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STATE OF WISCONSIN

PERSONNEL COMMISSION

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LLOYD OCHALLA,
(Dennis Benson, John Cannon,
William Foster, Ron Gundlach, David
Guitzkow, John Lange, Shawn
McGettigan, Norbert Meier, Kenneth
Nelson, Ramon Schendel, Steven
Schumacher, John Vanwick, and
Edward Vasuikевичius),

Appellants,

v.

Administrator, DIVISION OF MERIT
RECRUITMENT AND SELECTION,

Respondent.

Case No. 90-0011-PC

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FINAL
ORDER

After reviewing the Proposed Decision and Order and the objections to it filed by appellant Ochalla, and after consulting with the hearing examiner, the Commission adopts the Proposed Decision and Order as its final resolution of the instant appeal with the following exceptions:

I. The following Finding of Fact is added:

11. Those appellants other than appellant Ochalla and appellant Guitzkow felt they were deprived of an opportunity to compete for the subject ET 5 vacancies since they were not certified for these vacancies from the ISS register established in November of 1989. The record does not indicate whether any of them took the ISS exam in response to the announcement in September of 1989.

II. The second complete sentence on page 7 of the Proposed Decision and Order is modified to read as follows:

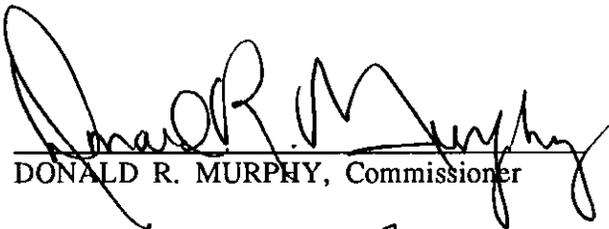
In order to show a violation of this rule, appellants would have to prove that respondent failed to investigate the factors listed in the rule in regard to the subject recruitment for the ET 5 position vacancies or failed to properly analyze and balance the information obtained from this investigation.

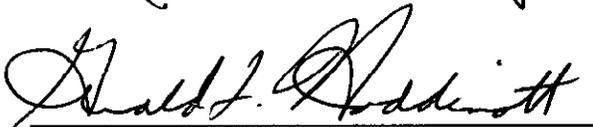
This modification is intended to clarify that an appellant would only have to show that the investigation was not conducted or that the results of the investigation were not properly analyzed and balanced, not both, in order to prove that the rule had been violated.

Dated: May 31, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM/lrm/gdt


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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2. In a September 7, 1989, Current Opportunities Bulletin, respondent announced a recruitment for an Instrument Shop Supervisor position at the University of Wisconsin-Madison College of Letters and Science--Physics Department. An employment register containing the names of 16 applicants was created on November 14, 1989, by respondent as a result of this recruitment.

3. Late in 1989, the University of Wisconsin-Madison decided to fill two vacant ET 5 positions in its Graduate School's Physical Science Laboratory and 1 vacant ET 5 position in its College of Letters and Science's Physics Department. The UW-Madison recommended to respondent that the ET 5 register which had expired on October 29, 1989, not be reactivated since the register did not contain enough names from which to obtain a full certification. In a letter to respondent dated January 2, 1990, from Peter Strutz of the UW-Madison Classified Personnel Office, the UW-Madison requested permission to use the recently created register for Instrument Shop Supervisor as a related register to fill these ET 5 positions.

4. In response to this request, respondent compared the duties of these ET 5 positions to those of an ISS position; the most recently administered ET 5 exam and current exam plan to the most recently administered ISS exam and current exam plan; and the likely applicant pool for these ET 5 positions to the applicant pool for the recent ISS recruitment, and concluded they were similar. In response to this request, respondent also considered the time and cost of administering a new exam. Respondent notified the UW-Madison on January 3, 1990, that the subject request had been approved. Subsequently, the UW-Madison used the ISS register to fill the subject ET 5 positions.

5. The duties and responsibilities of the subject ET 5 positions at the Physical Sciences Laboratory were summarized in a December, 1989, position description as follows:

The major responsibility of this position is to design, fabricate, assemble and test highly complex mechanical components of scientific instruments and apparatus which support research and instructional programs in departments and research centers. This may include the following: (1) providing expert consultation to engineers, scientists and students regarding a wide variety of instrument design and fabrication issues and problems, (2) directing machining and assembly work performed by other staff such as Instrument Makers, Mechanics or graduate students, and (3) performing very advanced, highly precise machining and fabrication operations. The apparatus that is constructed is frequently prototypical (one-of-a-kind) and may require the development of unique, innovative methods of machining and fabrication.

The Knowledge and Abilities section of this position description included the following item:

(6) Ability to function as lead worker: train new staff, implement task assignments as scheduled by shop supervisor, monitor staff performance, recommend disciplinary action when necessary, and make recommendations on other personnel issues.

The duties and responsibilities of the vacant ET 5 position in the Physics Department (See Finding of Fact 3, above) were equivalent to those of these ET 5 positions at the Physical Science Laboratory.

6. The duties and responsibilities of the ISS position at the UW-Madison College of Letters and Science--Physics Department for which the subject ISS exam was administered (See Finding of Fact 2, above) as detailed in an August, 1989, position description, may be summarized as follows:

The major responsibility of this position is to supervise the design, fabrication, assembly, and testing of highly complex mechanical components of scientific instruments and apparatus which support research and instructional programs for faculty, scientists and post-doctoral staff, graduate students, and technicians primarily but not exclusively from the Department of Physics. This involves the following: (1) providing expert consultation to users/clients, (2) supervising day-to-day activities of the shop staff including monitoring shop work flow, making

work assignments, directing the machining and assembly work of other staff, training new staff, and resolving problems which arise during machining/fabrication process, and (3) carrying out advanced level instrument maker duties and performing experimental work for special user applications.

7. The current ET 5 exam plan listed the following dimensions to be measured by the exam:

1. Knowledge of the operation of standard machine shop equipment and tools.
2. Knowledge of techniques used to evaluate plans and blueprints and to recommend changes and improvements.
3. Knowledge of machining work related to research and development; fabrication of prototypes or few-of-kind gear used for special research applications.
4. Knowledge of preparing cost estimates for machining work; procedures, techniques, and methods used to develop estimates.

This exam plan has been used for administration of ET 5 exams since 1985.

8. The current ISS exam plan listed the following dimensions to be measured by the exam:

1. Knowledge of a wide variety of machine shop tools and equipment.
2. Supervise the work of instrument shop staff, make work assignments, hire and train new staff, evaluate and monitor staff performance, recommend disciplinary action when necessary.
3. Fabrication of prototype equipment, research equipment or other one of a kind equipment. Familiarity with research and development activities.
4. Development of cost or time estimates for projects.

This exam plan has been used for administration of ISS exams since 1983.

9. Appellant Ochalla filed an application and took the exam in response to the announcement for the ISS vacancy in September of 1989 (See Finding of Fact 2, above). His name was placed on the resulting register but his score on the exam was not high enough for him to be certified for any of the vacancies filled from this register.

10. Appellant Guitzkow did not take the subject ISS exam.

Conclusions of Law

1. This matter is appropriately before the Commission pursuant to §230.44(1)(a), Stats.
2. The appellants have the burden to prove that respondent's decision to approve use of the subject ISS register for certifying candidates for the three subject ET 5 positions at the University of Wisconsin-Madison was incorrect.
3. The appellants have failed to sustain this burden of proof.

Decision

It appears that appellants are arguing that use of the subject ISS register to certify candidates for the subject ET 5 position vacancies at the UW-Madison violated §§ER-Pers 6.01 and 12.04, Wis. Adm. Code.

Section ER-Pers 12.04(2), Wis. Adm. Code, provides as follows:

ER-Pers 12.04 Use of related registers. (2) The administrator may certify additional names from registers of related classes in the same, counterpart of higher pay ranges to fill out an incomplete certification, or may make a certification from registers of classes in the same, counterpart or higher pay ranges when no register exists for the class for which certification is requested. Such decisions shall include a determination by the administrator that the examinations for the same or higher classes or classes in counterpart pay ranges are job related for the work of the position for which certification is to be made.

The record indicates that the duties and responsibilities of the relevant ISS and ET 5 positions (See Findings of Fact 5 and 6, above) and the dimensions of the relevant ISS and ET 5 exam plans (See Findings of Fact 7 and 8, above) are closely comparable. The sole distinction appears to be that related to the supervisory aspect of the ISS classification. It is important to note in this regard, however, that the particular ET 5 positions for which the subject request for

use of a related register was made are positions with a significant leadworker component. This leadworker component is closely akin to the supervisory component of the ISS classification, i.e., a comparison of the relevant position descriptions indicates that both involve training new staff, monitoring shop work flow, and monitoring staff performance. The Commission concludes on this basis that respondent's use of the subject ISS register as a related register for purposes of the subject ET 5 recruitments was consistent with the requirements of §ER-Pers 12.04(2), Wis. Adm. Code.

Section ER-Pers 6.01, Wis. Adm. Code, provides as follows:

ER-Pers 6.01 Base of Recruitment. The administrator, in determining the most appropriate base of recruitment for classified civil service positions, shall consider such factors as: affirmative action; agency goals; staff development patterns; availability of qualified applicants in the service, agency or the employing unit, and effect on employe morale or turnover; designated promotional patterns in the classification series; availability of trained people in the labor market, including the number who have completed or are completing training for the type and level of positions; value of bringing new personnel with different backgrounds into the service; current pay; employe benefits and hiring practices for the types of positions; the interests of other agencies which may use the eligible lists; and efficiency in conducting recruitment programs and examinations.

Appellants argue that an action which deprives qualified, interested individuals, such as the appellants, of an opportunity to compete for a position is a per se violation of §ER-Pers 6.01. However, §ER-Pers 6.01 is a listing of the factors which respondent must consider in determining the scope of a recruitment. It is implicit that respondent would have to balance these factors and determine the priorities to assign to these factors depending on the individual characteristics of a recruitment. It would not be possible to assign each factor equal priority for each recruitment simply because some factors are mutually exclusive, e.g., the goal of promoting employees from within the service is incompatible with the goal of bringing new personnel with different back-

grounds into the service. As a consequence of this discretionary balancing and prioritizing which respondent is required to do under §ER-Pers 6.01, Wis. Adm. Code, it is not possible to sustain appellants' argument that respondent's failure to provide an opportunity for each qualified, interested individual to apply for the subject ET 5 position vacancies was a per se violation of §ER-Pers 6.01, Wis. Adm. Code. In order to show a violation of this rule, appellants would have to prove that respondent failed to investigate the factors listed in the rule in regard to the subject recruitment for the ET 5 position vacancies and failed to properly analyze and balance the information obtained from this investigation. The appellants have failed to show this. The record indicates that respondent, in comparing and contrasting the recently expired ET 5 register and the newly generated ISS register, considered that the ISS register had been established based on open competition while the ET 5 register had been established based on a promotional recruitment only; that the ET 5 exam had recruited only 7 applicants of which only 5 were then certifiable while the ISS register contained 16 applicants, all of whom were presumed to be certifiable due to the recent generation of the register; that the ISS register was newer; and that the ISS register included a broader range of applicants. On the basis of this information, respondent concluded that use of the ISS register would provide a larger and more diverse applicant pool than reactivation of the recently expired ET 5 register. The Commission concludes that the factors considered and the conclusions reached by respondent in this regard were consistent with the provisions of §ER-Pers 6.01, Wis. Adm. Code. Respondent also considered the time it would take to administer a new exam and generate a new register. This is consistent with the requirement of §ER-Pers 6.01, Wis. Adm. Code, that respondent consider the "efficiency in conducting recruitment programs and examinations." Respondent also considered that certain interested

and qualified individuals might be deprived of an opportunity to apply for these ET 5 positions if a decision were made not to administer a new exam. Respondent concluded, however, that a very similar exam had very recently been administered for a very similar position and had been open to competition. On this basis, respondent concluded further that an equivalent applicant pool had recently been tapped and the administration of a new exam would not significantly expand this applicant pool. This factor, balanced against that relating to efficiency, led respondent to decide not to administer a new ET 5 exam. The Commission finds that the factors considered and the conclusions reached by respondent in this regard were consistent with the provisions of §ER-Pers 6.01, Wis. Adm. Code. Appellants have failed to show that respondent failed to consider the proper factors pursuant to §ER-Pers 6.01, Wis. Adm. Code, or that respondent did not reach a proper conclusion after application of these factors to the facts of the subject recruitment.

Order

The action of respondent is affirmed and these appeals are dismissed.

Dated: _____, 1991 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

LRM/lrm/gdt/2

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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