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DARYL RANSOM, *

Appellant, *

v. *

President, UNIVERSITY OF *

WISCONSIN SYSTEM (Milwaukee), *

Respondent. *

Case No. 87-0125-PC *

* * * * *

PROPOSED
DECISION
AND
ORDER

This matter is a claim of a violation of §230.44(1)(d), Wis. Stats. Appellant alleges that respondent acted illegally or abused its authority of discretion when it failed to appoint him to a Laborer-Special position. The following findings of fact, conclusions of law, and decision and order are based upon the evidence presented at a hearing on this matter. To the extent any of the opinion constitutes a finding of fact or conclusion of law, it is so adopted.

FINDINGS OF FACT¹

1. The appellant, Daryl Ransom, began employment with the University of Wisconsin-Milwaukee in 1979, when he was hired as a Laborer on the grounds crew.

2. The appellant became the union steward for the ground crew. From June 1984 to June 1986, appellant, on behalf of ground crew members, filed over 200 grievances against respondent.

¹ Findings of Fact 5, 6 and 7 were stipulated to by the parties.

3. In June 1986, appellant's position and a ground keeper position were eliminated in response to budget retrenchment. Appellant was reassigned to a Building Maintenance Helper position and assured he could transfer back to the grounds crew if a position became available.

4. In November 1986, a Laborer position on the grounds crew became vacant. UW-Milwaukee requested a change in the classification of the vacant position from Laborer to Laborer-Special from DER and it was granted.

5. UW-Milwaukee began recruitment for the Laborer-Special position in November 1986. It requested from DMRS a certification of UW-Milwaukee candidates and a servicewide certification list, if there were fewer than five UW-Milwaukee candidates.

6. Appellant's name was included on the second of two lists of candidates submitted by DMRS and he was interviewed for the position.

7. Because only two candidates were interested in the position, UW-Milwaukee, in accordance with its original request, made another request to DMRS for additional names of certified candidates. DMRS complied with the new request but recruitment efforts were halted by insufficient funding for the position.

8. In May 1987, the UW-Milwaukee was again given authority to fill the position.

9. Tasha Trott, a personnel specialist, was assigned by her supervisor, David Putchinsky, to initiate the recruitment process.

10. Ms. Trott decided to request an open certification statewide recruitment, with an expanded certification for minorities from the Department of Employment Relations (DER), Division of Merit Recruitment and Selection (DMRS). She had authority to select the type of recruitment to be used in filling the position.

11. Ms. Trott made the decision to use open certification, without input from anyone else.

12. DMRS sent Ms. Trott a list of certified eligible candidates for respondent's vacant laborer position on a register dated June 10, 1987. Appellant's name was not on that register and, as a result, he was not interviewed or considered for the position.

13. Before the hiring process had been completed, appellant advised Ms. Trott of the prior recruitment and his continued interest in the position. Ms. Trott attempted to cancel the open recruitment and replace it with an agency or servicewide recruitment.

14. DMRS denied Ms. Trott's request to cancel the open recruitment in July 1987, and, after further correspondence, again in August 1987.

15. UW-Milwaukee completed the hiring process for the vacant Laborer-Special position, using the certification register provided by DMRS and appointed Jeffrey Lang to the position.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over appellant's appeal under §230.44(1)(d), Stats.

2. Appellant has the burden of proving respondent violated §230.44(1)(d) when in August 1987 it failed or refused to hire him for the vacant Laborer-Special position at UW-Milwaukee.

3. Appellant has failed to prove respondent violated §230.44(1)(d) when in August 1987 it did not consider him for the vacant Laborer-Special position at UW-Milwaukee.

OPINION

Appellant, in supporting his claim, made two arguments: (1) respondent's decision to select open recruitment for the Laborer-Special position

is contrary to §230.19, Wis. Stats. and (2) appellant's union affiliation was a factor in the request for open recruitment.

Addressing appellant's first argument, Section 230.19, Wis. Stats., provides:

Promotion. (1) The administrator shall provide employes with reasonable opportunities for career advancement, within a classified service structure designed to achieve and maintain a highly competent work force, with due consideration given to affirmative action.

Appellant, in his brief, states that §230.19, as applicable to this matter, is to be interpreted to mean: The U.W. of Milwaukee must make every effort to fill job vacancies from within its campus before resorting to outside recruitment. This argument fails because it is based upon a misconstruction of that section of the statutes. Section 230.19 refers to the authority of the "administrator." Under sections 230.03(1) and 230.03(10), the term "administrator" is defined as the administrator of the division of merit, recruitment and selection. A plain reading of §230.19 does not impart any legal requirement upon respondent.

The question of whether §230.19 is applicable to respondent by means of a delegated authority was addressed by the Commission in an earlier Interim Decision in this matter. The Commission in that decision dated July 13, 1988, said, respondent had direct undelegated power to determine the recruitment base for vacant positions and recruitment decisions made under it were not appealable to the Commission. In that same decision, the Commission said " ... U.W.-Milwaukee clearly has no legally cognizable role in the context of alleged violations of §230.19, Stats...."

Appellant's argument regarding his union affiliation, equally is unpersuasive albeit for different reasons. Appellant failed to adduce evidence to substantiate his inference that respondent selected open recruitment as the base for the vacant Laborer-Special position, because

respondent was antagonized by his union activities and did not want him to obtain the vacant laborer position.

The appellant established that he was a union steward at the UW-Milwaukee and that he had been involved in approximately 200 grievances, well above the campus norm filed against the supervisor of the grounds crew,,but failed to establish a connection between those facts and respondent's decision to use open recruitment as its base.

Ms. Trott, the personnel specialist assigned the recruitment task, testified that she selected the open recruitment base because it was her practice to use open recruitment in "blue collar" positions. She testified that no instructions were given her regarding the selection of a recruitment base by her supervisor, the grounds crew supervisor, or anyone, and that she had no knowledge of past recruitment practices for that type of position. Ms. Trott also testified that at the time she requested open recruitment she was unaware of the prior 1986 recruitment, did not know the appellant, did not know appellant's union affiliations or his interest in the position. Further, she testified that after appellant informed her of his prior certification in 1986 and his continued interest in the position, she attempted to cancel the open recruitment process, because she was concerned about being bound by the 1986 recruitment process. Ms. Trott's testimony was uncontroverted.

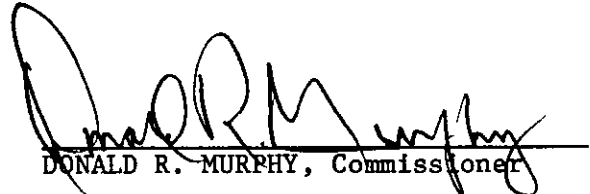
Based on the evidence adduced, it is clear that respondent did not use open recruitment to fill the vacant Laborer-Special position to prevent appellant from obtaining the position. Also, the clear evidence does not establish that respondent engaged in any illegal action or abuse of discretion during the recruiting and hiring process for the Laborer-Special position.

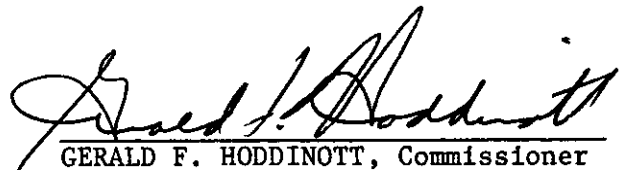
ORDER

Appellant's appeal is dismissed.

Dated: September 20, 1989 STATE PERSONNEL COMMISSION

DRM:rcr
RCR03/1


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Daryl Ransom
1617 E. Irving Place
Milwaukee, WI 53202

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