School Law for Administrators

Employment Discrimination

Teacher alleges race discrimination in employment decisions

Citation: Carter v. Pulaski County Special School District, 2019 Fair Empl. Prac. Cas. (BNA) 29597, 2019 WL386173 (E.D. Ark. 2019)

A federal district court in Arkansas has granted a school district's motion for summary judgment in a case in which an African American teacher alleged race discrimination in violation of Title VII as well as violations of her Equal Protection rights under the Fourteenth Amendment.

Marion Carter was a math teacher at Joe T. Robinson High School in the Pulaski County Special School District. She was also the coach of the cheer and dance teams for which she made an additional $2,670 per sport.

In March 2017, the principal of the high school, Mary Carolyn Bailey, who was white, recommended to the superintendent, Jerry Guess, that Carter's coaching contracts not be renewed for the following school year. She cited lack of participation as one reason, but also stated that there had been inappropriate cheer routines at sporting events and bad behavior by cheerleaders during travel. Guess in turn recommended nonrenewal of the supplemental contact to Carter in a letter, citing "conduct unbecoming of a professional employee." He included details on the examples Bailey had given, including details of a situation at a restaurant where cheer team members had acted disorderly and rude but had not been chastised by Carter.

Carter was replaced by an African American woman for the cheer team and the dance team was eliminated. Her teaching contract was not impacted, and she is still employed as a teacher. However, Carter initiated a race discrimination complaint against the district, alleging that the non-renewal of her contract was racially motivated and that a white cheer coach who had coached in the year before Carter had not been terminated from her position despite choreographing a cheer routine that Carter herself had complained was inappropriate. Bailey (who was interim principal at the time) could not recall that Carter (or anyone else) had complained about the cheer routine.

The district sought summary judgment on the basis that the nonrenewal of Carter's cheer and dance team supplemental contract was based on the legitimate, nondiscriminatory reasons outlined in the notice letter she received and not on her race. The court granted the district's request for summary judgment.

Race discrimination claims are analyzed under the same standards whether they are brought under Title VII or Section 1983. To survive a motion for summary judgment, there must be either direct evidence of discrimination or the plaintiff must create an inference of unlawful discrimination under the burden-shifting framework established in *McDonnell Douglas Corp. vs. Green*. Carter did not present direct evidence of discrimination and, therefore, her claim was analyzed under the burden-shifting framework in which she first had to establish a *prima facie* case of discrimination, after which the burden would shift to the district to present a nondiscriminatory and legitimate reason for its

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Around the Nation ~ Indiana

As part of an active shooter training for teachers, they were shot with pellet guns

A state education committee recently heard testimony from a group of teachers in Indiana who claim that they were shot "execution style" with pellet guns as a part of an active shooter training conducted by the local sheriff's department. These teachers, also a part of the Indiana State Teacher's Association, claim that they were unaware that this training exercise would involve actually being shot, and they were shocked and dismayed at the course this training took.

During the course of this training at Meadowlawn Elementary School in Monticello, Indiana, court documents claim that, "four teachers at a time were taken into a room, told to crouch down and were shot execution style with some sort of projectiles." According to two of the teachers who participated in the training, when they voluntarily agreed to participate in the training, they were not told that they would be shot, and if they had, they would not have agreed to participate. Not only do the teachers take issue with the way the training was conducted, but also disagree with the philosophy that rushing a shooter or

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adverse employment action. Carter could prevail after this only if she could show that the stated reason was not true and was merely pretext for discrimination.

Carter alleged that she established a *prima facie* case of discrimination in that she was treated differently than a white coach who was similarly-situated to her who had led the cheer team in a vulgar routine but had not been terminated. Carter alleged that she had complained to Bailey about the inappropriate nature of the routine and Bailey had laughed and been dismissive about the complaint. But Bailey could not recall this and there was no record of the complaint from Carter or anyone else. The court noted that because there was no record of Carter's complaint other than her own memory of it, she could not meet the requirements for establishing a *prima facie* case of discrimination.

However, the court noted that even had she established a *prima facie* case, she would still not have prevailed. This was because the district provided legitimate nondiscriminatory reasons for the adverse employment action and Carter failed to show that these reasons were pretextual.

A plaintiff can establish pretext by showing disparate punishment between similarly-situated employees. Carter tried to do this by comparing her treatment to that of the white cheer coach. But the court found the evidence lacking. Unlike Carter's situation where there had been several complaints from parents about the inappropriate cheer routines, there was no record that there had been complaints about the cheer routines choreographed by the white coach with the exception of Carter's own alleged complaint.

Carter also argued that two of the three reasons given for non-renewal of her supplemental contract were not legitimate, non-discriminatory reasons. Carter argued with express to the allegations that she didn't appropriately manage students at a restaurant that the district could not prove she acted irresponsibly, and that the incident was not as serious as it was made out to be by the district. But the court rejected these as evidence of pretext, noting that its job was not to second guess the determination of the school district that the incident, in conjunction with the other issues, led to its decision not to renew Carter's supplemental contract. This was because there was no evidence that this reason was discriminatory.

Carter also argued that the district's third reason—declining participation in cheer and dance—was not a true reason for not renewing her contract. Carter argued that the district could not confirm the declining numbers they cited and that the projected decline in numbers for the next year was based on speculation alone. But the court found that Carter did not support her argument with sufficient probative evidence that would allow a finding in her favor. Even so, the court found that the other reasons cited by the district for the non-renewal decision were not discriminatory and had not been shown by Carter to be pretextual.

Therefore, the court granted the School's district's motion for summary judgement.

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throwing objects at them is better than waiting for law enforcement to arrive. The teachers claim that the pellet guns were extremely painful and they left them with bruises and welts, and at least one teacher said a pellet left her bleeding.

A group of the teachers in the training described what happened during the training. They explained that the officers told the teachers to kneel against the classroom wall before unloading a round of pellets from an airsoft gun without any warning. "They told us, 'This is what happens if you just cower and do nothing,'" one of the teachers said. "They shot all of us across our backs. I was hit four times . . . . It hurt so bad."

Bill Brooks, White County Sheriff, defends his department's training method, and he contends that after his department received a complaint from one of the participants, they stopped using the pellet gun in trainings. Brooks, who has served as sheriff since January, claims that this type of training is typical, and they have done it before without any complaints. He claims that the teachers agreed to participate and they should not have been surprised when they were shot with the airsoft guns. According to Brooks, "They all knew they could be. It's a shooting exercise."

Still, the teachers are adamant that they had no idea that this was coming, and further, they claim that after they were shot with the pellet guns, they were instructed not to warn others what was in store for them. A group of teachers shared their feelings on Twitter saying, "The teachers were terrified, but were told not to tell anyone what happened." They also tweeted, "Teachers waiting outside that heard screaming and were brought into the room four at a time and the shooting process was repeated."

Schools around the country are trying to prepare their teachers for the reality of a school shooting, and many of the methods schools are using are controversial. This "options-based" encourages students and educators to rush school shooters or throw objects at them instead of just hiding or hunkering down. Teachers said the airsoft gun was used in other exercises in the training, during which several teachers were shot with the pellets. Teachers testifying before the Indiana Senate Education Committee asked that lawmakers add language into one of their school safety bills to prohibit educators or staff from being shot with any kind of projectile during training exercises.

Source: *Indiana Star*

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First Amendment

Law firm files suit against school board, claiming First Amendment violation and payments owed

Citation: *Black & Davison v. Chambersburg Area School District, 2019 WL 314635 (M.D. Pa. 2019)*

A federal district court in Pennsylvania has granted in part and denied in part a school board's request to dismiss a First Amendment lawsuit brought against it by its former law firm. In the case, the law firm sued the board after being terminated allegedly to "economize." But the termination followed a school board election in which new board members, who all belonged to the same political affiliation, allegedly took action to purge the district of employees who aligned with the opposing political affiliation. While the court granted the board's request to dismiss an unjust enrichment claim, the court concluded the board did not have qualified immunity on the First Amendment claims.

Black & Davison, a law firm in Chambersburg, Pennsylvania, represented the Chambersburg Area School District for many years, from 1968 through 2016. The firm consisted of five equity partners, and all but one had performed legal duties for the school district. The school district retained Black & Davison (the firm) through a decision by the school board.

On May 27, 2015, the firm entered into an agreement in which the school district hired it for legal expertise from July 1, 2015 through June 30, 2018. The firm stated it received between 25% and 33% of its annual revenue from duties it performed for the school district.

The school district's board had the authority to approve every personnel decision for school district employees. The school board, which consisted of nine elected members, held an election in 2015. Five seats on the board were up for election.

Although school board elections were technically nonpartisan, some candidates were endorsed by political faction groups. The two political groups that endorsed candidates in the 2015 election were the Citizens for Education, a group made up mostly of "moderate Republicans," and Common Sense. Prior to the election, there were five members of the Citizens for Education group and the other four members belonged to the Common Sense group.

The individual partners in the firm also took part in campaign activities, supporting Citizens for Education candidates by handing out literature, taking voters to the polls, and posting political signs. In the 2015 election, Common Sense candidates won all five board seats. The result was a board that consisted of a majority of Common Sense affiliated members.

The new school board "purged" the school district of employees, including the firm, that had openly supported Citizens for Education candidates. The school board unanimously voted to terminate the recent agreement with the firm. The board explained the decision was motivated by economics, but later hired a law firm with higher rates than Black & Davison. The firm claimed the termination of their agreement was solely based on the individual partners' support of Citizens for Education candidates.

On April 17, 2017, the firm brought a lawsuit against the school district and individual members of the board, claiming First Amendment violations against the individual board members and the school district (defendants), and *quantum meruit* claims against the school district. The defendants asked the court to dismiss the claims.

The court granted the defendants' request to dismiss the claims in part, and denied in part.

QUANTUM MERUIT

The *quantum meruit* claim is based on a claim of unjust enrichment. The court explained that a party asking for recovery under this theory must show: "(1) the benefits conferred on the defendant by the plaintiff; (2) appreciation of said benefits by the defendant; and (3) 'the acceptance and retention of said benefits under such circumstances that it would be inequitable for the defendant to retain the benefit without payment of value'" *(Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.)*.

A client may terminate a contract with an attorney at any time. However, an attorney may bring a claim of *quantum meruit* to receive "a proper amount" for services rendered. The firm explained that the school district benefited from over 1,000 hours of its work. The firm, however, neglected to allege any benefit that was not appreciated by the school district without compensation. The firm's claim also failed to state which, if any, of the 1,000 hours were not compensated. The firm also argued that it was entitled to recover "a $5,000 monthly retainer for the remainder of the contract term" (two years) as well as fees that the firm would have reasonably expected to receive for the remainder of the contract term.

The court did not argue, stating, "*Quantum meruit* provides recovery for services the attorney has rendered, not recovery for expectation damages." The retainer fees that the firm requested for the remaining two years of the contract "constitute expectation damages which are not an available remedy in *quantum meruit.*" Therefore, the court granted the defendants' request and dismissed this portion of the complaint.

QUALIFIED IMMUNITY

Regarding the firm's First Amendment claim, the individual board member defendants responded by invoking qualified immunity. In evaluating a claim for qualified immunity, the court had to determine whether a constitutional right had been violated, and, if so, whether that right was "clearly established" at the time of the alleged violation. The court noted that the firm had provided sufficient facts to support their claim that the individual defendants violated their First Amendment rights of speech and association by terminating them because of their political affiliation. Therefore, the court only had to determine whether that right was clearly established at the time.

The court noted that the issue to consider was "whether a school district solicitor has a constitutionally protected right against termination by the school district on the basis of political affiliation." Whether political affiliation is an appropriate requirement for a school district's solicitor is "a fact intensive inquiry, falling far short of clearly established law."

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Around the Nation ~ District of Columbia

D.C. based Bilingual Teacher Exchange firm is facing a lawsuit alleging fraud and negligence

Earl Francisco Lopez is the head of the D.C. branch of Bilingual Teacher Exchange as well as a number of other companies. He has been accused of fraud, and threatening to deport teachers if they refused to sign their contracts with his company. The D.C. Attorney General's Office has filed suit against him. His job was to recruit foreign teachers to work in public schools in D.C. Many of the teachers he worked with claim that he charged them exorbitant fees for services that he did not even provide. According to the lawsuit, Lopez has been recruiting foreign teachers to work in the district since at least 2015. The D.C. based Bilingual Teacher Exchange asks teachers to sign a three-year contract to work with the U.S. Department of State exchange program.

A statement released by the attorney general's office states that at least 45 teachers recruited by the company, many of them Spanish-speaking teachers from Colombia, currently teach in public and charter schools in the city. The lawsuit claims that the Bilingual Teacher Exchange misrepresented itself, saying it was an affiliate of the D.C. Public Schools and could sponsor teachers, charging thousands of dollars more for visas than legitimate sponsors do before offering teachers usurious loans to pay the fees.

Additionally, the lawsuit asserts that the company falsely claimed that it offered services like school placement, which is not true, and it threatened teachers with deportation if they did not sign annual contracts after their first year. The suit contends that the company promised to pay teachers who performed administrative paperwork in order to reduce their debts, and then never followed through with the payments. The suit seeks, among other relief, an injunction against Lopez and his companies and cancellation of the teachers' debts.

This situation came to light when more than a dozen teachers were connected with D.C. Attorney General Karl A. Racine by the Washington Teachers' Union. These teachers "detailed the fraud, manipulation and fear that they were suffering from because of dealing with Mr. Lopez," Racine said.

A spokesman from the D.C. Public Schools said the school district "is aware of the lawsuit and will continue to fully support the Office of the Attorney General's efforts to protect our teachers from predatory business practices." The lawsuit is especially meaningful as D.C. is expanding its dual language public education offerings across the city. Teachers qualified to teach in a foreign language are generally paid more and are harder to recruit, and districts spend a lot of time and effort to find qualified teachers to fill these positions.

Source: *Washington Post*

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The firm argued that the qualified immunity question should be reserved for summary judgment, because more information was necessary to determine whether political affiliation was an appropriate requirement for the school district's solicitor position. Discovery could also reveal that the individual defendants violated the law by terminating the firm. The court agreed. A state actor who knowingly violates the law is not protected by qualified immunity *(Ashcroft v. al-Kidd).*

The firm also argued that the defendants provided a pretextual reason to terminate the contract, stating it was to "save money." The school board then hired a firm that charged more than the original firm. The firm stated in its complaint that defendants later affirmed that political patronage was the reason for terminating the Black & Davison contract.

The contract, therefore, agreed that the firm's complaint stated a plausible claim that the individual defendants knowingly violated the firm's First Amendment rights, and thus were not entitled to qualified immunity. Therefore, the court denied the defendants request to dismiss the portion of the complaint.

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