

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RUTHYE SMITH,)
)
 Petitioner,)
)
 vs.) Case No. 02-4527
)
 BREVARD COUNTY SCHOOL BOARD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal administrative hearing in this case on March 10, 2003, in Viera, Florida.

APPEARANCES

For Petitioner: Levi G. Williams, Esquire
Fertig & Gramling
200 Southeast Thirteenth Street
Fort Lauderdale, Florida 33316

For Respondent: Harold T. Bistline, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioner, Ruthye Smith, was discriminated against on the basis of her race when she was not selected for two

administrative positions with the Brevard County School Board in 1998.

PRELIMINARY STATEMENT

On September 10, 2002, the Florida Commission on Human Relations advised Petitioner that it had made a determination that there was no reasonable cause to believe that an unlawful employment practice had occurred in response to her complaint that she had been the victim of employment discrimination due to her non-selection for positions with the Brevard County School Board in 1998.

The Florida Commission on Human Relations advised Petitioner that she had the right to request an administrative hearing within 35 days of the notification of the determination of no reasonable cause.

On October 15, 2002, Petitioner filed her Petition for Relief from an Unlawful Employment Practice with the Florida Commission on Human Relations. On November 19, 2002, her Petition for Relief was transmitted by the Florida Commission on Human Relations to the Division of Administrative Hearings, requesting assignment of an Administrative Law Judge to conduct all necessary proceedings.

On November 19, 2002, an Initial Order was sent to both parties. On December 9, 2002, the case was scheduled for final hearing on January 27, 2003, in Viera, Brevard County, Florida.

On January 17, 2003, Petitioner filed a Motion for Continuance that was granted on January 22, 2003. The final hearing was rescheduled for March 10, 2003.

The final hearing took place as rescheduled on March 10, 2003. Petitioner testified on her own behalf and presented 14 exhibits that were admitted into evidence and marked Petitioner's Exhibits 1 through 14. Respondent presented two witnesses: William Hall and Betty Dunn. Respondent presented four exhibits that were admitted into evidence and marked Respondent's Exhibits 1 through 4.

At their request, the parties were given 20 working days from the filing of the transcript of the proceedings to file proposed recommended orders. The two-volume Transcript of Proceedings was filed on April 14, 2003. On May 1, 2003, Respondent requested an extension of time to file proposed recommended orders. The time for filing proposed recommended orders was extended until May 19, 2003. Each party filed a Proposed Recommended Order; each was thoughtfully considered by the undersigned Administrative Law Judge.

FINDINGS OF FACT

1. Respondent, Brevard County School Board, is the public entity that operates the public schools in Brevard County, Florida, and is the employer of teachers, administrators and other personnel involved in operating public schools.

2. Petitioner, Ruthye Smith, is an African-American female, who has been employed by Respondent as a teacher since 1973.

3. Respondent utilizes a state-approved Human Resource Management and Development Plan, known by the acronym "HRMD," for the training, evaluation, and selection of principals, assistant principals, and deans.

4. HRMD utilizes an interview process for personnel selection called "targeted selection" which identifies "dimensions" for each employee position that are developed through an in-depth job analysis of each position.

5. The targeted selection interview process is designed to evaluate a candidate's qualifications for a position by assessing the candidate's responses to questions designed to reveal the candidate's ability to fulfill requirements of the dimensions identified for the particular position.

6. "Targeted selection" identifies the following seven dimensions for the assistant principal position: communication, decisiveness, leadership, energy and tolerance for stress, planning and organization, control/monitoring, and technical/professional knowledge.

7. A candidate for a principal, assistant principal or dean position is questioned/interviewed by two certified targeted selection interviewers in one-on-one interviews. These

interviewers are principals or former principals who have been promoted to director or assistant superintendent and who have received specific training in utilizing the targeted selection process.

8. Each interviewer rates and scores the candidate in separate interviews, evaluating the candidate's responses to certain questions from an interview guide that provides questions directly related to the seven dimensions. The result is a "dimension rating" with a range from a low of 1 to a high of 5 in each of the seven dimensions.

9. After each interviewer has concluded his or her interview, the interviewers confer and form a consensus of the dimension ratings generated by the candidate's responses and prepare a data integration form which documents a consensus dimension rating given the candidate by the interviewers for each targeted dimension.

10. A candidate for selection to an administrative position such as principal, assistant principal, or dean is not deemed qualified unless the candidate scores at least a consensus 3 in each of the seven targeted dimensions.

11. Respondent typically pursues three initial steps in the personnel selection process: advertising the position, evaluating applicants to see if they meet basic criteria, and

giving candidates who meet the basic criteria targeted selection interviews.

12. In the instant case, in April 1998, Petitioner applied for two advertised assistant principal positions. Having met the criteria for consideration, Petitioner was given two targeted selection interviews on June 10, 1998. The data integration form prepared by the interviewers records a consensus score of 1 in each of the seven targeted dimensions. Based on the targeted selection interviews and the resultant consensus scores, Petitioner did not score the consensus 3 in each of the seven targeted dimensions required to qualify for consideration for the assistant principal positions.

13. Utilizing the same targeted selection interview process, Respondent identified other qualified candidates who were selected for the positions; both of the candidates selected were Caucasian females.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Subsection 120.57(1), Florida Statutes.

15. Subsection 760.10(1)(a), Florida Statutes, provides that it is an unlawful employment practice for an employer:

(1)(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with

respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

16. Florida courts have determined that federal discrimination law should be used as a guidance when construing provisions of Section 760.10, Florida Statutes. Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385 (11th Cir. 1998); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

17. The United States Supreme Court established, in McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII, which is persuasive in the instant case, as reiterated and refined in the case of St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

18. This analysis illustrates that a petitioner has the burden of establishing, by a preponderance of evidence, a prima facie case of discrimination. If that prima facie case is established, the respondent must articulate a legitimate, non-discriminatory reason for the action taken. The burden then shifts back to the petitioner to go forward with evidence to demonstrate that the offered reason is merely a pretext for

unlawful discrimination. The Supreme Court stated in Hicks, before finding discrimination in that case, that:

[T]he fact finder must believe the plaintiff's explanation of intentional discrimination.

509 U.S. at 519.

19. In the Hicks case, the Court stressed that even if the fact finder does not believe the proffered reason given by the employer, the burden still remains with the petitioner to demonstrate a discriminatory motive for the adverse employment action taken.

20. In order to establish a prima facie case, Petitioner must establish that she is a member of a protected class or group; that she is qualified for the position in question; that despite her qualifications she was not selected for the position (she was subjected to an adverse employment decision); that someone was selected who had similar qualifications who was not in the protected group; that she was treated less favorably than similarly situated persons outside her protected group; and that there is some causal connection between her membership in the protected group and the adverse employment decision that was made. McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973); Canino v. U.S. E.E.O.C., 707 F.2d 468, (11th Cir. 1983).

21. There is no dispute in this case that Petitioner is a member of a protected class or group, that an adverse employment

decision was made, and that individuals were selected for the positions who were not members of the protected group.

22. Petitioner failed to demonstrate that she was qualified for the positions. In fact, the evidence clearly demonstrates that she failed to accomplish the minimum consensus scores in each of the seven targeted dimensions in the interviews designed to qualify candidates. In addition, Petitioner failed to establish any causal connection between her failure to be selected for the positions and her race. No credible evidence was presented that her failure to be selected for the positions was because of her race. Coutu v. Martin County Board of County Commissioners, 47 F.3d 1068, 1073 (11th Cir. 1995); Young v. General Foods Corp., 840 F.2d 825, 830 (11th Cir. 1988).

23. While Petitioner failed to establish a prima facie case, Respondent offered legitimate, non-discriminatory explanations for its failure to select Petitioner for the positions she sought. Petitioner had failed to meet the minimum qualifications for the positions. It hired individuals who had scored at least a consensus 3 in each of the targeted dimensions and successfully completed the selection process.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing the Petition for Relief filed in this case.

DONE AND ENTERED this 22nd day of May, 2003, in Tallahassee, Leon County, Florida.

JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of May, 2003.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.