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WM. T. HARRINGTON

The Commonwealth of Massachusetts
Commission Against Discrimination
One Ashburton Place, Boston, MA 02108
Phone: (617) 994-6000 Fax: (617) 994-6024

- DISMISSAL and NOTIFICATION of RIGHTS -

To: Charles P. Perry
[REDACTED]
New Bedford, MA 02740

Case: Charles P. Perry v. New Bedford Police
Headquarters
MCAD Docket Number: 17NEM00941
EEOC Number: 16C-2017-01230
Investigator: Evan Coleman

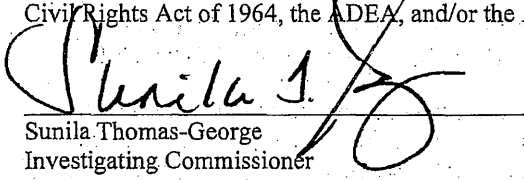
Your complaint has been dismissed for the following reasons:

- The facts alleged fail to state a claim under any of the statutes the Commission enforces.
- Respondent employs less than the required number of employees.
- Your complaint was not timely filed with the Commission, i.e. you waited too long after the date(s) of the alleged discrimination to file. Because it was filed outside the time limit prescribed by law, the Commission cannot investigate your allegations.
- You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conference, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your complaint. You have had more than 30 days in which to respond to our written request.
- The Commission's efforts to locate you have been unsuccessful. You have had at least 30 days in which to respond to a notice sent to your last known address.
- The Respondent has made a reasonable settlement, offering full relief for the harm you alleged. 30 days have expired since you received actual notice of this settlement offer.
- The Commission issues the following determination. Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes a violation of the statutes. This does not certify that the Respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this complaint.
- Other (briefly state)

- NOTICE of APPEAL -

If you wish to appeal the dismissal of your complaint and believe that the above stated reason for dismissal is incorrect, you may appeal to this Commission within 10 days after receipt of this notice. You or your attorney must make your appeal of the dismissal in writing to the appeals clerk of this Commission. **Attention: Nancy To.**

All employment complaints, where applicable, were filed by the MCAD with the Equal Employment Opportunity Commission. Our finding, which will be forwarded to its area office, JFK Federal Building, Boston, MA will be given substantial weight provided that such findings are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the ADEA, and/or the ADA, as amended.


Sunila Thomas-George
Investigating Commissioner

Date 9/30/17

Cc:

William Harrington, Esq.

INVESTIGATIVE DISPOSITION

Case Name: Charles P. Perry v. New Bedford Police Headquarters
MCAD Docket No.: 17NEM00941
EEOC Docket No.: 16C-2017-01230
No. of Employees: 25+
Investigator: Evan Coleman, Compliance Officer
Recommendation: **Lack of Probable Cause**

Introduction

On April 24, 2017, Complainant Charles P. Perry filed this action against Respondent New Bedford Police Headquarters alleging that he was discriminated against on the basis of his race/color (Black) in violation of M.G.L. c. 151 B § 4(1) and Title VII, as amended.

Complainant's Allegations

Complainant (Black) states that he began working for Respondent as a police officer in 1987; in 2016, Joseph Cordeiro became the chief of police. Complainant alleges that in the fall of 2016, a civilian informed him that Mr. Cordeiro [REDACTED] talked about not liking Black people. Complainant states that on January 3, 2017, Mr. Cordeiro sent an email with a quote from Teddy Roosevelt stating, "This year, I will be stronger, braver, kinder and unstoppable. This year I will be fierce." Complainant responded to Mr. Cordeiro and everyone on the force by email stating, "All your quotes are a bunch of bullshit."

Complainant asserts that on January 5, 2017, Lieutenant Ricard Rezendes submitted a written complaint about his email to the Internal Affairs Unit. [REDACTED]

[REDACTED] On April 5, 2017, Complainant reported to Human Resources that he was offended by the January email because he believed Teddy Roosevelt was a bigot. Complainant alleges that on April 20, 2017, after a hearing, he was suspended for one day for violating Respondent's computer and social media policy, and insubordination. Complainant was also removed from his special criminal records division assignment. Complainant states that he is aware that a White police officer was treated similarly when this individual also violated the social media policy.

Respondent's Position

Respondent, the City of New Bedford's police department, denies discriminating against Complainant and states that he was suspended for violating Department policies.

Respondent states that it hired Complainant in 1989 as a police officer. Respondent alleges that in August 2015, he was assigned to the Criminal Records Division. Respondent states that for at least the last five years, since the time he was a Captain, Chief Cordeiro has had a practice of disseminating to the police personnel under him a daily email containing an inspirational quotation. On the morning of January 3, 2017, Chief Cordeiro sent out his daily inspirational quotation to all members of the Department with a quotation was from Teddy Roosevelt which read: "This year I will be stronger, braver, kinder, and unstoppable. This year I will be FIERCE!" Respondent alleges that evening, Complainant sent an email, from his Department email account, to all the members of his union which read: "Everything seems black and white in this world, but it's all about power. The power to be in place to do good, bad or ugly is truly the sovereignty. B&W is just token colors on token faces to keep the power from having dirty hands when sweeping the powerless. Cowardly kicking the use of B&W things."

Respondent asserts that on the morning of January 5, 2017, Chief Cordeiro sent out a Marianne Williamson inspirational quotation to all members of the Department, which read: "In every community, there is work to be done. In every nation, there are wounds to heal. In every heart, there is power to do it." Later that morning, Complainant responded to this email, sending an email reply from his Department email account to Chief Cordeiro and all members of the Department, which stated: "All your quotes are a bunch of bullshit!" Respondent alleges that in response to Complainant's January 5 email, on January 9, 2017, Lieutenant Ricard Rezendes formally requested that an Internal Affairs Investigation be conducted based on his concern that Complainant's January 3 and January 5 emails violated the Department's Social Media Policy, its Computer Usage Policy, and its General Rules and Regulations prohibiting insubordination or disrespect of an officer of higher rank.

Respondent states that on January 20, Captain Ledo and Deputy Chief Oliveira met with Complainant who stated that he had been offended by emails sent out by Chief Cordeiro. Complainant went on to mention that he believed Roosevelt was a "bigot" and that he wanted Chief Cordeiro to be aware that his emails could be offensive to some. On January 26, 2017, Complainant filed a formal complaint against Chief Cordeiro. Respondent alleges that on January 27, Sgt. Kagan issued his Investigatory Report, finding that Complainant violated the Computer Usage Policy, the Social Media Policy, and Rule 515.6(c) of the Rules and Regulations. Respondent asserts that on April 20, Complainant was informed that, as a result of the Internal Affairs complaint, he was being suspended for one day and that he was being removed from his special assignment in the Criminal Records Division. Complainant served his one-day suspension on April 26.

Summary of Investigation and Analysis

Disparate Treatment – Race/Color

To establish a prima facie case for disparate treatment based on race/color, Complainant must establish that he is a member of the protected class and that he was treated differently

from similarly situated individuals not of his protected class with respect to a term or condition of employment, or circumstances give rise to a reasonable inference of discrimination based on his protected class. If Complainant establishes a prima facie case, Respondent may show either that Complainant was not being treated differently than others, or that there are legitimate, non-discriminatory reasons for the different treatment that Complainant received. If Respondent succeeds in offering such reasons, Complainant must then show that Respondent's reasons are pretextual.

Complainant claims that he was subjected to disparate treatment when he was suspended following his objection to an email including quotations from Teddy Roosevelt who he believed to be a bigot. Complainant admits to objecting to this email by replying to Mr. Cordeiro and the entire Police Union with vulgarities. Investigation reveals insufficient evidence to show that Complainant was subjected to disparate treatment.

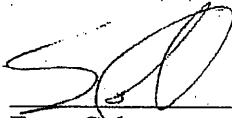
Investigation reveals that the relevant Computer Usage Policy, which Complainant violated provides, in pertinent part: "You may not [use] the computer network to display, store or send ... material that is fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory or otherwise inappropriate or unlawful." The relevant Social Media Policy, which explicitly applies to emails, provides that, "Except in the performance of authorized duty and/or in commenting on issues of general or public concern, members shall not post, transmit, reproduce, or disseminate content, communications or information ... that would unduly discredit or reflect unfavorably upon the Department or any of its members." Lastly, Rule 515.6(c) prohibits "[i]nsubordination or disrespect to any officer of higher rank or in command."

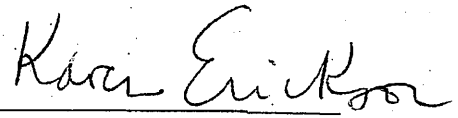
Complainant claims that he heard secondhand that Mr. Cordeiro did not like Black people and that this was pretext to his suspension. However, Complainant does not dispute that his inappropriate language violated the aforementioned policies. Complainant also admits in his complaint that a White officer was suspended for the similar inappropriate use of social media. Investigation reveals that there have actually been 8 such incidents involving inappropriate social media conduct in the past 3 years. These 8 incidents led to suspensions of 10 White officers.

This Commission gave Complainant an opportunity to submit a rebuttal responding to Respondent's Position Statement; to date, Complainant has failed to submit a rebuttal. Given the evidence presented and the totality of the circumstances, Complainant failed to provide sufficient evidence that Respondent's actions were motivated by discriminatory animus and therefore, a finding of Lack of Probable Cause is recommended.

Conclusion

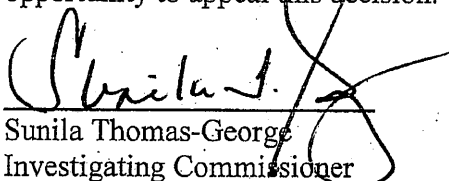
A finding of Lack of Probable Cause is recommended for Complainant's claim of discrimination based on race/color against Respondent.


Evan Coleman
Investigator


Karen Erickson
Enforcement Advisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B of the Massachusetts General Laws, and in conformity with the foregoing findings, I have this day determined that a **Lack of Probable Cause** is being rendered on this case. Complainant will be afforded the opportunity to appeal this decision.


Sunila Thomas-George
Investigating Commissioner

9/30/17
Date