

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.: 1780CV00033

PATRICK BUCHANAN)
and)
TODD DODGE,)
Plaintiffs,)
vs.)
TOWN OF GREENFIELD)
and)
ROBERT HAIGH,)
Defendants.)

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Superior Court - Hampshire

3/31/2022

**PLAINTIFFS' JOINT OPPOSITION TO DEFENDANTS' MOTION IN LIMINE TO
PRECLUDE TESTIMONY CONCERNING GREENFIELD OFFICERS**

INTRODUCTION

The Plaintiffs, Patrick Buchanan (“Buchanan”) and Todd Dodge (“Dodge”) and submit this Joint Opposition to Defendant’s Motion in Limine to Preclude Testimony Concerning Greenfield Officers. The evidence that Defendants seek to preclude is directly relevant to the proof of the race discrimination, retaliation, and whistleblower claims brought by the Plaintiffs, and there is no basis to bar the introduction of the evidence described herein.

EVIDENTIARY STANDARD

The evidence that Defendants seek to preclude is material, relevant, and admissible. As the Supreme Judicial Court has instructed:

The **most probative means** of establishing that the plaintiff’s termination was a pretext for racial discrimination is to demonstrate that similarly situated white employees were treated differently.

Matthews v. Ocean Spray Cranberries, Inc., 426 Mass. 122, 129 (1997) (emph. suppl.) (citing Smith v. Monsanto Chem. Co., 770 F.2d 719, 723 (8th Cir. 1985), cert. denied, 475 U.S. 1050, 89 L. Ed. 2d 581, 106 S. Ct. 1273 (1986) (the fact of discriminatory motive “can be inferred from differences in the treatment of [employees of different races]”)).

In this case, the Defendants’ Motion attempts to nitpick the comparator co-workers and events and distinguish each case in order to erase a history of favoring white employees and sabotaging the career of Buchanan, who should have become the Defendants’ first ever black Sergeant. However, the Defendants’ arguments must all be rejected. The Greenfield Police Department (“GPD”) is a small police department and at all times relevant hereto it had no more than 35 sworn police officers. The supervisory staff totaled no more than ten (10) sworn police officers – a Chief, a Deputy Chief, two Lieutenants, and six Sergeants. The balance of the force consisted of approximately 20-25 officers. The evidence cited herein relates to misconduct ignored when committed by white employees and enforced with hyper-scrutiny when alleged or manufactured against Buchanan, and the one white employee who objected to his mistreatment, Plaintiff Dodge. It is permissible for each Plaintiff to “identify other employees to whom he is similarly situated in terms of performance, qualifications and conduct, without such differentiating or mitigating circumstances that would distinguish their situations.” Id., at 130 (internal citations omitted). In each case, Defendants have failed to raise any ***material*** distinguishing features that would bar the comparison of Buchanan and Dodge to Haigh, Rode, Clark, McCarthy, and the other employees of GDP. All of the cases cited by the Defendants relate to discussions and considerations made by a trial court in considering and ruling on summary judgment motions that are distinguishable. The instant issue is whether Plaintiffs may offer evidence that the Defendants disciplined and treated the Plaintiffs differently from their

white peers within GPD. Of course, any analysis of Matthews leads to the resounding answer to that question in the affirmative.

This is supported by the fact that the Supreme Judicial Court expanded upon Matthews in the 2016 case of Bulwer v. Mount Auburn Hospital, 473 Mass. 672, (2016). Bulwer is a race discrimination case in which the plaintiff presented evidence that showed that the stated reason for the various actions taken by the employer were not the real reason and that, when taken as a whole, the evidence would lead a rational jury to conclude that the reasons for the employment action in question was pretextual. Id., at 684-85.

In reversing summary judgment granted to the defendant hospital, the Bulwer decision noted various comparators and failures by the Defendant to follow rules and procedures that the Court reasoned could be seen as evidence of discrimination. Id. In Bulwer, these categories of relevant, material and admissible evidence included:

- (1) positive evaluations of the plaintiff inconsistent with the defendant's basis for termination;
- (2) incidents where similarly situated non-black interns were given opportunities to remediate or repeat rotations where their work had been below grade while the plaintiff in Bulwer was not extended courtesies;
- (3) testimony and evidence of another African American doctor who identified three separate incidents involving white doctors whose deficient performances were addressed to the hospital staff, but they were not subject to any disciplinary action, or the disciplinary action was years later;
- (4) comments by the plaintiff's evaluators and supervisors as reflecting "[s]tereotypical thinking ... categorizing people on the basis of broad generalizations";
- (5) failure to follow written procedures in terminating the plaintiff; and
- (6) "white supremacist" literature being found in the break room and a failure by administrators to discipline employees who left the offensive materials behind.

Id., at 684-88.

The Supreme Judicial Court held that all of these categories (many of which are duplicated by the Defendants in this case) are categories and examples of relevant evidence on the issue of a discriminatory bias. All of the considerations and reasons recognized by Bulwer apply and govern the evidence which the Defendants improperly seek to bar in this Motion. Consistent with Matthew and Bulwer, the Defendants' Motion must be denied as the evidence in question is relevant, material and admissible.

ARGUMENT

I. THE EVIDENCE AT ISSUE IS RELEVANT TO PLAINTIFFS' CLAIMS.

A. Plaintiff Patrick Buchanan.

Buchanan, at times relevant to this case the only black member of the GPD, has asserted race discrimination and retaliation claims arising from GPD's steadfast refusal and failure to promote him to the rank of Sergeant. Among the claims and theories presented by Buchanan is that the GPD manipulated the Internal Affairs process to punish, suspend, and demote Buchanan for alleged or frivolous violations of department rules, while ignoring or sweeping under the rug serious infractions committed by white officers, including Defendant Chief Haigh himself. Chief Haigh is the ranking sworn officer in the department, but the Greenfield Mayor is the appointing authority. Any and all discipline imposed by the Chief may be appealed to the Mayor and thereafter to third-party arbitration. In this case Mayor Martin heard and ruled on appeals by Buchanan and Dodge of discipline imposed on them by Chief Haigh.

On January 30, 2015, Buchanan was subject to a three-day suspension, a demotion from Provisional Sergeant, and removed as a Field Training Office due to his treatment of a minor operator from a December 2014 traffic stop. (See the Buchanan Internal Affairs Complaint and Investigation Documents, attached hereto as Exhibit 1). In this traffic stop, Buchanan issued a

warning to the young driver, instead of several tickets, and told the young man to do something nice for his mother with the money saved by Buchanan's legitimate exercise of discretion.

GPD learned of the December 2014 incident when the mother was in the department and asked about officer Buchanan, stating she wanted to thank him for the way he treated her son. Thereafter, GPD conducted a "No Holds Barred" investigation against Buchanan to turn a compliment and thank you into a discipline, demotion and suspension. Based on the investigation, Chief Haigh imposed the above-referenced discipline and provided the following reasoning:

You placed the Greenfield Police Department in a negative light by overstepping your authority to create punishments which are not part of your discretionary powers...By your own admission, this tactic of, in your words, 'paying it forward,' has been utilized on several occasions. This is not part of a police officer's training, nor is it part of your discretionary powers under the law.

(See Chief Haigh Letter of January 30, 2015, attached hereto as Exhibit 2.)

After the suspension imposed by Defendant Chief Haigh, Buchanan with material assistance from Plaintiff Dodge, appealed Buchanan's demotion and suspension to Mayor Martin. The Mayor rubber-stamped the Chief's decision. Thereafter, again with material assistance provided by Dodge, Buchanan appealed to third-party arbitration. After a hearing, the arbitrator issued a decision favorable to Buchanan in mid-October 2015 reducing the suspension to a mere reprimand. However, by then GPD had achieved its goal of sabotaging Buchanan's promotion to becoming the first black Sergeant in the department's history.

B. Plaintiff Todd Dodge.

Sergeant Todd Dodge, a white member of the GPD, repeatedly objected to the Defendants' mistreatment of Buchanan, served as Buchanan's union representative, and helped Buchanan through his successful arbitration challenge ending in approximately October 2015.

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