
 JANICE BROM,
 Appellant,
 v.
 SECRETARY, DEPT. OF INDUSTRY, LABOR &
 HUMAN RELATIONS and DEPUTY DIRECTOR,
 STATE BUREAU OF PERSONNEL,
 Respondents.
 Case No. 77-109

OPINION AND ORDER

OFFICIAL

Before: Morgan, Hessert and Warren, Board members.

NATURE OF THE CASE

This appeal concerns the appointment of a person other than the appellant from a certification for a job service assistant 1 vacancy. At the prehearing conference respondent Knoll moved to dismiss the appeal for lack of subject matter jurisdiction on the grounds that since appellant was certified but not selected there is no jurisdiction under s. 16.05(1)(f), Stats., citing Smith v. Lison, No. 76-89 (12/12/76). The appellant moved that the board hear the case as an investigation under s. 16.05(4), Stats. The parties through counsel have filed briefs. The board has reviewed the entire record to date and bases the following findings of fact on uncontested matter in the file.

FINDINGS OF FACT

The appointing authority was provided the first three names from an existing register for job service assistant 1, Black River Falls area: in order, Harvey, Leubke, and Brom. Harvey was unable to meet the necessary typing requirement and was considered not eligible. Leubke decided to withdraw from consideration. The appellant, Brom, met the typing standard and was interested. Additional names were certified as part of a supplemental certifi-

cation: Rank, who may or may not have met the typing standard* and was interested; Elmer, who failed to meet the typing standard; and Wessell, who met the standard, was interested, and was appointed. The order of the names set forth above corresponds to their rank on the register.

The appointing authority's professed rationale for this appointment was the experience of the person appointed. The appointing authority failed to contact the appellant's former employers to verify appellant's job experience, which appellant asserts is more than adequate for the job description of the position filled and at least equal to or greater than that of the person appointed.

CONCLUSIONS OF LAW

Once a certification has been made to an appointing authority, the acts of the appointing authority relative to the appointment may not be attributed to the director on a delegated or agency basis which would support an appeal to this board. See Smith v. Lison, Wis. Pers. Bd. No. 76-89 (12/12/76).

The appellant, however, has asked the board to take jurisdiction over this case as an investigation pursuant to s. 16.05(4), Stats. This board has repeatedly held that it will not exercise its discretionary investigatory powers unless the issues involved raise broad and important policy matters. Smith v. Lison, and cases cited therein.

The appellant argues that the supplemental certification violated the "rule of 3" set forth in s. 16.20(1), Stats., and that the appointment should have been made from among the top three eligibles without regard to withdrawals. The respondent argues that the interpretation and implementation of s. 16.20 involved here was appropriate and we concur. The Wisconsin Administrative Code, rules of the director state bureau of personnel, which have the force and effect of law, provide at § Pers. 12.04(1):

* The parties disagree on this point. It is unnecessary to this decision to make a finding on this question.

"Lacking a complete certification, the appointing authority may request additional names to complete certification. Additional names may be certified and shall be considered in rank order following those originally certified."

The Wisconsin Personnel Manual, published by the bureau of personnel, provides more explicit authority on this point:

"§232.080. A supplemental certification may be made, that is, additional eligibles may be certified, in rank order, provided one or more of the eligibles is not interested in, is not available for, or cannot be located for the present vacancy."

Both of these provisions are consistent with the intent of the "rule of three" certification, which is to provide a certain amount of discretion to the appointing authority. See State ex rel. Buell v. Frear, 146 Wis. 291, 302-303 (1911). That discretion would be defeated if the appointing authority could not request the replacement of certified persons who withdraw from consideration.

The appellant also objects to the appointment itself, arguing that the appointing authority failed to check her references and that her experience was at a comparable or higher level than the person appointed, in addition to which she ranked higher on the certification.

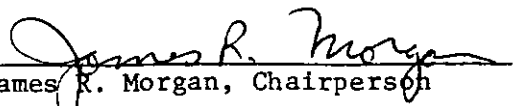
While examinations are required to conform to certain standards and "be of such character as to determine the qualifications, fitness and ability of the persons examined," s. 16.12(4), Stats., as noted above the "rule of three" gives the appointing authority certain discretion in the appointment from among those certified. If the appointing authority were required to demonstrate that he or she appointed the most qualified applicant, the whole rationale for the rule of three would be destroyed.

ORDER

The request for investigation is denied and this appeal is dismissed.

Dated: 11-15, 1977.

STATE PERSONNEL BOARD


James R. Morgan, Chairperson