



STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
<b>CAROL HUBER,</b>	)		
	)		
Complainant,	)		
	)		
and	)	CHARGE NO:	1999SA0280
	)	EEOC NO:	21B990390
<b>MONTGOMERY COUNTY OFFICE</b>	)	ALS NO:	S-11158
<b>OF TREASURER,</b>	)		
	)		
Respondent.	)		

**RECOMMENDED ORDER AND DECISION**

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing was held before me in Springfield, Illinois on January 29, 2001. The parties have filed their post-hearing briefs. Accordingly, this matter is ripe for a decision.

**Contentions of the Parties**

In the Complaint, Complainant asserts that she was the victim of harassment on the basis of her age when her supervisor subjected her to a series of insults about her work performance and her intelligence that he did not similarly inflict upon younger workers. She additionally contends that she complained to her supervisor about age discrimination in May of 1998, and was retaliated against in October of 1998 when her supervisor assigned her additional duties for the payroll clerk position. Finally, Complainant maintains that she was the victim of unlawful retaliation when Respondent terminated her from her account clerk/deputy collector II position because she had complained to her supervisor about age discrimination on November 10, 1998 and because she had filed a charge of discrimination. Respondent, on the other hand, submits that Complainant did not establish a *prima facie*

claim of either age harassment, or retaliation based on unequal terms or conditions of work, or retaliation based on Complainant's termination. Alternatively, it contends that it assigned Complainant certain job duties and ultimately terminated her for reasons unrelated to any alleged prior opposition to age discrimination.

### **Findings of Fact**

Based on the record in this matter, I make the following findings of fact:

1. Complainant, Carol Huber, was born on September 19, 1943.
2. In January of 1992, Complainant was hired by Ron Jenkins, the Montgomery County Treasurer, to work as an account clerk/deputy collector II. At all times pertinent to the Complaint, Complainant performed duties on the "bookkeeping" side of the Treasurer's Office and was supervised by Dorothy Hunt, who was 62 years old at the time of Complainant's hire.

3. At all times pertinent to the Complaint, Hunt and Complainant shared an office across the hall from the main Treasurer's Office where Jenkins, who was four years younger than Complainant, and three other full-time employees (Aimee Shelton, Gale Myers and Linda Bolton) worked on the "collections" side of the Treasurer's Office. As of the fall of 1998, Shelton was 27 years old, Myers was 49 years old, and Bolton was 50 years old. The Treasurer's Office also employed regularly three to four part-time employees, two of which, i.e., Helen Niehaus and Jean Shannon, were older than Complainant.

4. At all times pertinent to the Complaint, Complainant worked with Hunt in the processing of deposits for various County funds and generated various monthly and annual expense and revenue reports. Moreover, Complainant had been trained to balance all of the general ledgers, do adjusting entries, work with budgets, work with certified public accountants to balance accounts at the end of the year, sign off on vouchers for the County and on checks written by the County, disburse monies to taxing bodies and perform

research projects as assigned. Complainant's job description also required her to assist the payroll clerk in handling payroll deductions, checks and state reimbursements.

5. In August of 1995, Jenkins hired Shelton to work as a payroll clerk in the Treasurer's Office. Up until that time, Complainant had been trained in performing certain payroll clerk duties. However, after Shelton's hire, Complainant no longer performed any of the payroll clerk's duties.

6. Throughout Complainant's employment at Respondent, Jenkins delegated specific work assignments to Hunt with respect to the bookkeeping aspects of the Treasurer's Office. Hunt, in turn, delegated work to those individuals she supervised. In late 1997, Complainant told Hunt that she had more work than she could handle. Thereafter, Complainant and Hunt met with Jenkins who suggested that they reallocate some of Complainant's deposit duties and make other changes to assist Complainant.

7. Despite the reallocation of job duties that occurred in late 1997, Complainant continued to complain that she had more work assigned to her than anyone else in the Treasurer's Office, and that the "bookkeeping" side of the Treasurer's Office was busier than the "collections" side of the office. Complainant made these complaints at least one time per week from late December 1997 to November of 1998 to either Shelton, Jenkins or Hunt.

8. In early 1998, the Treasurer's Office purchased a new accounting program called the Manitron system that required that both Hunt and Complaint input vendors and accounts into the system. During the middle of the implementation of the Manitron system, Complainant complained to Hunt that because of the implementation, she had more work than what she could handle. Hunt told Complainant that the extra data entry created by the implementation of the Manitron system was a one-time task, and that it had to be done along with Complainant's regular duties. Hunt did not relay this complaint about the workload to Jenkins.

9. After the Manitron system had been implemented in the latter part of 1998, Jenkins assigned Complainant an additional duty of depositing payroll deduction checks. This additional duty, which involved obtaining checks from Shelton, required that Complainant spend approximately five to ten minutes of extra work once every two weeks.

10. Throughout Complainant's employment with Respondent, Shelton, Myers, Hunt and some of the part-time employees assisted Complainant with her duties if they had finished their own assigned tasks.

11. At some point in 1998, Jenkins upgraded his computer and gave his old computer with hardware for accessing the Internet to Shelton. Thereafter, Jenkins provided a telephone line for Shelton to access the Internet, and Shelton used the Internet to access various federal and state forms for the office. Shelton also used the Internet to sell and acquire Beanie Babies during her break times for her private business. At no time during Complainant's employment with Respondent did Complainant ever ask Jenkins to have the Internet installed on her computer.

12. Prior to November of 1998, Complainant had received a memo of office procedure from Jenkins indicating that the employees of the Treasurer's Office were to schedule meetings with Jenkins to discuss areas of the employee's job or other concerns.

13. On Friday, November 6, 1998, Complainant came into work but did not return to work in the afternoon. At approximately noon on that day Jenkins received a telephone call from Complainant's husband indicating that Complainant would not be in that afternoon, and that Complainant "could not take any more" and was going to see a doctor. When pressed to clarify what he had meant by Complainant not being able to "take it any more", Complainant's husband claimed that Complainant was the "dog on the end of the chain" and was being treated unfairly. Complainant's husband also questioned Jenkins as to whether he knew what was going on in his (Jenkins) office. Jenkins stated that

Complainant should come to him if she had a problem and invited Complainant's husband to come in for a meeting.

14. After the conversation ended with Complainant's husband, Jenkins asked Hunt, Shelton, Myers and Bolton on the same day if they were aware of anything out of the ordinary involving Complainant. None of these workers reported that they were aware of any problem with Complainant.

15. Complainant's husband came into the Treasurer's Office at approximately 1:00 p.m. on November 6, 1998. When Jenkins asked him to come into his office, he declined and commented that "we are going to have to think things out before we do anything". At the time of this conversation Complainant was scheduled to be off on vacation for the next week.

16. At approximately 6:00 a.m. on November 10, 1998, Complainant and her husband went to the Treasurer's Office and spoke with Jenkins. While the Treasurer's Office had office hours beginning at 8:00 a.m., Jenkins had a well-known habit of coming into the office at 6:00 a.m. After Complainant and her husband entered Jenkins' office, Complainant stated that she had some issues that she wanted to discuss with him, and that she was tired of being harassed by Shelton. Jenkins stated that if the meeting had anything to do with Complainant's job, he wanted Hunt, as Complainant's supervisor, to be present. Jenkins then asked Complainant and her husband to leave, but Complainant's husband instead pulled up a chair near Jenkins, laid his hand repeatedly against Jenkins' desk in the fashion of a hammer, and indicated that they were going to stay and finish what they had to say.

17. At some point during the start of the November 10, 1998, meeting, Jenkins produced a tape recorder and attempted to turn it on. The tape recorder, however, would not start, and Complainant's husband produced a tape recorder. Jenkins then stated a second time that the meeting would not take place without Hunt's presence and told

Complainant and her husband that if they would not leave, he would call the sheriff to have them removed. Jenkins attempted to call the sheriff, but the phone lines were dead. Complainant, in using notes that she had prepared prior to the meeting, then complained about job related issues concerning the fact that she had to report to five bosses who were demanding immediate results, that Shelton was harassing her by demanding that she do certain tasks and by giving her late and incomplete paperwork, that Jenkins permitted Shelton to harass her, that Shelton was manipulating Jenkins, and that Jenkins failed to provide needed assistance in processing the vouchers.

18. At some point during the meeting, an individual from the telephone company telephoned Jenkins to inform him that the telephone lines were working. At that time Jenkins hung up the telephone and told Complainant and her husband that they had one more chance to leave before he would call the sheriff. Complainant's husband told Jenkins to go ahead and call the sheriff. Jenkins then called the sheriff but found out that no deputy was available. Jenkins told the dispatcher that he would wait for a deputy rather than have someone from the local city police department come to the Treasurer's Office. Jenkins then received another telephone call from a maintenance man, and both Complainant and her husband left while Jenkins was talking to the maintenance man. Jenkins then called the sheriff's office back to cancel his request for a deputy and later contacted the county personnel committee chairman to advise him of what had happened.

19. During the ten to fifteen minute meeting that Jenkins had with Complainant and her husband on November 10, 1998, Complainant never indicated that her age was the basis for Shelton's or anyone else's harassment of her.

20. When Hunt came into the office later on the morning of November 10, 1998, Jenkins asked her if she had been aware of Shelton harassing Complainant or manipulating him. Hunt denied knowledge of any harassment of Complainant or of Shelton's alleged manipulation of Jenkins. Jenkins also asked Shelton in the presence of Hunt whether she

had been harassing Complainant or giving Complainant the impression that she could manipulate him. Shelton denied that she had been harassing Complainant or had given the impression that she could manipulate him.

21. At or around November 12, 1998, Jenkins decided to terminate Complainant and sent the following memorandum to the County's States' Attorney:

"Kathy:

Because of her [Complainant's] action and reaction to me Carol has violated her freedom of responsibility as my employee and my trust as her employer. Any future contact or situation I may have with Carol will certainly be clouded with doubt and mistrust for her. I welcome your assistance and advice. Thank you."

22. On November 13, 1998, Jenkins typed up the following memorandum addressed to Complainant:

"Your employment in the Montgomery County Treasurer's Office is being terminated immediately. This termination is necessitated by your misconduct at approximately 6:00 a.m., November 10, 1998 at which time you and Randy Huber entered my office unscheduled, disruptive, and refusing to remove yourselves from my office at my repeated request. Only after my contacting the Sheriff's office did you leave and then reluctantly."

23. On the morning of November 16, 1998, Complainant drove to Springfield, Illinois, spoke with an attorney and filed a Charge of Discrimination with the Department of Human Rights. In the Charge, Complainant asserted that she was the victim of harassment due to her age when Jenkins screamed insults at her from a period of May of 1998 to November of 1998. She also alleged that she was the victim of unlawful retaliation when Jenkins assigned to her additional duties after she had complained to Hunt beginning in May of 1998 that Jenkins had been discriminating against her and Hunt on account of their age.

24. After Complainant had filed her Charge of Discrimination, Complainant arrived at work at around 1:00 p.m. on November 16, 1998. At that time Jenkins called her into his office with Hunt. During the meeting Complainant told Jenkins that she had been to the Department of Human Rights and filed a Charge of Discrimination against Jenkins.

Thereafter, Jenkins reminded Complainant of her conduct during the November 10, 1998 meeting and offered her an opportunity to resign. When Complainant refused to resign, Jenkins terminated Complainant and gave her an already typed memorandum, dated November 16, 1998, stating that she was terminated due to her disruptive conduct during the November 10, 1998 meeting. The language of the memorandum mirrored the language of the November 13, 1998 memorandum.

25. On November 30, 1998, Complainant filed a verified amended Charge of Discrimination that included the same age harassment and retaliation claims, but asserted for the first time a second count of unlawful retaliation based on allegations that Jenkins terminated Complainant for making complaints of age discrimination to Hunt between May and October of 1998. The amended Charge did not mention the November 10, 1998 meeting or otherwise allege that Complainant was terminated because she had complained of age harassment/discrimination during the November 10, 1998 meeting with Jenkins.

26. On March 17, 1999, Complainant filed a second amended Charge of Discrimination, that included the same age harassment and retaliation claims, but alleged for the first time that: (1) she had complained to Jenkins about age discrimination and harassment at the November 10, 1998 meeting; and (2) she had been terminated in retaliation for making this complaint and for telling Jenkins that she had filed a Charge of Discrimination.

### **Conclusions of Law**

1. Complainant is an “employee” as that term is defined under the Human Rights Act.

2. Respondent is an “employer” as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Complainant failed to establish a *prima facie* case of harassment on the basis of age.

4. Complainant failed to establish a *prima facie* case of unequal terms and condition of employment in retaliation for opposing unlawful discrimination.

5. Complainant failed to establish a *prima facie* case of unlawful retaliation based on allegations that Respondent terminated Complainant for having opposed unlawful discrimination.

6. Respondent articulated legitimate, non-discriminatory reasons for its decision to assign Complainant certain job duties and for its decision to terminate Complainant.

7. Complainant has failed to show by a preponderance of the evidence that the explanations given by Respondent for its decision to assign Complainant various job duties or to eventually terminate Complainant were untrue or otherwise unworthy of belief.

#### **Determination**

Complainant failed to prove by a preponderance of the evidence that Respondent violated section 2-102(A) or 6-101(A) of the Human Rights Act (775 ILCS 5/2-102(A), 6-101(A)) by either harassing her on account of her age or retaliating against her in any fashion for having opposed unlawful discrimination.

#### **Discussion**

##### **Age Harassment.**

According to Count I of Complainant's Complaint, Jenkins harassed her on account of her age when, from May of 1998 to November of 1998, Jenkins uttered a series of insults and constantly badgered Complainant about her work performance, her personal appearance and her need to acquire "newer and fresher" ideas in the workplace. Moreover Complainant asserted during the public hearing that Jenkins' harassment occurred on a daily basis, with a frequency of as many as 12 to 15 incidents a day, and with sessions lasting from ten minutes to one hour. Complainant also accused Jenkins of sabotaging her computer at least once a week by either deleting formulas that she had entered into the

computer, removing figures that she had entered into the computer, or entering data that she had not put into the computer. Jenkins and Complainant's co-workers on the other hand deny that he ever harassed, ridiculed or berated Complainant in her work duties. After reviewing the record, I find that Jenkins and Complainant's co-workers were the more credible witnesses in this regard, and therefore find that Complainant did not establish a *prima facie* case of harassment.

In coming to this conclusion, I first note that Complainant was not a particularly credible witness. Specifically, she claimed that many of her co-workers either witnessed or heard Jenkins' negative comments about her work product and her appearance, yet none of them testified on her behalf at the public hearing or provided any corroboration for her claims of harassment on the part of Jenkins. Complainant, though, urges me to discount the fact that none of her co-workers came forward to testify on her behalf because they were still employed by Respondent, and therefore had a financial incentive for lying on behalf of Jenkins. However, Complainant ignores her own financial incentive in prevailing in this lawsuit, and thus I could not automatically ignore the testimonies of Jenkins or Complainant's co-workers just because they were still working in the Treasurer's Office.

Too, I found Dorothy Hunt, Complainant's supervisor, to be a particularly credible witness. According to Complainant, Jenkins verbally harassed Hunt by calling her incompetent, and that Hunt had complained to her about this treatment. The problem for Complainant, though, was that Hunt categorically denied these claims, and I found Hunt to be very forthright on the witness stand with respect to the working conditions of both Complainant and herself. In this regard, while Hunt provided corroboration with respect to Complainant's regular complaints about being overworked, Hunt credibly testified that Complainant's protests were related to the nature of her job, rather than to any alleged age animosity on the part of Jenkins.

Other factors also led me to believe that Complainant was not telling me the truth about her claims of age harassment on the part of Jenkins. Chief among my concerns was Complainant's claim that Jenkins harassed her on a daily basis, beginning from the time of her employment at Respondent in January of 1992 up until her termination in November of 1998. Aside from the bizarre nature of this claim, Complainant is essentially asserting that Jenkins had been harassing her on the basis of her age from almost the inception of her employment with Respondent. However, this claim does not make any logical sense since, if Jenkins harbored an animosity against Complainant on the basis of her age, he would not have hired Complainant only to begin a campaign of age harassment against her. (See, also **Buhrmaster v. Overnite Transportation Company**, 61 F.3d 461 (6<sup>th</sup> Cir. 1995), where the court recognized a "same actor" inference against a finding of discrimination where the decision-maker who fired the employee was the same decision-maker who hired the employee.) Complainant's uncorroborated claims that Jenkins regularly sabotaged her computer in an effort to make her look bad are suspect for similar reasons.

Additionally, Complainant's list of notes concerning the November 10, 1998 meeting with Jenkins provides an additional clue that the alleged harassment described by Complainant did not actually occur. Specifically, the list contains ten topics that were allegedly discussed by Complainant during the meeting, and yet the first nine topics generally pertained to allegations with respect to Shelton's harassment, as well as the alleged demands that Complainant's co-workers were placing on Complainant. Moreover, while it is true that Complainant's list hints at age discrimination on the part of Jenkins in the tenth topic, one would think that the alleged six-year campaign of daily verbal harassment on the part of Jenkins would have been the first topic on Complainant's list if in fact it had been occurring as Complainant had testified.

In **Hill and Peabody Coal Co.**, \_\_\_ Ill. HRC Rep. \_\_\_ (1991SF0123, June 26, 1996) the Commission, in describing the quantum of proof necessary to establish a

harassment claim under the Human Rights Act, observed that in order for conduct to be actionable under the Human Rights Act, the harassing behavior must occur frequently enough to constitute a term or condition of employment. Here, though, I did not find Complainant credible in her assertions of age harassment on the part of Jenkins. Moreover, while Complainant made additional assertions of harassing conduct on the part of Shelton and her co-workers, Complainant never attributes her age as the motivation for this conduct. In as much as the Human Rights Act is not a general “anti-harassment” statute in the sense that it limits coverage for harassment to those areas where the motivation for such conduct falls within the definition of “unlawful discrimination”, I find that Complainant has failed to meet the threshold requirement for a *prima facie* case of harassment on account of her age.

**Retaliation-Unequal Terms and Conditions of Employment.**

According to Count II of the Complaint, Complainant asserts that she made a complaint of age discrimination to Jenkins in May of 1998, and that he retaliated against her by giving her some of Shelton’s payroll clerk duties. Unfortunately, Complainant’s testimony during the public hearing did not match up with the allegations of Count II. Specifically, the closest that Complainant comes in her public hearing testimony to a May 1998 meeting with Jenkins was her contention that: (1) she met with Jenkins sometime in the Summer of 1998 when Complainant asked for more assistance in implementing a new computer bookkeeping system; (2) during this meeting Complainant accused Jenkins of not treating her the same as the “younger girls” in the office in terms of providing her with necessary assistance in her job; (3) Jenkins accused her of being a liar, and failing to be more like the “younger girls” in the office; and (4) as a consequence of the meeting Jenkins gave her unspecified extra financial projects to complete. However, Jenkins denied that a meeting with Complainant ever existed in which Complainant complained about age discrimination or in which he gave Complainant extra projects of the sort described by

Complainant. In as much as I did not find Complainant to be particularly credible concerning her allegations of harassment against Jenkins, I too find that these allegations are without substance.

True enough, Complainant testified to the existence of a Fall, 1998 meeting in which she complained to Jenkins about Shelton's harassment that resulted in Jenkins giving her several more duties that she claimed had previously been a part of Shelton's payroll clerk job. Moreover, Complainant asserted that as a result of this meeting she was directed to stop whatever she was doing to help others in the Treasurer's Office whenever they needed assistance. Jenkins, however, testified that the only meeting in which Complainant received additional duties occurred in the latter part of 1998, when, in discussing Complainant's duties with respect to the Manitron systems, he ultimately directed Complainant to work with Shelton in order to make payroll deduction deposits. Jenkins, though, asserted without contradiction that this task took Complainant at most five to ten minutes to accomplish every two weeks.

Thus, assuming that this assignment formed a basis of Complainant's retaliation-unequal terms of employment claim, I find that this allegation cannot support a retaliation claim since a five to ten minute additional assignment over a two-week period is too trivial to support a finding of actionable conduct under **Campion and Blue Cross and Blue Shield**, \_\_\_ Ill. HRC Rep. \_\_\_ (1988CF0062, June 27, 1997), and **Gehlbach and State of Illinois, Department of Corrections, Logan Correctional Center**, \_\_\_ Ill. HRC Rep. \_\_\_ (1995SF0694, April 23, 1999). But, regardless of whether this additional assignment constituted an actionable adverse act, Complainant loses because I did not find her credible with respect to her allegation that she complained to Jenkins about age harassment/discrimination in the Fall of 1998. Additionally, while Complainant contends that Jenkins assigned her reports that had been a part of Shelton's job duties as a punishment for complaining to him about unequal treatment, both Jenkins and Shelton

testified that these reports had always been a part of Complainant's job description. In view of Complainant's lack of credibility, I find this aspect of Complainant's case to be without merit as well.

The real rub for Complainant on her retaliation/unequal terms and conditions claim, though, is her contention that Jenkins burdened both Hunt and herself with a heavy workload and did not provide the assistance that the younger co-workers received to finish their jobs. Complainant also submits that Jenkins favored the younger workers by giving them treats, as well as permitting them to do personal errands without having to make up the time. All of Complainant's co-workers, though, testified that Jenkins shared his treats with everyone in the office, and that they had to take either personal or vacation time in order to take time off from the office. Complainant never provided a rebuttal to their testimony or an explanation as to how she would have known about the status of any written or oral leave request from a co-worker. Moreover, in view of the fact that I find that Complainant did not make an actual protest of age discrimination to Jenkins at any time between May and October of 1998 as alleged in Count II of the Complaint, any alleged unequal treatment by Jenkins in this regard cannot be the result of any retaliation animosity on the part of Jenkins.

Too, while Complainant made frequent complaints to Hunt and Jenkins about the amount of work she was required to do, the decision by Jenkins to either deny Complainant's request for assistance and/or provide Complainant's co-workers with requested assistance has evidentiary value as to Complainant's retaliation/unequal treatment claim only if Complainant could show that she was sufficiently similar to her co-workers, and that Jenkins made the decision to provide the co-workers with adequate assistance after Complainant had made a protest of age discrimination. (See, for example, **Vidal and St. Mary's Hospital of East St. Louis, Inc.**, \_\_\_ Ill HRC Rep. \_\_\_ (1985SF0343, August 1, 1995).) In this regard, Complainant falls short of either showing

since: (1) Complainant's complaints of lack of assistance came well before any asserted protests of age discrimination in May of 1998; (2) Complainant's co-workers who worked on the collections side of the Treasurer's Office had different job responsibilities than those given to Complainant who worked on the bookkeeping side of the Treasurer's Office; and more important (3) Jenkins testified that he had, for a variety of reasons related to giving prompt service to the public, an office policy of giving priority to the needs of the collections side of the Treasurer's Office.

Thus, what Complainant is apparently asking me to do is to find that her job in the bookkeeping side of the Treasurer's Office was just as important as the jobs performed by her co-workers in the collections side of the Treasurer's Office. However, such a finding would violate a long-standing position of the Commission that it does not substitute its notion of what is best for Respondent's business over that of Respondent's management. (See, for example, **Tebrugge and City of Springfield**, \_\_\_ Ill. HRC Rep. \_\_\_ (1991SF0092, October 17, 1995).) Here, it is enough to say that Complainant loses on this aspect of her claim since Jenkins may properly allocate his personnel in a way that reflected his priorities within the Treasurer's Office, and there is no credible evidence that any additional assignment between May and October of 1998, or refusal to provide assistance came after Complainant had protested to Jenkins about age discrimination or age harassment.

Finally, before leaving Complainant's claim of retaliation/unequal treatment, Complainant focuses on the relatively lenient treatment given by Jenkins to Shelton and asserts that it was unfair for Jenkins to provide Shelton with Internet access to her office computer and to permit her to sell and purchase Beanie Babies on her computer during her breaks during the work day. Similarly, Complainant maintains that Jenkins' favoritism towards younger workers was demonstrated when she was told by Jenkins to drop whatever she was doing in order to deal with the public during the busy property tax

season, while Shelton was excused from this duty. None of these allegations, however, are sufficient to establish her retaliation/unequal treatment claim.

Initially, I would note that Complainant never seriously disputes Jenkins' testimony that Shelton used the Internet to obtain certain work related forms, and that Complainant never links a protest of age discrimination/harassment followed by either Shelton's obtaining of the Internet access on her computer or a denial of Complainant's own request for Internet access. Similarly, although Complainant asserts that Jenkins required her to help out at the collections desk after she had protested his unequal treatment of her sometime in the Fall of 1998, I have found that Complainant did not make a protest of age discrimination/harassment during this time period. This is not to say that Complainant did not make regular complaints to Hunt and others about her workload, and, at least from Complainant's perspective, I can understand why she believed Shelton to be a favorite of Jenkins given Shelton's ability to use the Internet for private Beanie Baby transactions during Shelton's break time. However, complaints about job assignments or about a co-worker's favored status, without a simultaneous complaint of age discrimination or harassment, do not qualify as "protected" conduct under the retaliation provisions of the Human Rights Act.

#### **Retaliation-Termination.**

According to Count III of the Complaint, Complainant registered a complaint of age harassment/discrimination at an early morning meeting on November 10, 1998, but was terminated on November 16, 1998 shortly after telling Jenkins that she had gone to the Department of Human Rights earlier in the day to file a Charge of Discrimination. During the public hearing, Complainant conceded that Jenkins had tendered to her an already typed termination memorandum citing her conduct at the November 10, 1998 meeting as the reason for her termination. Given this concession and with no evidence indicating that Jenkins had been otherwise aware of her going to the Department of Human Rights on the

morning of November 16, 1998, Complainant's allegation that she was terminated because she had filed a Charge of Discrimination is wholly without merit since the typed memorandum demonstrates that Jenkins had made the decision to terminate Complainant at a time prior to his knowledge that Complainant had filed her Charge of Discrimination.

If Count III of the Complaint had been based solely on Complainant's allegations in either her original Charge of Discrimination or her first amended Charge of Discrimination signed on November 30, 1998, this case would be over since Complainant failed to mention in either Charge any claim that she had protested age discrimination to Jenkins at the November 10, 1998 meeting. Indeed, Complainant does not assert that she actually protested age discrimination or age harassment at the November 10, 1998 meeting until March 17, 1999 when she filed her second amended Charge of Discrimination. At first blush, due to the seriousness of the allegation and the proximity of its purported occurrence to the time that Complainant filed her first amended Charge, I find it difficult to believe that Complainant would not have included this allegation in her November 30, 1998 amended Charge if it had in fact occurred. Moreover, for additional reasons to follow, I find that Complainant never asserted that she was the victim of age discrimination or age harassment at the November 10, 1998 meeting so as to trigger the anti-retaliation provisions of the Human Rights Act.

During the public hearing, Complainant asserted that after she spoke to Jenkins at the November 10, 1998 meeting about work related issues involving Shelton and Complainant's extra workload, she began addressing her concerns about "unequal treatment and discrimination" when Jenkins asked her to leave the office. Significantly, Complainant never testified that she told Jenkins at that time that she believed that age was the basis for the alleged harassment/unequal treatment. (See Tr. pp. 42-43.) Additionally, Complainant asserted during the public hearing that she informed Jenkins at the November 10, 1998 meeting that she intended to take matters to a higher level level if the

discrimination and harassment did not stop. This testimony, though, is also suspect since the record shows that Complainant filed her original Charge of Discrimination without giving Jenkins an opportunity to stop any alleged harassment/discrimination and Complainant did not explain what changed her mind in deciding to file the Charge before giving Jenkins this opportunity.

Moreover, the only evidence indicating that Complainant actually addressed the topic of age harassment/discrimination during the November 10, 1998 meeting came in the form of Complainant's list of notes for the November 10, 1998 meeting that she claimed she used during the meeting. Indeed, Complainant accuses Jenkins of not harassing younger co-workers in the tenth and last entry on her notes. However, in examining the spacing of the notes within the tenth entry, with the phrase "Stop Harassment" appearing twice as large as the rest of the comments and, like the other nine entries, appearing directly adjacent to the item number it is unclear whether the age references were on the list at the time of the November 10, 1998 meeting since the age references were crammed into and around the "Stop Harassment" phrase. Too, Complainant never explains how the date of "11-10-98" got onto the first page of the list if Complainant was telling me the truth that the first page of the list introduced into evidence appeared as it did when it was drafted days before the actual meeting. Thus, for all of the above reasons, I do not believe that Complainant ever actually protested to Jenkins at the November 10, 1998 meeting that she was the victim of age harassment/discrimination.

Alternatively, I agree with Respondent that the reason Complainant was terminated from her position in the Treasurer's Office was because of the conduct of Complainant and her husband at the November 10, 1998 meeting. Specifically, while Complainant argues that she is not a particularly intimidating individual, Complainant does not dispute that she was upset during the meeting, and I would note that the meeting had a serious tone when both Jenkins and Complainant's husband produced their own tape recorders at the

beginning of the meeting. Moreover, I found Jenkins to be credible when he found Complainant's husband to be intimidating in view of the fact that Complainant's husband approached Jenkins' desk, made hammer-like gestures and refused Jenkins' multiple requests to leave the office and come back at a time when Hunt would be present. In this regard and contrary to Complainant's contentions, Jenkins was not attempting to foreclose any discussion about her concerns within the office, but rather was directing her to return at a more suitable time when those concerns could be properly addressed. Thus, under these circumstances, I find that Complainant's own disruptive conduct in refusing to leave Jenkins' office, as opposed to the substance of any complaints she may have made against her co-workers, was the reason for her termination.

**Recommendation**

For all of the above reasons, it is recommended that the Complaint and the underlying Charge of Discrimination of Carol Huber be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 2<sup>nd</sup> DAY OF JANUARY, 2002.