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JAMES E. LARSON,
 Complainant,

v.

Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 Respondent.

Case No. 86-0152-PC-ER

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DECISION
 AND
 ORDER

This matter is before the Commission on respondent's contention that complainant lacks standing. The parties were provided an opportunity to file briefs. The following facts appear to be undisputed.

FINDINGS OF FACT

1. Complainant has been employed by respondent for approximately 25 years. Complainant's position is currently classified as an Administrative Assistant 5.

2. On December 15, 1986, complainant filed a complaint of discrimination alleging that respondent has discriminated against him on the basis of race and sex in violation of the Fair Employment Act. Complainant's allegations arise from respondent's policies regarding the use of "screening panels" (a group that convenes after certification to interview candidates for the purpose of reducing the number who will receive further consideration) and "hiring panels" (a group, including the hiring authority, that convenes to make the final selection of a candidate from a list of certified candidates). These panels must, pursuant to respondent's policy, be "balanced", i.e. at least two-thirds of the panel must consist of target

group members -- minorities, women or people with disabilities. Complainant identified five specific charges in his complaint:

- A. I herewith submit a formal complaint to the State Personnel Commission charging that the Wisconsin Department of Health and Social Services has engaged in a massive and organized system of screening and interviewing Civil Service Applicants that discriminates against white male applicants in direct violation of Statute 230.18, which specifically prohibits any discrimination in the State recruitment, application, examination, or hiring process. This discrimination arises from the use of "screening panels" and "hiring panels" that are racially and sexually weighted against white male applicants. These panels are ordered and described in Exhibit A (enclosed) - a memo directive from Linda Reivitz, Department Secretary, dated March 28, 1986 and titled "Balanced Interview Panels." Also in Exhibit B (enclosed) - pages from the Department's Personnel and Employment Relations Directive.
- B. I also charge that Statute 230.16(7) Veterans Preference has been violated - this process of being "screened" after certification for hiring can result in the Veteran being "screened out" - thus completely voiding the Veterans Preference Law. Or he does not receive the Veterans Preference because the Panel produces an entirely different ranking of applicants not based on their examination grades and including Veteran's Points.
- C. I also charge that Statute 230.20(2) Recommendations has been violated in that such "hiring panels" being racially and sexually weighted against white male applicants cannot provide an "objective evaluation of an applicant's character, training, experience, skills or abilities as they relate to the requirements for the position" and are therefore prohibited.

I also charge duress - can you imagine any hiring person having the courage to turn down the "recommendations" of this "hiring panel" that has been ordered by the head of the Department, and so elaborately organized?

- D. I also charge that Statute 230.43(1)(a) Obstruction or Falsification of Examinations has been violated by the operation of these "screening panels" which "defeats, deceives or obstructs any person in respect of the rights of examination." The "screening" panels are a thinly disguised illegal examination that does indeed defeat, deceive and obstruct the examination rights of the applicants!
- E. I also charge that Statute 230.43(1)(b) has been violated: "Who...falsely...grades...or reports upon the examination or proper standing of any person examined, registered or certified." The "screening panels" actually illegally substitute their own list and rank of candidates for hiring in place of the lawful Civil Service certification of name for hiring, thus

falsely reporting "upon the examination or proper standing of any person examined, registered or certified."

3. Complainant has not sought a promotion within the five years prior to the date he filed his complaint. He was never interviewed or screened by a "balanced" screening panel or hiring panel at any time prior to April of 1987, over one year after he filed his complaint.

4. An initial determination of "no probable cause" was issued on January 6, 1987, pursuant to s. PC 4.03(3), Wis. Adm. Code. Complainant filed a timely appeal.

5. At a prehearing conference on March 11, 1987, the complainant was provided until April 1, 1987 to clarify the nature of his complaint and to list any exam opportunities he alleged he did not follow up on due to respondent's "balanced" interview panel requirement.

6. On April 1, 1987, complainant filed a "Clarification of Complaint" which read:

The above-named appellant, James E. Larson, hereby clarifies and modifies his complaint in the above matter as follows:

Appellant requests that the State Personnel Commission investigate charges of discrimination against white male applicants and employees by the Department of Health and Social Services, as evidenced by the written directive of the former secretary, Linda Reivitz dated March 28, 1986 establishing "Balanced Interview Panels" which are 60% composed of minorities, females and handicapped, are racially and sexually biased against white males.

Appellant further requests that the State Personnel Commission investigate and determine whether five State Laws, regarding the Wisconsin Civil Service examination and hiring process are being violated. Specifically these are:

1. Does the "screening panel" composed of 60% minorities and females violate S.230.18 which prohibits discrimination in the State examination and hiring process.

2. Does the "hiring panel" similarly composed also violate S.230.18.

3. Does the screening out of veterans by the "screening panel" violate S.230.16(7) Veterans Preference.

4. Does the use of "hiring panels" composed of 60% minorities and females violate S.230.20(2) Recommendations.

5. Do these "screening panels" violate S.230.43(1)(a) by "defeating, deceiving or obstructing any person in respect of the rights of examination".

6. Do these "screening panels" violate S.230.43(1)(b) by falsely reporting "upon the examination or proper standing of any person examined, registered or certified".

7. By letter dated June 5, 1987, complainant filed an "Amended Discrimination Complaint" in this matter in which he alleged that on April 29 and 30, 1987, he was interviewed by three "balanced" interview panels for Management Intern positions with the respondent and that he was not selected for any of the positions.

8. By letter dated June 11, 1987, the Commission advised the parties as follows:

Due to the apparent lack of similarity between the complainant's allegations in his initial complaint and in his "amended complaint", it would appear to be inappropriate to permit amendment of the existing case at this time. Instead, it would appear to be more logical for the complainant to file a new complaint arising from the 1987 interviews. If that procedure is followed, the Commission would then conduct an investigation of the procedures followed in the 1987 selections and the complainant could continue to pursue his 1986 complaint. The initial issue in the 1986 case would continue to be whether the complainant had standing. If that issue is answered affirmatively, the next step would presumably be a hearing on the issue of probable cause as to the 1986 conduct.

If the complainant wishes to proceed with an effort to amend his 1986 complaint to include a claim arising from the 1987 interviews rather than filing a new complaint, he should submit a letter to that effect within 10 days of the date of this letter. If such a letter is filed, the Commission will invite a statement of respondent's position and will then exercise its discretion in determining whether to permit an amendment.

9. The Commission did not receive any indication from the complainant that he wished to proceed with an effort to amend his

complaint. By letter dated June 25, 1987, the Commission advised the parties:

In light of the absence of any response from the complainant to my letter of June 11, 1987, the complainant's letter of June 5, 1987 will not be considered further in the context of the instant case.

CONCLUSIONS OF LAW

The complainant lacks standing to pursue this matter.

OPINION

Complainant has failed to allege any injury to himself for the time period covered by his complaint and that resulted from the imposition of the allegedly discriminatory practice of using "balanced" screening panels and hiring panels. Complainant had not appeared before such a panel nor did he apply for positions during the five year period preceding his complaint. Despite being specifically provided an opportunity to allege that he did not follow up on an exam opportunity due to the "balanced" interview panel requirement, the complainant did not make such an allegation.

There are no specific provisions in either s. 230.45(1), Stats., or in Subch. II, ch. 111, Stats., setting forth specific criteria for standing necessary to file a complaint under the Fair Employment Act. However, Wisconsin's Administrative Procedure Act provides some assistance in applying the principles of standing. The phrase "person aggrieved", defined in s. 227.01(8), Stats., refers to "adverse effect" on "substantial interests" as a prerequisite to a finding of standing. In addition, the Wisconsin Supreme Court has established a two step test for determining standing in the administrative setting:

The first step under the Wisconsin rule is to ascertain whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine

whether the interest is recognized by law. Wisconsin Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1, 10 (1975).

As noted above, the complainant has not alleged any injury to himself. Thus, the complainant lacks standing to pursue his complaint.

This result is consistent with Title VII cases under federal law. In an EEOC Decision 75-006 on July 30, 1974, the EEOC held that a charging party lacked standing to challenge the respondent newspaper's advertising practice of publishing help wanted advertisements in sex segregated columns where the charging party never applied for any of the jobs with allegedly illegal advertising nor did she allege she had been deterred from doing so. The EEOC held that mere status as a concerned citizen was insufficient to confer standing. In James v. Rumsfeld, 17 FEP Cases 1398 (6th Cir, 1978), the 6th Circuit upheld dismissal of a complaint on the grounds that the employees lacked standing where their complaint alleged racial and sex discrimination by the agency but contained no specific allegation that they had been injured as a result of the allegedly discriminatory practices.

ORDER

This matter is dismissed due to lack of standing.

Dated: July 8, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

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LAURIE R. MCCALLUM, Commissioner

Parties

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