

\* \* \* \* \*  
 CLEO I. FRIEDRICH,  
                     Appellant,  
 v.  
 President, UNIVERSITY OF  
 WISCONSIN SYSTEM  
 (Platteville)  
                     Respondent.  
 Case No. 86-0210-PC  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

This appeal arises from a hiring decision. During a prehearing conference held on January 13, 1987, the parties agreed to the following issue for hearing:

Whether the decision by respondent not to hire appellant for the subject carpenter position at the UW-Platteville was illegal or an abuse of discretion.

A hearing was held on March 13, 1987, and the parties filed post-hearing briefs.

FINDINGS OF FACT

1. Since August of 1977, the appellant has been employed by the University of Wisconsin-Platteville Physical Plant as a Building Maintenance Helper. Appellant's immediate supervisor is John Cullen, a Custodial Supervisor 2.

2. The Director of the Physical Plant is Jim Valaskey. Mr Valaskey supervises both Donald Moberg, Housekeeping Supervisor (and therefore, Mr. Cullen's supervisor) and Clifford Van Natta, Craftworker Supervisor.

3. Before he began working for UW-Platteville, the appellant had worked eight years as a construction foreman for the Burnham Lumber

Company. Approximately half of that time was spent pouring concrete. Appellant had also worked for Eastman Cartwright, a lumberyard.

4. During the course of his custodial work for the respondent, the appellant raised several concerns to his supervisor, Mr. Cullen, relating to the repair of the buildings and equipment. Mr. Cullen passed these concerns on to Mr. Van Natta who, as Craftworker Supervisor, was responsible for overseeing the repairs. While Mr. Cullen did not specify who made the complaints, that information could have been deduced by Mr. Van Natta.

5. On one occasion, Mr. Van Natta was threatened by a subordinate of Mr. Van Natta. As a consequence of the threat, Mr. Van Natta gave the employee a reprimand.

6. During the period since he was hired in August of 1977, the appellant has frequently applied for higher level positions within the University of Wisconsin-Platteville Physical Plant. Those efforts have been unsuccessful.

7. Vivian Durni was employed by UW-Platteville from the mid-1970's until his retirement on approximately May 1, 1986. Mr. Durni was hired as a Facilities Repair Worker, but in 1981, his position was reallocated to the Carpenter classification. Mr. Durni had been employed as a mason prior to his employment at UW-Platteville.

8. As a consequence of Mr. Durni's retirement, respondent prepared a position description that summarized the duties of the Carpenter position as follows:

Carpentry improvements, remodelings, repairs and restorations (60%). Masonry improvements, remodelings, repairs and restorations (35%). Supervision and recordkeeping (5%).

These were essentially the same duties as had been performed by Mr. Durni.

9. In Bulletin P-83 issued on March 31, 1981, the Administrator of the Division of Personnel established the standard method for filling vacant positions within the Crafts bargaining unit (which includes Carpenter positions):

Because of accepted long standing procedures used to fill building trade jobs, the limited number of Crafts positions in most locations and the unlikelihood of finding qualified persons in other State positions, the area of competition for Crafts positions will normally be open competition.

10. On April 2, 1986, respondent posted the Carpenter vacancy as a transfer opportunity. Although several persons inquired about the job, none were eligible to transfer into the vacant position.

11. Subsequently, respondent's personnel office notified James Cimino of UW-System Personnel that respondent needed a list of eligibles pursuant to the certification process. While there was available a current certification derived from a statewide Carpenter examination, there was no existing Carpenter/Mason certification.

12. After consulting with the Department of Employment Relations, Mr. Cimino decided not to conduct a statewide examination on the joint skills of carpentry and masonry but to send a letter to the Carpenter candidates to see if they also possessed masonry skills. The letters asked the candidates to certify that they possessed a masonry/brick laying background based on one of three criteria:

- a. Union card
- b. Formal apprenticeship
- c. Equivalent training and experience (at least 4,000 hours of training or experience) in the trade.

13. Based on the responses to the letters, five names were certified as eligibles for the subject position. One candidate then withdrew. The remaining candidates included the appellant and Mr. Donald Wilson.

14. Since approximately June of 1985, it was the policy within the Physical Plant to have just one person, rather than a panel, conduct employment interviews. Because the Carpenter position was under Mr. Van Natta's supervision, Mr. Valaskey directed him to do the interviewing and gave him full authority to make the final decision. The interviews were scheduled by the respondent's personnel office.

15. At some time prior to the point that the selection decision was made, Mr. Moberg advised Mr. Van Natta that appellant did his job well, was a self-starter and had neither a drinking nor an absence problem. Mr. Moberg had also told the appellant that he could enhance his chances of getting the Carpenter job by obtaining a union membership card.

16. Before conducting the interviews, Mr. Van Natta asked Mr. Cullen for his opinion of appellant as a candidate. Mr. Cullen recommended the appellant. Mr. Cullen told Mr. Van Natta that the appellant was reliable, was one of the best persons then on the night shift and was one of the best workers on the restoration of an organ that had been moved into the Performing Arts Center.

17. Mr. Van Natta had previously interviewed the appellant on at least two other positions. Mr. Van Natta knew that appellant had previously worked as a carpenter for Burnham Lumber and Eastman Cartwright and had seen him work on the organ restoration project.

18. Mr. Van Natta conducted the carpenter interviews asking approximately eleven questions of each candidate. Mr. Van Natta did not take any notes. The questions all related to the candidates' ability to perform certain tasks. The responses of Mr. Wilson, the successful candidate, and the appellant were substantially similar except as follows:

- a. Mr. Wilson stated he had done considerable masonry work in terms of patio construction and restoration of

buildings in Madison. When asked whether he had laid a concrete block as long as a wall in the room they were sitting, Mr. Wilson said he had while appellant said that he may not have erected a block wall quite that long.

- b. The appellant stated he would have no trouble performing lead work because he knew most of the people in the physical plant.

During the interview, the appellant did not get into any details about his qualifications because he felt that Mr. Van Natta already knew his qualifications. In contrast, Mr. Wilson fully explained his work experiences and had a series of photographs showing the various work he had performed in the past.

19. All the candidates also filed a Work History, Education, and Training Questionnaire. Mr. Wilson's questionnaire was much more detailed than the questionnaire prepared by the appellant. The appellant simply listed his name, address, social security number, name of his high school and grade completed (10), referred to a Florida G.E.D and listed his only work experience as 10 years as a Building Maintenance Helper 2 for the UW-Platteville. He did not describe his duties. Mr. Wilson's questionnaire showed he had graduated from high school and attended both the Madison Area Technical College and the University of Wisconsin-Madison as well as the following training and experience:

Extensive carpentry skills and overall building knowledge with background in masonry walls and floors including ceramic tiling and concrete forming and finishing. Ongoing training since 1967.

Mr. Wilson listed the following work experience: 1) since May 1986 with a construction company; 2) ten years with Wisconsin Landscapes as a carpenter and bricklayer with responsibility for designing and building decks, outbuildings, pole barns, residential and commercial additions and

masonry surfaces and walls; and 3) seven years as a carpenters helper and performing general labor.

20. After the interviews were completed, Mr. Van Natta ranked Mr. Wilson first and appellant third. Mr. Wilson was hired for the vacancy.

21. Mr. Van Natta did not verify the accuracy of any of the information provided by the candidates.

22. Mr. Van Natta's decision was based on the interviews and the materials provided by the candidates and was not the result of intimidation by others.

23. Appellant filed an appeal of the subject selection decision with the Commission on June 26, 1986.

#### 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 selection decision made by respondent was an illegal act or an abuse of discretion.

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

4. Respondent's decision not to select appellant for the subject position was neither illegal nor an abuse of discretion.

#### DECISION

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."

This issue established for hearing is consistent with the statutory provision. However, prior to and during the hearing, the appellant made no allegation that the hiring decision was "illegal." It was not until his

post-hearing brief that the appellant first contended that "Mr. Van Natta was in violation of the State Employment Relations 230.14 - 230.19 - 230.20." The appellant has not indicated which portions of these statutes have been violated nor has he supplied any argument as to how he feels they were violated. Given the absence of any specific allegation and after a general review of the ss. 230.14 (Retirement), 230.19 (Promotion), and 230.20 (Recommendations), Stats., the Commission concludes that the appellant has failed to establish that any of these provisions were violated.

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, 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, No. 81-74-PC (1982).

The appellant alleges that Mr. Van Natta abused his discretion by: 1) failing to confirm the information found on the candidates' work history questionnaires or to confirm that the candidates actually qualified as carpenters and bricklayers/masons, and 2) having his selection decision influenced or controlled by others who, in order to prevent appellant from being hired, threatened Mr. Van Natta.

Mr. Van Natta testified that he made no effort to verify each candidate's qualifications as a journey worker in carpentry as well as a bricklayer/mason. Mr. Cimino obtained a certification from each candidate

before placing them on the list of eligibles for the vacant UW-Platteville position. Mr. Van Natta relied on the fact that the candidates were all on the list of eligibles prepared by the Personnel Department of the University of Wisconsin System and the Division of Merit Recruitment and Selection. That reliance was reasonable unless some information had become apparent prior to the selection decision which called into question the candidates' qualifications. No such information has arisen. The appellant failed to produce any evidence indicating that it is standard practice to go beyond a work history questionnaire to verify a candidate's qualifications.

Appellant also contends that the selection decision was not Mr. Van Natta's own decision but was in fact the result of a threat or threats made by other persons. Nothing in the record supports this contention other than a statement by appellant's supervisor, Mr. Cullen, that there were "rumors" of influence on the selection decision. Appellant made no attempt to identify who he thought had exerted influence, or the nature of any threats. Mr. Van Natta testified that no one under his supervision had told him not to hire the appellant for the vacant position, and that Mr. Wilson was the better candidate. The fact that Mr. Van Natta disciplined a subordinate employe who had threatened Mr. Moberg (Finding #5) undermines the appellant's allegation.<sup>1</sup>

The appellant did not explicitly allege that he was better qualified than the successful candidate, Mr. Wilson. Regardless of whether or not

---

<sup>1</sup>The appellant's allegation that someone's threat caused Mr. Van Natta not to select the appellant for the vacant position is a very serious charge. Based on the record before it, the Commission has concluded that there is insufficient evidence to support the appellant's allegation. However, the appellant was unrepresented before the Commission and there is no way for the Commission to know whether a more complete presentation of evidence relating to the appellant's allegation would have generated a different conclusion. The respondent may find it to be within its own best interests to commence an investigation of the appellant's allegation.



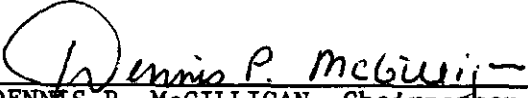
such an allegation was made, the Commission finds that Mr. Van Natta did not abuse his discretion in deciding to select Mr. Wilson rather than the appellant for the vacancy. Mr. Wilson's manner during the interview was more polished. He "came across better" due in part to a photo album of projects he had completed during his previous employment. Mr. Wilson had a more extensive and varied experience with bricklaying/masonry. A large part of the appellant's shortcoming at the interview is attributable to the incomplete questionnaire that he submitted. The appellant testified that he supplemented the questionnaire with a copy of his resume. Mr. Van Natta denied having received a copy of appellant's resume at the interview as well as during any of the previous interviews he had conducted of the appellant. Mr. Van Natta's version was supported by Mr. Valaskey's testimony that he had never seen appellant's resume during various employment interviews, despite appellant's assertion to the contrary.

The Commission concludes, therefore, that the respondent did not abuse its discretion in making the subject selection decision. In reaching this decision, the Commission has not considered those portions of the appellant's brief dated April 16, 1987, which comprise new allegations of fact extending beyond the evidence produced during the hearing in this matter.

#### ORDER

The decision by respondent not to select appellant for the subject position is affirmed and this appeal is dismissed.

Dated: June 24, 1987 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

KMS:rjk  
RK1/2

  
LAURIE R. MCCALLUM, Commissioner

Parties:

Cleo Friedrich  
5478 Mueller Lane  
Potosi, WI 53820

Kenneth Shaw, President, UW  
1700 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706