



LINDABURY

McCORMICK, ESTABROOK & COOPER, P.C.

Attorneys at Law

EdLawAlert

By the EdLaw Group at Lindabury

December 15, 2009

The EDUCATION LAW GROUP at Lindabury has extensive experience in the area of school law. We serve as general counsel, special education counsel, and labor counsel for boards of education throughout the State.

ANTHONY P. SCIARRILLO
ATHINA LEKAS CORNELL
JEFFREY R. MERLINO
DENNIS MCKEEVER
LISA M. GINGELESKIE
JENNIFER A. OSBORNE
PAUL E. GRIGGS
JOSHUA S. SKLARIN

edlawgroup@lindabury.com

Westfield Office

P. O. Box 2369
53 Cardinal Drive
Westfield, NJ 07091
(TEL) 908-233-6800
(FAX) 908-518-2967

Summit Office

480 Morris Avenue
Summit, NJ 07901
(TEL) 908-273-1212
(FAX) 908-273-8922

Rumson Office

20 Bingham Avenue
Rumson, NJ 07760
(TEL) 732-741-7777
(FAX) 732-758-1879

www.lindabury.com

Appeals Court Rules in Favor of Board in Teacher's Age Discrimination Suit

By Denise Del Priore

In *Dorfman v. Pine Hill Board of Education*, Judith Dorfman, a music teacher filed a suit against the Pine Hill Board of Education ("Board"), as well as the superintendent and principal, alleging age discrimination in violation of the New Jersey Law Against Discrimination ("NJLAD"). Pine Hill had hired the plaintiff as a music teacher in 2001. The teacher's contract was renewed for each of the next two years, but was not renewed for a third year. The teacher was told that there was a problem with her "fit" at the school. Pine Hill replaced the teacher with a person who was eleven years her junior. The teacher subsequently filed suit alleging age discrimination, asserting that Pine Hill did not renew her contract because of her age in violation of the law; that the superintendent and principal aided and abetted that violation; and that she was subjected to harassment because of her age. The Board asserted that the teacher was not rehired because of poor performance evaluations. The District Court granted summary judgment in favor of the Board and the teacher appealed.

The NJLAD applies a three part, burden shifting test to determine whether the law has been violated. First, the employee must establish a prima facie case, mainly that she is a member of a protected class, that she was fired, and that she was replaced with a similarly qualified person. After the employee establishes her burden, the employer must "articulate some legitimate, non-discriminatory reason" for the employee's firing. Lastly, the employee must demonstrate that the employer's reason was not the true reason for the employment decision, but was a pretext for discrimination. An employee may demonstrate a pretext by: 1) discrediting the employer's proffered reasons, either circumstantially or directly; or 2) producing evidence, either circumstantial or direct, showing that discrimination was more likely than not the motivating or determinative cause of the adverse employment action.

The Appeals Court assumed that the teacher met her burden by demonstrating that she was in her fifties, and thus a member of a protected class, that her contract was not renewed by Pine Hill, and that she was replaced with a similarly qualified person. (*cont'd* ➔)

The Court found that the Board met its burden, demonstrating a legitimate reason for the teacher's non-renewal by asserting that she was fired due to poor performance evaluations. Although the teacher attempted to show that the reasons offered for her firing were merely a pretext for discrimination, the Court did not agree.

The teacher first pointed to positive evaluations from the previous principal, but the Court noted that even those evaluations commented on her need to improve her classroom management skills. Likewise, the Court rejected the teacher's assertion that being informed that she was not the right "fit" for the school was an inference of age-based discrimination. The Court noted that of the teachers whose contracts were not renewed during the superintendent's time at Pine Hill, three were replaced by older teachers and two were replaced by teachers less than two years younger. Further, the Court stated that while an incident where the principal made an off-color remark that could be construed as age-based animus, this incident alone could not lead a reasonable jury to believe that age was more likely than not the motivating or determinative cause of the Board's decision not to renew the teacher's contract. Moreover, though the teacher's replacement was more than a decade younger, had less experience, and less education, the Court stated that the replacement's resume demonstrated that she was qualified for a position as a music teacher. Thus, the Court concluded that the teacher failed to show that a reasonable jury could find that age discrimination was a

determinative factor in the Board's decision not to renew her contract.

The Court also held that the teacher failed to show that Pine Hill's conduct created a hostile work environment in violation of the NJLAD. In order to establish harassment, an employee must show that the employer's conduct: 1) would not have occurred but for the employee's protected characteristic; and the conduct was 2) severe or pervasive enough to make a 3) reasonable person believe that 4) the conditions of employment are altered and the working environment is hostile or abusive. In support of the harassment claim, the teacher pointed to the principal's off-color remark, as well as other incidents where the principal failed to support her or her class in some way. The Court held that except for possibly the off-color remark, there was no evidence that any of the incidents the teacher pointed to were the result of age-based animus on the part of Pine Hill. Further, that even if the incidents were based upon age-based animus, no reasonable jury could find that the teacher's working environment was hostile or abusive. Therefore, the Court held that the District Court properly granted summary judgment for Pine Hill on each of the teacher's aforementioned claims.

☪

The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.



www.lindabury.com

Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.

You may, if this letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, P.O. Box 037, Trenton, NJ 08625.