

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

SARA L. STICHERT, *

Appellant, *

v. *

President, UNIVERSITY OF *

WISCONSIN SYSTEM (Oshkosh) *

Respondent. *

Case No. 86-0197-PC *

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of a hiring decision pursuant to §230.44(1)(d), Stats. A hearing was held before Laurie R. McCallum, Commissioner, on February 2, 1987, and the posthearing briefing schedule was completed on April 11, 1987.

FINDINGS OF FACT

1. From October, 1982, to January, 1985, appellant was employed as a Limited Term Employee (LTE) at the Clow Resource Center, Libraries and Learning Resources (LLR), University of Wisconsin-Oshkosh, and was assigned to work with audiovisual equipment and reserved materials. From January, 1985, to August, 1986, appellant was employed as an LTE and assigned to work at the main circulation desk in LLR. Since October, 1985, appellant has held a permanent part-time Library Services Assistant 2 (LSA 2) position in LLR and is assigned bindery duties. Appellant's duties and responsibilities in these positions included inputting information into the database of the automated circulation system used in LLR (CLSI) and

performing duties of certain LSA 2, 3, and 4 positions during the absence of the position incumbent.

2. Early in 1986, Diana Leonard was selected to fill the position of Coordinator of Access Services for LLR. At that time, there was a vacant position in the unit supervised by Ms. Leonard. Mr. Vann, Ms. Leonard's supervisor, advised her that she could restructure this position but it could not be filled until a hiring freeze was lifted July 1, 1986. Ms. Leonard was aware that many of her subordinates felt that management did not seek or consider their input, so she decided to seek and consider their input regarding the restructuring of the vacant position. Ms. Leonard mistakenly assumed that she could fill the position without competition through promotion within the unit. Ms. Leonard developed a proposal to promote Eva Peterson, an LSA 2, into the vacant position and to transfer appellant into the full-time LSA 2 position vacated by Ms. Peterson. After sharing her proposal with others in the unit, Ms. Leonard became aware that she could only select an individual for the vacant position if that individual's name appeared on one of the applicable lists of eligible candidates and if a competitive process was used to select that individual. Ms. Leonard had wanted to fill the vacant position prior to the beginning of the fall semester but did not get final approval of the position description and the classification of the position until sometime around the beginning of September, 1986. In order for the position to be classified at the level requested by Ms. Leonard, LSA 3, certain duties and responsibilities were required to be added to those originally proposed by Ms. Leonard. Such additional duties and responsibilities primarily included those relating to supervising the monitoring and collection of overdues. Due to the fact that the nature of the position had changed as the result

of the addition of these duties and responsibilities, that it would not be possible to fill the position prior to the beginning of the fall semester, that a new LSA 3 register had been generated in May of 1986, that Ms. Leonard's supervisor indicated he expected her to request a list of certified eligibles from this register, and that Ms. Leonard was unable to implement her original plan to promote Eva Peterson and to transfer appellant, Ms. Leonard decided not to fill the position by competitive promotion but to request a list of certified eligibles from the existing LSA 3 register.

3. The duties and responsibilities of the LSA 3 position included:

- 60% A. Overdue Supervision and Patron File Maintenance
 - A1. Overdue records
 - A2. Patron file maintenance.
- 40% B. Front Desk Duties - Circulation
 - B1. Staffs front desk 25 hours per week. Eleven of those hours (27.5%) will serve as only circulation staff person in building (Friday night and Saturday). Will be circulation staff person of record in dealing with problems during those times.
 - B2. Provides Patron Services (Provided as back up to student desk help)
 - B3. Clerical and Computer Duties
 - B4. Maintains Copy Machines
 - B5. Supervision of Student Employees

4. Six candidates were interviewed for the subject position: appellant, Eva Peterson, Ellen Grignon, Linda Schrottky, Dawn Bubolz, and Frederick Gaieck. The interview panel included Ms. Leonard and Diane Schoeler, appellant's first line supervisor and the former supervisor of the circulation desk. Each of the candidates interviewed was asked the same questions by the interviewers. The interviewers were provided copies of the candidates' applications at the time of the interviews.

5. The criteria applied by Ms. Leonard in evaluating the candidates included: 1) public relations skills, 2) experience with overdue, and 3) ability and willingness to work with computers.

6. The criteria applied by Ms. Schoeler in evaluating the candidates included: 1) ability to deal with students and other patrons in a calm manner -- ability to diffuse volatile situations, 2) ability to represent and present the library's policies well, 3) experience with overdue and 4) experience with patrons.

7. After the candidates were interviewed, the references of the top four candidates were checked. Based on the interviews and reference checks, Ms. Leonard, who had the effective authority to make the hiring decision, decided that Ellen Grignon was the best qualified candidate. Ms. Grignon was offered the position and she accepted it.

8. Ms. Grignon's references gave her consistently high marks in the public relations area. Two of appellant's references (Ms. Leonard and Ms. Schoeler) expressed reservations about appellant's public relations skills. Ms. Schoeler indicated that appellant "sometimes reacted emotionally to meeting goals," that she'd received some complaints regarding appellant's interaction with people, and that appellant has "tendency to react defensively rather than find another solution." Ms. Leonard indicated that appellant had a tendency to be "snippy" and did not demonstrate maturity in her relationships with people. Appellant's third reference, Ron Reid, who had worked with appellant at Clow Resources Center, indicated that appellant was at ease in meeting and dealing with the public but that her "forcefulness was sometimes misinterpreted."

9. At the time she was interviewed for the subject position, Ms. Grignon was the Assistant Librarian for the Berlin Public Library. Her

duties included circulation, overdues, and children's programs and she had developed a computer system for patron files.

10. Ms. Leonard was aware, prior to the date of the subject hiring decision, that an appeal would probably be filed no matter who was selected for the LSA 3 position.

11. The reasons offered by Ms. Leonard and Ms. Schoeler for selecting Ms. Grignon as the best qualified candidate included: Ms. Grignon's experience with overdues, Ms. Grignon's superior public relations skills, and their feeling that Ms. Grignon's concept of the purpose of the circulation department was stronger than that of the other candidates.

12. Appellant filed a timely appeal of the hiring decision with the Commission.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(d), Stats.

2. The appellant has the burden of proving that the hiring decision made by respondent was an illegal act or an abuse of discretion.

3. The appellant has failed to sustain her burden of proof.

4. Respondent's decision not to hire appellant was neither illegal nor an abuse of discretion.

DECISION

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, No. 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, No. 81-74-PC (1982).

Appellant does not allege that the actions of respondent which form the basis of this appeal were illegal.

Appellant does allege that it was an abuse of discretion for Ms. Leonard to formulate a hiring proposal, i.e., a proposal to promote Eva Peterson into the vacant ESA 3 position and to promote appellant into Eva Peterson's former position, prior to conducting the competitive selection process. The Commission acknowledges that "pre-selections" are always highly suspect. However, in the instant case, the individual who was allegedly "pre-selected" was not offered the subject position. It appears more likely that Ms. Leonard, once she became aware that the position could not be filled without competition, that it was not possible to fill the position prior to the beginning of the fall semester, and that the duties and responsibilities of the position were not the same as those she had considered in formulating her proposal, abandoned the proposal. Appellant alleges that it was obvious from Ms. Leonard's proposal that she did not feel that appellant was qualified for the LSA 3 position since Ms. Leonard proposed to place Eva Peterson in the LSA 3 position, not appellant. However, it is just as reasonable to infer from Ms. Leonard's proposal a desire on her part to promote appellant. Both inferences are equally

speculative and certainly not sufficient grounds upon which to base a finding of abuse of discretion.

Appellant alleges that neither she nor Eva Peterson was selected for the LSA 3 position because Ms. Leonard was aware that an appeal would be filed if one of them was selected. Actually, Ms. Leonard was aware that an appeal might be filed no matter who was selected, in other words, if appellant was selected or if she wasn't selected. Thus, this factor appears to be a neutral one as far as the appellant's candidacy for the position is concerned.

Appellant further alleges that it was an abuse of discretion for Ms. Leonard to make a selection decision "without a complete grasp of all the details of the candidate's backgrounds." Appellant bases this allegation on Ms. Leonard's failure to recall certain details of appellant's work experience in her testimony at the hearing. Both Ms. Schoeler and Ms. Leonard had copies at the time of the interviews of each candidate's applications which detailed the candidate's work experience. Simply because Ms. Leonard failed to recall certain of these details several months later, it cannot be reasonably inferred that she didn't fairly consider appellant's work experience at the time of appellant's interview or at the time the subject hiring decision was made.

Appellant takes issue with the selection criteria utilized by respondent. Appellant alleges there was too much emphasis on personality and not enough on work experience and not enough on the amount of training the candidates would need to assume the position. It is not the Commission's role to determine which of an unlimited number of possible criteria it would have been best for respondent to utilize but rather to determine whether the criteria utilized by respondent were reasonably related to the

duties and responsibilities of the position to be filled and were uniformly applied. It is clear that, in view of the fact that the position included substantial front desk duties and problem overdue duties and certain computer duties, it was reasonable to consider the candidate's public relation skills, experience with overdues, ability and willingness to deal with computers, ability to deal with patrons in a calm manner, and experience with patrons. It is clear that appellant and Ms. Grignon both had experience with computers and with library patrons but that Ms. Grignon had greater experience with overdues than appellant. It was also not unreasonable for Ms. Leonard and Ms. Schoeler to conclude that Ms. Grignon's public relations skills were better than appellant's. Even if Ms. Leonard's and Ms. Schoeler's references regarding appellant were discounted, even Mr. Reid's reference implied that appellant had some problems in this area by virtue of his statement that her "forcefulness was sometimes misinterpreted."

Finally, appellant alleges respondent abused its discretion by including Ms. Schoeler on the interview panel since Ms. Schoeler wanted to keep appellant in her current position. Certainly, Ms. Schoeler's former position as a supervisor of the circulation desk made her a logical selection for the interview panel. In addition, it is not possible to conclude from the record that Ms. Schoeler did have a desire to keep appellant in her current position and, if she did, that it influenced her evaluation of appellant's candidacy. Indeed, it could also be concluded from this set of circumstances that a desire to keep appellant in her current position would reflect Ms. Schoeler's satisfaction with appellant's work performance and this could have a positive effect on Ms. Schoeler's evaluation of appellant's candidacy.

Appellant has failed to show an abuse of discretion or an illegality in regard to the subject hiring decision.

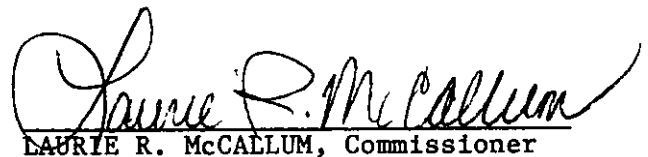
ORDER

The decision by respondent not to hire appellant is affirmed and this appeal is dismissed.

Dated: June 11, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf
JMF02/2


LAURIE R. McCALLUM, Commissioner

Parties:

Sara L. Stichert
1432 Maricopa Drive
Apt. 1
Oshkosh, WI 54904

Kenneth Shaw, President
UW-Madison
1700 Van Hise Hall
1220 Linden Drive
Madison, WI 53706