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ROBERT SKEWAY,
 Appellant,

v.

Superintendent, DEPARTMENT OF
 PUBLIC INSTRUCTION,
 Respondent.

Case No. 80-83-PC

* * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal of respondent's decision to deny reclassification of appellant's position. A hearing on the merits was conducted by a hearing examiner appointed by the Commission.

FINDINGS OF FACT

1. Appellant Robert Skeway has been at all times relevant to this appeal an employe in the classified civil service, in the State Department of Public Instruction, in a position with the classification of Education Consultant 1.

2. Pursuant to a Stipulation Limiting Issues for Hearing, entered into by the parties prior to the hearing conducted by the examiner appointed by the Personnel Commission, the parties stipulated to certain facts which are hereby found by the Commission and incorporated into this decision as follows:

1. The class specifications for Education Consultant 1 and Education Consultant 2 are entered into the record as Exhibits A and B, respectively. There is no dispute as to the propriety of the class specifications in form, substance or otherwise.
2. Progression from the Education Consultant 1 level to the 2 level occurs only upon the approval of a written application therefore by the Peer Review Panel (also known as the Committee Review Team and the Education Consultant Reclassification Review Panel) in accordance with the criteria, policies

and procedures established by DPI Policy and Procedure Bulletin No. 53.76, hereby entered into the record as Exhibit C. There is no dispute as to the propriety of said criteria, policies and procedures in form, substance or otherwise.

3. Appellant submitted a timely written application for reclassification to Education Consultant 2. Appellant's application is entered into the record as Exhibit D.
4. Appellant's written application was reviewed by the Peer Review Panel composed of Dr. John Bell, Dr. Sue Ann Bates, and Dr. James Stoltenberg. In passing upon Appellant's written application, the Peer Review Panel proceeded in accordance with the requirements of Policy and Procedure Bulletin No. 53.76 (Exhibit C) and did not resort to the use of information extrinsic to the individual written application under review in reaching its determination as to whether or not the candidate met the criteria specified in said bulletin. There is no dispute as to the propriety of the Peer Review Panel's composition, methodology or the procedures it utilized in passing upon Appellant's written application, either in form, substance or otherwise.
5. The Peer Review Panel determined that Appellant's written application did not document and demonstrate that Appellant had satisfied all the substantive criteria specified in Bulletin No. 53.76 (Exhibit C). In reaching its determination, the Peer Review Panel employed an Education Consultant Reclassification Worksheet, hereby entered into the record as Exhibit E, which worksheet contains a verbatim statement of the substantive criteria for reclassification as specified in said Bulletin. On the basis of the Peer Review Panel's determination, Respondent denied Appellant's application for reclassification.
6. Appellant filed a timely written appeal of Respondent's denial of his application for reclassification with the Personnel Commission. Respondent acknowledges the Commission's subject matter jurisdiction over this appeal. Appellant's appeal is entered into the record as Exhibit F.
7. Respondent concedes that Appellant's written application for reclassification (Exhibit D) documents and demonstrates his satisfaction of at least the minimum criteria specified by Policy and Procedure Bulletin No. 53.76, Parts I. 3.A, B(1), B(2), and B(3) as set forth in Exhibits C and E.

WHEREFORE IT IS STIPULATED AND AGREED by and between the parties that the sole and dispositive issue for determination in this case is whether or not the Peer Review Panel and Respondent, acting in accordance with the policies, methods and procedures set forth above, erred in determining that Appellant's written application for reclassification failed to document and demonstrate satisfaction of the substantive criteria specified by Policy and Procedure Bulletin No. 53.76 at Part I.3.C. as set forth in Exhibits C and E.

3. The Peer Review Panel consisted of John Charles Bell, Sue Ann Bates and James C. Stoltenberg.

4. The disputed issue in this appeal is whether appellant demonstrated fulfillment of substantive criteria I.3.C. of the Policy and Procedure Bulletin (Exhibit C), which requires that an applicant for reclassification show:

c. Professional training consistent with the educational growth and development needed to function effectively in his/her field of specialization.
Areas of consideration:

- (1) Continuing relevant, formal, professional education experiences after employment.
- (2) Other pertinent educational experience. Examples:
 - participation in professional conferences, seminars, workshops, and other educational activities;
 - significant individual study or personal development;
 - other types of study or research which contribute to knowledge and ability to perform in the specialty area;
 - responsibility for an educational research project(s) which has been favorably recognized by appropriate professionals.

5. Mr. Bell examined appellant's application materials and determined that appellant did not meet criteria in section I.3.(1) because certain activities which would have met the requirements were listed in the application as fulfilling criteria in Sec. I.3.C.(2). The

criteria necessary to meet I.3.C.(1) requirements were nevertheless listed somewhere in the application form, according to Mr. Bell.

6. Ms. Bates examined appellant's submission and determined that he did not meet the requirements of I.3.C. because there was no documentation of the university level seminars taken for graded credits which would have satisfied I.3.C.(1). Educational conferences at which appellant may have taught materials would not satisfy I.3.C.(1) requirements although they may satisfy I.3.C.(2) requirements. Ms. Bates looked at the entire application and found nothing which she felt fulfilled I.3.C.(1), although she stated that one course would have met I.3.C(1) requirements.

7. Ms. Bates determined that, while some of the conferences and workshops attended by appellant would meet I.3.C(2) requirements, the full I.3.C.(2) requirements had not been met since the nature and level of appellant's participation in certain workshops was not clearly documented.

8. Mr. Stoltenberg reviewed the entire application and found insufficient support for appellant having met I.3.C.(1) criteria. Mr. Stoltenberg defined acceptable I.3.C.(1) activities as including both taking and teaching university-level courses, whether at university or at certain non-university institutes or seminars.

9. The members of the Peer Review Panel differed among themselves as to how the criteria of I.3.C.(1) and (2) could be met and each gave a different reason in his or her testimony as to why appellant failed to meet the criteria.

10. Appellant presented formal educational programs at several national professional conferences and participated in designing workshops at UW-Extension campuses statewide. (Exhibit D, Section B.2).

11. The presentations prepared and given by appellant meet the I.3.C.(1) criteria described by Mr. Stoltenberg and Mr. Bell. Ms. Bates was the only panel member who determined that appellant did not meet I.3.C.(2) criteria.

12. The application materials of other successful 1979 candidates for reclassification from Educational Consultant 1 to Educational Consultant 2 are no more or less clear and easy to understand with respect to activities in fulfillment of I.3.C.(1) and (2) than is appellant's application.

13. Applicants whose formal educational development consisted of attendance at non-university seminars were reclassified. (Ex. 2,6, 7). The content and nature of course work than did appellant, were reclassified, (ex. 1,6, 7).

14. Applicants who submitted no more detail explanation of the content and nature of their course work than did appellant were reclassified. (ex. 1,6,7).

15. Applicants who were reclassified to Education Consultant 2 presented evidence of fulfillment of I.3.C.(2) criteria which were not materially different from the evidence submitted by appellant.

16. The testimony of Peer Review Panel members, taken together with the reclassification applications of other Educational Consultants 1 leads to the conclusion that appellant met the minimum criteria under I.3.C.(1) and (2) for reclassification to Educational Consultant 2.

CONCLUSIONS OF LAW

1. The appeal is properly before the Commission pursuant to §230.44 and §230.45, Wis. Stats.
2. The burden of proof is on appellant to show by a preponderance of credible evidence that the decision to deny his request for reclassification was correct.
3. Appellant has met his burden of proof.
4. The decision of the respondent in denying appellant's request for reclassification was incorrect.
5. Appellant is properly classified Education Consultant 2.

OPINION

The respondent has created a specialized process of review and analysis of applications for reclassification of Education Consultant positions. The Commission in this appeal can only determine whether the necessary criteria were fulfilled by appellant, not whether the criteria used are the most appropriate ones for determining reclassification.

The Peer Review Panel analysis of Mr. Skeway's application shows that each member of the Panel had a different perspective on what was necessary to fulfill the criteria in sec. I.3.C. The reclassification applications of other Education Consultants show that there is great variety among applicants with respect to the form their applications take and the clarity with which they describe their activities. The Panel felt that Mr. Skeway's application materials were not sufficiently detailed to show fulfillment of I.3.C. criteria. The Commission finds, however, that the Panel was too narrow in its interpretation,

especially in comparison with the applications of the successful candidates.

ORDER

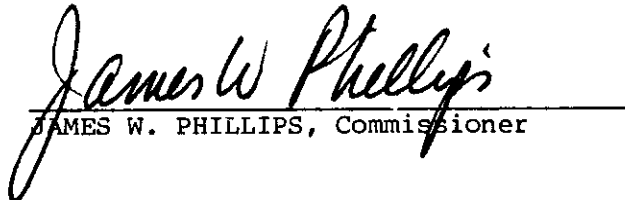
The decision of the respondent to deny reclassification of appellant's position is reversed and remanded for action in accordance with this Decision and Order.

Dated: Feb 9, 1982 STATE PERSONNEL COMMISSION

AR:jf


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

Parties

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