

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD & E. Robert Poulin,
Complainants

v.

DOCKET NO. 02-BEM-01148

Lincoln-Sudbury Regional High School
And John R. Ritchie,
Respondents

Appearances:

Nancy Sue Keller, Esquire for Complainant
Samuel Perkins, Esquire for the Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On March 11, 2002, Complainant, E. Robert Poulin, filed a complaint with this Commission charging Respondents, Lincoln-Sudbury Regional High School, and Superintendent John R. Ritchie, with discrimination on the basis of age (D.O.B. 4/6/36), in violation of M.G.L., c. 151B § 4.¹ Complainant charged Respondents with termination or refusal to renew his employment contract as the men's varsity baseball coach because of his age. The Investigating Commissioner issued a Probable Cause finding. After attempts to conciliate the matter failed, the case was certified for public hearing. A public hearing was held before me on June 19 through June 22, 2008. After careful consideration of the post-hearing submissions of the parties and the entire record in this matter, I make the following findings of fact, conclusions of law and order.

¹ Complainant made additional claims upon which the Commission issued a Lack of Probable Cause finding. Accordingly those claims were not certified for public hearing and are not before me.

II. FINDINGS OF FACT

Background

1. Complainant, E. Robert Poulin, born April 6, 1936, is a member of a protected class by virtue of his age. He resides in Eastham, Massachusetts. Respondent Lincoln-Sudbury Regional High School (Lincoln-Sudbury) is a public high school, serving grades 9-12, located in Sudbury, Massachusetts. Lincoln-Sudbury employed the Complainant as the varsity men's baseball coach through the end of the 2001 baseball season.

Respondent Dr. John R. Ritchie is the superintendent of the Lincoln-Sudbury Regional High School.

2. Complainant worked for 25 years at Arthur Anderson, and its successors, in its IT consulting division in the New England area. Complainant voluntarily ended his full time employment with that company in 1984. He made the decision to retire from full time employment in order to devote his efforts to coaching baseball. Complainant testified that he felt he could contribute more to society by teaching student athletes to play the game of baseball and to become better citizens. According to Complainant, he required his players to focus on academics, and during his tenure as coach some players' academic performance improved because of their desire to remain on the baseball team. (Tr. I. 142-144).

3. The baseball season at Lincoln-Sudbury runs from the middle of March through the end of the school year, with practices or games daily after school. Lincoln-Sudbury fields a varsity and JV team. Some years the school also fields a freshman team. The Lincoln-Sudbury baseball team is a Division I program, based on the size of the

school district. The school plays under rules established by the Massachusetts Interscholastic Athletic Association (MIAA) and the Sporting News.

4. Complainant had begun coaching baseball at the junior varsity (JV) level at Lincoln-Sudbury in 1982. He became the Varsity coach in 1983. During his tenure at Lincoln-Sudbury, Complainant's teams won over seventy percent of their games and earned nine league titles. They also earned the Division I North Championship and made it to post season play multiple times.

5. Dr. John Ritchie, born in 1949, became superintendent and principal of Lincoln-Sudbury Regional High School in 1996 or 1997. Prior to his post at Lincoln-Sudbury, he had been a school principal in Winchester and a teacher in Brookline.

6. Athletic director Nancy O'Neil, born in 1955, became athletic director at Lincoln-Sudbury in 1994 or 1995. Prior to her appointment, O'Neil had held similar positions at a high school in Hudson, N.H., in Needham, MA., and at Milton Academy. Tr. III, 124-26. At Lincoln-Sudbury, the athletic director serves on the administrative team along with the superintendent, house masters, and other administrators. Tr. III, 128.

Evaluations Generally

7. Under previous athletic directors Complainant generally was given an informal evaluation annually. Tr. I, 172. During these evaluations Complainant's coaching philosophy was not criticized, nor was it raised as an area of concern. After becoming athletic director, O'Neil instituted an evaluation process in which coaches would be formally evaluated every other year. According to the process coaches were to turn in end of season reports within two weeks of the close of the season and the athletic director

would review the report and complete a coach evaluation within two weeks of receipt. (Ex. C-1, Tr. I, 176).

8. During O'Neil's tenure as athletic director, Complainant's first scheduled evaluation year was 1996. (Ex. C-17) He received "outstanding" or "above average" for all rating areas with an overall recommendation of "Highly Recommend for Reappointment." In 1998 he received an evaluation with one rating of "outstanding" and other ratings ranging from "above average" to "below satisfactory." Areas where Complainant received the lowest marks included Season Planning and Supervision of Team/ Staff. (Ex. C-7). The overall recommendation by O'Neil for 1998 was "Recommend for Reappointment with Reservations" and the comment section stated "Coach Poulin must satisfactorily address the issues presented in this evaluation if he is to continue as Head Baseball coach." One year later, in 1999 Complainant received another end of season evaluation with ratings of "outstanding," "above average," and at least one rating of "satisfactory." O'Neil's overall recommendation was again "Recommend for Reappointment with Reservations." (Ex. C-6) Sometime after the 2001 season Complainant received an evaluation from Lincoln-Sudbury with an overall evaluation of "Not Recommended for Reappointment." (Ex. C-8) As part of this evaluation he received "below satisfactory" for Cooperation and Relationships with Administration.

9. When O'Neil became athletic director in 1995, Complainant handled the scheduling of the batting cages and the scheduling of freshman games. He also maintained the team uniforms without involvement of the school equipment manager, and ran an annual baseball trip to Florida. These responsibilities were not raised as areas

of concern in O'Neil's 1996 evaluation of Complainant, however they were cited as requiring improvement in his 1998 and 1999 evaluations. Tr. II, 41-48.

Prior to the 1998 season

10. During his tenure coaching at Lincoln Sudbury, Complainant instituted winter clinics through the park and recreation department so that players could begin conditioning before the season began. The clinics were run through the town of Sudbury, not the high school (Tr. I, 157-8.) Complainant also fostered relationships with the town Little League and summer leagues to improve the caliber of players in the town. During some summers he also ran a for-profit baseball camp.

11. Soon after Complainant became the coach at Lincoln-Sudbury, home games began to be played at Feeley field, a local town field off high school property. Over the years the baseball team and local town members raised money to install and maintain lights at Feeley field. Tr. II 50-52.

1998 Season

12. According to the Lincoln-Sudbury Athletic Handbook and Complainant's coaching philosophy, the coach determined how much playing time a particular varsity player received. (Tr. I., pp. 128-130) Players who did not perform at the varsity level and who would not be granted playing time were generally cut from the team. In one instance Complainant placed a particularly hard-working senior player on the varsity team and communicated to that player that he would likely not see any playing time during the season. During that season the O'Neil received a complaint from that player's father that his son had not receiving playing time during a particular runaway game. O'Neil, Complainant, the player, and his father met to discuss the incident and

Complainant acknowledged that while he did substitute players during the later innings of the games he had not done so in this case. (Tr. I. 136-137) This refusal to substitute a player appeared as an action to be corrected on Complainant's Coaching Evaluation in the Spring of 1998. (Ex. R-7)

13. Beginning in the early 1980's until 1999, the varsity baseball team went on a trip to Florida during April school vacation. Baseball players were given the opportunity to fundraise for the Florida trip and were invited to go once they became varsity players or seniors. Over the years there were complaints about student gambling during the Florida trip. Complainant testified that he never saw students gamble on the Florida trip but that he considered the students' rooms to be off limits, or essentially "their sanctuary." Tr. II, 23. Athletic Director O'Neil pointed out that school administrators cannot indulge in this kind of relaxed oversight when they are responsible for student behavior and safety, stating, "there need to be room checks when students are off-site." TR. III, 154. She felt that the laissez-faire attitude toward governance of student activities on these trips caused school rules to be violated and provoked worry and criticism from parents. Gambling on these trips ended after 1998 only when a parent informed the athletic director that her son had arrived home with more money than when he left. TR. III, 152-153.

14. In 1998, a former assistant coach, Jay Davidson, who had no official role in the in 1998 Florida Spring trip, went to Florida during the trip took two promising players from the team out to lunch, without any coaching staff being present. During the lunch he encouraged the players to consider playing baseball on his own Massachusetts AAU baseball team. Davidson was not a Lincoln-Sudbury coach at the time, and there were

concerns that he should not have been allowed to take students away from the practice facility without coach supervision. One set of parents later complained about this lunch and Complainant apologized for allowing it to happen. Tr. I 196-7.

15. The 1998 Spring trip was the last the trip that occurred under the auspices of Respondents' baseball program. After the 1998 trip, O'Neil expressed concerns about the trip and she prohibited the baseball program from sponsoring the trip in 1999. In 2000 a group of baseball players' parents organized the trip for February vacation. After receiving permission from Respondents, Complainant attended and observed, but did not participate in the activities on this trip. In 2001, with O'Neil's permission, the Boosters club, a town-wide sports sponsorship group, organized the Spring Florida trip as a non-school event. Complainant received permission from Respondents to attend the trip and to coach. Tr. I, 199-200.

16. In 1998 O'Neil communicated to Ritchie and the administrative team that she felt there was some difficulty in communicating with Complainant, that he was resistant to her suggestions and directives, that the baseball program had grown out of proportion to the rest of the athletic program, and that she believed it was time for a change in direction. Tr. IV, 10.

17. On or about July 7th or 8th of 1998 O'Neil met with Complainant. She had completed his evaluation and indicated that he was going to be dismissed from his coaching position. In response to his questions, O'Neil told him that this was an administrative decision and that he would have to discuss the details with Superintendent Ritchie. Complainant met with Ritchie who indicated he needed time to review the situation. Complainant testified that because he was shaken up by this decision, he talked

to a few people about it, and the local newspapers got wind of the story. Tr. I. 183-184. Ritchie testified that there followed a “media outcry, followed quickly by many phone calls from community members and parents.” Tr. IV, 16. Ritchie offered to meet with concerned parties. After the meeting attended by O’Neil, parents, coaches from other teams and at least one umpire, Ritchie made the decision to reinstate Complainant. Ritchie called the decision to reinstate Complainant “one of the two or three most challenging and difficult positions” he took during his career as an administrator. He stated that it was very difficult for him as an administrator, to appear not to support a member of his administrative team. Nonetheless, he felt it was the politic thing to do given the widespread community concern over Complainant’s termination. He made a judgment that it would benefit both the school and the community to more clearly ascertain the problems and attempt to resolve them. Tr. IV, 17-20.

18. Ritchie testified that he made the decision to reinstate Complainant in 1998 because he felt he was in a no-win position, and that to decide otherwise would have caused a lot of angry community sentiment. Tr. III, 20. He testified that the Lincoln-Sudbury baseball program had become not just a school program, but the apex of community involvement in baseball in which many people felt invested, both financially and figuratively. Tr. III, 22. He testified that he had the sense baseball was not just a high school sport, but a cooperating joint venture with various town constituents and the parents. Tr. III, 26.

19. In mid-July of 1998, O’Neil presented Complainant with a written evaluation which she asked him to review. She told him that she and Ritchie would meet with him in August to discuss the evaluation. Among O’Neil’s concerns about Complainant’s

performance were players being shuffled between the varsity, junior varsity, and freshman teams, scheduling too many games per season, placing 9th graders on the varsity team, having players participate in junior varsity and varsity games on the same day, not substituting players during runaway games, supervision of the Florida trip, and equipment maintenance. Ex. C-7. Complainant prepared a written response dated July 31, 1998, justifying many of his decisions. Ex. C-2. According to Complainant the only issue raised in the July 1998 evaluation, of which he was aware, was his failure to substitute one player during a lop-sided game, so that all team members might get some playing time. He stated that all the remaining concerns were being addressed to him for the first time. Tr. I, 189.

20. O'Neil testified about a number of her concerns regarding Complainant's coaching. She believed that his scheduling of 22 games for freshman was a violation of MIAA rules. Ultimately, approximately only 18 games were played and she did approve the freshman baseball schedule. Tr. III 138-42, 205. O'Neil also testified that the practice of putting freshman on varsity teams was "worrisome," but to her knowledge no freshmen were on the varsity baseball team. Tr. III, 206. O'Neil was also concerned that having students participate in junior varsity and varsity games in the same day required too many hours devoted to baseball on a school night. Tr. III 138-42. She also testified that she received parent complaints about supervision on the Florida trip. Generally, O'Neil believed that Complainant's coaching contract should not be renewed after 1998 because of his difficulty accepting her directives and decisions. While she admitted that Complainant never countermanded or refused a direct order from the athletic office, O'Neil stated that she never felt that Complainant was part of the school team or the big-

picture team. Tr. III, 147, 222. There was some testimony from an assistant coach that communication between Complainant and O'Neil did not improve after 1998. Tr. I, 60.

1999 Season

21. Complainant was involved in some additional controversy surrounding the control and scheduling of the batting cages. Many years earlier, the baseball coaches had received permission to use abandoned gym space to construct baseball batting cages. The cages were built with private funds at an initial cost estimated to be around \$75,000. Over the years, the high school baseball and softball teams, and some local youth sports teams had access to these cages. Complainant and the other baseball coaches had keys to the cages, which were issued by the school, and until sometime in 1999, Complainant maintained the schedule for the cages. Tr. I, 164-6; Tr. II, 73. As part of Complainant's end of the season evaluation in 1999 O'Neil requested that the athletic department take over scheduling the cages. Complainant disagreed with this decision. His position was that the cages were privately built and maintained for the exclusive use of the baseball program and that the baseball program had always accommodated outside groups' scheduling needs. Exs. C-4, C-6. Complainant testified that after meeting with O'Neil they agreed he would retain scheduling responsibilities. Tr. I, 168, Tr. II, 64, 68-70.

22. During a high school lacrosse game in 1999, the captain of the baseball team made some lewd remarks which were overheard by fans and the lacrosse coaches. O'Neil testified that it was her understanding that that the incident involved taunting of a lacrosse player and involved more than one remark. The student/athlete involved later admitted his conduct to O'Neil and O'Neil told him that the punishment associated with his conduct would be suspension from one baseball game. Tr. III, 147-150. Complainant

testified that had the conduct occurred during a baseball game, he would have suspended the captain for more than one game, but since the conduct occurred at a different school event, he did not support punishment which affected the entire baseball team. Eventually a meeting was held with the student athlete, his parents, Ritchie, O'Neil, and Complainant. The student's mother testified that Complainant was quiet and respectful during this meeting, and that she and her husband were very upset with the way O'Neil had handled the situation. Tr. II, 218, 217. Ritchie and O'Neil later expressed frustration to Complainant that he had not supported the athletic department's decision to suspend the student from one game. Tr. I, 206-8. I find that Complainant did not support the administration or the athletic department on the issue of student athlete sanctions and that Respondents had a valid concern that this sent a mixed message to parents and players and undermined the administration's position.

23. During a baseball game in 1999 one of the players held a team huddle on the first baseline and as the huddle was breaking up, stated words to the effect of, "we're going to win this f-ing game." Tr. II, 187. His remark was heard by fans, and after the game, Complainant addressed the players and told them such conduct would not be tolerated in the future. Tr. I, 38. Tr. II, 30. Complainant's handling of this incident was raised in Complainant's 1999 evaluation. Tr. II, 187-88. O'Neil testified that she expected the coaches to intervene immediately when foul language was used during athletics. Tr. III, 159-60. I find that while Complainant addressed the use of profanity during a game, the way in which he handled the incident did not conform to O'Neil's expectations for coaches.

24. On occasion, O'Neil's evaluations of Complainant included criticism of actions that did not occur in year of the evaluation. For instance she criticized Complainant's handling of the Florida trip during a year when no Florida trip occurred, and blamed Complainant for problems with the batting cages when other coaches, such as the track, softball and soccer coaches were also given keys to the cages. Tr. III, 230-31. While O'Neil's methods of communication with Complainant were not always immediate and effective, this did not negate certain valid concerns she had regarding the management of the baseball program.

2000 Season

25. In 2000, Complainant was involved in a dilemma regarding a student who wished to participate in two different sports during the same season. The MIAA Blue Book rules govern situations where a bona fide team member wishes to participate in more than one sport during the same season. If a student participates in athletic contests for two teams in the same day, or misses a practice or game for sport one, in favor of competing in an event for sport two, the penalties could include automatic athletic suspension for two weeks, two games, and prohibition from post season play. According to the rules, a bona fide member of a high school team must participate in every practice and game for that team. (Tr. I. 152). Complainant testified that while he was head coach he had a copy of the Blue Book, but admitted he may not have always had the most recent copy. Tr. III, 89.

26. In March of 2000, student Ryan Berg, wished to participate in a regional elite swimming meet, which would have required him to miss some baseball practices. Complainant informed Berg and his parents about the Bona Fide Team Member rule and

the potential for a waiver of the rule. Sometime later Complainant also emailed O'Neil about Berg's request. Berg's parents were extremely concerned about the prospect of their son missing post season play, a consequence which Complainant may not have initially communicated to Berg. Tr. III 94. Berg was ultimately permitted to swim in the meet even though this meant his missing some baseball scrimmages. Ritchie communicated to Complainant that it was inappropriate for Complainant to tell Berg's parents that Berg could miss baseball practice, prior to the school having made any decision on the matter. Ritchie voiced his concern that Complainant was potentially communicating an inconsistent message. Ex. R-18. Complainant testified that expressing his personal opinion to the parents did not reflect on the school in any way, and that he saw nothing wrong in doing this. Tr. III, 96. I find that Respondents' desire to communicate a consistent message to student athletes, their families, and the public was undermined by Complainant's actions. Complainant apparently saw no harm in expressing his personal views, contrary to the stated preference of the administration that they speak with one voice on issues related to athletic rules and regulations.

2001 Season

27. At some point around 2001, there was an opening for a sub-varsity baseball coach. Most of the assistant baseball coaches at Lincoln-Sudbury were volunteer coaches who were interviewed by Complainant and the athletic director prior to being appointed. (Tr. I, 162) In 2001, Complainant interviewed and selected Mike Caso for sub-varsity coach, and sent an email to O'Neil indicating that he wanted to appoint Caso. O'Neil responded via an email stating, "I will contact Mike and set up a meeting. Consider him on board. I just want to meet him." C-5. As result of this email Poulin told Caso he was

hired. O'Neil subsequently changed her mind based on her interview with Caso and feed-back from the community. Tr. II 35-8. Complainant testified that while he did not agree with O'Neil's decision, he supported her as the final decision maker. Tr. III, 49. Complainant was later criticized in his 2001 review for communicating to Caso that he had been hired prior to his having been formally interviewed by O'Neil. This was another example of the problems with communication between Complainant and O'Neil, for which neither was singly to blame. While O'Neil testified that she preferred to make decisions by consensus and attempted to work cooperatively with coaches and teachers to reach collective solutions to problems, she found it difficult to foster this approach with Complainant and they seemed to be unable to reach mutually agreeable solutions by consensus. TR III, 163.

28. At some point in 2001 O'Neil communicated to Complainant a preference that a particular game against Acton-Boxborough be played in the afternoon, rather than in the evening, to avert anticipated rowdiness by spectators. After discussing the matter with the opposing coach, Complainant decided to stay with the evening schedule. The following day O'Neil and Ritchie directed Complainant to reschedule the game for the afternoon and he did so. Complainant testified that, in this instance, he had not so much ignored a directive, but merely declined to take what he felt was a suggestion from O'Neil. Tr. II, 78-79; Tr. III, 54-60. There was evidence of other times when Complainant did not accept O'Neil's suggestions as when O'Neil wanted someone appointed as JV coach and Complainant preferred he remain as assistant varsity coach. Tr. II, 83.

29. Prior to 2001, a town-wide sports sponsorship group, called the Boosters, assisted in fundraising for continued improvements to the high school batting cages. According to O'Neil the group was informed that the batting cages were slated to be demolished upon the upcoming construction of a new high school, and that dedicated batting cages were not included in the plans for the new high school. O'Neil wrote in Complainant's 2001 evaluation that he was working at cross purposes with the administration by supporting town members interested in maintaining the cages, rather than supporting the administration and town committee's decision to demolish the cages. Emails demonstrate that Complainant contacted community members to bolster support for his desire to maintain the batting cages. Ritchie testified that he felt he was dealing "with the baseball consortium" consisting of Complainant, the Booster's president, and the Boosters, and that, "it felt larger than life." Tr. IV. 38. This was another clear example of how Ritchie felt frustrated by Complainant's overly zealous advocacy on behalf of the baseball program and his efforts to politicize the baseball program by lobbying the outside the school. I credit Ritchie's testimony regarding the difficulty of dealing with Complainant and his proponents in the community on issues related to the baseball program.

2001 dismissal

30. In September 2001 Ritchie sent a letter to Complainant seeking a meeting with him to discuss the future of the high school baseball program. Attached to the letter was a two page document detailing certain concerns the administration had regarding the baseball program. Ex. C-8, pages 1, 4, 5. The issues raised included the number of baseball games scheduled (20-21), how fundraising for the independent Florida trip was

conducted, feedback from parents and youth baseball groups about problems between Complainant and the school, Complainant's refusal to move coach Fordiani to the JV team, "confusion and misinformation" about the batting cages belonging to the baseball program rather than the school, playing time for baseball players, and general complaints about the baseball program.

31. Ritchie testified that, independent of O'Neil, he had come to the conclusion that the efforts to give Complainant a second chance had "come to naught" and ultimately, "the same time consuming, irritating and frustrating battles" continued with the baseball program. Tr. IV, 44, 80. As a result, on September 12, 2001, Ritchie met with Complainant and told him his contract would not be renewed and gave him the option to resign. Tr. IV, 107. Complainant testified that during this meeting Ritchie congratulated him on a successful season and suggested he resign or retire and "go out in a blaze of glory." Tr. II, 94. When Complainant stated he was not interested in retiring Ritchie told him he was being dismissed. Tr. II, 94. Ritchie declined to discuss the specific points raised in Complainant's 2001 evaluation. On or about October 3, 2001 Ritchie wrote another letter to Complainant confirming the decision to hire a new head baseball coach to take the high school baseball program in a new direction. (Ex. R-2).

32. Complainant testified that he specifically recalled Ritchie using the term "go out in a blaze of glory," but that he felt like retiring would be disingenuous and would be a slap in the face to his supporters. Ritchie testified that he did not use the word retire, but he admitted in his deposition that he might have used the phrase "go out in a blaze of glory." Tr. IV, 109; C-13, p. 81-82. I credit Complainant's testimony that Ritchie may have suggested he "retire" but I do not find that this was evidence of age discrimination.

33. Complainant testified that around the time of his first dismissal in 1998, the former athletic director Andy Oleski said words to the effect of “Bob, you got to understand that coaching is a young man’s game. And this, you know - You have to accept that because younger coaches can relate better to the student athletes.” Tr. II, 98. Complainant testified that Dick Hayden, the president of the Booster’s Club, stated in an email that Complainant should consider retiring. Hayden also referred to going out in a blaze of glory and said “if you retire and all we’ll name the batting cages after you.” Tr. II, 99. Neither of these comments may be attributed to the administration, nor are they evidence of Ritchie’s or O’Neil’s motives in terminating Complainant’s contract.

34. Ritchie met with Complainant again in October, 2001. Complainant declined to resign and Ritchie re-iterated that he was being dismissed. At the time Complainant was 65 years old. Ritchie told Complainant that he wanted the program to go in a new direction. Tr. II, 101.

35. The individual hired to replace Complainant was in his mid-20s. He had at least one year of varsity coaching experience prior to his appointment as head baseball coach at Lincoln-Sudbury. Complainant had faced him as an opposing coach, and testified that he found him to be immature and inexperienced as a coach. Tr. II, 110-11. O’Neil testified that the decision of who to hire Complainant’s replacement was made by a committee of administrators and a former coach. Tr. III, 186.

36. O’Neil testified that age was not a factor in Complainant’s dismissal. Tr. III, 187. She testified that Lincoln-Sudbury has a ski coach over age 80 and other coaches over 50, including the football gymnastics coaches.

37. After Complainant's dismissal the administration received a number of emails in support of Complainant. In addition, a petition was circulated among former players and parents in support of Complainant's reinstatement, and there was a public meeting with the school committee regarding his termination. Tr. I, 74-6. The school committee never responded formally to Complainant regarding these entreaties on his behalf. Tr. II, 114.

38. A number of witnesses testified that Complainant was a mentor to the student athletes, and generally a positive person who provided guidance and support to his players. Tr. I, 27. Former assistant coaches testified that his coaching style fostered teamwork and did not place baseball above all else. Tr. II, 8. There were a number of testimonials from parents regarding Complainant's skills as a dedicated coach and mentor. Tr. II, 202; Tr. III, 73-74. On the other hand, Ritchie and O'Neil testified that a number of parent complaints were received regarding the baseball program, but admitted that parent complaints have not ceased, and that it is "the nature of the beast" because baseball is a tough program with high expectations from a very demanding community. O'Neil testified that "a lot of people like to weigh in on baseball." Tr. III, 234.

39. Following his dismissal Complainant did not coach for a year. He subsequently became an assistant varsity coach in Hudson. Tr. II, 115. Initially this was a volunteer position, but later became a paid position. Complainant testified that his dismissal from Respondent hit him very hard, especially the school's unwillingness to discuss the details. He had devoted himself to the program for 20 years and his dismissal affected him and his family personally. Tr. II, 118-9. He stated that people in the

community look at him differently, and that former players, umpires, and coaches continue to inquire about what happened at Lincoln-Sudbury. Tr. II, 120.

Complainant testified that he did not consider his 1998 termination to be motivated by age, but that he always felt O'Neil had trouble dealing with him because of his age and maturity. Tr. II 140-1.

II. CONCLUSIONS OF LAW

General Laws c. 151B § 4 (1B) makes it an unlawful practice to discharge one from employment on account of age. In order to establish a claim of age discrimination, Complainant must demonstrate that: (1) he is a member of a protected class; (2) his job performance was acceptable; (3) he was subjected to an adverse employment action; and (4) his employer sought to replace him with someone who is substantially younger, at least five years younger than he is. Knight v. Avon Products, Inc., 438 Mass. 413, 425 (2003); MaCormack v. Boston Edison, Co., 423 Mass. 652, 662-663 (1996).

Complainant has established that he is a member of a protected class, by virtue of his age. His employment was terminated and he was replaced by an individual who was substantially younger. While there is some dispute about whether complainant was satisfying his duties as head varsity baseball coach, I conclude that for purposes of establishing a prima facie case of age discrimination, he has satisfied this element of his claim. Respondents admit that Complainant was a successful and capable baseball coach and that he was a respected mentor to many student athletes.

Once Complainant has established a prima facie case of discrimination, Respondents must provide a legitimate non-discriminatory reason for the alleged

discriminatory act. Abramian v. President and Fellows of Harvard College., 432 Mass. 107, 116, 117 (2000). Respondents offered a number of legitimate non-discriminatory reasons why the Complainant was terminated from his position as the head baseball coach. Among them were that he did not always cooperate with, and frequently did not follow the directives of Athletic Director O’Neil; that he ran the baseball program as if it were a independent organization, rather than as an extra-curricular activity associated with the high school and its educational mission; that there was excessive influence and pressure from outside community organizations and private citizens regarding the activities of the baseball program; and that Complainant frequently solicited community advocacy on his behalf, and in doing so, compromised the position of the administration. The Respondents offered evidence that Complainant violated school rules, sent mixed messages to players and their parents concerning the enforcement of rules, and participated in well organized political campaigns to pressure school officials when he disagreed with their decisions on baseball program activities or facilities. Both Superintendent Ritchie and Athletic Director O’Neil testified credibly about their extreme frustrations and concerns in this regard. Ritchie described dealing with the pressure from outsiders regarding the baseball program as dealing with the “baseball consortium” and said sometimes it seemed “larger than life.”

Respondents also raised concerns about Complainant’s management of the annual Florida baseball trip that caused the school to no longer sponsor the trip; discussed complaints from the parents of student athletes about how the baseball program was run; cited Complainant’s failure to administer appropriate sanctions for the use of profanity, and lewd, un-sportsman-like behavior by his athletes; and gave examples of

Complainant's failure to follow or accept O'Neil's suggestions about scheduling and hiring decisions. Both Ritchie and O'Neil testified credibly that after several years of dealing with these issues, they determined that Complainant's activities were often at cross-purposes with the school's mission and its view of the baseball program. As a result of wanting to take the baseball program in a new direction, they concluded that they needed a new coach, and notified Complainant that his contract would not be renewed. I conclude that the reasons given by Respondent to justify its termination of Complainant's contract were legitimate, non-discriminatory reasons.

Once Respondent has articulated legitimate non-discriminatory reasons for its actions that are supported by some credible evidence, Complainant is required to prove by a preponderance of the evidence, that the stated reasons are not the real reasons but a cover up for a discriminatory motive. See Knight, 438 Mass.420 n. 4. In order to prove pretext, Complainant must show that Respondent "acted with discriminatory intent, motive or state of mind." Lipchitz v. Raytheon Co., 434 Mass. 493, 504 (2001) Complainant may meet this burden through circumstantial evidence including proof that "one or more of the reasons advanced by the employer for making the adverse decision is false." Id. at 504. Complainant has proffered no evidence that age discrimination was the motive for Respondents' decision not to renew his contract.

Complainant did state that he believed that O'Neil had difficulty dealing with him because of his age and his maturity. However, there is no evidence to support the inference that his age was the reason for their apparent incompatibility and difficulty communicating personally with one another. In lieu of such evidence, Complainant offered ample evidence of his impressive record as baseball coach and offered

testimonials from a number of parents who respected his concern for, and mentoring of, the student athletes he coached. It is important to note, however, that Respondents did not deny that Complainant was very dedicated and successful baseball coach. Instead they stressed that his termination was motivated by incompatibility and disagreements about how the baseball program should be managed, whether the program should be influenced or controlled by outside community interests, and their view that the program should be less of a personal enterprise, and more within the sphere of the school's athletic department. The evidence does not support a finding that legitimate disagreements about how the baseball program should be managed or influenced were fabricated or motivated by age discrimination. I am unable to conclude that Respondents' desire to minimize the politics surrounding the baseball program was a pretext for age discrimination.

While Complainant offered some evidence of discriminatory remarks regarding baseball coaching being a young man's game, none of these comments may be attributed to Respondents. Moreover, the fact that Superintendent Ritchie may have suggested that Complainant retire or suggested he "he go out in a blaze of glory," is not sufficient evidence that the decision was motivated by age discrimination, given Ritchie's legitimate concerns. Thus, I conclude that Complainant's termination was not in violation of G.L. c. 151B.

III. ORDER

For all the reasons stated above, the complaint in this matter is hereby dismissed. This constitutes the final order of the Hearing Officer. Any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt

of this order and a Petition for Review to the Full Commission within thirty days of receipt of this Order.

SO ORDERED this 31st day of December, 2008.

Eugenia M. Guastaferr
Hearing Officer