

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

TONI TATSEY,

Charging Party,

-v-

BROWNING SCHOOLS,

Respondent.

Case # 0089013130

ORDER

Toni Tatsey (Tatsey) filed a complaint with the Department of Labor and Industry (Department) alleging Browning Schools discriminated against her on the basis of her race, color and national origin and retaliated against her. Tatsey asserted that Browning Schools declined to hire her for a mentor position and for the summer school, that she was given a verbal warning to not bring up subjects not on the staff meeting agenda while light skinned teachers were allowed to talk out of turn, that her classroom was disrupted by the administration differently than other teachers, that her request for discipline of a student was not considered, and that her ability to make decisions on the School Improvement Team was removed. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Tatsey's allegations of unlawful discrimination. The Department issued a Notice of Dismissal.

Tatsey filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 17, 2009. At the hearing, the Commission vote was split, two to two. Therefore, the case record, briefs, and full hearing transcript were submitted to Commissioner Maria Beltran. After considering the full record, Commissioner Beltran voted to remand this case for hearing pursuant to § 49-2-511, MCA, as discussed below.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. Section 49-2-511(2), MCA. After careful

consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is an abuse of discretion in that the investigator's analysis did not consider race, color, and national origin separately and did not address disparate impact.

Nothing in this order precludes the parties from engaging in the mediation or other settlement negotiations that would normally occur if the Department's investigative report had originally found cause. See § 49-2-504(2)(b), MCA. Further, nothing in this order prevents the parties from joining this case with the case Skunk Cap v. Browning Schools, Case # 0089013120.

IT IS HEREBY ORDERED, that Toni Tatsey's objection is **sustained**. The Commission reopens and remands the case to the Hearings Bureau for hearing.

DATED this ____ day of March 2009.

Chair Ryan C. Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of March 2009.

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