

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DORIAN RING,

Appellant,

v. ,

Administrator, DIVISION
OF PERSONNEL,

Respondent.

Case No. 79-49-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This case involves the appeal of non-selection for a classified position based on the possibility of bias by three persons who graded the Achievement History Questionnaire (AHQ). All the following issues were noticed for hearing:

1. Were the three raters involved in the process of rating the exam subject to undue bias?
2. Whether or not the procedures used to establish the rating panel were illegal.
3. Were the three raters involved in the rating process of the AHQ exam subjected to undue bias, and/or the appearance of bias?
4. Did the selection process used in selecting the three raters comply with the Wisconsin Personnel Manual/Staffing Policies and Procedures?
5. Did any illegal acts occur in an attempt to secure an impartial review panel for rating the Achievement History Questionnaire for the position of Public Health Educator 1-Information Specialist-Immunization Program?
6. Did "abuse of discretion," occur when attempting to select an impartial review panel for rating the Achievement History Questionnaire for the position of Public Health Educator 1-Information Specialist-Immunization Program?
7. If the selection process used in selecting the three raters did

not comply with the Wisconsin Personnel Manual (WPM)/Staffing, did such noncompliance constitute a violation of s. 230.16 Wis. Stats., or Chapter Pers. 6, W. A. C.?

FINDINGS OF FACT

1. For six months beginning November 23, 1977, Dorian M. Ring was employed as an LTE Public Health Educator 1 in the Immunization Program of the Bureau of Prevention, Division of Health, Department of Health and Social Services (DHSS). For six months thereafter and until April, 1979, when he was replaced by a permanent employe, he was employed as an LTE Project Specialist with the same basic duties.

2. Ring's performance as an LTE was satisfactory: he was good at meeting people and establishing rapport with them; his writing needed improvement.

3. On June 26, 1978, a Job Opportunity Announcement (JOA) was issued for the position of Public Health Educator 1-Information Specialist, Immunization Program. The position description developed by Herb Bostrom, Director of the Immunization Program, had this attached note: 50% of the job duties involved development of informational/motivational materials related to immunization for health care professionals and the general public, 30% of which involved writing and editing.

4. Applicants, including the appellant, were required to complete an Achievement History Questionnaire (AHQ) including four questions developed by Bostrom and Sue Braman, the Division of Health personnel specialist who coordinated the examination for the position. The questions were designed to measure the qualities Bostrom was looking for in the candidates: writing ability, public speaking experience, development of audio-visual materials,

and knowledge of health education. The candidates were directed to be specific and factual in their responses.

5. Three people who knew the requirements of the job were selected to evaluate the AHQ's: John Sikora, Publications Editor, Bureau of Operations and Management in the Division of Health; Michael Pfrang, Public Health Educator 2 in the Bureau of Community Health; and Sherry Kaspar, Division of Health Public Information Officer.

6. In a meeting of the three raters, Braman explained the rating procedures and provided them with benchmark responses to the four questions (Respondent's Exh. 5) and written instructions regarding the application of the benchmarks. Bostrom explained what the benchmarks meant and what he was looking for in the position. The AHQ's were identified only by Social Security numbers; the raters were told if they recognized a candidate by the responses, they should go ahead and rate the AHQ as long as they felt they could be objective. Each rater evaluated the AHQ's independently following the meeting.

7. Ring's answers to questions 1 and 2 on the AHQ, if at all specific, would clearly identify him to any rater who had contact with him during his employment by DHSS as an LTE.

8. All three raters knew Ring and recognized his AHQ; two recognized other candidates. None believed their recognition of candidates' identity interfered with their ability to evaluate the AHQ's objectively.

9. Chapter PERS. 6.09(1) Wisconsin Administrative Code (WAC), which was in effect at the time this appeal was filed, provides:

"PERS 6.09 Anonymity of examinees and security for written examinations. (1) The director shall use appropriate means to insure that the identity of the examinees in no way influences their score in a written examination."

10. Section 230.16, Stats. provides in part:

"(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 standard may be at or above the passing point set by the administrator for any portion of the examination. The administrator shall utilize appropriate scientific techniques and procedures in administering the selection process, in rating the results of examinations and in determining the relative ratings of the competitors."

11. The 1977 Chapter 220, Wisconsin Personnel Manual, Staffing, recommends that in the administering and scoring of an unassembled examination, such as an AHQ, agencies should "Use raters who are unacquainted with the individual competitors whenever possible - to minimize bias or the appearance of bias. This generally precludes use of any who have been in a supervisor/subordinate relationship, relatives, friends, etc." (#6, p. 32, Commn. Exh. 3).

12. None of the raters were in a supervisor/subordinate relationship with the candidates, relatives, or close friends, or had any other stake in the selection.

13. Following the completion of the rating of the AHQ's the Department of Employment Relations did a rater reliability correlation, which was

0.7798, an acceptable correlation.

14. Ring did not know who had rated the AHQ's until after the rating had been completed but before he received his grade (85.4) and rank (eighth, without veterans' points.) In the interim he questioned Bostrom and a DHSS personnel specialist about the selection of the raters and the exam procedure. He filed a timely appeal with the Commission on February 16, 1979.

15. The raters were selected and functioned in accordance with the procedures set forth in the Wisconsin Personnel Manual-Staffing and with the relevant provisions of statutes and WAC.

16. The three raters involved in the rating process were not subject to bias and/or the appearance of bias.

CONCLUSIONS OF LAW

1. The Personnel Commission has jurisdiction over this appeal pursuant to sections 230.44(1)(a) and (b).

2. The burden of proof is on the appellant to establish by the greater weight of credible evidence that the examination procedures followed were illegal or an abuse of discretion.

3. The appellant has failed to sustain his burden.

4. Respondent's actions in the conduct of the examination were not illegal or an abuse of discretion.

OPINION

Inability of the parties to agree on a statement of issue(s) prior to the scheduled hearing date resulted in the noticing of the seven issues set forth on the first page of this decision. The hearing examiner has

consolidated them into the single issue of whether or not respondent's actions in the conduct of the examination were illegal or an abuse of discretion; all other questions raised are subsumed in this issue. Each of the sub-issues will be addressed in the opinion.

The hearing examiner held in abeyance a ruling on the testimony of Audrey Koehn. This testimony is irrelevant and was not considered in the Commission's decision.

Sections 230.16(4) and (5) Stats., set forth the relevant statutory requirements for testing procedures and rating to be followed in the implementation of Wisconsin's civil service law. The issue of validation was not raised in this case, nor does the Commission find that these sections were violated. All applicants were treated equally; their AHQ's were rated against benchmarks in accordance with procedures in effect at the time, pursuant to Chapter 220, WPM-Staffing, pp. 26-28 (Commission's Exh. 3). The three raters knew the requirements of the position to be filled, understood the evaluation process and followed the suggested procedure. (Ibid, pp. 29-31). Blind scoring procedures were used; each competitor's AHQ was identified by the social security number, with identifier information removed prior to its being made available to the raters.

Appellant contends that failure to follow constraint #6, p. 32 of the WPM-Staffing in selecting raters who were acquainted with some competitors was also a violation of PERS 6.09(1) WAC regarding preservation of the anonymity of the examinee. Although each rater recognized the AHQ of the appellant and those of several other candidates as well, each was able

to evaluate the responses objectively, based on the application of the benchmarks provided. Their relationship with the appellant was not such that it would be likely to impact on their objectivity.

Appellant raised the further question as to whether the selection of the three raters constituted an abuse of discretion. There is no exact measure of what constitutes abuse of discretion. It is more than the substitution of the judgment of one tribunal for that of another and is governed by the situation and circumstances affecting each individual case. (NLRB v. Guernsey-Muskingum Electric Co-op, 285 F 2d 8 CA6, Dec. 13, 1960). See also Abuse of Discretion, 2 Am. Jur. 2d, ss. 651-653, pp. 507-514.

In the instant case, the raters were selected for conformance with the guidelines of the Staffing Manual. There is no assurance, and appellant offered no evidence, that raters could have been obtained who knew none of the candidates and who at the same time understood the requirements of the position, as recommended by the WPM (pp.29-31). Furthermore, the raters were from three different operations in the Division of Health, none from the Bureau of Prevention in which the appellant worked as an LTE. None had ever been in the relationship of supervisor or subordinate nor were they relatives or close friends of any of the candidates. The most that can be said is that two raters had a friendly but casual working relationship with the appellant, and the third was an acquaintance. No evidence was adduced at the hearing that the appellant was disadvantaged by the fact that the raters knew him. The rater who had the least contact

with the appellant (Pfrang) testified that there was a slight possible advantage to an incumbent. There was no evidence of closer ties between the raters and the other candidates. Under all the circumstances the Commission cannot conclude that the procedures used to establish the rating panel constituted an abuse of discretion.

The Commission also concludes that the raters were not subject to undue bias or the appearance of bias. Although recognition of some of the candidates may have added another dimension to their objective application of the benchmarks to the written answers, all three raters testified that nevertheless they were able to evaluate the AHQ's objectively and had no difficulty doing so. As to the appearance of bias, the Commission does not find that the facts of this case present the situation referred to in constraint #6 of the WPM, (see findings 11 and 12). The respondents followed appropriate procedures to minimize the appearance of bias, and the situation which occurred would have been almost impossible to avoid.

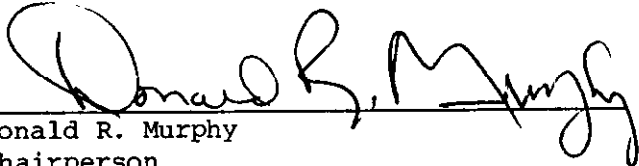
Ring v. DP
79-49-PC
Page Nine

ORDER

IT IS HEREBY ORDERED that the action of the respondents is affirmed
and this appeal is dismissed.

Dated: Nov. 19, 1981.

STATE PERSONNEL COMMISSION



Donald R. Murphy
Chairperson

CMH:jmg

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