
DEBRA M. D'AMICO,
Plaintiff

v.

CRANSTON SCHOOL COMMITTEE, and
RICHARD SCHERZA, in his capacity
as Superintendent of Schools, Cranston
Public Schools,
Defendants

AFFIDAVIT OF DEBRA M.
D'AMICO IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

I, DEBRA M. D'AMICO, state:

Introduction

1. I have filed this action against my employer, the Cranston School Committee and the Superintendent of Schools (hereinafter "the Cranston Public Schools"), for discriminating against me with respect to employment benefits based upon my sexual orientation.

2. On May 24, 2004, the Cranston Public Schools denied my request for family leave to care for my partner, Heather V. Paschoal, who was ill. They did so because the Cranston Public Schools requires that their employees be married in order to take family leave benefits to care for their partners, despite the fact that gay and lesbian employees like me are not allowed to marry in Rhode Island.

3. In denying my request for family leave benefits to care for my partner Heather, the Cranston Public Schools discriminated against me based upon my sexual orientation.

Relationship with Partner

4. I am a lesbian and live with my partner, Heather V. Paschoal, in a committed, loving relationship. We met in March 2001, and we have been in an exclusive and committed relationship for approximately 7 years.

5. We have lived together at [redacted] since August 2002.

6. We share a common home, expenses and household responsibilities with each other and no one else. We attend each other's family celebrations and employment social functions together, take vacations together and take care of each other when one of us is sick.

7. In 2003, Heather and I exchanged rings with the Greek symbol for eternity to symbolize our commitment to each other.

8. I have named Heather in my will as my "life partner," and she is the designated beneficiary of my life insurance and retirement proceeds.

9. I am not related to Heather by blood or marriage. Both Heather and I are above the age required to consent to marry, and neither of us is married to anyone else.

10. Under current Rhode Island law, I cannot marry Heather. If we could marry legally in Rhode Island, we would have done so well prior to the date of the denial of my request for family leave. I consider Heather my spouse for all intents and purposes, even though we are not presently eligible to marry under Rhode Island law.

Employment History & Family Leave Benefits

11. I started working for the Cranston Public Schools in November, 1991 as a substitute teacher and later held other teaching assignments in the Cranston Public Schools before assuming my present position.

12. I am presently employed by the Cranston Public Schools as a full-time social studies teacher at the Hugh B. Bain Middle School. I have held this position for 10 years.

13. At the time of the denial of leave, I was eligible for employment benefits as a full-time teacher with the Cranston Public Schools and continue to be eligible to the present.

14. The employment benefits offered by the Cranston Public Schools are set forth in a collective bargaining agreement entitled "Master Agreement Between the Cranston School Committee and the Cranston Teachers' Alliance Local 1704, AFT, September 1, 2002 To August 31, 2005" ("the Master Agreement"). A true and correct copy of the Master Agreement is attached hereto as Exhibit 1.

15. Article XX of the Master Agreement provides for short term leaves of absence. Article XX 8a entitled, "Absence due to illness in the family," provides: "In case of illness in the immediate family (father, mother, spouse, son, daughter) or additional persons in the immediate household, a teacher may be allowed up to three (3) days with full pay."

Need for Family Leave to Care for Partner

16. On Sunday, May 23, 2004, my partner Heather experienced a severe and potentially life-threatening allergic reaction.

17. I took Heather to the emergency room at Pawtucket Memorial Hospital at 11 p.m. that night. Heather was released from the emergency room at 6 a.m. on Monday, May 24, 2004.

18. I could not attend work on May 24 because I had stayed with Heather at the hospital the preceding night to provide her care and needed to continue doing so

that next day. Specifically, there was still the dangerous risk that Heather's symptoms would return, and I needed to watch over Heather in case that happened.

Denial of Family Leave

19. On May 26, 2004, I asked to have my absence on May 24 designated as an absence due to illness in my family.

20. On May 26, 2004, Dennis Neri, then Executive Director of Human Resources for Cranston Public Schools, verbally denied my request for family leave to care for my partner.

21. On May 27, 2004, I filed a formal request for family leave on a form entitled, "Absence Due to Illness in the Family Form."

22. By letter dated June 2, 2004, Mr. Neri formally denied my request for family leave.

Grievance Complaint

23. On June 2, 2004, my union and I filed a grievance over the denial of family leave.

24. On October 28, 2004, the Superintendent of the Cranston Public Schools, Catherine M. Ciarlo, denied my grievance, stating that "Article XX 8a of the Master Agreement addresses absences due to illness in the family and not non-related individuals living in the household."

25. The matter was submitted to arbitration on February 16, 2005. On May 4, 2005, the Arbitrator issued her Decision and Award denying my request for family leave. A true and correct copy of the Arbitrator's Decision and Award is attached hereto as Exhibit 2.

Complaint to the Rhode Island Commission for Human Rights

26. On May 19, 2005, I filed a Charge of Discrimination against the Cranston Public Schools based upon sexual orientation discrimination. A true and correct copy of the Charge of Discrimination is attached hereto as Exhibit 3.

27. On July 11, 2006, upon investigation of my charge of discrimination, including briefing by myself and the Cranston Public Schools, Senior Complaint Officer Susan J. Gardner for the Commission for Human Rights issued a recommendation that my allegation be found meritorious and that a recommendation of probable cause issue. A true and correct copy of Officer Gardner's Recommendation is attached hereto as Exhibit 4.

28. On August 1, 2006, Executive Director Michael D. Evora for the Commission for Human Rights issued a letter confirming that a Preliminary Investigating Commissioner had adopted Officer Gardner's recommendation of finding probable cause. Mr. Evora's letter also informed both parties of their rights to elect that the matter be heard and decided in the Superior Court within twenty days. A true and correct copy of Mr. Evora's letter is attached hereto as Exhibit 5.

29. Soon thereafter, the Cranston Public Schools gave notice of election to terminate all proceedings before the Commission for Human Rights and to bring suit in the Superior Court. A true and correct copy of the Notice of Election is attached hereto as Exhibit 6.

30. On September 8, 2006, Mr. Evora issued a Notice of Right to Sue pursuant to Section 28-5-24.1(c) of the General Laws of Rhode Island. A true and correct copy of the Notice of Right to Sue is attached hereto as Exhibit 7.

Present Action for Statutory Right to Non-Discrimination in Employment Benefits

31. The Cranston Public Schools have refused and continue to refuse to provide me with leave to care for Heather because we are not married, even though we cannot marry in Rhode Island because we are a same-sex couple.

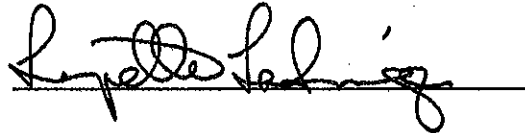
32. Upon information and belief, married, heterosexual employees are able to access their family leave benefits.

33. As a result of the actions of the Cranston Public School, I have suffered monetary damages in the amount of \$336.21, the amount of lost pay for the day I took off from work to care for Heather and continue to suffer harm from being denied my statutory right to be free from employment discrimination.

I declare under penalty of perjury under the laws of the State of Rhode Island that the foregoing is true and correct.


DEBRA M. D'AMICO

Subscribed and sworn before me on this 22 day of October 2008.



Notary Public