STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2011CA3827**
	)	EEOC NO.: **21BA12100**
WILBURN WILKINS, JR.,	)	ALS NO.: **12-0634**
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Charlene Foss-Eggemann,[1] and Patricia Bakalis Yadgir presiding, upon the Request for Review ("Request") of Wilburn Wilkins, Jr. ("Petitioner"), of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[2] of Charge No. 2011CA3827 and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW**,** THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of Petitioner's charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On June 27, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that the Illinois State Police ("Employer") gave him an unfair performance evaluation (Count A) and harassed him (Count B) in retaliation for opposing unlawful discrimination; and subjected him to unequal terms and conditions of employment because of his race, age, and in retaliation (Counts C, D, and E), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").

On July 10, 2012, the Respondent dismissed the Petitioner's charge in its entirety. The Petitioner filed a timely Request.

A *prima facie* case of retaliation requires evidence that the Petitioner engaged in a protected activity, that they suffered an adverse action, and that there is evidence of a causal connection between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). Count A fails at the second prong, because an unfair performance evaluation does not qualify as an adverse action. An adverse action must be sufficiently severe or pervasive to constitute a term or condition of employment. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365 (October 4, 1999), 1999 WL 33252975 (Ill.Hum.Rts.Com.). Negative performance evaluations, standing alone, do not qualify. See Smart v. Ball State Univ., 89 F.3d 437, 441–42 (7th Cir. 1996).

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[1] This Order is in accordance with a vote cast by Commissioner Foss-Eggemann prior to the expiration of her term.

[2] 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 Illinois Department of Human Rights's action shall be referred to as the "Petitioner."

Similarly, the harassment alleged by Petitioner (Count B) does not qualify. Harassment must be so severe and pervasive that it alters the conditions of employment and creates an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 17, 20 (1993). Petitioner alleges that Employer demanded to know when he was conducting union business, gave him an unfair writeup, counseled him for improper use of email, investigated his outside employment, denied him a professional opportunity, and did not give him a service pin. These actions do not qualify as "severe and pervasive." Heavy-handed management is unpleasant but does not constitute harassment. Patel v. Allstate Insurance, 105 F.3d 365, 373 (7th Cir. 1997).

Even if Petitioner presents a *prima facie* case of retaliation, Employer may produce a legitimate, nondiscriminatory reason for its action, and Petitioner must prove that this reason is a pretext for discrimination. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 179 (1989). Petitioner's count E fails at this point. He alleges that Employer denied him the opportunity to travel to Springfield and train police. Employer asserts that it denied this opportunity due to budget cuts, and that Petitioner was not needed for this task. Petitioner has not shown that these reasons were pretextual. The Commission does not sit as a "super-personnel department" to examine an employer's business decisions, even if those decisions seem "high-handed" or "mistaken." Mechnig v. Sears, Roebuck & Co., 864 F.2d 1359, 1365 (7th Cir.1988) (citations omitted).

Finally, Petitioner's claims that Employer denied him the opportunity to train police based on his race or age (Counts C and D) also fail. Even if he presented a *prima facie* case, he has not proven that Employer's proffered reasons for denying him the opportunity to train police were pretextual. Zaderaka, 131 Ill. 2d at 179.

Accordingly, the Petitioner has not presented any evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

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

2. 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 the Illinois State Police as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
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HUMAN RIGHTS COMMISSION)

Entered this 16th day of November 2018.

Commissioner Duke Alden

Commissioner Charlene Foss-Eggemann

Commissioner Patricia Bakalis Yadgir