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RACHEL HELDT,
SUZANNE BOEKE,
KAREN LINDHOLM,
CATHERINE MLSNA, and
CHARLES JAGEMANN,

Appellants,

v.

Secretary, DEPARTMENT OF
CORRECTIONS, and Administrator,
DIVISION OF MERIT RECRUITMENT
AND SELECTION,

Respondents.

Case Nos. 90-0092-PC
90-0093-PC
90-0096-PC
90-0109-PC
90-0110-PC

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FINAL
DECISION
AND
ORDER

NATURE OF THE CASE

These are consolidated appeals pursuant to §230.44(1)(a), Stats., of the decision to limit competition for a Social Services Supervisor 2, Probation and Parole Field Supervisor exam to current DOC (Department of Corrections) employes. The parties submitted this case for decision on the basis of a stipulation of facts and written briefs. The parties agreed to the following issue for hearing:

Whether respondents acted in violation of the civil service code (Subchapter II, Chapter 230, stats.; Ch. ER-Pers., Wis. Adm. Code) in refusing to allow appellants to participate in the subject exam for the Social Services Supervisor 2, Probation and Parole classification by limiting competition to individuals employed by the Department of Corrections.

The following findings are the parties' stipulated findings. The attachments have not been reproduced here.

FINDINGS OF FACT

1. Appellants are currently employed as juvenile field agents for the Department of Health and Social Services (DHSS) with civil service classifications of Social Worker 3.

2. Prior to January 1, 1990, Appellants were so employed by DHSS within the Division of Corrections, and were, therefore, eligible to take promotional exams open only to employees of the Division of Corrections.

3. On January 1, 1990, the Division of Corrections became the Department of Corrections (DOC).

4. On January 1, 1990, juvenile field agents remained employees of DHSS, while adult field agents became employees of DOC.

5. Social Services Supervisor 2 is the lowest civil service classification utilized to supervise field agents.

6. On January 16, 1990, DOC issued a promotional announcement for a Social Services Supervisor 2, Probation and Parole Field Supervisor exam. (A copy of the announcement is attached as Attachment 1.)

7. The announcement limited the exam to current DOC employees.

8. Appellants sent applications for the Social Services Supervisor 2 exam to DMRS.

9. Appellants received an examination notice form from DMRS stating that they had been scheduled to participate in the March 3, 1990 civil service exam for Social Services Supervisor 2. (A copy of that examination notice form is attached as Attachment 2.)

10. Prior to the March 3, 1990 exam date, DOC received a print-out from DMRS listing the individuals who had applied to take the exam.

11. Upon review of the list of applicants, DOC phoned each Appellant and sent a letter to each Appellant indicating that Appellants were ineligible

to take the exam because they were not DOC employees. (Copies of those letters are attached as Attachments 3-6.)

12. The exam was completed on March 3, 1990 by approximately 96 DOC employees.

13. By letter dated January 2, 1990, full authority for all aspects of staffing transactions for the Social Services Supervisor 2 position was delegated by DMRS to DOC. That letter was signed by Stephen Bablitch and returned to DER on or before January 3, 1990. (A copy of that letter is attached as Attachment 7.)

14. The most recent prior recruitment for Social Services Supervisor 2 occurred in 1987 and was limited to Division of Corrections employees.

15. Prior to 1987, recruitment for the position had been open to all DHSS employees, which had resulted in large numbers of applicants lacking the knowledge base necessary to pass the exam. For this reason, DHSS requested and received DMRS approval to limit competition for the position to Division of Corrections employees, as indicated in the June 11, 1987 memo from Tom Garcia to Cheryl Anderson. (Attached as Attachment 8.)

16. Appellants have work experience which would be expected to allow them to obtain passing scores, had they been eligible to take the Social Services Supervisor 2 exam offered to DOC employees on March 3, 1990.

17. Appellants wish to take the Social Services exam offered to DOC employees because there are more field supervisor positions in DOC than in DHSS and, therefore, more potential opportunities for such a promotion exist within DOC than within DHSS. DOC currently has approximately 36 Social Services Supervisor 2 positions, including 3 positions in its Division of Juvenile Services. (Attachment 12, a memorandum from David Duax to DHSS

Secretary, Patricia Goodrich referenced appellants' concern about promotional opportunities.)

18. In February, 1990, a memorandum of understanding was executed by Patricia A. Goodrich, Secretary, DHSS, and Stephen Bablitch, Secretary, DOC, indicating that for purposes of transfer only, those departments intend to permit field agents to transfer between those departments as they did prior to January 1, 1990. (A copy of that memorandum is attached as Attachment 9. A further explanation of that memorandum is attached as Attachment 11.)

19. Attachment 9 refers to "7/1/1 of the Agreement" which is a portion of the collective bargaining agreement covering Appellants' collective bargaining unit. (That portion of the contract is attached as Attachment 10.)

20. On or about February 28, 1990, Appellants filed these appeals with the Commission challenging their ineligibility to take the Social Services Supervisor 2 exam offered to DOC employees on March 3, 1990.

CONCLUSIONS OF LAW

1. These matters are properly before the Commission pursuant to §230.44(1)(a), Stats.

2. Appellants have the burden of proof or persuasion.

3. Respondents did not act in violation of the civil service code (Subchapter II, Chapter 230, Stats., Ch. ER-Pers., Wis. Adm. Code), when they refused to allow appellants to participate in the subject exam for the Social Services Supervisor 2, Probation and Parole classification, by limiting competition to DOC employees.

DISCUSSION

There are a number of provisions in the civil service code concerning the scope of competition for examination as follows:

Section 230.14(1), Stats.:

Recruitment for classified positions shall be an active continuous process conducted in a manner that assures a diverse, highly qualified group of applicants, and shall be conducted . . . on the broadest possible base consistent with sound personnel management practices and an approved affirmative action plan or program. Due consideration shall be given to the provisions of §230.19. (emphasis added)

Section 230.19(2), Stats.:

If, in the judgment of the administrator, the group of applicants best able to meet the requirements for vacancies in positions in the classified service are available within the classified service, the vacancies shall be filled by competition limited to persons in the classified service . . . unless it is necessary to go outside the classified service to be consistent with an approved affirmative action plan or program. The administrator may also limit competition for promotion to the employees of an agency or an employing unit within an agency if the resulting group of applicants would fairly represent the proportion of members of racial and ethnic, gender or handicap groups in the relevant labor pool for the state.

§ER-Pers. 11.02(2)(b), Wis. Adm. Code:

Competition under this subs. may be limited and separate registers of qualified applicants under par. (a) may be established in the following order of preference:

1. Eligible persons employed within state service.
2. Eligible persons employed within an agency.
3. Eligible persons employed within an employing unit.

§ER-Pers. 6.01, Wis. Adm. Code:

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.

Flottum v. DMRS, Wis. Pers. Commn. No. 90-0155-PC (5/10/90) contains the following discussion:

Read together, §§230.14(1) and 230.19(2) . . . make it clear that the general preference of the civil service code is for the broadest possible base of recruitment to fill vacancies, consistent with "sound personnel management practices" . . . The administrative code rules . . . provide additional direction with regard to the effectuation of the more or less general principles set forth in the statutes. Section ER-Pers. 11.02(2)(b), which establishes an order of preference for service-wide, agency-wide, and employing unit-wide competition, reflects the general direction provided by §230.14(1), Stats., that recruitment is to be on the broadest possible basis. Section ER-Pers. 6.01, which sets forth an extensive list of factors to be considered in the determination of the appropriate recruitment base, is a detailed exposition of the kinds of "sound personnel management practices" referred to in §230.14(1) that qualify the general preference for the broadest possible recruitment base, and, inferentially, the preference for service-wide over agency-wide recruitment in promotional situations.

In deciding on the scope of competition, DMRS (or the appointing authority when it has been delegated this authority) in a case like this must attempt to strike a balance between the general imperative of the widest possible scope of recruitment and "sound personnel management practices," which include those set forth in §ER-Pers. 6.01, Wis. Adm. Code. Such balancing effort necessarily involves the exercise of discretion. In an appeal of this kind of decision, the discretion that was exercised must be evaluated. It is unclear from the civil service code whether the Commission's standard of review of such a decision is based on "abuse of discretion," which would give the respondents relatively wide latitude of action, or on some more exacting standard. However, it is unnecessary to address this issue, because regardless of how the standard is stated, the record before the Commission does not provide a basis upon which to conclude that respondents' decision to limit competition to DOC employes violated the civil service code.

The stipulated findings reflect that prior to the creation of a separate DOC, competition for these positions was limited to Division of Corrections employees, and that this limitation had been imposed because:

15. Prior to 1987, recruitment for the position had been open to all DHSS employees, which had resulted in large numbers of applicants lacking the knowledge necessary to pass the exam. For this reason, DHSS requested and received DMRS approval to limit competition for the position to Division of Corrections employees

Subsequent to the creation of DOC as a separate department, the only way that appellants, who remained in DHSS, could be eligible to compete for the positions in question in DOC would be if competition were opened up on a service-wide basis.¹ If competition limited to the old DHSS resulted in "large numbers of applicants lacking the knowledge necessary to pass the exam," it can be inferred that opening up competition service-wide would result in even larger numbers of unqualified applicants. Looking to the considerations set forth in §ER-Pers. 6.01, Wis. Adm. Code, the concern about having excessive numbers of unqualified candidates is addressed by "efficiency in conducting recruitment programs and examinations." Against this factor, respondents had to balance such factors as "staff development patterns" and "effect on employe morale and turnover." Based on this record, there is no basis upon which to conclude that respondents' decision, and the balance struck among the competing interests, violated the civil service code, and specifically with the directive that recruitment be on the "broadest possible base consistent with sound personnel management practices." §230.14(1), Stats. (emphasis added) The record does not establish that respondents should

¹ Appellants also contend that competition should have been restricted to employes of DOC and the Division of Youth Services within DHSS. However, §230.19(2), Stats., and §ER-Pers. 11.02(2)(b), Wis. Adm. Code, restrict the area of promotional competition to one of three options -- service-wide, agency-wide, or employing unit-wide -- and do not include the option of agency plus employing unit.

have put more weight than they did on the interest of expanding the base for recruitment to include appellants and less weight on the concern about excessive numbers of unqualified applicants. The record merely shows that both appellants and respondents can identify significant interests that were or would have been affected by the decision as to scope of competition. The record does not show that the approach taken by respondents was inconsistent with the civil service code in the context of the identified facts.

Appellants cited the fact that DOC and DHSS entered into an agreement permitting field agents to transfer between the two agencies as they had prior to January 1, 1990. Appellants are undoubtedly correct in asserting that this recognizes "the similarities between the duties of agents who work with adults and those who work with juveniles," but this point is not dispositive of the question concerning the appropriate scope of competition. It is not disputed that appellants are qualified candidates, the problem is that opening competition to a service-wide basis still could be expected to result in a large increase in the number of unqualified candidates.

While the Commission is constrained to conclude that no violation of the civil service code has been demonstrated on this record, it notes that appellants' move outside the DOC has undoubtedly created a hardship for them in terms of their advancement prospects in the civil service. It is unfortunate that the current civil service code does not permit what would otherwise appear to be a logical solution -- defining the scope of competition in such a way that appellants could compete for these jobs without opening up competition on a service-wide basis. The Commission urges respondents to consider pursuing changes in the civil service code that could provide a solution to this problem.

ORDER

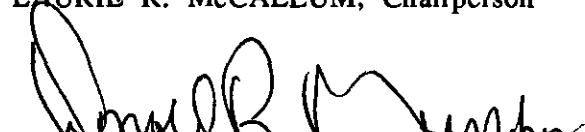
Respondents' action limiting competition to the positions in question to
DOC employes is affirmed and this appeal is dismissed.

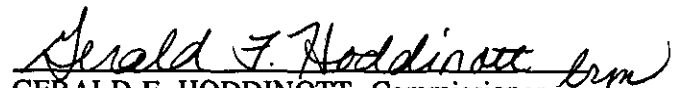
Dated: July 25, 1990

STATE PERSONNEL COMMISSION


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