

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARTHA ANN GATES,)
)
 Petitioner,)
)
 vs.) Case No. 05-2403
)
 GADSDEN COUNTY SCHOOL BOARD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to Notice a hearing was held on October 3, 2005, before the Honorable Diane Cleavinger, Administrative Law Judge, Division of Administrative Hearings, in Quincy, Florida.

APPEARANCES

For Petitioner: Marie A. Mattox, Esquire
Marie A. Mattox, P.A.
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Tallahassee, Florida 32303

For Respondent: Deborah S. Minnis, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent committed an unlawful employment practice against Petitioner based on race or otherwise violated Chapter 760, Florida Statutes.

PRELIMINARY STATEMENT

On October 11, 2004, Petitioner, Martha Ann Gates, filed a Charge of Discrimination against Respondent, Gadsden County School Board. The Charge of Discrimination alleged that Respondent discriminated against Petitioner based on her race when the Board failed to hire Petitioner for a Site Coordinator position under its 21st Century Grant program. On March 25, 2005, the Florida Commission on Human Relations (FCHR) entered its Notice of Determination: No Cause on Petitioner's Charge and advised Petitioner of her right to file a Petition For Relief in this matter. On April 25, 2005, Petitioner filed a Petition for Relief against Respondent. The Petition essentially alleged the same act of discrimination as the original Charge of Discrimination. The Petition For Relief was forwarded to the Division of Administrative Hearings. The one-volume Transcript was filed on October 21, 2005.

At the hearing, Petitioner testified in her own behalf and presented the testimony of four witnesses. Additionally, Petitioner offered ten exhibits into evidence. Respondent presented the testimony of one witness and offered nine exhibits into evidence.

Petitioner and Respondent filed Proposed Recommended Orders on November 29, 2005.

FINDINGS OF FACT

1. Petitioner, who is Caucasian, was employed by the Gadsden County School Board as a teacher in 1972. Since that time, other than an absence of three years, she taught in the Gadsden County School system for 29 years.

2. Petitioner graduated from Florida State University (FSU) in 1971 with a bachelor of science degree in elementary and early childhood education. In the early 1980's she obtained a master of science degree from FSU in reading-K-12 and language arts. She also had continuous in-service training over the 29 years she taught in Gadsden County.

3. Petitioner has certifications to teach in English and language arts and has received recognition as a teacher from the National Board. Such National Board recognition signifies that Ms. Gates is considered an "outstanding" teacher in her area of specialization. Additionally, at the time of her recognition by the National Board, Ms. Gates was one of only 1500 teachers nationwide to receive this honor.

4. Petitioner taught sixth grade with the majority of her time spent as a reading instructor working with at-risk children in Gadsden County.

5. Petitioner was the reading instructor for both the Quincy Middle School until it closed and then for the Carter-Parramore Middle School. She continued in that position until

Carter-Parramore closed and the school was moved to Shanks Middle School. While at Carter-Parramone, Petitioner began working with Edna Hussein-Forehand, a fellow Gadsden County School Board employee, doing Saturday tutoring/mentoring for children who needed extra support and help in reading.

6. The Saturday program provided one-on-one instruction for at-risk children and eventually became known as the Help One Student To Succeed (HOSTS) program. In fact, Petitioner helped bring HOSTS to the Gadsden County School system.

7. The HOSTS program was a prescribed instructional reading and language arts program that paired students with parents in order to promote reading through mentoring. It was held during the school day. Data collection and compilation of the program's impact were required.

8. In 1998 or 1999, Petitioner became the site facilitator for the HOSTS program at her school. In that capacity, she worked with at-risk children, including children who were scoring below average on standardized tests. She provided lesson plans and help to the volunteers in the program. More than that, Petitioner was instrumental in the program's success and helped in the program's receiving a National Exemplary Status award. The award was based on the success of the program in achieving positive academic and attitudinal results and in reducing the number of disciplinary referrals for the children

who participated in the HOSTS program. Clearly, Ms. Gates had been involved in disciplinary decisions and in maintaining discipline in the classroom for some 29 years. She was also involved in disciplinary matters in the HOSTS program and in the Saturday mentoring program.

9. After her success in the HOSTS program and prior to September 2003, Ms. Gates, along with a handful of other employees of Respondent, spearheaded the effort to bring the 21st Century Grant program to the Gadsden County School system. The Grant program was a partnership between the Gadsden County School Board and another community entity. The program was offered after school, beginning each school day around 3:00 to 3:15 p.m. It served at-risk children similar to the children Ms. Gates had been teaching and helping throughout her career. Given her teaching career and her voluntary efforts to help children succeed, Ms. Gates clearly believed in the Grant program and in helping a difficult population of children to succeed.

10. In 2003, The Board advertised for five part-time Site Coordinator positions for the 21st Century Grant program. The positions were located at select schools in Gadsden County, including Shanks where Petitioner taught. The advertised qualifications were:

1. Bachelor of Science degree or higher with a Masters' degree preferred.
2. Supervisory skills.
3. Knowledge of the Gadsden County School District's operations and procedures.
4. Ability to work with children, adults, community members and parents.

11. Essential Job Responsibilities listed in the advertisement were:

1. Organize and Supervise the decision-making process.
2. Provide clear direction and support to teachers and staff.
3. Make clear job responsibilities and roles for all staff.
4. Supervise care and maintenance of community center schools, equipment and property.
5. Coordinate center schedule.
6. Assist Program Director in periodic reviews of staff performance.
7. Monitor collection and maintenance of student records and progress.
8. Review program performance through on-going assessments and provide feedback to Program Director.
9. Coordinate facilities and supervise extra-curricular activities.
10. Facilitate communication among staff, parents, students, and community.
11. Investigate and document all related incidents.
12. Assist Program Director in on-going assessment to ensure quality implementation and success in activities that 1) improve students' mastery of academic skills . . . through individualized assistance, 2) reduce juvenile risk-taking behaviors and promote healthy lifestyles through quality, fun after school and summer programs, and 3) strengthen families through increased parental participation in their child's academic and social success and through

extended learning programs addressing adult needs.

13. Special projects

12. The posted Vacancy Announcement, as well as the application for these positions, also required three references. However, most of the applicants were district employees who had references on file with the Board. Such filed references were accepted by Respondent as meeting the references required by the posted Notice of Vacancy and the application. Therefore, failure to submit references with the application did not disqualify the applicant. There was no evidence that acceptance of already-filed references in this application process was unreasonable or a pre-text to promote job applicants who did not submit references with their applications. Indeed, several applicants did not submit such references.

13. Van Riggins, a former employee of Respondent, was the Director of the 21st Century Grant program. Mr. Riggins is African-American.

14. In September 2003, Ms. Gates applied for the Site Coordinator position for the 21st Century Grant program located at Shanks, where she knew the children the program would serve. At the time of her application, she had been working with the type of children served by the Grant program for about 26 years. Additionally, the program would overlap with the reading program Ms. Gates taught on Saturdays. She submitted the three required

reference forms with her application. Each of her letters of reference shows that Petitioner was considered by her supervisors and peers as "excellent" or "good" in her performance with Respondent.

15. Unquestionably, Petitioner met the qualifications for this position. In fact, Petitioner had extensive experience in every category of the essential job responsibilities for this position and was already performing similar duties in the various positions she held at the time of her application.

16. The interview panel for the site coordinator positions consisted of Vann Riggins; Tammy McGriff Farlin, African-American and then Coordinator of the HOSTS program; Maurene Daughan, Caucasian, then Grant Coordinator for the Board; and Ann Taylor, Caucasian.

17. In addition to Petitioner, other applicants for the five positions were Carla Galvin, African-American; Debby Thompson, Caucasian; Doris Jean Black, race unknown; Rayford E. Blicht, Caucasian; Cedric Fabian Chandler, African-American; Irene Ford, African-American; Michelle Denise Taylor, African-American; and Marshall Lewis Williams, African-American. Debby Thompson limited her application to the position available at Chattahoochee Elementary School. Ms. Gates and Carla Galvin limited their applications to Shanks. Irene Ford preferred the position at Shanks, but did not limit her application to a

specific school. Doris Black limited her application to Shanks, Chattahoochee Elementary, East Gadsden Elementary and a school in Greensboro. Cedric Chandler limited his application to Stewart Street Elementary School. Marshall Williams limited his application to Havana Middle School. The other applicants did not limit their applications to a position at a specific school. Thus, the applicants competing for the Shanks position were Ms. Gates; Carla Galvin, the successful applicant; Doris Black; Rayford Blitch; Irene Ford; and Michelle Taylor.

18. Carla Galvin had a bachelor's degree in education. She did not have a master's degree. She held a Florida teaching certificate in middle grade English. She had taught school since 1988 and had about 15 years' teaching experience. She occasionally volunteered for the Saturday reading program. The evidence did not show that Ms. Galvin often helped at the Saturday program. Nor did the evidence show that Ms. Galvin had the extensive experience of Petitioner. As a teacher, she worked with some at-risk children. Ms. Galvin was also nominated for District Teacher of the Year and was one of the finalists for that award. Ms. Galvin was qualified for the position of Site Coordinator.

19. Doris Black held a Florida teaching certificate in elementary education and varying exceptionalities. She was an exceptional student education (ESE) teacher at Shanks and had

been working with ESE and at-risk children for over 20 years. The evidence did not show what college degree Ms. Black had obtained. She was qualified for the position of Site Coordinator. However, her qualifications are not at issue here.

20. Rayford Blitch had an impressive resume since, during his 30-year career, he had been a guidance counselor, school psychologist, and school principal in high school and adult education in Gadsden County. He had extensive administrative experience. Mr. Blitch held a teaching certificate in administration, adult education, guidance counseling, school principal, school psychologist and school social work. He held a bachelor's degree in criminology, special education and administration. He was experienced in testing and documentation of programs. However, he had retired in 2001 and the committee members were concerned about his ability to re-integrate into the school system and his general commitment to the program. The committee's concerns were vague, but did form a reasonable basis for not recommending Mr. Blitch for the position of Site Coordinator at Shanks. The evidence did not demonstrate that the committee's rationale was a pre-text for racial discrimination.

21. Irene Ford held a Florida teaching certificate in elementary education. The evidence did not demonstrate the Bachelor's degree she had attained in college. Ms. Ford began

teaching in 1967 and had taught for about 36 years. She had retired from the Gadsden County school system in 2003. The committee, generally, scored Ms. Ford lower than either Petitioner or Ms. Galvin. Her qualifications are not at issue here.

22. Michelle Taylor held a Florida teaching certificate in middle grade social studies. She held a bachelor's degree in sociology and psychology and a Master's degree in political science-public administration. She had been teaching since 1993 and had about 10 years' experience as a teacher. Her qualifications are not at issue here.

23. All the applicants were interviewed for the Site Coordinator positions by the committee. During the interview process, the applicants were all asked the same set of pre-established questions. There were no specific questions regarding student discipline. However, discipline was an important aspect of the position. One of the questions asked of applicants was to relate any additional strengths the applicant believed he or she had for the position.

24. During her interview, Ms. Gates in listing her strengths, volunteered that she did not like to discipline students. Although this was not one of the interview questions, Ms. Gates' statement was noted in the interview notes of three of the four committee members. Ms. Gates was never asked to

qualify her statement nor to explain what she meant. At no time did Petitioner ever state during her interview or at any other time that she could "do everything except handle discipline," as Mr. Riggins indicated in his affidavit to FCHR during its investigation of this matter.

25. Mr. Riggins, the only interview committee member marking Ms. Galvin higher than Ms. Gates, did not write anything on his interview package about any discipline comments made by Ms. Gates. However, the comment was noted in his mind and brought up during the discussion following completion of all the scoring and interviews.

26. After the interviews, the committee members independently scored each application. Petitioner received the following scores from each of the persons sitting on the interview committee:

<u>Committee Member</u>	<u>Score</u>
Ann Taylor	33+
Maurine Daughan	18
Tammy McGriff Farlin	14.5+
Vann Riggins	16+
<u>TOTAL SCORE</u>	<u>81.5</u>

27. Carla Galvin received a lower overall score than Ms. Gates from the interview Committee. Ms. Galvin scored as follows:

<u>Committee Member</u>	<u>Score</u>
Ann Taylor	25.5+
Maurine Daughan	14+
Tammy McGriff Farlin	11+
Vann Riggins	21+
<u>TOTAL SCORE</u>	<u>71.5</u>

28. Three of the four panelist scored Ms. Gates higher than Ms. Galvin. Mr. Riggins scored Ms. Galvin higher than Ms. Gates.

29. Scores alone were not determinative of the committee's ultimate recommendation of an applicant for a position. As indicated, the committee discusses each candidate and considers any other information or opinions of committee members regarding the applicants. At least two of the committee members had known Ms. Gates for many years, had worked with her and had a high regard for her abilities as a teacher and her dedication to improving at risk children. Mr. Riggins knew of both Ms. Gates and Ms. Galvin, but did not have any knowledge specific to either applicant other than he felt they were both good teachers. The other committee members were slightly more familiar with Ms. Galvin and recognized that she was a good teacher. As with Ms. Gates, they assumed Ms. Galvin could discipline students, since she had been teaching for a number of years and discipline is part of the job.

30. During the group discussions of the applicants, Mr. Riggins raised concern about Ms. Gates' statement that she did not like discipline. He noted that discipline was an important concern at all the Grant site locations since the Site Coordinator would be the only authority figure on location and would be responsible for handling any disciplinary problems that might arise. There would be no principal or backup administrator to help the Site Coordinator maintain discipline or handle a problem that might arise. Although vague and based more on intuition, Mr. Riggins felt that Ms. Galvin could "control the whole operation better" from a discipline standpoint. The evidence did not show that Mr. Riggins' concern was a pre-text for racial discrimination. In this instance, committee members gave Mr. Riggins' opinion about the ability of the candidates in fulfilling the duties of the Site Coordinator great weight since he was the director of the Grant program. The group reached a consensus that Ms. Galvin was the better candidate for the position and unanimously recommended her for the Shanks position.

31. Out of five Site Coordinator positions to be filled, only one position was filled by a white applicant, Debby Thompson. However, this fact does not demonstrate that the committee members were motivated by race in recommending Ms. Gates for the Shanks position.

32. Admittedly, Ms. Gates would seem to be the best candidate and the fact that she was not recommended for the Shanks position caused her to leave the Gadsden County School System and cost the School System an excellent teacher and mentor. However, the majority of the duties and responsibilities of the 21st Century Site Coordinator position did not involve being in the classroom and involved only occasional mentoring. The duties were mostly administrative and, since this was a new program, the director, Mr. Riggins, was the person most aware of the nature of the position which he would oversee. Mr. Riggins' concerns over discipline were sufficient to overcome the higher score of at least two committee members and his regard for Ms. Gates. Deference by the racially-mixed committee to his concern over Ms. Gates' ability to discipline was not unreasonable and not shown to be a pretext for racial discrimination. Therefore, the Petition For Relief should be dismissed.

CONCLUSIONS OF LAW

33. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2005)

34. Under the McDonnell Douglas framework, the Petitioner has the burden to establish by a preponderance of the evidence an inference of discrimination by establishing a prima facie

case. McDonnell Corp. v. Green., 411 U.S. 992, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Once the Petitioner has established the elements of a prima facie case, the burden of going forward with the evidence shifts to the employer to articulate a non-discriminatory basis for its employment action. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981). If the employer meets this burden, the Petitioner must show by a preponderance of the evidence that the proffered reason was pretextual or otherwise motivated by unlawful reasons. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 511, 112 S. Ct. 2742, 125 L. Ed. 2d 407 (1993). At all times, the ultimate burden of proof remains with the Petitioner and even if the Petitioner succeeds in discrediting the employer's proffered reasons, the trier of fact may conclude that the employer did not intentionally discriminate against the Petitioner. Reves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 148, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000).

35. In order to establish a prima facie case, the Petitioner must demonstrate that:

- (i) she belongs to a protected class;
- (ii) she was qualified for and applied for a position that the employer was seeking to fill;
- (iii) despite her qualifications, she was rejected; and

(iv) the position was filled with an individual outside the protected class.

McDonnell Douglas, supra.

36. In this case, Petitioner has established that she is a member of a protected class, that she was qualified for and applied for the Shanks Site Coordinator position, that despite her qualifications she was rejected, and that the position was filled by an individual outside the protected class, i.e., Carla Galvin. Therefore, Petitioner has established a prima facie case of discrimination based on her race. See Vessels v. Atlanta Independent School System, 408 F.3d 763 (11th Cir. 2005).

37. Having established a prima facie case, Respondent has the burden to articulate a legitimate non-discriminatory reason for its failure to hire Petitioner for the Shanks Site Coordinator position. As indicated, the burden of proof on the Board is one of production and not of proof. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 257-58, 101 S. Ct. 1089, 1096; St. Mary's, supra.; and Burdine, supra.

38. In this case, the Board articulated a legitimate non-discriminatory reason for the decision to not hire Ms. Gates for the Shanks position. The Board's articulated reason through the interview committee was that Ms. Gates identified herself as someone who did not like to discipline students. Ms. Gates'

statement raised concerns primarily with the program Director and eventually with all the committee members that she was not the best applicant to fill a position where the successful applicant would be the only administrator on-site and would be responsible for maintaining discipline of the students. The fact that the committee members deferred to Mr. Riggins on the disciplinary issue, even though they assumed both Ms. Gates and Ms. Galvin could and did discipline students as teachers, was reasonable since the director was in the best position to know what duties he expected the Site Coordinator to perform. Even though Ms. Gates was arguably better qualified for the position, given her years of experience, such experience does not overcome or demonstrate the illegitimacy of the rationale discussed by the committee and this racially-mixed committee's decision to recommend Ms. Galvin. Further, the evidence did not show that the difference in qualifications between Ms. Gates and Ms. Galvin was so significant that a reasonable, impartial person could not have chosen Ms. Galvin over Ms. Gates. Alexander v. Fulton County, 207 F.3d 1303, 1340 (11th Cir. 2000). Gofield v. Goldkist Inc., 267 F.3d 1264, 1268 (11th Cir. 2001).

39. "[D]isparities in qualifications are not enough in and of themselves to demonstrate discriminatory intent unless those disparities are so apparent as virtually to jump off the page

and slap you in the face.” Lee v. GTE Florida, Inc., 226 F.3d 1249, 1254 (11th Cir. 2000) (quoting Deines v. Texas Dep’t of Protective and Regulatory Servs., 164 F.3d 227, 280 (5th Cir. 1999)). In the instant case, the disparity in the qualifications between Ms. Gates and Ms. Galvin is not so dramatic, given the other considerations discussed above that a reasonable fact-finder could infer discrimination based on such disparities in qualifications. Both candidates were qualified, both were considered good teachers. In short, there was no substantial evidence to demonstrate that Respondent’s articulated reason was pretextual. See Cooper v. Southern Co., 390 F.3d 695, 725 (11th Cir. 2004); Bass v. Bd. Of County Commissioners, 256 F.3d 1095, 1108 (11th Cir. 2001). Therefore, the Petition For Relief should be dismissed.

RECOMMENDATION

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

The Florida Commission on Human Relations enter a Final Order finding that no unlawful employment practice occurred and dismissing the Petition For Relief.

DONE AND ENTERED this 13th day of February, 2006, in
Tallahassee, Leon County, Florida.

Diane Cleavinger

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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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.