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Director

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Charge No.: 165-2004-00513

Mary T. Donlon
105 Guthrie Road
Mumford, New York 14511

Charging Party

Greece Central School District
800 Maiden Lane
Rochester, New York 14615

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of this charge filed under the Age Discrimination in Employment Act (ADEA). Timeliness, deferral and all other requirements for coverage have been met.

Charging Party alleged she was denied a summer school position and subjected to different terms and conditions of employment than similarly situated, younger teachers based on her age. Charging Party alleged she complained about discrimination, and she was retaliated against by being subjected to unfair criticism, unwarranted disciplines and given poor performance evaluations. Charging Party alleged she believes Respondent intentionally created a hostile work environment in order to force her to retire early, or resign before she was eligible to retire. Charging Party alleged that when she refused to resign, Respondent initiated the process to terminate her employment.

Respondent denied the allegations and stated Charging Party was not selected for a summer school position because she was lacking in the areas of guided reading practices and the Balanced Literary Framework. Respondent further stated Charging Party was given negative feedback in observations and evaluations based on legitimate performance concerns in conjunction with the new Professional Performance Review standards. Respondent stated Charging Party was resistant to the introduction of the Professional Performance Review process and persisted in taking a negative approach to the classroom observation process and made personal attacks on her Principal in her rebuttals.

Respondent's position fails to withstand scrutiny. The evidence showed Charging Party was qualified for the summer school position, and according to the collective bargaining agreement, should have been placed in the position. The evidence indicated Charging Party was denied the position based on her age. The evidence further showed Charging Party engaged in a protected activity by complaining about age discrimination, and she was retaliated against for complaining. Respondent made numerous specific, but subjective, criticisms of Charging Party's performance. Charging Party

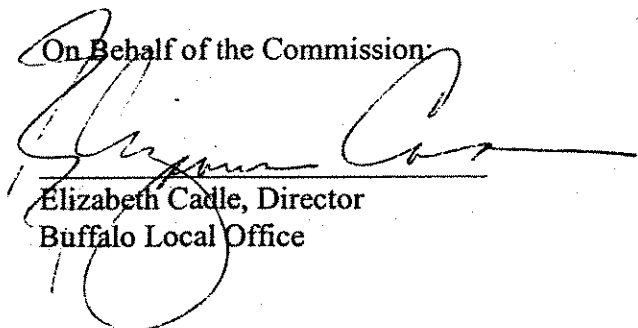
provided credible rebuttals refuting Respondent's accusations. The evidence showed Respondent failed to set specific attainable criteria for improvement, denigrated Charging Party's professional abilities, attacked her character and credibility and created a paper trail to support its position. The investigation determined Respondent failed to use observations as a means of providing constructive criticisms, and instead used them as a tool to harass and disrupt Charging Party's classroom. The cumulative effect of the evidence also revealed pretext and showed a discriminatory animus based on age.

Lastly, during the course of the investigation, the evidence uncovered a violation of Title I of the Americans with Disabilities Act of 1990 (ADA). Charging Party took a medical leave from work from December 11, 2003, through June 3, 2004. In order to return to work, Respondent requested Charging Party sign a blanket Medical/Hospital Authorization. The blanket medical authorization the Respondent requested constitutes an unlawful medical inquiry under the ADA. The request is overly broad and all-inclusive. The ADA requires that Respondent inquiries be specific and related to the employee's current condition as it affects the employee's ability to perform the essential functions of his or her position with or without a reasonable accommodation.

Based on the results of the EEOC investigation, I have determined that the evidence establishes a violation of the statute. Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices through informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in a collective effort toward a just resolution to this matter. The confidentiality provisions of the Commission Regulations apply to information obtained during conciliation.

When the Respondent declines to discuss settlement or when, for any reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. A Commission representative will contact each party in the near future to begin conciliation.

On Behalf of the Commission:



Elizabeth Cadle, Director
Buffalo Local Office

SEP 14 2005

Date