



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

MOIRA P. HUGGINS,

Complainant,

v.

WEST BABYLON SCHOOL DISTRICT,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10207690

Federal Charge No. 16GC002733

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on April 22, 2024, by Robert M. Vespoli, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

Pursuant to 9 N.Y.C.R.R. § 465.17(c)(3), Chief of Staff Belkis Alonso-Ortiz, Esq., has been designated by the Commissioner as the person who is fully empowered to decide this case.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY BELKIS ALONSO-ORTIZ, ESQ., CHIEF OF STAFF, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a

copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: 07/16/2024
Bronx, New York



Belkis Alonso-Ortiz
Chief of Staff



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on the Complaint of

MOIRA P. HUGGINS,

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v.

WEST BABYLON SCHOOL DISTRICT,

Respondent.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10207690**

Federal Charge No. 16GC002733

SUMMARY

Complainant alleged that Respondent unlawfully discriminated against her based on her sex by failing to hire her and retaliated against her for opposing unlawful discriminatory practices. Because the record does not support Complainant's allegations, the instant complaint is dismissed.

PROCEEDINGS IN THE CASE

On May 4, 2020, Complainant filed a complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Robert M. Vespoli, an Administrative Law Judge (“ALJ”) of the Division. Virtual public hearing sessions were held on September 19, 2022, September 20, 2022, March 22, 2023, and March 23, 2023.

Complainant and Respondent appeared at the hearing. Complainant was represented by Svetlana Sobel, Esq. Respondent was represented by Rondiene E. Novitz, Esq., and Julissa M. Proano, Esq.

In the instant complaint, Complainant alleged that Respondent subjected her to a retaliatory hostile work environment by barring her from the security office, removing her from her first-floor post, and taking her keys away. At the hearing, Complainant raised additional, specific claims of harassment, retaliation, and constructive discharge that were not raised in the instant complaint or subsequent Division investigation. The presiding ALJ ruled that these additional claims are outside the scope of this hearing and will not be considered. (Tr. 164-80; ALJ’s Exhs. 1, 4)

Permission to file post-hearing briefs was granted. The parties filed post-hearing briefs, which were considered and, where appropriate, adopted.

FINDINGS OF FACT

1. Complainant is female. (Tr. 233, 288-89; ALJ’s Exh. 1)
2. Respondent is a school district that employs many different categories of workers, including security guards. (Tr. 611-12, 617)

3. During the time relevant to the complaint, Edwin Salas was Respondent's director of school safety. (Tr. 727)

4. Salas knew Complainant socially, was aware that Complainant is female, and encouraged Complainant to apply for a job opening as a part-time guard for Respondent. (Tr. 33, 728-31)

5. In 2017, based on Salas's recommendation, Respondent hired Complainant to work as a per diem guard. (Tr. 33-34, 196, 728-31)

6. In 2018, Complainant became a full-time guard for Respondent. (Tr. 34, 197, 731)

7. During the time relevant to the complaint, Peter Tannazzo was Complainant's direct supervisor. (Tr. 38, 49)

8. At the time Respondent hired Complainant, Respondent did not have armed guards. (Tr. 197-98)

9. Due to the increasing incidents of school shootings nationwide, Respondent decided to take several measures to enhance school security, including hiring armed guards for the 2019-20 school year. (Tr. 612-14, 618-19; Complainant's Exh. 4)

10. Yiendhy Farrelly, Respondent's superintendent, believed that the process for hiring armed guards had to be handled with extreme care because the armed guards would be carrying weapons inside the school building. Accordingly, it took Respondent more than six months of planning to establish maximum safety and vetting procedures before hiring any armed guards. (Tr. 613-18)

11. Among other criteria, Respondent wanted candidates who had law enforcement experience and were licensed to carry a firearm. (Tr. 616, 858; Complainant's Exh. 4)

12. Respondent was also looking for candidates who had the right temperament to handle the responsibility of being an armed guard in a school district. (Tr. 616-17)

13. The armed guard position established by Respondent in 2019 was a full-time position. (Tr. 641, 643-44, 760-61, 883)

14. Complainant had experience working for both the New York City Police Department and the Suffolk County Police Department and was licensed to carry a firearm. (Tr. 25; Complainant's Exh. 1)

15. On March 15, 2019, Complainant applied for an armed guard position with Respondent. (Tr. 53; Complainant's Exh. 5)

16. The armed guard position pays more than the unarmed guard position. (Tr. 181-85; Complainant's Exh. 11)

17. At the time Complainant applied for an armed guard position, her assigned post was in the command center at the high school; her work hours were from 6:30 a.m. until 3:00 p.m. (Tr. 764)

18. Of the fifty-four candidates who applied for an armed guard position, two are female: Complainant and Christina Dahling.¹ (Tr. 844-45, 860-61)

19. When Respondent received applications for the armed guard positions, Farrelly, Salas, and Shawn Hanley, Respondent's assistant superintendent for human resources, reviewed the resumes of the candidates. They reviewed the resumes of internal candidates who already worked for Respondent and external candidates from outside the school district and separated them into different groups. (Tr. 617-18, 732-34, 855, 859-60)

¹ In some parts of the transcript, Dahling's last name is misspelled as "Darling." (Tr. 445, 625-26, 640-41, 647, 757, 759-60, 814-16, 861-62, 876, 878-79, 881-84, 887-88, 895, 912, 936)

20. Internal candidates who had the requisite experience and excellent ratings on their performance evaluations were moved directly on to interviews with Respondent's Board of Education ("BOE"). Dahling was one of these candidates. (Tr. 274, 454, 678-80)

21. Complainant and two male internal candidates, Andrew Munn and Keith Gamrat, were part of a second group of internal candidates who were qualified for the position but needed further vetting. These candidates were first given a screening interview with Farrelly and Hanley before they could go on to interview with the BOE. (Tr. 860-70, 920-21)

22. As superintendent, it was Farrelly's responsibility to recommend to the BOE which candidates she believed should be hired as armed guards. (Tr. 615, 672)

23. Complainant needed further vetting because she received a performance evaluation rating of "satisfactory" in four of the seven applicable rating categories, and Salas had other concerns about Complainant. (Tr. 634-37, 736-43, 872-74; Complainant's Exh. 3)

24. Prior to Complainant's interview for an armed guard position, Salas told Farrelly and Hanley about concerns he had about Complainant's character and fitness for this position. Salas informed Farrelly and Hanley about Complainant's "unprofessional" conduct that came to light when he received a complaint from the principal of one of Respondent's schools that was attended by Complainant's child. The principal of that school complained to Salas that Complainant had contacted her child's teacher to find out when her child took recess so she could monitor him on the district's security cameras. Salas felt this conduct was unprofessional because Complainant was fixating on her child when her job was to focus on the safety of all the students. (Tr. 635-36, 736-40, 872-74)

25. Salas also informed Farrelly and Hanley that Complainant had a history of failing to properly maintain Respondent's security cameras. (Tr. 636-37, 740-42, 873-74)

26. Salas noted other concerns about Complainant's character that included Complainant sometimes not being at her post in Respondent's command center when she should have been. Salas also received complaints from Respondent's information technology director that Complainant was often in that office having conversations with office employees for extended periods when she should have been working. (Tr. 743-45, 807-08)

27. Salas did not believe that Complainant possessed the requisite characteristics for the armed guard position. (Tr. 745)

28. Complainant went to the screening interview with Farrelly and Hanley. When they asked Complainant open-ended questions designed to elicit answers detailing how she would respond in a crisis situation, Complainant gave poor responses that provided them with no confidence in her temperament for the job. Complainant's responses were "not very specific," they "lacked focus," and were "off topic." Neither Farrelly nor Hanley were impressed with Complainant's interview, and they decided not to move her forward in the interview process. (Tr. 637-40, 875-76)

29. Munn and Gamrat were also not selected for an armed guard position. (Tr. 86-87, 644-47, 868-70)

30. Salas told all internal candidates who were not chosen for an armed guard position that they could remain employed with Respondent as unarmed guards and that their posts would change. The post assignments were going to change to account for posts that were now going to be assigned solely to armed guards. (Tr. 762-64)

31. When Munn learned that he would not be hired as an armed guard, he resigned. (Tr. 87, 763, 884)

32. Complainant and Gamrat remained employed by Respondent as unarmed guards. (Tr. 103-04, 763-64)

33. Each of the internal candidates who were hired for an armed guard position were males, were highly qualified for the position, had the temperament and characteristics that Respondent was targeting, and had evaluation ratings of “excellent” in all ratings categories on their performance evaluations. (Tr. 103, 628-32, 642-43, 681-82, 749-53, 861-67; Respondent’s Exhs. 4, 9)

34. I credit the testimony of Salas, Farrelly, and Hanley that after Dahling’s interview with the BOE, Respondent offered her an armed guard position, but she declined it because her childcare issues caused her to be available only for part-time work. (Tr. 454, 643, 647, 760-61, 815-16, 876, 882-84)

35. Although Dahling, who has a close friendship with Complainant, testified at the hearing that Respondent did not offer her an armed guard position, she did not display a clear recollection of specific facts and testified that she might have told Respondent that she only wanted to work on a part-time basis. I do not credit Dahling’s implausible hearing testimony that Respondent never informed her that she did not get an armed guard position and that she never asked anyone about it. (Tr. 258-77, 455, 465-66, 468, 470-71; Respondent’s Exh. 3)

36. Dahling, who has five children, has only worked part-time for Respondent and has only done part-time work since she left Respondent’s employ. (Tr. 466-67)

37. In a sworn deposition taken on February 23, 2021, pursuant to N.Y. General Municipal Law § 50-h, Complainant testified that Dahling could not take an armed guard position because she could not work a full-time position. (Respondent’s Exh. 2)

38. I do not credit Complainant's dubious testimony at the hearing that she based her sworn deposition testimony on an assumption about Dahling's work status. (Tr. 276-78)

39. In September 2019, Respondent re-posted openings for the armed guard position. (Tr. 105, 647)

40. On September 13, 2019, Complainant applied for this position. (Tr. 105; Complainant's Exh. 12)

41. Dahling did not apply for this position, and Complainant was the only female applicant. (Tr. 457, 701-02, 887)

42. Respondent did not interview Complainant for this position because Complainant's initial interview convinced Farrelly that Complainant did not have the characteristics that Respondent wanted for the position. (Tr. 648-49)

43. In December 2019, Complainant contacted the Suffolk County Human Rights Commission to complain about unlawful discrimination in the workplace. (Tr. 250, 339-45)

44. By letter dated December 24, 2019, the Suffolk County Human Rights Commission contacted Respondent and requested a response to Complainant's allegations of unlawful discrimination. (Tr. 341-45; ALJ's Exh. 1)

45. Complainant acknowledged that Respondent was closed on December 24, 2019, and that Respondent could not have been aware of any contact from the Suffolk County Human Rights Commission until sometime in early January 2020. (Tr. 340-41)

46. Beginning in September 2019, when Respondent began to put armed guards into service, the command center at the high school, Complainant's previously assigned post, became a post for armed guards only. At that time, Complainant's post was moved to a hallway post in

the high school, and her work hours were changed from 6:30 a.m. until 3:00 p.m. to 7:00 a.m. until 3:30 p.m. (Tr. 334-35, 345, 764, 766-67)

47. Respondent moved the command center to a new room that had a bathroom inside to prevent the reoccurrence of an incident where an armed guard left a gun in an outside bathroom that was accessible to students. (Tr. 335, 765)

48. Because the old command center was a place where guards would congregate, Respondent restricted access to the new command center to armed guards only. Respondent took this step to lessen the possibility that someone other than an approved armed guard could access a room that contained firearms. (Tr. 766-67)

49. Complainant acknowledged that in September 2019, Respondent did not allow her or the other unarmed male and female guards in the new command center. (Tr. 337, 345)

50. The room where the old command center was located was converted into a room for speech therapy services. In September 2019, Respondent collected the keys for the old command center from Complainant and male security staff, including Salas, Tannazzo, and Frank Palazzolo, because they no longer needed to have access to the room. (Tr. 345, 765-66)

OPINION AND DECISION

It is unlawful for an employer to discriminate against an employee on the basis of sex. N.Y. Exec. Law, art. 15 (“Human Rights Law”) § 296.1(a).

To make out a prima facie case of unlawful discrimination in employment, a complainant must show that 1) he or she is a member of a protected class, 2) he or she was qualified for the position, 3) he or she suffered an adverse employment action, and 4) the adverse employment action occurred under circumstances giving rise to an inference of unlawful

discrimination. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305, 786 N.Y.S.2d 382, 390 (2004) (citing *Ferrante v. Am. Lung Ass'n*, 90 N.Y.2d 623, 629, 665 N.Y.S.2d 25, 29 (1997)).

If a complainant makes out a prima facie case of unlawful discrimination, the burden shifts to the respondent to articulate a legitimate, independent, and non-discriminatory reason for its actions. *Id.* If the respondent does so, the complainant must show that the reasons presented by the respondent were merely a pretext for the unlawful discrimination by demonstrating that the respondent's stated reasons were false and that the real reason was unlawful discrimination. *Id.* at 305, 786 N.Y.S.2d at 391. The "burden of persuasion of the ultimate issue of discrimination always remains" with the complainant. *Stephenson v. Hotel Empls. and Rest. Empls. Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 271, 811 N.Y.S.2d 633, 636 (2006).

Complainant, a female, is a member of a protected class, and there is no dispute that she possessed the minimum qualifications for the armed guard position. Complainant suffered an adverse employment action when Respondent did not hire her as an armed guard, a position that paid more money than the unarmed guard position. Despite Complainant's seeming qualifications, she was not selected for the position, while Respondent hired allegedly less qualified male candidates. There is scant evidence in the record beyond Complainant's subjective, conclusory testimony suggesting an inference that Complainant was not hired because of her sex. Nevertheless, in light of the totality of the circumstances, Complainant has met the "de minimis" burden of establishing a prima facie case of unlawful discrimination. *See Schwaller v. Squire Sanders & Dempsey*, 249 A.D. 2d 195, 196, 671 N.Y.S.2d 759, 761 (1st Dept. 1998).

Respondent has met its burden of articulating legitimate, independent, and non-discriminatory reasons in support of its actions. Respondent's burden here is one of production

only; it does not involve any evaluation of credibility. *See Stephenson* at 270-71, 811 N.Y.S.2d at 636 (citing *Texas Dept. of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254 (1981)).

Of the fifty-four candidates who applied for an armed guard position, only Complainant and Dahling are female. Respondent moved Dahling directly to an interview with the BOE and sought to hire her, but she could not work the full-time hours required for the job. Complainant and two male internal candidates did not go directly to interviews with the BOE because they needed further vetting. Complainant needed further vetting because Salas, Respondent's director of school safety, expressed his concerns about Complainant's performance and character to Farrelly and Hanley prior to her screening interview. Salas, who knew Complainant prior to her employment with Respondent and was familiar with her work product, did not believe that Complainant possessed the requisite characteristics for the armed guard position. When Farrelly and Hanley met with Complainant at her screening interview, they were not impressed with her responses, and they decided not to move her forward in the interview process. Each of the internal candidates who were hired for an armed guard position were males, were highly qualified for the position, had the temperament and characteristics that Respondent was targeting for this highly sensitive school safety position, and had evaluation ratings of "excellent" in all ratings categories on their performance evaluations. The interview performance of job candidates and supervisor input are legitimate business reasons for employers to make hiring decisions. *See Diello v. Potter*, 697 F. Supp. 2d 410, 413 (W.D.N.Y. 2010), *aff'd*, 413 F. App'x. 344 (2d Cir. 2011). In September 2019, Complainant applied for the re-posted armed guard position. Farrelly did not feel the need to interview Complainant again because Farrelly did not believe Complainant had the requisite characteristics for the job.

Complainant has not shown that the reasons presented by Respondent were a pretext for

unlawful discrimination. Complainant's subjective conclusions about her experience and qualifications for the armed guard position are not sufficient to substantiate a showing of pretext. *See id.* at 413-14. The record does not show that anyone associated with Respondent harbored unlawful discriminatory animus toward Complainant, that other similarly situated co-workers outside of Complainant's protected class were treated more favorably, or that Respondent applied established rules or policies in a discriminatory manner. Accordingly, this claim must be dismissed.

Complainant also alleged that Respondent subjected her to unlawful retaliation. It is unlawful for an employer to retaliate against an employee for having filed a complaint or opposed unlawful discriminatory practices. Human Rights Law § 296.7.

To make out a prima facie case of retaliation, a complainant must show that 1) he or she engaged in activity protected by the Human Rights Law, 2) the respondent was aware that the complainant participated in the protected activity, 3) he or she suffered an adverse employment action, and 4) there is a causal connection between the protected activity and the adverse employment action. *Adeniran v. State of New York*, 106 A.D.3d 844, 844, 965 N.Y.S.2d 163, 164-65 (2d Dept. 2013).

In a retaliation context, an adverse employment action is one which "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Mejia v. Roosevelt Is. Med. Assoc.*, 31 Misc.3d 1206(A), 927 N.Y.S.2d 817 (Table) (Sup. Ct. N.Y. Co. 2011), *aff'd.*, 95 A.D.3d 570, 944 N.Y.S.2d 521 (1st Dept. 2012), *lv. to appeal dismissed*, 20 N.Y.3d 1045, 961 N.Y.S.2d 374 (2013) (citing *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)).

If a complainant makes out a prima facie case of retaliation, the burden shifts to the

respondent to articulate a legitimate, independent, and non-discriminatory reason for its actions. If the respondent does so, the complainant must show that the reasons presented by the respondent were merely a pretext for discrimination. *Adeniran* at 845, 965 N.Y.S.2d at 165.

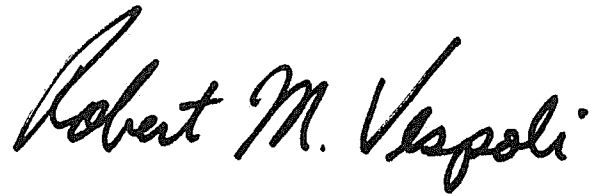
Complainant alleged that Respondent subjected her to a retaliatory hostile work environment by barring her from the security office, removing her from her first-floor post, and taking her keys away. Complainant engaged in protected activity when she complained about unlawful discrimination to the Suffolk County Human Rights Commission in December 2019. The issue here is whether Complainant suffered an adverse employment action in the form of a hostile work environment in retaliation for bringing a complaint of discrimination to the Suffolk County Human Rights Commission. The record shows that Respondent could not have been aware of contact from the Suffolk County Human Rights Commission until early January 2020 and that the adverse employment action occurred in September 2019, well before Complainant engaged in the protected activity. Complainant's retaliation claim is not actionable because the protected activity did not precede the actions which Complainant claims were retaliatory. *See St. Louis v New York City Health and Hosp. Corp.*, 682 F. Supp. 2d 216, 236 (E.D.N.Y. 2010). Moreover, Respondent has established that it took the challenged actions for legitimate, independent, and non-discriminatory reasons, and there is no record evidence that would support a finding that unlawful retaliation was a motivating factor behind Respondent's actions. Accordingly, this claim must be dismissed.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the instant complaint be, and the same hereby is, dismissed.

DATED: April 22, 2024
Hauppauge, New York

A handwritten signature in black ink that reads "Robert M. Vespoli". The signature is written in a cursive style with a large, sweeping initial 'R'.

Robert M. Vespoli
Administrative Law Judge