

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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KARALEE MULKEY,  
Charging Party,

HRB CASE NO. 0180013

-v-

REMAND ORDER

BROADUS PUBLIC SCHOOLS,  
Respondent

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Charging Party, Karalee Mulkey (Mulkey), filed a complaint with the Department of Labor and Industry (Department) alleging unlawful discrimination in employment on the basis of retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Mulkey's allegations that Respondent, Broadus Public Schools, unlawfully discriminated against Mulkey. The Department issued a Notice of Dismissal. Mulkey filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 20, 2018. Karalee Mulkey presented argument on her own behalf. Attorney Jeana Lervick argued on behalf of Broadus Public Schools. All members of the Commission present stated they had each reviewed the entire record submitted to the Commission.

Mulkey argued that Broadus Public Schools failed to live up to the settlement agreement that the parties had reached in a prior discrimination case. Mulkey argued that she had been promised that Broadus Public Schools would hire and schedule her to work as a substitute custodian, but that she was only scheduled for a limited number of hours, and that other employees, including newly hired substitute custodian, were scheduled for the shifts that normally would have been available to her.

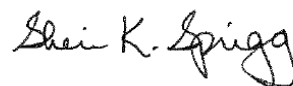
Broadus Public Schools argued that there was no abuse of discretion on the party of the investigator, and that the investigator correctly found the preponderance of evidence supported a no – cause finding.

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. The failure of the investigator to analyze the effect of the prior settlement agreement's terms on the obligations of the parties following that settlement, and to consider the effect of the claimed non-performance by Broadus Public Schools constitutes an abuse of discretion. Therefore, the Commission sustains the objection and the case is hereby remanded for hearing to the Office of Administrative Hearings pursuant to § 49-2-505, MCA.

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 found cause. See § 49-2-504(2)(b), MCA.

IT IS HEREBY ORDERED, that Karalee Mulkey's objection is **sustained**. The Commission reopens and remands the case to the Office of Administrative Hearings for hearing.

DATED this 17th day of August, 2018.



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Sheri Sprigg, Chair  
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 17th day of August, 2018.

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Annah Howard, Legal Secretary  
Montana Human Rights Bureau