

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RACHELL STALLWORTH,)
)
 Petitioner,)
)
 vs.) Case No. 06-0942
)
 OKALOOSA COUNTY SCHOOL BOARD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This cause came on for final hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on August 8, 2006, in Shalimar, Florida.

APPEARANCES

For Petitioner: Jeffery D. Toney, Esquire
Post Office Box 579
Crestview, Florida 32536

For Respondent: Vickie Allene Gesellschap, Esquire
Anchors Smith Grimsley
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STATEMENT OF THE ISSUE

The issue is whether Respondent Okaloosa County School Board engaged in an unlawful employment practice with regard to Petitioner.

PRELIMINARY STATEMENT

Petitioner Rachell Stallworth (Ms. Stallworth), submitted an Employment Complaint of Discrimination to the Florida Commission on Human Relations (Commission), which was filed on August 12, 2005, and an Amended Employment Complaint of Discrimination that was filed with the Commission on August 26, 2005. Ms. Stallworth alleged that the Okaloosa County School Board (School Board) discriminated against her because of her race, black, and retaliated against her. She claimed a hostile work environment based on race and disparate treatment based on race. On February 6, 2006, the Commission entered a Notice of Determination: No Cause. Ms. Stallworth filed a Petition for Relief with the Commission on March 6, 2006. The Petition was transmitted to the Division of Administrative Hearings and was filed on March 17, 2006.

The case was set for hearing on June 1, 2006, in Shalimar, Florida. On May 30, 2006, Ms. Stallworth moved to continue the case. It was thereafter set for August 8, 2006, and was heard as scheduled.

Ms. Stallworth testified and presented the testimony of Arden Farley. She offered Exhibit Nos. 1 through 6, and they were all admitted into evidence. The School Board presented the testimony of three witnesses and offered Exhibit Nos. 1 through 3, which were admitted into evidence. A Transcript was filed on

August 28, 2006. Both parties timely filed Proposed Recommended Orders.

References to statutes are to Florida Statutes (2004), unless otherwise noted.

FINDINGS OF FACT

1. Ms. Stallworth, during the 2004-2005 school year, was a teacher's aide employed by the School Board at W. E. Combs School in Ft. Walton Beach, Florida. She is a female African-American. She was assigned to assist Dawn Hall, who was a teacher in the Teen Age Parenting Program (TAPP) at Combs. Ms. Hall is a female of the Caucasian race.

2. Ms. Stallworth is a non-instructional employee of the School Board and is a member of the collective bargaining unit of the Okaloosa County Educational Support Personnel Association.

3. The School Board of Okaloosa County operates the school system in the Okaloosa County School District. It operates the Combs School and the TAPP program. The TAPP program provides an alternative education to students who are pregnant or who have recently given birth. There are often babies in the classroom of the TAPP program. The ages of students in the TAPP program range from 12 to 19.

4. The School Board of Okaloosa County is an employer as that term is defined in Section 760.02(7), Florida Statutes.

5. Ms. Stallworth has been employed by the School Board since June of 2000. She was a substitute teacher when she first began working for the School Board. She began work at Combs School on February 2, 2004. At the beginning of the 2004-2005 school year, she assisted Teresa Lancaster, a certified teacher. She filed papers and made copies of materials, helped individual students if they were struggling in a particular area, and accomplished such other tasks as were assigned by the teacher.

6. Ms. Stallworth asserted that her relationship with Ms. Lancaster was satisfactory and stated that she believed that Ms. Lancaster was a very good teacher. However, the relationship was not without conflict. School administrators were aware that the two did not always get along. Citing "burnout," Ms. Lancaster did not return after the Christmas vacation at the end of 2004. She was replaced by Dawn Hall.

7. Ms. Hall was absent with a medical problem the entire month of January 2005. During that time it was necessary for Ms. Stallworth to assume many of the duties that would normally be accomplished by a certified teacher. This was true even when a certified substitute was present in the classroom because of the specialized nature of the TAPP program. The substitute teachers relied on Ms. Stallworth's experience and skill in working with the students.

8. Due to a budget shortfall that occurred during the latter part of the school year, all of the staff at Combs were asked to volunteer to do extra duties. Ms. Stallworth willingly did all that she was asked, including emptying trash cans. She was never asked by Mr. Gaines to mop floors or clean toilets. The duties of a teacher's aide are relatively open-ended.

9. When Ms. Hall returned to work after her illness Ms. Stallworth was required to accomplish jobs normally done by a certified teacher, such as computer data entry, taking attendance, and supervising testing. These tasks were typical of the tasks done by aides. The satisfactory completion of them was the ultimate responsibility of Ms. Hall, however.

10. William Gainey, who was the administrator of Combs School during the 2004-2005 school year, supervised Ms. Hall and Ms. Stallworth. He had a favorable opinion of Ms. Stallworth's performance and gave her outstanding evaluations.

11. Subsequent to January 2005, Mr. Gainey received, from time to time, verbal and written complaints about Ms. Hall, from Ms. Stallworth, and from Ms. Hall's students, and from some parents. The students said Ms. Hall was distant and not available and that she made inappropriate comments about abortion and using guns. Some students complained that she yelled at them. They said she was often on the telephone and in

her office with her door closed. None of the complaints alleged racial discrimination.

12. Mr. Gainey suspected that some of the complaints from the students were precipitated by Ms. Stallworth, who, he knew, did not get along with Ms. Hall. Nevertheless, Mr. Gainey investigated the complaints and found some were valid, although none raised the issue of racial discrimination. He discussed the complaints with Ms. Hall. He told her that if she repeated certain behavior, he would put a letter in her personnel file. He did not reprimand Ms. Hall because he felt a warning would be sufficient.

13. Mr. Gainey had observed Ms. Hall's class from time to time and he noted that the two women only spoke when necessary to accomplish classroom activities.

14. Mr. Gainey had a meeting with Ms. Hall and Ms. Stallworth in an effort to resolve their differences. This effort failed because the two women disliked each other so intensely, and were so emotional, that a civil resolution was impossible.

15. Subsequent to the meeting, Mr. Gainey received a memorandum from Ms. Hall dated March 22, 2004. This memorandum noting the ongoing conflict with Ms. Stallworth, stated that Ms. Stallworth was hostile toward her, and stated that Ms. Stallworth engaged in unprofessional conduct toward her.

She noted that Ms. Stallworth called her "sick," "nasty," and "pitiful" during the meeting. She stated that she did not need an aide.

16. Sometime prior to March 7, 2005, both Ms. Stallworth and Ms. Hall complained to Arden Farley. Mr. Farley is the program director in charge of equal opportunity, mediation, and investigations for the School Board. Mr. Farley has worked in the equal opportunity area for twenty years in the military, and he has been addressing complaints of discrimination based on race, creed, color, sex, national origin and religion for twelve years for the School Board.

17. He met with Ms. Stallworth and she revealed that she was upset with Ms. Hall. She related that she thought that Ms. Hall was unprofessional. Mr. Farley inquired as to whether her concern involved issues of equal opportunity and discerned that the matter did not involve civil rights. As he put it, Ms. Stallworth, ". . . did not articulate any 'EEO' activity." Mr. Farley considered this to be a "management situation" and suggested that she address the matter with Mr. Gainey.

18. Mr. Farley became aware that Ms. Hall had complained about Ms. Stallworth. He determined that the two women were incompatible and unhappy with one another. Ms. Hall complained to him that Ms. Stallworth would not follow her instructions, and Ms. Stallworth stated that Ms. Hall was an incompetent

teacher. Both complaints were vague and Mr. Farley could not get the two women to provide him with specifics.

19. Mr. Farley conducted a cursory investigation. The reason he pursued the matter, to the extent that he did, is because there was some indication that an ethics violation may have occurred and ethics violations also fall under his purview. He learned that each of the women had stated that they were going to "get rid of" the other. He learned from a student that both of the women were disrespectful to the other in the presence of the students. He did not uncover any indication that race or bias was involved in the situation.

20. Ms. Stallworth stated, in a letter dated March 25, 2005, addressed to Mr. Farley, that Ms. Hall had called her a "mad woman." She said that Ms. Hall had made comments in the classroom about guns, abortions, sexual preferences of administrators, and had sprayed a household cleaner on a student's desk. The largest part of the letter addressed what Ms. Stallworth believed to be unprofessional behavior on the part of Ms. Hall. There is no assertion of any racial bias contained in this document.

21. On April 6, 2005, Ms. Stallworth penned a memorandum to Mr. Gainey, which addressed what she believed to be Ms. Hall's shortcomings. In this memorandum she claimed that Ms. Hall created a hostile environment for the paraprofessional

and students in her classroom. Apparently the paraprofessional to which she referred was herself. She made additional allegations that addressed claims that Ms. Hall used poor teaching methods and was not dedicated to her mission. There is no assertion of any racial bias in this document.

22. On June 15, 2005, subsequent to learning that she was to be transferred to Crestview, Ms. Stallworth penned a letter to Mr. Farley that addressed behavior on the part of Ms. Hall that she believed to be unprofessional. This letter is two and one-quarter pages long and does not mention racial discrimination. It complains generally that Ms. Hall made slanderous comments about her and others and engaged in unprofessional conduct in front of her students. She asked repeatedly, "why am I being punished?"

23. Petitioner first made allegations of racism on August 10, 2005, and August 26, 2005, when she signed Employment Complaints of Discrimination. Even in these filings it is clear that she was primarily angry because she believed she had been required to do certain jobs in the classroom without an increase in pay and because she was transferred. She noted that her nemesis, Ms. Hall, was not the subject of discipline.

24. Petitioner repeated these allegations of racism on the part of Ms. Hall, under oath, during the hearing. The allegations, expanded at the hearing, follow:

a. Ms. Stallworth claimed that Ms. Hall said that Filipinos are nasty, and that she didn't want her daughter with a Filipino because she didn't want slant-eyed grandchildren. She said that Filipinos eat rats.

b. Ms. Stallworth claimed that Ms. Hall said, with regard to her daughter dating a black person, that the guy was a thug and she couldn't stand him and she was going to buy a gun and she hoped her daughter "blowed" his head off because she just didn't like him.

c. Ms. Stallworth claimed that Ms. Hall said that snuff reminded her of the color of black skin.

d. Ms. Stallworth claimed that Ms. Hall said that she, Ms. Stallworth, was a mad black woman.

25. Ms. Hall denied making these remarks, under oath, at the hearing, and there was no evidence that contradicted her denial. It is found that the complaints made at or near the time Ms. Stallworth was working with Ms. Hall accurately reflect her complaints, which were management or professional complaints, not race-based complaints.

26. Mr. Gainey had a high opinion of Ms. Stallworth and gave her an outstanding evaluation. He did not participate in the decision to transfer Ms. Stallworth to Crestview.

27. Frank Fuller was Assistant Superintendent for Nontraditional Schools for the School Board during times

pertinent. He was Mr. Gainey's supervisor. He was aware of the conflict between Ms. Stallworth and Ms. Hall during the late winter and early spring of 2005. Mr. Fuller suggested that Mr. Gainey bring the two women together and attempt to ameliorate their differences and that suggestion led to the unfruitful meeting discussed above.

28. Mr. Fuller made the decision to transfer Ms. Stallworth from the Combs campus in Ft. Walton Beach, north to Crestview, in part because Ms. Burrows, the TAPP teacher in Crestview, requested an aide. Ms. Burrows had been teaching in the TAPPS program in Crestview for a number of years without an aide. Ms. Burrows insisted on having a good aide if she was to teach a reinvigorated TAPPS program in Crestview. Ms. Stallworth, who was an excellent aide, was the person she needed, in Mr. Fuller's opinion.

29. The decision to move Ms. Stallworth was made in May 2005, about two weeks before the end of the school year. Mr. Fuller, in deciding to transfer Ms. Stallworth determined that it was in the best interest of all parties that a unilateral transfer be made.

30. The general population shift in Okaloosa County is to the north. It was anticipated that the campus where Combs was located would be leased to the University of West Florida and

ultimately that occurred. Mr. Fuller had a desire to stabilize the program in the north and evaluate the future of the program in the south.

31. Ms. Stallworth's race was not a factor in the decision to move her to Crestview. It was not a transfer motivated by retaliation. Indeed, Ms. Stallworth never made a complaint about an unlawful employment practice that might precipitate retaliation until some two months after she learned that she was going to be transferred. Although Mr. Fuller was aware that Ms. Stallworth had filed a complaint with Mr. Farley, he was not aware of the nature of the complaint.

32. Her complaints did not contain any allegation of civil rights violations that would trigger retaliation as described in Chapter 760. She was not, in other words, engaging in a protected activity when she complained that Ms. Hall was rude and incompetent.

33. Ms. Hall resigned her position with the School Board on May 24, 2006.

34. The job site to which Ms. Stallworth was transferred is much closer to her home in Crestview than the job site at Combs. She asserted some inconvenience because her doctors were in proximity to Combs and some college classes she was taking were nearer Combs than Crestview.

35. "Full justification," for the transfer was not provided to Ms. Stallworth as Article 10.B.2.a of the Master Contract between the School Board and the Okaloosa County Education Support Personnel Association requires.

36. Ms. Stallworth has not received a poor evaluation, has not been disciplined, has not been demoted, has not been suspended, has not been terminated, and has not suffered a decrease in pay or benefits.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Sections 120.569, 120.57(1), and 760.01, Florida Statutes, et seq.

38. Ms. Stallworth has the ultimate burden of proving by the preponderance of the evidence that Respondent committed an unlawful employment practice. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

39. Petitioner is an "aggrieved person" and Respondent is an "employer" within the meaning of Section 760.02(10) and (7), Florida Statutes, respectively.

40. Section 760.10(1)(a), Florida Statutes, makes it unlawful for the School Board, "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, sex, handicap, or marital status."

41. Section 760.10(7), Florida Statutes, provides that it is an unlawful employment practice for an employer to discriminate against a person because that person has opposed an unlawful employment practice or because that person has made a charge under Chapter 760, Florida Statutes.

42. The Florida Civil Rights Act, Section 760.01, et seq., is patterned after Title VII of the Federal Civil Rights Act, 42 U.S.C. Section 2000e, et seq. Federal case law interpreting Title VII and similar federal legislation is applicable to cases arising under the Florida Act. See Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991) and School Board of Leon County v. Weaver, 556 So. 2d 443 (Fla. 1st DCA 1990).

43. Discriminatory intent can be established through either direct evidence or circumstantial evidence. Racially derogatory statements can be direct evidence if the comments were: (1) made by the decision-maker responsible for the alleged discriminatory act and (2) made in the context of the challenged decision.

44. The remarks made by Ms. Hall, recited at paragraph 24, above, even if she did make them, are not direct evidence of discrimination, because they were not made by a decision-maker in the context of carrying out an adverse action. The decision-maker was Dr. Fuller. If these remarks were made at all, they were merely "stray remarks." Vickers v. Federal Express Corporation, 132 F. Supp. 2d 1371 (S.D. Fla. 2000).

45. Because there is no direct evidence of discrimination, Ms. Stallworth must prove her case through circumstantial evidence by using the burden shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973).

46. To demonstrate race discrimination under McDonnell Douglas Corp. v. Green, Ms. Stallworth must first establish a prima facie case of race discrimination. Thereafter, the School Board may offer legitimate, nondiscriminatory reasons for its action. If the School Board does that, in order to prevail, Ms. Stallworth must establish that the School Board's articulated legitimate, nondiscriminatory reasons were a pretext to mask unlawful discrimination. Smith v. J. Smith Lanier & Co., 352 F.3d 1342 (11th Cir. 2000).

47. In order to prove a prima facie case, Ms. Stallworth must demonstrate that: (1) she is a member of a protected class; (2) she was subjected to an adverse employment action;

and (3) she was treated differently than similarly situated employees of a different race. McDonnell Douglas Corp. v. Green, supra.

48. Ms. Stallworth is a member of a protected class, but she was not subjected to an adverse employment action. Being required to accomplish additional tasks because a teacher is absent, and being transferred to a work site closer to one's residence, albeit a circumstance that might cause some minor and occasional inconveniences, are not actions that result in an adverse effect on the "compensation, terms, conditions, or privileges of employment." See Burlington and Northern Santa Fe Railway Co. v. White, 126 S. Ct. 2405 (2006). For that reason alone, she has not proven a prima facie case.

49. In any event, the School Board articulated its reason for the transfer to Crestview, and its reason had nothing to do with Ms. Stallworth's race.

50. Ms. Stallworth did not demonstrate that she was treated differently than similarly situated employees of a different race. She did not produce a single "comparator," which might have provided some evidence of discrimination.

51. If one assumes, arguendo, that Ms. Stallworth did prove a prima facie case of racial discrimination, the School

Board provided nondiscriminatory reasons for its actions.

Ms. Stallworth offered no evidence to suggest that this reason was pretextual.

52. Ms. Stallworth also asserted that she was subjected to a hostile work environment based on her race. In order to succeed with this claim she must demonstrate that, (1) she belongs to a protected group; (2) she was subject to unwelcome harassment; (3) the harassment was based on her race; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and to create a discriminatorily abusive working environment; and (5) provide a basis for holding the employer liable." Chambers v. Walt Disney World Co., 132 F. Supp. 2d 1356 (M.D. Fla.).

53. Ms. Stallworth can satisfy elements one and two. She is in a protected class. To be sure, Ms. Hall's harassment was unwelcome. However, Ms. Stallworth cannot satisfy element three because the harassment was not based on race. It was based on Ms. Hall's dislike of Ms. Stallworth.

54. With regard to the fourth element, four factors are relevant in determining whether conduct is sufficiently severe and pervasive from an objective standpoint to alter an employee's terms or conditions of employment: "(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or

humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." Mendoza v. Borden, Inc., 195 F.3d 1238 (11th Cir. 1999).

55. The verbal jousting and irritating behavior of two people isolated in a classroom together do not indicate harassment of the kind that would satisfy the Mendoza requirements. Accordingly, no hostile work environment based on race is found.

56. Ms. Stallworth's assertion that she was a victim of retaliation is also unfounded. Section 760.10(7), Florida Statutes, provides that, "It is an unlawful employment practice for an employer to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section. . . ." Ms. Stallworth did not oppose an unlawful employment practice at all. If anything, she exposed poor teaching methods on the part of Ms. Hall. See Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385, 1388 (11th Cir. 1998) and EEOC v. Navy Federal Credit Union, 424 F.3d 397 (4th Cir. 2005).

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Rachell Stallworth's Employment Complaint of Discrimination and an Amended Employment Complaint of Discrimination be dismissed.

DONE AND ENTERED this 3rd day of October, 2006, in Tallahassee, Leon County, Florida.



HARRY L. HOOPER
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Filed with the Clerk of the
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this 3rd day of October, 2006.

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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.