

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DIANNE REYNOLDS, Appellant,

vs.

Secretary, **DEPARTMENT OF WORKFORCE DEVELOPMENT**, Respondent.

Case 9

No. 66159

PA(sel)-32

Decision No. 32291

Appearances:

Dianne E. Reynolds, appearing on her own behalf.

Howard Bernstein, Legal Counsel, Office of the Secretary, Wisconsin Department of Workforce Development, 201 East Washington Avenue, P.O. Box 7946, Madison, Wisconsin, 53707-7946, appearing on behalf of the Wisconsin Department of Workforce Development.

FINAL DECISION AND ORDER

On August 3, 2006, Appellant Dianne E. Reynolds (herein Ms. Reynolds) filed a timely appeal of the Department of Workforce Development's (herein DWD) decision not to select her to fill the position of Director of the Bureau of Wisconsin Works (W-2) thereby invoking the jurisdiction of the Wisconsin Employment Relations Commission (Commission) under Sec. 230.44(1)(d), Stats. The basis for the appeal was the allegation that the DWD acted illegally and abused its discretion when it failed to place her in the aforesaid position. The Commission designated Steve Morrison, a member of its staff, as Hearing Examiner. The Examiner held a hearing on August 8, 2007 at the office of the Commission. The parties agree that the issues before the Commission may be stated as follows:

Whether the Department of Workforce Development committed an illegal act or an abuse of discretion in not hiring the Appellant for the position of Director of the Bureau of Wisconsin Works within the Division of Workforce Solutions, Department of Workforce Development.

The parties completed post hearing briefs on October 20, 2007.

The hearing examiner issued a proposed decision on December 13, 2007. No objections were filed by the requisite due date of January 13, 2008.

No. 32291

Being fully advised in the premises, the Commission now makes the following

FINDINGS OF FACT

1. At the time of the events which led to this action, Ms. Reynolds was employed as a Section Chief, Workforce Investment Act Section, Bureau of Workforce Programs, Division of Workforce Solutions. She had held that position since June, 2004. From 1998 thru June, 2004, Ms. Reynolds was a Section Chief, Workforce Policy and Program Development, Bureau of Workforce Programs, Division of Workforce Solutions (formerly Economic Support). She was an acting supervisor with the Regulatory Analysis and State Plan Unit, Bureau of Welfare Initiatives from July, 1997 to December, 1998; a Welfare Reform Legislative Liaison from November, 1993 to March, 2000; and a Welfare Initiatives Administrative Rules Coordinator from November, 1984 thru November, 1993. Ms. Reynolds holds a B.S. degree in Secondary Education and a Masters degree in Library Science.

2. DWD is an agency of the State of Wisconsin. It includes the Bureau of Wisconsin Works, also known as W-2, within its Division of Workforce Solutions. W-2 is Wisconsin's welfare reform program which holds participants responsible for certain hours of scheduled activities and work readiness training in return for financial assistance and help in obtaining regular employment. The program is administered throughout the State through various contracts with independent contractors. W-2 is responsible for supervising these contractors, providing training for staff and contractors, and administering established policies of Workforce Solutions.

3. In April of 2006 the position of Director for W-2 became vacant. Eleven applicants, including Ms. Reynolds, participated in the first round of interviews which were conducted on June 26 and 27, 2006. The applicants responded to benchmarked questions which related to their management experience, ability to communicate program improvement strategies and to their knowledge of economic and labor market information. These interviews were conducted by a panel of four senior staff members. They were JoAnna Richard, Deputy Secretary of the DWD; Ron Hunt, Deputy Administrator of the Division of Workforce Solutions; Sheila Knox, Milwaukee District Director for the State Job Service Bureau; and Elizabeth Green, Director of the Dane County Department of Human Services. Following the first round of interviews the panel selected four applicants which they deemed to be qualified for the position. Ms. Reynolds was among the four finalists and was considered by three of the panel members to be "well qualified", while the fourth panel member, Sheila Knox, found her to be "qualified." Janice Peters, another of the four finalists, was also considered to be "well qualified" by the same three panel members who had found Ms. Reynolds to be "well qualified", and "qualified" by Sheila Knox.

4. The four qualified candidates were interviewed a second time by the Administrator of the Division of Workforce Solutions, William Clingan. Prior to the second interview Administrator Clingan received the resumés, application letters and references of each finalist. The record is not clear as to the date of the second interviews but does indicate that they took place sometime after June 27, 2006 (the second date of the initial interviews) and prior to July 7, 2006 (the date of Mr. Clingan's hiring recommendation).

5. Administrator Clingan prepared the questions for the second interviews. They included benchmarks indicating what he was looking for from each candidate. The questions and benchmarks were:

1. Tell me about yourself? Why do you want this particular job and how do your skills and experience relate?

- Candidate's command of their resumé and degree of qualifications for the position
- To get to unknown qualities of candidate not necessarily on their resumé
- Get at candidate's agenda
- Get at how much thought has gone into the application
- Get at whether candidate has every (sic) worked in providing direct service in an employment and training program
- Get at candidate's knowledge of what this job really is and is not
- Get at if there is a good match between candidate's skills/experience and the nature of the job
- Get at if this job is part of a particular career path

2. What do you see as the primary focus of the Bureau Director?

What do you want to accomplish in this position during the next 3-5 years?

- Get at candidate's core focus (does candidate's focus align with this job)
- Get at candidate's realistic appraisal of the range of the current duties of the W-2 Bureau Director (personnel, policy development, communications with external parties, communication with W-2 providers, operational aspects, IT involvement, relating to the broader public workforce world)

- Get at candidate's notion of where they want to see the position go and what aspirations they might have (connection between personal career aspirations and this particular job)
 - Get at ideas the candidate might have for program improvements (familiarity with the job, with the W-2 program, open to innovation, ideas on direction and how to push an agenda)
3. A primary focus of the W-2 program is to connect individuals to the workforce and increase their financial well being. What changes would you recommend to make progress in this direction? Please be specific in your recommendations for change.
- Get at candidate's knowledge of the W-2 program (does candidate know the W-2 program, specific policies as they relate to work activities, training that is allowed and not allowed, eligibility/participation requirements, before a candidate can recommend improvements they would need to have knowledge of the existing program)
 - Get at knowledge of candidate concerning public workforce system and how it relates to this question (Job Centers, WIA, DVR, employers relating to the public workforce system, etc.)
 - Get at candidate's knowledge of specific workforce strategies to improve W-2 (customized training, CSJ work experience, CSJ work experience at an employer, being part of the Job Center business services team, employer involvement, job development/placement strategies, career ladders, links to WIA sponsored training, dual enrollments in programs and service integration, role of training, career counseling, role of IT-CARES/ ASSET/ Job Net/WorkNet, etc.)
4. The W-2 customer is part of a much larger labor market and world, some of which pertains to the W-2 program and much of which does not. Likewise, the W-2 program is part of a larger workforce world. Describe this world and the interrelationships with W-2.

- Get at candidate's knowledge of public workforce system (WIA, Job Centers, IT-CARES/Job Net/WorkNet, labor market information, etc.)
- Get at candidate's knowledge of private economy and our relationship to it (appreciation that employers hire our customers and our need as a system to relate to the employer community, how does W-2 relate to employers, etc.)
- Get at candidate's knowledge of IM/child welfare and other social services and how they relate to W-2 (what are the obvious linkages, service integration potential/issues, importance of connecting to a variety of services and resources)
- Get at the candidate's views of what are the limits of the W-2 program vs. everything else (candidate's ability to relate items but also the ability to differentiate W-2 responsibilities vs. other issues, perceiving W-2 as one program that is part of an answer to larger societal issues but not the only answer to those issues, understanding of what are real legal limitations of a program vs. policy and where is latitude)

6. Administrator Clingan made extensive notes during the course of the finalists' interviews and penned those notes on the face of the sheets of paper containing the questions. Each candidate was asked to respond to the same questions. Following each interview Administrator Clingan rated the candidate's responses to each question as "well qualified", "qualified" or "not qualified." He rated one of the candidates as "qualified" regarding question number 1, and "not qualified" regarding questions 2, 3 and 4. A second candidate was rated as "well qualified" regarding questions 1 and 2, and "qualified" regarding questions 3 and 4. Ms. Reynolds was rated as "well qualified" regarding question number 1 and "qualified" regarding questions 2, 3 and 4. The successful candidate, Janice Peters, was rated "well qualified" regarding each of the four questions.

7. The standards set forth in Finding of Fact number 5 were all job-related and represented a neutral method of evaluating the four candidates and were consistent with DWD hiring policy and practice.

8. Following the interviews, the Administrator checked some, but not necessarily all, of the references provided by each candidate and made notes on the face of the first page of each candidate's interview packet.

9. On July 7, 2006 Administrator Clingan submitted his hiring recommendation. Based upon his interviews, reference checks, the fact that he determined that Janice Peters had provided the best overall responses to his interview questions, and the fact that she had received a “well qualified” evaluation in all respects, he recommended Janice Peters to fill the position of the W-2 Bureau Director. His recommendation read in relevant part:

SECTION D: Hiring Justification (to be completed by the supervisor).

1) Describe the reasons for selecting the successful candidate over the other candidates:

The breadth and depth of Ms. Peters’ knowledge and comprehension of employment and training/workforce development programs surpassed that of all the other candidates interviewed. Her leadership and management experience of statewide employment and training/workforce development programs and her leadership and management experience of planning and policy development for statewide employment and training/workforce development programs, services and service delivery systems exceeded that of all the other candidates.

Administrator Clingan’s recommendation was accepted and Ms. Peters was awarded the position of W-2 Bureau Director.

Based on the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. The Commission has authority to review non-selection decisions in the State civil service pursuant to Sec. 230.44(1)(d), Stats.
2. Ms. Reynolds has the burden to establish that DWD acted illegally or abused its discretion when it decided not to hire her for the position of W-2 Bureau Director.
3. Ms. Reynolds has failed to sustain her burden of proof.
4. DWD did not act illegally or abuse its discretion when it did not select Ms. Reynolds for the position of W-2 Bureau Director.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission issues the following

ORDER¹

This matter is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of February, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J.M. Bauman /s/

Susan J.M. Bauman, Commissioner

¹ Upon issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

Department of Workforce Development (Reynolds)

MEMORANDUM ACCOMPANYING FINAL DECISION AND ORDER

This case is before the Commission under authority provided in Sec. 230.44(1)(d), Stats., on the basis of Ms. Reynolds' allegation that DWD's failure to select her for the position of W-2 Bureau Director violated the law and/or was an abuse of discretion. Section 230.44(1)(d), Stats., provides, in relevant part:

A personnel action after certification which is related to the hiring process in the classified civil service and which is alleged to be illegal or an abuse of discretion may be appealed to the Commission.

In DEPARTMENT OF CORRECTIONS (ZEILER), DEC. NO. 31107-A (WERC, 12/04), the Commission applied the following interpretation of the term "abuse of discretion":

An "abuse of discretion" is "a discretion exercised to an end or purpose not justified by, and clearly against reason and evidence." As long as the exercise of discretion is not "clearly against reason and evidence," the Commission may not reverse an appointing authority's hiring decision merely because it disagrees with that decision in the sense that it would have made a different decision if it had substituted its judgment for that of the appointing authority. (Citations omitted.)

We are satisfied that the reason Ms. Peters was selected over Ms. Reynolds was the fact that Ms. Peters demonstrated a greater breadth and depth of knowledge and comprehension of employment/workforce development programs than did Ms. Reynolds; that Ms. Peters' leadership and management experience relating to statewide employment and training/workforce development programs exceeded that of Ms. Reynolds; and that Ms. Peters' leadership and management experience in the area of planning and policy development for statewide employment and training/workforce development programs, services and service delivery systems exceeded that of Ms. Reynolds.

1. Violation of Law

Ms. Reynolds alleges that the hiring process used in this case violates State law. She maintains that because Administrator Clingan failed to follow State and DWD rules and policies governing the hiring process, this constitutes a violation of Secs. 230.05 and 230.06, Stats. Because Ms. Reynolds appears to argue that Administrator Clingan has violated state and DWD rules and policies relating to "merit and fitness" the Commission believes she is actually referring to Sec. 230.15 and 230.16, Stats., which reference "merit and fitness". The "merit and fitness" reference in Sec. 230.15(1), Stats., relates to civil service examinations, rather than selection decisions. Section 230.16, Stats., also applies to civil service examinations.

See DWD (JUNCEAU), DEC. NO. 32050 (WERC 8/07). Thus, Ms. Reynolds' reliance (by implication) upon these two statutes is misplaced and is not material to this appeal. Aside from her implied references to Sec. 230.15 and Sec. 230.16, Stats., Ms. Reynolds has failed to cite any other provisions of the civil service law or corresponding administrative rules of the Director of the Office of State Employment Relations or the Administrator of the Division of Merit Recruitment and Selection which were allegedly violated. She refers to the reorganization of the Division of Workforce Solutions in 2004 and seems to suggest that the reorganization and the events surrounding it were illegal. The 2004 reorganization is outside the scope of this appeal. Consequently, we find no violation of law and will address her allegations of abuse of discretion below.²

2. Abuse of Discretion

Ms. Reynolds contends that Ms. Peters' hire was influenced by personal prejudice against Ms. Reynolds and a bias favoring Ms. Peters. According to Ms. Reynolds, Administrator Clingan had "pre-selected" Ms. Peters. She reaches this conclusion by referring to a series of actions beginning in 2004 surrounding the reorganization of the Division of Workforce Solutions. This reorganization resulted in the creation of the Bureau of Wisconsin Works (W-2), at which time Administrator Clingan declined to move Ms. Reynolds into the W-2 Bureau. Ms. Reynolds asserts that he made this move without giving her a "satisfactory explanation." Following the reorganization, Ms. Buckwalter became the W-2 Bureau Director and was subsequently moved from that position. This move, according to Ms. Reynolds, made it clear that Administrator Clingan "sought to promote Peters" by opening the position up and placing Ms. Peters in a situation to occupy it. The foregoing, says Ms. Reynolds, constitutes an abuse of discretion. The record does not support this conclusion. Administrator Clingan testified credibly that this was not the case and, in fact, he did not ask Ms. Peters to apply for the position nor did he know who, if anyone, had. Further, he testified that he had never discussed the position with Ms. Peters prior to the final interviews. Ms. Reynolds asserts that it was clear to her that Administrator Clingan "preferred to work directly with Peters in her role as Unit Supervisor under Reynolds' supervision."

In her attempt to further support her allegations of pre-selection, and thus, abuse of discretion, Ms. Reynolds sets forth her extensive experience in many of the areas relating to the position of W-2 Bureau Director and compares her experience to that of Ms. Peters. She attempts to demonstrate that her experience is greater than that of Ms. Peters and concludes that because she was not given the position over Ms. Peters this constitutes proof of pre-selection and abuse of discretion. It does not. Even though Ms. Reynolds may have had more experience than Ms. Peters, this is not the standard by which this appeal is judged and her non-selection on that basis is not an abuse of discretion.

² The Commission has deleted one sentence from this paragraph and replaced it with the remainder of this footnote which more clearly explains Appellant's arguments.

In her post-hearing written submissions Ms. Reynolds included a number of arguments under the heading of "Illegal Acts" that actually relate to her view that the selection decision was an abuse of discretion.

Ms. Reynolds points to the fact that Administrator Clingan failed to contact all of her references before making his decision to hire Ms. Peters. This, she says, is further evidence of his bias toward Ms. Peters and his predisposition not to hire Ms. Reynolds. The Commission is aware of no law or policy requiring a hiring authority to check all references and Ms. Reynolds has failed to provide any authority for such a conclusion. Further, the Commission cannot draw the conclusion from this record that Administrator Clingan's failure to check all of Ms. Reynolds' references indicated a bias in favor of Ms. Peters, as Ms. Reynolds suggests it does. The Administrator checked two of the four references she provided and testified credibly that he called the others and they failed to respond to his request. The record does not refute that testimony. Additionally, Ms. Peters' reliance on the case of *JACOBSEN VS. DILHR*, Case No. 79-28-PC (Pers. Comm. 4/10/81) is misguided. That case is distinguishable from the present case. In *JACOBSEN*, the question concerning the appellant was her reputation for negative behavior and poor judgment. The interviewer failed to check the reference of her current supervisor and elected to check only that of a past supervisor. The Commission found that the appointing authority was so influenced by the negative opinions of the appellant that it ignored taking a reference from her current supervisor and that this was an abuse of discretion. There is no parallel activity here.

In short, the only suggestion of pre-selection or pre-disposition not to select Ms. Reynolds comes not from the record evidence, but from conjecture and supposition put forth by Ms. Reynolds herself. The record clearly reflects that the process employed in the hiring of Ms. Peters was honest, fair and entirely consistent with the policies and rules applicable thereto.

Ms. Reynolds also asserts that Administrator Clingan was biased against her because Ms. Peters was in a position to work directly with him in the program and would have an advantage over her in answering the questions. There is no evidence that Administrator Clingan formulated the final interview questions in a way which might favor Ms. Peters and handicap Ms. Reynolds. The mere fact that one candidate is more knowledgeable about the subject matter during an interview, or interviews more effectively than another candidate, does not prove bias.

All eleven initial applicants were interviewed by an unbiased panel of qualified people, which did not include Administrator Clingan, and all were given the same opportunity to qualify as finalists. Both Ms. Peters and Ms. Reynolds were among those the panel deemed qualified to move on to the next interview. For all Administrator Clingan knew, Ms. Peters could have been eliminated after the initial interview. Administrator Clingan's interview of the final four candidates fails to demonstrate bias in favor of either Ms. Peters or Ms. Reynolds. On the contrary, his notes, taken during the interview, were extensive relative to all four candidates, including Ms. Reynolds, and demonstrate his intention and attempt to evaluate each candidate on her merits. Ms. Reynolds' assertion that Administrator Clingan's failure to contact all of her references, especially that of Jean Rogers (a past supervisor who had been moved to Wausau with the Division of Vocational Rehabilitation), proves a clear bias against her is not supported by the record. The record *does* support the conclusion that the entire

hiring process, including the final interview with Administrator Clingan, was fair and unbiased. Regarding the reference check of Jean Rogers, Administrator Clingan testified credibly that he attempted to contact her but she was out of town or simply failed to return his call. He attempted to contact her on more than one occasion. In *MATAKAS V. DOC*, Case No. 99-0088-PC (Pers. Comm. 4/19/2000), the Commission rejected the candidate's argument that the employer acted improperly by not contacting his listed references. Ms. Peters inferred that Administrator Clingan had been in a hurry to appoint Ms. Peters and that this was the reason he failed to contact all of her references. The record does not support such a conclusion. It *does* support Administrator Clingan's testimony that the hiring process, including his final interview, was done according to appropriate standards and that his desire to fill the position related to the fact that this was a complex and sensitive position and he wanted to fill it as soon as possible. In that vein, he made every effort to facilitate the process while maintaining strict hiring protocol and a fair process. Consequently, the Commission finds no abuse of discretion based on bias against Ms. Reynolds or in favor of Ms. Peters.

We now turn to the allegation that DWD abused its discretion in the final selection process. Ms. Reynolds cites her extensive experience and long work history with state government suggesting that this proves she was more qualified than Ms. Peters and, consequently, should have received the position. She argues that, because Administrator Clingan failed to hire her "given the respective qualifications of Peters and Reynolds", this shows that the failure to hire her was "clearly against reason and evidence." This is not the method of analysis the Commission applies to non-selection cases, however. The Commission views all four final candidates to be qualified for the job. It is not disputed that Ms. Reynolds was highly qualified but the Commission is not vested with the authority to substitute our determination of qualifications over that of the hiring authority, even though we may believe that the individual not selected was more qualified than the person selected and even though we would have made a different decision. The Commission may not reverse an appointing authority unless its hiring decision was clearly against reason and evidence. Here, it was not.

Ms. Reynolds argues that the questions posed by Administrator Clingan failed to address any of the "skills and knowledges" (sic) required for this position. She refers specifically to questions 1 and 2, which she says are not based on the job description nor do they relate to the duties of the position. We disagree. Question 1 asked each candidate to "Tell me about yourself? Why do you want this particular job and how do your skills and experience relate?" The benchmarks, referred to in Finding of Fact 5, are all designed to allow the interviewer to gain knowledge and insight into the nature of the candidate, her qualities which may not have been clear from a review of her resumé, her experience in working with direct service relating to employment and training programs, her knowledge of the position, whether she would be a good match with the position and her particular career path. These benchmarks are certainly job-related and appropriate inquiries during such an interview. Question 2 asked "What do you see as the primary focus of the Bureau Director" and the benchmarks were designed for the interviewer to gain knowledge of the candidate's notion of where they want to see the position go and what aspirations they have and what ideas the candidates may have for program improvements. These questions and benchmarks are job-related and appropriate. Ms. Reynolds argues that they were slanted toward giving Ms. Peters

an advantage because she worked more closely with Administrator Clingan and thus would have a better understanding of how to answer the questions in a way that would please him. We do not agree. The questions were not given to the candidates prior to the interviews nor did Administrator Clingan discuss them with Ms. Peters beforehand. Any knowledge Ms. Peters had was gained by virtue of her experience and work history, as was Ms. Reynolds', and this does not equate to an abuse of discretion. Further, Administrator Clingan used a standardized set of questions and a uniform rating system to evaluate each of the four finalists. The questions were job-related and uniformly put to all candidates and the process used in making the hiring decision was consistently applied to all four. The respondent was in the difficult position of having to select one candidate from a final pool of four excellent candidates and he determined that the successful candidate (the one he rated most highly qualified) was best able to perform the duties of the position. Ms. Reynolds believes that this determination is inconsistent with her idea of who was the most qualified but she has not shown that there was not a rational basis for the Administrator's decision.

Ms. Reynolds cites the matters of THORNTON v. DNR, Case No. 88-0089-PC (Pers. Comm. 11/15/89) and ZEBELL v. DILHR, Case No. 90-0017-PC (Pers. Comm. 10/4/90) in support of her conclusion that DWD abused its discretion. Both of these cases are distinguishable. In THORNTON, the Commission determined that the respondent violated its own in-house selection procedure when it made its hiring decision. In the past, the respondent had selected the successful candidate by obtaining the consensus of a four-person interview panel. Following the top candidate's declination of the offer of appointment, this procedure was dropped. Instead of a four-panelist consensus, only two panelists made the successive selections. The Commission found that this change, which meant that two of the four panelists were not consulted prior to successive hires, was an abuse of discretion. These are not the facts in the present matter. In ZEBELL, the respondent devised and implemented an elaborate interview process. Respondent specifically acknowledged that the interview phase was a critical part of the recruitment and selection process. When the process failed to meet the interviewers' expectations or hopes, the process was abandoned and in its stead was substituted a process with only one criterion - whether the candidate was one with whom the supervisor and unit staff could get along. While the Commission found that the ability to get along with others could have been a legitimate selection criterion for the subject position, the conclusions drawn by the supervisor under the facts of that case were inaccurate and the Commission concluded that the respondent manipulated the hiring process to avoid hiring appellant. The record in the instant case falls far short of supporting such a conclusion.

Ms. Reynolds argues that the matter of JAHNKE vs. DHSS, Case No. 89-0094-PC (Pers. Comm. 12/13/90) further supports her case. She says, quite rightly, that in the JAHNKE case, the Commission concluded that the hiring authority did not abuse its discretion in a hire when the following procedural steps were followed:

- A standard set of questions were asked of all the candidates;
- The questions were all job-related;
- The candidates' responses were rated by (the) interviewer using a standardized benchmark system;

- The scoring methodology was uniformly applied to all candidates;
- The scores for each interviewer for each of the candidates were combined; and
- The candidate with the highest total score was selected for the job.

We believe the record fully supports the conclusion that the JAHNKE standards set forth above were followed in this case and we reject Ms. Reynolds' contention to the contrary.

Finally, Mr. Gerald Gunther, the Director of the Human Resources Bureau, DWD, testified that, although he was not personally involved in the hiring process, he did have an opportunity to review all of the exhibits and listen to the testimony at the hearing. He concluded that not only was the process legal but he found no evidence of any abuse of discretion. The process employed in the hiring which led to the selection of Ms. Peters was standard and conformed to policy.

We are satisfied that the decision made herein was not illegal or an abuse of discretion. For all the reasons above, we conclude that the appeal filed herein is without merit. We have accordingly dismissed the appeal.

Dated at Madison, Wisconsin, this 12th day of February, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J.M. Bauman /s/

Susan J.M. Bauman, Commissioner