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 *
 HOWARD W. HOPPENRATH, *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 TRANSPORTATION, *
 *
 Respondent. *
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 Case No. 83-0065-PC *
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DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal of a hiring decision pursuant to §230.44(1)(d), Stats.

FINDINGS OF FACT

1. During 1983, respondent Department of Transportation undertook to fill a vacancy in the position of Assistant Chief of Purchasing within its Bureau of Management Services. The position was classified as a Purchasing Officer 3 - Supervisor and was responsible for assisting the Chief of Purchasing in procuring certain goods and services and for supervising three purchasing agents.

2. James S. Johnson, respondent's Chief of Purchasing and Contracting requested and received a list of candidates for the subject position from James Zegers of respondent's Bureau of Personnel Management. Each of the candidates on the list was contacted and those who were interested in the position were scheduled for an oral interview.

3. Appellant was one of the candidates on such list and he was interviewed for the subject position some time during the week of March 14, 1983.

4. The interviews were conducted by James S. Johnson and Harold Meyer, Director of the Bureau of Management Services. The same procedure was followed in interviewing each of the candidates.

5. After the completion of the interviews, the interviewers met and decided that their top-ranked candidates were Almon Porter, Bradley Miller, and John Culp, in that order. The interviewers did not rank the other candidates who had been interviewed.

6. The interviewers subsequently met with David Bohlman, Administrator of the Division of Business Management. The interviewers indicated to Mr. Bohlman that Mr. Porter was their top-ranked candidate and explained their reasons for feeling he was best qualified to perform the duties of the subject position. Mr. Bohlman then discussed with the interviewers the Department of Transportation's affirmative action plan and asked the interviewers if they had considered the goals of such plan in making their recommendation. The interviewers indicated they had not. Mr. Bohlman then stated that hiring candidate Wallis Roberts (a female) would satisfy one of the goals of the DOT's affirmative action plan and asked the interviewers if Ms. Roberts was qualified to perform the duties of the subject position. The interviewers indicated that they felt she was so qualified due to her experience with state procurement procedures and requirements. Mr. Bohlman stated that Ms. Roberts would be the candidate selected.

7. Ms. Roberts' application for the subject position indicated that she had 3½ years of experience as a Purchasing Officer for the Division of

Vocational Rehabilitation of the state Department of Health and Social Services.

8. Ms. Roberts was offered the subject position and she accepted it. Appellant was subsequently advised that another candidate had been selected for the position.

9. On April 25, 1983, appellant filed a timely appeal of such hiring decision with the Commission. The appellant has also filed a complaint of discrimination relating to the same hiring decision by respondent. The parties have clearly indicated to the Commission that they wish to reserve consideration of the alleged violation of the state Fair Employment Act to subsequent proceedings relating to such complaint of discrimination.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(d), Stats.

2. The appellant has the burden of proving that the respondent's hiring decision was an illegal act or an abuse of discretion.

3. The appellant has failed to sustain his burden of proof.

4. Respondent's decision not to hire appellant was neither illegal nor an abuse of discretion.

OPINION

This is an appeal pursuant to §230.44(1)(d), Stats. Therefore, the standard to be applied is whether the appointing authority's decision was "illegal or an abuse of discretion."

The parties have clearly indicated to the Commission that they wish to reserve consideration of the alleged violation of the state Fair Employment Act to subsequent proceedings relating to the complaint of discrimination filed by appellant and arising out of the hiring decision by respondent

which forms the basis for the present appeal. The appellant has alleged no other illegality and none can be reasonably inferred from the record in this proceeding.

Discretion is more than a choice between alternatives without giving the rationale or reason behind the choice. Reidinger v. Optometry Examining Board, 81 Wis. 2d 292 (1977). In McCleary v. State, 49 Wis. 2d 263 (1971), the court said:

"In the first place, there must be evidence that discretion was in fact exercised. Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning. This process must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards. As we pointed out in State v. Hutnik (1968), 39 Wis. 2d 754, 764, 159 N.W. 2d 733, '... there should be evidence in the record that discretion was in fact exercised and the basis of that exercise of discretion should be set forth.'"

The sole question before the Commission is not whether it agrees or disagrees with the appointing authority's decision, in the sense of whether the Commission would have made the same decision if it substituted its judgment for that of the appointing authority. Harbort v. DILHR. No. 81-74-PC (1982). Rather, it is a question of whether respondent properly exercises its discretion.

Mr. Bohlman, who made the final hiring decision, considered respondent's affirmative action plan and concluded that hiring a female candidate for the subject supervisory position would satisfy one of the goals of such plan, i.e., to employ more women in management positions. Appellant has not challenged the existence of such a plan or the existence of such a goal within the plan. Given that such a plan and such a goal existed, it was reasonable for respondent to conclude that hiring Ms. Roberts would satisfy such goal. Mr. Bohlman also considered whether Ms. Roberts was qualified to perform the duties of the subject position. On the basis of Ms. Roberts'

experience with state procurement procedures and requirements, it was not unreasonable for respondent to conclude that she was qualified to function as Assistant Chief of Purchasing, a position which primarily involves a procurement of goods and services for a state agency.

On the basis of the record before the Commission, it is clear that the respondent properly exercised its discretion -- it considered various factors before making its final decision, these factors (goal of an affirmative action plan, qualifications of a candidate) were reasonable in view of the nature of the decision to be made, and the conclusions reached after application of these factors to the facts under consideration were reasonable, i.e., it was reasonable for respondent to conclude that hiring Ms. Roberts would satisfy a goal of its affirmative action plan and that Ms. Roberts was qualified to perform the duties of the Assistant Chief of Purchasing position.

ORDER

The decision by respondent not to hire appellant is affirmed and this appeal is dismissed.

Dated: February 29, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

LRM:jmf


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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