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FREDERICK K. BREWINGTON

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

HOWARD MONROE,

Complainant,

v.

TOWN OF HEMPSTEAD, DEPARTMENT OF PARKS
& RECREATION,

Respondent.

DETERMINATION AFTER
INVESTIGATION

Case No.
10168797

Federal Charge No. 16GB402957

On 5/13/2014, Howard Monroe filed a verified complaint with the New York State Division of Human Rights ("Division"), charging the above-named Respondent with an unlawful discriminatory practice relating to employment because of race/color, opposed discrimination/retaliation in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division has determined that it has jurisdiction in this matter and that PROBABLE CAUSE exists to believe that the Respondent has engaged in or is engaging in the unlawful discriminatory practice complained of.

Pursuant to the Human Rights Law, this matter is recommended for public hearing. The parties will be advised of further proceedings.

Dated: November 7, 2014
Hauppauge, New York

STATE DIVISION OF HUMAN RIGHTS

By:

Ronald B. Brinn
Ronald B. Brinn
Regional Director

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

TO: Files

REGION: Long Island

FROM: Ronald B. Brinn
Regional Director

DATE: November 6, 2014

SDHR CASE NO: 10168797-14-E-RO-E

Federal Charge No. 16GB402957

SUBJECT: Howard Monroe v. Town of Hempstead, Department of Parks & Recreation

FINAL INVESTIGATION REPORT AND BASIS OF DETERMINATION

I. CASE SUMMARY

This is a verified complaint, filed by complainant, Howard Monroe, on Tue 5/13/2014. The complainant who is African-American and opposed to discrimination, charges the respondent with unlawful discriminatory practices in relation to employment because of race/color, opposed discrimination/retaliation.

II. SUMMARY OF INVESTIGATION

Complainant's Position:

The complainant claims that he began working for the respondent in March 2009 as a part-time Maintenance Helper, primarily driving. The complainant claims that although he applied for a position as a Carpenter, he was told by the respondent that he was needed as a Driver, because he had a commercial driver's license. The complainant claims he accepted the position and was told that it was temporary. The complainant alleges that since March 2009, at least 4 part-time coworkers have been promoted to full-time positions. The complainant claims that these individuals include; Bruno Bacciatti, Daniel Harris, James Vouloukos and Roger Fraile. The complainant claims that he is also aware that coworkers, Anthony Ferguson, Ross Bender and Stephen Raimondi, who were hired after the complainant, upon information and belief, earn more money than the complainant. The complainant alleges that these individuals are Caucasian.

The complainant alleges that on Friday, May 9, 2014 he was involved in an altercation with Cary Cook, a coworker in Tech Services. The complainant claims that Supervisor, Jamie Tintle asked Mr. Cook, Ryan Kelly and the complainant to perform a task that the complainant claims was disproportionately completed by him. The complainant claims that he complained

about Mr. Cook and Mr. Kelly not doing their fair share of work to Mr. Tintle, who did nothing. The complainant alleges that the comment to Mr. Tintle was overheard by Mr. Cook, who took offense to the complainant's assertion. The complainant claims that Mr. Cook began to use racial epithets in a loud altercation with the complainant.

The complainant claims that he complained to Mr. Tintle about the racial tone of Mr. Cook's rant and the complainant claims that Mr. Tintle dismissed the complaint by stating "Mr. Cook is just blowing off steam". The complainant claims that on May 12, 2014, he complained in writing to Matthew Thompson, Deputy Commissioner about discrimination. The complainant claims that in response to his complaint about discrimination, the respondent conducted an investigation, the outcome of which he never learned.

Respondent's Position:

The respondent agrees that the complainant was hired on March 23, 2009 as a part-time Maintenance Worker. The respondent denies discriminating against the complainant on the basis of his race/color and/or opposition discrimination/retaliation.

The respondent claims in that on May 12, 2014 the respondent received a complaint from Cary Cook alleging a dispute between themselves and the complainant regarding work productivity. The respondent responded to the complaint by transferring Mr. Cook out of the Tech Services Department. The respondent claims that they immediately responded to Mr. Cook's complaint by conducting an investigation between May 19 and May 23, 2014. The respondent alleges that the investigation revealed that the complainant reported a coworker, Mr. Cook, to his Supervisor, Mr. Tintle reporting that Mr. Cook was not doing his fair share of work. The respondent claims that both the complainant and Mr. Cook provided written complaints to the respondent. The respondent claims that in the complainant's complaint internally, that he alleged that Mr. Tintle "observed Cary's (Mr. Cook) racial outburst... but failed to intervene." The respondent alleges that Mr. Tintle denied hearing the content of the argument and denied that Mr. Cook was not doing his task effectively.

The respondent claims that their internal investigation revealed that Mr. Cook and the complainant were involved in a heated altercation about the amount of work performed. Each party to the internal complaint made allegations against the other. The complainant alleged that Mr. Cook told the complainant that he would "kick his black ass" and that he was not afraid of "black people". Mr. Cook alleged that the complainant invited a physical confrontation after work. The respondent's investigation revealed that no one witnessed the racial epithets being used by Mr. Cook. The respondent stated that Mr. Tintle had problems with the complainant in the past but chose not to discipline him.

The respondent denies discriminating against the complainant on the basis of his race/color and/or his opposition to discrimination/retaliation.

Investigator's Observations:

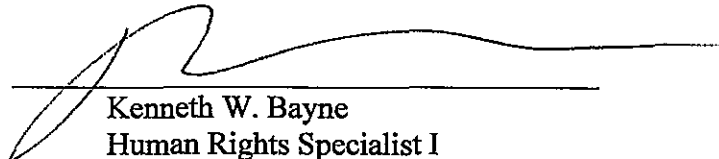
The Division reviewed all documentation provided by each party to the complaint.

The Division conducted a two-party conference with all parties to the complaint. During the conference the complainant was represented by Frederick Brewington and Priscilla Lockett complainant's attorneys and the respondent was represented by Jamie Tintle, Supervisor, Cary Cook, Maintenance Helper and Donna Napolitano, respondent's attorney. The complainant stated that he has been a part-time employee with the respondent for five years, while Caucasian coworkers have been promoted. The complainant stated that he believes that he has been denied advancement on the basis of his race/color. The complainant stated that he was involved in an altercation with Mr. Cook on May 9, 2014 over how much work Mr. Cook was performing. The complainant stated that Mr. Cook overheard his complaint to Mr. Tintle, and began a verbal altercation with the complainant using racial epithets. The complainant stated that Mr. Cook said "I will kick your black ass" and "I'm not afraid of black people". The complainant claims that Mr. Tintle and Mr. Kelly witnessed the racial comments. The complainant stated that Mr. Tintle heard the comments by Mr. Cook, and that he later complained to Mr. Tintle about Mr. Cook's racial comments. The complainant stated that Mr. Tintle did nothing. The complainant stated that on May 12, 2014 he formally complained to Mr. Matthew Thompson, Deputy Commissioner and an investigation was launched, the results of which the complainant never learned. Mr. Tintle stated that he was approached by the complainant, who complained about Mr. Cook not doing his fair share of work. He stated that he was aware of an altercation between Mr. Cook and the complainant, but did not hear any Mr. Cook use any racial pejoratives or any statements made by the parties. Later, Mr. Cook came to see him about the complainant's belief that Mr. Cook is not performing his "fair share" of work. Separately, he stated that the complainant did report his strong belief that Mr. Cook was not doing his fair share of work, and stated that the complainant never complained to him about discrimination. Mr. Tintle stated that the respondent conducted an internal investigation involving a complaint filed by an unknown worker in the Tech Services Department. Mr. Tintle stated that he subsequently learned that both the complainant and Mr. Cook filed a complaint internally. Mr. Tintle stated he never learned the results of the investigation, but that Mr. Cook was transferred out of his supervision. Mr. Cook stated that he was upset about the complainant characterizing his work product as substandard to his Supervisor, Mr. Tintle. Mr. Cook denied making any racial remarks during the brief altercation between the complainant and him. Mr. Cook stated that he complained to Mr. Tintle about the complainant's characterization of his work product. Mr. Cook stated that coworkers Anthony Accuri urged Mr. Cook to simply punch out and go home. Mr. Cook stated that he complained to Mr. Matthew Thompson, Deputy Commissioner, and requested a transfer, which was granted. Mr. Cook stated that he does not know if anyone else in the shop heard the altercation, but were aware of an altercation going on between the complainant and him. Mr. Cook stated that Mr. Ryan Kelly might have heard the altercation. The complainant stated that Mr. Kelly was present and also believed he may have heard the exchange. The respondent stated that there are 28 employees in the Department; 4 are African-American and 24 are non-African-American. The complainant agreed with the data. The respondent stated that there were at least four employees in the Department promoted to full-time, who were hired after the complainant; Bruno Bacciatti, Daniel Harris, James Vouloukos and Roger Fraile, all four are Caucasian. The respondent stated that three employees; Anthony Ferguson, Ross Bender and Stephen Raimondi, were paid a higher salary because they were long time employees, who returned to the department and had accrued a higher salary because of their years of service. The complainant had no information to challenge the respondent's statement.

Witness Interview:

On November 5, 2014, the Division interviewed Ryan Kelly, part-time Maintenance Helper for the respondent. Mr. Kelly stated that he was aware of an altercation that briefly occurred between Mr. Cook and the complainant on May 9, 2014. Mr. Kelly stated he did not hear Mr. Cook use any racial epithets or the complainant threatened Mr. Cook. Mr. Ryan stated that Mr. Accuri and he encouraged Mr. Cook to punch out to avoid any further interaction.

Submitted by: _____


Kenneth W. Bayne
Human Rights Specialist I

III. BASIS FOR DETERMINATION

The investigation supported the complainant's allegations that he was discriminated against on the basis of his race/color and/or his opposition to discrimination/retaliation. The investigation revealed that the complainant complained internally and an investigation was conducted. The investigation revealed conflicting statements from the complainant, Mr. Cook, Mr. Kelly and Mr. Tintle concerning the racial statements attributed to Mr. Cook by the complainant. The investigation revealed that at least four Caucasian employees identified by the respondent were promoted to full-time. The investigation revealed that these individuals were hired after the complainant. The respondent did not provide an explanation for the promotions. The investigation revealed conflicting statements between the complainant and the respondent concerning whether or not the complainant complained about discrimination or about issues relating to the amount of work being performed by Mr. Cook.


This matter is recommended for a public hearing before an administrative law judge where statements from witnesses can be taken, under oath, to determine credibility and issues of material fact.

Reviewed & Approved: _____


Human Rights Specialist II

IV. DETERMINATION

Based on the foregoing, I find **PROBABLE CAUSE** to support the allegations of the complaint.


Ronald B. Brinn
Regional Director