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WILLIAM R. TAYLOR,
 Appellant,

v.

Administrator, DIVISION OF MERIT
 RECRUITMENT AND SELECTION, and
 Superintendent, DEPARTMENT OF
 PUBLIC INSTRUCTION,
 Respondents.

Case No. 90-0279-PC

* * * * *

DECISION
 AND
 ORDER

This matter is before the Commission on an appeal, pursuant to §230.44(1)(a), Wis. Stats., of respondent's examination process for the position of School Administrator Consultant—Private Schools. The following findings of fact, conclusions of law, decision and order are based on the record made at the hearing held on this appeal.

FINDING OF FACT

1. In June, 1990, the Administrator, Division of Merit Recruitment and Selection (DMRS) announced a vacancy at the Department of Public Instruction (DPI) for a School Administrator Consultant—Private Schools.
2. The job announcement in the June 1, 1990 Servicewide Promotional Transfer Job Opportunities Bulletin included a description of the duties and knowledges needed for the consultant position and, in darker print, advised applicants to use a state application form and with it submit a detailed resume, highlighting qualifications for the position.
3. Appellant submitted a two-page resume with his application for the position. The resume consisted of the following: 1) date and place of birth; 2) a listing of high school and post-high school educational institutions attended, with dates of diplomas, degrees and hours received; 3) a chronological listing, beginning in 1969, of employers and job titles; 4) six sentences describing

same; and 5) under heading pertinent life experiences: marital status, personal interests and endeavors.

4. According to appellant's resume, in 1968, he received a B.S. degree, Phi Beta Kappa, Summa Cum Laude with distinction in mathematics from Duke University and in 1969 an M.A., mathematics from the University of Wisconsin.

5. Appellant provided a home school for his children and was director of a club for "churched and unchurched young men" ages 9 to 12.

6. Applicants' resumes were screened by Mr. Amza Vail and Ms. Kathy Knudson.

7. Ms. Knudson served as Executive Personnel Officer for DMRS.

8. Mr. Amza Vail was the Director of Financial Aids, School Management Services, Department of Public Instruction (DPI).

9. Appellant and two others were eliminated as candidates for the vacant position during the resume screening process.

10. Within thirty days of receiving notice of his elimination as a candidate for the vacant position, appellant filed an appeal of respondent's action to the Commission.

11. The resume screen criteria was developed by Juanita Pawlisch, Director of the Bureau of School Management Services and Federal Aids and Audits. Ms. Pawlisch, who received a doctorate degree in Education Administration from the University of Wisconsin in 1981 supervised the position and was considered the position expert.

12. Prior to developing the resume screen, Pawlisch conferred with DPI Personnel Specialist Lee Hill. She confirmed the accuracy of the position description and received instructions on determining the "high important job content (HIJC)" of the position.

13. Hill and Pawlisch developed an exam plan, which was based on information from the HIJC and the job announcement.

14. Ms. Knudson, DMRS, reviewed and approved the HIJC rated position description, job announcement and exam plan.

15. The resume screen, developed by Ms. Pawlisch, was written to include applicants with experience and knowledge in public or private school operations.

16. As intentionally drafted, the resume screen differed from the rated PD which requires knowledge in both public and private school operations.

17. The resume screen as drafted enhanced the possibility of a larger pool of qualified potential applicants.

18. The resume screen was reviewed by Mr. Hill and Ms. Knudson and compared with the duties and responsibilities of the position.

19. Ms. Knudson approved the use of the conjunction "or" instead of "and" in the resume criteria, which referred to experience and knowledge in "public or private school operations."

20. Each of the criteria in the resume screen is based on the duties and responsibilities of the announced vacant position.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over this matter pursuant to §230.44(1)(a), Wis. Stats.

2. Appellant has the burden of proof to establish respondents' examination for the position of School Administrator Consultant—Private Schools was not conducted in accordance with §230.16, Stats. and s. ER-Pers 6.05, Wis. Adm. Code.

3. Appellant has not sustained that burden.

4. The examination for the position of School Administrator Consultant—Private Schools was conducted in accordance with the applicable state statutes and administrative codes.

DISCUSSION

Appellant claims that certain examination actions taken by respondent in recruiting for the position of School Administrator—Private Schools were in violation of §§230.16(4) and (5), Stats. and s. ER-Pers 605, Wis. Adm. Code.

Under §230.16(4) Stats., examinations for positions in the classified service are required to be: "job related in compliance with appropriate validation standards and subject to approval of the administrator." In addition this section provides that "relevant experience, whether paid or unpaid, shall satisfy experience requirements."

Section 230.16(5), Stats. provides: "the administrator may set a standard for proceeding to subsequent steps in an exam, provided . . . all applicants are fairly treated and due notice . . . given. The standard may be at or above the

passing point set by the administrator for any portion of the examination. The administrator shall utilize appropriate scientific techniques in administering the selection process, in rating . . . examinations and in determining relative ratings of . . . competitors."

Under §ER-Pers 6.05, Wis. Adm. Code, the administrator is responsible for establishing criteria for evaluating applicant qualifications and requiring the same or equivalent examination for all applicants competing for eligibility. The examinations may include techniques the administrator determines appropriate to evaluate applicants.

Other provisions of the section require the examination to be based on information from job analysis and developed to test the skill and knowledges need to successfully perform the position. Finally this provision requires the examination to comply with appropriate test validation standards and be to objectively rated and scored.

Appellant contends that respondents' resume screen criteria was not job-related and enabled applicants without knowledge, experience or training in private education to become eligible, while screening out applicants with a home schooling background. Within this general premise appellant argues: 1) This position involves, primarily, private schools and home-based education. Therefore, criteria that enable applicants without private school background to become eligible are not job-related. 2) Changing the criteria by using "or" in place of "and" in the first and second sets of the screening criteria is "radically" different from the description because these changes allow applicants without any experience in private education to qualify for the position, where the work requires knowledge in private education. 3) The state constitution and court cases show that DPI lacks general authority in private education. Therefore, screening criteria that requires candidates to demonstrate involvement in planning, developing and implementing policies in private school operations is not job-related, because the candidate would have no authority to do that work. 4) The criteria are not job-related because candidates with only home based private educational program experience would most probably be eliminated in the initial screening process.

Regarding appellant's first and second arguments, the appellant is factually correct. The screening criteria differ from the job announcement and the position description. These two documents indicate a need for job

knowledge in public and private school operations. However, it does not necessarily follow that this criteria is not job-related because it screens out applicants with only home school experience. Juanita Pawlisch, the job expert, testified that it was more appropriate to recruit applicants with backgrounds in planning, developing and implementing instructional programs, whether gained from public or private school experience. According to her testimony, this screening benchmark increased the potential for a larger pool of eligible applicants. [Contrary to appellant's argument, the evidence does not support a finding that the use of the conjunction "or" instead of "and" caused criteria concerning public school operation knowledge to be not job-related.]

Also, appellant argues that 75% of the consultant position duties concern private and home-based educational programs. The approved position description, which was testified as being representative, fails to provide percentages for every listed duty and some of its language is ambiguous. While particular percentages cannot be substantiated in any detail, it appears that they are weighted toward private and home-based educational programs. Assuming this is correct, standing alone, it does not establish that knowledge about public school operations is not job-related.

Next, appellant argues that DPI lacks general authority in private education, therefore screening criteria requiring knowledge in planning, developing and implementing instructional programs in private education are not job-related. Appellant correctly points out that DPI has the responsibility of supervision of public instruction. However, appellant fails to proffer evidence that knowledge of public or private school operations is not job related. Marvin Berg, former incumbent, testified he was involved in projects with private schools that impact upon their instructional program. Also, Pawlisch testified such background was pertinent in carrying out consultant duties. This testimony was unrefuted.

Concerning §ER-Pers 6.05 Wis. Adm. Code, appellant contends that the resume screenings were biased. In support, appellant states that Amza Vail, while testifying, responded incorrectly and emotionally to appellant's question concerning Vail's role as legislative liaison. About Katherine Knudson, appellant contends her action and testimony demonstrated a bias.

Appellant's allegations regarding Amza Vail are not supported by evidence in the record. No testimony or exhibits contradict Vail's testimony. The

same can be said about Katherine Knudson. No testimony or exhibits were introduced which controverted her testimony. Appellant's allegations are conjectural.


Finally, appellant makes the argument that Katherine Knudson failed to exercise reasonable administrative and management controls and judgment over the staffing process. Through cross examination, appellant inferred inadequate review of pertinent staffing documents and inappropriate delegation of certain responsibilities, but provided no evidence which supported these arguments.

For the reason stated, the Commission concludes that appellant has failed to substantiate his assertions against respondent. While appellant established that applicant's experience in only home based educational programs would score poorly under the resume screen criteria, he failed to establish the given criteria were not job-related. As respondents correctly argue, the decision to emphasize policy-development and implementation instead of denomination of school operation experience was within their discretion.

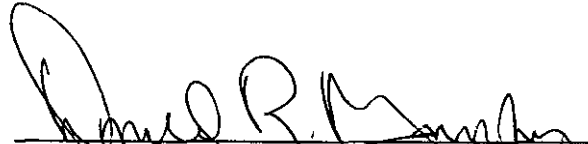
ORDER

Respondent's actions regarding an examination for School Administrator Consultant—Private Schools at DPI in June 1990 is affirmed and this appeal is dismissed.

Dated: September 19, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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