

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

DARYL J. RANSOM, *

Appellant, *

v. *

President, UNIVERSITY OF *

WISCONSIN SYSTEM (Milwaukee) *

Respondent. *

Case No. 92-0234-PC *

* * * * *

ORDER

After having reviewed the Proposed Decision and Order and the objections thereto and after having consulted with the hearing examiner, the Commission adopts the Proposed Decision and Order except as follows:

The second paragraph on page 5 is deleted and the following paragraph substituted:

The record shows that appellant and Mr. Skodinski have been on opposite sides of labor management-disputes over a period of years. However, the record does not show that this had an impact on the hiring decision made here, i.e., the record shows that Mr. Skodinski did not directly participate in the interview and ranking of Ransom, who was rated third among the four candidates by the interview panel; and does not show that Mr. Skodinski directly or indirectly influenced the interview panel in its ranking of appellant or any of the other candidates. A conclusion that no improper influences or biases played a part in the hiring decision is further sustained by a comparison of the qualifications of appellant and Mr. Stark, i.e., the record shows that the successful candidate for the subject position would be required to operate certain types of equipment and that Mr. Stark had more extensive experience than appellant with such equipment; and that, other than in regard to this equipment experience, the work backgrounds of appellant and Mr. Stark were similar, i.e., at the time of the subject recruitment, both of them were employed in campus BMH 2 positions.

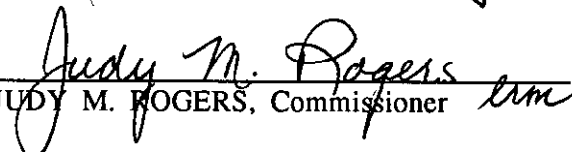
Dated: February 9, 1994

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:irm


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner *irm*

Parties:

Daryl J. Ransom
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Milwaukee, WI 53202

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President, UW System
1700 Van Hise Hall
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Madison, WI 53706

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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

* * * * *

DARYL J. RANSOM,
 Appellant,

v.
 President, UNIVERSITY OF
 WISCONSIN SYSTEM (Milwaukee)
 Respondent.

Case No. 92-0234-PC

* * * * *

PROPOSED
 DECISION
 AND
 ORDER

This matter is before the Commission on appeal of respondent's decision not to hire appellant for a Laborer-Specialist position. The issue is: whether the failure or refusal to appoint Mr. Daryl Ransom, Appellant, to the Laborer-Specialist position at the Kenwood Campus Physical Plant, University of Wisconsin-Milwaukee (UW-Milw.) was an abuse of discretion. The following findings, conclusions, discussion and order are based on a hearing before Donald R. Murphy, Commissioner.

FINDINGS OF FACT

1. In the Fall of 1991, a Laborer-Specialist position became vacant in respondent's Department of Physical Plant Services - Buildings and Grounds at the University of Wisconsin-Milwaukee.
2. After the position description and recruiting plan were approved, a list of six certified candidates referrals for this position were sent by the University's personnel office to the Physical Plant department. Ransom's name was not on that list.
3. Only two of the certified candidates were interested in the position and they were invited to interviews conducted on February 12, 1992, by

Sheldon Fishman, the Laborer-Specialist position's immediate supervisor, and Dennis Greenwood, Fishman's supervisor.

4. Subsequently, Leonard Skodinski, Manager of Buildings and Grounds Services, requested and received an additional list of certified candidates for the position, since he was entitled -- by administrative rule -- to at least five candidates from the register of certified candidates.

5. On February 18, 1992, Skodinski received an additional list of three certified candidates for the laborer position. Ransom's name was on this list.

6. From this second certification list, Ransom was the only candidate to express an interest in the position. He was invited to be interviewed on February 26, 1992.

7. Later, a reinstatement candidate, Walesa Jett, was certified and sent to Skodinski for an interview.

8. The same interview procedure was used for all of the candidates: Each candidate completed application forms and signed an Authorization For Release of Information for his or her work/school record. The same questions were asked each candidate at the interview.

9. On February 26, 1992, Skodinski requested and was provided additional candidate referrals by the University's personnel office, but none responded for interview.

10. After the interviews were completed, Fishman and Greenwood met to evaluate the candidates. They selected candidate William Stark for the position and notified Skodinski that Stark was their recommendation.

11. With the recommendation of William Stark for the position, Fishman and Greenwood submitted written reasons for selecting Stark to Skodinski and Dexter Domahoski, the Director of Physical Plant Services.

12. In their written documentation of reasons why Stark was selected, Fishman and Greenwood wrote:

"More relevant experience than other candidates (space) has run front-end loaders and four wheel drive snowplows, has done pipe line construction, has some ground work experience and a little moving experience, characterizes himself as a good worker".

13. After reviewing the selection process to ensure that it was done according to all personnel procedures, including affirmative action requirements, Skodinski and Domahoski accepted the recommended candidate.

14. All candidates not selected for the position received letters from Greenwood and then Stark was appointed to the vacant Laborer-Specialist position. Ransom ranked third among the four candidates interviewed.

CONCLUSIONS OF LAW

1. The Personnel Commission has jurisdiction over this appeal pursuant to §230.44(1)(d), Wis. Stats.
2. Appellant has the burden of proving that respondent's hiring decision selecting another candidate rather than him, was an abuse of discretion.
3. Appellant has failed to sustain his burden of proof.
4. Respondent's decision not to hire appellant was not an abuse of discretion.

DECISION

The question before the Commission in this controversy is whether the University of Wisconsin-Milwaukee committed an abuse of discretion in violation of §230.44(1)(d), Stats., when it failed to select Daryl Ransom for a Laborer-Specialist position.

The Commission, in Lundeen v. DOA, Case No. 79-0208-PC (6/81), citing Murray v. Buell, 74 Wis. 14, 19 (1889) and Black's Law Dictionary (4th Ed. p. 25) concluded that the term abuse of discretion found in §230.44(1)(d), Stats., means: "A discretion exercised to an end or purpose not justified and clearly against reason and evidence."

Daryl Ransom began working at the University of Wisconsin-Milwaukee in 1979 as a Laborer on the grounds crew. In 1986, rather than being laid-off Ransom transferred to the position of Building and Maintenance Helper 2 (BMH2), where he presently works.

Mr. Ransom argues that he previously worked as a Laborer on the University's ground crew for some seven years; that he has seniority; that he was promised by Skodinski and Domahoski that he could return to the ground crew if a Laborer position became available, and that he was as qualified for the position as the successful candidate.

Undisputed testimony was that Laborer positions were eliminated, that initially, Laborer positions and Laborer-Specialist positions differed primarily on the basis of the type of supervision given. Fishman and Greenwood testified later that Laborer-Specialist positions changed over the last several years into positions operating a larger variety of motorized equipment. Ransom acknowledges that unlike Stark -- the successful candidate -- that he had no experience operating moving trucks, back hoes, front-end loaders and skid loaders, but argues that he could quickly learn and points out that Stark had not operated this equipment for 12 years. Stark testified that he had operated equipment similar to that used in his job as Laborer-Specialist; that he had not operated a back-hoe or road grader but had operated front-end loaders, bucket loader and forklifts while working for a pipeline construction company, and that he had owned a four-wheel drive snowplow rig. Prior to being hired by UW-Milwaukee, Stark was a BMH2 at UW-Parkside. Skodinski and Domahoski

testified that since the Laborer position was eliminated it was not possible for Ransom to transfer into one. Further, they testified that because the Laborer-Specialist position is a higher pay range than Ransom's BMH2 position, he could only obtain the Laborer-Specialist position through competition.

The Appellant also argues that UW-Milwaukee did not select him because of Skodinski's enmity for him, born out of his union activity as a union steward. While a union steward, Ransom testified that he filed nearly 300 grievances against the University's Physical Plant department and that this activity continued until he resigned his union position to attend graduate school. Ransom also testified that while he was a union steward he had many second-step grievance meetings with Skodinski and that many were quickened with anger. Skodinski in his testimony denied this and said he held no animosity toward Ransom.

Unions and employers are long antagonists. And there is no reason that was not the case in this instance. However, that does not necessarily mean that these two counteracting entities can not share mutual regard and respect. Ransom insists that Skodinski has animosity against him. Skodinski denied that Ransom's non-selection was caused by his union activity. The evidence does not support a contrary finding. If in fact he holds some enmity toward Ransom it could be for reason other than he was a union steward. Their respective positions may have been the medium for interpersonal conflict and dissolution. Still, Leonard Skodinski did not participate in the interview and ranking of Ransom, who was rated third among the four candidates, and there is no evidence that he influenced the interview panel in its ranking of Ransom.

The Commission believes that appellant has failed to show an abuse of discretion in regard to his non-selection for the subject Laborer-Specialist position. Appellant failed to show any abuse of discretion in the recruitment, interview and selection process. Also, appellant has failed to show that his applicable job skills were superior to the successful candidate's, William Stark.

Finally, appellant's claims of violations of the collective bargaining agreement are not within the Commission's jurisdiction. Accordingly, the Commission can not find for appellant in this matter.

ORDER

Respondent's non-selection of appellant for the subject position is affirmed and this appeal is dismissed.

Dated: _____, 1993 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DRM:dkd

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

Parties:

Daryl J. Ransom
1508 East Kane Place
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