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 OSCAR D. SHADE,
 Appellant,
 v.
 VERNE KNOLL, Deputy Director,
 State Bureau of Personnel,
 Respondent.
 Case No. 75-11
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OPINION AND ORDER

OFFICIAL

Before: Morgan, Warren, Hessert, Board members.

NATURE OF THE CASE

This is an appeal of an action of the director denying appellant admission to a career executive program selection process pursuant to Sec. 16.05(1)(f), Wis. Stats. The parties by stipulation have submitted this matter on written arguments directed to the following stipulated issue:

"Does the Wisconsin Career Executive Code [sic] prevent appellant as a minority and other minority persons from openly and freely competing for positions listed under the provisions of the Wisconsin Career Executive Program, including the proposed amendments to Pers. Chapter 30, which are to be submitted to the board for final approval (see attached)* and if so, what is the appropriate remedy?"

FINDINGS OF FACT

The respondent announced a selection process for Social Services Administrator 2--Assistant Director, Bureau of Mental Retardation, with applications restricted to:

"Career Executive employes from any department in the state service, and classified employes (except limited term, emergency,

* Subsequently the bureau determined not to submit the proposed amendments.

or provisional) who meet the TRAINING AND EXPERIENCE requirements and who are on the current Career Executive Candidate Register or who are interested in being assessed for placement on the Register prior to certification." Board's Exhibit 5.

This restriction on applicants was based on two provisions of the Wisconsin Administrative Code, Chapter Pers. 30 Career Executive Employment:

"Sec. Pers. 30.03(2) Primary emphasis shall be placed on obtaining career executive candidates from within the classified service.

"Sec. Pers. 30.05(2) After the appointing authority has given first consideration for appointment in accordance with (1) above to available qualified career executive candidates who are current classified employees, and upon request with supporting information supplied by the appointing authority for referral of additional qualified career executive candidates, the director may open the position to persons who are not classified civil service employees. Persons recruited and examined from outside of the classified service shall then be certified to the appointing authority in accordance with the method specified in (1) above, along with the previously certified career executive candidates who are current classified civil service employees."

The appellant's application for this position was not accepted because he was not a classified civil service employe. He was a former incumbent of the position in question and received a more than adequate performance rating prior to his resignation.

CONCLUSIONS OF LAW

There can be no question based on this record that the respondent's decision to prohibit appellant from competing for this position was in accordance with and mandated by the administrative code provisions cited above. With regard to the stipulated issue, the appellant argues that qualified racial minority persons should be allowed to compete for all open positions regardless of whether or not it is determined that there is a sufficient number of qualified persons in the existing work force, since in his opinion there are not enough racial minority persons in the state work force at any level to insure adequate minority interest and competition for jobs.

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Based on the limited scope of the stipulated issue and the lack of specific data on this record we must conclude that there is no basis for a conclusion favorable to the appellant on this record.

We do note that the board has an obligation, independent of its responsibilities under Chapter 227, and Sec. 16.05(1)(f), Wisconsin Statutes, to review contested cases on appeal such as this, to conduct an independent review of the career executive program to determine whether it is successful in maintaining merit principles in the classified civil service, and to issue enforceable orders if it determines that merit principles have been violated. Sec. Pers. 20.13(3), W.A.C. The board currently is involved in a review of the career executive program and copies of this file will be available to the board for whatever informational value it may have.

ORDER

The actions and decisions of the director are sustained and this appeal is dismissed.

Dated: 10-12, 1977. STATE PERSONNEL BOARD


James Morgan, Chairperson