

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

GEORGE ZANCK & PETER SCHULER, \*

Appellants, \*

v. \*

Secretary, DEPARTMENT OF \*

HEALTH AND SOCIAL SERVICES, \*

and Administrator, DIVISION \*

PERSONNEL, \*

Respondents. \*

Case Nos. 80-380-PC & \*

81-12-PC \*

\* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

These are consolidated appeals pursuant to Section 230.44(1)(b), Wisconsin Statutes, of an examination.

FINDINGS OF FACT

1. These appeals concern an examination for the position of Human Services Administrator 3-Director, Bureau of Juvenile Services, in the classified civil service.
2. The examination was delegated pursuant to Section 230.05(2)(a), Wisconsin Statutes, by the administrator to the appointing authority, the Department of Health and Social Services (DHSS).
3. The examination format was oral board, held December 9-11, 1980.
4. Both appellants applied for examination, and DHSS sent them certain written instructions, along with other examinees, on or about November 25, 1980 (Appellants' Exhibits 1 & 2). Copies are attached hereto.
5. Upon arriving at the exam center on December 9th, the appellants were informed by an agent of the respondent that there would be delays because the examinations were taking longer than planned.

6. After arriving at the exam center on December 9th, 1980, the appellants were given a copy of Appellants' Exhibit 3, a copy of which is attached hereto.

7. They were also given copies of five questions to study before entering the exam room.

8. Upon entering the exam room, each appellant was read instructions by an oral board panel member. These instructions (see Appellants' Exhibit 4) included in part the following:

"In order to help the board arrive at an accurate evaluation, it is necessary for us to follow the complete procedure that Wisconsin has developed for this purpose. Therefore, we will be using an interview guide to make sure that we get the information we need and do not do less for you than we would for the other candidates. Every applicant will be asked the same questions . . . On your part, please try to respond fully to each question. You (and the other applicants) will each have a total of 20 minutes to respond to our questions."

9. During the course of the appellants' exams, one of the oral board members regularly was smiling and nodding, which conveyed the impression that she was reacting positively to their answers.

10. The oral board did not tell the appellants when to end an answer, or when to move on to the next question. The next question was read when each appellant finished answering the preceding question.

11. Neither appellant was given a warning that there were only five minutes left in the exam, although a panel member gave such a warning to the other applicants.

12. Mr. Zanck had finished three questions when the exam ended. Mr. Schuler had finished four questions. Both appellants, as well as all the other examinees, were scored on the basis of five questions.

13. There were two proctors who handled exam timing at different times in the course of the examination.

One proctor cut off examinees at the end of the 20 minutes. The other proctor allowed up to one or two minutes thereafter to some examinees to permit them to finish thoughts.

14. Mr. Zanck complained to the personnel specialist in charge of the exam on December 10th that he felt that the exam instructions were unclear as to the necessity of answering all five questions within the 20 minutes and as to the necessity of the examinee to time his or her answers so as to complete the examination within the allotted 20 minutes.

15. At least partially as a result of this complaint, and for the purpose of clarifying the instructions, the personnel specialist issued an additional instruction, Appellants' Exhibit 5, a copy of which is attached hereto and incorporated by reference as if fully set forth.

16. Following the examination, both appellant's received passing scores and were placed on the register, but not certified.

17. The person who eventually was appointed to the position was examined on the first day, December 9th, the same day as the appellants.

18. The mean score of those who took the exam on the first and second day was 83.52. The mean score of those who took the exam on the third day was 84.94.

19. The standard deviation, which is the measure of dispersion or variability around the mean, was 19.26 for the first day and second day, and was 21.66 for the third day.

20. The differences of the mean scores for the two groups, that is between the first and second days and the third day, were not statistically significant and could be attributable to random deviation.

21. Of 34 persons examined on the first and second days, five scored in the top ten, while of 17 examined on the third day, five also scored in the top ten.

22. From a statistical standpoint, the foregoing results can be attributed to random factors.

23. James Baugh, one of the members of the exam panel, was, at the time of the exam, Executive Director of the Wisconsin Council on Criminal Justice (WCCJ), and was the supervisor of one of the examinees, and the supervisor, once removed, of one of the other examinees.

24. Mr. Baugh felt that he could be objective in his evaluation of these examinees, and the decision was reached not to disqualify him from their evaluation.

25. Mr. Baugh's ratings of these examinees did not vary in any statistically significant manner from those of other members of the panel.

26. The Division of Personnel Staffing Manual, Appellants' Exhibits 6 and 10, states in part as follows:

"If a board member has some prior knowledge about an applicant, ideally the board member should withdraw. However, this may be tempered somewhat by other factors such as the nature of the relationship, whether or not the board member feels that s/he can be objective or whether applicant might feel there was bias. Jointly decide whether the board member must withdraw. p. 44

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d. Carefully consider the likelihood that a proposed board member for any reason would find it hard to exercise objective judgment during the oral or whose service on the board would be apt to generate complaints from applicants concerning the equity of the examination. Examples of those who may, depending on the circumstances, find it impossible or difficult to be objective are:

\* \* \*

d-4. Individuals known to have had an association with any of the candidates (this eliminates anyone listed on a candidate's application as a supervisor or reference)." p.35

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to Section 230.44(1)(b), Wisconsin Statutes.
2. The appellants have the burden of proof.
3. The appellants have, in part, satisfied that burden of proof and have established that certain examination procedures denied them fair and proper employment consideration, as set forth in Subchapter II, Chapter 230, Wisconsin Statutes, and Ch. PERS., WAC, and were illegal specifically with respect to Section 230.16(5), Wisconsin Statutes; namely the failure to time all examinations the same, the failure to provide 5 minute warnings to all candidates, and the provision of non-verbal feedback by one of the examiners.
4. The appellants have, in part, failed to satisfy their burden of proof and have failed to establish that the remainder of the examination procedures, specifically including the instructions and the participation by Mr. Baugh as an examiner, denied them fair and proper employment consideration, as set forth in Subchapter II of Chapter 230, Wisconsin Statutes, and Ch. PERS., WAC, and were illegal.
5. There not having been any showing of obstruction or falsification pursuant to Section 230.43(1), Wisconsin Statutes, the removal of the incumbent is not an appropriate remedy.

OPINION

In this case, the appellants challenge not the adequacy of the exam content, but the adequacy of the procedures used in administering the exam.

Section 230.16(5), Wisconsin Statutes, provides in part as follows:

"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." (emphasis supplied)

One key element in the proper administration of an examination is standardization. This was discussed in excerpts from Nature and Use of Psychological Tests, submitted by the appellants as Appellants' Exhibits 8 & 9:

"A test is systematic in three areas: its content, procedures for administration, and scoring. Not only is the item content systematically chosen from the domain to be measured, but also the same items or tasks are administered to all persons taking the test. The administration procedure is standardized in that specific instructions are developed with respect to what directions will be given the person taking the test, how answers are to be recorded, time limits, and other relevant procedural matters.

\* \* \*

. . . Standardization implies uniformity of procedure in administering and scoring the test. If the scores obtained by different individuals are to be compared, testing conditions must obviously be the same for all. Such a requirement is only a special application of the need for controlled conditions in all scientific observations. In a test situation, the single independent variable is usually the individual being tested. . . . Such standardization extends to the exact materials employed, time limits, oral instructions to subjects, preliminary demonstrations, ways of handling queries from subjects, and every other detail of the testing situation. . ."

The respondents' "ORAL EXAMINATIONS IN WISCONSIN STATE SERVICE - INFORMATION FOR CANDIDATES", Appellants' Exhibit 2, also emphasizes the need for standardization:

"The requirement of objectivity . . . is accomplished in two ways:

- 1) Standardization of administration - which requires that the oral exam be administered in an equivalent fashion for all candidates.

The board members have been asked to follow a consistent and highly standardized plan for questioning from one candidate to the next. . . the board members will not be providing you with any indication as to the adequacy (inadequacy) or goodness (badness) of your answers."

The issues for hearing were as follows:

"Whether the examination procedures relative to (appellants') examination denied them fair and proper employment consideration, as set forth in the civil service code, Subchapter II of Chapter 230, Wisconsin Statutes, and the personnel rules (PERS.), Wisconsin Administrative Code." Conference report, dated March 4, 1981, Commission's Exhibit 4.

"(Whether) the examination procedures relative to (appellants') examinations were illegal and/or an abuse of discretion in relation to the examination procedures utilized with some of the other examinees." Conference Report, dated March 17, 1981, Commission's Exhibit 5.

The appellants' main contention is that the instructions they received were misleading as to the way the exam would be conducted, that they were not adequately informed that they would be scored on all five questions and therefore should have answered all of them within the allotted 20 minutes, and that the examinees on the third day were unfairly guided by the additional instructions (Appellants' Exhibit 5) that they received.

The appellants argue that, on its face, the language of the initial instructions was misleading. In the opinion of the Commission, these instructions were not misleading. The written instructions, Appellants' Exhibit 2, which appellants received in advance of the examination, state in part:

"When you arrive at the prescribed examination place, you will be given a few minutes immediately prior to the examination to review the job areas the board members will be covering in their evaluations and a list of questions to be used in each area. All candidates will be asked the same questions in the same sequence."

The oral instructions, Appellants' Exhibit 4, read at the beginning of the exam, included the following:

"You (and the other applicants) will each have a total of 20 minutes to respond to our questions."

These instructions reasonably clearly inform the recipient that the exam will consist of the questions distributed before the exam and that the examinee will have 20 minutes in which to answer these questions.

The additional instructions given the examinees on the third day differ in content only slightly. In addition to being told verbally that "You . . . will each have a total of 20 minutes to respond to our questions," (emphasis supplied), the additional instructions stated that, "You will be given a total of 20 minutes to answer the questions," (emphasis supplied), and that "You will not be permitted to continue an answer after 20 minutes have elapsed." The difference in the underscored language is not that significant. Since it was an oral exam, and the panel was asking the questions, the use of the word "our" is appropriate, but to suggest, as the appellants do, that this implies that the oral board would be in control of the exam in the sense that it would ask the next question when it decided it was appropriate (as opposed to when the examinee finished the preceding question), is reading too much into what is a subtle distinction at best.

Furthermore, the statistics adduced at the hearing do not support the theory that the examinees on the third day were aided by the additional instructions. The appellants' contentions on this point were outweighed by the testimony of Mr. Milanowski, whose statistical background added weight to his opinion.



The Commission does not agree with the appellants that the participation of Mr. Baugh was improper. While it was a marginal situation, as the staffing manual points out, the fact of the prior knowledge of the examinee to the examiner may be tempered by other factors. Finding an appropriate oral board for a three day examination is not an easy job, as testified to by Mr. Milanowski. There was no indication of a statistical bias on the part of Mr. Baugh.

With respect to the other aspects of the examination, the Commission is of the opinion that the inconsistency of exam timing was improper. With a 20 minute examination, some of which is consumed by instructions and stating the questions, the allowance of an extra one to two minutes to some candidates to finish, and not to others, cannot be dismissed as insignificant. This constituted significantly unequal testing conditions. The same comment can be made about the provision of a warning of five minutes remaining to some, but not all, candidates.

The non-verbal feedback that one of the panel provided also was improper, and a significant deviation from a standardized exam format.

With respect to a remedy, pursuant to Section 230.44(4)(d), Wisconsin Statutes, the Commission can only remove an incumbent if "there is a showing of obstruction or falsification as enumerated in Section 230.43(1)."

Section 230.43(1), Wisconsin Statutes, defines certain misdemeanors which are punishable by fine or imprisonment or both. This section provides in part:

"(a) Any person who wilfully . . . defeats, deceives, or obstructs any person in respect to the rights of examination or registration under this subchapter or any rules prescribed thereto, or

(b) Who wilfully, or corruptly, falsely marks, grades, estimates, or reports upon the examination or proper standing of any person examined, registered or certified, pursuant to this subchapter, or aids in so doing, or

(c) Who wilfully or corruptly makes any false representations concerning the same, or concerning the person examined, or

(d) Who wilfully or corruptly furnishes any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any persons so examined . . . shall be guilty of a misdemeanor."

On this record there has been no showing of any wilful defeating, deceiving, or obstructing with respect to rights of examination or registration, or any wilfull or corrupt furnishing of special or secret information for the purpose of improving or injuring the prospects or chances of anyone, nor any other showing of "obstruction or falsification."

Therefore, the removal of the incumbent is not an available remedy. Upon remand of this matter to the respondents, they will be required to cease and desist in the future from examining appellants in the manner found to have been improper.

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ORDER

The actions of the respondents are affirmed in part and rejected in part and this matter is remanded for action in accordance with this decision.

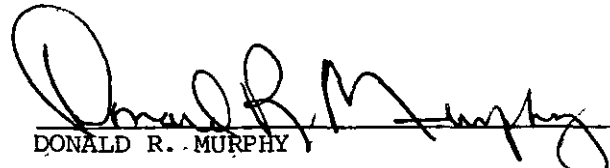
Dated: Dec. 3, 1981

STATE PERSONNEL COMMISSION

AJT:nwb

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