

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO. ED08RB-64671

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| Marcus Royal, |) | |
| |) | |
| Complainant, |) | <u>Administrative Action</u> |
| |) | |
| v. |) | FINDING OF PROBABLE CAUSE |
| |) | |
| Camden City Public Schools, |) | |
| |) | |
| |) | |
| Respondent. |) | |

Gloucester County resident Marcus Royal (Complainant) filed a verified complaint with the Division on Civil Rights (DCR) alleging that he was among a group of information technology (IT) employees laid off by the Camden City School District (Respondent) after their title—Computer Specialist Technician (CST)—was eliminated. He alleges that although a number of former CSTs were offered a newly created replacement title—LAN Specialist—he was denied the position because of his race in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Summary of Investigation

Respondent is a public school system that serves students in pre-kindergarten through twelfth grade. In September 2001, it hired Complainant to work as a CST. According to Respondent’s written job description, CSTs were responsible for troubleshooting and maintaining telephone systems, providing asset support, installing equipment, and repairing computers and associated technology. CSTs also worked with vendors to ensure timely repairs and assisted with the disposal of obsolete technology. Required qualifications for the CST position included:

- Post High School training in the technical area
- Certification(s) from an accredited technical school or equivalent preferred, e.g., A+. MCP, etc.
- A minimum of two (2) years of experience in servicing personal computers
- Working knowledge of
 - Various Windows and Mac OSX operating systems

- UNIX
- Mac and PC desktops
- Printers
- Various peripherals
- Various software applications (word processor, database, spreadsheet)
- Telephone systems
- Strong interpersonal, written and verbal communication

In June 2013, the State took control of the District's school board and replaced many of its administrators. Following the State takeover, the District's new superintendent announced that the district was facing a \$75 million shortfall. The Superintendent's proposed budget required the elimination of 575 positions, including the CSTs.

Respondent retained a consultant, Tom O'Dea, to manage some of the layoffs. On April 22, 2014, O'Dea informed the CSTs that their positions were being eliminated as of June 30, 2014. They were provided with information to apply for seven newly created LAN Specialist positions.

According to Respondent's written job description, LAN Specialists were to be responsible for installing and maintaining district hardware and software, resolving IT issues relating to network connectivity and toning drops, assisting the Help Desk in resolving Level 1 IT issues, addressing customer needs related to Level 2 IT issues, ordering equipment, tracking equipment, coordinating with managers regarding the installation of hardware and software, and performing wiring to support the installation of technology hardware and software. Required qualifications for the LAN Specialist position included:

- Associate's or Bachelor's degree in Computer Science or equivalent work experience
- Certification preferred in one or more of the following areas: CompTIA A+, Network +, Cisco Certified Entry Networking Technician, Microsoft Certified Professional, Microsoft Certified Technology Specialist, Microsoft Technology Associate
- Experience and in-depth understanding of working with a diverse array of technology devices, including smartphones, IP phones, tablets, laptops, and desktops which reside on multiple types of networks

- At least 2 years of previous work experience in a similar position, preferably working in a school setting
- Working knowledge of various Windows, Mac OSX, IOS and Android operating systems

Complainant submitted an application for the LAN position. He included his resume and evidence that he possessed one of the preferred certifications, namely the CompTIA A+ certification. He interviewed with O'Dea and Deputy Manager/Technology Systems Specialist Patrick McGlinchey. Complainant completed a hiring exercise that tested his IT knowledge.

O'Dea and McGlinchey conducted most of the interviews. In one or more cases, another person conducted the interviews with O'Dea. Based on the applications, resumes, and interviews, the interviewers made a written notation as to whether each candidate was recommended for hire. The application materials, interviewers' notes, hiring recommendations, and results of the hiring exercise were forwarded to the Human Resources department for the final hiring decision. O'Dea told DCR that the interviewers did not see the hiring exercise scores before making their recommendations. O'Dea also told DCR that he did not possess technical expertise in IT.

At the end of the process, four of the CSTs were re-hired as LAN Specialists: (a) T.F., a 32-year-old African-American male who had a CompTIA Network + certification; (b) C.N., a 55-year-old Asian male who had a bachelor's degree in Computer Science; (c) Y.T., a 37-year-old Caucasian male who had a CompTIA A+ certification, Microsoft Certified Professional certification, Microsoft Technology Associate Certification, and a Cisco Certified Network Associate certification; and (d) W.R., a 59-year-old Caucasian male.

Respondent also hired three external applicants: (a) C.H., a 32-year-old Caucasian male who was a Cisco Certified Entry Networking Technician; (b) B.L., a 36-year-old Caucasian male who had a Bachelor's degree in Computer Science; and (c) E.P., a 44-year-old Caucasian male who had a Microsoft Certified Professional certification.

Complainant was rejected for the LAN position. Two other former CSTs were also rejected for the LAN position: J.A. (52-year-old African-American female) and C.G. (60-year-old African-American male).¹

Respondent offered a higher level network administrator position to one of the laid off CSTs, J.D. (31-year-old Caucasian male). And Respondent re-hired laid off CST, V.O. (35-year-old Hispanic male) for another position within the District.

¹ C.G. filed a separate discrimination claim with DCR arising from the same events. See Giddins v. Camden City Public Schools, DCR Docket No. ED08WE-64672.

Complainant, who is African-American, alleges that he was qualified for the position and passed over in favor of less qualified applicants because of his race. Moreover, he contends that the LAN Specialist position had identical responsibilities to the CST position, and that the degree and certification preferences were intended to decrease the number of African-American employees in the position. He notes that all of the Caucasian CSTs survived the lay-off process but 75% of the African-American CSTs did not.

Respondent denied the allegations of discrimination in their entirety. Respondent told DCR that education and certification preferences were put in place for the LAN Specialist position because it required substantially more responsibilities and competencies than the CST position. In an interview with DCR, O'Dea stated that the District wanted an IT department that was capable of supporting computer-based testing and a new 1:1 initiative that called for every student to have a computer. In order to fulfill these objectives, O'Dea felt that the IT employees should have the qualifications to provide the necessary technical and infrastructure support for the new devices. O'Dea also asserted that technical certifications were "preferred," but not "required," and a candidate could be qualified based on "equivalent work experience."

Respondent told that Complainant was not selected because he failed to demonstrate an "acceptable" score on a number of core competencies and performed poorly on the IT hiring exercise. See Response to Information Request, Aug. 21, 2014, p. 5.

Respondent produced the "Competencies Checklist and Recommendation" form completed during Complainant's May 20, 2014 interview. Complainant was scored as "Acceptable" or above on 16 out of 21 core competencies. O'Dea noted that Complainant's strength was his "knowledge of district procedures" and his weaknesses were "networking knowledge, [and] tech certifications." Complainant was recommended for hire "with reservations."

O'Dea told DCR that he could not remember specific details about Complainant's interview, and he was unable to explain why he noted Complainant's weakness as "tech certifications" despite his CompTIA A+ certification. Neither O'Dea nor McGlinchey could recall their particular reasons for recommending Complainant "with reservations."

Respondent provided results of the hiring exercise on which Complainant scored 7 out of 15 on the LAN Specialist portion, and 1 out of 5 on the Network Administrator portion. DCR requested the scores of the successful candidates' hiring exercises so that DCR could verify that they outperformed Complainant. Respondent stated that it was unable to provide that information.

One of the successful candidates—W.R. (59 year-old Caucasian male)—had less experience working for Respondent. He did not have a computer science degree. Unlike Complainant, he did not possess any of the preferred certifications. The interviewers scored him as Acceptable on 19 out of 21 core competencies. His strengths were noted as "knowledge of

district procedures, willingness to go beyond minimum work requirements, customer focus, [and] results oriented.” He was “recommended for hire” without reservations.

It appears that Complainant’s score on the core competencies was higher or equivalent to non-African-American candidates who were offered the position. For example, Y.T. was deemed to be “Acceptable” in 15 out of 21 core competencies. Like Complainant, C.N. and B.L. were deemed to be “Acceptable” in 16 out of 21 core competencies. Respondent did not provide DCR with C.H. or E.P.’s scores.

DCR interviewed W.R., who had recently retired from the LAN Specialist position. He confirmed that he began working in Respondent’s Technology Department as a CST in 2009. He stated that his LAN Specialist role was more difficult than the CST because it required networking knowledge. He said that as a CST, he was only required to troubleshoot individual computer hardware issues as opposed to network connectivity problems. He stated that although he did not have any of the preferred technical certifications listed in the job description, he noted in his application materials that he had a Smartboard certification, which he felt may have been a factor in the hiring decision. He said that he had acquired some networking experience in his role as a CST, and had additional networking experience from jobs he held prior to joining the District.

DCR interviewed C.N., an Asian male who began working for Respondent as a CST in 2011. He was 55 years old when he was re-hired as a LAN Specialist. He stated that as a CST, he would occasionally perform network-related duties but he did not have the official authority to work with the networking team. He stated that his current role is more difficult because it requires use of his networking knowledge.

DCR interviewed T.F., an African-American male who began working in Respondent’s Early Education Department as a CST in 2011. He was 32 years-old when he was re-hired to work as a LAN Specialist. He stated that the LAN Specialist role was substantially similar to his CST position. He stated that he worked with the networking team in his previous role and the only difference was that it was no longer a union position. He stated that he believed McGlinchey made networking experience and technical certifications requirements for the new role in order to weed out certain people, but he was unsure of whether it was racially motivated.

Analysis

At the conclusion of an investigation, the DCR 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. “Probable cause” for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” Ibid.

The procedure is not an adjudication on the merits. It is merely an initial “culling-out process” in which the DCR makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” 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., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the terms, conditions, or privileges of employment based on race. N.J.S.A. 10:5-12(a). In this case, Complainant raises two separate issues. First, he alleges that Respondent rebranded the CST position with another title that performed essentially the same functions and concocted unnecessary educational and technical certification requirements to justify eliminating the majority of African-American CSTs. Second, he alleges that he was qualified for the new LAN Specialist position but was rejected in favor of less-qualified applicants based on race.

Based on the written job descriptions, it appears that the LAN Specialist and CST positions had significant differences, primarily related to network wiring and troubleshooting network connectivity. McGlinchey told DCR that prior CST experience would not automatically provide the type of networking experience necessary to be a LAN Specialist, and two of Complainant’s former Technology Department co-workers, C.N. and W.R., stated that although they occasionally performed networking tasks as CSTs, their LAN Specialist duties were substantially more difficult and required more networking knowledge. Although T.F. stated that his LAN Specialist role was similar to his former role as a CST and that he believes McGlinchey put the new requirements in place to “weed out certain people,” he did not conclude that it was racially motivated. After weighing the evidence, the Director does not find that the “facts and circumstances” support a “reasonable ground of suspicion . . . to warrant a caution person” to believe that the hiring criteria for the LAN Specialist position was put in place as a pretext to disqualify candidates based on race. N.J.A.C. 13:4-10.2.

The issue becomes whether Respondent had a legitimate non-discriminatory reason for rejecting Complainant. Respondent contends that Complainant was not hired because he did not possess a number of the “core competencies” associated with the position, and performed poorly on the IT hiring exercise. However, Complainant’s core competency score was equivalent or greater than at least three successful non-African-American candidates: Y.T, C.N., and B.L. DCR could not compare the competency scores of two other Caucasian LAN Specialists—C.H. and E.P.—because Respondent did not produce that information.

Nor could the DCR investigation verify Respondent’s claim that Complainant had a lower score on the IT hiring exercise than the successful candidates because Respondent did not produce those scores (or any other evidence demonstrating that Complainant’s score was worse

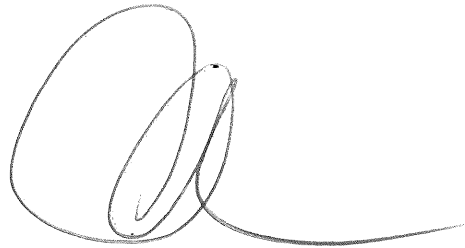
than that of successful candidates of other races). O’Dea told DCR that he and McGlinchey were unaware of IT hiring exercise scores prior to submitting their hiring recommendations.

O’Dea could not explain why he wrote that Complainant lacked technical certifications in the face of Complainant’s CompTIA A+ certification. O’Dea and McGlinchey could not recall their reasons for recommending Complainant for hire “with reservations,” and Respondent provided no other evidence to justify its personnel decision.

The Director is satisfied that if Respondent selected non-African-American candidates over Complainant because they demonstrated a greater number of core competencies and scored higher on the IT hiring exercise—as alleged—then that would constitute a legitimate, non-discriminatory business explanation. But at this threshold stage in the process, Respondent has produced no such evidence, and none was discovered by DCR, to support that assertion. Therefore, the Director finds that this matter should “proceed to the next step on the road to an adjudication on the merits” of the claim that Complainant was denied a LAN Specialist position based on his race. Frank, 228 N.J. Super. at 56. Should this matter not be resolved during the required conciliation process, N.J.S.A. 10:5-14, the matter will proceed to a plenary hearing where a fact-finder will hear live testimony and evaluate the evidence. N.J.A.C. 13:4-11.1(b).

DATE:

6-29-18



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS