

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

HARMONY PUBLIC SCHOOLS, D/B/A
HARMONY SCIENCE ACADEMY-AUSTIN

Defendant.

Civil Action No. 1:14-cv-00193

Jury Trial Demanded

COMPLAINT

Plaintiff United States of America alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), 28 U.S.C. § 1331, and 28 U.S.C. § 1345.

3. Venue is proper in the United States District Court for the Western District of Texas pursuant to 28 U.S.C. §1391, because all or a substantial part of the events or omissions giving rise to this cause of action took place in this judicial district, and because Defendant Harmony Public Schools (“Harmony”), doing business as Harmony Science Academy – Austin, maintains places of business in this judicial district.

PARTIES

4. Harmony operates open-enrollment charter schools, including Harmony Science Academy-Austin, throughout the State of Texas as part of the public school system, and therefore is a public agency, political subdivision, and/or instrumentality of the State of Texas.

5. Harmony is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).

6. Nicole Tuchscherer (“Tuchscherer”), a white female, began her employment with Harmony in August 2005, when she was hired to work as an art teacher at Harmony Science Academy-Austin. Tuchscherer was employed by Harmony as an art teacher until May 2010, when she complained of compensation discrimination on the basis of sex and national origin, and Harmony subsequently failed to renew her teaching contract.

7. Tuchscherer filed a timely charge of discrimination (Charge No. 451-2010-01205) against Harmony with the Equal Employment Opportunity Commission (“EEOC”) on June 2, 2010, in which she alleged, *inter alia*, that she had been subjected to retaliation because she opposed discrimination by Harmony and that she had been subjected to discrimination in compensation based on sex.

8. Pursuant to Section 706 of Title VII, as amended, 42 U.S.C. § 2000e-5, the EEOC investigated the charge of discrimination filed by Tuchscherer and found reasonable cause to believe, *inter alia*, that Tuchscherer was subjected to retaliation because she opposed discrimination when Harmony failed to renew her teaching contract, in violation of Title VII. The EEOC referred the matter to the United States Department of Justice after an unsuccessful attempt to voluntarily resolve the charge via conciliation.

9. All conditions precedent to the filing of this Title VII retaliation suit have been performed or have occurred.

RETALIATION CLAIM

10. Teachers hired by Harmony are employed pursuant to one-year employment contracts subject to renewal.

11. Upon information and belief, Harmony employs a number of teachers pursuant to the H1-B visa program, which permits schools to employ international teachers if it can demonstrate that there are not enough highly-qualified American applicants. I.N.S. § 101(a)(15)(H).

12. Upon information and belief, near the end of each school year, Harmony requires each of its teachers to submit a “Letter of Intent” stating whether he or she intends to return to Harmony to teach during the upcoming school year.

13. In February 2010, Tuchscherer submitted a “Letter of Intent” to Harmony stating her intent to return to Harmony Science Academy – Austin for the school year of 2010-2011.

14. During both the 2008-2009 school year and the 2009-2010 school year, Tuchscherer was contracted to receive an annual salary of \$40,000 for 187 days of work at Harmony Science Academy-Austin.

15. During her tenure as a teacher at Harmony Science Academy - Austin, Tuchscherer’s performance record was positive. She received one written performance evaluation during her employment, in 2008, and it gave her the highest marks and complimented her teaching. She never received any complaints, either formal or informal, about her work performance.

16. Upon information and belief, between 2005 and 2010, teachers employed by Harmony met with the principal of their school near the end of each school year to discuss the terms of their employment for the subsequent school year, including salary, teaching duties, and extracurricular duties.

17. On May 4, 2010, Tuchscherer met with Halit Erdogan (“Erdogdu”), the principal of Harmony Science Academy – Austin, to discuss the terms of her employment for the 2010-2011 school year. During this meeting, Tuchscherer conveyed her intent to return to teach at Harmony for the 2010-2011 school year.

18. During the May 4, 2010 meeting, Tuchscherer and Erdogan also discussed possible teaching duties for Tuchscherer in addition to teaching art for the 2010-2011 school year, including teaching physical education, health, and music. Tuchscherer was willing to perform these duties, as she understood that charter school teachers must take on many different responsibilities.

19. Also during the May 4, 2010 meeting, Erdogan asked Tuchscherer for her salary expectations. In response, Tuchscherer asked for a salary comparable to teachers employed by the Austin Independent School District, equal to \$42,424.83 per year. Erdogan told Tuchscherer that Harmony would not pay her that amount.

20. Tuchscherer then asked to be paid a salary equal to that of the male Turkish teachers at the school, and Tuchscherer told Erdogan that she believes that Harmony discriminates against women and Americans in its compensation.

21. Upon information and belief, many of the Turkish teachers employed by Harmony are hired through the H-1B visa program. As required by the H-1B visa program, Harmony posts the salary information for its teachers hired under the H-1B visa program.

According to this posted information, many teachers hired under the H-1B visa program are paid higher salaries than many of the American and female teachers not hired under this program.

22. Tuchscherer had access to the posted H-1B visa program salary information and she based on her salary discrimination allegations on this information. Prior to the May 4, 2010 meeting, Tuchscherer had never raised with Harmony officials any allegations of discrimination related to her salary because she was afraid that Harmony officials would react negatively.

23. Upon hearing Tuchscherer's discrimination claims in the May 4, 2010 meeting, Erdogdu became angry with Tuchscherer, called her unprofessional and negative, and concluded the meeting by telling Tuchscherer that he needed to discuss her salary with others and would get back to her.

24. In prior salary negotiation meetings, Tuchscherer had more than one meeting with the Harmony principal before reaching an agreement on her salary for the upcoming school year.

25. On May 19, 2010, Erdogdu sent an email to Tuchscherer stating, "I regret to tell you that we are not able to offer a position to you for next school year."

26. Harmony's decision to not renew Tuchscherer's employment contract was because she complained of national origin and sex discrimination.

27. Harmony violated Section 704(a) of Title VII when it subjected Tuchscherer to retaliation by failing to renew her employment contract because she opposed discrimination in compensation on the basis of sex and national origin.

PRAYER FOR RELIEF

28. WHEREFORE, the United States prays that the Court grant the following relief:

(a) Enjoin Harmony from engaging in retaliation, in violation of Title VII, against any employee or applicant for employment.

(d) Award backpay and all other appropriate monetary relief, including the value of lost employment benefits, to Tuchscherer in an amount to be determined at trial in order to make her whole for the loss she suffered as a result of the retaliatory conduct alleged in this Complaint;

(d) Award Tuchscherer any prejudgment interest on the amount of lost wages and benefits determined to be due;

(e) Award compensatory damages to Tuchscherer to fully compensate her for the pain, suffering, and medical expenses caused by the retaliatory conduct alleged in this Complaint, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;

(f) Order Harmony to institute policies, practices, and programs to ensure a non-retaliatory workplace, including but not limited to implementing appropriate policies and providing adequate training to all employees and officials regarding retaliation;

(g) Award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

29. The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

BY:

/s/ Valerie L. Meyer (by permission of Delora Kennebrew)
DELORA L. KENNEBREW (GA Bar No. 414320)

Chief
Employment Litigation Section

/s/ Valerie L. Meyer (by permission of Karen Woodard)
KAREN D. WOODARD (MD – no number issued)
Deputy Chief
Karen.Woodard@usdoj.gov

/s/ Valerie L. Meyer
VALERIE L. MEYER (AZ Bar No. 023737)
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4916
Washington, DC 20530
Valerie.Meyer@usdoj.gov
Telephone: (202) 305-3179
Facsimile: (202) 514-1005

Attorneys for Plaintiff United States of America