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KAREN ANDERSON,

Appellant,

v.

President, UNIVERSITY OF WISCONSIN*
 & Administrator, DIVISION OF *
 PERSONNEL, *

Respondents. *

Case No. 80-318-PC *

* * * * *

INTERIM
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent's objection to subject matter jurisdiction. The parties have filed briefs in support of and opposition to this objection.

OPINION

The appeal letter in this matter contained in part the following:

"...the Wisconsin Association of Science Professionals, Local 3732, is filing an appeal on the illegal filling of the Medical Technologist II position in Dr. Ray V. Haning's lab, University of Wisconsin, Center for Health Sciences (46/262). After posting this new position for transfer and selecting none of the transfer applicants, the position was filled illegally. Civil Service Procedures were not followed as set by Wisconsin Statutes."

It appears to be undisputed, and the Commission finds for the purpose of resolving this objection, that the position in question was filled under the critical recruitment program, §230.21(2), Wis. Stats., that the position first was posted for transfer but that none of the transfer candidates were selected, that one other person applied for the job and was selected, and because she was the only candidate other than transfer applicants, the administrator's procedures for a formal evaluation process was not followed.

The administrator, pursuant to §Pers. 6.11(2), Wis. Adm. Code, has developed certain procedures for critical recruitment, see Attachment 1 to respondent's brief, which states in part as follows:

"268.050 PROCEDURES FOR FILLING VACANCIES

* * * * *

4. If five or fewer qualified candidates express an interest in being interviewed for a vacancy and after a formal evaluation of training and experience, a grade of "Eligible" is given and a selection can be made from those available. No official notice of the ranking is necessary as all qualified candidates are to be given equal employment consideration.
5. If more than five persons who meet the training and experience requirements indicate an interest in being considered for a vacancy, a formal evaluation process must be developed which will result in a ranking for certification purposes. A Notice of Examination Results (DER-PERS-25) must be completed and sent to each applicant. If a formal evaluation process is frequently needed, then the job classification should be removed from the Critical Recruitment Program and recruited through the CURRENT EMPLOYMENT OPPORTUNITIES BULLETIN or the CONTINUOUS RECRUITMENT BULLETIN."

Section 230.21(2), Wis. Stats., provides as follows:

"The administrator may designate classifications in which applicants are in critically short supply and may develop such recruitment, examination and certification processes as will provide agencies with prompt certification when qualified applicants can be found, provided that due notice has been given and proper competitive standards have been maintained."

The evident purpose of this subsection is to provide a means of recruitment, examination and certification which is more streamlined and faster in operation than the normal processes followed for regular selections. See primarily §230.16, Stats. However, the overall responsibility for the administration of §230.21(2), Stats., is clearly vested in the administrator,

just as the overall authority for the administration of "regular" examinations is vested in the administrator by §230.16, Stats. The administrator may permit the appointing authorities to conduct the evaluation and ranking processes, but this in legal effect is simply a form of delegation. Therefore, pre-certification and certification actions taken under this section are appealable to the Commission as appeals of decisions of the administrator under §230.44(1)(a), Stats., or of actions of the appointing authority taken on a delegated basis, pursuant to §230.44(1)(b), Wis. Stats.

The respondent argues that there can be no jurisdiction under §230.44(1)(c), Stats., because there has been no certification. Section 230.21(2), Stats., speaks explicitly of "prompt certification," so it is clear that as a general proposition there can be a certification in a critical recruitment selection process. The question is whether there is as a matter of law a "certification" where, as here, there is no formal evaluation process because of the small number of qualified candidates. The respondent argues that the administrator's guidelines preclude a certification under these circumstances, citing §268.050/5. However, this section simply states that if more than five qualified persons are interested, "a formal evaluation process must be developed which will result in a ranking for certification purposes." This is not inconsistent with the concept of a certification in cases of less than five eligible candidates. In the latter case, there obviously is no need for a formal evaluation process to determine the top five candidates. The term "certification" does not refer to the evaluation process

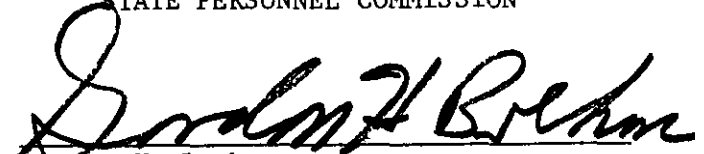
which determines the candidates ranking and consequently the top five, but rather to the designation to the appointing authority of these candidates he or she can consider for appointment. Even in a "regular" selection process in the civil service, if there are less than five qualified candidates there is no need for a formal examination as such.

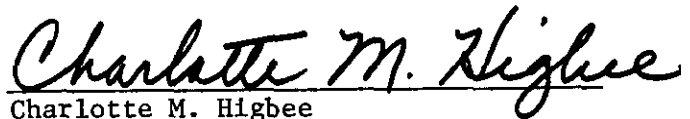
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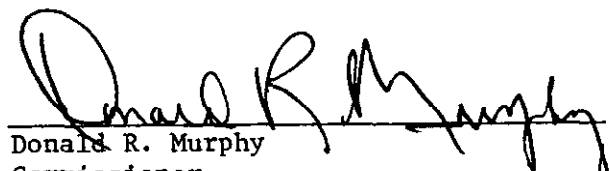
The respondent's objections to subject matter jurisdiction are overruled.

Dated July 21, 1981

STATE PERSONNEL COMMISSION


Gordon H. Brehm
Chairperson


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner

AJT:mew

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