

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008SF3679
)	EEOC NO.: 21BA82349
VICCI L. KINNEY)	ALS NO.: 09-0439
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane Viverito and Gregory Simoncini presiding, upon Vicci L. Kinney's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008SF3679; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On June 23, 2008, the Petitioner filed a charge of discrimination with the Respondent in which she alleged her employer Lake Land College ("Employer") subjected her to unequal terms and conditions of employment in retaliation for having opposed unlawful discrimination, in violation of Section 6-101(A) of the Illinois Human Rights Act (the "Act"). On July 8, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On August 10, 2009, the Petitioner timely filed her Request.
2. The Employer is a community college which employs the Petitioner as a Constructions Occupations Instructor. The Employer has a contract with the Illinois Department of Corrections ("DOC") to provide training for DOC inmates throughout Illinois. Pursuant to this contract, the Petitioner was assigned to teach inmates at the DOC Danville Correctional Center during the time in question.
3. The undisputed evidence in the file shows that on or about March 1, 2008, Tom Kerkhoff, the Executive Dean, advised the Petitioner that she was being placed on administrative leave because she was accused of having engaged in insubordination toward her supervisor, Mary Nichols, on February 28, 2008. Kerkhoff advised the Petitioner that a pre-investigation hearing regarding the alleged insubordination was scheduled for March 14, 2008.
4. The Petitioner is a member of the Lake Land College Faculty Association, Local 2296 ("Union"). The Union and the Employer have entered into a collective bargaining agreement ("CBA"). Pursuant to the CBA, the Petitioner was entitled to union representation at the pre-investigation hearing.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

5. The Employer has a Policy Manual which provides in Section 5.01.01: “Administrators are identified by the titles of Executive Dean, Associate Dean, Director of Human Resources, etc.”
6. Section 2.15 of the Policy Manual lists the duties of its “College Board Attorney”:

The Attorney shall render legal opinions on questions raised by the Board or the President, shall prepare legal documents requested by the Board or the President, shall attend Board meetings or committee meetings when requested by the Board or the President, shall represent the district in court proceedings, and shall call attention to Board action when, in the attorney’s opinion, the Board of the administration is acting contrary to law.
7. The Policy Manual does not state that employees or instructors are entitled to legal representation by the College Board Attorney. As a matter of practice, the College Board Attorney represents individuals classified as Administrators or Board Members in matters affecting the Employer’s business operations.
8. A College Board Attorney represented Nichols and Kerkhoff at the March 14th hearing. The Petitioner was represented by private counsel. The Employer did not provide the Petitioner with representation by a College Board Attorney.
9. The Petitioner alleges in her charge and in her Request that in April 2008, the Employer subjected her to unequal terms and conditions of employment in retaliation for having opposed unlawful discrimination because the Employer failed to provide her with legal representation by the College Board Attorney, while providing such counsel for Nichols and Kerkhoff. The Petitioner alleged she opposed sexual harassment from November 2005 through February 8, 2008, when she verbally complained to Nichols. The Petitioner alleged she complained to Kerkhoff about the sexual harassment on March 14, 2008. The Petitioner appears to be asserting a general entitlement to legal representation by the College Board Attorney.

Conclusion

The Commission’s review of the Respondent’s investigation file leads it to conclude that the Respondent properly dismissed all counts of the Petitioner’s charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent’s investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

Substantial evidence of a retaliation claim first requires substantial evidence of a *prima facie* case: (1) the Petitioner engaged in a protected activity; (2) the Employer committed an adverse action against the Petitioner, and (3) a casual connection existed between the protected activity and the adverse action by the Employer. Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd Dist. 2000).

In this case, there is no substantial evidence of a *prima facie* case of retaliation because there is no substantial evidence the Employer committed an adverse action against the Petitioner. Specifically, the Petitioner’s claim fails because there is no substantial evidence the Employer was obligated to provide the Petitioner with representation by the College Board Attorney.

The plain language of the Policy Manual indicates College Board Attorney representation was provided only to Board Members, the President, and Administrators. Instructors, such as the Petitioner, do not fall within any of those classifications, and thus are not entitled to representation by the College Board Attorney. There is no substantial evidence the Petitioner was subjected to different terms and conditions because she was not similarly situated to Nichols and Kerkhoff.

In the Matter of the Request for Review by: Vicci L. Kinney-2008SF3679

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Lake Land College as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 17th day of February 2010.

Commissioner Munir Muhammad

Commissioner Gregory Simoncini

Commissioner Diane Viverito