

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 ROSS ROMAHER.  
                   Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 HEALTH AND SOCIAL SERVICES,  
                   Respondent.  
 Case No. 86-0015-PC  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal of a hiring decision pursuant to 230.44(1)(d), Stats. A hearing was held on July 17, 1986, before Laurie R. McCallum, Commissioner.

FINDINGS OF FACT

1. In late 1985 or early 1986, respondent announced and processed applications for the vacant position of Assistant Superintendent of the Oregon Camp, a minimum security correctional facility for men. Appellant applied for and was one of the candidates interviewed for such position.

2. The interview panel consisted of three persons selected by James Mathews, the working title of whose position was Superintendent of the Camp System. The interview panel interviewed 9 candidates and scored each interview on a scale of 1 to 10 with 1 being the highest. The interview panel then forwarded the interview notes and scores to Mr. Mathews who had effective authority to make the final hiring decision.

3. Mr. Mathews considered for the subject position the candidates who had received the five highest scores from the interview panel.

Appellant had the 4th highest score (4.0) and the successful candidate (Ron Kalmus) had the 5th highest score (4.3).

4. Appellant summarized his recent relevant work experience for the interview panel as follows:

1977-1981 - Military Corrections  
April, 1981 - August, 1981 Officer at Dodge Correctional  
Institution  
August, 1981 - January, 1983 Officer at Oregon Camp  
January, 1983 - date of interview Officer at Mendota Mental Health  
Institute

5. The interview panel's notes indicate that Mr. Kalmus summarized his recent relevant work experience for the interview panel as follows:

August, 1983 - March, 1985 Officer at Kettle Moraine Correctional  
Institution  
March, 1985 - date of interview Officer at Metropolitan Women's  
Center - Milwaukee (minimum  
security correctional institution)

6. Mr. Mathews had had an opportunity to observe appellant's work performance and review such performance with appellant's supervisors while appellant was employed at Oregon Camp and to observe Mr. Kalmus's work performance and review such performance with Mr. Kalmus's supervisors while Mr. Kalmus was employed at the Metropolitan Women's Center. Mr. Mathews was of the opinion that Mr. Kalmus's work performance, particularly his rapport with the residents (inmates) under his supervision, was superior to appellant's. Appellant's only experience as a correctional officer in a minimum security correctional facility was his experience as an officer at the Oregon Camp; Mr. Kalmus's only experience as a correctional officer at a minimum security correctional facility was his experience at the Metropolitan Women's Center.

7. Mr. Mathews offered the subject position to Mr. Kalmus, Mr. Kalmus accepted such offer and was appointed to the position effective February 4, 1986.

8. Prior to offering the subject position to Mr. Kalmus, Mr. Mathews did not discuss the position or the selection process with Mr. Kalmus.

9. Mr. Navis was the Superintendent of the Oregon Camp at the time of the interviews. Officer Lemke, an officer at the Oregon Camp, had heard Mr. Navis say that appellant wouldn't work at the Oregon Camp as long as Mr. Navis was there. Officer Lemke could not recall when he heard Mr. Navis make this statement. Mr. Mathews had not discussed the subject hiring decision or the selection process with Mr. Navis prior to offering the subject position to Mr. Kalmus since Mr. Navis would be retiring and would not be working with the new Assistant Superintendent.

10. Mr. Mathews based his hiring decision primarily on a comparison of the quality of the candidates' work performance in minimum security correctional institutions.

11. The appellant filed a timely appeal of the subject hiring decision with the Commission.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to §230.44(1)(d), Stats.

2. The appellant has the burden of proving that the hiring decision made by respondent 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."

Illegality

Appellant contended in his opening and closing statements at the hearing that the interviews conducted by the interview panel should be regarded as part of the competitive examination process for the subject position (See §§230.15 and 230.16), Stats., and that, as a result, Mr. Mathews was bound by the interview results, i.e., was required to hire the candidate with the highest interview score.

However, the competitive examination process described in §§230.15 and 230.16, Stats., refers to the process required to be followed to develop the list of certified eligibles, i.e., the list of eligible candidates from which the appointing authority shall make his/her selection for the subject position. Once the appointing authority receives this list, he/she is required to exercise his/her discretion to appoint the certified candidate, who, in the opinion of the appointing authority, is the best candidate for the subject position. (Ebert v. DILHR, Case No. 81-64-PC, (1983)).

It is clear from the record in the instant appeal that the interview process was not part of the competitive examination process since it is un rebutted that the appointing authority had been provided a list of eligible candidates from which the selection was to be made prior to the date the interviews were conducted. It is also clear from the record that the interview panel was intended to fill an advisory role only.

The Commission concludes, therefore, that, in view of the fact that the interview process was not part of the competitive examination process for the subject position and that the interview process was intended to be advisory only, Mr. Mathews was authorized to exercise his discretion and to appoint to the subject position a candidate from the list of eligibles who,

in his opinion, was the best candidate for the position, and he was not required to appoint the candidate with the highest interview score.

Abuse of Discretion

The term "abuse of discretion" has been defined as "... a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." Lundeen v. DOA, Case No. 79-208-PC (6/3/81). The 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. Rather, it is a question of whether, on the basis of the facts and evidence presented, the decision of the appointing authority may be said to have been "clearly against reason and evidence." Harbort v. DILHR, Case No. 81-84-PC (1982).

In making the final hiring decision, Mr. Mathews primarily relied upon a comparison of the quality of the candidates' work performance in minimum security correctional institutions. This appears to be a reasonable selection criterion in view of the fact that the candidate selected for the subject position would be carrying out his or her duties and responsibilities in a minimum security correctional institution.

Mr. Mathews based his assessment of the quality of appellant's and Mr. Kalmus's work performance in minimum security correctional institutions primarily on his observations of their performance and his discussions of their performance with their supervisors while they were employed in minimum security correctional institutions. It was certainly not unreasonable for Mr. Mathews to rely upon his personal knowledge of the candidates' work performance in minimum security correctional institutions as opposed

to the knowledge he may have gained in checking their employment references.

There is nothing in the record from which to conclude that the above selection criterion was not uniformly applied or that Mr. Mathew's conclusion regarding the relative quality of appellant's and Mr. Kalmus's work performance in minimum security correctional institutions was inconsistent with the information available to Mr. Mathews or with Mr. Mathew's actual knowledge or opinion in this regard.

Appellant contends that, since he had more years of experience in corrections than Mr. Kalmus, a greater variety of experience in corrections than Mr. Kalmus, and Mr. Kalmus had worked only with women residents (inmates) in a minimum security correctional institution, appellant's work experience in corrections was superior to Mr. Kalmus's and, therefore, it was an abuse of discretion from Mr. Mathews to select Mr. Kalmus instead of appellant for the position of Assistant Superintendent. However, Mr. Mathews did not utilize years of work experience in corrections, variety of work experience in corrections, or the sex of residents (inmates) with whom the candidates had worked as the primary selection criteria. Although argument could be made that such criteria would have been reasonable to apply in view of the hiring decision to be made, the appointing authority is not required to apply every reasonable criterion in making a hiring decision. Furthermore, it is not the role of the Commission to determine which criteria should have been applied. i.e., to substitute its judgment for that of the appointing authority.

The Commission concludes, therefore, that there was no abuse of discretion in regard to the subject hiring decision.

ORDER

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

Dated: September 17, 1986 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

LRM:jmf  
JMF02/2

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

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