

2. In October, 1981, respondent advertised a promotional examination for a vacant Property Assessment Supervisor 4 position in its Equalization Section at Madison, Wisconsin. Seven candidates, including complainant, were certified and interviewed for the position by respondent.

3. The interview panel for the Madison position consisted of Glenn L. Holmes, Director of the Bureau of Property Tax and Glenn Niere, Chief of the Equalization Section. Five questions were prepared by Niere to be asked each of the candidates. Prior to the interview, the interviewers discussed what they considered would be the best answer to each question. The candidate could receive a score of from 0 - 10 for each answer. Ten was the best possible score for each question. The interviewers independently assigned a score for each question answered by the candidate. These separate scores were totalled to arrive at each candidate's scores.

4. A candidate named Eugene Miller was ranked first by each interviewer independently. He also ranked first in the written examination. He was recommended unanimously by the interviewers and hired by the respondent to fill the vacant position in Madison. Holmes maintained a social relationship outside the work place with Miller.

5. Each of the two interview panel members for the Property Assessment Supervisor 4 position in Madison recommended Eugene Miller because he believed him best qualified based on his responses during the interview; technical knowledge and supervisory experience.

6. In July, 1982, respondent announced recruitment through promotional examination for three supervisory positions located in the cities of Eau Claire, Fond du Lac and Milwaukee. Three separate certification lists were developed to fill these positions, but some candidates were common to all three lists so only nine candidates were involved.

7. Complainant was certified for all three positions. She was added under the expanded certification for women to the certification list for the Property Assessment Supervisor 4 (PA Sup 4) position in Fond du Lac; she placed third on the written examination for Property Assessment Supervisor 4 to make the Eau Claire certification list and she ranked fifth on the written examination to qualify for the Property Assessment Supervisor 5 (Trainee) (PA Sup 5 Trainee) position in Milwaukee.

8. Eugene Hafner, District Supervisor of the La Crosse office was one of three individuals who graded the written examinations of the candidates for these three positions. He recognized the handwriting of candidates Fred Matthes and James Hendrickson as he graded their examinations. Hafner was Matthes' second-line supervisor.

9. The interviews for the three positions were combined and held in Milwaukee on the 4th and 5th of October, 1982. There were three interviewers on the interview panel: Glenn Niere, Chief of Equalization; Glenn Holmes, Director of the Bureau of Property Tax and Robert Wood, Equalization Unit Supervisor in Milwaukee.

10. The interview, preparation and process was the same as employed in filling the Madison position except that nine questions were asked each candidate. During the interview, each interviewer individually scored the candidates. After the interview, each candidate was ranked by consensus of the panel. The panel ranked Douglas Malius first, Fred Matthes second and William Lake third. Malius was offered and accepted the position at Fond du Lac, Lake was appointed to the position at Eau Claire -- the only one he competed for -- and Matthes received the position in Milwaukee.

11. Prior to the interviews in October of 1982 for these positions, the following events occurred:

a. Over a period of two years, Glenn Niere and his assistant Ruthe Badger had several conversations about who would be a good person to replace the current Property Assessment Supervisors when they retired. Initially, Niere thought Douglas Malius would be a good candidate. After the certification lists were developed, Niere and Badger agreed that William Lake was a good candidate for the Eau Claire position. Badger was considered a good candidate for Milwaukee. After Badger withdrew, Niere preferred Fred Matthes. Badger's choice was Douglas Malius. Having considered Malius the best candidate for Milwaukee, Badger did not believe the Fond du Lac Certification list contained a good selection. Badger was not involved in the interviews or final selection.

b. Glenn Niere called all the candidates to confirm their interest in the various positions. Fred Matthes indicated an interest in the Milwaukee position, and his name was added to that certification list. He had scored high enough to have been placed on the original list.

c. Eugene Hafner, Supervisor of Equalization for the West-Central district office, who supervised candidates Fred Matthes and James Hendrickson, discussed the three positions with Glenn Niere and Glenn Holmes and offered his opinion as to the best candidates for such positions. Neither Niere nor Holmes advised Hafner of their choices.

d. Candidate Mark Weber, a Field Supervisor in the Fond du Lac Office, removed his name from the Eau Claire certification list and it was replaced with William Lake's. Weber was not asked to remove his name or promised a promotion in the future.

e. The evening before the interviews, candidate Genevieve Schmidt told complainant that the hires for the three positions were already set; Malius would be hired in Fond du Lac, Matthes in Milwaukee and Lake in Eau Claire. That same weekend, prior to her conversation with complainant, Schmidt had talked with Eugene Hafner, her uncle, about the three positions. Neither Schmidt nor Hafner had any knowledge of preselection.

12. The persons selected for the Property Assessment Supervisor positions in Milwaukee, Fond du Lac and Eau Claire were recommended by each of the three members of the interview panel because they believed the candidates selected were the best qualified.

13. Respondent's affirmative action plan established twenty percent (20%) as parity for women in comparable positions -- pay range 16 and above. As of 1982, three (3) of sixty-two (62) or 4.8% of the comparable positions were held by women.^{FN}

14. Complainant filed a charge of sex discrimination against respondent with the Personnel Commission on October 15, 1982.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction pursuant to §230.45(1)(b), Wisconsin Statutes.

2. The complainant has the burden of proving by a preponderance of the evidence that respondent discriminated against her on the basis of sex with respect to not selecting her for any of the four Property Assessment Supervisor positions during 1982.

3. The complainant has established a prima facie case but has failed

^{FN}This finding has been amended to better reflect the record.

to prove that respondent did not select her for four supervisory positions in 1982 because she is female.

4. The respondent did not discriminate against complainant on the basis of sex with respect to appointments to the subject four supervisory positions in 1982.

OPINION

The complainant alleges that respondent sexually discriminated against her when they failed to appoint her to one of four Property Assessment Supervisor positions in the Equalization section of the Property Tax Bureau.

It is not disputed by respondent that complainant was qualified for the positions. As a female, she is a member of a protected class as defined in the Fair Employment Act, Subch. II, Ch. 111, Wis. Stats.; she applied for the subject positions and was not hired. Clearly complainant presented evidence sufficient to establish a prima facie case.

Respondent presented the following evidence in support of their argument that complainant was not selected for the subject positions for non-discriminatory reasons.

After the positions were advertised, a written promotional examination was given the candidates. The examination was graded and the candidates with the highest scores were certified as qualified for the positions. Interview panels were formed. The panels interviewed complainant and other interested certified candidates. After the interviews, the panel members unanimously agreed to recommend the candidates ultimately hired for the positions by the appointing authority.

Each of the panel members testified as to his reasons for recommending the successful candidates. Glenn Holmes testified that he recommended

Eugene Miller, the choice for the Madison position, on the basis of his training and experience in the equalization process and managerial and supervisory position; his responses to the questions during the interview convinced him that Mr. Miller understood the process. Regarding the interview for the positions at Milwaukee, Fond du Lac and Eau Claire, Holmes testified that complainant's responses to questions on the equalization process; managerial and supervisory matters were not of the depth he expected. He believed complainant did not have the training and experience in the equalization process, management and supervising as the successful candidates.

Glenn Niere testified that he thought Eugene Miller was the best qualified person for the Madison position because he gave the most positive answers to the questions at the interview and he had extensive supervisory experience. Niere testified that he recommended the successful candidates for the positions at Milwaukee, Fond du Lac and Eau Claire on the basis of their answers to the interview questions and experience. Robert Wood, who participated only on the second interview panel, testified that he rated Douglas Malius, one; Fred Matthes, two; and William Lake, three because their responses to the interview questions indicated that they had a greater depth of knowledge of the subject matter.

Complainant argues that respondent's reasons for selecting the successful candidates were pretextual because respondent's method of examining job applicants was subjective; statistical and direct evidence shows a history of sex discrimination; the successful candidates were preselected and complainant was the best qualified for "at least some of the positions."

In the Commission's view, complainant has not shown by a preponderance

of the evidence, that respondent's reasons for selecting the successful candidates were not the true reasons; and that respondent failed to select complainant because of her sex. First, although not the question before the Commission, the evidence does not support complainant's assertion that she was the best candidate for some of the positions. A comparison of the job application forms, contrary to complainants' assertion, show the successful candidates all possessed supervisory or lead work experience; held higher level positions and had more technical experience than complainant. Second, the evidence shows there was nothing irregular about oral interviews process. Witnesses including complainant testified that the questions were objective and job-related. While it is true that some subjective objectivity is possible during the rating process, there is no evidence of uneven treatment of the candidates. Third, while complainant presented statistical evidence of sex discrimination and one witness testified that she believed Mr. Niere and Mr. Holmes were sexists, this evidence is insufficient for a finding that respondents practiced sex discrimination during the period under scrutiny.

Complainant's chief argument of pretext is of irregularities surrounding the certification lists and preselection. The complainant, Ruthe Badger and Genevieve Schmidt were the principle witnesses regarding these allegations. The complainant had no personal knowledge of any irregularities or preselection. Her belief of preselection was based upon her discussions with Genevieve Schmidt. Genevieve Schmidt denied that she told complainant the positions were preselected, but testified that she gave complainant her opinion as to who would be selected for the various positions. With the exception of Ruthe Badger, all the witnesses who were reputed sources of preselection information, testified they had no knowl-

edge of preselection and had not told Schmidt the successful candidates were preselected.

Ruthe Badger testified that she and Glenn Niere, her immediate supervisor, had several conversations about good candidates for the positions. These conversations took place over a period of two years. Badger's testimony was confirmed by Niere.

It is clear that Glenn Niere had personal preferences for the subject positions prior to the oral examinations. As administrative head of respondent's Equalization section, he was familiar with the job performances of many of the candidates. There is a nominal chance that Niere could ignore prior performance records and preferences during his deliberations on the selection panel and it would be unrealistic to expect it. However, there is no evidence that he had influence on the decisions of the other panel members or that his preferences were sex-based.

In summary, the evidence presented by complainant was insufficient to establish sex discrimination as a factor in the selection process for the subject positions.

For these reasons the Commission's Order is in favor of the respondent.

ORDER

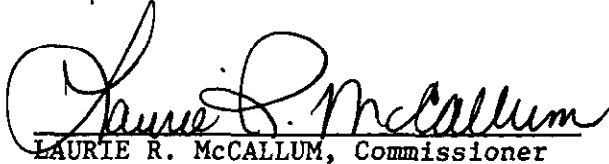
Based upon the Findings of Fact, Conclusions of Law and Opinion set out above, this complaint is dismissed.

Dated: September 26, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

DRM:jmf
ID4/l


DONALD R. MURPHY, Commissioner


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