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FRANK J. HINZE,

Complainant,

v.

Secretary, DEPARTMENT OF
 AGRICULTURE, TRADE AND
 CONSUMER PROTECTION,

Respondent.

Case No. 91-0085-PC-ER

* * * * *

DECISION
 AND
 ORDER

Nature of the Case

This is a complaint of discrimination on the basis of sex and age in relation to a hiring decision. A hearing was held on September 13, and 16, 1993, before Laurie R. McCallum, Chairperson. The parties were permitted to file briefs and the briefing schedule was completed on November 15, 1993.

Findings of Fact

1. In response to a new statutory mandate, three new positions were allocated to respondent for the regulation of automotive ozone-depleting refrigerant. One of these was a supervisory position and the other two were Regulation Compliance Investigator (RCI) positions.

2. The RCI positions were entry level positions with responsibility for investigation, inspection, enforcement, and compliance. The duties and responsibilities of these positions were accurately described in a position description signed by respondent's personnel manager on January 23, 1991, and may be summarized as follows, in pertinent part:

55% A. Enforcement of specific state regulations related to the manufacture, packaging, labeling, distribution, use, recycling and disposal of ozone-depleting refrigerants, including review of applications of businesses that recycle ozone-depleting refrigerants and businesses that service and repair mobile air

conditioners that contain ozone-depleting refrigerants to determine compliance with applicable standards; review of records of regulated businesses to determine accuracy of those records relating to sales and purchases of used and recycled refrigerants; conduct of random on-site inspections of the 12,000 or more regulated businesses to determine compliance with registration certificate posting requirement; review of applications of certified repair and recycling businesses to determine whether in compliance with standards for recycling equipment; review of applications of regulated recycling businesses for compliance with employee training requirements.

35% B. Development of compliance actions when investigation or inspection activities have disclosed possible violation of state law, including investigation of alleged violations; preparing written investigative report; issuing warning notices and conducting other enforcement actions; recommending enforcement action to supervisor.

10% C. Interpretation and dissemination of information on program requirements and procedures.

3. In view of the size of the new unit and the number of regulated businesses, it was obvious to respondent that compliance would most likely have to be obtained primarily through education of regulated businesses and their voluntary cooperation. As a result, respondent established the following hiring criteria for the new RCI positions listed in their order of relative importance: communication and conflict resolution skills which stressed education, persuasion, and conciliation; judgment and objectivity; ability to function as a member of a team, including cooperation, initiative, and flexibility; knowledge of investigative techniques; knowledge of ozone-depleting refrigerant program requirements; knowledge of the mechanics of refrigerant recovery; data collection; and knowledge of information entry, retrieval, and tracking on computer systems.

4. The recruitment for the two RCI positions was conducted in April of 1991 and was limited to state employees eligible for transfer into the positions. Six candidates, including complainant, were interviewed for the two RCI positions. The interview panel consisted of Merry Fran Tryon, Assistant Administrator of respondent's Division of Trade and Consumer Protection and Director of the Bureau of Consumer Protection; and Melanie Hayes, Madison Region Supervisor of respondent's Bureau of Consumer Protection, Division of Trade and Consumer Protection. The members of the interview panel asked the same questions of each candidate whom they interviewed.

5. Ms. Tryon and Ms. Hayes prepared a draft memo summarizing the interview process and results. This memo was subsequently dated April 26, 1991; signed by John Alberts, Administrator of respondent's Division of Trade and Consumer Protection; and directed to Cheryl Anderson, respondent's personnel manager. This memo stated as follows, in pertinent part:

Ms. Tryon and Ms. Hayes independently ranked the applicants for the position after all interviews had been completed. Following their recommendations, our first choice for one of the two available positions is Edward Anderson. Mr. Anderson has handicapped status. As an Audit Specialist with this department's Trade Division, Mr. Anderson has had considerable investigatory experience. He appears to be well-versed in fact gathering, interviewing methods, and report writing. He possesses strong communication skills which have served him well in establishing a rapport with regulated businesses. Mr. Anderson has received compliance training both within our department and from the Department of Justice. In addition, Mr. Anderson owned and operated a heating and air conditioning business in the past which has made him quite knowledgeable regarding air conditioning equipment and the business.

Our second choice for one of the two positions is Cathleen Anderson. Ms. Anderson is presently employed as a program assistant to the Director of Compliance within this department's Food Division. In this capacity, Ms. Anderson tracks licensing for the program using the computer and is currently developing a tracking system for pending prosecutions on the computer with assistance from the Legal Section. Although Ms. Anderson has no direct work experience in investigation, she has actively pursued a longstanding interest in the RCI position. Toward this end, she has requested and received compliance training through the department, accompanied investigators in the field to observe their techniques and procedures, and contacted present investigators to glean firsthand knowledge of the job. Finally, Ms. Anderson demonstrated tremendous initiative in contacting area air conditioning installers and repairers to research their equipment and business, in preparation for taking this interview and potential position.

Our third choice for the position is Mr. Frank Hinze. Mr. Hinze has had numerous courses in law enforcement training and impressed us with his knowledge of investigative procedures and his willingness to take the initiative and address problems as a team. However, we had some concerns about Mr. Hinze's communication style with regulated parties as surfaced in his responses to interview questions.

Our fourth choice was Ms. Jan Hopwood. Ms. Hopwood demonstrated team spirit and eagerness to work at challenges. However, her lack of knowledge regarding investigative

procedures and perceived reluctance to initiate actions without continually checking with a supervisor, surfaced as a deficiency.

Our fifth choice was Ms. Cheryl Herwig. She displayed some aptitude for investigation, but appeared to balk or display appreciable reluctance regarding travel on the job. We were not impressed by Ms. Herwig's responses to questions intended to gauge initiative. Ms. Herwig appeared to look to the supervisor for directives before exploring challenges that may confront her. Although we prefaced the interview by communicating the fact that this would be a new unit and as such, may not have a battery of policies and procedures developed initially, she assumed otherwise in her responses to our questions. She appeared to expect the supervisor to formulate policies and procedures without group deliberation.

Our last choice for the position was candidate Ruth Durkin. Although Ms. Durkin has worked as an RCI in the past with our department and demonstrated knowledge of investigative procedures, we were very disappointed with several aspects of her interview response. She displayed no real interest in assisting a potential co-worker as is required of a successful team member. Further, Ms. Durkin displayed the least amount of expertise in dealing with a regulated business in response to our hypothetical question. Instead of defusing our "volatile caller," she would have inflamed the situation with her response. We were flabbergasted with this due to the fact that Ms. Durkin is presently a Consumer Specialist with our department and should be well versed in techniques for dealing with an angry public. Finally, Ms. Durkin displayed an anemic initiative. Her responses to questions in this arena, disclosed a preoccupation with policies and procedures and an attendant penchant for faulting the supervisor or training, instead of exploring new job challenges either for herself or with peers.

6. The resume provided by complainant to respondent as part of the recruitment process for the two RCI positions indicates that complainant was then working as a Facilities Repair Worker 3 for the Department of Administration responsible for building and grounds maintenance and repairs under the direct supervision of a Building Superintendent; that, from November of 1974 to August of 1989, complainant was employed as a Building and Grounds Patrolman for Mendota Mental Health Institute responsible for providing protection and enforcing all relevant policies and regulations, patrolling buildings and grounds, enforcing parking and traffic regulations, escorting ambulance and fire rescue vehicles, making court appearances, assisting with combative patients, locating eloped or escaped patients, assisting with escorting new admissions to wards, conducting fire drills and safety inspections, photographing and fingerprinting forensic patients,

maintaining police reports and radio logs, assisting maintenance personnel and performing minor maintenance duties in absence of regular maintenance personnel; and that, from January of 1973 to November 1974, complainant worked as a Facilities Repair Worker at Mendota Mental Health Institute. This resume also indicated that complainant had completed an 8-week course at the MATC Police Academy; an 8-week course at Military Police School; and had completed in-service training at Mendota Mental Health Institute including a 40-hour law enforcement refresher course in January of 1982, a 12-hour course on defense, proper stopping techniques, and citation writing in February of 1982, and other courses on fingerprinting, photographing, handcuffing, night stick use, criminal law, and traffic investigation. Complainant's resume also indicated that his date of birth was December 4, 1944.

7. Prior to his interview, complainant initiated two or three conversations with Ms. Tryon. Ms. Tryon encouraged complainant to compete for the two RCI positions but did not tell him that he was going to be one of the successful candidates. Complainant told certain of his co-workers after these conversations but before his interview that Ms. Tryon had promised him one of the RCI positions, that the interview would be just a formality, and that he had bought some new suits in anticipation of being appointed to one of the RCI positions. Complainant's statements to this effect were relayed to Ms. Tryon and Ms. Hayes prior to the subject interviews. Ms. Tryon and Ms. Hayes were concerned about this and discussed it with Ms. Cheryl Anderson.

8. It was the opinion of both Ms. Tryon and Ms. Hayes, as the result of their interviews of the candidates, that complainant's communication and conflict resolution style was less persuasive and conciliatory than that exhibited by Mr. Anderson and Ms. Cathleen Anderson. During his interview, complainant described his law enforcement training, his report-writing responsibilities in previous jobs, and indicated he did not have computer skills or training. Although the interviewers' notes do not indicate that complainant discussed during his interview his experience with ozone-depleting refrigerants such as freon, such experience consisted of assisting a steamfitter, during complainant's employment as a Facilities Repair Worker, in installing freon in an air conditioning unit on a few occasions; and assisting another person in installing freon in complainant's refrigerator on a single occasion. Complainant had no knowledge or experience with refrigerant

recycling equipment. Complainant had prepared for his interview by reading the RCI position description and by reading a summary of the statute creating the ozone-depleting refrigerant regulation program.

9. The resume provided by Ms. Cathleen Anderson to respondent as part of the recruitment process for the two RCI positions indicates that Ms. Cathleen Anderson was then working for respondent providing program support to the Food Division's Meat Inspection Licensing and Compliance program and was responsible for preparing compliance reports, including summaries of pending prosecutions, file system development and maintenance, extensive communication with the general public and other enforcement agencies, and was required to have a working knowledge of all Food Division program areas; that Ms. Cathleen Anderson, from December of 1985 to May of 1990 had held various program support positions in state government which required extensive computer knowledges and skills and which, in addition to general program support responsibilities, involved data input, retrieval, and compilation, and providing program information to the public and other agencies; and that, for 10 years, she had run a farming business. Ms. Cathleen Anderson's resume also indicated that she had completed the DATCP Compliance Course and had participated in DATCP investigative field work.

10. During her interview, Ms. Cathleen Anderson indicated that her career goal was to be an RCI; that, in preparation for the interview and on her own initiative and her own time, she had contacted a service station and spent four hours there learning more about mobile air conditioning and refrigerant recycling practices and equipment; had contacted a heating and air conditioning business and spent two hours there learning about HVAC (heating, ventilating and air conditioning) systems and practices; had met with the drafter of respondent's administrative rule regulating the program to which the RCI positions would be assigned; and brought the documents she had acquired as the result of these activities to the interview with her. Ms. Tryon and Ms. Hayes were also aware that Ms. Anderson had asked to accompany one of respondent's senior investigators on his field investigations.

11. At hearing, Ms. Hayes and Ms. Tryon testified that they formed their opinion that Ms. Cathleen Anderson exhibited a more persuasive and conciliatory communication style and better conflict resolution skills in her answers to interview questions than did complainant based on the candidates' answers to questions number 2 and 3. Question number 2 was as follows:

You receive a telephone call from a farm implement dealer who also has a service shop that installs and repairs air conditioners in tractors. As such, his business is regulated by law. He is calling to protest the \$80 licensing fee he must pay to the department. He is extremely angry and defensive. It becomes apparent that his business employees and equipment are not in compliance with the law. He adds that he can name several other businesses that are not in compliance either and he wants to know why the state is picking on him. What do you say or do?

Question number 3 was as follows:

During the on-site compliance inspection at a motor vehicle repair shop, you discover the shop regularly does a high volume of air conditioning work on cars yet has not obtained the required license. You inform them of their responsibility, provide them with a copy of the law, and review it in its entirety with them. They claim they never received any notice from the department advising them of the new regulation. One year later you receive a telephone oral complaint from their competitor alleging they are in violation of our law. You are not aware of any clear procedural guidelines or precedent for this situation. How would you respond?

12. Ms. Tryon's notes of complainant's answer to question number 2 are as follows:

Ask for names of other places that you're describing. This is the law, we need your cooperation. We have problems with ozone and we're not trying to pick on you. He has to follow the rules. Try to calm him down. Tact is a big part. Get him calmed down. Defuse the situation. If you're calm, they'll calm down--touchy situation--you have to do the best you can. Try to talk to person, use a little "B.S." and let him know you're just trying to do the job.

Ms. Hayes' notes of complainant's answer to question number 2 are as follows:

Get names of other businesses alleged to be violating, explain law, ozone depletion, purpose of our job and the law, use tact, ask for his cooperation, explain law, mainly calm him down and explain problem. Defuse the situation. You must remain calm yourself.

13. Ms. Tryon's notes of Ms. Cathleen Anderson's answer to question number 2 are as follows:

Be patient in listening to his concerns. Explain why we have regulations and how beneficial to all including environment. Jot down notes of who he says not in compliance so can visit and educate them. Give business information that it needs.

Ms. Hayes' notes of Ms. Cathleen Anderson's answer to question number 2 are as follows:

Patient in listening to his concern. Explain reason for regulation--beneficial to him and everyone, environment. Take notes on others reputedly not in compliance. Check them on-site and educate them as well. Provide him with information from department on compliance.

14. Ms. Tryon's notes of complainant's answer to question number 3 are as follows:

? Follow up--go see fellow that complaint filed against. Give time by which he'd have to comply. Get back with person who made the call and advise him of action taken.

Ms. Hayes' notes of complainant's answer to question number 3 are as follows:

Go and see business that is alleged to be violating law. Give him time specifically within which to comply. Follow up. Either write letter or fine business as appropriate.

15. Ms. Tryon's notes of Ms. Cathleen Anderson's answer to question number 3 are as follows:

Talk to and educate him about need for \$80 fee and he would be in violation. Warning letter, forfeiture, fine of \$50-\$1000. After phone call, go back to business, find out why he hasn't complied--may issue warning letter, further violations forfeiture, etc. (progressive).

Ms. Hayes' notes of Ms. Cathleen Anderson's answer to question number 3 are as follows:

Educate him about the \$80 fee and if not certified possible ramifications, warning letter, fine of \$50 to \$1000. Call year later--reported violation/return to shop, check on it, educate again, possible w/l or civil forfeiture commenced depending upon procedures in place.

16. Ms. Tryon's notes of Ms. Cathleen Anderson's interview indicate "Listening skills?" next to question number 11.

17. During his interview, complainant interrupted the questioner on one occasion before she had finished asking the question.

18. Mr. Anderson's date of birth is February 6, 1944.

19. Mr. Anderson and Ms. Cathleen Anderson were offered and accepted the subject RCI positions.

Conclusions of Law

1. This matter is appropriately before the Commission pursuant to §230.45(1)(b), Stats.

2. The complainant has the burden to show that he was discriminated against on the basis of his age or his sex when he was not hired for one of the subject RCI positions.

3. The complainant has failed to sustain this burden.

Opinion

The issue before the Commission and to which the parties agreed is:

Whether respondent discriminated against complainant on the basis of sex or age when they did not select complainant for a Regulation Compliance Investigator 1 position in May, 1991.

Under the Wisconsin Fair Employment Act (FEA), the initial burden is on the complainant to show a prima facie case of discrimination. If complainant meets this burden, the employer then has the burden of articulating a non-discriminatory reason for the actions taken which the complainant may, in turn, attempt to show was a pretext for discrimination. See McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 5 FEP Cases 965 (1973); and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 25 FEP Cases 113 (1981).

In the instant case, complainant has shown that he is protected under the FEA on the basis of his sex and his age and that he was qualified for the subject RCI positions. Complainant has also shown that one of the successful candidates is female and, although he failed to show what her age was at the time of the RCI hires under consideration here, it will be presumed from her appearance, as observed at hearing by the hearing examiner, that she was under the age of 40 in April of 1991. Complainant has, therefore, made out a prima facie case of age and sex discrimination in regard to the hire of Ms. Cathleen Anderson. In regard to the hire of Mr. Anderson, however, the record shows not only that Mr. Anderson is also a male but that he and complainant were the same age in April of 1991 and, in the absence of any evidence that respondent presumed or had a basis for presuming that complainant was older than Mr. Anderson, the Commission concludes that complainant has failed to make out a prima facie case of sex or age discrimination in regard to the hire of Mr. Anderson.

Respondent's proffered rationale for hiring Ms. Cathleen Anderson instead of complainant is that, in the opinion of the interviewers, Ms. Cathleen

Anderson's communication and conflict resolution skills were more persuasive and conciliatory than complainant's; that her preparation for the interview, interest in the position, regulatory program experience, and initiative were superior to complainant's; and that complainant, although having more investigatory experience than Ms. Cathleen Anderson, had this experience in the law enforcement, not the regulatory, area; and had not shown good judgment in comments he had made relating to his prospects for obtaining one of the RCI positions prior to the interviews. On its face, this rationale is legitimate and non-discriminatory.

The burden then shifts to complainant to demonstrate pretext. In his post-hearing brief, complainant contends that his investigatory experience and experience with refrigerants made him a clearly better qualified candidate than Ms. Cathleen Anderson for the RCI positions, i.e., complainant "was a superbly well-qualified white male" who was "dumped in order to hire an unqualified white female;" and complainant "already possessed all the background training and skills necessary for the job" and "had already been a de facto RCI." These are obvious overstatements of complainant's relevant qualifications and the superiority of these qualifications to those of Ms. Cathleen Anderson. First, although complainant had investigatory experience in law enforcement and security, his resume does not indicate that this was the focus or even a significant aspect of his previous work experience or training. In addition, complainant did not show that the law enforcement or security investigatory work he had performed mirrored to any significant degree the type of investigatory work involved in a regulatory program such as the ozone-depleting refrigerant program involved here. Furthermore, it is apparent from the record that investigative experience, even directly relevant investigative experience, was not considered as the sole or overriding hiring criterion. For example, even though candidate Ruth Durkin had experience as an RCI, she was ranked last by the interviewers due to the poor communication, cooperation and conflict resolution skills, and inadequate initiative she displayed during her interview. Finally, in view of Ms. Anderson's program experience in a compliance unit of one of DATCP's regulatory programs, her completion of the DATCP compliance training, and her participation in DATCP field investigative work, the record shows that Ms. Anderson's regulatory program experience was more extensive and more directly relevant than complainant's; and her investigative training and

experience, although not as extensive as complainant's, was more directly relevant to the duties and responsibilities of the RCI positions than complainant's.

Complainant also failed to show that the interviewers should have concluded that his familiarity with or work with ozone-depleting refrigerants was superior to complainant's. The record shows that complainant had on a few occasions assisted a steamfitter in installing freon in an air conditioning unit as part of his Facilities Repair Worker duties, had on one occasion assisted another individual in installing freon in complainant's personal refrigerator, and had no experience with refrigerant recycling equipment. Ms. Cathleen Anderson had received six hours of self-initiated training not only in the general area of HVAC equipment and practices but also relating to mobile air conditioners and refrigerant recycling equipment which would be the primary focus of the refrigerant-related responsibilities of the RCI positions. It is certainly arguable that Ms. Anderson's familiarity and training in this area is more relevant than complainant's to the positions under consideration. In addition, Ms. Cathleen Anderson discussed the refrigerant-related training she had undertaken and completed during her interview but the record does not show that complainant discussed his experience in this area during his interview or noted it in his resume.

Complainant has failed to show that his investigatory and refrigerant-related experience rendered him a more qualified candidate for the subject RCI positions than Ms. Cathleen Anderson.

Complainant also appears to argue that respondent relied too heavily on hiring criteria such as communication skills, conflict resolution skills, judgment and objectivity, teamwork and initiative, and computer skills in view of the duties and responsibilities of the RCI positions; that these criteria were not applied uniformly to the candidates; and that the scoring of these factors did not accurately reflect the actual performance of the interview candidates. However, the record shows that respondent would be required, in view of program resources, to rely primarily on voluntary compliance in its regulation of ozone-depleting refrigerants, and it is obvious that communication and conflict resolution styles which emphasized education, persuasion, and conciliation would be desirable, if not necessary, attributes for an RCI to possess in order for such voluntary compliance to be achieved. In addition, objectivity, judgment, initiative, and teamwork skills would be

necessary attributes for any position functioning as a part of a regulatory team required to fairly assess whether regulatory requirements have been met and to work independently to service a large number of regulated businesses. Clearly, these criteria are job-related for the RCI positions at issue here. In addition, it would appear to be justified for respondent to rely heavily on these criteria when assessing candidates, such as complainant and Ms. Cathleen Anderson, who did not possess a significant amount of directly relevant experience.

Complainant argues further that these criteria were not applied accurately or uniformly. Complainant relies primarily on the fact that the interviewers' notes did not mention his communication skills or how they compared to those of the other candidates, and that it was contrary to the requirements of the civil service hiring process to rely on subjective criteria or on information obtained about a candidate outside the exam or interview process. First of all, it would not be practical or possible for an interviewer to memorialize, as the interview process is ongoing, each observation or impression about a candidate or each opinion about how two candidates compare. As a result, it is not surprising that the interviewers' notes under consideration here do not specifically articulate an impression as to the quality of complainant's communication or conflict resolution skills or how they compare to those of Ms. Cathleen Anderson. The notes made by the interviewers do, however, allow us to compare the content, if not the manner of presentation, of the candidates' answers to questions number 2 and 3, i.e., the questions the interviewers testified led them to conclude that Ms. Cathleen Anderson exhibited a more persuasive and conciliatory and education-oriented communication and conflict resolution style than complainant. In comparing the answers to question number 2, it is apparent that both complainant's and Ms. Anderson's answers have an educational emphasis. However, complainant's answer appears to present a more heavy-handed approach to enforcement ("This is the law. . . . He has to follow the rules") and a less constructive approach to conflict resolution (" . . . use a little 'B.S.' and let him know you're just trying to do the job.") In regard to the answers to question number 3, it is apparent that Ms. Tryon had a question about complainant's answer. It is also apparent that complainant took a strictly enforcement approach to the situation and that Ms. Anderson offered an educational approach combined with a more gradual or progressive enforcement

approach if voluntary compliance was not achieved through education. As a result, the answers to both questions, which complainant has not shown were not accurately represented in the notes of the interviewers, are consistent with the opinion of the interviewers that Ms. Anderson presented a more persuasive and conciliatory and education-oriented communication and conflict resolution style than complainant. As discussed above, this was the style that respondent was looking for in a candidate and was consistent with the demands of the two RCI positions. It is also respondent's position that the interview presentations of the candidates demonstrated that Ms. Cathleen Anderson's preparation for the interview, interest in the position, and initiative were superior to complainant's. The record shows that respondent had a justifiable basis for reaching this conclusion based on the fact that Ms. Cathleen Anderson had asked for and received investigatory training, had initiated discussions with the drafter of the relevant administrative rule, had requested training and information from private businesses, and had shared this with the interviewers. In contrast, complainant had prepared for his interview by reading the RCI position description and a summary of the enabling statutory language. Complainant has failed to show that the application of the hiring criteria to the candidates by the interviewers did not accurately reflect the interviewers' actual impressions at the time or the information available to the interviewers at the time.

In addition, if, in fact, the civil service process required that only criteria susceptible to an objective grade or score be used, the civil service process would not incorporate an opportunity for the appointing authority to conduct personal interviews, and hiring decisions would be based solely on a comparison of grades received on objective exams. One of the purposes of personal interviews of candidates is to subjectively assess each candidates' communication skills, enthusiasm, etc., and the record reflects that that is precisely what respondent utilized the interview process for in this case.

Finally, most employers regard a candidates' work history, including personal characteristics observed by an employer during the candidate's performance of his or her work responsibilities, as one of the primary indicators of his or her likely success in a position. As a consequence, it is routine for employers to solicit and rely on this type of information in making a hiring decision and complainant has failed to show that it is contrary to civil service hiring requirements to do so. This information may be considered to

be outside the scope of the exam and interview process per se but it is also clearly relevant to the hiring decision. In this case, each of the candidates was already employed within state service and most of them were already employed by respondent. As a consequence, respondent's knowledge of each candidates' work history and work performance and of the personal characteristics exhibited by each candidate in the performance of his or her work responsibilities would be relevant to the hiring decision. The fact that complainant, while employed in a position located at respondent's headquarters building, indicated to others that he presumed that he would be hired for one of the RCI vacancies and that his interview would be just a formality, was relevant to considerations of his judgment and objectivity and listening skills and respondent was justified in considering this information just as respondent considered information relating to other candidates which it had gleaned from their employment histories.

Complainant has failed to show that the reasons offered by respondent for selecting Ms. Cathleen Anderson instead of complainant for one of the subject RCI positions constituted a pretext for discrimination.

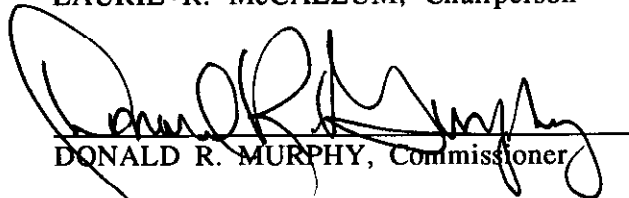
Order

This complaint is dismissed.

Dated: December 28, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the

Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)