

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

LINDA SINGH and
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION

Complainants

Against

Docket No. 04 BEM 00458

BROOKLINE SCHOOL DEPARTMENT,
Respondent

Appearances: Cornelius J. Sullivan, Esq. for Complainant Singh
George F. Driscoll, Jr., for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On January 29, 2004, Linda Singh (“Complainant”), filed a complaint with the Massachusetts Commission Against Discrimination charging that she was discriminated against on the basis of age, race (African-American) and color by the Respondent, Brookline School Department, in violation of M.G.L. c.151B, section 4(1), the ADEA, and Title VII. The Investigating Commissioner found lack of probable cause in regard to the age claim but found probable cause in regard to the race and color claim. On April 11, 2006, the case was certified for public hearing. A public hearing was conducted on October 12 and 13, 2006.

The parties submitted ten (10) Joint Exhibits. Respondent submitted six (6) additional exhibits. The following witnesses testified: Peggy Lee, Judy Meyers, Dianne Davis, Peter Rowe, Cindy Mahr, Stephen Barrasso, Judy Bevilacqua, Gale Delaney, Judith Doyle, and the Complainant, Linda Singh. The parties submitted post-hearing briefs on December 19 and 21, 2006.

In deciding the matter, I have considered the entire record, including the testimony of the witnesses and the exhibits introduced at the public hearing. To the extent the testimony of the witnesses is not in accord with or irrelevant to my findings, the testimony is rejected. Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

During the course of the public hearing, Complainant waived her claim of discrimination arising out of the denial of her application for a promotion to Principal Clerk in the School Department's Office of Administration and Finance. She is proceeding only on the Classification Review Committee's denial of her request to upgrade and reclassify her position as METCO Secretary from Senior Clerk II to Principal Clerk.

II. FINDINGS OF FACT

1. The Complainant, Linda Singh, is an African-American female. In 1993, she answered an advertisement in the Bay State Banner and was hired by the Respondent, Brookline School Department, as a provisional Senior Clerk and Stenographer II, Grade 4 (Senior Clerk) in the METCO program. The position is

also referred to as the METCO secretary.

2. At all relevant times, Complainant was the only African-American in the Brookline secretarial pool of fifty-six employees.
3. At the time Complainant applied for the position of METCO secretary, it was being temporarily filled by a Caucasian female, Debbie True, who also applied for the job. Complainant was hired over Ms. True. As secretary for the METCO program, Complainant worked in the METCO office at Town Hall.
4. Complainant became a permanent Senior Clerk in 1996 after passing a civil service exam for the position.
5. METCO is a program designed to allow minority students from Boston attend suburban public schools. There are approximately three hundred (300) METCO students who attend the Brookline schools each year.
6. The Brookline METCO program is staffed by approximately fourteen employees: Dr. Janet Morris, the Director; school aides; a basic skills specialist; a social worker; bus monitors; a high school counselor; a coordinator; tutors; and the Senior Clerk. Dr. Morris is an African-American female and the staff of the METCO program is predominantly minority.
7. While Complainant served as the Senior Clerk with the METCO program, she acted as a liaison between parents of METCO students and the Town of Brookline. She helped to coordinate student schedules, addresses, and bus routes. She compiled the addresses of all the students needing transportation in order for bus routes to be determined. She kept addresses updated and disseminated information to students and their parents. She assisted in locating missing

METCO students.

8. Complainant was never disciplined and always received positive performance reviews during the time she served as METCO secretary.
9. In 1996, the Brookline School Department's Human Resources Director wrote to Complainant to notify her that because of reductions in METCO funding, her Senior Clerk position was going to be reduced from a 52-week position to a 45-week position. Respondent's Exhibit 5. Complainant was given to option to bump into any 52-week Senior Clerk position with the school system that was occupied by a less senior person. Complainant elected not to do so.
Respondent's Exhibit 6.

10. In 2002, Complainant requested that her position as Senior Clerk, Grade 4, be reclassified to a Principal Clerk, Grade 5. Complainant prepared a "classification review request" form listing why she felt her position should be reclassified. Complainant's request was reviewed and signed by her supervisor, Dr. Morris, who wrote the following on the form:

I have read this proposal and I am of the opinion that the duties and tasks described are the same as Linda has performed and performed well, since she began the position. I do not see this as a basis for an upgrade. I am willing to pass it along to a jury of her peers for further review. If the panel finds the job tasks appropriate for an upgrade, it is fine with me.

11. Complainant's request was reviewed by a Classification Review Committee composed of three representatives of the Brookline Educational Secretaries Association (BESA) and three members designated by the School Committee. Two of the School Committee designees were Judy Meyers, then chair of the

- School Committee's subcommittee on negotiations,¹ and Stephen Barrasso, Human Resources Director for the Brookline School Department. All of the members of the Classification Review Committee were Caucasian.
12. Applicants for reclassification, including Complainant, were instructed to identify the duties and responsibilities that were new to their jobs in order to demonstrate increased responsibility since the last time the positions were reviewed.
 13. Complainant was granted a hearing in June of 2003, along with other applicants for upgrades, in order to explain to the Classification Review Committee why an upgrade was warranted. Complainant asserted at her reclassification hearing that she had more work than she could complete in 45 weeks per year and that she performed "additional duties" beyond those initially assigned to her in 1993. Some of the "additional" duties related to accounts receivable/payable and to the MUNIS accounting system which she argued were not previously part of her job. Joint Exhibit 6.
 14. The Classification Review Committee determined that Complainant's tasks as METCO secretary in 2003 did not warrant an upgrade to Principal Clerk. It denied Complainant's request in a letter dated June 30, 2003 but approved her request to lengthen her yearly employment from 45 to 52 weeks. Joint Exhibit 3. The Complainant grieved the denial which was upheld by the Superintendent of Schools. The Complainant refused the offer to increase her position to 52 weeks but did work an additional period of time on a per diem basis in 2003.
 15. The Classification Review Committee reviewed the reclassification requests of

¹ Ms. Meyers is currently Chairperson of the Brookline School Committee.

six other employees along with Complainant's. Of the six other employees who requested upgrades, five were Caucasian and one was Asian. Three of the four Caucasian employees received their requested upgrades (Radford, Davis, and O'Neil), one Caucasian employee (Andrews) was upgraded to a Senior Clerk II but not to a Principal Clerk as she requested, another Caucasian employee (Delaney) was denied an upgrade,² and the request of Peggy Lee, an employee of Asian race/ancestry was put in abeyance and subsequently mooted when she received a promotion.

16. At some point following the denial of the Complainant's request for an upgrade, Mr. Barrasso laterally transferred Complainant to a Senior Clerk II position in the technical library at Brookline High School because of interpersonal difficulties between Complainant and Dr. Morris.
17. In August of 2005, Respondent hired an independent personnel management consulting firm, Human Resources Services, Inc., to review the classification plan pertaining to clerical personnel in the Brookline School System. The purpose of the study was to achieve internal equity within the system and bring it into conformity with other school districts. Respondent's Exhibit 4. The study recommended no change in grade level for the METCO Senior Clerk position. According to Mr. Barrasso, the study treated the Metco Senior Clerk position as "dramatically separate [from the elementary school secretary position] in overall grade and responsibility" based on the secretarial position having significantly more responsibility. Transcript, Day 2 at p.12. The study did recommend that the

² Delaney based her request for an upgrade on the added responsibility of preparing the course syllabi book, a 400-page document. Transcript, Day 2 at pp. 60-61.

Senior Clerk II position into which Complainant was transferred be reclassified to Library Technician and be upgraded from a Grade Level 4 to a Grade Level 5. Grade Level 5 is the same grade level occupied by Principal Clerks at the time of Complainant's request to be reclassified from METCO Senior Clerk to Principal Clerk. As of the date of public hearing, the reclassification and upgrade of the Senior Clerk II position to Library Technician was in process.

18. The responsibilities of an elementary school secretary include working in schools with 500 to 700 students, greeting parents or anyone else who comes in to the school, providing first aid to students in the absence of a school nurse, participating as a member of a crisis team in emergencies; reviewing Criminal Offender Record Information (CORI) on parents who chaperone field trips or volunteer at the school, collecting and depositing money received for dances and field trips, receiving and distributing furniture and supplies, arranging for substitute coverage for teachers, recording and reporting daily attendance of staff and students, inputting student grades, assisting with class lists and schedules, and issuing parking permits to staff and faculty.
19. Respondent recruits minority applicants for vacant secretarial positions by advertising in the Bay State Banner, El Mundo, and SamPan, newspapers that serve the African-American, Hispanic, and Asian communities, respectively. Respondent has been a member of the Affirmative Action Recruitment Consortium for twenty-five years. The Consortium consists of suburban school districts which meet monthly to devise strategies for recruiting minority job applicants. As part of this initiative, Respondent sends representatives to job fairs

in Massachusetts, New York, and in southern states to attract minority applicants.

20. Complainant sought therapy from Dr. Stephanie Beukemia as a result of not receiving an upgrade to Principal Clerk while serving as METCO secretary. Complainant testified that she felt “not supported,” that “nobody really cared,” that her confidence was “deflated.”

III. CONCLUSIONS OF LAW

M.G.L. c. 151B, s. 4(1) prohibits discrimination in the terms and conditions of employment based on race and/or color. In the absence of direct evidence of racial discrimination, Complainant may establish a prima facie case of disparate treatment through the inferential method adopted by the Commission in Wheelock College v. MCAD, 371 Mass. 130 (1976). See also Wynn & Wynn, P.C. v. MCAD, 431 Mass. 655, 655-666 (2000); Blare v. Husky Injection Molding Sys. Boston, Inc., 419 Mass. 437, 444-445 (1995). In order to prevail on her claim of racial discrimination, Complainant must show that she was treated in a manner that deviated from the treatment of similarly-situated non-minority clerical employees of the Brookline School Department. Absent direct evidence, Complainant must establish that: (1) she is a member of a protected class; (2) she was performing her position in a satisfactory manner; (3) she suffered an adverse employment action; and (4) similarly-situated, qualified person(s) not of her protected class were not treated in a like manner in circumstances that give rise to an inference of race discrimination. See Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116 (2000) (elements of prima facie case vary depending on facts).

If Complainant successfully establishes a prima facie case, the burden then shifts to the second stage of proof in which the Respondent must articulate a legitimate, nondiscriminatory reason for its action supported by credible evidence. See Blare v. Husky Injection Molding Systems, Boston, Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If the Respondent asserts such a reason, Complainant bears the burden to persuade the factfinder, by a preponderance of the evidence, that the Respondent's articulated justification is not the real reason, but a pretext that permits a finding of unlawful discrimination. See Lipchitz v. Raytheon Co., 434 Mass. at 501; Abramian, 432 Mass. at 117-118. Complainant must ultimately prove by a preponderance of the evidence that the Respondent was motivated by discriminatory animus. See id. Complainant may meet this burden of proof by circumstantial evidence such as the inference of discriminatory animus that may be drawn from proof that one or more of the reasons advanced by the Respondent is false. See Lipchitz, 434 Mass. at 504. Even if the trier of fact finds that the reason for the adverse employment action is untrue, it is not required to find discrimination in the absence of the requisite intent. See id.; Abramian v. President and Fellows of Harvard College, 432 Mass. at 117-118

Turning to the elements of her prima facie case, Complainant is African-American and, thus, a member of a protected class. At all relevant times, she was the only African-American in the Brookline secretarial pool of fifty-six employees. Complainant performed her job as METCO secretary in a satisfactory manner, as evidenced by Dr. Morris's description of Complainant on her "classification review request" as performing her job well. Complainant suffered an adverse job action when

she did not receive a position upgrade to Principal Clerk. She points to the fact that the Classification Review Committee denied her request for an upgrade to Principal Clerk but granted requested upgrades to three of four Caucasian clerks and upgraded another Caucasian employee to an interim rank. Complainant relies on this evidence to assert that similarly-situated, qualified persons not of her protected class were treated more favorably. The disparity in treatment is sufficient to give rise to an inference of race discrimination.

At the second stage of proof, Respondent offers legitimate, nondiscriminatory reasons for denying Complainant an upgrade and supports the reasons with credible evidence. It notes that the METCO secretary is situated in Town Hall rather than in a school setting and, thus, is removed from constant interaction with students and parents. Unlike elementary school secretaries, the METCO Senior Clerk does not function as a substitute nurse, an ambassador to community visitors, a member of a crisis team, a screener of CORI information, a locator of substitute teachers, an issuer of parking permits, and a scheduler of school space. Respondent also asserts that Complainant's mastery of the MUNIS accounting system did not constitute a new job responsibility but merely replaced duties she had previously performed under a prior accounting system.

The Respondent's position regarding the upgrade was adopted by the Classification Review Committee. It, too, denied Complainant's request for an upgrade notwithstanding Complainant's contention that she assisted with METCO submissions to the state, helped to coordinate the METCO budget process, helped to coordinate student transportation and bus passes, maintained METCO student records, supervised work-study students, scheduled the METCO Director's meetings, prepared notices, sent out

mailings, and assisted with METCO annual events. Nothing in the record establishes that this determination was made in bad faith.

Complainant's supervisor, METCO Director Morris, herself an African-American educator, declined to support the request for an upgrade. She and Complainant may not have gotten along, but there is no evidence that their interpersonal difficulties stemmed from racial animus. Dr. Morris took the position in 2003 that Complainant's duties were commensurate with a Senior Clerk classification. There is no credible evidence on which to draw an inference that her opinion was anything other than a good faith expression of her evaluation of the job.

Complainant's request for an upgrade was also rejected by Human Resources Services, Inc., an independent personnel management consulting firm which reviewed the classifications of clerical personnel within the Brookline School System and produced a 2005 report which characterized Complainant's METCO position as "dramatically" different from elementary school secretaries. The report's recommendation to upgrade the Senior Clerk position at the technical library into which Complainant was subsequently transferred lends credence to Respondent's argument that its refusal to upgrade the METCO position was a function of job duties and not Complainant's race or color. Complainant has not identified any circumstantial evidence establishing that one or more of the reasons advanced by the Respondent is false. She asserts in her post-hearing brief that as METCO secretary, her duties included the "complex task of coordinating student bus transportation." It appears, however, that her involvement in bus transportation consisted of maintaining and transmitting student addresses rather than mapping out bus routes. The Committee was not unreasonable in determining that such

tasks do not constitute a “complex” clerical function.

Based on the foregoing, I am persuaded that the reasons offered by Respondent for refusing to reclassify Complainant’s METCO position were not due to discriminatory animus and that the complaint should be dismissed.

IV. ORDER

This decision represents the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may seek review by the full Commission by filing a notice seeking review within ten (10) days of receipt of this decision, and a petition for review within thirty (30) days of receipt of this decision.

So ordered this 16th day of February, 2007.

Betty E. Waxman, Esq.