Hiring, Etc., of ALJs in Central Panel States - An Exchange

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HIRING, ETC., OF ALJS IN CENTRAL PANEL STATES — AN EXCHANGE

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Appeals - Bureau of Human Resources
Lucas State Office Building
Des Moines, Iowa 50319
June 22, 1987

Hon. David J. Agatstein
Editor-in-Chief
Journal of the National Association of Administrative Law Judges

Dear Judge Agatstein:

I read with interest the article entitled "Hiring, Training and Retention of Administrative Law Judges in Central Panel States." [VII. J. NAALJ 5 (Spring, 1987)] I am a hearing officer in the State of Iowa. I possess knowledge of and interest in the situation here. I trust you will permit me [two] observations.

First, I am not sure that Iowa qualifies as a "central panel state." A central panel configuration was the hoped for result of legislation creating the Department of Inspections and Appeals. The legislation shaped the department, in 1986, as a part of a general government reorganization plan. However, the legislature did not include those persons who conduct contested case proceedings for the Employment Services Department, the Department of Revenue, the Commerce Department, the Corrections Department, the Parole Board, the Public Employment Relations Board, or the Industrial Commission (Deputy Industrial Commissioners not technically hearing officers). Efforts to include persons from these agencies was not successful in 1987. Politically, such efforts may be impossible in the near future.

As a result, in terms of sheer numbers, there are more hearing officers outside the central panel (at least 27, I am unable to obtain a number from the Corrections Department) than there are inside (15 1/2 positions, not persons in place at this time). The central panel consists of those hearing officer positions formerly with the Departments of Human Services and Transportation; one other full
time position which handled hearings for boards and commissions; and one part-time position which handled victim reparation hearings. The present staff has assimilated hearings for a number of boards, commissions, and agencies which, in the past, contracted with private attorneys when a hearing decision was needed.

As you can see Iowa is hardly a central panel state when compared to Minnesota (which I believe includes all ALJ's except those from Social Services) or Washington (which I believe includes all ALJ's). Second, Iowa does not require a law degree to become a hearing officer. The article correctly states that no statutory requirement exists. However, it incorrectly asserts that, "[a]ll hearing officers must be graduates of an accredited law school," (p. 16) and "[i]n Iowa . . . the Office of Personnel has determined that entrance to the bar is a requisite of employment." (p. 6). Both of these statements are incorrect.

A law degree qualifies one for the hearing officer position, but candidates may qualify by experience as well. Bar admission is not required regardless. As my source, I submit with this letter, a photocopy of the current job description for Hearing/Compliance Officer I. [not reprinted--Ed.] The job description was most recently revised February 13, 1984. There has been no subsequent revision.

Practice also shows the foregoing to be true. Two vacancies have been filled since the department was created. One vacancy was filled by a barred attorney; one with a non-attorney. The department accepted the attorney, who had previously been employed as a program planner in an office eliminated by the reorganization, under statutorily imposed hiring guidelines for persons displaced by the reorganization. The guidelines expired before the non-attorney was hired. The department currently employs twelve full-time hearing officers. Four of the full-time hearing officers are attorneys. The department currently employs three half-time hearing officers. Two of the half-time hearing officers are attorneys. Currently, two vacant full-time positions exist. Authorization to hire for one of these positions exists. I understand the person hired will be an attorney. . . .
I trust that there will be a clarification or correction of the errors contained in the article in the next issue of the Journal.

Sincerely yours,

Joe E. Smith, Ph.D.
Hearing Officer

July 2, 1987

Judge David J. Agatstein
Editor-in-Chief
Journal of the National Association of Administrative Law Judges

Dear Judge Agatstein:

Thank you for the opportunity of reviewing and commenting on Dr. Smith's letter of June 22, 1987.

Dr. Smith challenges two aspects of our article. First, he questions whether denoting Iowa as a central panel state is a valid characterization. Second, he disputes our assertion that an Iowa hearing officer working for the central panel must be a law school graduate. In order to verify the accuracy of our information we contacted Larry J. Bryant, the Transportation Bureau Chief Hearing Officer of the Division of Appeals and Fair Hearings (the Iowa central panel).

Insofar as the question of whether Iowa is truly a central panel state is concerned, the article does not state that all administrative agency hearings in a state would have to be within the jurisdiction of the central panel in order for it to be so denominated. In point of fact, the article makes no assertion in this regard at all. And indeed, although not mentioned in the article, most of the state central panel agencies examined are subject to certain jurisdictional exceptions. Moreover, with specific regard to the situation that obtains in Iowa, according to Mr. Bryant, the Division of Appeals and Fair Hearings, despite
the various exceptions to its jurisdiction, conducts roughly
60% of the contested hearings in the state.

As to Dr. Smith's point that an Iowa hearing
officer need not be a law school graduate, Mr. Bryant
reports that as of June 1, 1987, persons hired as
hearing/compliance officers by the Division of Appeals and
Fair Hearings must be attorneys. The context of the portion
of the article that states that all hearing officers must be
graduates of an accredited law school quite clearly refers
to those hearing officers employed by the Division. At most
it can be said that the article should not have used the
term "employed" but rather the word "hired".

Yours sincerely,

John W. Maurer          Michael B. Lepp
Administrative Law Judge Administrative Law Judge
Board of Review          Ohio Hazardous Waste
Ohio Bureau of Employment Facility Board
All members shall be advised that the issue of proxy voting will again be presented to the membership as a constitutional amendment at the general membership meeting in Chicago in October. Please attend and vote.

Margaret Giovanniello,
President