

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION &  
MARJORIE O'BRIEN,  
Complainants

v.

DOCKET NO. 99-BEM-0740

CITY OF LYNN SCHOOL DEPARTMENT &  
JAMES MAZAREAS,  
Respondents

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Respondents City of Lynn School Department and James Mazareas. Following an evidentiary hearing, the Hearing Officer concluded that Complainant failed to establish a prima facie case of retaliation in violation of M.G.L. Chapter 151B, section 4(4) and dismissed the complaint. Complainant appealed to the Full Commission.

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 et. seq.), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. G.L. c. 151B, Section 5. The Hearing Officer's findings of fact must be supported by substantial evidence, which is defined as "...such evidence as a reasonable mind might accept as adequate to support a finding..." Katz v. MCAD, 365 Mass. 357, 365 (1974); G.L. c. 30A.

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses or to weigh the evidence when deciding disputed issues of fact. The Full Commission defers

to these determinations of the Hearing Officer. See e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion or was otherwise not in accordance with the law. See 804 CMR 1.23.

Complainant has appealed the Decision of the Hearing Officer on two grounds. She contends that the Hearing Officer's conclusion that she failed to establish a prima facie case of retaliation because she did not engage in protected activity was an error of law. Complainant contends that this conclusion was erroneous due to the Hearing Officer's imposition of a requirement that the complaint triggering the retaliatory conduct be reasonable. Complainant also asserts that the Hearing Officer failed to make the required findings of fact essential to her assessing whether Complainant engaged in protected activity when she complained to Respondents that her supervisor had directed an obscene gesture at her.

With regard to Complainant's first contention, we find that the Hearing Officer's conclusion was not erroneous. A **retaliation** claim brought under the opposition clause requires that the employee have a reasonable belief that the practice she opposes is in fact unlawful. Clark County Sch. Dist. v. Breeden, 532 U.S. 268 (2001). The opposition category protects only those employees who oppose unlawful practices or reasonably and in good faith believe an employer's practices are unlawful. 88 MBA Law Rev. 1-2, Understanding and Preventing Workplace Retaliation (2003).

Complainant's second assertion is also not meritorious. We find that the Hearing Officer assessed all of the evidence to find "an office where interpersonal hostility pervaded the atmosphere. However, the enmity did not result from discriminatory animus, but from a personality conflict between Complainant and her supervisor and co-workers." The Hearing Officer also found that Respondents investigated the complaint filed by Complainant, and credited testimony of witnesses who did not see the supervisor make an offensive gesture. We defer to her determinations.

We have carefully reviewed the petition for review and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. As a result of our review, we find no material errors of fact or law and conclude that there is substantial evidence in the record to support the findings of fact made by the Hearing Officer. We, therefore, deny the appeal and affirm the decision below in its entirety.

## **ORDER**

For the reasons set forth above, we hereby affirm the findings of fact, conclusions of law and Order of the Hearing Officer. Complainant's appeal to the Full Commission is hereby dismissed.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Failure to comply with this Order will result in the Commission's initiation of enforcement proceedings, pursuant to 804 CMR 1.25, which may subject the non-complying party to both civil and criminal penalties as provided in M.G.L. c. 151B, s. 8.

Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review within 30 days of receipt of this decision in accordance with M.G.L. c. 30A, c. 151B, §6, and the 1996 Superior Court Standing Order on Judicial Review of Agency Actions. The filing of a petition pursuant to M.G.L. c. 30A does not automatically stay enforcement of this Order. Failure to file a petition in court within 30 days of receipt of this Order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L.c. 151B, §6.

SO ORDERED this 29<sup>th</sup> day of March, 2006.

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Walter J. Sullivan, Jr.<sup>1</sup>  
Commissioner

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Cynthia A. Tucker  
Commissioner

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<sup>1</sup> Pursuant to 804 C.M.R. 1.23 Investigating Commissioner is participating in appeal as necessary to create a quorum of the Commission.