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 HARVEY E. KRAUSE,
 Complainant,
 v.
 President, UNIVERSITY OF
 WISCONSIN SYSTEM (LaCrosse),
 Respondent.
 Case No. 85-0026-PC-ER
 * * * * *

DECISION
 AND
 ORDER

This matter is an appeal of a determination of "no probable cause" to believe respondent discriminated against complainant on the basis of age or sex with respect to his non-selection for a Laboratory Animal Caretaker 2 position at the University of Wisconsin - LaCrosse. The determination was based upon an investigation made by the Commission in accordance with §§230.45(1)(b), 111.33(2), Wis. Stats., and §PC 4.03, Wis. Adm. Code.

A hearing was held on April 7, 1986, before Commissioner Donald R. Murphy, and the briefing schedule was completed on June 16, 1986. The following Findings of Fact, Conclusions of Law, Opinion and Order are based upon the record made at the hearing.

FINDINGS OF FACT

1. In December, 1984, Harvey E. Krause, the complainant, a male, born April 21, 1943, applied for a Laboratory Animal Caretaker 2 (LAC 2) position with the respondent, University of Wisconsin - LaCrosse (UW-LaCrosse) through the standard state civil service recruitment and selection process. Previously he had taken a statewide examination and had ranked number one.

2. The position was described in the state service job opportunities bulletin as being full-time during the academic year and half-time for eight weeks during the summer with the responsibility of maintaining the animal care laboratory, feeding and watching animals, cleaning, disinfecting/sterilizing cages, food bins, floor, cabinets, walls, etc., scheduling and directing student employees in animal care and lab functions; assisting in setting up class demonstrations, and maintaining the plant laboratory, including watering, pruning, spraying and weeding plants.

3. The position description for the position allocated the time percentages for the duties as follows: 60% - animal room maintenance; 30% - greenhouse maintenance; and 10% - class laboratory preparation.

4. Fifteen applicants, including one for veterans preference, three for handicap expanded certification and one transfer, were certified for interviews for the position.

5. Approximately 11 applicants accepted and were interviewed by a panel consisting of Mark Rowinski, Chairperson, Department of Physical Therapy, Robert Burns, faculty member, Department of Biology, and Jerry Davis, Chairperson, Department of Biology.

6. The structured interviews were approximately 30 minutes in length. First, each candidate was given an oral description of the position and invited to comment or ask questions. Then, the panelists asked questions specifically related to the candidates' statements. Formal interview notes were not made.

7. After the interviews were completed, the panelists reviewed their notes and applications, then met for one final time, ranked the top four candidates, which included the complainant, and decided to offer the position to Catherine Hubert.

8. Ms. Hubert is approximately 10 years younger than complainant. She was ranked Number 5 on the certification list. She had a Bachelor's Degree in Animal Science and Horticulture. Her work experience in animal and plant care dated from 1976 to the date of the interview.

9. Complainant, who ranked first on the certification list, had college course work in chemical engineering. His work experience included employment as an Animal Caretaker 2, in the laboratory at the UW-Madison from 1964 - 1972. He had no course work in horticulture and no work experience in plant care.

10. The interview panelists' selection of Ms. Hubert for the LAC 2 position at UW-LaCrosse was based upon their perception that her educational background and work experience best suited the need of the position. Age and sex were not factors in the selection process conducted by respondent's job interview panelists.

11. Complainant appealed the no probable cause determination to the Commission within the 30 day time requirement.

CONCLUSION OF LAW

1. The Commission has jurisdiction over this matter by authority of §230.45(1)(b), Wis. Stats.

2. The complainant has the burden of proving there is probable cause to believe he was discriminated against because of his age and sex with respect to his non-selection to the LAC 2 position at UW-LaCrosse in February, 1985.

3. The complainant has failed to satisfy the burden of proof with respect to his allegations of respondent's acts of age and sex discrimination against him.

4. There is no probable cause to believe complainant was discriminated against because of his age or sex, by the respondent, with respect to his non-selection for the LAC 2 position at UW-LaCrosse in February, 1985.

DECISION

It is clear from the record that complainant, who has alleged discrimination on the basis of age and sex in regards to hire, has satisfied the elements of a prima facie case as express in McDonnell-Douglas Corp. v. Green, 411 US 792 93 S. Ct. 1817 (1973) and Texas Dept. of Community Affairs v. Burdine, 450 US 248, 101 S. Ct. 1089 (1981). He is a male, over 40 years of age who was qualified for the position in dispute; and the person selected for the position is a female under the age of 40.

However, in accordance with McDonnell Douglas maxim regarding order of proof, the respondent presented its reasons for the hiring division through the testimony of the three job interview panelists. While the testimony of each panelist varied in intensity, emphasis and detail, they said the person selected was the best candidate and expressed specific reasons for their selection. In summary they testified that, in contrast to complainant, the successful candidate had an educational background and work experience in animal and plant care - the two major functions of the position.

Also they testified that the successful candidate was the most knowledgeable about current federal regulations applicable to the position and distinguished herself as being well suited for the University setting.

Complainant, as proof that respondent proffered false explanations for its selection, testified that he ranked first on the written examination and had extensive work experience in animal care. While he took issue with respondent's evaluation of the successful candidate's educational background and work experience, he presented no other evidence to show respondent

offered reasons were pretextual and used to conceal its act of discrimination against him.

The evidence presented at the hearing showed the successful candidate was qualified for the position. Her work experience was more current than complainant's and involved both animal and plant care, and her education in animal and horticulture corresponded with the two major functions of the position. No evidence revealed discriminatory reasons for the selection. The Commission concludes complainant has failed to show it is probable that respondent's reasons for his non-selection were pretextual.

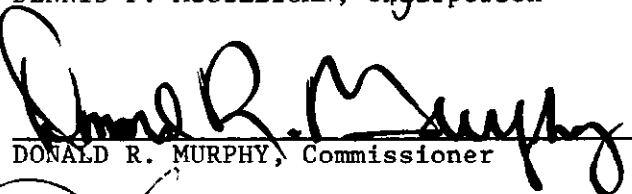
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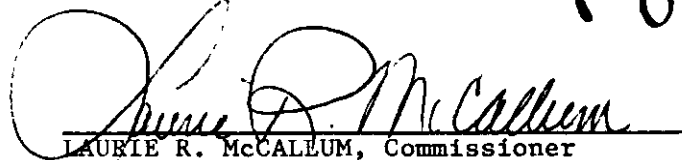
This complaint is dismissed.

Dated: 11/22/87, 1987

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

DRM:jgf
JGF003/2

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