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|----------------------|---|-----|-----------------------------|
| STATE OF INDIANA |) | | IN THE ALLEN SUPERIOR COURT |
| |) | SS: | |
| COUNTY OF ALLEN |) | | CAUSE NO. _____ |
| GARRY A. HAMILTON, |) | | |
| |) | | |
| Plaintiff, |) | | |
| |) | | |
| v. |) | | |
| |) | | |
| FORT WAYNE COMMUNITY |) | | |
| SCHOOLS, |) | | |
| |) | | |
| Defendant. |) | | |

COMPLAINT

Plaintiff alleges against Defendant that:

1. The Plaintiff is Garry A. Hamilton who alleges that he was discriminated against and not hired because of his race and color (African American/Black) and was retaliated against for opposing and complaining about race discrimination in the hiring process, all as set forth in Plaintiff’s EEOC Charge of Discrimination No. 470-2022-00968, attached hereto, made a part hereof, and incorporated herein as Exhibit “A”.
2. The EEOC issued Plaintiff’s Notice of Rights to Sue on November 18, 2022 (Exhibit “B”), and this Complaint has been filed within ninety (90) days after receipt thereof.
3. The Defendant is Fort Wayne Community Schools (“FWCS”), an “employer” for purposes of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. § 1981. Defendant is required by law to treat minorities the same as other races with respect to the terms, conditions, benefits, and privileges of employment – including benefits of at-will employment – and to refrain from discriminating against

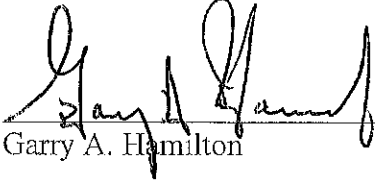
African Americans with respect to those benefits.

4. Defendant is located at 1200 S. Clinton Street, Fort Wayne, Indiana 46802.
5. Plaintiff repeatedly applied for the position of Security Supervisor with Fort Wayne Community Schools in 2019 and 2021 as set forth in Exhibit "A".
6. Plaintiff was repeatedly passed over for the Security Supervisor position without reason, cause, or explanation.
7. Instead, Defendant filled the position with Caucasian individuals with less experience and less qualified than Plaintiff, or at the very least, were much less qualified than Plaintiff, and in the case of Thomas Miller (a Caucasian who was allowed to interview for the position while Plaintiff was not given an interview), he was not as educated as the Plaintiff and had no college degree.
8. Attached hereto and incorporated herein as Exhibit "C" is a statement from Plaintiff that sets forth facts and circumstances that support his claim for race discrimination in the hiring process for the position of Security Supervisor with Defendant.
9. As a result of not being hired into the position of Security Supervisor for FWCS, Plaintiff suffered the loss of income and benefits associated with it. Plaintiff also suffered humiliation, embarrassment, financial distress, inconvenience, emotional distress, and other similar injuries for which he seeks compensatory damages.

WHEREFORE, Plaintiff prays for judgment against the Defendant, for compensatory damages, pecuniary damages, reasonable attorney's fees and costs, and for all other just and proper relief in the premises including injunctive and declaratory relief, as well as an order from the Court requiring FWCS to hire Plaintiff as Security Supervisor for FWCS.

VERIFICATION

I, Garry A. Hamilton, swear and affirm under the penalties for perjury that the above and foregoing representations, as well as the contents of Exhibits "A" and "C", are true, accurate, and based upon my personal knowledge.


Garry A. Hamilton

JURY DEMAND

Pursuant to Rule 38 of the Indiana Rules of Trial Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

MYERS SMITH WALLACE, LLP

/s/Christopher C. Myers
Christopher C. Myers, #10043-02
809 South Calhoun Street, Suite 400
Fort Wayne, IN 46802
Telephone: (260) 424-0600
Facsimile: (260) 424-0712
E-mail: cmyers@myers-law.com
Counsel for Plaintiff

EEOC Form 5 (1/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: FEPA EEOC
Agency(ies) Charge No(s):
Indianapolis District Office
12/03/2021
470-2022-00968

Equal Employment Opportunity Commission

Name (Indicate Mr., Ms., Mrs.)

State or Local Agency, if any

and EEOC

Garry A. Hamilton

Home Phone (Incl. Area Code)

Date of Birth

260-438-8348

Street Address

City, State and ZIP Code

9416 Sugar Mill Drive

Fort Wayne, IN 46835

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

Fort Wayne Community Schools

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

1200 South Clinton Street

Fort Wayne, IN 46802

16 +

260-467-2132

DISCRIMINATION BASED ON (Check appropriate box(es).)

- RACE
- COLOR
- SEX
- RELIGION
- NATIONAL ORIGIN
- RETALIATION
- AGE
- DISABILITY
- GENETIC INFORMATION
- OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

2019

Present

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

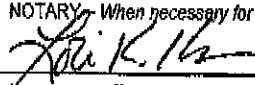
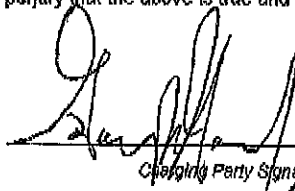
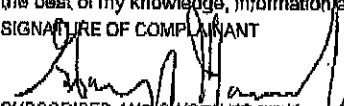
- I. The Complainant is Garry Hamilton is a black/African American gentleman. At all material times to this Charge, Complainant contends he was discriminated against and/or retaliated against on the basis of his color/race (black/African American), in violation of his federally protected rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and (42 U.S.C. § 1981).
- II. The Respondent is Fort Wayne Community Schools, a company doing business at 1200 South Clinton Street, Fort Wayne Indiana 46802. At all material times to this Charge, the Respondent was an "employer" for the purposes of Title VII and (§ 1981).
- III. The Complainant initially applied for a Security Supervisor with the Fort Wayne Community School System in 2019. This was a position for which he was imminently qualified, based on his experience in law enforcement, including work he'd performed as a Special Crimes Investigator. The Respondent declined to hire the Complainant, and instead selected a white male applicant named Daniel Nigro. By information and belief, Mr. Nigro has less relevant experience for the position than the Complainant had.
- IV. In August 2021, the same security supervisor position opened up, when Mr. Nigro resigned from the position. The Complainant again applied. By information and belief, it was only he and two other candidates that were interviewed - the other two both being white/Caucasians (Amy Schuler and Thomas Miller). Again, the Respondent declined to hire the Complainant for the position and instead hired one of the white/Caucasian's applicants in spite of the Complainant's significant qualifications and relevant experience. By information and belief, Miller had no college degree. The Complainant in contrast did meet the positions educational qualifications but was not hired.
- V. On September 9, 2021 the Complainant learned that the same position (which had been given to

Continued on Page 2

Ex. A

applicant Tomas Miller), was opened again. The Complainant was never contacted for any additional interviews for the once again opened position. He received an EEOC email communication dated September 13, 2021 from the Respondent confirming they had received his application for the position. However, again he wasn't hired and he was notified on October 1, 2021 that the position "has been filled or closed" by the Fort Wayne Community Schools Human Resources team.

- VI. The Complainant contends that the Respondent was discriminated against and past over for hire into a Security Supervisor position multiple times when instead hired less qualified white/Caucasian males instead of the Complainant. He further contends that the Respondent's failure to hire him was on the basis of his color/race (black/African American), in violation of the Complainant's federally protected rights under Title VII and (§ 1981). The unlawful discriminatory conduct of the Respondent furthermore was the direct and approximate cause of the Complainant suffering the loss of the prospective job, loss of income and job-related benefits and also subjected the Complainant to inconvenience, mental anguish, emotional distress, and other damages and injuries.
- VII. The Complainant is entitled to seek compensatory damages and reasonable attorney fees and cost from the Respondent.
- VIII. The Respondent complained of unlawful discriminatory conduct was also intentional, knowing, willful, want, and in reckless disregard of the Complainant's federally protected rights under Title VII (§ 1981). The Complainant is therefore also entitled to seek punitive damages against the Respondent.

| | |
|---|---|
| <p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p> | <p>NOTARY - When necessary for State and Local Agency Requirements </p> |
| <p>I declare under penalty of perjury that the above is true and correct.</p> <p> _____ Date: 12/03/2021 Charging Party Signature</p> | <p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p>SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) 12-3-2021</p> |

LORI KAY KOLB
 Saaf
 Notary Public - State of Indiana
 Allen County
 My Commission Expires Dec 20, 2024

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Garry Hamilton**
9416 Sugar Mill Drive
Fort Wayne, IN 46835

From: **Indianapolis District Office**
101 West Ohio St, Suite 1900
Indianapolis, IN 46204

EEOC Charge No.
470-2022-00968

EEOC Representative
Andrea Dayharsh,
Enforcement Supervisor

Telephone No.
463-999-1127

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

More than 180 days have passed since the filing of this charge.

The EEOC is terminating its processing of this charge.

Equal Pay Act (EPA): *You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.*

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Digitally Signed By: Michelle Eisele
 11/18/2022

Enclosures(s)

Michelle Eisele
District Director

cc: **David Amen**
Fort Wayne Community Schools
1200 S CLINTON ST
Fort Wayne, IN 46802

Christopher C Myers
CP LEGAL REPRESENTATIVE
809 S. Calhoun Street Suite 400
Fort Wayne, IN 46802

Ex. B

In 2019, I applied for a position with Fort Wayne Community Schools as a Security Supervisor. I was granted an interview with the Director of Security Michael Manuel and other members from Fort Wayne Community Schools.

After I completed my first interview with the panel, I was later contacted to do a follow up interview. I was advised that I was one of the two finalize for the position as the Security Supervisor position. The other finalize was Daniel Nigro, now age 54, who is a male white and a current police officer with the Fort Wayne Police Department. The second interviews were conducted again with Michael Manuel, Charles Cammack and other members from the Fort Wayne Community Schools. Shortly after the interview was completed, I received a call Michael Manuel, stating that the Board decided to go in a different direction. Michael Manuel never explained what he meant when he said that the Board decided to go in a different direction. Michael Manuel never stated that decision to hire Daniel Nigro, was he was more qualify. I did thank Michael Manuel for the interview.

It should also be noted that before Michael Manuel became the Director of Security. That position was once held by Dottie Davis, a retired Deputy Chief from the Fort Wayne Police Department. Prior to Dottie Davis retiring from Fort Wayne Community Schools. It is alleged that she wrote the job description for the position of Security Supervisor. Dottie Davis is also married to Daniel Nigro. Daniel Nigro and I was in the same academy class with the Fort Wayne Police Department. During our career with the Fort Wayne Police Department. Daniel Nigro had never been promoted or held a supervisor's position. Attached to this report is my resume and my current job description with the Allen County Prosecutors Office 38th Judicial Circuit as a Special Crimes Investigator.

In August of 2021, the position for Security Supervisor with Fort Wayne Community Schools was posted once again after Daniel Nigro, resigned his position. I applied for this position for the second time and was granted an interview on August 31, 2021 at 5pm. I arrived 15 minutes early for my appointment, and I waited over one hour to be interviewed. There were only three candidates to be interviewed. Amy Shuler age 48, female white, police officer with the Fort Wayne Police Department. The second candidate that was interviewed was Thomas Miller, age 54, male white, County Police Reserve Officer.

The interview panel consisted of Michael Manuel, Charles Cammack and Matt Shipboard. After I completed my third interview for the same position dating backing to 2019. About an hour after I completed my interview, I received a phone call from Michael Manuel. Michael Manuel stated that the interview was very close. Michael stated that the Board decided to go with another candidate. I would not have known who the candidates were, but we were all in the lobby about the same time and we could see each other. Michael asked me if I had any questions. I asked Michael if the candidate that was selected was the male white, and Michael replied yes. I then stated to Michael that this was the second time that a male white was selected over me. Michael stated that the Board had decided that Thomas Miller was a better fit for the district. Michael never stated that Thomas Miller was more qualified, but was a better fit and he never explained what he a better fit for the district meant. I did thank Michael for the interview.

On September 9, 2021, I learned that the job that was offered to Thomas Miller was being posted again. I learned that Thomas Miller didn't meet the minimum requirements, to be considered for the position. The job posting on the Fort Wayne Community Job Site now indicate that you can apply for the position of Security Supervisor starting on September 9, 2021.

Ex. C

Since the selection pool was now between Amy Shuler and myself. The Board never offered to do a second interview, to select which of two candidate was more qualified for the position. It is obvious that Fort Wayne Community Schools rather start the application process over, to avoid hiring a qualified applicant that is an African American with a college degree with over 16 years of being in management.

Garry A. Hamilton