

STATE OF RHODE ISLAND COMMISSION FOR HUMAN RIGHTS

Simon Peralta,	:	
<i>Complainant,</i>	:	
	:	
v.	:	RICHR No. 16 EAO 253-06/06
	:	EEOC No. 16J-2016-00264
City of Providence, by and through	:	
its Treasurer, James J. Lombardi, III,	:	
and Bill Bombard, alias	:	
<i>Respondents</i>	:	

POSITION PAPER OF RESPONDENT, CITY OF PROVIDENCE

The Respondents, City of Providence, by and through its Treasurer, James J. Lombardi, III and Bill Bombard, alias (the “City”), hereby submit this position paper in response to the charge of discrimination (the “Charge”) filed with the Rhode Island Commission for Human Rights (the “Commission”) by Complainant, Simon Peralta (“Peralta”), on or around June 3, 2016. In the Charge, Peralta alleges that the City discriminated against him on the basis of his color and ancestral origin (dark skinned Hispanic). For the reasons stated below, the City denies the Charge and respectfully requests that the Commission dismiss it for lack of probable cause.

I. PARTIES

The City of Providence, by and through its Treasurer, James J. Lombardi, III, is a municipality and political subdivision of the State of Rhode Island.

Bill Bombard¹, is employed as the Chief Engineer in the Department of Public Works for the City of Providence. Mr. Bombard was the acting Director of Public Works from April 12, 2012 until April 20, 2015.

¹ “Bill Bombard” The City is providing this Position Statement on behalf of William Bombard.

Simon Peralta is currently employed as a Laborer in the Department of Public Works for the City of Providence. Peralta was an applicant for the position of Senior Mechanic within the Department of Public Works.

Upon review, it appears that the Complainant alleges several instances of disparate treatment and/or discriminatory action by the Respondents, each of which is lacking in veracity, not indicative of disparate treatment or discriminatory conduct, or both.

First, the Complainant alleges that he was not promoted to the position of Senior Mechanic because of his color and ancestral origin. These allegations are misleading or untrue. Peralta is not qualified for position of Senior Mechanic. Under these facts, it is unfathomable that Peralta would characterize the failure to promote an act of "discrimination." The charge is frivolous.

The Complaint sets forth no evidence that the City failed to promote Peralta because of his color and ancestral origin. All employment decisions made with regard to Peralta were made for legitimate, nondiscriminatory reasons. Peralta was not promoted because he failed to meet the minimum qualifications; not because of his color and ancestral origin;

II. STATEMENT OF FACTS

On October 14, 2008, Peralta began working for the City of Providence as a temporary employee in the Department of Public Works as a Laborer. See Personnel History Record, attached hereto as **EXHIBIT A**. On or about August 11, 2010, Peralta was placed into a bargaining union position of Laborer in the Department of Public Works.

On or around September 5, 2014, vacancy P-144-14, Senior Mechanic Limited in the Department of Public Works, was posted. A total of five (5) individuals applied for the position: Three (3) internal bidders (employees within the Department of Public Works), zero (0) external bidders (City employees outside of the Department of Public Works), and two (2) outside applicants. See List of Bidders, attached hereto as **EXHIBIT B**.

Peralta was one of the applicants. See Peralta Resume, attached hereto as **EXHIBIT C**. He was considered an internal bidder. The Department of Public Works Senior Mechanic position was awarded to Noel St. George, an internal bidder. Mr. St. George was awarded the position because he was the candidate who possessed the most minimum qualifications and the senior person.

All of the applicants were interviewed by the Superintendent of the Highway Division, Sal Solomon and Shop Supervisor, Steve Dutra. Mr. Dutra is responsible for the administrative and technical supervision of employees and operations of a Truck and Heavy Equipment Maintenance and Repair Shop and the Municipal Garage Facilities. Like the other candidates Mr. Peralta was interviewed and asked questions about his skills, previous work experience and knowledge in the field. Additionally, the candidates were asked to demonstrate their training and experience in the field. It was apparent that Mr. Peralta did not possess the minimum qualifications for the position. See Job Description, attached hereto as **EXHIBIT D**. Specifically, Mr. Peralta did not have any experience with diesel and hydraulic system powered engines; most of the vehicles in the fleet at the Department of Public Works are diesel and hydraulic system powered engines. During the interview, Mr. Peralta was afforded an opportunity to address the concerns regarding his lack of experience with diesel and hydraulic system powered engines; he was unable to do so. Since Mr. Peralta failed to possess the minimum qualifications for the position, he was disqualified.

Article X of the Collective Bargaining Agreement (“CBA”) in place during the posting process required the City to give priority consideration to Local 1033 members already working within the department where the vacancy existed. See CBA, attached hereto as **EXHIBIT E**².

² Specifically, Article X, Section 2 of the CBA states that “[t]he Employer agrees to fill all vacancies from the best qualified applicants in the bargaining unit...” The following section, Section 3, then goes on to state: “Vacancies shall be filled on the basis of qualifications and ability, as determined by the Employer. The vacancy shall be filled on the basis of qualifications and ability, as determined by the Employer based on the requirements listed in the parties’ job descriptions. Where qualifications and ability are relatively equal, seniority shall be the

At all pertinent times, Mr. St. George was a member of Local 1033, was working in the Department of Public Works, and was the most senior qualified applicant within that department. As such, even if Peralta had the qualifications similar to Mr. St. George's, Mr. St. George would still have been given priority consideration for the Senior Mechanic position pursuant to the CBA—i.e., he still would have been more “qualified.” See **EXHIBIT E**.

On or around December 11, 2014, vacancy P-169-14, Senior Mechanic in the Department of Public Works, was posted. A total of eight (8) individuals applied for the position: Three (3) internal bidders (employees within the Department of Public Works), zero (0) external bidders (City employees outside of the Department of Public Works), and five (5) outside applicants. See List of Bidders, attached hereto as **EXHIBIT F**.

Peralta was one of the applicants. He was considered an internal bidder. The Department of Public Works Senior Mechanic position was awarded to Carlos Santos, an internal bidder. Mr. Santos was awarded the position because he was the candidate with the most minimum qualifications.

Similarly to the September 5, 2014, vacancy P-144-14, Senior Mechanic Limited, all of the applicants were interviewed by Sal Solomon and Steve Dutra. Although Mr. Peralta was the most senior applicant within the Department of Public Works, he once again did not possess the minimum qualifications for the position. See **EXHIBIT D**. Mr. Peralta did not have any experience with diesel and hydraulic system powered engines, he failed to meet the minimum qualifications therefore, and he was disqualified. In fact, Derek Faria, the next most senior employee within the Department of Public Works, was also disqualified because he failed to possess the minimum qualifications. Carlos Santos, the next most senior qualified employee within the Department of Public Works was awarded the position. It should be noted that Mr.

determining factor. Should a question arise out of the decision made by the Employer on the question of qualifications and ability, this shall constitute a grievance and be subject to the grievance and arbitration procedure included in this Agreement.”

Santos is Hispanic. Furthermore, pursuant to Article X, Section 3 of the CBA, Peralta and/or Local Union 1033 could have filed a grievance challenging the award(s) of the position of Senior mechanic to other applicants, however, no such grievance has been filed.

Peralta asserts that he was told that the basis for his failure for being promoted was that he did not possess a valid State Commercial Drivers License (CDL). If Peralta was the most qualified candidate with the most minimum qualifications and the senior person, he would have been awarded the position of Senior Mechanic. Peralta would have been allowed six (6) months to obtain a valid State Commercial Drivers License (CDL). His failure to possess a CDL was not a factor in the decision not to award him the position of Senior Mechanic; it was solely based upon his failure to meet the minimum qualifications.

III. DISCUSSION

In order to make a prima facie case for a failure-to-promote claim, the individual must show that (i) he is a member of a protected class, (ii) he was qualified and applied for an open position, (iii) he was rejected, and (iv) the successful candidate possesses similar qualifications. See Rathbun, 361 F.3d 62, 71 (1st Cir. 2004).

In his charge of discrimination, Peralta alleges that he was denied promotional opportunities to the position of Senior Mechanic in the Department of Public Works.

The minimum qualifications of the position of Senior Mechanic include the following:

- (1) Must demonstrate accomplished skill and knowledge in the maintenance and repair of gas and diesel engines, hydrostatic and hydraulic system, and electrical systems as they relate to vehicular and power equipment operation.
- (2) Must possess and maintain a valid State Commercial Drivers License (CDL).
- (3) Must be able to perform all essential functions of the job.

As these were the only positions Mr. Peralta applied for and he did not meet the minimum qualifications, Mr. Peralta was justifiably not considered for this position. Accordingly, Peralta cannot establish a prima facie case for his failure to promote claim.

At this point, no discrimination on behalf of the City may be found unless Peralta proves by a preponderance of the evidence that the reasons offered by the City are not, in fact, true, but merely a pretext for discrimination, and that Peralta's color and ancestral origin" was the "but-for" reason that the City did not award him the position of Senior Mechanic. Peralta does not bring forward any such evidence.


IV. CONCLUSION

Based on the above explanations, the Respondents respectfully request that the Commission promptly take action on this matter, find that there is no probable cause for the Complainant's charge of discrimination, and deny and dismiss same.

The City of Providence,

By its Attorney,

JEFFREY DANA
CITY SOLICITOR



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