



3. The leadworker for the Mitchell Hall copy center is Jerry Gozdowiak. However, the first line supervisor for the complainant, as well as for Mr. Gozdowiak, was Gabriel Chido. Mr. Chido is the Assistant Manager of Printing Services in charge of production at both the Mitchell Hall facility and the larger printing facility at Kennilworth. Mr. Chido's supervisor is Mr. Robert Poppert, Manager of Printing Services.

4. The Mitchell Hall copy center contains three different types of offset presses: an Addressograph-Multigraph 4875, an Addressograph-Multigraph 2850N and an AB Dick 369T. The Kennilworth facility has a variety of other presses including an AB Dick 360.

5. In December, 1980, the respondent placed an advertisement in the Milwaukee Journal and made an announcement in the Current Opportunities Bulletin (COB) to fill the permanent OPO-2 position. The newspaper advertisement read:

OFFSET PRESS  
OPERATOR

Operate AM 4875, AM 2850N, AB Dick 382, AB Dick 369T and AB Dick 360 presses for the Printing Services unit of the University of Wisconsin-Milwaukee. Start at \$13,210, , increase to \$13,607 after six months. Qualified applicants should call Mr. Gabe Chido at 963-4055 for more information and a State of Wisconsin application form.

Completed applications should be sent to Ms. Joan Williams, Dept. of Personnel and Human Resources, UW-Milwaukee, P. O. Box 413, Milwaukee, 53201, no later than December 22, 1980.

UWM IS AN EQUAL OPPORTUNITY  
EMPLOYER

6. In response to the advertisement and/or COB notice, the complainant completed an application. Each applicant was subsequently directed to fill out an Achievement History Questionnaire (AHQ) which was then graded. The top five applicants were ranked in the following order:

1. Warren A. Albertson (white/male)
2. Sally Ganger Jensen (white/female)
3. Joseph Delfar, Jr.
4. Moses W. McCrae (black/male)
5. Scott S. Nissen-Arends (white/male)

7. Based upon the AHQ results, the top applicants who were still interested in the position were interviewed and were given a performance test. The performance test was designed to assess an applicant's ability to operate a specific offset press. The respondent chose to utilize a performance test because of prior instances in which applicants had scored well on the AHQ but, once hired, were found to be unfamiliar with actual operation of the presses.

8. The performance test was given to three applicants: the complainant, Ms. Albertson and Ms. Jensen. Before the test was held, the respondent checked the applicants' AHQ's to determine which type of press would be appropriate for running the test. The respondent chose to run the test on an AB Dick 360 because each applicant had indicated that they were familiar with that press. The performance test was given on or about June 2, 1981, and was scheduled for a different time for each applicant so that the applicants could be tested on the same press. The performance test results, in decreasing order of expertise shown with the AB Dick 360, were as follows: 1) Mr. Albertson; 2) Ms. Jensen; 3) complainant.

9. Respondent subsequently offered the OPO-2 position to Mr. Albertson who declined to accept it because he was unwilling to move from Madison to Milwaukee.

10. The position was then offered to Ms. Jensen who accepted the offer.

11. On August 2, 1981, the respondent advertised for a short-term employment opportunity in the Printing Services unit. The position was expected to last for only two weeks and it was never filled.

12. During at least the first few months of his employment at Mitchell Hall, the complainant's work was considered by Mr Chido to be unsatisfactory. The complainant was moved from one type of press to another and several customer complaints were received about his work. During both January and May of 1981, Mr. Poppert and Mr. Richard Wueste, Associate Director of the Department of Purchasing and General Services at UW-M, discussed whether or not to continue complainant's limited term employment in light of complainant's performance problems. In both instances, Mr. Poppert and Mr. Wueste decided not to terminate complainant's employment, in the expectation that they would soon be able to fill the permanent OPO-2 position.

13. While an LTE, complainant's term was extended twice and his status was changed from a short-term LTE to a provisional LTE (§230.26(2), Wis. Stats.) so that he could be employed beyond the 1043 hours maximum set by §Pers. 10.01(2), Wis. Adm. Code. The extensions and change in status were effectuated because of a hiring freeze which was in effect during much of the first half of 1981. If the respondent had terminated the complainant from his LTE position, respondent would have been unable to hire anyone to fill the OPO-2 position on either a temporary or a permanent basis until the hiring freeze was lifted.

14. Complainant's employment as an LTE with the respondent ceased on August 14, 1981.

15. The respondent's decision to offer the OPO-2 position to applicants other than the complainant was based on respondent's assessment of the relative qualifications and abilities of the applicants and not due to reasons of race and/or sex.

#### CONCLUSIONS OF LAW

1. The Commission has authority to hear this appeal pursuant to §230.45(1)(b), Wis. Stats.

2. The burden of persuasion is on the complainant to show the existence of probable cause, as probable cause is defined in §PC 4.03(2), Wis. Adm. Code.

3. The complainant has failed to carry his burden of persuasion.

4. There is no probable cause to believe that complainant was discriminated against on the basis of race or sex with respect to the filling of the permanent OPO-2 position.

#### OPINION

In an appeal from an initial determination of no probable cause, the sole decision to be made by the Commission is whether, pursuant to §PC 4.03(2) Wis. Adm. Code:

...there is reasonable ground for belief supported by facts or circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been or is being committed.

The evidence presented in this matter shows that the complainant, a black male, was not hired for the permanent position of OPO-2 in respondent's printing shop. The person ultimately hired was a white female. Complainant argues that he was discriminated against on the basis of race and/or sex in violation of Subch. II, Ch. 111, Wis. Stats. The evidence shows that the decision to hire Ms. Jensen rather than the

complainant was based on a reasonable analysis of the relative qualifications of the two applicants.

The application procedure consisted of three steps, although the primary emphasis at the hearing was placed on the performance test.

The first step of the examination was the Achievement History Questionnaire. Complainant made no allegations that the AHQ results mirrored a discriminatory bias among the graders. The results placed the complainant as number four among eight applicants.

The next step, the oral interview, was apparently conducted to verify the statements made in the AHQ and to note any additional information that might cause an applicant to move up or down from the AHQ rankings.

The final step of the selection procedure was the performance test. Three applicants took the test which was developed by Mr. Poppert and Mr. Chido, reviewed by a representative of UW-M and approved for use. The test consisted of having each applicant explain the offset printing process, identify the parts of a press and run some copies. The test was conducted on an AB Dick 360 offset press. The 360 was one of the various types of presses used by UW-M Printing Services and, based upon the information found within the AHQ's or initial applications, each of the final three applicants were familiar with its operation. The complainant argued that the test should have been performed on another type of press, i.e., either the 2850 N or the 4875. However, testimony indicated that the other final applicants were not familiar with these presses. If either of these presses had been used as the basis for the performance test, the results would not have accurately reflected the relative abilities for producing quality offset printing.

The complainant testified that sometime prior to the performance test, he had told Mr. Chido that he had not used an AB Dick 360 for a period of one year. Although it would have been preferable if each of the final three applicants had identical familiarity with the 360 press, it was the one press with which each of the three had experience. In the absence of any evidence that there was a preferable alternative, the respondent's decision to hold the performance exam on the AB Dick 360 cannot be faulted.

The complainant also raised the argument that the newspaper advertisement for the OPO-2 position failed to even mention the AB Dick 360 press as being a press that the successful applicant would have to run. Although no copy of the advertisement itself was placed into the record, the respondent did submit the purchase order for the advertisement. The handwritten ad copy attached to the purchase order is the best available evidence of the contents of the advertisement and it shows that the AB Dick 360 press was specifically noted.

The final three applicants, Mr. Albertson, Ms. Jensen and the complainant, were tested at different times on or about June 1, 1981, using the same AB Dick 360 press. The tests were conducted by Mr. Poppert, Mr. Chido and Mr. Larry Neimer, leadworker at the Kennilworth facility. The written comments of each of the three reviewers show that the complainant's performance was at a significantly lower level than the other two applicants in terms of time spent, quality of the copies produced, amount of waste, understanding of the process and handling of the press.

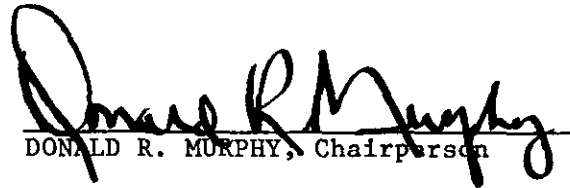
The Commission concludes that the facts noted above do not meet the definition of probable cause as set out in PC 4.03(2), Wis. Adm. Code. The techniques used by the respondent in selecting an individual to fill the

vacant OPO-2 position were reasonable. The reason that the complainant was not selected was based on principles of experience and performance rather than due to discrimination.


ORDER

The complaint is dismissed.

Dated: February 7, 1983 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

KMS:jmf

  
LAURIE R. McCALLUM, Commissioner

Parties

Mr. Moses McCrae  
1425 Hanover Street  
Petersburg, VA 23803

Frank Horton, Chancellor  
UW-Milwaukee  
P. O. Box 413  
Milwaukee, WI 53201