

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for New Jersey Division on Civil Rights

By: Beverley A. Lapsley
Deputy Attorney General
(973) 693-5055

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO: CRT 07550-2014S
DCR DOCKET NO: EC05FE 62357

HALYNA NIKULICZ,

Complainant,

v.

CITY OF BURLINGTON PUBLIC SCHOOL,

Respondent.

ADMINISTRATIVE ACTION

Consent Order and Decree

WHEREAS, this matter was commenced on May 25, 2011, when Complainant Halyna Nikulicz ("Complainant" or Nikulicz) filed a verified complaint ("Verified Complaint") with the New Jersey Division on Civil Rights ("DCR") against the City of Burlington Public Schools ("Respondent"), alleging that Respondent violated the New Jersey Family Leave Act, N.J.S.A. 34:11B - 1 et seq. (the "NJFLA"), when it terminated her employment for exercising her rights under the statute; and

WHEREAS, DCR conducted an investigation into the allegations in the Verified Complaint and issued a Finding of Probable Cause on May 13, 2014; and

WHEREAS, the matter was transmitted to the Office of Administrative Law (OAL) for a plenary hearing and assigned OAL docket number CRT07550-2014S;

WHEREAS, a Settlement Conference took place on February 20, 2015, before Administrative Law Judge, John F. Russo, and the parties commenced settlement discussions; and

WHEREAS, it is now the intention of the parties to settle, compromise and resolve in good faith, the differences and disputes that exist or may exist and the parties desire to amicably settle the matter without the necessity and expense of a public hearing;

NOW, THEREFORE, it is on this 27th day of May, 2015, ORDERED and AGREED as follows:

1. It is expressly understood that neither the execution of this Agreement, nor any other action taken by Respondent in conjunction with Complainant's alleged claims or this settlement, constitute an admission by the Respondent, of any violation of any law, duty, or obligation. The Parties agree that they have entered into this Agreement to avoid the time, and cost of further legal action, and that no party admits any liability to any other. Moreover, as the parties have chosen to settle this matter, there is no prevailing party.

2. Respondent agrees that it shall not engage in any act prohibited by the NJFLA, N.J.S.A. 34:11B-1 et seq., including any retaliatory conduct against Complainant, Complainant's family, or against any witness or participant in these proceedings, or allow any of its employees or agents to engage in any such conduct.

MONETARY RELIEF

3. Respondent shall pay the total sum of forty-five thousand dollars (\$45,000) in settlement of all claims and damages arising from the allegations set forth in the Verified Complaint and Finding of Probable Cause. Complainant shall be solely responsible for paying any and all federal, state or local taxes that may be due on the payment. Additionally, Complainant is solely responsible for any penalties or interest relating to any State, Federal or local taxes or tax liens, that may be required by law to be paid by Complainant with respect to the settlement amount. Respondent shall issue Complainant a 1099 tax form for the settlement amount. The parties agree to an allocation of the settlement amount in two installments as follows:

a. Complainant shall receive the sum of Twenty-two Thousand Five Hundred dollars (\$22,500), within thirty days following the full execution of this Agreement;

b. Complainant shall receive the second payment of Twenty-two Thousand Five hundred dollars (\$22,500) on or before September 5, 2015.

4. Complainant represents that she has no outstanding liens on the settlement amount, but agrees that she is solely responsible for the payment of any such liens. It is further understood that as a condition of this settlement, all liens, past, current and/or future that can be legally asserted against the proceeds of this settlement are to be satisfied by Complainant, including but not limited to any Medicare or Medicaid claims and/or liens, Worker's Compensation claims and/or liens, Social Security claims and/or

liens, hospital/healthcare insurer claims and/or liens, physician or attorney claims and/or
liens, or any of the statutory, equitable, common law or judgment claims and/or liens.

POLICIES AND TRAINING

5. Respondent shall display conspicuous notice of an employee's rights and obligations pursuant to the NJFLA, N.J.S.A. 11B-6. Respondent agrees to comply with all posting and notice requirements for employers pursuant to N.J.A.C. 13:8-1.2, N.J.A.C. 13:8-1.4 and N.J.A.C. 13:8-2.2.

6. No later than sixty (60) days from the execution of this agreement, Respondent shall review and modify, as appropriate, its NJFLA policy (the "Policy"). Said policy shall be consistent with the express Legislative purpose of the NJFLA, which is that employees should be entitled to take a period of leave upon the birth or placement for adoption of a child or serious health condition of a family member without risk of termination of employment or retaliation by employers and without loss of certain benefits. The Policy adopted shall include a provision specifically addressing that it is a violation of the NJFLA to retaliate and/or otherwise discriminate against an individual for exercising his/her rights pursuant to the Act.

7. Respondent shall forward a copy of the Policy to DCR Manager Lorraine LeSter ("Manager LeSter") at the Division on Civil Rights, 31 Clinton Street, 3rd floor, P.O. Box 46001, Newark, New Jersey 07102, at least twenty days prior to its implementation by Respondent.

~~8. The Policy established in paragraph 6 shall be disseminated to Respondent's~~
agents and/or employees, and included with all compilations of employee policies. Respondent shall keep employees advised of the policy and modifications made to the policy pursuant to the provisions of N.J.S.A. 34:11B-6 and N.J.A.C. 13:14-1.14. Respondent shall maintain a copy of the Policy in a readily accessible location in its offices.

9. Respondent agrees to train its Supervisors, Managers and Human Resource personnel on the NJFLA and Federal Family and Medical Leave Act. Said training shall include but not be limited to addressing the policy adopted by Respondent for addressing requests for family leave. If Respondent's training is conducted by a private firm, Respondent shall submit an outline of the subject matter being covered and provide a copy of any materials used in these sessions, including but not limited to handouts and any Power Point slides, to Manager LeSter, Division on Civil Rights, 31 Clinton Street, 3rd Floor, P.O. Box 46001, Newark, New Jersey 07102 for review prior to training. Respondent will notify DCR of when training is to occur and will also permit one or more representatives of the Division to attend any or all sessions.

10. All such training shall be completed on or before January 2016, or within six months of the execution of this Agreement, whichever comes later. Each individual who participates in training and receives instruction will sign a statement acknowledging that he or she has participated in, understands, and has completed the NJFLA training course.

COMPLIANCE AND RELEASES

11. Where a dispute arises regarding the Respondent's compliance with paragraphs 3, 5, 6, 7, 8, 9 and 10 of this Agreement, DCR and Respondent shall first attempt in good faith to resolve the dispute before seeking the Court's intervention. DCR shall provide Respondent with the specific details of the alleged noncompliance and provide Respondent at least a fifteen (15) day period within which to cure any noncompliance.

12. In the event that Respondent defaults with respect to any provision herein following an opportunity to cure the default, Respondent hereby consents to the entry of this Consent Order and Decree in the Chancery Division of the Superior Court of New Jersey, thereby making this Consent Order and Decree an order of the Court for purposes of enforcement therein. In the event of default Respondent shall be responsible for all costs associated with the enforcement of this Agreement.

13. This Consent Order shall be binding upon the parties to this agreement and their successors. In no event shall assignment of any right, power or authority avoid compliance with the terms of this Consent Order.

14. The parties agree that if any Court declares any portion of this Agreement unenforceable, the remaining portions shall be fully enforceable.

15. Each party agrees that each party will bear his, her or its own costs and attorneys' fees, if any, which have been incurred in connection with the within matter and in conjunction with the negotiation and preparation of this Agreement and that no

~~amounts other than the payments to be made pursuant to Paragraph 3 of this Agreement~~
shall be sought by or owed to Complainant or to any attorney in connection with this matter, and that no monies shall be sought by Respondent and no party will be considered a prevailing party. Excluding the enforcement of this agreement for default as set forth in paragraph 12.

16. This Agreement contains the sole and entire Agreement between the parties hereto. Each party represents and acknowledges that, prior to executing this Agreement, they have had ample time to consult with legal counsel prior to making the decision to execute this agreement, and that no party has relied upon any representation or statement not set forth in this Agreement, made by any other party hereto, or their counsel or representatives, with regard to the subject matter of this Agreement. No other promises or agreements shall be binding unless in writing, signed by the parties hereto, and expressly stated to represent an amendment to this agreement. Complainant Halyna Nikulicz expressly recognizes and understands that the Deputy Attorney General Beverley A. Lapsley represents the Director of the Division on Civil Rights in this matter and does not represent her. Complainant acknowledges that she had the opportunity to retain counsel to represent her in this matter, and with respect to this Agreement, and has elected not to do so. DCR makes no representations as to the obligations and/or effect imposed by paragraphs 17 and 16 of this Agreement.


17. In consideration for the payment and other consideration provided for in this Agreement, Complainant and Respondent irrevocably and unconditionally waive, release, discharge and give up any and all claims, demands, obligations, damages, liabilities,

~~causes of action and rights, in law or in equity, known and that which should have been~~

known, that each may have against the other, including Respondent's, officers, directors, agents and employees (present and former), and Respondent's successors, based upon any act, event or omission occurring before the execution of this Agreement, including, but not limited to, any events related to, arising from or in connection with Complainant's employment with Respondent. The parties specifically waive, release and give up any and all claims against each other in connection with Complainant's employment with Respondent thereof based upon any act, event, or omission occurring before the effective date of this Agreement that were known or should have been known to Complainant (but not those which were not known to her or should not have been known to her at the time of the execution of this Agreement), including but not limited to, any claim that was asserted or could have been asserted under any Federal and/or State statutes, regulations and/or common-law.

18. This agreement shall operate as a complete and final disposition of the aforesaid Verified Complaint, subject only to the fulfillment of all the foregoing provisions. In consideration for the execution of this agreement and payment as set forth in paragraph 3, Complainant Halyna Nikulicz, individually, expressly waives releases and gives up any claims that have been asserted or could have been asserted in the DCR Action, DCR DOCKET NO: EC05FE-62357 and OAL DOCKET NO: CRT 07550-2014S. Execution of this Agreement results in dismissal of the DCR complaint with prejudice.

19. Any signature for the entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Consent Order.



CRAIG SASHIHARA
DIRECTOR, NEW JERSEY DIVISION ON
CIVIL RIGHTS

Jointly Approved and Submitted for Entry:

For Complainants:

By: Malyna Nikulicz
Malyna Nikulicz

DATED: May 4, 2015

For Respondent:
Respondent Burlington Public Schools

By: Jennifer Montone
Jennifer Montone,
Title: Board President

DATED: May 11, 2015