IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

---

LINDA MARTIN,

Plaintiff,

v. MEMORANDUM and ORDER

ROGER PRICE, RENEE BREMER, MARY TEPPO, DONNA WILLIAMS and MADISON METROPOLITAN SCHOOL DISTRICT, 07-C-179-S

Defendants

---

Plaintiff Linda Martin brings this action against defendants Roger Price, Renee Bremer, Mary Teppo, Donna Williams and Madison Metropolitan School District under 42 U.S.C. §1983 and Title VII. In her complaint plaintiff alleges that she was denied the position of Transportation Coordinator because of her gender. She further alleges that she was retaliated against for her speech concerning issues of public concern.

On August 3, 2007 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submissions by

both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

## FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Linda Martin is an adult resident of Dane County Wisconsin. Defendant Madison Metropolitan School District (District) is a public school district organized and existing under

the laws of the State of Wisconsin with its principal place of business at 545 West Dayton Street, Madison, Wisconsin. Defendant Renee Bremer was the Manager of the District's Transportation Department. Defendant Mary Teppo was the Director of Administrative Services for the District. Defendant Roger Price was the Assistant Superintendent for Business Services for the District.

Plaintiff began her employment with the district on August 13, 1997 when she was hired for the position of Administrative Clerk-Intermediate in the District's Transportation Department. From August 13, 1997 until November 22, 2002 plaintiff was supervised directly by defendant Renee Bremer. Ms. Bremer was supervised by defendant Teppo who was supervised by defendant Price. In Ms. Bremer's absence plaintiff was not expected to perform her administrative job responsibilities.

One function of the Transportation Department was to hire bus companies to transport children for the District. In April/May 2002 plaintiff contacted Rite-Way Bus Company to advise it had not been included in a group of vendors asked to submit quotes for summer bus routes. She also told Nancy Kiefer at Rite-Way that her supervisor Ms. Bremer had engaged in "bid-rigging" by giving information about other vendor quotes to Jeff Fedler of First Student, Inc.

On May 6, 2002 Rite-Way asked the District why it had not been asked to submit bids. Rite-Way was ultimately allowed to bid on the summer bus routes.

Plaintiff complained to Ruth Robarts, a school board member, about Bremer's involvement in "bid-rigging". In 2003 plaintiff participated in a subsequent investigation of this allegation by an outside investigator Attorney Ed Parsons. Parsons concluded that there had been no improper conduct by the District.

From 1997 to 1999 plaintiff had good job performance evaluations. In 1999 Ms. Bremer noted that plaintiff was required to adhere more closely to the 8:00 a.m. to 4:30 p.m. work schedule. From 1999 to 2002 Ms. Bremer and Ms. Teppo began to notice deficiencies in plaintiff's job performance. Plaintiff was late for work 107 times in 1999; 125 times in 2000 and 63 times in 2001.

In July 2002 the District's Employment Manager, June Glennon, met with Mr. Price and the District's Executive Director of Human Resources, Robert Nadler, regarding the staffing needs with the Transportation Department. Mr. Price proposed creating a new position, Transportation Coordinator. Ms. Teppo and Ms. Glennon developed a job description for the new position of Transportation Coordinator. Their goal was to fill the gap between the two existing positions: the administrator position and the clerical support position.

On November 22, 2002 a meeting was held with plaintiff, Ms. Glennon and a union representative to provide plaintiff notice of the surplusing of her position. Surplusing an employee means that the human resources department will find the employee a new job within the District. They met again on November 25, 2002 to discuss plaintiff's options including bumping into another position; accepting a lay-off and accepting a vacant position in the district. In December 2002 plaintiff received an evaluation showing her overall performance had become less than satisfactory.

The position for Transportation Coordinator was posted as a vacancy on November 22, 2002. Plaintiff applied for the position and was referred for an interview. Defendants Teppo and Bremer were on the interview panel together with Mr. Richard Buss, a longtime supervisory employee of Madison Metro Bus Company. Plaintiff was interviewed. The interview panel recommended Fedler and another candidate.

Mr. Price hired Jeff Fedler for the position. He had been a a contract manager for First Student, Inc., a school bus contractor.

Donna Williams, Director of Budget/Planning and Accounting Department, posted a position for a second Assistant to the Director of Budget, Planning and Accounting. She was notified by Ms. Glennon that plaintiff was qualified for the position. On December 2, 2002 plaintiff accepted the position effective December

4, 2002. In February or March, 2003 plaintiff told her co-worker Candy Steffen her concerns about the abuse of taxpayer money in the department.

Plaintiff had attended the March 31, 2004 meeting of the District's School Board. She spoke in the public comment period and said the Board should take "a good hard look at the budget."

On April 16, 2004 plaintiff met with her union representative and Attorney Malina Piontek, the District's Assistant Director of Labor Relations, to discuss plaintiff's unsatisfactory performance. Plaintiff left the meeting before it was concluded and the in-person review of her evaluation did not take place.

Plaintiff began a medical leave on April 18, 2004. She returned to active employment with the District on March 1, 2007 and is currently employed as a clerical assistant/receptionist in the Budget Planning Department.

MEMORANDUM

Plaintiff claims that she was not hired for the position of Transportation Coordinator by the Madison Metropolitan School District because of her gender. Pursuant to the burden shifting methodology for indirect proof of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), plaintiff must first establish a *prima facie* case of discrimination by showing she was a member of a protected class;, applied for a position for which she was qualified; the employer rejected her and the employer filled the

position with someone not in her protected class. Gore v. Indiana University, 416 F.3d 590, 592(7th Cir. 2005).

Plaintiff is a female and applied for the position. A male Jeff Fedler was hired for the position. It is disputed whether plaintiff was qualified for the position. At the very least she was qualified for an interview.

Had plaintiff demonstrated a *prima facie* case the burden shifts to defendant to articulate a non-discriminatory legitimate reason for plaintiff's termination. Defendant District states that it hired Fedler because he was more qualified. It remains disputed whether Fedler was more qualified than plaintiff for the position. There is a factual dispute whether Ms. Bremer gave special consideration to Jeff Fedler regarding quotes for summer bus routes in May 2002 before she recommended that he be hired for the Transportation Coordinator position in November 2002.

Pretext need not be addressed where it remains disputed whether Fedler was more qualified for the position than plaintiff. A genuine issue of material fact remains as to whether plaintiff was not hired for the position because she was a woman. Defendant Madison Metropolitan School District's motion for summary judgment on plaintiff's Title VII gender discrimination claim will be denied.

Plaintiff claims that defendants Bremer, Teppo and Price did not hire her for the Transportation Coordinator in retaliation for

her protected speech. To prevail on her First Amendment retaliation claim plaintiff must prove that she engaged in constitutionally protected conduct which conduct motivated defendants' actions. Sun v. Board, 473 F.3d 799, 815 (7th Cir. 2007). Should plaintiff make this showing the burden then shifts to the employer to show that it would have taken the same action regardless of plaintiff's protected conduct. Id., 473 F.3d 799, 815(7th Cir. 2007).

Plaintiff engaged in constitutionally protected conduct if she spoke on an issue of public concern. The United States Court of Appeals for the Seventh Circuit in Anderer v. Jones, 385 F.3d 1043 (7th Cir. 2004) as follows:

> Whether a government employee's speech addresses a matter of public concern depends upon the content, form and context of the speech as revealed by the whole record... Of these three factors, content is the most important...The public concern element is satisfied if the speech can be fairly said to relate to a matter of political, social or other concern to the community, rather than merely a personal grievance of interest only to the employee.

Plaintiff's speech concerning bid-rigging was on an issue of public concern. The public has an interest in the District's bidding process for bus routes to be addressed honestly.

Defendants contend that plaintiff cannot prove causation because they were not aware of her protected speech. Plaintiff can rely on circumstantial evidence to prove defendant's knowledge of

protected activity. Piecynski v. Duffy, 875 F. 2d 1331, 1335 (7th Cir. 1989).

Rite-Way complained to Bremer for not being asked to submit bids for the summer routes. The inference can be drawn that someone from the Department of Transportation gave this information to Rite-Way. Since Bremer and Martin were the only employees in the department, defendants Bremer, Price and Teppo could have known that Martin provided the information to Rite-Way.

A genuine issue of material fact remains as to whether defendants Price, Bremer and Teppo knew of plaintiff's protected speech and whether that speech was a motivating factor in not hiring her for the Transportation Coordinator Position. A genuine issue of fact also remains as to whether but for her protected speech she would have been hired for the position. The motion for summary judgment of defendants Bremer, Teppo and Price on plaintiff's First Amendment retaliation claim will be denied.

Plaintiff also claims that defendants Williams and Price retaliated against her for her protected speech and constructively discharged her. The speech that plaintiff claims to be protected is her comments to her co-worker Candy Steffen in February or March, 2003 and her speech at the school Board meeting on March 31, 2004.

To prevail on her First Amendment retaliation claim she must show that this speech was a motivating factor in her constructive

discharge. See Bd. of County Comm'rs, Wabaunsee County, Kan. V. Umbehr, 518 U.S. 668, 675 (1996). To prevail on a claim for constructive discharge that the defendant engaged in harassing behavior sufficiently severe or pervasive to alter the conditions of her employment and that the abusive working environment became so intolerable that her resignation was a fitting response. Pennsylvania State Police v. Suders, 542 U.S. 129, 133-134 (2004)

In her opposition brief to defendants' motion for summary judgment plaintiff does not address defendants' arguments concerning her constructive discharge claim. There is no evidence in the record that defendants Williams or Price created a hostile working environment for plaintiff because of her protected speech. Plaintiff took medical leave after a negative evaluation conference with Williams. This was not a constructive discharge. Accordingly, defendants Williams and Price are entitled to judgment in their favor on plaintiff's retaliation and constructive discharge claims.

ORDER

IT IS ORDERED that defendant Williams' motion for summary judgment on plaintiff's retaliation claim and defendants Williams and Price's motion for summary judgment on plaintiff's constructive discharge claims are GRANTED.

IT IS FURTHER ORDERED that defendant District's motion for summary judgment on plaintiff's Title VII claim concerning the

failure to hire her for the Transportation Coordinator position is DENIED.

IT IS FURTHER ORDERED that the motion for summary judgment of defendants Roger Price, Renee Bremer and Mary Teppo concerning plaintiff's 42 U.S.C. §1983 claim that she was not hired for the Transportation Coordinator because of her protected speech is DENIED.

Entered this 13th day of September, 2007.

BY THE COURT:

/s/

_____
JOHN C. SHABAZ
District Judge