

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RICHARD PETERSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0410

Case Type: PA

DECISION NO. 38987

Appearances:

Richard Peterson 2055 S. River Road, Rhinelander, Wisconsin on his own behalf.

Jad Itani, Attorney, 3099 East Washington Avenue, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On November 19, 2020, Richard Peterson filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Corrections (DOC) had violated Wis. Stat. § 230.44(1)(d), by the manner in which it filled a Program Services Director position at the Lincoln Hills/Copper Lake School.

A telephone hearing was held on March 15, 2021 by Commission Examiner Peter G. Davis and the parties thereafter filed written argument by May 10, 2021. Peterson amended the appeal on July 26, 2021. A Proposed Decision and Order was issued by Examiner Davis on August 9, 2021, finding that DOC did not abuse its discretion or act illegally as to the hiring process utilized for the Program Services Director position. No objections to the Proposed Decision and Order were filed by the parties by the deadline given of September 9, 2021.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. Richard Peterson is an employee of the DOC and applied for the new position of Program Services Director at the Lincoln Hills/Copper Lake School.

2. DOC completed the hiring process for the Program Services Director position.

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

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction over this appeal pursuant to Wis. Stat. § 230.44 (1)(d).
2. The State of Wisconsin Department of Corrections did not abuse its discretion or act illegally as to the hiring process utilized for the Program Services Director position.

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

ORDER

The appeal filed by Richard Peterson is dismissed.

Issued at Madison, Wisconsin, this 16th day of September, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORER

As amended, Peterson's appeal contends that DOC acted illegally or abused its discretion by: (1) considering an applicant's resume and cover letter that exceeded four pages in length; (2) utilizing individuals who did not qualify as subject matter experts (SMEs) to screen the applicants' resumes and cover letters; (3) allowing the SMEs to collaborate when rating the applicants' resumes and cover letters; and (4) allowing the SMEs to conclude that the ultimately hired applicant was even minimally qualified.

Section 230.44(1)(d), Stats., provides the Commission with jurisdiction over a personnel action after certification:

which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion.

An illegal act is one that violates Wisconsin's civil service statutes or administrative rules. An abuse of discretion is when an agency exercises discretion to an end or purpose not clearly justified by and clearly against reason and evidence. *See Moller-Bunker v. DWD*, Dec. No. 36786 (WERC, 5/17)

Length of Cover Letter and Resume

Peterson correctly points out that the instructions received by applicants for the position stated:

Your cover letter and resume should be limited to a maximum of four pages total. (Emphasis in the original.)

The successful applicant for the position submitted a cover letter and resume consisting of five pages. One of the pages was $\frac{3}{4}$ blank and another page was $\frac{1}{2}$ blank. A Department of Administration (DOA) witness explained that where, as here, portions of a page are blank, DOA exercises discretion to determine if the four-page limit has been met and did so here. It is apparent that the focus of the page limit is on the amount of text rather than literal number of pages. Thus, the Commission concludes that DOA has discretion to allow DOC to evaluate compliance with the four-page limit in the context of blank space and did not abuse that discretion here when concluding the applicant's cover page and resume met the four-page maximum.

Subject Matter Experts

Peterson contends that neither of the two SMEs utilized by DOC (E.H. and S.E.) to screen the applicants' cover letters and resumes were qualified to so act. E.H. is the Safety/Security Director at Lincoln Hills/Copper Lake and worked briefly as a Youth Counselor early in his career at that institution. S.E. is a DOC employee who holds a high-level position at Lincoln Hills/Copper Lake.

Section 176.030 of the Wisconsin Human Resources Handbook defines an SME as:

An individual who knows the critical aspects of the job. This is often the supervisor of the position to be filled, another supervisor in the agency, senior incumbents, program partners, former employee of position, faculty or technical school instructors, or people with similar positions in other organizations or organizational units.

The DOA Division of Personnel Management (DPM) requires that individuals selected by a State agency as an SME complete a "Certificate" which asks the individuals to specify qualifications DPM deems relevant. The three specifically listed qualifications are:

I have performed all or most of the duties of this position or classification.

I was directly involved in the development of the position description or the job analysis (e.g., I helped define the duties and responsibilities of this position or classification).

I currently hold, or have held in the past, a position closely related to this classification that is at the same pay range or higher.

SME E.H. checked the second and third qualifications listed above and also added under "Other":

This is a new executive level position at LHS/CLS, where I hold an executive position.

The Certificate completed by S.E. is not in the record.

Peterson asserts that SME E.H. had no relevant treatment program management or oversight experience and thus was unqualified to make a critical review of applicant submissions. He further argues that E.H.'s status as a Career Executive is not sufficient to qualify him as an SME and disputes E.H.'s assertion that his position as Safety/Security Director is "closely related" to the Program Director position.

As to SME S.E., Peterson argues that her limited Corrections experience meant she could not adequately evaluate whether the DOC work experiences relied upon by applicants did or did not meet the minimum qualifications for the position.

DOC argues both individuals were qualified to serve as an SME by virtue of their high-level job classifications and their familiarity with Lincoln Hills/Copper Lake and the vision that Division Administrator Hermes had for the new position.

Administrator Hermes testified that both E.H. and S.E. were familiar with his expectations/vision for the new position. The Commission concludes that this testimony is sufficient to meet the requirement in Section 176.030 of the Wisconsin Human Resources

Handbook that an SME “knows the critical aspects of the job.” Peterson argues that such knowledge is not sufficient and narrowly interprets the word “knows” as requiring an SME to have sufficient personal substantive job experience with the duties of the job. DOC takes a broader view. The DOC view is certainly not unreasonable and does not constitute an abuse of discretion. Therefore, this portion of Peterson’s appeal is found to be without merit.

Rater Collaboration

Peterson contends that it was illegal or an abuse of discretion for the two SMEs to collaborate when determining which applicants met the minimum qualifications. However, Sec. 176.100.2.c. of the Wisconsin Human Resources Handbook explicitly provides:

panel members are encouraged to consult with one another if questions arise as to the applicability of screening criteria and especially where there is disagreement at the passing point, between categories, etc. Sharing individual perspectives will strengthen the panel as a whole and in turn increase reliability of the assessment.

Given this provision, the Commission concludes that the interaction between the SMEs when reviewing the resumes and cover letters did not constitute an abuse of discretion and was not illegal.

Minimum Qualifications

Peterson asserts that the SMEs abused their discretion by determining that the applicant ultimately hired had the following qualification:

Minimally qualified applicants will have experience in the following:

Managing evidence based and trauma informed care programming

He argues that there is nothing in the applicant’s cover letter or resume that would indicate that the applicant met that qualification and thus that the SMEs could not have concluded otherwise. The applicant in question provided the following information in the application that the SMEs reviewed.

In March of 2008 I was assigned by the Unit 4 Corrections Unit Supervisor as the Sergeant in charge of the Re-Entry Unit at Stanley Correctional Institution. At that time the Evidence Based Re-Entry Program was in its infant stages in the DOC. I was part of a multi-disciplinary team tasked with developing and implementing re-entry curriculum, and unit policies and procedures that would assist the persons in our care successfully re-integrate into society.

In November of 2010 I promoted to the position of Lieutenant at Stanley Correctional Institution. In my role as a Lieutenant, I was tasked by the Facility

Security Director with operational oversight and updating policies and procedures for my assigned areas of responsibility, which included the Re-Entry Unit.

During my safety rounds I provided guidance to a client population consisting of approximately 1500 men. I routinely forged professional working relationships with the men through open dialogue, and educating them about the valuable resources that were available to them. I made final safety decisions involving residents, always taking into consideration possible mitigating factors and post traumatic triggers. I attended daily meetings with the Administrative Team, and provided a briefing that included discussion about how I assisted the persons in our care with their rehabilitative process.

I have extensive training and experience in the use of Conversation Starters and Peer Circles, strategies that promote dialogue between youth, their peers and authority figures. They are Evidence Based processes designed to foster conversation over conflict. I also have extensive training QPR and Mental Health First Aid, two elements essential to performing duties requiring a Trauma Informed Care approach.

The record establishes that DOA advises State agencies to err on the side of finding applicants to be minimally qualified if there is an indication in the applicants' materials that they may meet the qualifications. Using this loose standard, it is apparent that the applicant in question used certain key phrases that incorporated the evidence based and trauma informed concepts. While it is certainly a stretch to also conclude that the applicant "managed" the programming in question, the Commission concludes that is a stretch that the State hiring process allows and sanctions. Therefore, the Commission also determines that there was no abuse of discretion or illegality when the SMEs determined that the applicant in question was minimally qualified.

Given the foregoing, Peterson's appeal has been dismissed.

Issued at Madison, Wisconsin, this 16th day of September, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman