

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CR0923
)	EEOC NO.: N/A
JUDY M. BIEL,)	ALS NO.: 13-0198
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Rose Mary Bombela-Tobias, and Patricia Bakalis-Yadgir presiding, to correct a typographical error in the Commission's October 2, 2018 Order in this matter.

IT IS SO ORDERED:

- 1) The following language is stricken from the October 2, 2018 Order: "This Order is not yet final and appealable."
- 2) The stricken language is replaced with the following language: "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 Our Lady of Peace School as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order."
- 3) All other provisions in the October 2, 2018 Order remain in full force and effect.

STATE OF ILLINOIS)	
)	Entered this 3rd day of October 2018.
HUMAN RIGHTS COMMISSION)	

Commissioner Duke Alden

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis-Yadgir

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ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Rose Mary Bombela-Tobias, and Patricia Bakalis-Yadgir presiding, upon Judy M. Biel’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Respondent of Human Rights (“Respondent”)¹ of Charge No. 2013CR0923; 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, **WHEREFORE**, it is hereby **ORDERED** that:

*The Respondent’s dismissal of Count A of the Petitioner’s charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.*

*The Respondent’s dismissal of Count B of the Petitioner’s charge is **SUSTAINED** for **LACK OF JURISDICTION**.*

In support of which determination, the Commission states the following:

A. PROCEDURAL HISTORY

1. On August 30, 2012, Petitioner filed a perfected charge of discrimination with the Respondent, alleging that Our Lady of Peace School (“Employer”), discriminated against her when it discharged her based on her age, 52 (Count A), and based on the lack of a personal friendship with Employer’s management staff (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).
2. In her charge, the Petitioner alleges that on April 20, 2012, Employer discharged her based on her age, 52, and replaced her with a Teacher who was younger than her, and that Employer unlawfully discharged her in an effort to replace Petitioner with a close personal friend of Mickey Tovey (“Tovey”), Principal.

¹ In a Request for Review Proceeding, the Illinois Respondent of Human Rights is the “Respondent.”

3. On February 5, 2013, the Respondent dismissed Count A for Lack of Substantial Evidence and Count B for Lack of Jurisdiction.
4. On May 10, 2013, Petitioner filed this timely Request.
5. On June 13, 2013, the Respondent filed its Response to the Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. Petitioner's birthdate is February 8, 1960, and she has worked for Employer as a Teacher since 2001.
2. Employer is a Catholic grade school.
3. Petitioner's supervisor was Mickey Tovey ("Tovey"), Principal, age/56. Tovey has given Petitioner good job performance evaluations.
4. On April 20, 2012, Tovey met with Petitioner and told her that her teaching contract would not be renewed. Petitioner was effectively discharged from Employer at age, 52. Petitioner was replaced with Eileen Backman ("Backman"), Teacher, age, 60.
5. Tovey stated that Petitioner received good job performance evaluations based upon her teaching work, but Petitioner consistently had problems with supplemental issues at work, such as having a bad attitude. Tovey made notes about Petitioner's attitude, but it did not improve.
6. Tovey had a number of parents request that their children not be placed in Petitioner's class, based on the children's fear of her. Children in first grade classrooms could hear Petitioner throughout the day and felt she yelled a great deal.
7. Tovey stated that Petitioner had begun to complain about everything school-related. The time she spent working on Catholic Schools Week was overly burdensome, the pay for the aftercare program was too low, she did not get enough hours at aftercare, she felt she should be given a fleece jacket at no charge because she worked hard, etc. Additionally, the Petitioner began to be very vocal in the lounge about her students and their various illnesses. Because of the complaints, the secretaries no longer wanted to go into the lounge during the lunch period due to the atmosphere.
8. Other teachers at Employer had a poor attitude, but after they were spoken to about it, they changed their behavior and did not continue as Petitioner did.

9. Employer renewed the contracts of 17 teachers who are over the age of 50, including Catherine Didio (“Didio”), Teacher, age, 63, Jeannie Mosquera (“Mosquera”), Teacher, age, 60, Marlene Pagnucci (“Pagnucci”), Teacher, age, 59, Katheleen Scatena (“Scatena”), Teacher, age, 61, and Cynthia Wittosch (“Wittosch”), Teacher, age, 68.
10. Under the Human Rights Act, Section 1-103(Q) states, “Unlawful discrimination means discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, or unfavorable discharge from military service...”
11. In her Request, the Petitioner argues the merits of her case and attaches two letters of recommendation drafted by Tovey. The Petitioner makes no arguments related to jurisdiction.
12. In its Response, the Respondent asks the Commission to sustain the dismissal of Count A for Lack of Substantial Evidence and Count B for Lack of Jurisdiction. The Respondent argues that its investigation did not reveal substantial evidence that the Employer discharged Petitioner based on her age. The Respondent further argues that its investigation revealed that the Employer articulated a nondiscriminatory reason for discharging the Petitioner and it found no evidence of pretext. The Employer discharged the Petitioner due to her repeated instances of making negative comments about students and the Employer.

C. DISCUSSION & DETERMINATION

The Commission sustains the dismissal of Count A of the Charge for Lack of Substantial Evidence, and sustains the dismissal of Count B of the Charge for Lack of Jurisdiction. If no substantial evidence of discrimination exists after the Respondent’s investigation of a charge, the charge must be dismissed. See 775ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

As to Count A, the Commission finds that the evidence was insufficient to establish a case of age discrimination. In order to establish a prima facie case of discrimination, Complainant must show: (1) that she falls within a protected class; (2) that she was performing her work satisfactorily; (3) that she was subjected to an adverse action; and (4) that Respondent treated a similarly situated employee outside Complainant’s protected class more favorably under similar circumstances. See Marinetti v. Human Rights Commission, 262 Ill. App.3d 247, 634 N.E.2d (2nd Dist. 1994).

In this case, the Petitioner failed to establish the second and fourth elements. The Respondent’s investigation did not reveal a similarly situated employee treated more favorably than the Petitioner. In fact, the Respondent’s investigation revealed that the Petitioner was replaced with someone within her same protected class. Additionally, the Petitioner’s attitude issues were well

