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PASTORI BALELE,

Complainant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES, and
Administrator, DIVISION OF MERIT
RECRUITMENT AND SELECTION,

Respondents.

Case No. 91-0118-PC-ER

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RULING ON
PETITION
FOR
REHEARING

This matter is before the Commission on complainant's petition for rehearing.

In September 1991, complainant filed a complaint of discrimination against respondents regarding the recruitment and hire of certain vacant Career Executive positions. Prior to the hiring, respondents stipulated for this case only, that the method used to recruit for these positions had a disparate impact on minorities, including complainant. Further, respondents consented to judgment on this issue provided complainant proved a prima facia case of discrimination. As a result of the stipulation, the issues for the hearing were reduced to whether complainant was qualified for the positions in issue, and if so, whether complainant would have been hired for either of these positions.

After the hearing process, on April 30, 1993, the Commission issued a Decision and Order dismissing complainant's complaint and remanding the matter to respondents "for action consistent with its stipulation."

In the complainant's petition for rehearing, complainant's states that he is petitioning for rehearing, "because the Commission, in its decision, did not specify the relief for the complainant and the action respondent were supposed to take after finding that complainant had proved a prima facia case of discrimination based on disparate impact on racial minorities for defendants use of career executive status as recruitment and selection criteria." Complainant said that the Commission's order simply remanded the matter to respondents and that he feared future use of this same method of

recruitment by respondents. In concluding his petition complainant sought the following:

1. Declare the Career Executive Status as a non-job related and unlawful as recruitment and selection criterion because it had and causes disparate impact on racial minorities. Caviale v. Wis. Department of Health and Social Services and Griggs v. Duke Power Company.
2. Issue an injunction against DMRS and other agencies to stop using the Career Executive status as a recruitment and selection practice because it had and causes disparate impact on racial minorities and is not job related. Caviale v. Wis. Department of Health and Social Services and Griggs v. Duke Power Company. Complainant will also call racial minorities who were denied interviews because they did not have career executive status.
3. Any other remedy as will be determined before or at the re-hearing.

Also, complainant attached those exhibits asserted to be relevant to the rehearing and representative of testimony that would be given at the rehearing.

This was a class 3 contested case as defined in sec. 227.01(3)(c), Stats. As such, determination of a petition for rehearing is governed by the provisions in sec. 227.49(3)(a)(b) and (c), Stats. which sets forth the bases for granting a rehearing. This statutory section provides that petitions for rehearing are to be granted only if there was some material error of law, some material error of fact or the discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

Upon review of complaint's petition, including the exhibits, the Commission concludes that complaint has failed to demonstrate that the Commission committed an error of law or fact in its final decision, or that complainant has identified "new evidence" as described in s.227.49(3)(c).

Regarding complainant's concern about the Commission's order, by DMRS Bulletin No. 139, dated July 24, 1992, Respondent changed its recruitment procedure for Career Executive vacancies in a manner which is consistent

with the subject case decision and order. As noted above, the stipulation with respect to which respondent consented to judgement was that, for the purpose of this case only, its decision to use option 2 to recruit for the Career Executive positions in issue had a disparate impact on minorities. The aforesaid bulletin prohibits agencies from limiting competition for Career Executive positions to option 2 until the candidate pool in the Career Executive program is equal to or greater than availability in the Administrator-Senior Executives job group. The record in this case does not call for any more extensive remedy.

Petitioner contends in his reply that brief in support of his petition that respondent intends to "void it [the DMRS Bulletin] or lifted [sic] its effectiveness once the total numbers of racial minorities is reached," that "the whole cycle of this case and of the Act will have been defeated," and that respondent should be ordered not to use the Career Executive program "now and for ever." The requested relief goes beyond what is appropriate in light of the stipulation, and is based at least in part on speculation about what will occur in the future.

ORDER

Complainant's petition for hearing is denied.

Dated: 6/17/93, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM/bew


DONALD R. MURPHY, Commissioner

Parties:

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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.