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FRED McCABE,

Appellant,

v.

President, UNIVERSITY OF  
WISCONSIN, SYSTEM,

Respondent.

Case No. 82-20-PC

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DECISION  
AND  
ORDER

NATURE OF THE CASE

This matter is before the Commission as an appeal from a decision by respondent University of Wisconsin not to interview the appellant for a vacant position. The issue identified for hearing reads as follows:

Whether or not the respondent's action in not granting an interview to the appellant for the position of Educational Services Intern at the University of Wisconsin-Milwaukee was an illegal [action] or an abuse of discretion.

FINDINGS OF FACT

1. The appellant is an employe of the Department of Industry, Labor and Human Relations. Although his current position is classified at the Job Service Assistant 1 level, he had previously held the position of Job Service Specialist 2 (JSS2). At all times relevant to this proceeding, the appellant has been on layoff status relative to his former position as a JSS2.

1. In the fall of 1981, a job announcement for the position of Educational Services Intern-Financial Aids/Minority Advisor-Milwaukee Area was posted. The announcement provided in relevant part:

University of Wisconsin-Milwaukee, Financial Aids Department. Start at \$7.476 per hour. Serve as financial aid advisor to students, parents, University departments, and government agencies. Develop and conduct outreach workshops/programs for minority students. Evaluate aid applications according

to government and department regulations. Knowledge required in analysis of financial aid needs, college scholarship services, and counseling techniques.

3. An examination was conducted by the Division of Personnel and on or about December 8, 1981, David Putchinski, a personnel specialist with respondent University was notified of the exam results. At the same time, the Division of Personnel notified Mr. Putchinski of six state employes who were deemed to be eligible for "non-mandatory transfer and reinstatement" into the Educational Services Intern (ESI) position.

4. In a memo to the Director of the UW-M Financial Aids Department, and based upon the information received from the Division of Personnel, Mr. Putchinski identified ten individuals as being "certified" for the position. Five of those ten persons qualified by using the "rule-of-five" standard, two qualified pursuant to the veteran's preference point procedure and an additional three names were certified pursuant to expanded certification list procedures. After listing the names of those persons certified for the positions, Mr. Putchinski also identified the six persons, including the appellant, who were eligible for the appointment as non-mandatory transferees and reinstates (hereafter referred to as "eligibles").

5. The four-page state application of all persons whose names appeared on the December 10th memo were sent, with the memo, to the Financial Aids Department.

6. In the course of transmitting the documents to the Financial Aids Department, Mr. Putchinski advised Steven Champagne, Associate Director of the Department and the individual who was authorized to make the appointment decision, that all sixteen of the identified individuals were to be considered equally for the appointment, that interviews of those persons certified were required and that the Department could eliminate from consideration those individuals within the list of eligibles

for non-mandatory transfer and reinstatement who it felt were "not qualified" for the ESI position. Mr. Putchinski indicated that, in making its decision as to who was "not qualified," the University could request resumes from the "eligibles" in order to obtain additional information.

7. Upon receipt of the various documents, personnel within the Financial Aids Department began arranging for interviews with each of the ten persons who were certified for the position. Those interviews were conducted during the period from December 16, 1981 to January 13, 1982.

8. In deciding which of the eligibles were qualified for appointment as well as in making its ultimate appointment decision, Mr. Champagne and three subordinates who also had input into the hiring decision considered experiences and abilities in three major areas: 1) counseling students in financial and related matters, 2) development and implementation of outreach workshops/programs in high schools, and 3) financial needs analysis and the mathematical and technical expertise it entails.

9. As the resumes were received, Mr. Champagne and his staff reviewed the documents for each eligible to determine whether they were qualified for appointment and therefore would justify the scheduling of an interview.

10. After the conclusion of the final interview for those persons certified for the position, Mr. Champagne and his staff rereviewed the documents for the "eligibles." Both reviews resulted in the conclusion that none of the eligibles were experienced or trained in all three of the areas in which the ESI would function.

11. The appellant's application and resume that were relied upon by the respondent in making its decision not to interview him indicate, inter alia, that he was an experienced unemployment claims adjudicator, with duties that included conducting factfinding interviews with UC claimants and others and interpreting

state statutes and administrative rules. Appellant's resume also showed that he was a "past candidate for the Wisconsin State Assembly," a director of the 19th Assembly District Republican Club and had taken graduate school courses in statistics and research methods.

12. Based upon the information available to it at the time of the document reviews, respondent's decision not to interview the appellant for the position of ESI was reasonable given appellant's lack of training or experience in the areas of counseling and outreach.

#### COUNCLUSIONS OF LAW

1. This matter is properly before the Commission as an appeal pursuant to s.230.44(1)(d), Wis. Stats.
2. The appellant has the burden of showing that respondent's decision to not interview the appellant for the position of ESI was illegal or an abuse of discretion.
3. The appellant has not met his burden.
4. The respondent's decision to not interview the appellant for the position of ESI was neither illegal nor an abuse of discretion.

#### OPINION

The focal point of this matter is respondent's decision, based on the information contained in the application and the resume, not to interview the appellant and the implicit conclusions as to the appellant's relative qualifications for the appointment. Respondent's decision on that point appears to have been a reasonable one due to the appellant's lack of experience in counseling in the university setting as well as his lack of any apparent relevant experience in outreach workshops or programs. Both of these two functional areas were among the three areas relied upon by the respondent throughout the appointment process.

The appellant has failed to show that there was any requirement that the respondent interview all of the eligibles in addition to those ten persons who had been certified. In contrast, the evidence showed that respondent's exercise of discretion in determining who to interview was reasonable given the factors being utilized and the number of qualified persons certified.

The appellant points out that one of the certified individuals (Mr. Walters) who was interviewed was also a Job Service employe who could have been included on the list of eligibles. Appellant argues that because Mr. Walters was interviewed, all of the individuals on the eligible list should have been interviewed. This argument fails to take into consideration that all of those individuals who had been certified had to be scheduled for an interview if they so desired. Mr. Walters obviously had taken the exam and scored well enough to be certified. The other Job Service applicants did not follow the same procedure and, therefore, were not entitled to identical treatment.

Appellant also suggested that the separation between the eligibles from the certified applicants on the Putchinski memo made the former group less likely to be interviewed with the others. This position also fails to reflect the legal distinction between those persons who are certified and those who are merely eligible. Interviews are required for the former group but are discretionary as to the latter. The relative positions of the two groups on the memo accurately reflected this distinction.

During the course of the hearing in this matter, the appellant also suggested that the respondent abused its discretion by requesting additional information (i.e. resumes) of the eligible individuals and by failing to obtain position descriptions of the classified positions held by the eligibles. These two

arguments are clearly inconsistent. Respondent's decisions to obtain the resumes but not to obtain any position descriptions appear to be reasonably related to the goal of reaching an informal decision as to the qualification of the eligible individuals without conducting an overly time-consuming investigation.

In summary, the appellant failed to produce evidence that the respondent acted illegally or abused its discretion in its handling of the ESI position.

ORDER


The action of the respondent is affirmed and this appeal is dismissed.

Dated: September 30, 1982

STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
JAMES W. PHILLIPS, Commissioner

KMS:ers

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