

STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights : CHRO No. 0510132
and Opportunities, ex rel. : EEOC No. 16aa500006
Patrick Onwuazor, Complainant

v. :

State of Connecticut, : July 24, 2008
Department of Transportation,
Respondent

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND

On or about September 29, 2004, Patrick Onwuazor (the complainant) filed an affidavit of illegal discriminatory practice (the complaint) with the commission on human rights and opportunities (commission), alleging that his employer, the Connecticut department of transportation (the respondent, or DOT), denied his application for promotion because of his race, color and national origin, in violation of General Statutes §§ 46a-60 (a) (1) and 46a-70, and, by virtue of § 46a-58 (a), Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

The commission investigated the charges in the complaint, found reasonable cause to believe that unlawful discrimination had occurred, and attempted unsuccessfully to conciliate the matter. On December 5, 2006, the commission investigator certified the complaint to public hearing in accordance with General Statutes § 46a-84 (a).

On December 12, 2006, the office of public hearings issued due notice of this proceeding to all parties and attorneys of record in accordance with General Statutes § 46a-84 (b).

I conducted a public hearing on October 23, 24 and 25, and December 4, 2007. Thereafter, the parties filed post-hearing briefs and the record closed on May 15, 2008.

FINDINGS OF FACT

1. The complainant, a black man born in Nigeria, immigrated to the United States in 1980. He attended Alabama A&M University, graduating in 1983 with a Bachelor of Science degree in civil engineering. (Stipulation of Parties [Stipulation], ¶¶ 1-3; testimony of Patrick Onwuazor, transcript pp. 9-10) ¹
2. After graduation, the complainant spent several years in Nigeria, and then returned to the United States where he studied computer-aided design software. (Onwuazor, 11-13)
3. In December 1987, the respondent, a Connecticut state agency, hired the complainant as an intern in its division of traffic engineering, located in the respondent's central facility in Newington. (Ex. C-23; Onwuazor, 13-14, 48; Stipulation ¶¶ 4-5)
4. The division of traffic engineering comprises two main subdivisions: "study" (for existing roadways) and "new construction" (for new roadways). Each of the subdivisions is divided into two units, with each of the resulting four units responsible for a different geographical area in the state. (Lussier, 272-75)
5. Each unit employs engineers at the Transportation Engineer (TE) -1 level, the TE-2 level and the TE-3 level, along with a supervising engineer who reports to a principal engineer. The principal engineer reports to the division manager. (Lussier, 276-77) In general, all TEs work on the same type of projects within

¹ Hereinafter, references to testimony consist of the witness's surname and the transcript page number(s). The four volumes of transcribed testimony are numbered consecutively. References to the exhibits offered jointly by the complainant and the commission bear the prefix "C," followed by a number. The respondent's exhibits bear the prefix "R."

their respective units, but each higher level is accompanied by greater degrees of responsibility and autonomy; TE-3s also have supervisory authority over TE-1s and TE-2s. (Cohen, 209; Lussier, 283-85, 291)

6. In 1989, the respondent promoted the complainant to TE-1 in the division of traffic engineering's unit 1404. (Ex. C-23; Stipulation ¶ 6) To become a TE-1, the complainant (like all other TE-1s) completed a working test period as an intern, passed an examination and satisfied certain minimum requirements. As a TE-1, the complainant, among other duties, designed simple traffic signals and road signs, performed computer analyses, prepared service memoranda for the maintenance office, prepared cost estimates in anticipation of contractor bidding, and responded to complaints from municipalities. (Onwuazor, 17-18; Conroy, 316-17)

7. In 1993, the respondent promoted the complainant to a TE-2, the position he has held at all times pertinent hereto. (Onwuazor, 13, 23; Stipulation ¶ 6) Promotion from a TE-1 to a TE-2 is a pro forma upgrade, based on years of experience; no examination is required. A TE-2's job responsibilities include work on similar, but more complex, designs handled by TE-1s. A TE-2 has more autonomy and works with less supervision than a TE-1, but like a TE-1, still reports to a TE-3. (Exs. C-3, C-5, C-23; Onwuazor, 43-44, 49, 131; Babowicz, 230; Lussier, 260, 283-85, 291; Campbell, 387)

8. The respondent has considered complainant's performance as a TE-2 "good to excellent." (See complaint, ¶11; answer, ¶11; Jurczyk, 198-200; Exs. C-2C and C-2D.)

9. In late March and early April 2004, the respondent posted notice of internal promotional opportunities for three vacant TE-3 positions in the division of traffic engineering in the Newington central office, and one TE-3 in the District One maintenance division in Rocky Hill. (Onwuazor, 50-52; Exs. C-4, C-4A) As

described in the formal job specification (Ex. C-5), a TE-3 in either of these divisions

[o]versees activities of engineers and technical assistants engaged in review and processing of major traffic generator studies, highway traffic engineering investigations, surveys, design and research; reviews reports from district traffic investigators and subordinates; prepares final reports and recommendations applying to traffic signs, signals, markings, control devices, illumination, channelization, detour and route designations; represents department in state, town, public meetings; performs related duties as required.

10. According to the internal posting of the TE-3 vacancies, candidates must demonstrate, at a minimum:

Considerable knowledge of principles and practices of civil engineering; knowledge of highway construction methods and materials; ability to analyze traffic engineer problems and recommend effective solutions; considerable interpersonal skills; oral and written communication skills; some lead ability.

(Exs. C-4, C-4A) Successful candidates must also have seven years of civil or electrical engineer experience, one year of which must include individual responsibility for design, design liaison or execution of complex engineering projects at the TE-2 level. The TE-3 position requires no college degree, but college training in civil engineering or construction technology may substitute for a portion of the seven years on the basis of fifteen semester hours equaling one-half year experience, up to a maximum of four years for a Bachelor's degree. (Exs. C-4, C-4A; see also Ex. C-5; Arpin 175-76; Cordula, 739.)

11. The complainant, along with other TE-2s, applied for these positions by completing and submitting to the department of administrative services (DAS) a standardized application form known as a "PLD-1." (Ex. C-23; Onwuazor, 52-53)

12. Candidates for promotions within state agencies frequently include their resumes and two most recent annual performance evaluations with the PLD-1s. At times, such documents are required, at other times they are submitted

voluntarily.² The complainant submitted copies of his performance evaluations (Exs. C-2C and C-2D) with both PLD-1s, and submitted his resume for the Newington positions. (Onwuazor, 53, 61-62)³

13. DAS screened the applications and determined that most of the candidates met the requisite minimum qualifications and were thus eligible to interview for the Newington and Rocky Hill positions. (Ricozzi, 445; Harlow, 497; Sawicki, 568; Arpin, 173-75, 177-78; Ex. C-5)

14. After DAS certified the lists of eligible candidates, the respondent established two interview panels, each consisting of managerial level employees. (Carey, 140; Arpin, 177; Cormier, 629-30)

15. All but one panel member in Rocky Hill had prior training in the proper conduct of interviews; all but another member in Rocky Hill had prior experience serving on DOT interview panels. None of the panel members received any specific training for these TE-3 interviews. (Arpin, 177, 180-81; Ricozzi, 403, 409, 417; Harlow, 493-94; Jennings, 455; Sawicki, 571-72, 617; Cormier, 635; DeCastro, 670)

16. The panels were charged with focusing primarily on the candidates' performance in the interview itself and avoiding any reliance upon extraneous sources or upon prior familiarity with the candidates' work performance. The predominant criterion for selection was the candidates' performance during the interviews, including their ability to provide thorough answers, to demonstrate the extent of their prior knowledge and experience, to display their communication skills and to respond confidently under pressure. (Arpin, 176-79, 182; Ricozzi, 413-14, 417, 442; Jennings, 469; Harlow, 557-58; Sawicki, 567-68, 580-82, 624-

² Most of the candidates who testified could not recall with certainty whether DAS (or the respondent) required the additional documents. Moreover, some could not remember whether they even submitted the documents.

³ The complainant testified that he did not recall whether he submitted his resume with his application for the Rocky Hill position. (Onwuazor, 53)

25; DeCastro, 674; Cormier, 631, 650-51) ⁴ The PLD-1s, resumes and performance evaluations, used by DAS for its initial screening, provide helpful background information for the interview panels, but would not outweigh a poor interview performance. (Sawicki, 573-74; Arpin, 177-78, 182-83; Jennings, 452-53, 469-70) Thus, candidates who performed poorly in an interview would—and did—receive a lower ranking than their actual work experience might otherwise warrant. (Arpin, 175-80, 183; Jennings 469-70; Ricoszi, 441; Cormier, 662) ⁵

17. In anticipation of the interviews, each panel prepared a list of questions, subsequently approved by the respondent's office of equal opportunity and diversity (generally known as the affirmative action office) and its human resources department. (Cordula, 708-09, 718; Harlow, 494) The interview panels asked each candidate the same series of questions for the respective positions, although the Newington questions differed from the Rocky Hill questions. (See, e.g., Exs. C-14D, C-15C, C-17C, C-19.)

18. The affirmative action office attempts to send a representative to observe and monitor interviews to ensure that they are conducted in a nondiscriminatory manner, but due to other responsibilities it cannot always do so. A representative from the affirmative action office did, however, attend both of the complainant's interviews and most, but not all, of the other interviews. (Harlow, 492-97; Sawicki, 570; Cordula, 708, 710-11, 740; Onwuazor, 64, 69) The representative observed no improprieties in either set of interviews. (Cordula, 711)

⁴ According to Jennings, "The candidate[s] must come in and demonstrate their competency relative to the job that they're interviewing for and must perform well during the interview and their responses should be direct and as direct as possible and must assume that the panelist[s] themselves don't have any information relative to the questions that they're answering and then we basically rank them based on that procedure." (Jennings, 469)

⁵ Harlow, in fact, specifically cited to one well-qualified individual whose poor interview performance in Newington—which Harlow attributed to a "bad day"—clearly hurt his ranking. (Harlow, 551)

19. Cordula, the respondent's affirmative action officer,⁶ was responsible for preparing the respondent's annual affirmative action plan at issue in this proceeding. (Cordula, 712-14; Ex. C-7B)

20. The objectives of the affirmative action office include establishing and maintaining a diverse workforce. Establishing hiring and promotional goals for minority employees is one way to attain this objective. The goals, however, are not intended to be mandatory quotas. (Cordula, 802) The 2004 affirmative action goals for the class of professional employees that included these specific TE-3 positions were six black males, one black female, and five Hispanic males.⁷ (Exs. R-2, R-8; Harlow, 505, Cordula, 741)

21. According to the policies of the affirmative action office, an interview panel's duty is to choose the best qualified candidate. Only if two candidates had equal qualifications and performed equally well in the interview might an affirmative action goal become a factor in the decision. (Cordula, 709, 720-21, 802)

22. The affirmative action office maintains a career development center and offers, among other things, career counseling, supervisory training (even for non-supervisors) and interview preparation. (Cordula, 808-12)

23. The panel members received no affirmative action training and no instruction on the use, if any, of the affirmative action goals for this particular set of interviews. Two panel members—Cormier in Rocky Hill, Harlow in Newington—were aware of the goals prior to the interviews, but they did not discuss the goals

⁶ Cordula's official title at the time was "acting director of the Office of Equal Opportunity and Diversity." (Cordula, 709) A black woman born in Germany, Cordula has worked in the field of affirmative action for more than twenty years in Connecticut state agencies, including twelve years at the commission on human rights and opportunities and more than seven at DOT. (Cordula, 708, 800, 806)

⁷ Although one document associated with the Rocky Hill position (Ex. R-1) indicated three, rather than six, black males as a goal, Cordula suggested the disparity was likely due either to a change in the overall goals for a comprehensive professional class (and not just for the more limited TE-3s vacancies) or, simply, to a typographical error. (Cordula, 740-42)

during the interview process and the majority did not even learn about them until after the interviews, when the summaries and recommendations were written for presentation to the affirmative action office. (Sawicki, 567-72; Cormier, 633-34; DeCastro, 670; Ricozzi, 409, 418; Jennings, 454-55; Harlow, 494, 505; Cordula, 720-21)

The Division of Traffic Engineering (Newington) TE-3 positions

24. John Carey, the manager of the respondent's division of traffic engineering since 2002, selected three DOT managers to serve on the Newington interview panel: Charles Harlow (white, born in the United States), Barbara Ricozzi (same) and Gerald Jennings (black, born in the United States). (Onwuazor, 68, Carey, 133,139-42, 152; Ricozzi, 401-02; Harlow, 486, 527-28; Jennings, 448)

25. Carey appointed Harlow, a principal engineer in Newington, as the chairman of the interview panel and provided some guidance for the development of interview questions. (Carey, 142; Harlow, 487) The questions were designed to address the candidates' supervisory abilities and their technical experience and knowledge. (Harlow, 490, 512-13) Once the questions were drafted, the affirmative action office approved the questions, requesting only the addition of an open-ended "Do you have any questions for the panel or wish to make a closing statement?" (Harlow, 494; see Exs. C-19, C-19B, C-19C)

26. As chairman, Harlow had administrative duties, but he had no special influence over the process and his vote was equal to that of the other panel members. (Carey, 150; Ricozzi, 404-05, 442; Jennings, 471-72; Harlow, 520, 548-49, 555) Harlow had served on other interview panels prior to the events at issue here. (Harlow, 493-94)

27. Barbara Ricozzi was a supervisor in the division of traffic engineering at the time of the interviews. She knew—and at some time or another had worked with—many of the candidates, including the complainant and the three

successful candidates. (Ricozzi, 411-414; 442) She had served on other interview panels prior to the events at issue here. (Ricozzi, 402-04)

28. Harlow and Ricozzi frequently took coffee breaks with candidates Jennifer Babowicz, Lisa Conroy and at least three other candidates—LaVance James (black, born in the United States), Jennifer Trio (white) and Julia Pang (Asian). (Babowicz, 236, 250; Conroy, 328-29, 339; Ricozzi, 433-34; Harlow, 533)

29. Some of the candidates had social relationships with Harlow and Ricozzi outside of work. (Babowicz, 256; Harlow, 496-99, 534, 549; Ricozzi, 433-436; Lussier, 266-69; Conroy, 322-323; Onwuazor, 69-70). Harlow considered several of the candidates, including those selected for the vacancies, to be “family friends” with whom he socialized outside of the office. (Harlow, 531-34, 549)

30. Gerald Jennings was an assistant planning director in the respondent’s bureau of policy and planning at the time of the interviews. Of the three panel members, he was least familiar with the candidates. (Jennings, 447-48; Harlow, 495) Jennings had served on other interview panels prior to the events now at issue. (Jennings, 453)

31. The complainant knew Ricozzi and Harlow from work, played in a golf league with Harlow and occasionally socialized and played basketball with Jennings in the late 1980s or early 1990s. (Onwuazor, 97-98, 107-08; Jennings, 453, 464; Harlow, 549)⁸

32. The panel interviewed twenty candidates for the Newington positions over the course of four days in early June 2004. (Exs R-2, R-8)

33. Each interview began with Harlow’s explanation of the interview process. The candidates were then allowed briefly to review the previously-prepared

⁸ When initially asked if he knew the panel members, the complainant evaded the direct question and only stated, “Mr. Jennings, I’ve never worked with him.” On cross examination, however, he conceded that he did know Jennings socially and played basketball with him. (Onwuazor, 69-70, 98)

questions, written out for their benefit. Thereafter each candidate had thirty minutes to respond orally to the questions. (Ricozzi, 410)

34. Each candidate had the same set of questions and none of the candidates knew the questions in advance. (Harlow, 546; Babowicz, 249; Lussier, 294; Conroy, 339; Exs. C-19, C-19B, C-19C)

35. Each member of the panel took notes on the candidates' responses in order to facilitate their subsequent discussion and recommendations. Some members wrote down as much information as possible, others simply jotted down key phrases or used various mnemonics. (Ricozzi, 420, 424; Jennings, 457, 474; Harlow, 500-01, 547-48; see also Babowicz, 247-48; Conroy, 336-37; Exs. C-15C, C-15D, C-17C, C-17D, C-19, C-19B, C-19C)

36. After the interviews were completed, the panel members individually prepared lists of their top four candidates and then met in an attempt to reach a consensus on which three they would recommend. (Ricozzi, 414; Harlow, 502; Jennings, 457)

37. The panel members did not discuss the candidates or the process with any other employees of the respondent (including the complainant's supervisor) before, during or after the interviews. (Jennings, 460; Harlow, 500) At no time before or after the interviews did the panel members speak with any of the candidates. (Jurczyk, 204; Babowicz, 249-50; Lussier, 293-97; Conroy, 339-40)

38. Jennifer Babowicz was the first choice on each panel member's list. Ken Lussier and Lisa Conroy were also on each member's list, and Jennifer Trio (white) was on the list of at least two of the panel members—Ricozzi and Harlow. (Ricozzi, 411; Jennings, 458-59, 479; Harlow, 503)⁹

⁹ During his testimony, Jennings initially recalled considering the complainant third or fourth on his own list, but later acknowledged that he might have ranked the complainant lower. (Jennings, 470-72; 476-77)

39. The panel members reached unanimity with little difficulty, and recommended the promotion of Babowicz, Lussier and Conroy. (Exs. R-2, R-8; Ricoszi, 414-15; Jennings, 459, 471; Harlow, 503, 548-49) All three are white and were born in the United States. (Babowicz, 226; Lussier, 258; Conroy, 313)

40. Jennifer Babowicz has been a DOT employee since 1994, beginning as an intern and receiving promotions to TE-1 and TE-2. (Babowicz, 226-27, 230-31; Ex. C-15B)

41. Among her noteworthy achievements was her work on the DOT's Traffic Control Signal Design Manual, used by all of the engineers in the traffic engineering division.

42. Babowicz had previously been denied at least two other promotions to TE-3. (Babowicz, 231) Determined to be better prepared for this interview, she reviewed the state employee supervisory handbook, the signal design manual, other documents relating to the TE-3 position, and her personal notes from an earlier assignment on project administration. (Babowicz, 252)

43. The interview panel was impressed with Babowicz's thorough preparation, poise and confidence as she provided detailed answers to all of the questions. (Harlow, 553-54) In its final report to the affirmative action office (Ex. R-8), prepared after the panel had chosen the three top candidates (see Findings of Fact [FFs] 55-59), the panel summarized its impressions of Babowicz:

Displayed excellent knowledge of traffic engineering principles and practices. Fully discussed elements of dilemma zone design, traffic investigations, project management and Maintenance and Protection of Traffic concepts and exhibited knowledge of supervisory practices. Experience in both traffic operations section and traffic project design section.

44. Lisa Conroy has been a DOT employee since 1994 and a TE-2 since 2000. (Conroy, 314-17; Ex. C-17A)

45. Previously rejected for TE-3 promotions approximately ten times, Conroy sought advice from her prior interviewers on how to improve her performance. She also did research and spoke with other TE-3s to familiarize herself with the position's responsibilities, and she reviewed pertinent technical and supervisory manuals. (Conroy, 317-18, 326, 334-36)

46. The panel members were impressed with Conroy's detailed answers and her ability to refocus and reorganize her presentation with concise yet correct responses when she realized she was running out of time. The panel considered her to be well-prepared. (Harlow, 554) In its final report to the affirmative action office (Ex. R-8), prepared after the panel had chosen the three top candidates, the panel summarized its impressions of Conroy:

Displayed excellent knowledge of traffic engineering principles and practices. Fully discussed elements of dilemma zone design, traffic investigations, project management and Maintenance and Protection of Traffic concepts and exhibited knowledge of supervisory practices. Experience in both the traffic project design section and temporary assignment work in traffic electrical section.

47. Kenneth Lussier began his employment with DOT in 1992 and received promotions up to the TE-2 level by 1995. (Lussier, 258-60, 290) ¹⁰

48. Prior to June 2004, Lussier had been an unsuccessful candidate for TE-3 promotions approximately eight times. (Lussier, 286) In anticipation of the interview questions, he planned how he would present himself, he reviewed his significant work as a TE-2 and perused several manuals pertinent to the TE-3 position. (Lussier, 292-93)

49. The panel members considered Lussier to be well-prepared and they were impressed with Lussier's broad knowledge and his through presentation.

¹⁰ For a period of time when Lussier was a TE-2, he was supervised by Sunny Ezete, a black Nigerian TE-3. (Lussier, 299-300) As of the public hearing, Ezete was still a DOT employee and the only black TE-3 among approximately fifteen TE-3s in the division of traffic engineering. (Lussier, 299-300, 306-07)

(Harlow, 553-54) In its final report to the affirmative action office (Ex. R-8), prepared after the panel had chosen the three top candidates, the panel summarized its impressions of Lussier:

Displayed excellent knowledge of traffic engineering principles and practices. Fully discussed elements of dilemma zone design, traffic investigations, project management and Maintenance and Protection of Traffic concepts and exhibited knowledge of supervisory practices. Majority of experience in traffic operations section.

50. The complainant had unsuccessfully applied for TE-3 promotions on one or two prior occasions. (Onwuazor, 117-18)

51. The complainant did not (or claimed that he did not) know that interview performance, rather than years of experience, was the primary criterion for selection. (Onwuazor, 117) Highly confident in his qualifications and his ability to interview well, he prepared for both interviews by “just . . . tighten[ing] up a few loose ends before the interview.” (Onwuazor, 28, 55, 71, 66-67, 94-95)

52. The panel members considered the complainant to be one of the more qualified candidates, but he did not perform as well in the interview as the chosen candidates, all of whom generally provided more thorough answers than the complainant. (Ricozzi, 421, 439-40; Harlow, 516-21, 551-52; Jennings, 457, 472) Collectively, the panel members ranked the complainant fifth or sixth. (Harlow, 503)

53. The panel recognized that the majority of the complainant's experience was in traffic operations and the complainant displayed excellent knowledge of traffic engineering principles and practices. In their collective opinion, they observed that the complainant did not fully discuss project management and that he needed greater familiarity with supervisory practices. (Ex. R-8)

54. At the request of the affirmative action and human resources offices, the panel also recommended six additional candidates—including the complainant—

to be placed on a TE-3 availability list for six months.¹¹ (Ex. R-2; Ricozzi, 415; Jennings, 457, 466; Harlow, 503-04; Cordula, 742-43)

55. After the panel determined whom they would recommend for the promotions, Harlow prepared and signed a written report summarizing the panel's assessment of each candidate's performance; Jennings and Ricozzi also signed the report, indicating their concurrence. The report generally reflected the panelist's interview notes and discussion thereof. (Ex. R-2; Ricozzi, 438-39; Harlow, 545-46; Jennings, 454-55)

56. On or about June 25, 2004, the panel sent the report to Carey, who approved the report and added his signature. Carey then forwarded the report, along with the panel members' interview notes and the documents the candidates had submitted, to the affirmative action office for its approval. (Ex. R-2; Carey, 143, 148; Harlow, 509-10; Cordula, 786-88)

57. Cordula, the affirmative action officer, would not endorse a recommendation if, upon review of a report and supporting documents, she believed that the process was in any way tainted by discrimination or other impropriety. (Cordula, 800) On occasion, she has also rejected reports lacking sufficient detail or explanation and required the panel to submit a second, more thorough report. (Cordula, 786-87)

58. In this case, although Cordula agreed with the panel's recommendation and had no concerns with the overall process, she was dissatisfied with the report itself, which commented briefly on only a few of the topics covered in the interviews. Her concerns were twofold: (1) because of the brevity and superficiality of the comments, the distinctions between the chosen candidates and the six highly-rated but unsuccessful candidates were not readily apparent in some instances; and (2) because some of the comments about the six were couched in negative terms (to distinguish them from the three chosen

¹¹ The record is inconsistent on this point. Some witnesses believed the list was effective for twelve months. (See, e.g., Onwuazor, 72)

candidates), she feared that unfavorable descriptions would appear inconsistent with the panel's positive recommendation for subsequent vacancies. (Cordula, 778-79; 782-83, 795-98; 803-04)

59. As is her practice, Cordula then discussed the report and the panelists' notes with Harlow and instructed him to augment the answers, relying only upon the same documents as before. On or about July 20, 2005, Harlow submitted a more-detailed evaluation based on the extant documents.¹² All three panel members signed the revised document, which was then approved by the affirmative action office and, thereafter, by the respondent's human resources department. (Ex. R-8; Carey, 148; Arpin, 166; Cordula, 786-87, 794-95, 800; Harlow, 828-33, 852-55)

60. The respondent announced its decisions for both the Rocky Hill position and the three Newington positions in August 2004. (Onwuazor, 71; Conroy, 321)

The District One (Rocky Hill) TE-3 position

61. The vacancy in Rocky Hill was in the special services section, a support unit whose sole TE-3 was responsible for providing technical assistance in a wide array of situations (including in the maintenance division), as well as performing more typical TE-3 duties. (Sawicki, 562-63, 606)

62. The panel appointed to interview candidates for the Rocky Hill position included four members: David Sawicki (white, born in the United States), John DeCastro (Filipino, born in the United States), Ronald Cormier (white, born in the United States) and Wayne McCallister (white, birthplace not given). (Sawicki, 561, 565-66; Onwuazor, 63-64; Cormier, 628-29; DeCastro, 665-66)

¹² Anything that Harlow added or modified was completely consistent with and supported by the panelists' contemporaneous interview notes and/or the candidates' initial submissions. (Harlow, 831-33)

63. Cormier was a DOT employee for almost twenty-nine years. At the time of the interviews, he was the maintenance director in the Rocky Hill facility and Sawicki's immediate supervisor. (Cormier, 628-29)

64. The selected candidate would be reporting to Sawicki, the special services section manager in the Rocky Hill branch. (Sawicki, 561, 565-66) Sawicki had worked with several of the candidates in the past, but had never supervised them. (Sawicki, 574)

65. McCallister was present during the interviews because his division, District Two in Norwich, would also be hiring a TE-3 from this candidate pool.¹³ Other than reading the questions to the candidates, he did not participate in the selection process for the Newington position. (Sawicki, 565,577-78; Cormier, 637)

66. DeCastro, who did participate in the interviews, was also from District Two (DeCastro, 665)

67. Because the complainant had done some temporary work in this division, he knew Sawicki by sight, but did not know the other panel members. (Onwuazor, 65-66; Sawicki, 565)

68. Kevin Campbell, one of the candidates, knew McCallister by name and by sight, but he did not know any of the other panel members. (Campbell, 365-66)

69. Sawicki prepared the interview questions, which were subsequently approved by Cormier and the affirmative action office prior to the interviews. (Sawicki, 566-67; Cormier, 630; DeCastro, 667; Ex. C-18)

70. The interview questions covered an array of issues including knowledge of available resources, interaction with the public and making public presentations, administrative duties such as correspondence, use and design of traffic barriers,

¹³ The complainant was not pursuing the District Two position.

and relations with co-workers. At the recommendation of the affirmative action office, two open ended questions were added to allow the candidates to highlight any other qualification and experience they believed appropriate. (Exs C-18, C-16D; Onwuazor, 66; Sawicki, 606, 608-10; Cormier, 656-59)

71. The panel members did not discuss the candidates or the process itself with any other employees of the respondent (including the complainant's supervisor) before, during or after the interviews. (Jurczyk, 204; Sawicki, 642)

72. The panel interviewed thirteen candidates, all TE-2s at the time, in early May 2004. (Ex. R-1)

73. No one gave Campbell any advice on how to prepare for the interview. On his own, he assembled and studied a notebook containing information he believed would be helpful in the interview, tested himself with potential questions, and prepared different closing statements. The weekend before the interview, he spent several hours composing his thoughts. (Campbell, 366-67)

74. The panel posed the same questions to each candidate. None of the candidates knew the questions prior to the interview. (Sawicki, 573, 607; Cormier, 655-56)

75. Other than McCallister, each member of the panel took notes on the candidates' responses. Some members wrote or summarized as much information as possible, others simply jotted down key phrases or various mnemonics. (Sawicki, 577, 607; Cormier, 638, 663; DeCastro, 690; see, e.g., Exs. C-16D, C-18.)

76. After all the interviews were completed, the panel members met in an attempt to reach agreement on the candidate they would recommend for promotion. (Sawicki, 580-82; Cormier, 652; DeCastro, 686)

77. The panel reached immediate consensus on Kevin Campbell. (Sawicki, 582; Cormier, 652; DeCastro, 686) Campbell (white, born in the United States) had twenty-three years of experience at DOT, including the requisite seven years in civil engineering. He had been a TE-2 since 1996. (Campbell, 347-48, 349, 357, 380) The interview panel was highly impressed with Campbell's thorough knowledge of engineering matters and strong communication skills; his interview performance exceeded that of the other candidates, including the complainant. (Ex. R-1; Sawicki, 582, 591; Cormier, 639, 641; DeCastro, 686) The quality of Campbell's interview preparation was evident to the panel members. As panel member Sawicki testified, "Mr. Campbell came prepared. He was very thorough and concise, explaining, you know, not just maybe mention[ing] resources that he may have used, but he may have discussed, you know, how he used them and [he] gave us a thorough explanation of some of those things." (Sawicki, 582).

78. Campbell had experience dealing with maintenance personnel—experience that would be useful in this particular position. He held a commercial driver's license, had driven maintenance vehicles and had served as a volunteer maintainer to help with snow removal and road sanding, giving him some first hand experience with the respondent's maintenance facility. (Campbell, 358-63, 394-96; Sawicki, 606, 612-14; Cordula, 759-61) The panel recognized that Campbell's experience, as described his interview, directly pertained to the type of work the Rocky Hill TE-3 would be doing. (Cormier, 654; DeCastro, 688-90)

79. Although Campbell did not have a college degree (Campbell, 348-49; Ex. C-16B), the job specifications for the position did not require a degree. (Exs. C-4, C-4A; Campbell, 377, 390; Cordula, 738-39)

80. In his interview, the complainant did not provide evidence of experience in traffic engineering "from a maintenance perspective" and did not demonstrate a good working knowledge of roadside barriers. (Sawicki, 588; Ex. R-1) Five of the white candidates also failed to demonstrate a good working knowledge of roadside barriers. (Ex. R-1)

81. The complainant, like several of the white candidates, exhibited poor communication skills. (Sawicki, 624; Ex. R-1)

82. Sawicki prepared a written report reflecting the panel's decision and its collective perception of each candidate. (Ex. R-1) The other panel members reviewed and signed the document and then Cormier sent it to the affirmative action office for approval. (Cormier, 635-36, 733-36; Sawicki, 577, 619)

83. In the report, the panel summarized its impressions of Campbell and Onwuazor, based on their interview presentations:

Candidate [Campbell] has a strong working knowledge and understanding of Dept resources used for establishing traffic controls and has represent (sic) the Dept. at many public informational meetings. Candidate has experience in preparing Dept. related correspondence, has extensive knowledge of barrier and attenuator systems and is currently working on a design project of a major barrier system on I-95. Candidate displayed very good communication skills. Candidate has held prior positions within the Dept. outside of traffic engineering that give him a well-rounded background as well as having worked within a maintenance garage during snow removal. Candidate has had three years of experience in the Maintenance Special Services Section holding the position of District Service Agent.

* * *

Candidate [Onwuazor] was knowledgeable of Dept. resources. Candidate has attended Public Informational meeting on behalf of the Dept. Candidate has prepared letters while with the Dept. Candidate did not demonstrate a good working knowledge of roadside barriers. Candidate did not demonstrate good communication skills. Candidate did not demonstrate that he had any experience in traffic engineering, from a maintenance perspective.

(Ex. R-1; see also Ex. C-7I, an excerpt from the 2005 Affirmative Action report that, in review of the prior year, summarizes, in similar terms, the strengths and weakness of the two candidates.)

84. Before approving the panel's recommendation, the affirmative action officer reviewed—and discussed with Sawicki—the written evaluation, the panel

members' interview notes, the candidates' PLD-1s, and any additional documents the candidates had submitted for the panel members' benefit. She saw no evidence of discriminatory motivation or other improprieties, signed the evaluation (thus approving the panel's selection) and, in accordance with standard practice, forwarded it to the human resources department, which approved the selected candidate. (Cordula, 733-36; Exs. C-11, C-12; Arpin, 166-67)

85. The respondent announced its decision in early August. (Onwuazor, 68) Shortly thereafter, the complainant met with the affirmative action officer to express his displeasure with the result and to challenge Campbell's qualifications for the position. The officer emphasized that, despite the complainant's protestations (see, inter alia, Onwuazor, 111-12), Campbell did not need a college degree, Campbell had qualified for and excelled in the all-critical interview, and the promotional process was not discriminatory in any way. (Cordula, 738-39)¹⁴

DISCUSSION AND CONCLUSIONS

The complainant alleges that the respondent's failure to promote him to any of the four open TE-3 positions constitutes unlawful discrimination on the basis of his race, color and national origin, in violation of General Statutes §§ 46a-60 and 46a-70, and Title VII of the Civil Rights Act of 1964, as amended.

According to General Statutes § 46a-60 (a) (1), it is a discriminatory practice

[f]or an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any

¹⁴ The complainant unconvincingly denied that such meeting occurred. (Onwuazor, 759) I find Cordula's testimony more credible on this point.

individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, marital status, national origin, ancestry, present or past history of mental disability, mental retardation, learning disability or physical disability . . .

General Statutes § 46a-70 provides, in pertinent part:

(a) State officials and supervisory personnel shall recruit, appoint, assign, train, evaluate and promote state personnel on the basis of merit and qualifications, without regard for race, color, religious creed, sex, marital status, age, national origin, ancestry . . .

(b) All state agencies shall promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state government. They shall regularly review their personnel practices to assure compliance.

(c) All state agencies shall conduct continuing . . . training programs with emphasis on human relations and nondiscriminatory employment practices. . . .

(e) Appointing authorities shall exercise care to insure utilization of minority group persons.

Title VII makes it unlawful for an employer to “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2 (a) (1). According to General Statutes § 46a-58 (a), “[i]t shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, blindness or physical disability.” In *Trimachi v. Connecticut Workers Compensation Committee* (sic), 2000 WL 872451, *7 (Conn. Super), the Superior Court reiterated the legal tenet long espoused in commission administrative decisions that § 46a-58 (a) expressly converts a violation of

federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws. See, e.g., *Commission on Human Rights & Opportunities ex rel. Dexter v. Connecticut Dept. of Correction*, 2005 WL 4828672 (CHRO No. 0320165, August 31, 2005); *Commission on Human Rights & Opportunities ex rel. Scarfo v. Hamilton Sundstrand Corp.*, 2000 WL 35457586 (CHRO No. 9610577, September 27, 2000). Thus, this tribunal has jurisdiction to adjudicate a Title VII claim that has properly been raised under the aegis of § 46a-58 (a).

The complainant's legal argument follows the familiar burden-shifting paradigm established for Title VII disparate treatment claims in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973) and its progeny. See, e.g., *Chertkova v. Connecticut General Life Insurance Company*, 92 F.3d 81, 87 (2nd Cir. 1996); *McCulley v. Southern Connecticut Newspapers, Inc.*, 98 F.Sup.2d 216, 221-22 (D.Conn. 2000). Because the Connecticut legislature intended the pertinent provisions of the state statute to mirror those of the federal antidiscrimination laws, the *McDonnell Douglas* analysis also applies to alleged violations of the Connecticut Fair Employment Practices Act (CFEPA), General Statutes § 46a-51 et seq.; *Burbank v. Blumenthal*, 75 Fed. Appx. 857, 858 (2nd Cir. 2003); *Department of Transportation v. Commission on Human Rights & Opportunities*, 272 Conn. 457, 463 n.9 (2005); and Connecticut courts—as well as this tribunal—may look to federal interpretation of Title VII for guidance in their interpretation and enforcement of CFEPA. See *Kelley v. Sun Microsystems, Inc.*, 520 F.Sup.2d 388, 400-01 (D.Conn. 2007); *Board of Education of the City of Norwalk v. Commission on Human Rights & Opportunities*, 266 Conn. 492, 505 n. 18 (2003); *Williams v. Hartford Public Schools*, 2007 WL 2080554, *4 (Conn. Super.); *Commission on Human Rights & Opportunities ex rel. Leftridge v. Anthem Blue Cross & Blue Shield*, CHRO No. 9830218, p. 8 (January 22, 2001)

Under the *McDonnell Douglas* approach, the complainant must initially establish a prima facie case, giving rise to a presumption of discrimination. If the complainant succeeds, the burden of production shifts to the respondent to articulate a legitimate, non-discriminatory reason for its employment decision. If

the respondent satisfies its burden, the presumption disappears and the burden returns to the complainant, who must prove, by a preponderance of the evidence, that the respondent was actually motivated by an unlawful discriminatory animus. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 143 (2000); *Byrnie v. Town of Cromwell Board of Education*, 243 F.3d 93, 102 (2nd Cir. 2001); *Board of Education v. Commission*, supra, 266 Conn. 506-07. The complainant retains at all times the ultimate burden of persuading the tribunal that the respondent intentionally discriminated against him. *Reeves v. Sanderson Plumbing*, supra, 143-44; *Darden v. Town of Stratford*, 420 F.Supp.2d 36, 42 (D.Conn. 2006); *Board of Education v. Commission*, supra, 505-06.

A prima facie case of discriminatory failure to promote, whether under either Title VII or CFEPa, requires the complainant to show that (1) he is a member of a protected class, (2) he was qualified for the position for which he applied, (3) he suffered an adverse employment action, and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination. *Howley v. Town of Stratford*, 217 F.3d 141, 150 (2nd Cir. 2000); *Darden v. Stratford*, supra, 420 F.Supp.2d 42; *Department of Transportation v. Commission*, supra, 272 Conn. 463 n.9; *Board of Education v. Commission*, supra, 266 Conn. 505. The complainant's burden of proving his prima facie case is not onerous and, in fact, has been described as "de minimis." *Woodman v. WWOR-TV, Inc.* 411 F.3d 69, 76 (2nd Cir. 2005); *Ann Howard's Apricots Restaurant v. Commission on Human Rights & Opportunities*, 237 Conn. 209, 225 (1996).

At the outset, I find that the complainant readily demonstrated that, by virtue of his race, color and national origin (black, Nigerian), he is a member of a protected class under both Title VII and CFEPa; see, e.g., *McDonnell Douglas v. Green*, supra, 411 U.S. 802; *Ayantola v. State of Connecticut Board of Trustees of Technical Colleges*, 2007 WL 2204181, *2 (Conn. Super.); and that he suffered a legally cognizable adverse employment action, the denial of a promotion. *Brown v. Coach Stores*, 163 F.3d 706, 710 (2nd Cir. 1998) (failure to promote considered an adverse employment action); *Ayantola v. State*, supra, *2

(same). Accordingly, he has satisfied the first and third elements of his prima facie case. See *Commission ex rel. Leftridge v. Anthem*, supra, CHRO No. 9830218, p. 9.

To satisfy the second element of the prima facie case, the complainant need not prove that he was the most qualified candidate; nor must he "demonstrate that his performance was flawless or superior"; because the prima facie threshold is minimal, he merely must show that he "possesses the basic skills necessary for the performance of [the] job." *de la Cruz v. New York City Human Resources Admin.*, 82 F.3d 16, 20 (2nd Cir. 1996) (citations omitted; internal quotation marks omitted); *Farricelli v. Bayer Corporation*, 116 F.Supp.2d 280, 284 (D.Conn. 1999); *Commission ex rel. Leftridge v. Anthem*, supra, CHRO No. 9830218, p. 9. The complainant has satisfied his burden by showing that he performed all of his TE-2 duties successfully for approximately eleven years and met all of the basic requirements set forth in the TE-3 job specifications. Particularly telling is the respondent's own admission that, as alleged in the complaint, the complainant's performance as a TE-2 was "good to excellent." The complainant's qualifications are further underscored by the initial review by DAS, the agency that, upon scrutiny of all the applications, deemed the complainant eligible to proceed to the interview stage. Finally, his qualifications are amply supported by an interview performance that, although less impressive than those of the chosen candidates, was successful enough to earn him placement on the roster for future TE-3 vacancies that might occur in the future.

The fourth element of the prima facie case requires the complainant to present evidence of circumstances that give rise to an inference of discrimination. This element is a "flexible one that can be satisfied differently in differing factual scenarios." *Chertkova v. Connecticut General*, supra, 92 F.3d 91. For example, the complainant may satisfy the fourth element in a failure-to-promote case by demonstrating that the desired promotion was awarded to someone outside of his protected class. *Howley v. Stratford*, supra, 217 F.3d 150 (discrimination may be inferred when preferential treatment is given to employees outside the

protected class); *Holt v. KMI-Continental, Inc.*, 95 F.3d 123, 129 (2nd Cir. 1996) (black plaintiff satisfied the fourth criterion by showing that the desired promotions were given to white co-workers); *Darden v. Stratford*, supra, 420 F.Sup.2d 43; *Department of Public Health v. Commission on Human Rights & Opportunities*, 2001 WL 418046, *3 (Conn. Super). Such is the situation before me, where all four promotions were given to white employees who were born in this country and, at the time of the interviews, held the same position as the complainant (TE-2) and adhered to the same workplace standards. Because the complainant's burden is minimal, I conclude that, on the evidence before me, the complainant has satisfied the final element of his prima facie case.

Once the complainant has established a prima facie case of discrimination, the burden shifts to the respondent to articulate—but not prove—a legitimate, nondiscriminatory reason for its action. *Reeves v. Sanderson Plumbing*, supra, 530 U.S. 142; *Board of Education v. Commission*, supra, 266 Conn. 506. "Any legitimate non-discriminatory reason will rebut the presumption triggered by the prima facie case." *Dickinson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 431 F.Sup.2d 247, 258 (D.Conn. 2006), quoting *Fisher v. Vassar College*, 114 F.3d 1332, 1335-56 (2nd Cir. 1997), cert. denied, 522 U.S. 1075 (1998). An employer's selection of a more-qualified candidate is a legitimate, non-discriminatory reason for its decision. *Byrnie v. Town of Cromwell*, supra, 243 F.3d 103; *Knight v. Nassau County Civil Service Commission*, 649 F.2d 157, 161 (2nd Cir.), cert. denied, 454 U.S. 818 (1981); *Department of Public Health v. Commission*, supra, 2001 WL 418046, *5. Despite the complainant's meritorious credentials, the panel members, both individually and collectively, determined that the selected candidates performed better than the complainant in the critical interview process. See *Byrnie v. Town of Cromwell*, supra, 102; *Donahue v. Norwich Roman Catholic Diocesan Corporation*, 2008 WL 821890, *3 (D.Conn.) (poor interview performance a legitimate reason for employment decision); *Commission ex rel. Leftridge v. Anthem*, supra, CHRO No. 9830218, p. 11. The

testimony of the panel members is consistent, credible and persuasive, and I accordingly find that the respondent has more than satisfied its burden.

After the respondent has articulated a legitimate, nondiscriminatory reason for its actions, the burden returns to the complainant, who must prove by a preponderance of evidence that the respondent's proffered reason was not its true reason, but was merely pretext for intentional discrimination. *Reeves v. Sanderson Plumbing*, supra, 530 U.S. 143; *Board of Education v. Commission*, supra, 266 Conn. 507. According to the U.S. Supreme Court,

The factfinder's disbelief of the reasons put forward by the [employer] . . . may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the [employer's] proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination.

(Citations omitted; emphasis in original; internal quotation marks omitted.)
Reeves v. Sanderson Plumbing, supra, 147.

The complainant and the commission challenge the respondent's proffered reason by claiming: the complainant was more qualified than the chosen candidates; the respondent should not have based its decisions primarily on the inherently subjective interview process; the interviews were not conducted fairly; the panel members were influenced by their social relations with the chosen candidates; the panel members were biased against the complainant because of his race, color and national origin; and the panel members paid no heed to the respondent's affirmative action goals and policies.

Like state and federal courts, this tribunal does not sit as a "super personnel department that second guesses employers' business judgments." *Byrnie v. Town of Cromwell*, supra, 243 F.3d 103. Rather, it defers to an employer's unfettered discretion not only to choose the best candidate, but even to choose among equally qualified candidates, so long as the decision is not based on unlawful criteria. (Emphasis added.) Id.; *Komoroski v. State of Connecticut*,

Department of Consumer Protection, 2007 WL 1238618, *4 (D.Conn.), quoting *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 259 (1981). Notwithstanding the complainant's confidence in his qualifications, the interview panels perceived otherwise, finding the complainant, in fact, to be less qualified in light of the applicable interviewing criteria. See *Kelley v. Sun Microsystems*, supra, 520 F.Sup.2d 399 (reviewing tribunal must scrutinize employer's perception of the candidates, not on complainant's perception of his own performance and qualifications). Ultimately, whether the employer's perception and consequent decision is prudent or fair is beside the point; what matters is whether the decision is intentionally discriminatory. *Alfano v. Costello*, 294 F.3d 365, 377 (2nd Cir. 2002); see also *Mauro v. Southern New England Telecommunications*, 46 F.Sup.2d 181, 185 (D.Conn. 1996).

The complainant protests the subjective nature of the promotional process, from its emphasis on interview performance (with its potential disregard of paper credentials) to the decision making authority of possibly biased managers. The complainant is correct that interviews, by their very nature, foster evaluations that are subjective to varying degrees. Interview performance, the decisive factor for selection in the present case, is, however, a lawful criterion. *Byrnie v. Town of Cromwell*, supra, 243 F.3d 104-05; *Donahue v. Norwich*, supra, 2008 WL 821890, *3.

As the Connecticut Supreme Court stated more than thirty years ago, "A personal interview is particularly important for ultimate job selection in today's complex and demanding economy where not only the education, training and experience count, but where personality, motivation, articulation, the ability to withstand pressure, and communicative ability must also be considered as essential criteria. It is a fact of life that those latter subjective elements can only be ascertained through a personal interview." *Reliance Insurance Company v. Commission on Human Rights & Opportunities*, 172 Conn. 485, 491 (1977); see also *Chapman v. A1 Transport*, 229 F.3d 1012, 1033 (11th Cir. 2000).

Nothing in Connecticut or federal anti-discrimination law forbids the use of subjective criteria, because many desirable traits and skills cannot be measured objectively. See, e.g., *Byrnie v. Town of Cromwell*, supra, 243 F.3d 104 (nothing unlawful about basing a decision on subjective criteria such as the impression an applicant makes during an interview); *Johnson v. Connecticut Department of Correction*, 392 F. Sup.2d 326, 337 (D.Conn. 2005); *Commission on Human Rights & Opportunities ex rel. Szydlo v. EDAC Technologies Corporation*, 2007 WL 4258347 (CT Civ. Rts.) (CHRO No. 0510366, November 11, 2007). Indeed, it is well established that a “subjective reason can constitute a legally sufficient, legitimate, nondiscriminatory reason under the *McDonnell Douglas* . . . analysis.” *Chapman v. A1 Transport*, supra, 229 F.3d 1033. Courts have traditionally shown particular deference to subjective evaluations for supervisory or professional positions, or for positions requiring public interaction—precisely the type of positions at issue here. *Id.*, 1033-34; *Robertson v. Sikorsky Aircraft Corporation*, 2000 WL 33381019, *3-4 (D.Conn.); *Commission ex rel. Leftridge v. Anthem*, supra, CHRO No. 9830218, p. 12 (decision makers considered candidates’ qualities such as interpersonal and communication skills and ability to train, motivate and supervise others, none of which is measured objectively).

An employer may not, however, use wholly subjective and unarticulated standards. *Byrnie v. Town of Cromwell*, supra, 243 F.3d 104; *Knight v. Nassau County*, supra, 649 F.2d 161; *Kelley v. Sun Microsystems*, supra, 520 F.Sup.2d 402. Such standards, by themselves, are potentially suspect because they may mask prohibited bias. See *Nagel v. Avon Board of Education*, 575 F.Sup. 105, 110-11 (D.Conn. 1983). For this reason, subjective employment decisions must be “honest” and should be supported by a clear and reasonably specific rationale, so that the complainant has a full and fair opportunity to challenge the proffered reason and to show pretext. *Chapman v. A1 Transport*, supra, 229 F.3d 1034; *Byrnie v. Town of Cromwell*, supra, 243 F.3d 105; see also *Kahn v. Fairfield University*, 377 F.Sup.2d 496, 504 (D.Conn. 2005). The complainant

has provided no convincing evidence to dispute the respondent's honest and well-justified rationale.

Although the respondent's decisions are not wholly subjective, they are nonetheless predicated upon clear and specific factors. Many of the quantifiable requirements for the TE-3 appeared in the posted job specifications. All of the candidates knew, or should have known, those job specifications; their written PLD-1 applications provided an opportunity to identify the skills, experiences and competencies that addressed those specifications. Some of the interview questions provided ample opportunity for the candidates to expound upon their strengths; others were tailored to elicit substantive, objectively measured responses to actual situations faced by TE-3s. (In fact, the panel members had prepared in advance their own factual answers to the more technical questions, against which the candidates' answers could be measured.) Moreover, the recommendations were not made by one individual whose subjective analysis might taint an otherwise fair process; rather, the recommendations reflected full consensus among all panel members. Finally, the panels' written reports highlight each candidate's pertinent strengths and shortcomings in the interview.

The overall selection process was conducted consistently and impartially, with no evidence of discriminatory motive, and the choice of the most qualified candidates—based on the interview—was not improper. Both the Newington panel and the Rocky Hill panel interviewed an array of candidates, all TE-2s, who had been “pre-screened” by DAS for the minimal TE-3 qualifications. The interview panels remained unchanged throughout the process. At no time, either before or after the interviews, did the panel members discuss the process with the candidates or other DOT employees.

The critical decision-making criteria were the thoroughness of the candidates' responses to the oral questions and the candidates' overall performance in their interviews. The interviews consisted of a series of prepared questions, addressing technical knowledge and experience as well as the less-tangible

qualities needed by a successful team player and team leader; open ended questions allowed the candidates to elaborate on their answers and highlight pertinent achievements or skills. All of the Newington candidates were asked the same questions; all of the Rocky Hill candidates likewise had the same questions, although not the same questions as the Newington candidates. Each candidate was allotted the same amount of time for the interview. Each panelist took notes (varying in details, some just to refresh recollection). When all of the interviews were completed, the panel members prepared individual rankings, then shared their assessments and quickly reached consensus on their respective recommendations.

The Newington panel members viewed the complainant favorably, but determined that his interview performance was not as strong as those of the chosen candidates. Thus, two of the three panel members did not include the complainant in their individual “top four” lists; the third panelist did not recall if he ranked the complainant third or fourth—or possibly even lower—on his initial, individual listing. With little discussion and even less dissent, all three agreed on the candidates they would recommend for promotion. The Rocky Hill panel, which did not appear to rank the candidates, unequivocally chose Campbell not only over the complainant, but over candidates such as Lussier and Conroy.¹⁵ There is no evidence that the joint recommendations of either panel were tainted by arm-twisting, manipulation or collusion.

The panel members all testified credibly that they considered nothing beyond the candidates’ interview performance and, primarily for background purposes, the completed PLD-1 application form and the prior two annual performance evaluations. Although Harlow and Ricoszi were familiar with the historical work

¹⁵ The panels’ respective decisions are not intended to demean or discount the wealth of experience and talent the complainant may bring to his work at DOT; rather, their recommendations reflect how, at a given point in time, the complainant, like all other candidates, was able to present himself in response to a series of general and specific questions. Opinions may differ on whether this is a desirable process, but it is not an unlawful process.

performance of many of the Newington candidates, all panel members were instructed, and all agreed, that if an otherwise excellent candidate performed poorly at the interview, they would have no choice but to rate that candidate lower than one with a better presentation. Although the difficulty in ignoring preconceived impressions is generally obvious, nothing in the records suggests the panel members failed to follow their guidelines. For example, Harlow testified that although he knew LaVance James to be a successful engineer, James had a “pretty bad day” in the interview and thus did not warrant selection.

The complainant also perceived the Newington process to be tainted by partiality because some of the candidates knew the panel members better than others, whether from shared coffee breaks or lunches, or from work-related events outside of the office. Some candidates, including but not limited to the three successful candidates, even socialized with Ricozzi and Harlow beyond work—particularly with Harlow, whose proclivity to befriend his subordinates appeared obvious throughout much of this proceeding. Such fraternization between the decision makers and selected candidates indeed gives one pause and calls for closer scrutiny, although concerns are somewhat allayed by the fact that non-white employees were also part of the coffee and lunch social circles and by the fact that many of the non-selected candidates likewise socialized with Harlow and Ricozzi.

I find troublesome the complainant’s reticence in highlighting his own social relationship with Harlow, with whom he sometimes played golf, and with Jennings, whom he had known for many years and with whom he had occasionally socialized and played basketball. Furthermore, none of the other candidates had any prior relationship with Jennings. The complainant appears to argue that personal connections foster partiality in the case of the successful candidates, yet he downplays his own connections when they would undercut his argument. Given these relationships, the complainant cannot claim immunity from his own criticisms.

Even if, for the sake of argument, the respondent were less than forthcoming in its reasons for choosing particular candidates over the complainant, no evidence reveals that the decision was made for discriminatory reasons. As explained by the Second Circuit Court of Appeals, “discrimination does not lurk behind every inaccurate statement. Individual decision-makers may intentionally dissemble in order to hide a reason that is non-discriminatory but unbecoming or small-minded, such as back-scratching, log-rolling, horse-trading, institutional politics, envy, nepotism, spite, or personal hostility. In short, the fact that the proffered reason was false does not necessarily mean that the true motive was the illegal one argued by the plaintiff.” *Fisher v. Vassar College*, supra, 114 F.3d 1337-38; see also *Hollander v. American Cyanamid Co.*, 172 F.3d 192, 201-02 (2nd Cir. 1999); *Langner v. The Stop & Shop Supermarket Company*, 2000 WL 158325, * 8 (Conn. Super.) At worst, some of the panel members may consciously or subconsciously have been motivated or influenced by friendship, but, as inappropriate as this might seem, it does not mandate a finding of unlawful discrimination.

The complainant contends that the white panel members were more likely to write down details of white candidates’ answers, while giving short shrift to the answers of non-white candidates. He claims, for example, that Harlow took notes in a discriminatory fashion, intentionally writing only brief or selective comments in order to “nullify” the complainant’s answers “because of my race.” (Onwuazor, 94-95) Harlow’s notes themselves—both in content and appearance—indeed reveal his haste, but his notes on the other candidates, however, are as brief as his notes on the complainant. Although Harlow’s notes unquestionably are more truncated than those of the other Newington panel members, the complainant’s conclusion is nothing more than a bald assertion, unsupported by any other evidence.

The complainant also contends that Ricoszi “nullified” his answers, because her interview notes did not “completely [reflect] what I did say at the interview.” (Onwuazor, 96) Curiously, the complainant does not level this accusation

against Jennings, even though Jennings, like the others, took contemporaneous notes during the interviews. A logical explanation might well stem from Jennings' race: the complainant did not believe that the black interviewer would be influenced by racial animus. Nevertheless, such distinction is unwarranted, as Jennings' notes contain approximately the same level of detail as Ricozzi's notes and support the same conclusions as both Ricozzi's and Harlow's.

Nothing in this record gives credence to the complainant's challenge. During cross-examination, the complainant reviewed the panel members' notes, and acknowledged that they were not as deficient as he previously believed. In fact, all of the Newington panel members testified convincingly that they took notes as best they could under the time constraints and used the notes as a starting point for their discussions. More important, however, they reflect the panel members' consistent approach to each interview, and no noteworthy distinctions exist between the panel members' notes of the complainant's interview and their notes of the other candidates' interviews. I find no impropriety in the Newington panel's note-taking.

The complainant believes that he was more qualified than the chosen Newington candidates by dint of his longer tenure with the respondent. Whatever the truth to such allegation, his focus on years of service is misplaced. The panel, as instructed, based its recommendations not upon the candidates' seniority, but upon their performance in the interviews, where the panel members, both individually and collectively, ranked the complainant lower than the recommended candidates. His responses to technical questions were less thorough than those of the successful candidates, and his knowledge of supervisory practices was deficient in comparison. Although the interview answers may not adequately portray the complainant's—or, for that matter, any candidate's—knowledge and abilities, all candidates were measured not by their experience, but by their ability to convey that experience via the interview.

The Rocky Hill position involved less-problematic issues. The complainant raised no allegations of personal or professional partiality and did not challenge the panel members' note-taking. Instead, the complainant believes his qualifications exceed Campbell's simply because Campbell does not possess a college degree.¹⁶ The job specifications, posted for all candidates to see prior to their applications and interviews, are unambiguous: the position requires no college degree.

Campbell excelled in the all-critical interview, revealing a breadth of experience—including an array of experiences pertinent to District One's maintenance work—and excellent communication skills. Conversely, the panel members perceived the complainant, like many other candidates, as demonstrating weaker communication skills, providing answers less thorough than Campbell's, and lacking some of the unique, pertinent experiences that Campbell described in his interview.

As the respondent emphasizes in its post-hearing brief, the complainant's less-than-exemplary performance is unsurprising. All of the successful candidates diligently prepared for the interviews, reviewing pertinent materials, speaking with other employees (including TE-3s and prior panel members), and anticipating what might be asked and how they might answer. The complainant, on the other hand, offered no meaningful testimony about his preparatory regimen. He briefly looked at some (unidentified) materials, but did not speak with any other employees and did not avail himself of the various resources and training offered by the affirmative action office. Perhaps the complainant was a victim of over-confidence, as suggested by his repeated references to his own high level of confidence, along with his immodest comment to the Newington panel: "I knew the [TE-3] job. I've done this. The job to me is like riding a bike. I don't have to

¹⁶ Even when told that a college degree was not required, the complainant still believed that he was more qualified because he had one. Yet he ironically denied that a candidate with both a bachelor's and master's degree in civil engineering would be more qualified than one with just a bachelor's degree. (Onwuazor, 113-14)

consult.” (Onwuazor, 94-95) Better preparation might have led to better performance, possibly with a different outcome.

The complainant emphatically testified, “[I]t is my absolute opinion that race was the reason why I was rejected for these positions.” (Onwuazor, 81-82) No evidence suggests, much less demonstrates convincingly that any panel member reached his or her decision—or even harbored discriminatory animus toward the complainant—because of the complainant’s race, color or national origin. The complainant offered no evidence that any panel member made inappropriate comments about his, or anyone else’s, race, color or national origin. The allegation of discriminatory note-taking, as discussed above, has no basis in fact. The panel members testified, without contradiction, that they never even discussed a candidate’s protected class status during the interview or their deliberations.

Furthermore, black employees were clearly part of the Newington coffee and lunch social circles; some also shared sports or maintained outside friendships with various panel members. An African American manager served on the Newington panel, and the affirmative action officer herself is black. One black Nigerian, Sunny Ezete, had already attained the TE-3 level in Newington.

The complainant’s contention also ignores the fact that Jennings, the African American member of the Newington panel, testified that he would not have tolerated any impropriety, discriminatory or otherwise. Jennings found no fault with the written questions, with the interview process, or with the post-interview deliberations. Jennings had personally ranked the complainant no higher than third or fourth and readily agreed on the panel’s collective recommendations. Certainly, the presence of a vigilant black manager on the panel militates against any discriminatory inference the complainant would have me draw. *Poeta-Tisi v. Griffin Hospital*, 2006 WL 1494078, *4 (Conn. Super. 2006), citing *Marlow v. Office of Court Administration of New York*, 820 F.Sup. 753, 757 (S.D.N.Y.), aff’d,

22 F.3d 1091 (2nd Cir. 1993), cert. denied, 513 U.S. 897 (1994) (no inference of discrimination where decision makers were in the same protected class as the plaintiff).

Unprompted by any specific question, the affirmative action officer explained that in her years of experience at DOT she has observed or otherwise learned that black men tend to have more difficulty than non-black candidates in an interview: “[B]lack males, when they get interviewed, become quiet, look down, talk very low, are not clear and articulate in what they’re saying.” Whatever the value or veracity of this generalization—and the evidence contains no statistical support of this phenomenon—the extant record belies any suggestion that the complainant himself suffered in this manner, either in these interviews or in prior interviews. According to his testimony, he was not reticent in the least during the interviews. In fact, the complainant described his own interview performance as knowledgeable and very confident. His comportment during this adjudicatory hearing underscores his confident manner of presenting himself and addressing technical issues.

In short, the record contains no evidence of discriminatory animus beyond that alleged for the de minimis prima facie case—that is, the promotions were offered only to white candidates—far too little to satisfy the complainant’s ultimate burden.

Finally, the commission argues that the respondent abrogated its responsibilities under General Statutes § 46a-70 and under its own affirmative action plan. In particular, the commission points (1) to the respondent’s failure to train the panel members on interviewing techniques, affirmative action policies and the use of affirmative action goals, and (2) to its allegedly blind acceptance of four white candidates notwithstanding an extant list of diverse “goal candidates,” including the complainant.

Section 46a-70 (a) provides little or no support for the commission's arguments. The statute requires state officials and supervisory personnel to promote candidates "on the basis of merit and qualifications," without regard for the candidates' protected class status. No one disputes that the complainant met the general qualifications for the TE-3 positions; the same can be said, however, of all the candidates. Only in the context of a specific and fairly-applied process—such as the one occurring in this case—could the respondent determine the more qualified candidates. The complainant was not among them.

Subsection (e) requires the respondent to "exercise care to insure utilization of minority group persons." The statutory language does not mandate the hiring or "utilization" of protected class employees; it merely requires the respondent to "exercise care"—presumably, to make good faith efforts—to diversify its work force. The identification of goal candidates in the DOT affirmative action plan is a preliminary step toward such diversification and, in the present matter, the plan identified specific goal candidates for the professional class that includes the 2004 TE-3 promotions: six black males, one black female, and five Hispanic males. The actual TE-3 candidate pool included several goal candidates, among them the complainant.

Nevertheless, as the affirmative action officer explained, setting hiring or promotional goals is not the same as establishing or relying upon an impermissible quota system.¹⁷ The interview panel's duty is to select the best qualified candidate. Only if two candidates have the same qualifications and perform equally in the all-critical interview, might an affirmative action goal then become a factor. As Cordula testified, "[i]f [candidates] were equal with credentials, with their qualifications, with how they answer the questions, with the entire selection criteria," then the goals may become a deciding factor. (Cordula,

¹⁷ Section 46a-68-31 (u) of the Regulations of Connecticut State Agencies defines "goal" as "a hiring, promotion, program or other objective that an agency strives to obtain." (Emphasis added.)

721) ¹⁸ This circumstance did not occur in the present case, as the chosen candidates outperformed the complainant in the primary criterion—the interview process. As § 46a-70 (a) states unequivocally, promotions must be made “on the basis of merit and qualifications.”

Although few of the panel members received training for this particular interview process, most had received training—and most had served on interview panels—in the past. None, however, received any advice on how to use the affirmative action goals. If this is a flaw in the overall process, it is not a fatal one. Because only the panel leaders were aware of the goals prior to the interviews, and because those same leaders met with the affirmative action officer afterward, I can readily infer that issues regarding goal candidates would—and should—be addressed at the time the officer reviewed the recommendations. The officer, with her expertise in diversity and affirmative action, is unquestionably better entrusted with such sensitive matters than the panel members.

Despite the commission’s arguments to the contrary, the entire promotional process bears the imprimatur of the affirmative action office. The affirmative action office must approve interview questions and did so here. Whenever possible, it observes actual interviews and, in this case, a representative sat in on the complainant’s interviews along with most of the other interviews. The representative observed no irregularities in the interview process, no “red flags” that might suggest any underlying discriminatory motives. Finally, the affirmative action officer, according to standard practice, reviewed the panels’ respective recommendations and endorsed them only after the reports—one requiring wholesale revisions—met her satisfaction. The affirmative action office provided safeguards against possible discriminatory decisions; its role was, and is, a far cry from a mere “rubber stamp.”

¹⁸ Although Cordula was called as a witness for the complainant, her testimony overwhelmingly supported the respondent and this particular promotional process.

ORDER

The respondent employed legitimate criteria in establishing its decision making process, executed that process in an impartial manner, and promoted four individuals over the complainant for lawful, nondiscriminatory reasons. The complainant, in turn, failed to demonstrate that those reasons were unworthy of belief or that they were pretext for unlawful discrimination. Accordingly, I hereby dismiss the complaint.

Dated at Hartford, CT this ____ day of July, 2008.

David S. Knishkowsky
Human Rights Referee

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