



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO: EN12RU-60182
REFERRAL NO: 17E-2009-00071

JON STOKES AND)
C. CARLOS BELLIDO, ACTING DIRECTOR,)
NEW JERSEY DIVISION ON CIVIL RIGHTS,)
Complainants,)
v.)
PLUMBERS & PIPEFITTERS LOCAL UNION)
NO. 9,)
Respondent.)

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on September 25, 2008, the above-named respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, et seq.) and specifically within the meaning of N.J.S.A. 10:5-4, and 10:5-12 (a) and (b) because of race.

C. Carlos Bellido, Esq. is the Acting Director of the Division on Civil Rights and, in the public interest, has intervened as a Complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).

SUMMARY OF COMPLAINT:

Complainant alleged that Respondent removed him from his shop steward position because of his race (Black). To support his claim, Complainant alleged that Respondent's business agent told him he was being removed because union workers at the job complained about him, but he performed his shop steward duties in a manner that met Respondent's legitimate expectations. Complainant alleged that he was removed because of his race and replaced by Angelo Rotondo, a Caucasian employee.

SUMMARY OF RESPONSE:

Respondent denied discriminating against Complainant for any unlawful reason including race. Respondent asserted that Complainant was removed from his position as shop steward because he did not satisfactorily perform his shop steward duties.

BACKGROUND:

Respondent is a labor union local with jurisdiction over central New Jersey, including Mercer County.

Complainant is a resident of Franklinville, New Jersey. Complainant's initiation date into Respondent union was September 25, 1990. On or about January 10, 2008, Complainant began working as a plumber/pipefitter at the Stone and Webster Construction site at Duck Island in Trenton, Mercer County, New Jersey. Complainant was shop steward at that job site from approximately January 10, 2008 to June 15, 2008, when he was removed from his position as shop steward.

C. Carlos Bellido, Esq. is the Acting Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

SUMMARY OF INVESTIGATION:

The investigation revealed sufficient evidence to support a reasonable suspicion that Respondent violated N.J.S.A. 10:5-12 (a) and (b) of the New Jersey Law Against Discrimination (LAD).

The investigation disclosed that in January 2008, Respondent assigned Complainant, who was a journeyman plumber, and four other union members (General Foreperson Roger Leip, Foreperson John Oberto, Journeyman Charles Russell and Apprentice Ed Burns) to work at the Stone & Webster Construction site at Duck Island in Trenton. Respondent's Business Agent, Nick Oberto (a relative of John Oberto), appointed Complainant, as shop steward. Complainant was the only Black member of the union at the site at that time.

The investigation disclosed that, over the next several months, Respondent assigned additional members to work at the Duck Island job site. Angelo Rotondo (Caucasian) was one such member. A copy of Rotondo's Referral Work History shows that he began working at the job site on April 1, 2008. It is undisputed that, on or about June 15, 2008, Nick Oberto removed Complainant from the position of shop steward and appointed Rotondo as shop steward.

Information provided by two witnesses supports the conclusion that Complainant's race was a factor in his removal from the shop steward position. In an interview with the assigned investigator, one of Complainant's Caucasian co-workers, Zoltan Mitru, said that he was sitting in the trailer on the job site on one occasion, approximately three or four weeks before Complainant was removed as shop steward, when Rotondo came in and said, "We have to get rid of that nigger steward." Although Complainant was not present, Mitru said that there were approximately 15 to 20 other men present, including Foreperson John Oberto, when Rotondo made this statement. Mitru said that there were "a lot of wide eyes and mouths dropped" when Rotondo made that statement.

The assigned investigator interviewed another witness, Journeyman Charles Russell, who also provided a certification to the Division. Russell stated that on more than one occasion, he heard Angelo Rotondo say he was going to "get rid of that nigger shop steward." Russell stated that on or about June 13, 2008, he heard Rotondo say "don't worry, we are going to rid of that

'molignon' soon." Russell stated that he understood "molignon" to be an Italian slur referring to Black people, and from the context, he understood that Rotondo was talking about Complainant.

Russell added that, on several other occasions, including May 23, 2008, he heard Rotondo, union workers Jim O'Connell and Robert Schuster, and Assistant General Foreperson John Smith refer to Complainant as "nigger" when Complainant was not present. Russell stated that General Foreperson Roger Leip and Foreperson John Oberto were also present at one time or another when the above union members referred to Complainant as "nigger." Russell further stated that, from the time Rotondo was first hired at the job site, Leip began assigning shop steward duties to Rotondo that were supposed to be carried out by Complainant.

Russell stated that on or about May 27, 2008, he revealed to Complainant that some of the union members at the job site were referring to him as "nigger" and saying they wanted to get rid of him as Shop steward. At the Division's Fact Finding Conference, Complainant stated that Russell and Mitru both told him about these statements. Complainant stated that, at the time, he did not ask Russell or Mitru who made the comments about him, nor, at that time, did he tell Business Agent Nick Oberto or any of Respondent's management what Russell and Mitru told him. Complainant said that he thought it was unnecessary because he trusted that Nick Oberto was looking out for him and "had his back," since Oberto appointed him as shop steward in the first place.

The investigation disclosed that on or about June 15, 2008, Nick Oberto called Complainant at home and told him that he was no longer going to be shop steward. During the Division's investigation, Complainant stated that Nick Oberto told him that he was being replaced because union members at the job site had too many complaints. Complainant explained to the assigned investigator that he asked Nick Oberto who complained, but Nick Oberto would not tell him. As neither Oberto or anyone else had ever told him of complaints from union members before removing him, and based on what Russell and Mitru told him several weeks earlier, Complainant concluded that some of the union members at the job site, including Rotondo and John Oberto were responsible for his removal as shop steward. Complainant later learned that he was replaced by Angelo Rotondo.

On June 15, 2008, after the phone call from Nick Oberto, Complainant called Charles Russell and told him that Oberto had just called him and told him he was being removed as shop steward. Russell then told Complainant the names of the individuals who referred to him as "nigger" and expressed their intent to get rid of him as shop steward. During the Division's investigation, Russell stated that he gave Complainant the names of Rotondo, Jim O'Connell and Robert Schuster.

On June 16, 2008, Complainant called Michael Maloney, Respondent's Business Agent and Nick Oberto's superior, and told him that there was a problem at the job site and that he was removed from the shop steward position. Complainant did not mention the racial remarks he learned of from Russell. Complainant's understanding was that Maloney and Oberto were going to come to the job site at the end of the week to look into the situation.

The investigation also disclosed that Charles Russell attended a union meeting on July 22, 2008, and after it was over, he met with Chris Longo, a member of the Union's Executive Board. Russell stated that he told Longo that there had been a conspiracy to remove Complainant as shop steward and that some guys at the job site referred to Complainant as "nigger" and said they were

“going to get rid of the stupid nigger.” Longo told Russell that he and Complainant should bring the matter to the attention of the local union board.

The investigation disclosed that Nick Oberto went to the Duck Island job site the next day and asked Russell about his report of racial remarks. During the Division’s investigation, Russell explained that Complainant was not present for this conversation, and he told Nick Oberto that he heard some guys at the job refer to Complainant “nigger” and say that they wanted to get rid of him as shop steward. Russell said that Nick Oberto did not ask him for the names of the persons who made these remarks at that time, and no one else in Respondent’s management asked him for any additional information about what he told Longo or Oberto.

The investigation disclosed that, on or about July 31, 2008, Nick Oberto went to a meeting at the job site. Complainant, Russell, Rotondo, Leip, John Oberto, John Smith, and Jim O’Connell, and possibly others were present. At that meeting, Complainant voiced his belief that he had been unfairly treated as shop steward, and was unfairly removed from that position. He noted that as the new shop steward, Rotondo was given more privileges than he had been given, and that Rotondo was relieved of some less desirable tasks he was required to do while he was shop steward. Complainant also said that he had been referred to as “nigger” by some of the guys.

During the Division’s investigation, Russell stated that Nick Oberto did not say anything during the meeting in response to Complainant’s comments. In an interview with the Division, Russell explained that several of the men present voiced outrage, and asked Complainant whether he was accusing them personally of making racial remarks. He advised the assigned investigator that the meeting became chaotic and neither Russell nor Complainant identified the individuals who made the statements at that point.

During the Division’s investigation, Complainant explained that although Nick Oberto said nothing about the race discrimination during that meeting, Oberto approached him after the meeting and said he needed the names of the people who made the racial remarks. In reply, Complainant said that he believed Oberto already knew who made the remarks. In an interview with the Division’s investigator, Complainant explained that he felt it was obvious that Oberto knew who did it; he noted that some of the people were supervisors, and Nick Oberto’s relative, John Oberto observed the racial hostility and Complainant believed that John Oberto was part of the movement to have him removed.

At the Division’s Fact Finding Conference, Nick Oberto said that when Complainant brought the issue to his attention, he spoke to Complainant and to Russell to get to the bottom of it, but Russell refused to name the individuals who made the racial remarks and said they were going to get rid of “the stupid nigger.” Nick Oberto stated at Fact Finding that if they would not provide the names, there was nothing he could do.

At the Fact Finding Conference, Nick Oberto stated that he actually made the decision to remove Complainant as shop steward based on a call he received after a May 2008 safety meeting. Complainant was the only member of the Pipefitters Union at that meeting, which was also attended by representatives from other unions working at the Duck Island job site. Oberto stated that one of the general contractor’s safety coordinators called him and told him that Complainant had questioned why they should bother with safety reports when his men don’t pay attention to them. At the Fact Finding Conference, Nick Oberto said that this was a terrible message to send to others at the meeting. When asked at the Fact Finding Conference to identify

the person who reported Complainant's alleged statement to him, Nick Oberto said he could not recall. Nick Oberto also stated at Fact Finding that he received reports "from here and there" that Complainant was not responding quickly enough when boiler makers needed materials, and that Complainant could not handle the shop steward duties.

During the Division's investigation, Complainant denied that he made any comment like the one described above. He said that at the May 2008 safety meeting, he merely asked for clarification as to who was responsible for reading and enforcing the safety reports on a daily basis. Complainant stated that, when Foreperson Roger Leip asked him about his statement after the safety meeting, he explained to Leip what he said and what he meant. Complainant told Leip that his words must have been misunderstood at the meeting.

The investigation could not conclusively determine exactly when Business Agent Nick Oberto or Business Manager Michael Maloney became aware that union members, including supervisors, were making racially hostile comments about Complainant, or when they became aware that Rotondo in particular had made racially derogatory comments in connection with his intent to have Complainant removed as shop steward. However, in its answer to the verified complaint, Respondent acknowledged, *"After being removed as Shop Steward, Mr. Stokes made general complaints on approximately four occasions from July to September 2008 to Nick Oberto that there was a conspiracy to remove him as Shop Steward, which was partially based upon race, but Mr. Stokes would not provide any specifics."*

The investigation revealed that, once Respondent learned of Complainant's "general complaints," Respondent took no action to properly investigate or affirmatively rectify the racially hostile work environment. The investigation further revealed that Respondent took no action to determine whether race was a motivating factor in the negative reports Respondent received about Complainant's work performance that prompted the decision to remove him as shop steward. Further, the investigation revealed that even after Respondent learned that Rotondo was alleged to have made racially hostile remarks on a number of occasions, and allegedly expressed a racially motivated plan to oust Complainant from his shop steward position, Respondent took no action to investigate or remove Rotondo from the shop steward position.

Moreover, the investigation disclosed that Respondent has no written policies prohibiting racial or other bias-based discrimination or harassment among its members, nor does Respondent have any written procedures for union members to report or otherwise seek relief from and redress for such discrimination or harassment.

The Division's investigation disclosed no evidence that, after Complainant and Russell reported the racially hostile comments and their understanding that some union members expressed a racially motivated intent to remove Complainant as shop steward, Respondent gave Complainant any additional information about the procedures Complainant could use to file a formal or informal report or complaint, or otherwise have Respondent investigate his allegations of race discrimination. Nor did the Division's investigation disclose any evidence that Respondent took any action to inform Complainant that he would not be subjected to retaliation for pursuing a race discrimination report or complaint with Respondent.

ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination

whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div.1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S. Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div.1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

The LAD prohibits race discrimination by both employers and labor organizations. The New Jersey courts have defined race discrimination to include both racially hostile work environments, see, e.g., Taylor v. Metzger, 152 N.J. 490 (1998) and situations in which racial bias, even if it is not the only factor in an employment decision, is a determinative factor in the employment decision. See, e.g., Slohoda v. United Parcel Services, Inc., 207 N.J. Super. 145 (App. Div. 1986).

Here, the investigation disclosed sufficient evidence to support a reasonable suspicion that Respondent failed to meet the LAD's requirements for taking appropriate action to prevent and eliminate race discrimination among its members, and to provide effective procedures for its members to report bias-based discrimination and harassment. In particular, after receiving information from both Complainant and Russell regarding racially hostile comments and a possible racially motivated plan to effect Complainant's removal from the shop steward position, Respondent failed to provide Complainant with a safe and effective procedure for reporting his race discrimination complaint and having it properly investigated. Further, once Respondent knew or should have known that Rotondo made racially hostile comments in connection with his intent to have Complainant removed as shop steward, Respondent took no action to investigate the appropriateness of Rotondo's continued service as shop steward, and permitted him to remain in that position.

In addition, the investigation disclosed sufficient evidence to support a reasonable suspicion that Complainant's race, in the form of racially motivated complaints about his performance as shop steward, was a determinative factor in Respondent's decision to remove Complainant from the shop steward position.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint as they pertain to discrimination based on race.

6/11/09

Date



C. Carlos Bellido, Esq., Acting Director
New Jersey Division on Civil Rights