

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EM14AG-64745
EEOC NO. 17E 2014 00469

W [REDACTED] M [REDACTED],)
)
Complainant,)
)
v.)
)
Rutgers University,)
)
Respondent.)

Administrative Action

FINDING OF NO PROBABLE CAUSE

On July 28, 2014, Union County resident W [REDACTED] M [REDACTED] (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Rutgers University (Respondent) refused to hire him as a campus police officer based on his age, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR's ensuing investigation found as follows.

Respondent is the state's largest public university and maintains its own police department. On August 2, 2013, it posted an advertisement announcing six openings for "Police Officer Recruit[s]" to work at the Cook Campus in New Brunswick. The advertisement provided the following job description:

Under the supervision of a University Police Sergeant or Lieutenant or any other command officer, during an assigned tour of duty or special assignment, renders police services designed to provide assistance and protection to persons, safeguard property, and provide required security services to the Rutgers University community. Ensures that the laws of the State of New Jersey, local ordinances, and the rules and regulations of Rutgers University are observed on campus and contiguous streets. Provides general assistance to all persons on the campus, including information regarding campus geography, special events, campus regulations, provisions of the law, and other related matters. Requires ability to deal courteously and effectively with a culturally diverse community, both individually and in groups. Initiates, receives, and investigates complaints; where possible takes appropriate action in cases under the officer's jurisdiction; and reports said complaint and corrective action in keeping with the State Uniform Crime Report Program. Investigates criminal, motor vehicle, civil, and other complaints committed by or against the university community and the general public, and observes established regulations and policy. When necessary, takes

appropriate action to apprehend, warn, cite, and/or take into custody violators of the laws of the State of New Jersey.

[See Rutgers, Position No. 13-002002, Aug. 2, 2013.]

The advertisement listed the job requirements as follows:

Applicants must minimally possess the following qualifications for consideration: High school/vocational school education (or equivalent); be not less than 21 nor more than 40 years of age; U.S. citizenship; valid New Jersey driver's license (with two years of driving experience). Requires ability to perform all essential job functions; write clear, accurate, and comprehensive police reports; and have completed or be able to satisfactorily complete, within one year of appointment, the Police Training Course given by an accredited police academy in the State of New Jersey. Applicants possessing a bachelor's degree from an accredited institution in a related discipline or those who possess a current PTC certification and have police experience are desired. Applicants who are currently enrolled at a New Jersey Police Training Commission sanctioned police academy or that have at least two years active military service with an honorable discharge are preferred. Applicants may be selected to appear before a police review board or complete a pre-employment physical agility test. Selected candidates will be required to satisfactorily complete a pre-employment medical examination that includes drug screening, stress test, and consultation with a psychologist.

[Ibid. (emphasis added).]

On or about August 14, 2013, Complainant submitted a resume and cover letter expressing his interest in the position. In the cover letter, he wrote, among other things, "In my current position, I provide oversight for motor vehicle inspection stations in six northern New Jersey counties. I elicit information from stakeholders and I inspect equipment to identify and correct deficiencies in the motor vehicle inspection process." See Letter from Complainant to Chief Kenneth Cop, Aug. 14, 2013.

Complainant's resume states that he has a master's degree from NJIT in environmental science, and an undergraduate degree from Stevens Institute of Technology in chemical engineering. At the time he applied for the police officer position, he had been working for approximately fourteen years at the NJ Department of Environmental Protection as an Environmental Engineer III. His resume included the following description of his job duties:

I provide oversight for motor vehicle inspection stations in six counties. I elicit information from stakeholders and I inspect equipment and supplies necessary to conduct the inspections and I perform quality control for supplies. I develop Standard Operating Procedures and I draft countless communications. I review reports. I conduct Right to Know training and I make presentations to public and private sector employees in a hazardous materials management class. I serve as a

vehicle coordinator and I keep track of State vehicles in part to ensure preventative maintenance is performed when required.

According to Complainant's resume, he worked for the U.S. Department of Justice as an investigator before working as an environmental engineer. He provided the following description of his job duties as an investigator:

I coordinated contractor security clearances during a multimillion dollar renovation of the office. I troubleshot facility related problems between employees and contractors. I investigated criminal activity involving a variety of violations. I performed physical and electronic surveillance of subjects. I developed and debriefed informants. I interviewed witnesses, complainants and suspects. I was the affiant on arrest and search warrants and executed each type of warrant both as a Team Leader and as part of an arrest or search team. I collected evidence at crime scenes. I traced financial transactions through banks. I used the computer to query internal databases as well as publicly available information. I participated in undercover operations. I established relationships and interacted with other law enforcement agencies from all layers of government. I worked with prosecutors and testified at trial. I protected witnesses. I am a certified police instructor and I regularly made presentations on crime scene management and evidence collection to state and local police.

At the time, he was 52 years old. He did not list his age on either document. However, he wrote that he had "more than twenty-four years of service as an investigator and engineer." Ibid. And his resume noted that his first job as an environmental engineer for the U.S. Army was from 1987 to 1988.

On August 16, 2013, the deadline for submitting applications closed. Respondent received 964 applications for the recruit position during the open period, and invited 62 applicants to sit for a first-round interview.

On September 12, 2013, Respondent posted a second advertisement announcing three openings for a police officer recruit to work at the Camden campus. The advertisement stated that applicants must be "at least 18," but made no mention of a maximum age requirement. See Rutgers, Position No. 13-002467, Sept. 12, 2013. Complainant did not apply for that position.

It appears that Complainant sent an email to Respondent entitled, "RUPD Application Status," asking whether a decision had been reached. On January 28, 2014, Lt. Brian Emmett responded via email notifying the Complainant that he was "not selected to move on to the first phase of interviews." See Email from Lt. Emmett to Complainant, "RUPD Application Status," Jan. 28, 2014, 10:11 a.m. Emmett wrote in part, "Should you see a future posting for a Rutgers New Brunswick Recruit, I hope you are not discouraged from applying again in the future." Ibid.

Complainant asked Emmett why the posting had a maximum age requirement. See Email from Complainant to Emmett, Feb. 4, 2014.

Emmett intended to forward Complainant's email to Administrative Assistant Nakia Darden, who handled personnel issues for the Department. Emmett wrote, "Are you able to respond to Mr. M [REDACTED]? If not, can you please provide him with the appropriate contact person at Human Resources? Thank you." However, it appears that he inadvertently sent the email to Complainant instead of Darden. See Email from Emmett to Complainant, Feb. 7, 2014.

At some point, Emmett received an explanation from school officials regarding the maximum age requirement for police officer recruits. He sent an email to Complainant that stated in pertinent part as follows:

The criteria listed in the recent job position is comparable to that of criteria set by law enforcement municipalities in New Jersey. As per New Jersey statute, the following age limit is set forth for the Police and Fire Department System:

PFRS MAXIMUM AGE LIMITS

New Jersey Statute; N.J.S.A. 43:16A-3, and the New Jersey Administrative Code; N.J.A.C. 17:4-2.5, requires that:

- Individuals hired in a PFRS eligible title at a **Civil Service** location must not be one day past their 35th birthday on the closing date of the examination for the title to establish membership in PFRS. Individuals meeting this age requirement can be hired at any time from the Civil Service list while it is still active and be enrolled in the PFRS;
- Individuals hired in a PFRS eligible title at a **Non-Civil Service** location must not be one day past their 35th birthday on the date of hire for the title to establish membership in PFRS.

For additional questions, Rutgers Human Resources can be reached at 848-932-3020.

[See Email from Emmett to Complainant, "Police Officer Position # 13-002002," May 29, 2014 (boldface in original)].

On July 18, 2014, Complainant wrote to Respondent, arguing that there was "no legitimate legal basis in New Jersey for applicants who are older than age 40 to be excluded from positions as police officers at State colleges or universities." See Letter from Complainant to Lisa Grosskreutz, Associate Director, Office of Employment Equity, Jul. 14, 2014. He wrote in part:

In New Jersey, applicants to positions as municipal police officers must be younger than age 35 (with some exceptions for "reductions in age") in order to be initially enrolled in the Police and Firemen's Retirement System (PFRS). Individuals seeking employment with a municipality in an eligible PFRS title who are over age 35 on the closing date of the examination with a Civil Service employer or over age 35 on the date of hire with a Non-Civil Service employer, even after "reductions in

age” have been taken into account, cannot establish membership in any State-administered retirement system. Since enrollment in the PFRS is a condition of employment (N.J.S.A. 43:16A-3(1)), these individuals cannot be hired as municipal police officers.

However, individuals seeking to be employed by the State of New Jersey or any county, who exceed the maximum age requirement for membership in PFRS, but who are otherwise eligible for the position, shall establish membership in the Public Employees’ Retirement System (PERS).

[Ibid.]

Complainant told DCR that Emmett’s explanation was “illogical.” See Email from Complainant to DCR, “Age Discrimination Complaint/EM14AG64745,” Feb. 3, 2015, 5:39 p.m. He alleged that his “background was superior” to the six candidates who were ultimately selected. Ibid.

Respondent contends that Complainant’s age did not factor into its personnel decision. It stated that in addition to the preferred qualifications expressly listed in the job posting—i.e., prior Police Training Course (PTC) certification and military background—it looked at three other “key qualifications” when determining which applicants would move past the initial screening stage: prior Rutgers employment, Rutgers degree, and “bachelor’s degree plus.” See Letter from Julianne Apostolpoulus, to DCR, Feb. 4, 2015. Respondent noted:

[A]pplicants with PTC certification are reviewed first, then those with a military background, etc. Thus, the first four categories are not prerequisites that an applicant must possess in order to be selected for an interview, but represent the most desirable qualifications. An individual without PTC certification, a military background, prior Rutgers employment or a Rutgers degree could potentially receive an interview. However, there are significantly fewer interview spots available for such applicants as they are reviewed as part of the final Bachelors degree “plus” pool. In reviewing that pool to determine which applicants will be offered the few remaining first-round interview spots, the applicants are evaluated as to whether they have prior experience in law enforcement or community policing and/or background in community relations, among other things.

[See Letter from Apostolpoulus to DCR, Feb. 15, 2015.]

Respondent noted that Complainant did not meet any of the first four key qualifications, and that “[w]hen compared to the other applicants in the Bachelors degree plus category, he was not competitive because he did not have prior experience in law enforcement or community policing nor a background in community relations.” Ibid. For instance, Respondent noted:

[Complainant] had worked for the past fifteen years as an Environmental Engineer for the New Jersey Department of Environmental Protection, where he “provide[d] oversight for motor vehicle inspection stations.” . . . His prior experience with the

Department of Justice was unrelated to law enforcement. Generally, his resume . . . did not indicate experience in community policing.

[See Letter from Apostolpoulos to DCR, Sept. 10, 2014.]

Thus, Respondent stated, Complainant's resume was "unremarkable in comparison to other applicants," and was included among the overwhelming majority of applicants who were not offered interviews. Ibid.

DCR spoke to Emmett, who confirmed that the police department received more than 960 resumes to fill six openings. He described the initial screening process. Resumes are submitted on-line through Respondent's applicant tracking system. A security officer assigned to the Detective Bureau "calls up" and prints each resume. A security officer assigned to the Detective Bureau goes through the stack of resumes and sorts them into five piles for purposes of the initial screening process: PTC; military experience; Rutgers staff; Rutgers graduate; and bachelor's degree plus. Once the resumes are sorted, Emmett begins his review.

He said that he is typically looking for about sixty or seventy applicants to be interviewed, and that held true in this case. Emmett stated that he does not know the candidates' ages. He noted that application process does not ask candidates to provide their ages or dates of birth. He begins with the PTC pile "because we're always looking for someone who's already trained as a police officer." He stated that there were dozens of resumes in that first pile. He selected them all to move on for interviews. He next reviewed any resumes in the military background and Rutgers staff piles. He recalled that there were approximately twenty resumes from Rutgers employees.

Emmett told DCR that he had no recollection of reviewing Complainant's resume. He stated that it was possible that he never saw it during the selection process because it was in the fifth tier "bachelors degree plus" pile, which he described as "overwhelmingly the biggest pile" and which made up approximately "one third of the resumes we received." He stated that when going through that pile, he was searching for applicants who had first-hand experience dealing with the community such as first responders.

Emmett said that after the selection process was over, he received an email from Complainant asking about the age requirement. Emmett told DCR that it was the first time he was ever asked that question. He asked the HR department for an explanation. He stated that someone from HR, he could not recall who, explained to him that the age requirement was necessitated by pension system requirements and sent him the rationale that he incorporated into his email to Complainant.

The Chief of the Rutgers University Police Department is responsible for administering the selection process. See Rutgers, Recruitment, Selection & Hiring for Sworn Positions, May 8, 2012, p. 2 ("The Chief of Police shall ensure all phases of the process are administered, evaluated, and interpreted in a uniform manner and that the operational elements of the selection process are identical for all candidates")

Chief Kenneth Cop told DCR that he became Chief in 2012. He confirmed that Lt. Emmett was assigned to conduct the initial screening which, he explained, meant reviewing resumes and selecting about sixty or seventy candidates to advance to the second stage in the process. Cop stated that the practice of “sort[ing] out the resumes” based on candidates who held a police training certificate, military experience, prior Rutgers employment, Rutgers degrees, and “bachelor degree plus,” pre-dated his tenure as Chief. He stated that the Department has used those criteria in its initial screening process since at least 2008.

Cop stated that the next phase is to have those sixty or seventy candidates go before the Community Oriented Review Board (CORB), which he described as members of the community who interview and rate the candidates. Cop said that after the CORB interviews are conducted and scored, about forty candidates proceed to the next phase, i.e., Police Review Board, which also interviews and rates the candidates. The candidates that make it past that stage are scheduled to interview with the chief. Cop stated this is his first exposure to any of the candidates in the selection process. He receives their resumes and “scoring charts” from the interview boards, and then conducts one-on-one interviews to decide who will “move forward” to the “background process.” He stated that in the background process, the Investigations Unit conducts background checks on the selected candidates and submits its reports to the Commissioning Board, which consists of captains from three geographic regions. The Commissioning Board reviews the reports to see if there are any areas of concern. The approved applications are returned to Cop who decides which applicants will receive a conditional offer of employment (i.e., conditioned on passing psychological and medical evaluations). Cop stated that the entire process typically takes three to four months. He said that after the process is over—i.e., offers have been made and accepted—Respondent notifies the other applicants that they were not selected.

Cop said that when it came down to selecting the final applicants, he was already familiar with five of the six persons selected. All five had been working for the department as *security officers*. He stated that Rutgers security officers are full-time employees who function as the “eyes and ears” for the Police Department. He said that the security officers, like the police officers, are “highly service-oriented” and perform duties ranging from jump-starting stalled cars, to providing security escorts, to patrolling campus buildings, to performing “parking enforcement.” He noted that all five officers were well-regarded as diligent employees who knew their way around the campus and were known and respected by Department personnel. One of the successful candidates had served as his assistant. He noted that applicants who are already working at the Department have “certain advantages” in that they know how the organization works and have an “understanding of the complex nature of Rutgers as a whole.” For example, he stated that critical skills that a successful campus police officer must possess include “awareness of the geography,” “knowledge of the community,” “ability to know what other departments are responsible for, and how they can help,” “ability to know who to call,” “ability to interact specifically with people in the Rutgers community,” “ability to interact specifically with other divisions within Public Safety,” ability to “conduct outreach to other units” and “ability to have a team approach.” He noted that since five of the candidates he selected were already working full-time for the Police Department as security officers, they possessed that requisite knowledge “before they got the actual job, and those are skills that are all important to us.” While others would have to learn those skills as part of their on-the-job training, persons who were already working for the Police Department were “ahead of the game.”

He also found it significant that all five had earned undergraduate degrees in criminal justice—four of those degrees had been from Rutgers. He noted that the majority of those five applicants had also worked part-time for the Rutgers Police Department as *community service officers* before they were security officers. He stated that community service officers are uniformed students who work part-time and typically have an interest in criminal justice. He said that they receive forty hours of training before being assigned to perform a “variety of tasks” such as “loss-prevention” in the campus bookstore, providing security at football games, patrolling the campus, serving as safety escorts for members of the Rutgers community, and performing “transports.” He noted that one of five successful candidates—in addition to working as a Rutgers security officer—had worked for another university’s police department as well as at a municipal police department. He felt that their work histories and educational backgrounds evinced a long-standing commitment to policing as a full-time career.

The sixth successful candidate had a psychology degree and worked as a social worker in a prison. Cop found her to be aptly qualified because of her practical work experience and also saw value in hiring a female because 50% of the undergraduate population is female. When asked why her professional background appealed to him, he replied that social work is “part and parcel to our field. . . . [P]art of our mission in being community-oriented is your ability to speak with people.” He said a critical role of the Rutgers police officer is to interact with the university community, “understand what their problems are, and get them the help that they need.” He stated, “That’s very akin to the job that she was doing” as a social worker. He added that her gender “was a bonus but that was not the determinative reason [he] hired her.” He stated, “I like to be diverse in the candidates that I select. Whether she was female or not, she was qualified for the job and did great in the [selection] process.”

Similarly, he stated that he found it helpful that one of the candidates was fluent in Spanish and that another applicant spoke partial Bengali and Hindi since the campus had significant Latino and Asian populations.

DCR presented Complainant’s resume to the Chief and asked how he would have evaluated the resume had it reached his stage in the process. DCR asked Cop to focus particularly on the second entry, i.e., Complainant’s claim that he spent six years working as an investigator for the Department of Justice. Cop did not think that the Complainant’s background made him as qualified as the six people he selected. He stated that there were different types of law enforcement work and the type of experience listed on Complainant’s resume—e.g., *trac[ing] financial transactions through banks, participat[ing] in undercover operations and coordinat[ing] contractor security clearances during a multimillion dollar renovation of the office*—did not necessarily translate into being an effective community police officer in a university setting, which required developing community partnerships by constantly conducting outreach and engaging in problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. He noted that the experiences that Complainant cited were simply “not what our day-to-day officers are out there doing,” i.e., community policing/community relations. In fact, he noted that such prior work experience “can actually work against us” in terms of how a candidate with such a background might “view or react to a situation.” Cop stated, “He may jump right into this type of mode and that’s not how we operate.” Cop stated, “We handle stuff at the very local level.”

Cop stated that when there are openings, he notifies his “local HR person,” Assistant Director of Personal Services for Rutgers’ Public Safety Division Nakia Darden. He said that Darden works with Respondent’s HR office. He said that the posting at issue was taken from a posting that’s been “in the system since 2002.”

DCR spoke with Senior HR Consultant Jim Venner. He stated when a division or department in the University has a vacancy that it wants to fill, it sends a “classification and recruitment form” to HR. He said the form is “essentially a job description,” and that from that document, an HR staff member will “compose a draft posting announcement” that is sent back to the department for its “review and consideration and approval.” He stated that once that approval comes back, the announcement is posted on the University’s website. In this case, HR was contacted by Darden.

DCR met with Respondent’s counsel, Julianne Apostolpoulus, who said that the age requirement had been in the posting since 2002. She stated:

It was just an error. There is the age 40 limitation for firefighters and so it may have come from something like that. I think it was a misunderstanding to do with pension regulations. There was some belief that you had to be enrolled before a certain age in order to qualify for the PFRS system, but we also have the PERS system.

She speculated that no one had ever raised the issue before because “unlike a staff position,” it was commonplace to have lawful age limitations in job postings for state and municipal police officers and fire fighters. She stated, “Everyone just assumed that it had to do with the pension plan. Frankly, because that’s why the age limitation is lawful for municipal and state police—because of the pension systems.” She told DCR that after Complainant raised the issue, they analyzed the issue and realized that the rationale did not hold because they had two different pension systems, so they promptly removed the age requirement.

DCR reviewed the resumes of the six candidates who were selected. Their submissions indicate as follows.

X1 is a male who graduated from East Stroudsburg University with a degree in criminal justice. His resume listed the following coursework: Police & Community Relations; Intro Cultural Diversity; Police Investigation; Chemical Aspects of Drugs and Alcohol; Spanish 1; Juvenile Delinquency; Criminal Process; Criminology; Corrections; Police Ethics; and Field Work Observation. At the time he applied, he was already working for the Rutgers Police Department as a security officer. He previously worked at the Watchung Police Department and East Stroudsburg University Police Department.

X2 is a female who graduated from Montclair State University with a degree in psychology and who, according to her resume, spent approximately six years as a counselor/social worker managing a population of 170 adult inmates where she gained first-person experience counseling, interviewing, evaluating, and providing crisis intervention and anger management training to criminal offenders. Her resume states that before working with the adult inmates, she worked

with juveniles in a residential setting including “mentally ill . . . [and] juvenile delinquents, adolescents on probation, and developmentally disabled,” where she “[u]sed primary restraint techniques during physical altercations.”

X3 is a male who graduated from Rutgers University with a degree in criminal justice. At the time he applied, he was already working for the Rutgers Police Department as a security officer and had other first-responder experience working as an EMT for an Elizabeth hospital and for a rescue squad in Middlesex County. According to his resume, X3 is fluent in Spanish (“Native Spanish speaker, read and write”), holds a number of certifications including but not limited to emergency vehicle operator (CEVO II), guard training (SORA), EMT, and OSHA Hazmat FRA training, and previously worked for the Rutgers Police Department as a community service officer where he received “two letters of commendation for actions taken leading to arrests.”

X4 is a male who graduated from Rutgers University with a degree in criminal justice. At the time he applied, he had been working for the Rutgers Police Department as a security officer for two years and was “given additional responsibilities by being assigned to the Detective Bureau and assisting the detectives with cases.” According to his resume, X4 has an MBA with a concentration in public administration, had been certified in surveillance detection by the Department of Homeland Security, certified as a basic telecommunicator and emergency medical dispatcher, partially speaks Bengali and Hindi, and previously worked for the Rutgers Police Department as a community service officer where he patrolled the campus and was “promoted to a CSO Field Training Officer for the new CSO cadets.”

X5 is a male who graduated from Rutgers University with a degree in criminal justice and a minor in criminology. At the time he applied, he was already working for the Rutgers Police Department as a security officer where his duties included serving as a Field Training Officer and training new recruits. According to his resume, he previously worked for the Rutgers Police Department as a community service officer. He also worked as a police intern at the Edison Police Department, and was a certified community service officer.

X6 is a male who graduated from Rutgers University with a double major in criminal justice and sociology. At the time he applied, he was already working for the Rutgers Police Department as a security officer where the majority of his time was purportedly spent “working in the Detective Bureau assisting the detectives with solving crimes.” According to his resume, he previously worked for the Rutgers Police Department as an Assistant to the Chief of Police, and as a community service officer where he served as an Executive Officer, and as an intern.

Five of the six candidates listed first-aid trainings on their resumes, e.g., CPR/AED certifications. Three of the candidates listed certificates for CUPSA Basic Security Training.

DCR found that the age limitation has not appeared in any subsequent job posting for Rutgers police officer recruits since the August 2013 posting. Rutgers has since hired at least one police officer who is over 40 years old.

The information obtained during the investigation was shared with Complainant, and prior to the conclusion of the investigation, Complainant was given the opportunity to submit additional information.

Analysis

At the conclusion of an investigation, the Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2. For purposes of that determination, “probable cause” is defined as a “reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe” that the complainant was a victim of unlawful discrimination. Ibid. If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, then the finding is deemed a final agency order subject to review by the Appellate Division of the New Jersey Superior Court. N.J.A.C. 13:4-10(e); R. 2:2-3(a)(2).

The LAD makes it illegal to “refuse to hire or employ” a job applicant based on age unless the applicant is “over 70 years of age.” N.J.S.A. 10:5-12(a). Here, Complainant alleges that but for unlawful age discrimination, he would have been selected to fill one of the six openings for police officer recruit.

The hiring process had a number of layers. The pool of applicants was whittled down at every stage. The 964 applications were initially screened based on five ranked criteria. A small percentage of those applicants (approximately 6%) was moved on to the first round of interviews, i.e., with the CORB. After those interviews were conducted and evaluated, a smaller group of applicants was allowed to proceed to the second round of interviews, i.e., with the Police Review Board. After those interviews were conducted and evaluated, a smaller group of applicants was allowed to proceed to the third round of interviews, i.e., one-on-one interviews with the Chief. After those interviews were conducted and evaluated, some applicants were moved to the background check stage. And a potentially smaller group of applicants was returned to the Chief for his selection.

It is undisputed that Complainant’s resume did not make it past the initial screening. Lt. Emmett, who conducted that initial screening, told DCR that he was unaware of the applicants’ ages and was simply following the department’s practice of filling sixty or seventy slots with candidates based on the priority qualifications—PTC certifications, military experience, prior Rutgers employment, a Rutgers degree, bachelor’s degree plus. The investigation found no evidence, and none was produced by Complainant, to suggest that the five initial screening criteria were somehow improper, or a way to weed out applicants on the basis of age. For instance, Complainant acknowledged during the course of the investigation that anyone who received the PTC certification prior to the close of the application process was more qualified than he. And although one could argue that having a Rutgers degree does not necessarily make someone a better campus police officer than someone without a Rutgers degree, there is no allegation that it is somehow a way of masking age discrimination. Here, Emmett stated that he had no recollection

of reviewing Complainant's resume. He said it was possible that he did not even see it because he may have already met his quota before he reached Complainant's resume.¹

Ultimately, the Chief selected five males who were already working for him as full-time uniformed security officers, and whom he knew and trusted. Four of those five had worked part-time for the Rutgers Police Department as uniformed community services officers before working as security officers, with one having served as Cop's personal assistant. Four of the five were Rutgers graduates. The fifth male, in addition to working at the Rutgers Police Department, worked at a municipal police force and another university's police force. All five earned undergraduate degrees in criminal justice. The sixth candidate whom the Chief selected had a psychology degree and years of community service working as a social worker assisting incarcerated adults, adolescents, and persons with mental illness, including experience with crisis intervention, anger management, and training in physical restraint during altercations, all which Cop viewed as useful skills for the campus police officer position. He also saw value in hiring a female. He found that all six candidates exhibited a long-standing commitment to ideals consistent with his model of community policing. The DCR investigation found no competent evidence to show that any of those qualities that the Chief valued were somehow ageist.

The Chief stated that the qualifications and experience of the six selected candidates were more relevant than those of Complainant, who was an environmental engineer and had spent the last fifteen years handling motor vehicle inspection stations. The job at issue requires someone who has an "ability to deal courteously and effectively with a culturally diverse community, both individually and in groups," in order to, among other things, "provide assistance and protection to persons, safeguard property, and provide required security services to the Rutgers University community." See Rutgers, Position No. 13-002002, Aug. 2, 2013. DCR makes no determination as to which qualifications would increase a person's effectiveness as a Rutgers police officer in a community policing model (i.e., criminal justice majors, coursework in community relations and cultural diversity, security and community service backgrounds, a female with physical restraint training who spent many years working directly with inmates by employing social work, crisis intervention, and anger management techniques, versus an environmental engineer with experience executing search warrants and investigating white-collar crime). It merely notes that Complainant offered no persuasive evidence to corroborate his allegation that his "background was superior" for the position at issue.

In view of the above, DCR cannot conclude that age was the reason why Complainant's application did not pass the initial screening. But even assuming for the moment that his resume had been among the 6% that survived the initial screening (despite his lack of any of the top four priority qualifications used during that stage in the process), and further assuming that it had survived the two interview boards and background check, it appears that he would not have been selected because he did not possess the other non-discriminatory characteristics that the ultimate decision maker—Chief Cop—found most desirable. Thus, the investigation did not support a

¹ By no means dispositive, the fact that Emmett invited Complainant to apply for future positions suggests that he did not know that Complainant was beyond what he misunderstood to be a required maximum age limit. See Email from Emmett to Complainant, "RUPD Application Status," Jan. 28, 2014 ("Should you see a future posting for a Rutgers New Brunswick Recruit, I hope you are not discouraged from applying again in the future.")

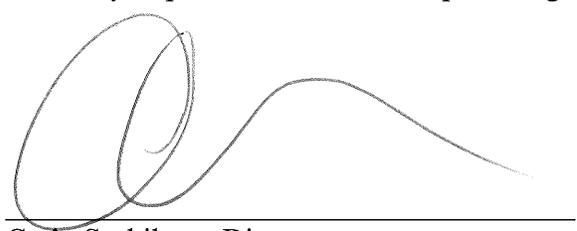
“reasonable ground for suspicion” that the Complainant was not selected for one of the six positions because of his age.

Respondent appears to have improperly included the maximum age requirement in its advertisements for police recruits from 2002 to 2013. Although not pled in the verified complaint (perhaps because the posting occurred beyond the applicable statute of limitations, N.J.S.A. 10:5-18), the conduct implicates N.J.S.A. 10:5-12(c), which prohibits employers from publishing a job advertisement that “expresses, directly or indirectly, any limitation, specification or discrimination as to . . . age . . . unless based upon a bona fide occupational qualification [BFOQ].” Respondent stated that it mistakenly believed that maximum age was a BFOQ because of the pension requirements. The posted age requirement did not dissuade Complainant from applying. However, it may have dissuaded other qualified applicants who may have met Respondent’s higher-level screening criteria.

Respondent noted that the mistake was corrected and will not be repeated. DCR confirmed that the age limitation has not appeared in any subsequent job posting for Rutgers police officer recruits since the August 2, 2013 posting. DCR found that Respondent has since hired at least one police officer who is over 40 years old. To ensure that no inappropriate criteria are applied to future postings, DCR will continue to monitor all postings for campus police officer positions.

Because the investigation was unable to find a “reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe” that Complainant would have been offered one of the six positions but for unlawful age discrimination, N.J.A.C. 13:4-10.2, and given that DCR never received a complaint alleging violation of N.J.S.A. 10:5-12(c), that Respondent has corrected the issue, and that DCR has not identified any other persons who allege to have been adversely impacted because of the posted age requirement, this matter will be closed.

DATE: 9-14-15



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS