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HAROLD H. HEIKKINEN,

Appellant,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION, and
Administrator, DIVISION OF
MERIT RECRUITMENT & SELECTION,

Respondents.

Case No. 90-0006-PC

* * * * *

INTERIM
DECISION
AND
ORDER *

NATURE OF THE CASE

This is an appeal pursuant to § 230.44(1)(a), Stats., of certain training and experience requirements for eligibility for inclusion on the Civil Engineer 1 register. This case was commenced as a complaint of age discrimination. At a prehearing conference held on December 14, 1989, the parties reached the following agreements regarding further proceedings and the submission of this matter for a final decision:

Following discussion, it was agreed that this matter be amended into a civil service appeal under § 230.44(1)(a), stats., that Mr. Heikkinen waives his charge of age discrimination, that the "supplemental complaint" filed December 12, 1989, is accepted as an amendment to this appeal, that the appeal as amended by the December 12, 1989, submission is deemed timely under § 230.44(3), stats., and that the parties would make an attempt to submit this case for decision on the basis of written arguments and stipulated facts inasmuch as it appeared unlikely that there would be any disputed facts.

Therefore, this matter will be submitted for decision of the issue of whether the requirement of a Bachelor of Science in Civil Engineering or certification as an Engineer in Training for admission to the Civil

* Pursuant to § 227.485, Stats., this decision is being issued as an interim decision so that the prevailing party may petition for costs.

Engineer I transportation exam violates the civil service code (subchapter II, Chapter 111, [sic]¹stats., Ch ER-Pers, Wis. Adm. Code).

Based on the briefs and other documents the parties have submitted, it does not appear that any of the material underlying facts are in dispute. The following Findings of Fact 1-16 are taken verbatim from respondent's brief.

FINDINGS OF FACT

1. The Appellant has worked as an Engineering Technician for the Department of Transportation since around 1980. His relevant work experience and education are listed in Exhibit 9 [resume dated November 9, 1988].

2. To date, the Appellant has not been certified as an Engineer In Training (EIT) or as a Professional Engineer.

3. Sometime before May 13, 1986, the Appellant applied for registration as a professional engineer. On May 13, 1986, he was told by letter that his application had been rejected because he did not have a degree in Civil Engineering.

4. On August 8, 1986, the Appellant received a letter from the Department of Regulation and Licensing responding to his application as a Professional Engineer. A preliminary review by the Chairman of the engineering section of the examining board determined that the Appellant did not have the requisite work experience to meet the professional engineer requirements.

5. The Chairman did determine that the Appellant was eligible to sit for the fundamental portions of the professional engineer examination.²

¹ This should refer to Chapter 230, Stats.

² The applicable statute is § 443.04:

This letter also stated that a final determination by the examining board as to whether his work experience was sufficient to meet the EIT certification requirements would not be made until after he had successfully completed the fundamental portions of the engineering examination. Exhibit 10.

6. Sometime prior to October 14, 1989, the Respondent announced that applications to take an oral examination would be accepted for Civil Engineer - Transportation. Qualifications for the position were listed as a "Bachelor of Science degree in Civil Engineering or EIT." Exhibit 2.

7. On February 27, 1980, this same position was announced in the Respondent's Current Opportunities Bulletin with qualifications listed as a "Bachelor of Science degree in Civil Engineering, or comparable training and experience." Exhibit 3.

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- 443.04 Registration requirements for professional engineers. (1)
An applicant for registration as a professional engineer shall submit satisfactory evidence to the examining board of one of the following:
- (a) A diploma of graduation, or a certificate, from an engineering school or college approved by the examining board as of satisfactory standing in an engineering course of not less than 4 years, together with an additional 4 years of experience in engineering work of a character satisfactory to the examining board and indicating that the applicant is competent to be placed in responsible charge of such work; or
 - (b) A specific record of 8 or more years of experience in engineering work of a character satisfactory to the examining board and indicating that the application is competent to be placed in responsible charge of such work; or
 - (c) A specific record by an applicant of 12 years of more of experience in engineering work of a character satisfactory to the examining board and indicating that the applicant is competent to practice engineering.
 - (d) A diploma of graduation or a certificate from an engineering school or college approved by the examining board as of satisfactory standing in an engineering course of not less than 4 years, together with an additional 8 years of experience in engineering work of a character satisfactory to the examining board and indicating that the applicant is competent to practice engineering.

8. The Appellant ranked 79 on the Civil Engineer 1 register dated November 23, 1988. He ranked 76 on the same register dated October 24, 1986. Exhibit 4.

9. On December 6, 1988, the Department of Transportation (DOT) Personnel Office informed the Appellant that he was not eligible to be placed on the employment register at that time because he did not have and was not scheduled to receive a Bachelor of Science degree in Civil Engineering, nor was he EIT certified.

10. On December 8, 1988, the Appellant wrote the Respondent to request an explanation of his ineligible status. Exhibit 6. The Respondent responded on January 3, 1989. Exhibit 7. As explained, the established procedure was to screen out all applicants who did not meet the qualifications before the oral exam. This procedure had not been followed because of the death of the DOT employe responsible for performing the screen.

11. The EIT certificate is not a required certificate. This means that any individual can perform engineering duties under the direct supervision of a licensed professional engineer regardless of whether he or she has been certified as an EIT.

12. A Civil Engineer 1 does not perform any engineering duties without the direct supervision of a professional engineer. This position, then, does not require any license or certification of any kind. Progression through the Civil Engineer series would, though, require a license as a professional engineer.

13. Prior to the enactment of § 230.14(3m), Stats.,³ (1977 c. 196), no law limited the state's ability to require that an applicant be a college graduate as a prerequisite to eligibility for examination. Since before 1977, then, the state has required that an applicant for Civil Engineer 1 be a college graduate to be qualified to take the examination.

14. This preliminary requirement is based on the opinion of individuals from the Department of Transportation and the Department of Regulation and Licensing who have expertise in professional engineering that graduation from an accredited four-year engineering college meets the minimum training and experience requirements for a person applying for a Civil Engineer 1 position, and has been approved by the Administrator as a valid job-related requirement.

15. With the enactment of § 230.14(3m) in 1977, the state was required to establish minimum training and experience criteria for a Civil Engineer 1 applicant which did not require a college degree. It is the opinion of persons with expertise in professional engineering at the Department of Transportation and the Department of Regulation and Licensing that a person who has an EIT certificate meets the minimum training and experience requirements for Civil Engineer 1.

16. The requirement of EIT certification has been approved by the Administrator as a valid job-related requirement and established as a preliminary requirement for the Civil Engineer 1 examination.

³ "In advertising openings in the classified civil service, the state may not require as a condition of application that an incumbent be a college graduate unless the opening must be filled by an incumbent holding a license or registration in an occupation regulated by law and college graduation is required to obtain the occupational license or registration."

17. Appellant subsequently was also denied admission to another Civil Engineer 1 examination on the same basis as previously by a letter dated October 10, 1989.

CONCLUSIONS OF LAW

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

2. Based on the undisputed material facts of record as set forth above, the Commission concludes that the requirement of a BSCE or an EIT certification for admission to the Civil Engineer 1 transportation exam:

(a) violated § 230.16(4), Stats.;

(b) did not violate § 230.14(3m), Stats., or any other part of the Civil Service Code (subchapter II, Chapter 230, Stats., Ch. ER-Pers Wis. Adm. Code).

DISCUSSION

The issue before the Commission is:

[W]hether the requirement of a Bachelor of Science in Civil Engineering [BSCE] or certification as Engineer in Training [EIT] for admission to the Civil Engineer I transportation exam violates the civil service code (subchapter II, Chapter 111 [sic: the civil service code is in Chapter 230], and Ch. ER-Pers, Wis. Adm. Code).

There are two statutory provisions implicated by this issue. First, appellant contends that respondent's requirement of a BSCE or EIT certification for admission to the Civil Engineer 1 transportation exam violates § 230.14(3m), Stats., which provides:

In advertising openings in the classified civil service, the state may not require as a condition of application that an incumbent be a college graduate unless the opening must be filled by an incumbent holding a license or registration in an occupation regulated by law and college graduation is required to obtain the occupational license or registration.

There is no legal requirement that a Civil Engineer 1 incumbent have an occupational license or registration which requires college graduation. However, respondent does not require that an applicant for Civil Engineer 1 employment be a college graduate -- either a BSCE or EIT certification is required. Therefore, the requirement is not in violation of the literal language of the statute.

The second statutory provision that comes into play in this case is § 230.16(4), which provides:

All examinations, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements. (emphasis added)

In respondent's brief, it is contended that the BSCE or EIT certification requirements:

[A]re based on the opinions of job experts that they are job-related and establish a minimum level of training and experience required to perform the job. Both requirements have been approved by the Administrator as valid job-related requirements.

However, while there is no question but that both the BSCE and EIT requirements in and of themselves are valid criteria of the necessary training and experience minimums, that does not end the inquiry into whether the minimum training and experience requirements are "job-related in compliance with appropriate validation standards. . . ." This inquiry requires scrutiny into not only the specific training and experience criteria that qualifies people for employment, but also the kind of training and experience that are thereby excluded from employment. That is, it is necessary to scrutinize the obverse operation of the training and experience requirements,

and not just consider whether the people screened in are qualified. This point can be illustrated by an example.

If the state is staffing a position that requires use of a certain computer (e.g., IBM XYZ), the specific requirement of prior experience operating an IBM XYZ is in and of itself job-related. However, if this requirement arbitrarily excludes employees who have completely equivalent experience operating an IBM clone, then the requirement is not valid.

In the instant case, respondent's training and experience criteria are called into question by the very fact (see Finding #11) that anyone "can perform engineering duties under the direct supervision of a licensed professional engineer regardless of whether he or she has been certified as an EIT." Pursuant to § 443.04, Stats., ("Registration requirements for professional engineers."), a person can become a licensed professional engineer without either a BSCE or EIT certification. Such a person presumably would be unable to compete in respondent's examination for Civil Engineer 1 transportation because he or she lacks the specific requirements of a BSCE or EIT certification, notwithstanding that he or she is demonstrably qualified for such employment.

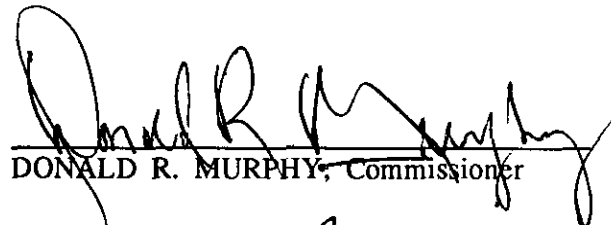
Since respondent's requirement of a BSCE or EIT certification for admission into the Civil Engineer 1 transportation exam violates § 230.16(4), Stats., respondent must either revert to the use of an "equivalent training and experience" requirement in addition to the BSCE and EIT requirements, and evaluate applicants on a case-by-case basis, or develop additional specific criteria so that the requirements for admission to this exam are not overly exclusive and appellant's training and experience can be properly evaluated in the future.

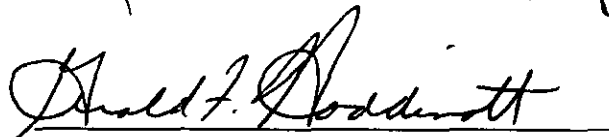
ORDER

Respondent's action of using the training and experience criteria of a BSCE or an EIT certification to deny appellant admission to the examination for Civil Engineer 1 Transportation is rejected and this matter is remanded for action in accordance with this decision.

Dated: March 9, 1990 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

AJT:rcr

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