

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 SALLY GAUGER JENSEN, *
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 Appellant, *
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 v. *
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 President, UNIVERSITY OF *
 WISCONSIN SYSTEM (Milwaukee), *
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 Respondent. *
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 Case No. 86-0144-PC *
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DECISION
AND
ORDER

This matter is before the Commission as an appeal of a non-selection decision. At a prehearing conference held on August 18, 1986, the parties agreed to the following issue for hearing:

Whether the decision of respondent not to hire appellant, Sally Gauger Jensen, for the position of Printing Technical [Technician] 1 was illegal or an abuse of discretion?

A hearing was held on June 11, 1987, and the parties have filed post-hearing briefs.

FINDINGS OF FACT

1. Appellant has been employed by respondent in its Department of Printing Services since August of 1981. At all times relevant to this case, her immediate supervisor has been Gabe Chido, production manager for the department. Mr. Chido is in turn supervised by Robert Poppert, manager of the department.

2. Prior to August of 1981, appellant had been employed for three years at a retail printing establishment where she started as a counter person, then helped customers with orders and wrote out bids, and eventually was trained to run the press.

3. For her first four years in the University of Wisconsin - Milwaukee Printing Department, appellant was employed as an Offset Press Operator 2 at the Mitchell Copy Center where she operated and monitored copy machines, answered the phone, and had significant public contact.

4. While employed at the Mitchell Copy Center, the appellant was evaluated twice. The evaluations did not include any summary rating. However, the 1982 evaluation listed two areas where "job improvement may be necessary:"

A. Ability to relate problems, i.e., press, supply procedural and maintenance to lead worker and/or production manager.

B. Dealing with clients dropping off jobs.

The 1983 evaluation listed four job areas where "strengths have been demonstrated." One was the "[a]bility to deal with clients at the door and on the phone." The areas where improvement was deemed necessary cited in the 1983 evaluation all related to familiarity with operation, service and maintenance of various copy machines.

5. In October of 1985, appellant started working at the respondent's Kennilworth Printing Shop, also as an Offset Press Operator 2. In comparison to the Mitchell Copy Center, jobs at Kennilworth are more complex, requiring different ink colors and a greater variety of paper. The Kennilworth position does not involve contact with the public.

6. From January of 1983 through June of 1986, the appellant took certain courses relating to accounting and data processing at the Milwaukee Area Technical College.

7. Late in 1985 or early in 1986, an incumbent in a Printing Technician I (PT I) position at Kennilworth resigned due to pregnancy. The position was filled on a temporary basis by a limited term employe, Joanne Mallman. Ms. Mallman was ineligible to promote into the PT 1 position on a

permanent basis. Mr. Poppert indicated a desire to have Ms. Mallman be able to compete for the position which could only be done via statewide or open competition.

8. Early in 1986, a job announcement was published for state-wide, open recruitment of a Printing Technician 1 (PT 1) vacancy in respondent's Department of Printing Services. The Position Summary of the Position Description for the PT 1 vacancy reads as follows:

POSITION SUMMARY:

Meets with and advises clients on their jobs as related to the use of paper, art, type, ink, photos, bindery operations, etc. Prepares estimates on job cost. Prepares specifications and orders for internal and external printing. Follows through production steps. Corresponds with clients and vendors on production problems, delays, conformance to proper procedures, laws and administrative codes. Acts as liaison between the client, State Printing Section and Contract Printing Vendor. Approves and processes vendor invoices for payment. Maintains record of all jobs. Routes printed materials to ordering clients when job is completed. Prepares manuscript and art for printing. Job tasks are performed under close supervision and completed jobs are spot checked for compliance and accuracy.

The decision to open competition to all persons rather than restricting competition to persons already employed in state service as a promotional opportunity was made by the Division of Merit Recruitment and Selection (DMRS) rather than by the respondent.

9. Appellant took the examination for the PT 1 vacancy. Appellant made it known to her co-workers that she received the number one ranking for the examination.

10. A total of 14 names were certified as eligibles for the vacancy after the scoring of the exam. Information as to the candidates' exam scores and whether or not they were certified via expanded certification was not conveyed by the respondent to the interview panel.

11. The interview panel consisted of Robert Poppert, Gabe Chido and Linda Jallings. Ms. Jallings holds the PT 2 lead worker position at the Kennilworth print shop and has approximately 10 years experience as a printing technician.

12. Prior to holding the interviews, the panel prepared a list of questions that were asked of all the candidates. Each panelist had an answer sheet for making notations about a candidate's response. The panel was looking for a candidate who had good overall knowledge of printing and an ability to work well with clients.

13. Candidates were interviewed between the dates of May 8 and May 20, 1986. At the conclusion of each interview, the candidate was asked to supply a list of three personal references plus employment references in the event they had not already done so. Ms. Turner submitted her list of references on May 23, 1986. Her list included two names, one an academic reference and one an employment reference. Ms. Turner had recently taken more than 13 courses at the Milwaukee Area Technical College (MATC) in the Graphic Communications/Printing and Publishing Diploma Program. Those courses were:

Graphic Communications Process	Process Camera 1 & 2
Layout for Graphic Arts	Keyboarding
Cold Type Paste Makeup 1 & 2	Lithographic Process Color
Phototypesetting 1 & 2	Stripping and Platemaking
Practical Proofreading	Offset Press Operation
Mathematics for Printers	Production Printing
Offset Duplicator 1 & 2	

The MATC courses included a substantial amount of "hands-on" experience. They are not simply lecture-style classes.

14. In addition to Jane Turner, each of the three interviewers ranked at least one person ahead of the appellant at the conclusion of the interviews. This ranking was based on the assessment of the candidates'

strengths in two areas: 1) printing knowledge, and 2) ability to work well with clients and co-workers. The latter area required an ability to properly respond to criticism from clients.

15. During the course of appellant's employment with respondent, both Mr. Poppert and Mr. Chido had concluded that the appellant was not well suited to a position requiring substantial public contact. Appellant was very defensive when her supervisor asked her about her work or asked her to perform a task. The interviewers ranked Jane Turner ahead of appellant because they perceived Jane Turner to have superior skills dealing with clients and co-workers. This conclusion was based on Jane Turner's conduct at the interview and her years of experience in both retail sales and as a teacher.

16. Mr. Chido and Mr. Poppert had failed to ever indicate to the appellant that they found her interpersonal skills lacking. The appellant was never disciplined for any inappropriate conduct nor was there any documentation of problems between the appellant and either clients or co-workers.

17. The references of three candidates (Kratt, Dorsey and Bonk) were checked between June 4 and June 6, 1986. Jane Turner's references were checked on June 23rd. None of the other candidates' references were checked. Ms. Turner's references described her very favorably.

18. Mr. Poppert was delegated the authority to make the final selection decision.

19. Jane Turner was offered the Printing Technician 1 position and she accepted the offer.

CONCLUSIONS OF LAW

1. The Commission lacks jurisdiction to review the correctness of the scope of recruitment for the Printing Technician 1 position.
2. The matter of the hiring decision for the Printing Technician 1 position is properly before the Commission pursuant to §230.44(1)(d), Stats.
3. The appellant has the burden of proving that the hiring decision made by respondent was an illegal act or an abuse of discretion.
4. The appellant has failed to sustain her burden of proof.
5. Respondent's decision not to hire the appellant was neither illegal nor an abuse of discretion.

OPINION

This is an appeal pursuant to §230.44(1)(d), Stats. Therefore the standard to be applied is whether the appointing authority's decision was "illegal or an abuse of discretion."

The term "abuse of discretion" has been defined as "a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." Lundeen v. DOA, 79-208-PC, (6/3/81). The question before the Commission is not whether it agrees or disagrees with the appointing authority's decision in the sense of whether the Commission would have made the same decision if it substituted its judgment for that of the appointing authority. Rather, it is the question of whether, on the basis of the facts and evidence presented, the decision of the appointing authority may be said to have been "clearly against reason and evidence." Harbort v. DILHR, 81-74-PC, (4/2/82).

Here, the appellant stated at the commencement of the hearing that her case related to the alleged abuse of discretion in not selecting the

appellant for the vacant position, Printing Technician 1, rather than to a violation of any of the provisions of §230.16, Stats.

The appellant identified four theories as the basis for her appeal:

1. In the past, the respondent has filled Printing Technician (PT) positions with employes who were already employed within the Print Shop, while in the present case, the position was opened up to applicants statewide;
2. The appellant was better qualified for the vacant position than Jane Turner;
3. Jane Turner did not have the skills necessary to fill the position at the objective level but required training beyond that contemplated for the vacancy.
4. Of all the applicants for the position, only Jane Turner's references were contacted.

1. Scope of recruitment

Printing Technician positions previously filled at the UW-Milwaukee were typically filled as promotional opportunities for persons already employed within the state civil service. Logically, this resulted in movement of employes from lower level positions in the Print Shop into the PT positions as they became available. However, it is important to note that prior to 1986, the PT positions were initially classified as Printing Technician - Trainee, and the incumbent was granted 1½ to 2 years to learn the printing skills and gain the experience necessary for the position. The position that is the subject of this appeal was classified at the PT 1 level and required performance at the objective level after customary orientation.

The decision establishing the scope of recruitment is made by the Division of Merit Recruitment and Selection (DMRS) rather than by the respondent. DMRS was never identified as a party in this case and the issue for hearing in this matter did not identify any pre-certification decision. The Commission lacks jurisdiction to consider the contention

that the scope of recruitment was incorrect. See, generally, Royston v. DVA and DMRS, 86-0222-PC, (6/24/87). Because the scope of recruitment was determined by DMRS, the decision to utilize statewide recruitment cannot be considered to be an abuse of discretion by the respondent, UW-Milwaukee.

2. Better qualifications

This issue is really at the heart of the "abuse of discretion" element in this appeal. The major support for appellant's argument is the fact that she had substantially more printing employment experience than Jane Turner even though the appellant has not received any formal training in printing. Appellant's resume indicates that she had been employed with the respondent as an Offset Press Operator for several years and had also worked at Econoprint. In comparison, Jane Turner had taken a wide variety of printing courses at the MATC. The courses included substantial "hands-on" training. This comparison indicates that appellant had much more concentrated experience performing press work but Jane Turner had a broader exposure, through course work, to printing.

Respondent correctly noted that had the sole criteria been printing experience, neither Jane Turner nor the appellant could match the experience of a third candidate, Duane Touchette, who had over 32 years of printing experience including plant supervision for a publishing company, printing consultant to the Department of Transportation (DOT), chief of printing for DOT and Graphics Division Manager for the Division of Corrections in the Department of Health and Social Services (DHSS). However, the printing knowledge/experience factor was only one of two major determinants in selecting the candidate for the vacant PT 1 position. The second was the candidate's skills in dealing with the public. In this area, Jane Turner was ranked higher than either Duane Touchette or the appellant.

The three interviewers regarded Jane Turner as having superior public contact skills based upon her composure, poise and teaching and retail experience. In contrast, Mr. Chido testified that during the course of the five year period in which he had served as first line supervisor for the appellant, the appellant had been very defensive about her work when asked how she was doing or when she was asked to perform a task. Mr. Poppert and Mr. Chido also testified there had been complaints from clients at the copy center to the effect the appellant was not courteous to them.¹

This contrast is a sufficient basis on which to conclude that the relative qualifications of the appellant and of Jane Turner were not such as to make the decision to select Jane Turner an abuse of discretion.

In reaching this conclusion, the Commission is aware that the respondent failed to explain certain inconsistencies in the record. Mr. Poppert, who had the authority to make the final selection decision, first testified that the interview panel applied the selection criteria and "eliminated applicants down the line until we came down to Sally Jensen and Jane Turner." Yet later in his testimony, Mr. Poppert stated that the interview panel unanimously ranked Ms. Turner first, Mr. Touchette second and Mr. Albertson third, and explicitly left Ms. Jensen out of the top three. Mr. Chido agreed that the interviewers were unanimous in ranking Jane Turner first and Mr. Touchette second. However, Ms. Jallings testified that Jane Turner was ranked first and Margaret Kratt was ranked second. Mr. Poppert

¹ The Commission places little weight on the testimony that there had been complaints by clients regarding the appellant's work at the copy center. The respondent was unable to provide any specifics regarding these complaints and the appellant denied that she was ever informed of any such complaints. However, during the course of the hearing, the appellant's demeanor and testimony tended to support Mr. Chido's testimony that the appellant was defensive.

also stated that, to his knowledge, only Jane Turner's references were checked. However, reference checksheets were completed for three candidates between June 4 and June 6. Then on June 23rd, Jane Turner's two references were checked. While Ms. Turner supplied two references, one academic and one employment, the request had been for three personal references and employment references covering two employers or the prior five years.

The respondent did offer a very reasonable basis for not checking appellant's references; all three members of the interview panel were quite familiar with the appellant and her work based upon the appellant's five years of employment with respondent's Department of Printing Services. Mr. Poppert also was already familiar with Mr. Touchette. The remaining inconsistencies are not sufficiently indicative of an abuse of discretion to support a finding for the appellant.

3. Necessary skills

The appellant contended, but did not prove, that Jane Turner lacked the skills necessary to fill the PT 1 position. Appellant did show, as noted above, that entry level PT positions had previously been designated as trainee positions. In contrast, the instant vacancy was to be filled at the objective level. The incumbent was expected to be able to perform at a full performance level soon after being hired, i.e., after customary orientation to the job. Nothing in the record suggests that Jane Turner was unable to perform at the full performance level. Her qualifications indicate that she had sufficient knowledge of the printing craft to perform the functions of advising clients, preparing estimates, specifications and orders, and the other responsibilities of the job. The appellant seems to be arguing that only someone who had previously worked in the Print Shop at

the UW-Milwaukee would know enough about the particular system there to allow them to fill the PT 1 position at the objective level. Again, the record does not support that conclusion. Some form of orientation is inevitable in any new job in order to understand the system of operation. However, there is an important distinction between teaching an incumbent basic knowledge and merely orienting a new employe as to the means of utilizing that knowledge.

Appellant did not argue that the interview panel was unaware of her qualifications for the job. It would have been logical for the appellant to have advanced some theory as to why the panel may have been opposed to appointing her to the vacancy. The only such theory offered by the appellant was that Mr. Poppert was retaliating against her because she had filed a grievance several years earlier. Mr. Poppert denied having remembered that grievance at the time of the selection decision. The appellant did not offer any reasons as to why the remaining two panelists might have been inclined not to hire her for the vacancy.

4. Contacting references

The appellant contends that the respondent's failure to contact all of the applicants' references was an abuse of discretion:

Mr. Poppert testified that only Ms. Turner's references were contacted. None of the other applicant's references were followed up on. When questioned as to why only Ms. Turner's were checked Mr. Poppert stated that they had ranked the applicant's first, and only checked on Ms. Turner's when they had reached the tentative conclusion to offer her the position. The record again reflects that this is not true. It is clear from the record that the decision to hire Ms. Turner was made at a meeting held within a day or two prior to their announcing the decision to the staff of the Printing Department. Ms. Jensen was told of the decision on June 30 and the rest of the staff was told on July 2 of Ms. Turner being hired for the Printing Technician. Ms. Turner's references were contacted on June 23 (Res. Exh. #4) clearly a week prior to any decision on who was to be hired. The other applicants for the position were treated different from Ms. Turner prior to any tentative or firm decision on who was to be hired. (Appellant's brief, pp. 8 and 9)

The issue of contacting references is discussed above. In light of the familiarity of the interviewing panel with the appellant and with Mr. Touchette and the fact that Ms. Kratt's references were contacted along with the references of Dorsey and Bonk, the Commission concludes that the respondent did not abuse its discretion in making reference checks on only four candidates.

During the course of the hearing, the only testimony relating to candidate's references was by Mr. Poppert, who testified that, to his knowledge, only Ms. Turner's references were checked. Mr. Chido and Ms. Jallings were never questioned about checking references. Clearly, based on the above quotation from appellant's brief, the appellant assumed that only Ms. Turner's references were contacted. However, the exhibits that were exchanged in advance of hearing and admitted into the record at the hearing, clearly show that the references of three other candidates (Dorsey, Bonk and Kratt) were checked two weeks before Ms. Turner's references. Because this information was apparently first recognized after the post-hearing briefs had been filed and was then recognized by the hearing examiner, the respondent's witnesses effectively never had an opportunity to explain the delay between the reference checks. The delay could be interpreted as an indication that it was only late in the process that Ms. Turner was considered seriously as a candidate. However, this interpretation would be inconsistent with the testimony of Poppert, Chido and Jallings. Another possibility is that the person making the reference checks simply took a vacation for the weeks of June 9th and the 16th. In the absence of any testimony regarding the discrepancy, the Commission will not elevate the delay to the level of an abuse of discretion.

As to the timing of events after Ms. Turner's reference checks, the record is consistent with a verbal offer of the position to her, and her acceptance, before June 30th. Presumably, the final decision to make the verbal offer to Ms. Turner was not made until her references had been contacted. However, at some time prior to June 23rd, the interview panel had ranked Ms. Turner first contingent upon obtaining satisfactory references.

For the above reasons, the Commission issues the following

ORDER

The respondent's decision to select Jane Turner for the vacant PR 1 position is affirmed and this appeal is dismissed.

Dated: November 4, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

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