



State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

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Promoting Equality and Justice for all People

January 19, 2024

CHRO ex rel. Richard Rotella v. City of Waterbury and Waterbury Board of education CHRO Nos. 1930420 & 1930421 Fed Nos. 16a201900529 & 16a201900530.

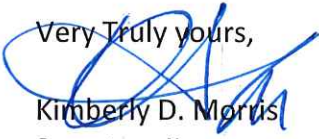
FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the commission, complainant, and respondent.

Very Truly yours,


Kimberly D. Morris
Secretary II

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**STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and
ex rel. Richard Rotella, Complainant

Office of Public Hearings

v

City of Waterbury

CHRO No. 1930420

Fed No. 16a201900529

and

Waterbury Board of Education,
Respondents

CHRO No. 1930421

Fed No. 16a201900530

OFFICE OF
PUBLIC HEARINGS -CHRO
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January 19, 2024

FINAL DECISION

PRELIMINARY STATEMENT

Richard Rotella filed two affidavits of illegal discriminatory practice (complaints) with the commission on human rights and opportunities (commission). He filed one on January 8, 2019 against the City of Waterbury (Waterbury) (1930420) and one on January 10, 2019 against the Waterbury Board of Education (Waterbury BOE) (193041). In his complaints, Mr. Rotella alleged that Waterbury and Waterbury BOE were his former employer. He further alleged that they had violated General Statutes § 46a-60 (b) (1) and the Age Discrimination in Employment Act as enforced through General Statutes § 46a-58 (a). According to Mr. Rotella, on or about November 14, 2018, Waterbury and Waterbury BOE discriminated against him in the terms and conditions of his employment and terminated his employment because of his age.

On November 30, 2021, the commission forwarded these complaints to the office of public hearings pursuant to its early legal intervention program as authorized by General Statutes § 46a-83 (e) (2). The respondents filed their answers denying the allegations of discrimination on January 18, 2022. The public hearing was held on

September 27, 2023. Briefs were due on December 20, 2023. The respondents' responses to the complainant's motion for attorney fees were due on January 17, 2024.

For the reasons set forth herein, the complaints are dismissed.

I PARTIES

The parties to this action are the commission, 450 Columbus Blvd., Hartford, Connecticut; Richard Rotella c/o Attorney Terrence M. Wynn, P. O. Box 91, Watertown, Connecticut; and Waterbury and Waterbury BOE c/o Attorney Connor P. McNamara, 41 Church Street, Waterbury, Connecticut.

II FINDINGS OF FACT

Based upon an assessment of the credibility of the witnesses and a review of the pleadings, exhibits, and transcripts, the following facts relevant to this decision are found. References to the transcript are designated by "Tr." followed by the page number. References to exhibits are designated by C for the complainant and R for the respondents followed by the exhibit number. The commission did not submit any exhibits.

1. At the time relevant to these complaints, Mr. Musto was the principal of the continuing adult education program for Waterbury BOE. Tr. 82-83.
2. Mr. Musto oversaw the adult basic education, English as a second language, GED high school credit diploma, and evening enrichment programs. Tr. 83-84.
3. In September 2014, Mr. Musto hired Mr. Rotella as a part-time instructor for Waterbury BOE's English as a second language program. Tr. 9, 10; R-1.
4. Mr. Rotella was approximately 70 years old at the time he was hired. Tr. 7, 9.

5. During an argument on November 14, 2018, Mr. Rotella repeatedly asked Mr. Musto if Mr. Musto wanted him to quit. Tr. 95-96, 101; R-1.
6. Mr. Musto finally said that he did want Mr. Rotella to quit and that he was accepting Mr. Rotella's offer to quit. Tr. 95-96, 101, 134-136, 139; R-1, R-2.
7. On November 15, 2018, Mr. Rotella returned to the building and attempted to rescind his resignation. Tr. 103-104; R-1.
8. Mr. Musto did not accept Mr. Rotella's attempt to rescind his resignation. Tr. 103-104; R-1.
9. Mr. Musto never told Mr. Rotella that he was fired. Tr. 21, 101, 139.
10. Mr. Musto did not fire Mr. Rotella. Tr. 21, 101, 139.
11. Mr. Rotella was 74 years old at the time of his separation from Waterbury BOE. Tr. 8, 54.
12. Instructors in the adult education program are between 70 and 87 years old. R-5. Instructors are typically retirees. Tr. 98-99.
13. Although Waterbury processes the payroll for both Waterbury BOE employees and Waterbury's own general government employees, Waterbury and Waterbury BOE each hire and terminate its own respective employees. Tr. 68.
14. Waterbury and Waterbury BOE are separate, independent legal entities. Tr. 68.

III CAUSATION

The causation test for discrimination cases under Connecticut law is the motivating factor test; that is, a complainant must prove only that illegal discrimination was a cause in a respondent's adverse action. *Wallace v Caring Solutions, LLC*, 213 Conn. App. 605, 278 A.3d 586 (2022).

IV ALLEGED DISCRIMINATION IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT AS ENFORCED THROUGH § 46a-58 (a)

In his complaints, Mr. Rotella alleged that Waterbury and Waterbury BOE violated the Age Discrimination in Employment Act (ADEA) as enforced through General Statutes § 46a-58 (a) by discriminating against him because of his age.

Section 46a-58 (a) provides that:

It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran.

Because age is not a protected class listed in § 46a-58 (a), no violation of § 46a-58 (a) could have occurred. Further, Connecticut has not waived its sovereign immunity as to ADEA claims. *Marasco v. Connecticut Regional Vocational-Technical School System*, 153 Conn. App. 146 (2014). In other words, § 46a-58 (a) does not enforce the ADEA. Therefore, this claim is dismissed.

V
ALLEGED DISCRIMINATION IN VIOLATION OF § 46a-60 (b) (1)

A
STATUTES

In his complaints, Mr. Rotella alleged that Waterbury and Waterbury BOE violated § 46a-60 (b) (1) by discriminating against him in the terms and conditions of his employment and by terminating his employment because of his age.

General Statute § 46a-60 provides that:

(b) It shall be a discriminatory practice in violation of this section:
(1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against any individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical disability, including, but not limited to, blindness or status as a veteran

B
STANDARD

Connecticut utilizes the *McDonnell-Douglas* burden shifting framework in the analysis of state employment discrimination claims. Under this analysis, the employee must

first make a prima facie case of discrimination, the plaintiff must show: (1) the plaintiff is a member of a protected class; (2) the plaintiff was qualified for the position; (3) the plaintiff suffered an adverse employment action; and (4) the adverse **179 employment action occurred under circumstances that give rise to an inference of discrimination. ... The employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question. ... This burden is one of production, not persuasion; it can involve no credibility assessment. ... The employee then must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias.

(Internal citations omitted; internal quotation marks omitted.) *Hartford Police Dep't v. Commission on Human Rights and Opportunities*, 347 Conn. 241, 257, 297 A.3d 167, 178–79 (2023).

We note, additionally, that [t]he [fact finder's] disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination, and ... upon such rejection, [n]o additional proof of discrimination is required *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 511, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993)." (Internal quotation marks omitted.) *Jackson v. Water Pollution Control Authority*, 278 Conn. 692, 705–706, 900 A.2d 498 (2006).

* * * *

To prove pretext, the plaintiff may show by a preponderance of the evidence that [the defendant's] reason is not worthy of belief or that more likely than not it is not a true reason or the only true reason for [the defendant's] decision to [terminate the plaintiff's employment] A plaintiff may show pretext by demonstrating such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable [fact finder] could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons."

(Internal citations omitted; internal quotation marks omitted.) *Stubbs v Icare Management, LLC*, 198 Conn. App. 511, 522-523, 233 A.3d 1170 (2020).

C ANALYSIS

1 City of Waterbury

Although Waterbury provides payroll services and some administrative support for Waterbury BOE, Waterbury and Waterbury BOE are separate legal entities. Each hire and terminate its own employees. Waterbury did not hire Mr. Rotella. Mr. Musto hired Mr.

Rotella on behalf of Waterbury BOE as an employee of Waterbury BOE. The complaint against Waterbury is dismissed.

2

Waterbury Board of Education

Mr. Rotella established the first two elements of a prima facie case. He is a member of a protected class based on his age and he was qualified for the position as evident by having performed the job duties for four years.

Mr. Rotella, though, did not establish that he had suffered an adverse employment action caused by his employer. Mr. Musto did not terminate Mr. Rotella's employment. He accepted as a resignation Mr. Rotella's repeated questions of whether Mr. Musto wanted him to quit. Even if Mr. Rotella's resignation could be construed as an adverse action, Mr. Rotella did not establish that the separation occurred under circumstances giving rise to an inference of discrimination. I do not find credible Mr. Rotella's testimony that Mr. Musto raised the issue of Mr. Rotella's age during their November 14, 2019 argument. Mr. Musto had hired Mr. Rotella only four years earlier. Mr. Musto frequently hired people he knew to be retirees. Mr. Rotella's age of 74 at the time of his separation fell in the mid-point of the ages of the other instructors.

Even if Mr. Rotella established a prima facie case, he did not establish that illegal discriminatory bias was a cause in his separation from employment. As previously stated, Mr. Musto had hired Mr. Rotella only four years earlier. Mr. Musto frequently hired people he knew to be retirees. Mr. Rotella's age of 74 at the time of his separation fell in the mid-point of the ages of other instructors. Mr. Musto did not reference Mr. Rotella's age during their argument on November 14, 2019.

VI
CONCLUSIONS OF LAW

1. Waterbury was not Mr. Rotella's employer.
2. Waterbury BOE was Mr. Rotella's employer.
3. Mr. Rotella did not establish a prima facie case that Waterbury BOE discriminated against him based on his age in the terms and conditions of his employment.
4. Mr. Rotella did not establish a prima facie case that Waterbury BOE terminated his employment based on his age.
5. Even if Mr. Rotella established a prima facie case, Waterbury BOE articulated a legitimate non-discriminatory reason for Mr. Rotella's separation from employment; that is, it accepted Mr. Rotella's offer to quit.
6. Mr. Rotella did not establish by a preponderance of evidence that age discrimination was a cause in his separation from Waterbury BOE.
7. Waterbury BOE did not terminate Mr. Rotella because of his age. Rather, Waterbury BOE accepted Mr. Rotella's offer to quit and did not accept his attempt to rescind his resignation.

VII
ORDER

The complaints are dismissed.

It is so ordered this 19th day of January 2024.

/s/ Jon P. Fitzgerald
Hon. Jon P. FitzGerald
Presiding Human Rights Referee

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