

Save

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 11

DANE COUNTY

JEFFREY ALLEN, et al.,  
Petitioners,

v.

Case No. 90-CV-2840

WISCONSIN PERSONNEL COMMISSION,  
Respondent.

**RECEIVED**

DECISION

MAR 7 1991

Personnel  
Commission

I. STATEMENT OF FACTS

The Department of Industry, Labor and Human Relations (DIHLR) informed the Division of Merit Recruitment and Selection (DMRS) of DIHLR's need to fill a Fiscal Supervisor 1 vacancy. The vacancy was to be filled through a resume screen process followed by an oral examination. The job experts developing the resume screen evaluation determined that resumes would be scored on five criteria: (1) supervisory experience, (2) direct or coordinate accounting system or business management function, (3) directed reconciliations or audit performance functions, (4) knowledge of governmental accounting, auditing and financial reporting principles, and (5) cash management reporting functions--invoice billings and/or letter of credit process. For each criteria, points were awarded dependent upon whether the criteria responsibilities were performed at the "organizational" level, "component" level, "functional" level, or "minimal involvement."

The petitioners submitted applications for the Fiscal Supervisor 1 position. However, after the resume screening process was complete, none of the petitioners were invited to the oral examination and were eliminated from further consideration for the position.

On October 10, 1989, the petitioners filed an appeal with the Wisconsin Personnel Commission ("the commission"). On February 20, 1990, a hearing examiner issued a proposed decision and order. On May 17, 1990, the commission affirmed the action of the DMRS and dismissed the petitioners' appeal. On June 15, 1990, the commission denied a petition for rehearing. On July 13, 1990, Allen and others filed a petition for judicial review of the commission's final decision.

The petitioners ask this court to set aside the commission's final decision and reinstate the hearing examiner's proposed decision on grounds that the Personnel Commission exceeded its legal authority and based its decision upon factual findings unsupported by substantial evidence on the record. - The court granted the petition for review and now affirms the commission's final decision.

## II. SCOPE OF REVIEW

Under 227.57(5), Stats., this court cannot substitute its judgment for that of the agency on any disputed finding of fact; unless the agency based its decision upon a finding of fact not supported by substantial evidence in the record. "Substantial

evidence" does not mean a preponderance of the evidence. Madison Gas & Elec. Co. v. Public Serv. Comm., 109 Wis. 2d 127, 133, 325 N.W.2d 339 (1982). The test is whether, taking into account all the evidence in the record, reasonable minds could arrive at the same conclusion as the agency. Id. at 133.

The court ordinarily provides independent review of an agency's legal interpretations. Houslet v. Natural Resources Department, 110 Wis. 2d 280, 284, 329 N.W.2d 219 (Ct. App. 1982). However, when an agency has interpreted a statute which it is charged with administering, the court often will defer to that interpretation if it is reasonable and consistent with the purpose of the statute. Frank v. Personnel Commission, 141 Wis. 2d 431, 434, 415 N.W.2d 533 (Ct. App. 1987). The Wisconsin Court of Appeals has specifically held that the Personnel Commission should receive such deference when reviewing personnel decisions under sec. 230.44, Stats. Id.; Cozzens-Ellis v. Wis. Personnel Comm., 155 Wis. 2d 271, 273, 455 N.W.2d 246 (Ct. App. 1990). Deference is especially appropriate when the agency's statutory interpretation is aided by its experience, technical competence and specialized knowledge. Seep v. Personnel Commission, 140 Wis. 2d 32, 41, 409 N.W.2d 142 (Ct. App. 1987); Section 227.57(10), Stats. The court should not substitute its judgment for the agency's application of a statute to the factual findings if a rational basis exists in law for the agency's interpretation and it does not conflict with the statute's legislative history, prior appellate decisions, or constitutional prohibitions." Klusendorf

Chevrolet-Guick, Inc. v. L&IRC, 110 Wis. 2d 328, 331-332, 323 N.W.2d 890 (Ct. App. 1982).

III. THE COMMISSION'S FINDING OF FACT #14 WAS SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD

The petitioners argue that finding of fact #14 in the commission's final decision is not supported by substantial evidence on the record. Therefore, Allen requests that this court set aside the final decision and reinstate the hearing examiner's proposed decision, which contained a different version of finding of fact #14. The contested finding states:

"14. The scoring levels developed by the job experts did not explicitly take into account differences in size and scope of responsibility of the 'organizations' employing the various applicants. However, the scoring levels were logical and were all clearly related to the five evaluation criteria."  
(FD at 3)

The petitioners apparently do not challenge the first part of the finding. In fact, a part of their argument is based upon it. The dispute goes to whether the scoring levels were logical and clearly related to the five criteria. The petitioners list numerous "discrepancies" which they believe demonstrate that the scoring levels were not logical. However, as discussed above, this court must examine only whether there exists a certain level of evidence which supports the agency's finding and establishes its reasonableness.

The court has examined the record and finds that the commission's findings, including finding of fact #14, are based on substantial evidence. A comparison of the resume evaluation criteria and scoring levels (Exhibit 57) and the job announcement

description of the Fiscal Supervisor 1 position (Exhibit 62) certainly indicate that the criteria and scoring levels were logical. The scoring system allowed for consideration of the various aspects of management, accounting, auditing, and reporting skills which the job required. The fact that supervisory experience was emphasized is logical; the position was supervisory in nature. In addition, the scoring levels and values were developed by John Packard and Gary West (individuals previously used as job experts by DMRS) with the assistance of Alan Bell, a Personnel Specialist for DMRS and an expert in test development. The petitioner offered no persuasive evidence that Packard and West were not qualified to develop the scoring levels. In fact, the petitioner offered no expert testimony whatsoever which questioned the validity of the resume screen procedure.

At the hearing, Bell provided reasonable explanations for the specifics of the scoring system. Bell testified that the job experts, the oral examination board members and the agency's appointing authority all informed him that the the overall examination (including the resume screen procedure) was related to actual duties of the job in terms of skills and knowledge. (Hearing Transcript [Tr.] at 283-284). Furthermore, Bell testified that West and Packard had executed a "Job Expert Affidavit" which certified that the examination was "representative, necessary, and at an appropriate level of complexity for the position." (Tr. at 191-193 and Exhibit 65) The

court, however, could not locate the actual affidavits in the record.

The court agrees that the resume screen scoring system was not perfect in that it did not specifically consider organization size. However, a reasonable mind could conclude that the scoring levels were "logical and clearly related to the five evaluation criteria." Therefore, the court finds that finding of fact #14 in the final decision was supported by substantial evidence on the record. Likewise, the court finds that the commission's other findings relative to the validity and reliability of the resume screen procedure under sec. 230.16, Stats. and ER-Pers 6.05 are reasonable and supported by substantial evidence.

#### IV. THE COMMISSION'S LEGAL ANALYSIS WAS NOT ERRONEOUS

The petitioner argues that the commission acted illegally and beyond its authority by changing the standards for civil service examinations, as set forth in sec. 230.16, Stats., and Wisconsin Administrative Code ER-Pers 6.05. Sec. 230.16, Stats., provides in part:

"(4) All examinations, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

"(5) In the interest of sound personnel management, consideration of applicants and service to agencies, the administrator may set a standard for proceeding to subsequent steps in an examination, provided that all applicants are fairly treated and due notice has been 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

and procedures in administering the selection process, in rating the results of the examinations and in determining the relative ratings of the competitors."

ER-Pers 6.05 provides in part:

"(3) All examinations shall be:

"(a) Based on information from job analysis, position analysis or other equivalent information documenting actual job tasks to be performed or skills and knowledges required to perform job tasks, or both;

"(b) Developed in such a manner as to establish the relationship between skills and knowledges required for successful performance on the test and skills and knowledges required for successful performance on the job;

"(c) Supported by data documenting that the skills and knowledges required for successful performance on the test are related to skills and knowledges which differentiate among levels of job performance if the examination results are to be used as a basis for ranking candidates;

"(d) Sufficiently reliable to comply with appropriate standards for test validation; and

"(e) Objectively rated or scored."

Allen contends that the commission replaced the above requirements with a standard gleaned from a written decision issued by the agency in another case. According to the petitioner, the new standard for civil service examinations is whether the exam is "clearly ridiculous and offensive to common sense." A careful reading of the commission's decision indicates otherwise.

The commission does state that "[u]nder the York analysis, the Commission must determine whether the scoring system was clearly ridiculous or offended common sense." However, this analysis comprises two paragraphs of a twenty-one page decision and only comes after the agency conducted extensive consideration

of the examination requirements cited in 230.16, Stats., and ER-Pers 6.05. The "clearly ridiculous" standard hardly "pervades" the final decision, as the petitioner contends, nor is it "clearly inconsistent with the direct language of the Wisconsin Statutes." The York application is merely a part of the agency's discussion about the scoring component of the resume screen process. On the other hand, references to the requirements of 230.16 and ER-Pers 6.05 are found throughout the final decision.

On page seven of the final decision (FD-7), the commission concludes:

"1. This matter is properly before the Commission pursuant to [section] 230.44(1)(a), Stats.

"2. The appellants have the burden of establishing that the Fiscal Supervisor 1 examination violated [section] 230.16, Stats., or the related administrative rules.

"3. The appellants have failed to sustain that burden.

"4. The examination was conducted in accordance with the civil service requirements."

Nowhere in those conclusions of law does the "clearly ridiculous or offensive to common sense" language appear.

While the above-quoted conclusions of law certainly suggest that the commission based its decision upon a consideration of the proper legal standards, a reading of the opinion itself reveals the actual application of those standards. The final decision specifically addressed issues of "reliability" relative to the resume screening. (FD at 9-10) Regarding the screening's overall "validity," the opinion expressly cited sec. 230.16 and its central requirement that examination procedures be "job-related in

compliance with appropriate validation standards." (FD at 12)  
The commission discussed the various examination validation techniques and then analyzed the particular technique (content validity) which DMRS applied to the resume screen component. (FD at 10-12) Finally, the commission stated that it "...[could] not conclude that the respondent failed to use 'appropriate scientific techniques and procedures in administering the selection process [and] in rating the results of examinations.' [section] 230.16(5), Stats." (FD at 20)

The commission's discussion of York arises only in the context of the scoring system utilized in the resume screen evaluation. While the opinion recognizes some flaws in the system, the scoring levels were found "logical" and "clearly related to the five evaluation criteria." (FD at 14) Likewise, the commission found that the petitioner was unable to prove that the five evaluation criteria were invalid or non-job-related. (FD at 11-12) Therefore, this leads the court to conclude that Allen also was unable to establish that the scoring levels were invalid or non-job-related. In addition, the scoring system was not invalid, the commission determined, because it emphasized supervisory experience in ranking candidates for supervisor vacancies. (FD at 14) This would also indicate a consideration of job-relatedness under 230.16 and the test-performance/job-performance relationship under ER-Pers 6.05. The court finds that the commission based its decision upon the civil service examination requirements contained in section 230.16, Stats., and

ER-Pers 6.05. Therefore, the Personnel Commission did apply the appropriate standards in its evaluation of the DMRS resume screen procedure.

The commission does not explain whether it considers the application of "the York analysis" an inquiry independent of the general validity and reliability requirements contained in 230.16 and 6.05 or as a specific standard it has adopted in applying those general requirements. Such an ambiguity does not change the result where, as here, the agency still applied the proper standards.

The petitioners contend that the commission imposed upon them a higher burden of proof than was required. A review of the final decision finds no support for this allegation. The court finds that the commission committed no errors of law nor did it exceed its authority in the instant case. The commission's application of the statutes and administrative regulations was reasonable and consistent with the purpose of the civil service statutes, which is to provide state agencies with "competent personnel who will furnish state services to citizens as fairly, efficiently and effectively as possible." Section 230.01, Stats.

#### V. CONCLUSION

Based upon the above reasoning, the court finds that all of the petitioners' arguments are without merit. Therefore, the Personnel Commission's final decision of May 17, 1990, is affirmed.

Dated this 28th day of February, 1991.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Daniel R. Moeser", written over a horizontal line.

Daniel R. Moeser, Judge  
Circuit Court Branch 11

cc: AAG Stephen M. Sobota  
AAG David C. Rice  
Mr. Jeffrey H. Allen