

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 MARK KRAKLOW,  
                     Appellant,  
 v.  
 President, UNIVERSITY OF  
 WISCONSIN SYSTEM,  
                     Respondent.  
 Case No. 84-0237-PC  
 \* \* \* \* \*

DECISION  
AND  
ORDER

This controversy is an appeal of respondent's decision not to hire appellant for a Building Maintenance Helper 2 position. The issue is: Whether the failure or refusal to appoint Mr. Kraklow to the BMH 2 position in question was illegal or an abuse of discretion.

FINDINGS OF FACT

1. In the fall of 1984 the respondent had three vacant Building Maintenance Helper 2 (BMH 2) positions in the Custodial Services-Residence Centers area, University of Wisconsin-Stevens Point (UW-Stevens Point).
2. These positions are state classified civil service positions and examinations for them are administered through the Department of Employment Relations (DER). Whoever qualifies for these positions via examinations administered by DER, is placed on a certification list.
3. In instances of state classified civil service position vacancies, DER provides the given agency with a list of certified candidates interested in the vacant positions. This list may include those who qualify because of veterans' preference; through expanded certification for

handicapped, females or minorities; or through transfer, reinstatement or demotion.

4. A list of forty-one (41) candidates, including the appellant as an eligible transfer, was sent to UW-Stevens Point for consideration.

5. The appellant, a BMH 3, and thirty-four other persons participated in the interview process which took place over a four or five day period in October, 1984. Appellant had no mandatory transfer rights under the provisions of the collective bargaining agreement between the state and the Wisconsin State Employees Association.

6. The interviews were conducted by two custodial staff persons and the same questions were asked of each candidate. No question pertaining to past work experience was asked the candidates because the BMH 2 position is an entry level position.

7. Each interviewer rated the candidates separately and recorded his score on a work sheet. The final score for each candidate was a composite of each interviewer's rating. One of the interviewers is supervised by the other.

8. Those persons who received the highest score were selected for the three vacant BMH 2 positions.

9. The selection process used by UW-Stevens Point to fill the vacant BMH 2 positions was reasonable as applied to the type of position involved and was uniformly applied by the university.

10. Respondent's decision not to hire appellant for a Building Maintenance Helper 2 position was neither illegal nor an abuse of discretion.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to §230.44(1)(d), Wis. Stats., as an appeal of a hiring decision.
2. The appellant has the burden of proof to show that the hiring decision made by respondent was an illegal action or an abuse of discretion.
3. The appellant has failed to sustain his burden of proof.
4. Respondent's decision not to hire appellant was neither illegal nor an abuse of discretion.

OPINION

The appellant, Mark Kraklow, Stevens Point, Wisconsin, first began employment in the state civil service in May, 1983, as a Building Maintenance Helper 2 at the University of Wisconsin - La Crosse, after failing to obtain a similar position at the University of Wisconsin - Stevens Point. Subsequently, on two separate occasions, the appellant unsuccessfully attempted to transfer from UW-La Crosse to UW-Stevens Point. The first instance was in June, 1983. At that time the appellant was on probationary status and had no mandatory right of transfer. In February, 1984, the appellant, then a BMH 3, requested transfer to UW-Stevens Point. Under the collective bargaining agreement between the state and the state employees' union which covered the appellant, he as a BMH 3 had no mandatory rights to transfer to a BMH 2 position. The appellant participated in the regular selection process at UW-Stevens Point and was not selected for the then vacant position. In July, 1984, the appellant filed an employee contract grievance against UW-Stevens Point. In October, 1984, the appellant again applied for a BMH 2 position at UW-Stevens Point. It is the job selection process of October, 1984, which is the subject of this appeal.

The appellant believes that he was treated unfairly by those who participated in the selection of the successful candidates for the three vacant BMH 2 positions in October, 1984 at UW-Stevens Point. He bases this belief, generally, upon the foregoing historical account of his abortive employment relationship with UW-Stevens Point.

More specifically, appellant argues that two UW-Stevens Point personnel staff persons became hostile toward him and transmitted those ill feelings to the job interviewers; that one of the job interviewers was unfavorably biased because he was aware that the appellant was grieving a prior hiring decision in which he participated; that all questions on prior relevant work experience were deliberately excluded from the interview for the sole purpose of reducing appellant's chance of being a successful candidate; and that the unfavorably biased interviewer supervised the other interviewer and exerted pressure upon him to give appellant low ratings.

While appellant's arguments may have merit, he presented little evidence to support them. He presented no witnesses of his own, but called respondent's witnesses adversely. One of the job interviewers, Mr. Konkol, testified that, at the time of the interview, he knew appellant had filed a grievance against UW-Stevens Point, but that was appellant's right and it had not affected his rating of the appellant. The other interviewer testified that he was unaware of appellant's litigation with UW-Stevens Point and that he treated the appellant like other candidates for the position.

No evidence was presented which supported appellant's argument that Mr. Dombek was influenced by his supervisor or other staff persons at UW-Stevens Point, or that his hiring decisions reflected anything other than his independent judgment. It was established, in fact, that

differences arose between the appellant and two members of UW-Stevens Point personnel office over the content of letters sent to unsuccessful candidates, but no evidence was produced showing that they attempted to influence the interviewers in their selections for hire.

The interviews were conducted uniformly and the same questions were asked of all candidates. Questions concerning prior work experience were not asked since the BMH 2 position is an entry level position and the employee is trained on the job.

Based upon the record in this controversy, some inferences favorable to the appellant could be drawn. It is difficult to believe it is a coincidence that the appellant, currently a BMH 3 at a fellow university, has failed three times to be selected for a BMH 2 position at UW-Stevens Point. However, the issue here pertains to the selection process which occurred in October, 1984. Notwithstanding inferences favorable to the appellant, the record on the issue does not support a decision in favor of the appellant.

ORDER


The decision by respondent not to hire appellant was neither illegal nor an abuse of discretion and this appeal is dismissed.

Dated: July 3, 1985 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

DRM:jmf  
JEN/2

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

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