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STATE OF WISCONSIN

PERSONNEL COMMISSION

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KATHLEEN E. LAMBERT,
 Appellant,

v.

Secretary, DEPARTMENT OF
 INDUSTRY, LABOR AND HUMAN
 RELATIONS, and Admini-
 strator, DIVISION OF MERIT
 RECRUITMENT AND SELECTION,
 Respondents.

Case No. 93-0063-PC

* * * * *

DECISION
AND
ORDER

A prehearing conference was held in the above-noted case on June 30, 1993; at which time the parties agreed to attempt to dispose of the case based upon undisputed facts and briefs. A brief was filed on respondents' behalf by Howard Bernstein. Appellant filed her own response brief which was received by the Commission on July 30, 1993.

The issue proposed by respondents and agreed to by appellant is shown below:

Whether respondents violated s 230.16, Stats., when they denied appellant the opportunity to compete in the next step of the selection process for Unemployment Benefit Supervisor 6 (Local Office Manager).

The FINDINGS OF FACT noted below are taken from the briefs submitted by the parties and do not appear to be disputed.

FINDINGS OF FACT

1. On April 12, 1993, respondents published two job announcements in the State Employee Promotional and Transfer Job Opportunities Bulletin for the position of Unemployment Benefit Supervisor 6 (UBS-6), which functions as a local office manager. (Respondents' Exh. 1) One vacancy existed in West Bend and the other in Fond du Lac. According to the bulletin, candidates were required to have knowledges relating to adjudication of unemployment compensation (UC) benefits including (among other things) the Quality

Performance Index (QPI) used by respondent-DILHR to evaluate the quality of decisions issued by its adjudicators. The bulletin invited interested candidates to submit a resume detailing their UC adjudication experience in the prior five years.

2. Appellant was interested in both positions and submitted her resume as required by the bulletin.

3. Appellant received a letter from respondent dated April 27, 1993, which notified her that she was excluded from further consideration because she had not worked as an adjudicator at the objective level in respondent's UC Division and, therefore, did not have the technical knowledge required for the position. (Respondents' Exh. 2)

4. The UC local office manager is expected to be knowledgeable as to the UC laws and rules, and in the QPI. The manager is expected to periodically resolve such issues him/herself; as well as to act as a resource to subordinates, especially in difficult UC case issues. These facts are supported by the "job dimensions" document (Respondents' Exh. 3) used by respondent in conjunction with the position standard for the UBS series.

5. Appellant has been employed in the UC Division for more than 20 years. She currently is employed as a UBS-3, with the working title of Claims Services Supervisor. She lacks the prerequisite knowledge of adjudication, including QPI.

6. Knowledge of UC adjudication, including QPI, is a job-related requirement.

7. Respondents previously did not require adjudication knowledge as a prerequisite for hire to local office manager positions. Two individuals hired under the prior requirements still successfully function as local office managers. Respondent-DILHR experienced problems with one manager hired under the prior requirements due to his lack of adjudication experience. This is one reason why respondents changed to require such knowledge as a prerequisite.

CONCLUSIONS OF LAW

1. This case is properly before the Commission, pursuant to s. 230.44(1)(a), Stats.

2. It is appellant's burden to show by a preponderance of the evidence that respondent's decision was illegal as in violation of §230.16(4) or (5).

3. Appellant failed to sustain her burden of proof.

4. Respondent's decision to deny appellant the opportunity to compete in the next step of the selection process for Unemployment Benefit Supervisor 6 (Local Office Manager) was not illegal.

DISCUSSION

Respondent's authority to set prerequisite job qualifications is governed by sections 230.16(4) and (5), Stats., which provide as follows:

(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 prerequisite of adjudicator/QPI training established for the UBS-6 positions, are the same as minimum requirements established under s 230.16, Stats.

The statutes create the general rule that if all applicants are treated fairly, minimum requirements are not illegal if they are job related and duly communicated to job applicants. Appellant concedes that adjudicator/QPI knowledge is job related. Also, the minimum requirements were duly communicated to her. Furthermore, there is no allegation that the minimum requirements were applied differently for appellant than for other candidates. Therefore, appellant has not shown illegality

Appellant would like respondent to remove adjudicator/QPI knowledge as a job prerequisite and, instead, treat it as a knowledge which could be learned after hire. However, it is generally a management prerogative to decide what amount of specialized on-the-job training will be given to a new

hire; a decision which impacts on the time period and resources needed for the selected candidate to perform at the expected level. Employees and even the Commission might disagree with where management draws the line, but the Commission lacks authority to force management to adopt an alternative standard absent a showing of illegality which does not exist in this case.

Appellant is further frustrated that adjudication/QPI knowledge is a minimum requirement for the UBS-6 position because respondent allegedly has refused her past requests to attend such training. The Commission's decision does not address the question of whether any such training refusal would be considered illegal. There is no statutory basis for an appeal of a denial of training. The only possible way such a denial could be contested before this Commission would be potentially by a noncontractual grievance, which apparently has not been pursued.

Appellant contended that the minimum standards established for the UBS-6 positions she applied for, conflicted with the language contained in the position standard (Respondent's Exh. 3), shown below.

The qualifications required for these classification levels will be determined on a position-by-position basis at the time of recruitment. Such determinations will be made based on an analysis of goals and work activities performed and by an identification of the education, training, work or other life experience which would provide reasonable assurance that the knowledge and skill required upon appointment have been acquired.

Appellant appears to believe the above-noted language requires the hiring authority to set the prerequisite qualifications with regard to the applicant pool and a consideration of whether some candidates could perform successfully without the adjudication/QPI knowledge. She is mistaken. The cited language requires prerequisite qualifications to be set at the time of recruitment and according to the needs for the position, not according to the particular applicant pool recruited for the position.

The final comment in appellant's response brief is shown below:

Subsequent to the pre-hearing conference, I learned that the Dept is attempting to re-write the standards so that a local office manager (LTE) can be hired at a level less than Unemployment Benefits Supervisor 6.

The information recited above is insufficient to change the outcome of her appeal. It appears respondents are writing standards for the needs of a particular position which is consistent with the methods contained in the position standard, as previously discussed.

ORDER

Respondent's action excluding appellant from further consideration is affirmed and appellant's appeal is dismissed.

Dated: August 23, 1993 STATE PERSONNEL COMMISSION

JMR


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, 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.