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STATE OF WISCONSIN

PERSONNEL COMMISSION

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KATHLEEN SCHMIDT,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 88-0131-PC

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DECISION
AND
ORDER

This matter is before the Commission as an appeal of a non-selection decision. The parties agreed to the following issue for hearing:

Was the non-selection of Kathleen Schmidt for the position of Laundry Worker II at Winnebago Mental Health Institute in October 1988 an illegal action or an abuse of discretion under §230.44(1)(d), Wis. Stats.

The parties filed post-hearing briefs.

FINDINGS OF FACT

1. For the majority of the period relevant to this proceeding, David Goers was the Chief Executive Officer of respondent's Winnebago Mental Health Institute (WMHI). One of Mr. Goers' subordinates was Barbara Kuhn, the Management Services Director for WMHI. Frank Mazanka, who headed what was variously referred to as the Housekeeping Services Department or the Environmental Services Department, with responsibilities for the institution's linen service, transportation and housekeeping, reported to Ms. Kuhn. Joseph Selner, classified at the Custodial Supervisor 2 level, was in charge of the linen and transportation operations and reported to Mr. Mazanka. Mr. Selner supervised approximately 10 positions.

2. During all relevant time periods, actual laundering of WMHI laundry was performed by an outside contractor rather than in-house.

3. Mr. Mazanka was hired in his position at WMHI in approximately November of 1984. Within the first few months after he was hired, Mr.

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Mazanka directed Ben Goyke, whose responsibilities included hiring LTE workers, to hire Grady Kuhn, the son of Barbara Kuhn for a LTE position in house-keeping. Prior to receiving the request from Mr. Mazanka, Mr. Goyke had already completed the interviewing process and had identified someone else for the LTE vacancy, but Mr. Kuhn was the person who was actually hired.

4. Mary Blount, the successful candidate for the position in question in this proceeding, is Mr. Mazanka's mother-in-law.

5. Ms. Blount had worked as secretary to the administrator of a nursing home for a period of 18 months in the mid-1970's. While so employed, Ms. Blount occasionally had helped out in the nursing home's laundry.

6. Ms. Blount was initially hired by WMHI in September of 1985 in a Laundry Worker 1 position as a limited term employe (LTE). Her second level supervisor was Mr. Mazanka. She held this position for only two months but during the course of the next 3 years, moved through a total of 5 other LTE positions in various departments at MMHI, with 2 months being the maximum break in employment between positions. In 3 of the 6 LTE positions, Mr. Mazanka was Ms. Blount's second level supervisor, but Mr. Mazanka never served as Ms. Blount's immediate supervisor.

7. In a performance report dated February 15, 1986, Mr. Mazanka rated Ms. Blount's work as "highly commendable" which was the highest of five listed categories.

8. During the period of her employment as an LTE at MMHI, Ms. Blount filed numerous applications for permanent state classified positions. On April 21, 1988, Ms. Blount submitted an application with the Department of Employment Relations for the classification of Laundry Worker 1-2.

9. In September of 1988, Ms. Blount was working in a 50% Stock Clerk 1 position in the WMHI Canteen, under the immediate supervision of Beth Oestreich, Acct. Spec. 1 Sup., and under the second level supervision of Brenda Wiley, who was in charge of the Business Office. In a performance report dated June 10, 1988, Ms. Oestreich rated Ms. Blount as "better than average," which was just below the top category of "highly commendable." Ms. Oestreich also wrote:

Mary does a very good job in the Canteen. She prepares and serves nutritious and attractive lunches. She is very well liked by the patients and greets everyone in a friendly and courteous

manner. Her attitude towards the institution and her fellow employees is good and she seems to very much enjoy her work in the Canteen.

The supervisor's development plan for Ms. Blount recommended that she "Participate in civil service exams for permanent employment in food service."

10. There were two permanent Laundry Worker 2 positions in the WMHI laundry operation. During 1988, one of the two incumbents, Viola Schneider, became terminally ill and commenced an extended leave of absence.

11. Respondent posted the position for a contractual transfer, but no eligible employees were interested in the position.

12. In preparation for filling the position, Mr. Selner, who was the immediate supervisor, prepared a position description to reflect the duties assigned to the Laundry Worker 2 position. The position description, signed by Mr. Selner on August 31, 1988, reads as follows:

- 70% A. Distribution and inventory of linen and patient clothing.
 - A1. Unload clean linen from baskets or carts as received from contract laundry and cleaners.
 - A2. Sort, fold, and store clean linen on designated shelves.
 - A3. Inspect linen and clothing for tears, and identify items in need of repair.
 - A4. From Departmental Requisitions, fill and accurately record daily linen orders for wards, departments, and individuals.
 - A5. Sort personal clothing, utilizing patient location board, and distribute to appropriate ward areas.
 - A6. Participate in taking inventory as required.
 - A7. Mark new linens with identification.
 - A8. Sort, inventory, date, and record all unmarked personal clothing by item, and maintain them in an orderly system until claimed or disposed of.
 - A9. Requisition laundry supplies.

- 20% B. Operation of Sewing Room.
 - B1. Repair linens, drapes, and clothing by hand or sewing machine.
 - B2. Fabricate new items, i.e., aprons, dish towels, tray covers, etc., from patterns.

B3. Tear condemned linens to proper size to be dyed for cleaning rags.

10% C. Performance of miscellaneous assigned duties.

C1. Keep work area clean and orderly, i.e., dust and damp mop floors, clean rest rooms, empty waste receptacles, dust shelves, and store empty carts.

C2. Follow prescribed safety precautions in the use of all equipment.

C3. Update patient location board daily, using census sheets.

C4. Maintain department linen and patient clothing records.

13. WMHI initiated the process to fill the vacant position on a permanent basis and, at the same time, sought to fill the vacancy with a LTE until the permanent appointment could be made.

14. At all relevant times, Margaret Cox served as a Personnel Assistant in the Personnel Office of WMHI.

15. On September 9, 1988, Ms. Cox sent a certification request to the Department of Employment Relations in Madison for filling the vacant permanent Laundry Worker 2 position.

16. On September 11, 1988, Mr. Selner hired Ms. Blount as a LTE Laundry Worker 1 to work until the selection process for the permanent position could be completed.

17. In moving from the 50% Stock Clerk LTE position to the full-time Laundry Worker 1 LTE position effective September 11, 1988, Ms. Blount's hourly pay rate was reduced from \$6.218 to \$5.365.

18. In the Laundry Worker 1 position, Ms. Blount's supervisor was Joe Selner and her second level supervisor was Mr. Mazanka.

19. For a period of approximately 10 days, Ms. Blount filled both the 50% Stock Clerk position and the full-time Laundry Worker position.

20. Upon receiving the certification list, Ms. Cox advised Ms. Kuhn and Mr. Selner that Ms. Blount's name was on the list for the Laundry Worker 2 vacancy and that, as a consequence, Mr. Mazanka was to have nothing to do with the selection process.

21. The appellant has been employed by WMHI as a food service worker since approximately 1965. She has no work experience in a laundry or linen service and she has no transfer rights to a Laundry Worker 2 position.

22. The appellant filed a request to be considered for the vacancy on a voluntary demotion basis.

23. With the exception of two practical questions designed to test accuracy in alphabetizing and matching which were developed by Ms. Kuhn, Mr. Selner developed the questions to be used during the selection process, as well as the rating standards. The draft questions were then submitted to Ms. Cox and the Personnel Office for approval prior to the interviews. Mr. Mazanka did not have any input into the questions.

24. While Mr. Selner could have opted to restrict the interview process to those names which were on the original certification list for the vacancy, he considered, and interviewed, those 4 persons, including the appellant, who had informed the WMHI personnel office that they were interested in filling the position on a voluntary demotion basis.

25. On October 18, 1988, 8 individual candidates were interviewed for the vacancy.

26. The selection procedure consisted of two components, one a practical test and the second a series of interview questions.

27. The practical test was conducted by Tom Schunk, a Custodial Supervisor in the WMHI housekeeping department. It consisted of having the candidates sew a small bag, alphabetize a list of names, match identical entries which were listed in a different sequence in two columns, and, finally, to move a loaded laundry cart and then lift a 40 pound bundle from the cart and place it on a sorting table.

28. The interview questions and benchmark answers were as follows:

1. This position requires unloading carts of clean laundry delivered from contract laundries and cleaners. Describe any experience you have working in a linen supply room or any other stockroom.

- (6) has worked in a hospital-type linen room or laundry
- (4) has worked in other linen handling service such as a commercial laundry
- (2) has worked in other stockroom such as a factory or retail store

2. From departmental requisition, each day the laundry workers must fill orders and send them to the proper wards or departments. What experience have you had working with inventories?

- (6) has worked with linen inventories
- (6) has worked with other inventories
- (2) has good general knowledge or(sic) keeping inventories but no past experience

3. Repairing linens, drapes, patients' clothing, and other items, and some fabricating of items from patterns is a requirement of this job. Describe your knowledge and experience in sewing.

- (6) has done sewing in past employment
- (6) sews at home with machine and by hand
- (2) does hand sewing

4. This job requires the physical strength to lift 40lb. laundry bundles and push wheeled laundry carts that weigh up to 300 lbs. Do you know of any condition that would prevent you from performing these duties and have you previously done work that requires lifting?

- (6) no problems

5. Safety is an important consideration. Describe the measures you can take to provide a safe workplace. Feel free to discuss safety in a broad context, not just in a linen service or laundry.

- (1) for each one mentioned
 - a. read labels, follow directions
 - b. store things properly (cool, away from flame, explosion proof cabinet, etc.)
 - c. lift with your legs, not your back
 - d. keep floors clean and dry
 - e. close doors to prevent airbourne transmission
 - f. cover contaminated things, mark them
 - g. wear gloves
 - h. wash your hands carefully and often
 - i. use ladders properly
 - j. cover oily rags, store and properly dispose of combustibles
 - k. dilute things properly
 - l. follow procedures for contaminated and soiled clothing
 - m. know how to use fire extinguishers

29. The interview questions were asked by a panel consisting of Mr. Selner and Bill Hebert, with the exception that for the last person interviewed, William Daniels was on the panel instead of Mr. Herbert. Mr. Daniels was employed as a supervisor in WMHI's kitchen.

30. At the time of the interviews, Mr. Hebert was serving a six month management internship under the supervision of Ms. Kuhn. He was normally employed as a Program Assistant Supervisor 2 at the Wisconsin Resource Center.

31. During the course of the interview process, Mr. Hebert was unaware that Ms. Blount and Mr. Mazanka were related.

32. The ratings/scores assigned by the panel to the various candidates are set forth in Appendix A and incorporated as part of this finding.

33. There was no significant disparity between Mr. Hebert's (and Mr. Daniel's) rating of a candidate and Mr. Selner's rating of the same candidate.

34. Mr. Selner did the scoring of the alphabetical order question and the matching question. Mr. Selner also did the totalling of the scores from each panelist for the individual candidates.

35. Mr. Hebert wrote numbers next to each question to reflect the total score he had determined for that particular question.

36. Ms. Blount incorrectly was credited with a score of 14 on the first interview question on Mr. Hebert's score sheet, even though the actual maximum score was 12. The score that Mr. Hebert had initially written down for this question was erased and rewritten by someone other than Mr. Hebert.

37. Because Ms. Blount received the highest total score, respondent made a reference check. In response to a request from Ms. Cox, Brenda Wiley, the WMMI business manager, completed a written reference/evaluation of Ms. Blount's work. Ms. Wiley rated Ms. Blount as "excellent" (the top of four ranks) in the categories of quality of work, quantity of work, rate of learning, and initiative, and "good" in the category of ability to get along with others. Ms. Wiley also rated Ms. Blount in the top ranking of "dependable" in the categories of tardiness and use of sick time.

38. After he had tabulated the scores, Mr. Selner wrote a memo to Ms. Kuhn summarizing the results of the interview.

I have interviewed and screened the applications of eight (8) candidates for the Laundry Worker 2 position and have made the following decision:

My selection is Mary Blount.

Since October 1985 she has been employed at Winnebago as an L.T.E. in four different positions: BMH2, stock clerk, food service

worker 5, and laundry worker 2. In these positions she obtained valuable experience in cleaning practices, infection control, taking inventories, and maintaining stocks. In her canteen assignment she displayed her ability to work well independently and with little supervision. Also, Mary is able to sew and has worked in a real laundry situation in a nursing home. All of Mary's references have been excellent and she is by far the most qualified for the position.

Runners up are:

Patricia Tesch who is a food service worker at Winnebago and has some qualifications gained by working with food service stock and inventories that would be helpful.

Sharon Clark who is also a food service worker at Winnebago and also has had some experiences with stocks and inventories.

39. Handwritten comments by Ms. Kuhn on Mr. Selner's memo indicated the following:

Mary's [Ms. Blount] experience doing actual laundry in a nursing home is especially important.

Pat Tesch's time card shows numerous sick days connected to off days.

Sharon Clark's time card shows many sick days connected to off days.

40. After Ms. Kuhn approved of hiring Ms. Blount, the memo was sent on to Mr. Goers, who also approved of the hiring. Both Ms. Kuhn and Mr. Goers were aware that Ms. Blount and Mr. Mazanka were related, and understood that he had been excluded from the selection process.

41. Mr. Mazanka did not participate in the selection process for the position in question.

42. Ms. Blount was appointed to the vacant Laundry Worker 2 position effective Monday, October 24, 1988, at an initial pay rate of \$5.775 per hour.

43. Once she was in the position, Ms. Blount was permitted to arrive at work at 5 or 6 a.m. so that she could leave early in the afternoon. Ms. Blount also worked overtime on a regular and volunteer basis while employed in the Laundry Worker 2 position. The overtime arose because the other Laundry

Worker 2 retired shortly after Ms. Blount began working, and the person who was hired to fill that vacancy worked for only a very brief period of time so that another hiring process had to be completed. No LTE was hired during this period.

44. In filling these subsequent Laundry Worker 2 vacancies, the respondent opted not to consider voluntary demotion requests.

45. Soon after she was hired as a Laundry Worker 2, Ms. Blount interviewed for and was selected to fill a vacant Food Service Worker 5 position at MMHI. She declined the offer.

46. In November of 1989, the Wisconsin State Employees Union filed a written request that "an investigation be conducted at Winnebago Mental Health Institute regarding the actions of Frank Mazanka and Barbara Kuhn.". The request provided, in part:

There are many areas that need investigating and below are listed several major concerns:

- (1) Falsification of time sheets/hours of work records by Frank Mazanka.
- (2) Misuse of state owned property by Frank Mazanka.
- (3) Misuse of state employees work time to perform personal tasks for Mr. Mazanka.
- (4) Ms. Kuhn's blatant knowledge of Mr. Mazanka's conduct.

Pursuant to the request, respondent commenced an "investigation into alleged wrong doing by Mr. Mazanka and Ms. Kuhn at WMHI."

47. Respondent carried out an extensive investigation of Mr. Mazanka's conduct, as well as of Ms. Kuhn's conduct.

48. After suspending Mr. Mazanka with pay, effective January 18, 1990, pending investigation, the respondent discharged Mr. Mazanka effective March 16, 1990. The discharge letter listed 5 main categories of reasons for the discharge, as well as various specific reasons, including the following:

1. Falsification of time sheets/hours of work records by Frank Mazanka

* * *

2. Misuse of state-owned property by Frank Mazanka

* * *

Orange coveralls that you use for your personal use in your veal farm were laundered through WMHI laundry services during the summer of 1989.

On January 4, 1987, while in work status and using state facilities, you personally washed vehicles and changed the oil for vehicles owned by your (sic) and your mother-in-law.

* * *

3. Misuse of state employee work time to perform personal tasks for Mr. Mazanka

* * *

Additionally, you directed your secretary, Chris Allen, to type up necessary information to submit coupons for rebate monies for your personal gain. You knowingly allowed her to perform such tasks at WMHI on a state typewriter, during her regularly scheduled work hours from the period of September, 1987, to March, 1988. During this same period you received rebate monies for yourself and your mother-in-law at the WMHI on a regular basis which also required the handling of rebate material by WMHI employes who process mail during their regular work hours.

In November or December, 1986, you directed Frederick Kubsch to wash your car and your mother-in-law's car while Mr. Kubsch was in work status using state facilities to accomplish this task.

4. Negligence

* * *

5. Theft and illegal conduct

49. Shortly before a scheduled predisciplinary hearing related to her employment, Ms. Kuhn resigned from her position.¹

50. In April of 1990, Ms. Blount resigned from the Laundry Worker 2 position, citing stress arising from the investigations.

¹This finding has been changed from the Proposed Decision and Order to better reflect the record.

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 decision not to hire her was illegal or an abuse of discretion.
3. The appellant has failed to sustain her burden of proof.
4. The respondent's decision not to hire the appellant as a Laundry Worker 2 was neither illegal nor an abuse of discretion.

OPINION

The jurisdictional basis for this proceeding is found in §230.44(1)(d), Stats., which provides:

Illegal action or abuse of discretion. A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

In her post-hearing brief, the appellant acknowledges that she has not alleged any illegal conduct. Therefore, the question which remains is whether the respondent properly exercised its discretion.

The Commission has previously defined the term "abuse of discretion" 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. In Harbort v. DILHR, 81-74-PC, 4/2/82, the Commission interpreted the standard as follows:

Thus, 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 a 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."

The Commission notes that the issue for hearing that was agreed to by the parties refers to whether the decision not to select the appellant was an abuse of discretion. In her post-hearing brief, the appellant incorrectly restates the

issue as relating to the "Respondent's failure to select [the appellant], *or the selection of Mary Blount...* was an abuse of discretion."

Based on the record before it, the Commission cannot conclude that the decision made by the respondent not to hire the appellant for the position of Laundry Worker 2 was "clearly against reason and evidence."

It is important to note that the Peggy Cox of the WMHI Personnel Office recognized as soon as she received the certification list that Mr. Mazanka could not participate in the selection process for the position, in light of the fact that his mother-in-law, Ms. Blount, was on that list. Ms. Cox, Ms. Kuhn, Mr. Selner and Mr. Mazanka all testified that Ms. Cox had stated that Mr. Mazanka had to be excluded from the process. Ms. Cox, Ms. Kuhn, Mr. Selner, Mr. Hebert and Mr. Mazanka all testified that Mr. Mazanka did not influence the selection process. The record shows that 1) Mr. Selner prepared a revised position description before the certification list had been received by WMHI, 2) the questions which were developed by Mr. Selner and Ms. Kuhn and approved by Ms. Cox were all reasonably related to the actual duties assigned to the position, 3) all 8 candidates were asked the same questions, 4) the candidates' responses were rated separately by each panel member, 5) there is no apparent disparity in the ratings given by the panelists, 6) the scores were combined, and 7) the candidate who obtained the highest score was offered the position after first obtaining a reference. Of the 8 candidates, appellant had only the fourth highest score. The process showed that the experience of Ms. Blount best matched the areas which respondent had determined were important in the position.

The appellant offered testimony in an attempt to show that the decision to select Ms. Blount was in fact influenced by Mr. Mazanka. Douglas Warner, an employe in WMHI's transportation area who was supervised by Mr. Selner, testified that Mr. Selner always asked Mr. Mazanka for approval or direction in terms of carrying out his responsibilities: "I don't think Joe [Selner] ever made a decision in his life when [Mazanka] was there."

Mr. Warner also testified that he was told by Mr. Hebert that Ms. Kuhn and Mr. Mazanka informed him that his role during the interviews was "to sit there and keep his mouth shut." However, Mr. Hebert denied having made the statement to Mr. Warner and specifically denied knowing anything that suggested the selection process was designed to come up with a particular result.

The appellant also offered the testimony of Karen Himmler, a LTE, who described a conversation with Mr. Selner, Ms. Blount and another canteen worker in the Canteen during the period in September and October of 1988 when Ms. Blount was filling the LTE Laundry Worker position. Ms. Blount had an opportunity to compete for a permanent position in the Canteen as well as the permanent Laundry Worker position. According to Ms. Himmler, Mr. Selner said to Ms. Blount: "Don't apply for the canteen job because it's a shoe-in for you in the laundry." Mr. Selner denied making the comment. Ms. Himmler's testimony is placed into question by her additional statement that it was Mr. Selner who talked her out of seeking the position. However, as an LTE, the only way she would have been eligible to be considered for the vacancy was if her name appeared on the certification list. It was not on that list, even though she testified that she had filed an application "to Madison."

Mr. Hebert's testimony is important in that he was a relative outsider. He was serving a short term management internship, he was one of the persons interviewed during the course of the investigation of Mr. Mazanka's activities and he supplied the interviewer with negative information about Mr. Mazanka's employment. Yet Mr. Hebert testified that he did not know, until after the interview process had been completed, that Mr. Mazanka and Ms. Blount were related. He also testified that he was unaware of any attempt to influence the results of the selection process, and that he remembered that Ms. Blount "was an exceptional candidate, was very well versed, knew the job real well and I was impressed."

Finding of fact 36 indicates that one of Mr. Hebert's scores for Ms. Blount had been altered. Mr. Hebert testified that the 14 points listed on his interview sheet for Ms. Blount's response to question #1 had been changed by someone else but the evidence suggests that this may have been done because the score marked by Mr. Hebert for that question² did not coincide with the points (6 + 4 + 2) which were to be given for having provided all of the benchmark answers to that particular question.

Another key aspect to this case is the fact that the only evidence offered at hearing by the appellant in terms of her own qualifications for the vacant Laundry Worker 2 position was that she had worked in WMHI's Food Service

²A careful examination of the original document shows the erased number may have been a 10.

department for approximately 25 years. There is simply no basis on this record to conclude that the appellant was better qualified than Ms. Blount who, as a LTE, had previously performed similar duties to those assigned to the vacant position.

However, it can hardly be said that the record in this matter is a seamless web in justification of the decision to hire Ms. Blount. The record leaves many gaps in terms of how Mr. Selner generated the scores which he relied upon in coming up with the top three candidates (Blount, Clark and Tesch) who were listed in the memo he sent on to Ms. Kuhn. Nothing in the record explains why Ms. Bahtke did not make the top 3, given her scores.

The exam consisted of two parts, a practical section and an interview section. The scoring for the first two practical questions (a sewing sample and pulling a full laundry cart across a room and then unloading a forty pound bundle from the cart and placing it on a table) was straightforward. The maximum score for each question was 6 points.

Mr. Selner scored the third practical question which called for placing a list of 20 names into alphabetical order. While the maximum score (20 points) for this question is obvious, nothing in the record indicated how Mr. Selner came up with a score. In fact, the interview documents for two of the candidates (the appellant and Ms. Tesch) did not reflect any score for this question, even though they were clearly entitled to some points. None of the candidates finished this exercise within the allotted time period. Given that the Commission was unable to come up with a system for scoring this question which was consistent with the scores which were actually awarded for the six candidates whose interview materials reflected a score on this question, the Commission has applied a scoring system which awards one point for each name which correctly follows the preceding name.³ This is the system apparently used by Mr. Selner when he scored Ms. Blount's list. The results of the

³The first name on the list, if correct, would also be entitled to one point even though no name precedes it. Another scoring method could be based solely on whether the correct name appeared on each one of the 20 lines. However, a candidate whose only error in listing the first 14 names in alphabetical order had been to leave out what should have been the second entry, would, using this scoring system, only receive one point, because only the very first entry would be correct.

application of this scoring system for practical question #3 are reflected on Attachment A, where they appear in parentheses.

Mr. Selner testified that the maximum score for interview question #1 was 12 points.⁴

There is no testimony specifying the maximum scores for questions 2 and 3, but it is clear from the actual scoring that the various benchmarks were not interpreted as being mutually exclusive, so the maximum for these questions was 14 points, each.⁵ The scoring for interview questions 4 and 5 was straightforward.

Part of the problem with the scoring is that there is no document which shows how Mr. Selner reached the conclusion that candidates Blount, Clark and Tesch received the highest scores, i.e. how their total scores related to those of the other candidates. The closest item in the record (Appellant's Exhibit #27) was prepared only in part by Mr. Selner and only includes point totals for four candidates.⁶ The points assigned to each candidate on this exhibit clearly do not include the points these candidates should have received from the last two practical questions. If this same flawed system (with corrected math)⁷ is applied to all 8 candidates, the top 5 candidates would be as follows: Blount (97 points), Bathke (70), Clark (64), Tesch (59) and the appel-

⁴Because there were two interviewers and the scores from the interviewers were totalled rather than averaged, the combined maximum score for this question was 24 points.

⁵On their face, some of the benchmarks appear to be mutually exclusive. For example, for question 2, someone who "has worked with other inventories" (6 points) would not seem to be entitled to an additional 2 points for having "good general knowledge or(sic) keeping inventories but no past experience." Likewise, in question 3, a candidate who "sews at home with machine and by hand" (6 points) would not seem to be entitled to an additional 2 points for meeting the third benchmark, "does hand sewing." However, it appears that all of the candidates, including the appellant, were scored similarly by the two interviewers in this regard.

⁶The top sheets for the interview materials for two of the candidates include circled numbers which would initially appear to represent point totals. (Appellant's exhibits 5 and 6) However, the Commission is unable to find any relationship between these circled numbers and the scores found elsewhere in the interview materials.

⁷In Bloedow v. DHSS, 87-0014-PC-ER, etc., 8/24/89, the Commission found there was no abuse of discretion even though some of the panelists had incorrectly added up the scores for the various questions asked of the candidates, where the errors did not result in a change in the ranking of the candidates by either the individual panelists or by the panel as a whole.

lant (57). If, however, all of the questions are included in the total scores, math errors are corrected, and points are assigned to all of the candidates for the alphabetizing question (practical question #3) using the scoring system described above, the point totals change, but the order of top scorers changes only slightly: Blount (127 points), Bathke (120), Clark (103), appellant (94), Schuettpelz (92), Tesch (91). These results are all reflected on Attachment A.

There was no testimony suggesting that it is contrary to accepted interview scoring practices to have added the scores of the two interviewers, rather than to average them before combining them with the results of the practical questions. The Commission also notes that it is logical to assume that Ms. Blount would do well in the interview given the fact that she had worked in an LTE position with very similar duties on two different occasions, even though the period of such employment was under 3 months.

The investigation of Mr. Mazanka and Ms. Kuhn has only a circumstantial relationship to the issue in this proceeding before the Commission. It is clear from the record that a series of very serious allegations generated the investigation, and that, upon completion of the investigation, the respondent had concluded that Mr. Mazanka should be discharged for his misconduct, and respondent scheduled a predisciplinary hearing for Ms. Kuhn.⁸ Both resigned, as did Ms. Blount, even though the respondent did not initiate disciplinary action against her. While the respondent found that Mr. Mazanka had used his office for personal advantage, its investigation did not establish that the failure to select the appellant for the vacant Laundry Worker 2 position was an abuse of discretion.

For all of the reasons set forth above, the Commission concludes that the appellant has failed to meet her burden of establishing that the decision not to select her for the position in question was an abuse of discretion.

⁸This sentence has been changed from the Proposed Decision and Order to better reflect the record.

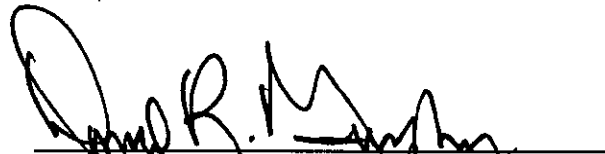
ORDER

This matter is dismissed.

Dated: June 4, 1993 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:Merits-non-sel (Schmidt)


DONALD R. MURPHY, Commissioner

Parties:

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230 North Morrison Street
Appleton, WI 54911

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or

within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

APPENDIX A

Candidate	Blount	Schmidt	Bathke	Clark
A. Practical				
1. cart	6	5	6	6
2. sewing	6	6	6	6
3. alpha	10	? (4)	13(16)	8(10)
4. match	20	33	34	29
Subt. for A.	42	? (48)	59(62)	49(51)
B. Interview				
	Hebert/Selner	H/S	H/S	H/S
1.	14(12)/12	2/2	0/6	2/6
2.	12/12	6/8	2/8	8/8
3.	8/12	6/8	12/14	6/6
4.	6/6	6/6	6/6	6/6
5.	3/2	1/1	2/2	2/2
Subt. for B.	43(41)/44	21/25	22/36	24/28
Total (A. + B.)	129(127)	? (94)	117(120)	101(103)
Rank	1	4	2	3
Alt. Total	99(97)	57	70	64
Rank	1	5	2	3
Candidate	Tourville	Buckman	Tesch	Schuettpelz
A. Practical				
1. cart	6	5	6	4
2. sewing	6	0	6	6
3. alpha	12	6	? (2)	5(10)
4. match	33	18	24(29)	29
Subt. for A.	57	29	? (43)	44(49)
B. Interview				
	H/S	H/S	H/S	Daniels/S
1.	0/2	0/0	2/6	6/10
2.	2/2	2/6	8/6	6/6
3.	6/6	2/2	6/6	6/4
4.	6/6	6/6	6/6	0/0
5.	0/0	1/2	1/1	3/2
Subt. for B.	14/16	11/16	22(23)/25	18(21)/20(22)
Total (A. + B.)	87	56	? (91)	82(92)
Rank	7	8	6	5
Alt. Total	42	32	59	48(53)
Rank	7	8	4	6

Note: Numbers in parentheses represent a "corrected" score, due to the elimination of a mathematical or similar error or the application of a different scoring system (for question A. 3) as discussed in the decision. The "Alt. Total" represents the total of A. 1 + A. 2 + B. 1 through 5, the method used by Mr. Selner on App. Exh. 27.