

**EQUAL OPPORTUNITIES COMMISSION  
CITY OF MADISON  
210 MARTIN LUTHER KING, JR. BOULEVARD  
MADISON, WISCONSIN**

Aaron Evans-Jackson  
650 Jett St #1  
Atlanta GA 30138

Complainant

vs.

Goodman Community Center  
149 Waubesa St  
Madison WI 53714

Respondent

COMMISSION'S DECISION AND  
FINAL ORDER

CASE NO. 20112076

EEOC CASE NO. 26B201100046

**BACKGROUND**

On May 9, 2011, the Complainant, Aaron Evans-Jackson filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division. In his complaint, Evans-Jackson charged that the Respondent, Goodman Community Center, discriminated against him on the bases of race, color and sex in his terms and conditions of employment and when it terminated his employment. The Respondent denied having discriminated against the Complainant on any bases or in any manner.

Subsequent to an investigation, a Division Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant in his employment and his termination on the bases of race, color and/or sex. Efforts at conciliation were unsuccessful and the complaint was transferred to the Hearing Examiner for a hearing on the merits of the complaint.

Subsequent to various scheduling problems, a hearing was held on February 3, 2012. After the opportunity for review and briefing, the Hearing Examiner issued a Recommended Findings of Fact, Conclusions of Law and Order, on July 3, 2013, determining that the Complainant had failed to demonstrate that the Respondent had discriminated against him in his employment on the bases of race, colored and/or sex. The Complainant timely appealed the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order dated July 3, 2013 to the Appeals Committee of the Equal Opportunities Commission.

The Appeals Committee provided the parties with the opportunity to submit briefs in support of their respective positions. On May 22, 2014, the Appeals Committee met to address the Complainant's appeal. Participating in the Committee's consideration of the appeal were Commissioners Saiz, Weier and McDowell.

## DECISION

After review of the record in this matter and considering the arguments of the parties, the Appeals Committee adopts and incorporates by reference as if fully set forth herein the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order dated July 3, 2013. While the Committee has some concerns regarding the professionalism of the Respondent's treatment of the Complainant, it finds that the Complainant failed to present sufficient evidence to establish that his treatment was a result of his race, color and/or sex and failed to demonstrate discrimination.

## ORDER

The Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order dated July 3, 2013 are affirmed and are incorporated by reference as the order of the Commission. The complaint is dismissed.

Joining in the Committee's decision are Commissioners Saiz, Weier and McDowell. No Commissioner objected to the decision of the Committee.

On behalf of the Equal Opportunities Commission and the Appeals Committee,

Signed and dated this 17th day of June, 2014.

EQUAL OPPORTUNITIES COMMISSION

Sean Saiz  
Appeals Committee Chair

cc: Peter E. Hans

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HEARING EXAMINER'S RECOMMENDED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

CASE NO. 20112076

EEOC CASE NO. 26B201100046

The Hearing Examiner for the Madison Equal Opportunities Commission, Clifford E. Blackwell, III, held a hearing on the merits of the above-captioned complaint on February 3, 2012 in Room LL-120 of the Madison Municipal Building, 215 Martin Luther King, Jr. Blvd. Madison, Wisconsin. The Complainant, Aaron Evans-Jackson, appeared in person, but without counsel. The Respondent, the Goodman Community Center, appeared by its Executive Director, Becky Steinhoff, and by its counsel Peter Hans.

Based upon the record in this matter, including that of the hearing conducted, the Hearing Examiner now issues his Recommended Findings of Fact, Conclusions of Law and Order.

**RECOMMENDED FINDINGS OF FACT**

1. The Complainant is a black African American male.
2. The Respondent is a not-for-profit community center with its principle place of business located at 149 Waubesa Street, Madison, Wisconsin, 53714. The Respondent's Executive Director is Rebecca "Becky" Steinhoff, a white female.
3. On or about February 22, 2011, the Complainant was hired by the Respondent to help implement the Merit Program. The Merit Program was intended to reduce teen pregnancies in the minority community by a series of educational programs. The Complainant's supervisor was Lobelia "Libby" Lee, an African American female.
4. The Complainant was to receive training on how to present the Merit Program's education programs. While he was being trained, he was given other job duties including working at the Lussier Teen Center and assisting with program development for the Respondent at O'Keefe Middle School.

5. While performing duties at the Lussier Teen Center, the Complainant was supervised, in addition to Lee, by Eric Hartwig, a white male.

6. Supervisors reported problems with the Complainant's performance. He was late to work and appeared to be looking up information on his cell phone instead of paying attention during trainings. Hartwig had repeated meetings with the Complainant about the expectations of his duties at the Lussier Teen Center. Lee also communicated with the Complainant about performance problems.

7. The Complainant objected to the complaints of his supervisors and coworkers. The Complainant either did not believe that his performance was deficient or that he (the Complainant) better knew how to perform his duties. In particular, the Complainant appears to have objected to supervision by Hartwig. The Complainant did not believe that Hartwig had sufficient experience to be his supervisor.

8. On a date not disclosed in the record, Kay Enright, principal of O'Keefe Middle School, observed the Complainant in a room provided for use of the Respondent for various programs that the Respondent conducted at the school. Ms. Enright knew the Complainant because of a job assignment of the Complainant from several years prior and also as a student in the school district. Enright was concerned about the Complainant's presence because she had not been previously informed of the Complainant's duties and because she had a concern stemming from the Complainant's previous assignment at O'Keefe.

9. Enright complained to Barry Davis, a coworker of the Complainant and an employee of both the district and the Respondent. Enright also spoke with Steinhoff about her concerns. It was agreed that the Complainant would not return to O'Keefe until the parties could meet to address Enright's concerns.

10. The Complainant did not want to meet with Enright insisting that he had done nothing wrong during the prior incident. He was unwilling to meet with Enright to resolve the situation.

11. This presented a problem for the Respondent as it operates several programs in connection with O'Keefe Middle School and operation of those programs was jeopardized by the Complainant's attitude and refusal to meet to resolve Enright's concerns.

12. Lee met with the Complainant on several occasions to counsel him on improving his performance. Lee told Steinhoff of Lee's concerns and the problems caused by the Complainant.

13. On or about April 27, 2011, Lee, Steinhoff and the Complainant met to discuss the Complainant's continued employment. Both Lee and Steinhoff emphasized the amount of time the Respondent had spent to improve the Complainant's performance. Steinhoff indicated that the Complainant had taken up more time than his employment was worth.

14. During the April 27, 2011 meeting, the Complainant questioned Steinhoff and Lee's motives indicating that he believed that his race was the reason for his problems. Steinhoff indicated that it was not the Complainant's race, but his performance and the fact that the Complainant's supervisors and coworkers felt that they could no longer work with the Complainant that was the problem.

15. On April 28, 2011, the Complainant's employment with the Respondent was terminated.

16. The Complainant's employment was terminated because his attitude and actions caused his supervisors and coworkers, both African American and white, male and female, to no longer be able to work with the Complainant. The Complainant's inability to work with others or to work towards resolution of outstanding issues required his termination.

17. Neither the Complainant's sex nor his race or color were motivating factors in his termination.

### CONCLUSIONS OF LAW

1. The Complainant is a member of the protected classes "race", "color" and "sex" as those terms are defined in the Equal Opportunities Ordinance.

2. The Respondent is an "employer" as that term is defined in the Equal Opportunities Ordinance.

3. The Complainant's termination from employment was not due in any part to his race, color or sex and did not violate the terms and requirements of the Equal Opportunities Ordinance.

### ORDER

1. The Complaint is dismissed.

2. The parties shall bear their own costs and expenses.

### MEMORANDUM DECISION

The present matter typifies one of the class of cases which the Hearing Examiner finds most difficult to address. In general, these cases involve at least one party who feels that he or she has been terribly wronged, but fails, often substantially, to meet the burdens apportioned to him or her by the legal process. In these cases, the Hearing Examiner, while feeling empathy for the party, is left with little flexibility in analyzing the record and reaching a conclusion based upon that record.

The burdens set forth by case law regulate the degree of proof necessary to prevail in a discrimination case, as well as, who must produce evidence in what order. Generally, these burdens are known as the burdens of proof and production. While application of these burdens may seem to restrict creativity and a meaningful understanding of the circumstances leading to a complaint, they are necessary to providing a reasoned structure to analysis and create reasonable expectations for the parties about how to present their respective claims and defenses. By setting forth an analytical framework that is to some extent standardized, there is a reduced possibility that a decision will be reached arbitrarily or capriciously rather than being based upon a reasoned condition of the record.

The decision maker does possess some flexibility in the application of the burdens or in the regulation of the hearing process. However, that flexibility is always constrained by the requirements of due process, equity and fundamental fairness to both parties. In other words, the Hearing Examiner may allow an unrepresented party to present his claim in a manner that does not strictly follow customary procedure, but in making such allowances, the Hearing Examiner must remain mindful of his duties to properly apply the accepted standards of proof and determine whether each party has met his or her burden of proof and production.

The first question to be addressed by the Hearing Examiner in this matter is whether this is a case presented by direct or indirect evidence. In the case of a claim presented by direct evidence, the Hearing Examiner must review the facts, weigh the evidence and render a decision without reference or reliance upon inferences appearing in the record. Direct evidence is that which, if believed, demonstrates a fact without reliance upon inference or presumption. In the case of an indirect claim, the Hearing Examiner will apply the McDonnell Douglas/Burdine burden shifting approach to determine whether discrimination has occurred. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). In a claim presented by indirect evidence, the Hearing Examiner will often rely upon inferences and presumptions raised by the evidence, rather than upon direct statements of discriminatory animus.

The testimony and evidence presented in this case create a factual record that more closely fits with a determination of discrimination under the indirect method. In this method, the Hearing Examiner must review the record to determine whether it supports a claim of discrimination or not. This analysis is performed through an application of the facts to the elements of a *prima facie* claim of discrimination and an examination of whether the Respondent has offered a legitimate, nondiscriminatory explanation for its conduct leading to the claim of discrimination. The Complainant might still prevail even if the Respondent presents a legitimate, nondiscriminatory explanation, if he can produce evidence that demonstrates the Respondent's explanation is either not credible or represents a pretext for an otherwise discriminatory reason. While various burdens shift between the parties in this analytical approach, the Complainant bears the ultimate burden to establish that discrimination has occurred.

The problem with the approach taken by the Complainant in presentation of his claim of discrimination is that he seeks to disprove the explanation presented by the Respondent rather than assuming the responsibility to demonstrate that the Respondent has discriminated against him. Even if the Complainant can successfully demonstrate that the Respondent's explanation is not credible, that, of itself, fails to demonstrate that he the Respondent affirmatively discriminated against him.

The Hearing Examiner will attempt to recast the testimony presented at the hearing in this matter in terms of the McDonnell Douglas framework.

As noted above, the first step in this process is to set forth the elements of a *prima facie* claim of discrimination. While these elements may differ slightly from claim to claim, the Hearing Examiner has generally found that three elements are essential to demonstrating discrimination in most cases. First, the Complainant must show that he is a member of a class of individuals identified in the Equal Opportunities Ordinance. In this regard, the Complainant asserts that he is a member of the protected classes race and sex. As an African American male, there is no

doubt that he is a member of these two protected groups. The Respondent does not contest the Complainant's membership in these groups.

The second element is that the Complainant must have suffered or experienced an adverse action. In the case of a claim of discrimination in employment that adverse action must relate to the Complainant's employment either in his terms and conditions, benefits or privileges or in his termination from employment. As with the Complainant's membership in one or more protected classes, there is no doubt that the Complainant experienced an adverse employment action when his employment was terminated in April of 2011. Again, the Respondent does not contest that the Complainant has established this element of his *prima facie* claim.

As is often the situation, the question becomes difficult with respect to the third element of the *prima facie* claim. The Complainant must demonstrate that the adverse action he suffered occurred, in part, because of his membership in one or more of his protected classes.

Proof of a contested element of the *prima facie* claim is by the greater weight of the credible evidence, also known as by the preponderance of the evidence. In this burden of proof, the Complainant must demonstrate that it is more likely than not that his termination resulted, at least in part, because of either his sex or his race. In determining whether the Complainant has met his burden of proof, the Hearing Examiner must weigh the evidence presented by both parties and make judgments as to the relative credibility of the parties. If the Complainant does not convince the Hearing Examiner that his version of events is more likely than not, he fails to meet his burden of proof and he fails to demonstrate discrimination. This includes a circumstance in which the Complainant's version of events is only as likely as that proposed by the Respondent.

At the hearing stage, a Complainant is not entitled to the presumption of credibility which attaches to his or her statements at earlier stages of the complaint process. For example, during the investigation of the allegations of the complaint, if there is a factual dispute between the Complainant and the Respondent, the Investigator/Conciliator is required to resolve the dispute in favor of the Complainant. This effectively creates an inference of credibility on behalf of the Complainant during that phase of the complaint process. However, at hearing, the Complainant is not given an inference of credibility and must demonstrate his or her credibility in the same manner as the Respondent.

The problem with this record for the Hearing Examiner is that the Complainant exclusively focused his presentation on disproving the Respondent's explanation rather than presenting affirmative evidence supporting his claims of discrimination. In this approach, the Complainant essentially skips over the first step in the McDonnell Douglas framework and moves to the third step. However, such a jump denies the Hearing Examiner the opportunity to determine if a *prima facie* claim has been demonstrated and eliminates the burden on the Respondent to demonstrate a legitimate, nondiscriminatory reason for its actions. It assumes burdens have been met without actually undertaking those burdens. While this approach by itself might be enough to dismiss the Complainant's allegations, the Hearing Examiner can synthesize some of the evidence in a manner that does not entirely destroy the accepted analytical framework.

Essentially, the Complainant presents three statements to establish the causal connection between the Complainant's protected classes and his termination. The Complainant asserts that the Respondent viewed him as a "black man with a chip on his shoulder," that

Respondent was going to "wave the white flag" and that he was attempting to turn African American boys into "little Malcolm Xs." It appears that the Complainant comes to these allegations from his final meeting with the Respondent's Executive Director, Becky Steinhoff, and his direct supervisor, Lobelia "Libby" Lee, and the written documentation of that meeting.

From these statements, the Complainant asserts that they support both his claims of race and sex discrimination. Presumably, the Complainant's claim of sex discrimination rests primarily on his allegation that the Respondent viewed him critically because of his race in combination with his sex. In other words, that because he is an African American male his actions were subject to greater scrutiny and criticism than they would have been had he been an African American female. The Hearing Examiner comes to this analysis from reading the record as a whole, because the Complainant fails to set forth this analysis in any manner or in any of his materials.

The problem with this form of argument is that it rests entirely on the Complainant's interpretation of acts without reliance upon any additional factual support. It represents a type of "he said she said" argument. Unless the record contains some evidence indicating that the Complainant's interpretation/version of events is more likely or more credible than that proposed by the Respondent, he will fail to carry his burden of proof.

The Complainant, as previously noted, attempts to shift this equation of credibility in his favor by demonstrating that the Respondent is not credible. However, the Complainant fails to demonstrate a lack of credibility on the part of the Respondent. Even if the Complainant demonstrated a degree of a lack of credibility on the part of the Respondent, doing such does not necessarily enhance the Complainant's own credibility.

The Respondent contends that the Complainant has either misquoted Steinhoff and Lee or misinterprets statements that have neutral meanings. In this regard, the Respondent indicates that this approach by the Complainant is evidence of the Complainant's own tainted view that his race is central to all transactions in which he participates.

First, the Hearing Examiner will review the Complainant's assertion that the Respondent called him a "black man with a chip on his shoulder." The Respondent contends that no such statement was made at least in those precise words or with the intent to discriminate. The Respondent concedes that Steinhoff may have told the Complainant that he had a "chip on his shoulder and that it might be time for self-reflection." In the context of the Complainant's termination meeting, the Respondent states that the Complainant was unwilling to accept that his failure to take supervision and that the deterioration of working relationships with coworkers and supervisors, both white and African American, was the cause of his termination. Rather, according to the Respondent, the Complainant protested his treatment as a "black man" and continued to raise race as the central issue involved in his employment.

Given the record as a whole, the Hearing Examiner concludes that even if the Respondent specifically stated that the Complainant was "a black man with a chip on his shoulder," it did not reflect a racial animus demonstrating that race or sex was a motivating factor in his termination. It is important to state that the Respondent employs numerous African Americans, both male and female, and several hold supervisory positions. It seems unlikely that given this employment record that the Respondent would be inclined to discriminate against an employee due to his race. The Complainant's direct supervisor, Lobelia Lee, is African American and demonstrated no animus of any kind during her testimony.

While it is understandable that a Complainant at hearing would focus on the issue of race in his questioning and during his own testimony, the Complainant, in the mind of the Hearing Examiner, demonstrated a fixation that went beyond what would be expected. This focus on race and the Complainant's treatment due to his race or in other words race being the central factor in the Complainant's treatment is consistent with the Respondent's testimony at hearing about the Complainant's refusal to accept responsibility for his own actions and conduct.

The second statement that the Complainant contends demonstrates that the Respondent was motivated by his race and or color in the decision to terminate his employment is that Steinhoff was going to "wave the white flag and give in." It is not at all clear how the Complainant believes that this statement indicates a racial animus.

It is true that Steinhoff is white and the statement refers to a "white flag," but the Hearing Examiner knows of no interpretation of this statement that demonstrates any knowledge or intention related to race. The white flag has been associated with surrender for centuries. That the Complainant finds a racial component to this statement is an indication of how thoroughly the Complainant's concern with his racial identity and treatment controls his views and perhaps attitudes. It supports the Respondent's position that the Complainant saw race as being the controlling factor in all of his interactions, even where race was not an issue at all.

The statement concerning "turning black boys into little Malcolm Xs" might have been made by Steinhoff or another supervisor, but does not demonstrate any racial animus in the Complainant's termination. It does not appear, given the record, that it was made as part of the termination meeting and reflects a certain amount of exasperation with the Complainant's personal focus on issues of race while he should have been focused on his particular job duties with young African American males.

While the Complainant touched on a number of other arguments during his case in chief, the Hearing Examiner does not find that those additional arguments are able to be framed in terms of the third element of a *prima facie* claim of discrimination, i.e., that there is a causal connection between the Complainant's termination and his membership in his protected classes. By identifying the above arguments, the Hearing Examiner does not conclude that the Complainant carried his burden of proof with respect to this element. Rather, the Hearing Examiner finds that the record more likely supports the Respondent's explanation of the circumstances surrounding each of these statements. The Complainant fails to provide any corroborating evidence from which the Hearing Examiner can conclude that the Complainant's version/interpretation of events is more likely than not. At best, the Hearing Examiner might find that neither the Complainant nor the Respondent's positions are more likely than the others. As noted above, that means that the Complainant fails to carry his burden of proof with respect to a key element in the *prima facie* case.

Failing to establish each element of the *prima facie* claim of discrimination, the complaint will be dismissed. Under the McDonnell Douglas approach, failure to establish the Complainant's initial burden means that the burden does not shift to the Respondent to demonstrate a legitimate, nondiscriminatory explanation for its actions.

While the Hearing Examiner finds that the Complainant has failed to meet his burden of proof, the Hearing Examiner will continue with the analysis of this complaint. Even assuming

that the Complainant had demonstrated a *prima facie* claim of discrimination, the analysis would not stop there. The Hearing Examiner would have to determine whether the Respondent has produced a legitimate, nondiscriminatory explanation for its actions. It is important to note that under the McDonnell Douglas/Burdine approach, the burden on the Respondent is one of production, not of proof. In other words, the Respondent need merely present an explanation for its actions that, if true, would be legitimate and nondiscriminatory.

In this regard, the Respondent presents a primary overriding reason for the Complainant's termination and a related secondary reason. The primary explanation presented for the Complainant's termination was the Complainant's failure to conform his conduct to the expectations and needs of his supervisors and coworkers. Essentially, after several weeks of employment, the Respondent contends that the Complainant had so alienated his supervisors and many of his coworkers, that his continued employment was untenable. Somewhat related to the contention that the Complainant could not get along with his coworkers and supervisors is the additional argument that the Complainant failed or refused to take reasonable steps to resolve a conflict with Principal Kay Enright from O'Keefe Middle School. O'Keefe Middle School, along with White Horse Middle School, were important to the Respondent because several programs of the Respondent were operated at those schools and students from those schools participated in programs of the Respondent.

As examples of the Complainant's inability to work with his supervisors and coworkers, the Respondent provided testimony indicating that the Complainant was critical of his more experienced white supervisor, Eric Hartwig, that the Complainant argued with and did not follow the directives of his African American supervisor, Lobelia Lee and that he did not work well with his African American coworkers Barry Davis and Arthur Morgan. Additionally, Lobelia Lee testified that instead of agreeing to meet with Principal Enright, the Complainant protested that he'd done nothing wrong and seemed unwilling to meet Ms. Enright half way to resolve Enright's concerns.

Given the record as a whole, the Respondent meets its burden of production to establish a legitimate, nondiscriminatory explanation for its termination of the Complainant's employment. This shifts the burden back to the Complainant to demonstrate that the Respondent's explanation is either not credible or represents a pretext for an otherwise discriminatory explanation. It is this stage of analysis on which the Complainant focused his testimony at hearing. Unfortunately, for the Complainant, this effort is irrelevant given his failure to establish a *prima facie* claim as the first step in the process.

However, if the Hearing Examiner had reached this point in the analysis, the Hearing Examiner would find that the Complainant fails to carry his burden of proof. In making such a determination, the Hearing Examiner does not mean to convey that he does not find a certain level of empathy for the Complainant in his dealings with Enright and Steinhoff, but those observations do not indicate that the Respondent's position is not credible or is pretextual.

The Hearing Examiner found the testimony of Enright and Steinhoff to be cold, self-serving and to a great degree sanctimonious. However, the testimony of others such as Hartwig, Lee, Davis and Morgan more than demonstrates that the Complainant's employment was problematic from nearly the start.

The Complainant began his employment with the Respondent on or about February 22, 2011. He was to work in the Respondent's Merit Program. The Merit Program was intended to

reduce teen pregnancies in minority communities through education and counseling. The Complainant was to receive training on how to present these programs. The Complainant's supervisor was Lobelia Lee.

While the Complainant was receiving training, he was assigned to work with teen programs at the Lussier Center and to provide program support at O'Keefe and White Horse Middle Schools. While Lobelia Lee remained the Complainant's supervisor, he also received supervision at the Lussier Center from Eric Hartwig.

The Complainant never actually performed duties in the Merit Program due to his termination on April 28, 2011 prior to completion of training.

Lee testified that the Complainant was frequently late to assignments and often appeared to be involved in his own activities such as reading or texting or surfing on his phone instead of paying attention to his specific job duties. The Complainant objected to Lee's characterizations of his conduct indicating that he may well have been looking up information related to his training. However, the Complainant's testimony misses the point. His supervisor clearly believed that he was not paying attention and that this lack of attention was detrimental to his performance. Even if the Complainant was doing as he testified, it is the perception of his supervisor that is important. If that perception was erroneous, it does not then make a decision based upon that erroneous perception discriminatory.

The record clearly indicates that the Complainant did not like or perhaps wish to be supervised by Hartwig. It is not clear whether that desire of the Complainant was, in part, motivated by Hartwig's race, white, or by the Complainant's perception that Hartwig lacked appropriate credentials. However, the reasons for the Complainant's desire not to be supervised by Hartwig are generally irrelevant. Hartwig was the Complainant's supervisor at the Lussier Center and as such, it was incumbent upon the Complainant to take the supervision that was given. There is nothing in the record to indicate that Hartwig treated the Complainant badly or that Hartwig's supervision of the Complainant was influenced by the racial difference between them. What is clear in the record is that both Hartwig and Lee spent several lengthy meetings with the Complainant attempting to make the Complainant's duties clear to the Complainant and to gain his acceptance of his duties and responsibilities.

Davis and Morgan both testified that their interactions with the Complainant had been frustrating and unproductive. Morgan testified that he found the Complainant's conduct to be unacceptable and objected to the Complainant's conduct in front of participants in the Respondent's programs.

Finally, Principal Enright was surprised to find the Complainant at his school preparing to work on a program for the Respondent. She believed that she had not been properly contacted by the Respondent prior to the Complainant's assignment. This was a matter of Enright's control over her facility, the people present and the programs being operated in her school. The Complainant's unexpected appearance was the fault of the Respondent.

However, Enright had a particular concern involving the Complainant over an incident that had occurred sometime previously. Until Enright was satisfied that there would not be a repetition of that earlier incident, Enright was not willing to permit the Complainant access to her school's facilities.

The Complainant felt that he had been blameless with respect to the earlier incident and made his position clear to his supervisors. While his supervisors attempted to work out a meeting that might allow the Complainant to begin working in programs at O'Keefe Middle School, the Complainant refused to cooperate due to his personal belief that he had done nothing wrong.

While the Hearing Examiner is sympathetic to the Complainant's beliefs that he had done nothing wrong, the fact that he was unwilling to attempt to find some solution to the difficulty is the problem for the Respondent. Because the Complainant prevented a resolution of the impasse with Enright, the Respondent found him to be uncooperative and an impediment to its programs. Though the distant, underlying conflict may have had a racial genesis, the Complainant's refusal to meet with Enright or to resolve the difficulties does not present a basis for finding that there is a racial or gender motivation for the decision to terminate the Complainant. Equally, there is nothing in the testimony concerning this situation that would lead the Hearing Examiner to doubt the Respondent's credibility or to find that it represents a pretext for an otherwise discriminatory explanation.

In short, the Hearing Examiner finds that the Complainant has failed to meet his burden of proof with respect to the *prima facie* case. That failure is sufficient to dismiss his complaint of discrimination. However, if there was sufficient evidence to support the *prima facie* claim, the Respondent has carried its burden to present a legitimate, nondiscriminatory explanation for the Complainant's termination. The Complainant then fails to demonstrate that the Respondent's explanation is either not credible or represents a pretext for an otherwise discriminatory explanation.

The complaint is dismissed.

Signed and dated this 3rd day of July, 2013.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III  
Hearing Examiner

cc: Peter E Hans