 10, 1980 (Respondent's Ex. 7).

14. A certification list from the reactivated register was sent to DILHR Job Service on July 30, 1980. Marla J. Mayer was subsequently appointed to the Racine position, effective September 21, 1980.

15. Appellant did not apply for the Racine position in August through September, 1979 although he was eligible to compete for the position at the time.

16. Appellant contacted Duane Sallstrom, personnel manager for DILHR, in late August or early September, 1980, after being informed that the old register had been reactivated to fill the Racine position and inquired as to why a new register was not being developed.

17. After making an investigation, Sallstrom contacted the appellant and informed him that he felt that it was proper to reactivate the old register.

18. Joseph McClain, affirmative action officer for DILHR, contacted

a number of DILHR officials including George Kaisler and Ed Kehl of the DILHR Job Service Division, after the old register had been reactivated. McClain asked them to rescind the request to reactivate the old register in order to permit several minority candidates, including appellant, to compete for the Racine position. Kaisler and Kehl then asked John R. Lawton, a DILHR personnel specialist, to rescind the request but Lawton refused to do so when Kaisler, Kehl, and McClain failed to submit any reasons in writing justifying their request to rescind the reactivation.

19. There was a reasonable basis for respondent to reactivate the old register and use it in filling the position of Job Service Supervisor 4 in Racine.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.25(3) and (4)(a) and §230.44(1)(d), Wis. Stats.
2. The appellant has the burden of proving that the respondent's use of the reactivated register in filling the Racine position was illegal or an abuse of discretion.
3. The appellant has failed to sustain his burden.
4. The decision of the respondent to reactivate and use the register in filling the Racine position was neither illegal nor an abuse of discretion.

OPINION

The issues agreed to by the parties in this case are as follows:

"1. Whether or not the administrator's decision to reactivate the certification list, dated October 29, 1979, for the position of Job Service Supervisor 4 - WIN - Racine area, was in violation of Sections 230.25(3) and (4) (a), Wis. Stats.

2. Whether or not use of the reactivated register by the appointing authority is illegal or an abuse of discretion under §230.44(1) (d), Wis. Stats."

The relevant statutes are as follows: "§230.25(3) The term of eligibility on original entrance and promotional registers is 6 months and thereafter the register expires but may be reactivated by the administrator for up to 3 years from the date of the establishment of the register. The eligibility of individuals for reinstatement or restoration is 3 years except as provided in §§230.28 and 230.34.

Section 230.25(4) (a) The administrator may establish a new and separate register for a specific position or class only when in the administrator's judgment there is no appropriate existing register from which appointments may be made.

Section 244(a) (d) Illegal action or abuse of discretion. A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the Commission."

In the instant case, there is no dispute as to the essential facts.

Respondent created a register in October, 1979 to fill two Job Service Supervisor 4 positions, one in Madison and one in Racine. The Madison position was subsequently filled through the register.

In the meantime, because of a classification question and an investigation at the Racine Job Service Office, respondent postponed the filling of the Racine job. The register expired after 6 months as per §230.25(3) on April 30, 1980.

After clarifying the classification question concerning the Racine position, respondent then proceeded to fill the job. DILHR chose to request DER to reactivate the expired register rather than ask that a new register be established. DER granted the request and the expired register was reactivated and the position was filled.

DILHR personnel specialists and DER officials testified that they agreed that the best course of action was to reactivate the expired register because: 1) The register had been created by an examination designed specifically for both the Madison and Racine positions, 2) the candidates on the register who competed only for the Racine position had not been given employment consideration, 3) there were still enough viable, qualified, interested candidates for the Racine position on the register to complete a certification, 4) although there had been some changes in the duties of the Racine position, it was determined that the examination used to establish the expired register was still job related to the then current duties and responsibilities of the position, 5) since the position had been vacant for some time, there was



a clear need to expedite the filling of the position, 6) reactivating the register would clearly be more efficient and economic to the state.

The Commission believes that, under these circumstances, that the language of §230.25(4)(a) which states that "The administrator may establish a new and separate register for a specific position or class only when in the administrator's judgment there is no appropriate existing register ..." (emphasis supplied) made it incumbent on respondent to reactivate the register.

Appellant also questioned the reactivation of the register on the basis that affirmative action hiring practices were not observed. However, Sallstrom testified that he did consider affirmative action hiring in the decision and pointed out that one woman and one minority member were on the certification list from the reactivated register.

Thomas v. DILHR & DP  
80-298-PC  
Page Eight

ORDER

The action of respondent in reactivating the register and using the certification list from the register in filling the position of Job Service Supervisor 4 - WIN - Racine Area is affirmed and this appeal is dismissed.

Dated: \_\_\_\_\_, 1981. STATE PERSONNEL COMMISSION

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Gordon H. Brehm  
Chairperson

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Charlotte M. Higbee  
Commissioner

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Donald R. Murphy  
Commissioner

GHB:jmg

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