
Civil Rights Division – Bureau of Labor & Industries
Complaint Dismissal Memo

Complainant: Kimmie Jackson
Respondent: City of Yachats
Case Number: EEEMRC220317-40356
Date: March 20, 2023
Investigator: Tyler Stokes
Reviewed By: s/Amanda Bartenstein

Respondent is a municipal government in Lincoln County, OR. Complainant is a black woman who began her employment for Respondent as a Deputy Recorder (AKA Deputy City Recorder) on July 15, 2011, and remains employed by Respondent to the present in this role.¹ Complainant is Respondent's only black employee.² She alleges that “[f]rom almost the beginning of [her] employment, [she has] been subjected [by Respondent] to a campaign of discrimination, including demotion, harassment, racial slurs, and unequal pay practices.”³ Respondent denies that such a “campaign” against Complainant has ever existed and maintains that she has never been subjected to any of the unlawful employment practices claimed in her complaint.

This attorney-filed complaint consists of thirty-two numbered allegations. Of these, twenty-seven are contested.⁴ At the outset, it must be stated that Complainant (for a variety of reasons, discussed below) failed to establish substantial evidence of any of her allegations of discrimination or retaliation by Respondent. The following is a summation of Complainant's contested allegations, Respondent's defenses/responses to said allegations, and (where applicable) statements Complainant made to BOLI during her interview.⁵

A) BOLI finds that Allegation Nos. 6 - 19 are untimely in regard to all three statutes charged in the complaint: ORS 659A.030(1)(a), (f); ORS 659A.199; and ORS 652.220. Complainant filed her

¹ Complainant stated to BOLI on September 7, 2022, that she was still employed by Respondent. On information and belief, her employment status has not changed. While the record establishes that Complainant's nominal job title has changed at least once during her tenure, her position is Deputy City Recorder.

² Specifically, Complainant alleges: “I am the only black employee and was the only employee of color at [Respondent] until Anita Sites was hired. After her termination, I remain the only employee of color at [Respondent].” Respondent admits that this allegation is factual (as of the date of its response to the complaint, May 9, 2022, at minimum). It is important to note here that the record establishes Respondent is a small municipality with few employees. Respondent asserts it “employs roughly 10 employees spread over varying departments,” which appears to be the case. Moreover, for her part, Complainant acknowledged to BOLI that there have been notable periods at Respondent since her hire in 2011 when, including herself, significantly fewer than “roughly ten employees” were working for Respondent. (For instance, local news outlet YachatsNews reported on July 1, 2021, that, at that time, “other than a part-time contractor handling financial duties, there are just two employees in City Hall [Respondent] – [Pro Tem City Manager Katherine] Guenther and deputy city recorder Kimmie Jackson [Complainant].” See *7/1/2021 YachatsNews article at: <https://yachatsnews.com/24803-2/>*). Regarding Ms. Sites (the other “employee of color” mentioned by Complainant), she is an Asian woman who worked for Respondent in the position of Administrative Assistant as a “Temporary Hire” contractor through a third-party temporary staffing agency, Cardinal Services, Inc., during two different time periods: 1) September 2019 to January 2020; and 2) June 2020 to May 26, 2021. Complainant's suggestion that Ms. Sites' employment ended in “termination” by Respondent (the insinuation being that Ms. Sites was fired) is inaccurate. Rather, on May 26, 2021, then Respondent Interim City Manager Lee “Elliott cancelled the contract with an employment agency [Cardinal Services, Inc.] that had Anita Sites working in City Hall [Respondent] as an administrative assistant for the past year.” See *5/27/2021 YachatsNews article at: <https://yachatsnews.com/sudden-departure-of-two-yachats-city-hall-staffers-stalls-re-opening-plans-for-commons-throws-administration-into-turmoil/>*. (NOTE: Simultaneous to Complainant, and via the same attorney, Ms. Sites also filed a complaint of civil rights discrimination with BOLI against Respondent (likewise including allegations of racial discrimination), the investigation of which BOLI has conducted in tandem to its investigation of Complainant's complaint. See *BOLI Case # EEEMRC220317-40355*).

³ Complainant's statement here derives from Allegation No. 3 in her complaint. More specifically, Complainant “allege[s] that Respondent discriminated against [her] on the basis of [her] race, and in the terms and conditions of [her] employment, and retaliated against [her] due to [her] reports of violations of law, regulation, or rule, and engaged in discriminatory pay practices, all in violation of the following laws: ORS 659A.030(1)(a) (race discrimination and hostile work environment); ... ORS 659A.030(1)(f) (retaliation); ORS 659A.199 (whistleblowing); ... ORS 652.220 (discriminatory pay practices).”

⁴ The term “contested” here possesses some nuance. Notably, as discussed below, at least half of these twenty-seven allegations are untimely, and many of the remainder are so vague/generalized that Respondent was *unable* to reasonably respond to them.

⁵ BOLI interviewed Complainant for this investigation on September 7, 2022. Complainant's attorney was present for her interview.

complaint with BOLI on March 17, 2022. ORS 659A.820(3), which became effective September 29, 2019, clearly states that a “complaint alleging an unlawful employment practice as described in ORS ... 659A.030 ... must be filed no later than five years after the occurrence of the alleged unlawful employment practice.” In parallel, ORS 659A.820(2) clearly states that “a complaint under this section [(here, regarding ORS 659A.199 and ORS 652.220)] must be filed no later than one year after the alleged unlawful practice.” BOLI finds that Complainant’s Allegation Nos. 6 - 19 claim harms by Respondent purported to have occurred *prior to both* applicable statutes of limitations dates in this case: September 29, 2019, and March 17, 2021. Therefore, it is recommended that the portion of the complaint comprising Allegation Nos. 6 - 19 be dismissed due to untimely filing.⁶

B) Allegation No. 5 states: “I have complained to every City Manager, since I began, as well as Mayor Vaaler and several City Councilors, and each time not only have they failed to stop the discrimination and harassment, but they actively participated in the systemic racism that permeates all parts of life in Yachats[, OR].”^{7, 8}

i. This allegation is unclear on its face as to whether the purported instances in which Complainant “complained” to various Respondent leadership figures during her many years of employment are protected activity, or had anything to do with her protected class (race). (For its part, Respondent simply “admits that [Complainant] did complain to various City Managers regarding a variety of issues”). Insofar as any of Complainant’s claimed communications to City Manager Shannon Beaucaire (or her successors) articulated in Allegation Nos. 20 - 25 are intended by Complainant to be a part of her having “complained” to Respondent, BOLI discusses them *below at §§ C - E*. Beyond those, Complainant failed to establish substantial evidence that she ever “complained” (about “discrimination and harassment” or otherwise) to any other City Manager, Mayor Vaaler, or any City Councilor.

C) Allegation Nos. 20 - 21 state: “Ms. Beaucaire hired Council of Government[s] (COG) to do the finance, planning, and human resources functions.” --- “COG restricted all my access to utility billing and other job functions that prevented me from doing my job effectively. They stated to Ms. Beaucaire that I should not be doing the duties I have been performing for seven years. I had expressed concern to Ms. Beaucaire and she claimed she was not aware of access taken away despite her being the administrator.”

i. Respondent admits it hired Oregon Cascades West Council of Governments (COG) to do these “functions,” and claims: “[It] does not have the information or knowledge to respond to the specific allegations about what the COG staff may or may not have stated to [Complainant]. The contract that [it] executed with the COG called for the COG to be the only one to have credentials to perform many tasks on [Respondent] systems. This was not limited to [Complainant]’s duties – other [Respondent] employees were also not allowed to access certain

⁶ Moreover, pursuant to BOLI’s thorough investigation of the complaint and review of the record, the facts do not indicate the existence of continuing violations that would justify its consideration of Allegation Nos. 6 - 19 in spite of their untimeliness.

⁷ The City of Yachats (Respondent) has a five-member governing body of elected officials, which includes four City Councilors and a Mayor. Leslie Vaaler, mentioned in the complaint, served as Mayor from early January 2021 through early January 2023. The City (Respondent) is structured as a Council – Manager form of government, where the City Council sets policy and adopts a budget. The Council appoints a City Manager to act as the administrative head of Respondent. The City Manager carries out the policy decisions of the Council and runs the day-to-day operations of Respondent. Included in the City Manager’s duties are managing the daily business of Respondent, hiring and firing personnel, organizing and reorganizing the departmental structure of Respondent, among others. **Whoever holds the position of Respondent City Manager functions as Complainant’s direct supervisor.** Joan Davies held the City Manager position from 2015 - October 2017, Shannon Beaucaire held it from October 2017 - March 19, 2021, Lee Elliott held it (as Interim City Manager) from March 22, 2021 - June 3, 2021, Katherine Guenther held it (as Pro Tem City Manager) from June 3, 2021 - February 14, 2022, and Heide Lambert (the current City Manager) entered the position on February 14, 2022.

⁸ Regarding the final portion of this allegation (“they actively participated in systemic racism that permeates all parts of life in Yachats[, OR]”), Complainant appears to be asserting a subjective statement of belief regarding the presence of “systemic racism” “permeat[ing] all parts of life” in the community of Yachats, OR, and alleging that the leadership of Yachats’ government (Respondent) “actively participated” in perpetuating said “systemic racism” in this community. BOLI acknowledges Complainant’s lived experience as a black woman and longtime resident of Yachats. However, this portion of her Allegation No. 5 is beyond the scope of BOLI’s jurisdiction in this case, which is limited to investigating her allegations that the City (Respondent) violated *her* civil rights *in the context of her employment* for the City.

[Respondent] systems.” Respondent provided documentation of its contract with COG to BOLI.⁹ (See *Investigation File*).

- ii. Complainant fails to articulate any discernable harm here, primarily because Allegation No. 21 is incredibly vague. What “other job functions?” How was she “prevented from doing her job effectively?” Who made this statement to Ms. Beaucaire? And when? When did she “express concern” to Ms. Beaucaire? Complainant does not say. In part however, perhaps these questions are moot. Insofar as these alleged harmful actions by Respondent occurred before September 29, 2019, and March 17, 2021, they would, like Allegation Nos. 6 - 19, be untimely in regard to all three statutes charged in the complaint. Given that the contract between Respondent and COG became effective February 1, 2019, this appears most likely to be the case.
- iii. However, the facts that Complainant’s Allegation No. 21 is (confoundingly) vague in terms of time, and that the COG contract was effective through May 2021 (i.e., beyond both statutes of limitations dates), prompt BOLI to continue its analysis for the sake of argument. First, a simple review of the contract itself seems to establish that Complainant’s allegation “COG restricted all my access to utility billing” is incorrect. It is true that COG became responsible for handling “Account Receivable” for Respondent, but the contract clearly defines this service with the caveat “all invoicing for city receivables **other than utility billing.**” (*Emphasis added*). Thus, COG would have had no need, or reason, to “restrict” Complainant’s “access to utility billing.” Second, objectively considering Respondent’s explanation *at § (C)(i)*, its limited number of staff, the significant amount of money it was paying to COG every month (\$6,500, then \$7,400) for services, and the statutory basis for its contract with COG (ORS 190.010), BOLI finds that its decision to delegate “the performance of required duties or the exercise of permitted powers” to COG was a legitimate nondiscriminatory action for it to take as the government of a small municipality, notwithstanding that it resulted in *some* “other job functions” and related Respondent systems “access” shifting from *several* City employees (including Complainant) to COG. Third, Complainant failed to establish substantial evidence of a nexus between Respondent’s decision to contract with COG and the protected class (race) and activities identified in her complaint.

D) Allegation No. 22 states: “Soon after this, a staff of COG went through my desk and made a comment that ‘I see that voodoo doll. Don’t do voodoo on me.’ as she was walking out the door. I reported this to Ms. Beaucaire.”¹⁰

- i. Allegation No. 22 is also vague, failing to state when this unidentified female “staff of COG” made the alleged racist comment to Complainant. Given that the contract between Respondent and COG (assumingly the “this” in “Soon after this”) became effective February 1, 2019, this alleged harm also appears, most likely, to be untimely in regard to ORS 659A.030. Moreover,

⁹ This contract was agreed to by Respondent (via Ms. Beaucaire) and COG on February 6 and February 21, 2019, respectively. It became effective (originally) upon signing from February 1, 2019, through January 31, 2021. In pertinent part, the contract states: “**ORS 190.010 permits units of local government agencies to enter into agreements for the performance of required duties or the exercise of permitted powers. CITY [Respondent] has the need of the services of Financial Services.** OCWCOG has staff with the proper credentials, licensing and experience to provide such services. THEREFORE, the parties to this intergovernmental agreement agree to the following terms and conditions: ... SCOPE OF SERVICES[:] This Agreement shall be for the purpose of OCWCOG finance staff to provide financial services to the [Respondent]. These services [include:] ... “**Payroll** - employee maintenance, benefits maintenance, timesheet prep, issuance of payroll checks, reconciliation of payroll balance sheet accounts, W-2’s, communication to employees, Federal & State tax payments[;] **Bank management** to include direct deposit for payroll and ACH accounts payable[;] **Payroll reporting** - taxes (state, federal, transit, unemployment) Worker’s Comp, PERS, any other [Respondent] specific reports and other monthly, quarterly or annual tax reporting as required[;] **Account Receivable** - all invoicing for city receivables **other than utility billing**[.] i.e. Transient Room Tax[;] **Accounts payable**[;] Bank Reconciliations[;] Journal Entries, Chart of Accounts, General Ledger Maintenance[;] Close accounting books monthly, Financial Statements, Council Reports[;] New Accounting/Financial Employee Orientation (If City Council decides to hire an employee in the future)[;] **HR functions, if needed**, to include 1-9 reporting, hiring paperwork, benefits management[.]” (*Emphasis added*). These COG services cost Respondent a fee of \$6,500 per month originally. In August 2020 Respondent and COG agreed to increase the fee to \$7,400 per month. On February 3, 2021, Respondent (via Ms. Beaucaire) and COG agreed to extension of the contract “for a month to month continuation” beginning February 1, 2021, or a period not to exceed six months, or until a time in which [Respondent] can identify what their future Financial Services needs are.” The contract appears to have ended in May 2021. See 5/13/2021 *YachatsNews* article at: <https://yachatsnews.com/23215-2/>.

¹⁰ Respondent claims it “does not have the information or knowledge to respond to this allegation.” Since Complainant fails to identify the alleged female COG commenter or when the alleged comment was made, BOLI finds Respondent’s response here to be reasonable.

even assuming for the sake of argument Complainant means to claim that the alleged comment took place after September 29, 2019, Complainant failed to provide any (let alone substantial) evidence to BOLI that she ever reported the comment to Ms. Beaucaire, or that such a comment ever occurred at all.

E) Allegation Nos. 23 - 25 state: “I asked Ms. Beaucaire to reinstate my trainings and discussion of advancement. One of the two trainings was reinstated. But my workload was also increased with no increase in pay.” --- “It was so much additional work, I requested temporary office help since I was the only full time City office staff that had knowledge and access to all functions of running [Respondent] operations. I received no additional help and was still expected to take on all the extra work.” --- “In between official City Manager appointments, all the administrative work of the City Manager fell on my desk. My union and I requested multiple times to discuss the additional work I was being given and additional compensation based on the CBA [Collective Bargaining Agreement] with Mayor Vaaler and respective Interim City Managers. No acknowledgment or response was given.”¹¹

- i. In response to Allegation Nos. 23 and 24 Respondent claims, respectively, that “These statements are vague and [it] cannot ascertain what trainings and discussion [Complainant is referring to; thus [it] cannot respond” and that “These statements are vague, [it] cannot respond.” Since Complainant fails to specify what “trainings and discussion of advancement” she is referring to (that she “asked” to be “reinstate[d]” when she posed these requests to Ms. Beaucaire), how and when her “workload was ... increased,” or to whom and when she “requested temporary office help,” BOLI finds Respondent’s responses here to be reasonable.
- ii. Moreover, Complainant appears to undercut her own claim that she suffered a harm in terms of her unidentified “trainings,” admitting in Allegation No. 23 itself that “[o]ne of the two trainings was reinstated” after she “asked Ms. Beaucaire to” do so. Subsequently, during her interview with BOLI, Complainant then effectively negated her claimed “trainings” harm entirely, admitting that (1) said “trainings” were “taken away” by Ms. Beaucaire’s predecessor, Ms. Davies, in or about 2015, well before both statutes of limitations dates in this case; and (2) that while Ms. Beaucaire “reinstated” one of Complainant’s “trainings” and “paid the fee” for additional training, the true “harm” to Complainant was that Ms. Beaucaire did not permit her to attend an “annual conference” “to get credits” at some point. How the purported decision of her supervisor that she could not attend a conference was a violation of her civil rights as an employee on the basis of her protected class (race) or alleged protected activities, or why she was entitled as an employee to attend said conference, Complainant never explains.

¹¹ A major contradiction within Complainant’s complaint stands out to BOLI. In Allegation Nos. 23 - 25 she complains about receiving an “increased workload” / “all the administrative work of the City Manager f[alling] on [her] desk.” It “was so much additional work” in fact, she requested “temporary office help” (“since [she] was the only full time City office staff **that had knowledge and access to all functions of running [Respondent] operations**”) and (with her union) requested “to discuss the additional work,” but all of these various requests purportedly went unacknowledged by Respondent whatsoever. (*Emphasis added*). **And yet**, immediately prior in her complaint, at Allegation Nos. 20 - 21, Complainant complains in parallel about Ms. Beaucaire having hired COG “to do [Respondent’s] finance, planning, and human resources functions,” “COG restrict[ing] all [her] access to utility billing and other job functions that prevented [her] from doing [her] job effectively,” and COG supposedly trying to convince Ms. Beaucaire that Complainant “should not be doing the duties [she] ha[d] been performing for seven years” in her role. In other words, Complainant seems to, effectively, cancel out the articulation of a definitive harm in terms of “workload” and systems “access” given that the various harms she does express appear to be incompatible. **First**, Complainant claims Respondent paid for temporary contract help (COG staffers) to take on various City administrative “functions” that Complainant and other employees had been handling up to that point (as well as related systems “access” to said functions), which, logically, seems that it would have resulted in Complainant having *less work* overall. (Complainant even alleges as much, given that she claims COG was attempting to, or did, usurp some of her job responsibilities and systems “access”). **Then**, Complainant claims that, apparently, she never lost any systems “access” to COG. She in fact remained “the only full time City office staff that had ... access to all functions of running [Respondent] operations” (further calling into question the “loss of access” harm she asserts in Allegation No. 21 “that prevented [her] from doing [her] job effectively”). **Finally**, Complainant claims she had “so much additional work” that Respondent bringing in “temporary office help” was necessary, but this request received “no acknowledgement or response” by Respondent. Yet, as the complaint itself notes, Respondent had *already* brought in “additional help”: paying COG to handle certain city functions from February 2019 to May 2021 that Complainant and other staff had previously been responsible for. As such, because it is evident that these three sets of claims are, inherently, mutually exclusive, BOLI finds that their contradiction further undermines Complainant’s credibility in this investigation.

- iii. Finally, Complainant's claimed harm expressed in Allegation Nos. 23 - 25 regarding Respondent giving her an "increased workload" but then ignoring "multiple" requests by her and her union for "additional compensation" for said "additional work," appears to be timely with respect to all three statutes charged in the complaint. Regardless of this claimed harm's timeliness however, BOLI finds that (in terms of all three charges) Complainant was unable to overcome Respondent's proffered defense: it "admits that the union requested to discuss additional work which [Complainant] claimed she was expected to take on[, it] denies that no acknowledgement or response was given to [her]," and, through documentary evidence provided to BOLI, it establishes it gave her a "Special Salary Adjustment" "5% pay increase for duties she was performing 'out of class,'" effective May 25, 2021.¹² (*See Investigation File*).
- F) Allegation Nos. 26 - 28 state: "Eventually, Ms. Guenther was appointed as the interim City Manager without any application process, even though she had no municipal experience and had only recently started her position as a City Planner." --- "Despite having over a decade of relevant experience and the willingness to help the community, the years of abuse and continued harassment left me paralyzed and I was afraid to apply." --- "I was discouraged to apply for the City Manager position since even my request to discuss negotiations of getting paid for performing the job function was repeatedly not acknowledged."
- i. Standing alone, Allegation No. 26 makes no discernable claim of harm to Complainant.¹³ In regard to Allegation Nos. 27 and 28, respectively, Respondent claims: "[it] cannot respond to what [Complainant]'s state of mind was;"¹⁴ and "[t]his statement is vague, and [it] cannot ascertain what requests [Complainant] is referring to; thus, [it] cannot respond. [It] denies that [she] was performing the City Manager job function. To the extent that [she] may have been performing duties 'outside of class,' she received a 5% pay raise" on May 25, 2021. BOLI finds Respondent's responses here to be reasonable. Furthermore, *as discussed at § E above*, the May 2021 "Personnel Action File" for Complainant in the record establishes that her claim "my request to discuss negotiations of getting paid for performing the job function was repeatedly not acknowledged" is simply inaccurate. As such, BOLI finds that Complainant was not "discouraged" from applying for the City Manager job opening *by Respondent* in any reasonable sense.
- G) Allegation No. 29 states: "Ms. Guenther was told not to worry about not having any experience with the [Pro Tem City Manager] position as 'Kimmie [Complainant] will do all the work' and she could just hand it all to me."
- i. Respondent claims: "This statement is vague, and [it] cannot ascertain who may have said this to Ms. Guenther." BOLI agrees with Respondent that this allegation is vague. It does not claim that the commenter was an employee of Respondent, and it does not claim that Ms. Guenther followed, nor would have followed, this unidentified commenter's directive. BOLI also finds that Complainant failed to establish substantial evidence of a nexus between the protected class (race) or activities identified in the complaint and this alleged harm.

¹² Furthermore, ORS 652.220(1) states: "It is an unlawful employment practice under ORS chapter 659A for an employer to: (a) In any manner discriminate **between employees** on the basis of a protected class in the payment of wages or other compensation for work of **comparable** character[:]; (b) Pay wages or other compensation **to any employee at a rate greater** than that at which the employer pays wages or other compensation to employees of a protected class for work of **comparable** character." (*Emphasis added*). As such, the nature of the statute clearly necessitates there being, at minimum, an identified employee outside of the complainant's protected class who is doing work for the respondent of a comparable character to that of the complainant, but is being paid better in terms of wages or other compensation. However, Complainant failed to identify any such coworker in her complaint or otherwise.

¹³ Respondent claims: "Due to the abrupt resignation of the previous Interim City Manager Lee Elliot, the City Council appointed Ms. Guenther as the Pro Tem City Manager, as allowed by the City's charter. Ms. Guenther was hired as the City Planner for two days a week and was asked to be the Pro Tem City Manager for the other 3 days a week." Given BOLI's determinations regarding Allegation Nos. 27 - 28, it determined that a review of City of Yachats' charter was unnecessary.

¹⁴ Respondent also "denies [Complainant's] general conclusions regarding abuse and harassment." Given BOLI's review of the record, it agrees with Respondent's characterization of the claimed "abuse and harassment" as "general conclusions" on Complainant's part.

H) Allegation No. 30 states: “Because of the continuing racism, discrimination, harassment, and retaliation, I took medical leave on December 22, 2021, for job-related mental health reasons.”¹⁵

- i. As BOLI finds Complainant failed to establish substantial evidence that she was the victim of “racism, discrimination, harassment, [or] retaliation” (“continuing” or otherwise) in her workplace, it cannot find that such factors were what caused her to take medical leave from work.

In light of the reasons discussed above, and the record overall, it is clear Complainant failed to establish substantial evidence that she was discriminated or retaliated against by Respondent as alleged in her complaint. Therefore, it is recommended that this complaint be dismissed for lack of substantial evidence.

_____/s/ Tyler Stokes

¹⁵ Respondent admits that Complainant “took medical leave beginning December 22, 2021, and remain[ed] on medical leave as of [May 9, 2022],” but “denies the allegations of racism, discrimination, harassment, and retaliation.”