

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CF0088
)	EEOC NO.: 21BA22155
Ronald Singletary)	ALS NO.: 13-0288
)	
Petitioner)	

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary BombelaTobias and Commissioners Patricia Bakalis Yadgir and Duke Alden, presiding upon Ronald Singletary's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2013CF0088 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 the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

DISCUSSION

On July 16, 2012, the Petitioner filed a discrimination charge with the Respondent alleging that the Joliet Public Schools District #86 ("District #86") removed him from his sub-engineering duties in retaliation for filing previous charges with Respondent, in violation 6-101(A) of the Illinois Human Rights Act ("Act").

On March 21, 2013, the Respondent dismissed the Petitioner's charge in its entirety for lack of substantial evidence. The Petitioner filed a timely Request for Review on June 20, 2013.

The Commission concludes 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. 775 ILCS 5/7A102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. *In re Request for Review of John L. Schroeder*, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

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

The record shows that Petitioner was hired as a Custodian at Dirksen Junior High School on November 5, 2008. As a Custodian, Petitioner became a member of a bargaining unit represented by the American Federation of State County and Municipal Employees ("AFSCME") and subject to a Collective Bargaining Agreement ("CBA") between the Union and District #86. On January 6, 2010, Petitioner was a successful bidder to move to a mid-day position at Dirksen Junior High School. On May 24, 2010, Petitioner engaged in protected activity when he filed a charge of discrimination against District #86 (Charge No. 2010CF3645). From April 14, 2010 through May 24, 2010, there were 29 opportunities for Acting Engineer Assignments (When engineers were not available, District #86 assigned sub-engineering duties, also known as acting engineers, to temporarily serve as engineers until the regular engineer returns from leave of absence.) Petitioner filled 11 of those opportunities as he was on vacation. Randall Gordon ("Gordon") filled 12 of the 29 opportunities while Michelle Clay ("Clay") filled the remaining six opportunities. Clay also had the most seniority when compared to Gordon and Petitioner.

From June 21, 2010 through September 9, 2011, District #86 assigned Petitioner 21 Acting Engineer Temporary Assignments. On February 14, 2011, pursuant to the CBA, Petitioner was a successful bidder to move to the Keith/Woodland Schools (split assignment). Due to reorganization, however, Petitioner was transferred to the Keith/Eisenhower Schools (split assignment) on August 17, 2011. On October 3, 2011, Gordon was assigned the Acting Engineer position because this would be less disruptive to business operations since he worked in a building that was not yet occupied. Whereas, if Petitioner were to be assigned as Acting Engineer, District #86 would have had to hire a Task Force Engineer for Petitioner's position. Nevertheless, Petitioner was assigned to Acting Engineer from October 5, 2011 through October 7, 2011 as it is customary to temporarily replace employees with other building employees. On January 5, 2012, Petitioner alleges that he was engaged in protected activity when he filed a second charge of discrimination against District #86 (Charge No. 2012CF1864). From January 5, 2012 through July 16, 2012, Petitioner was assigned 10 Acting Engineer Temporary Assignments.

On March 19, 2013 and March 20, 2013, Petitioner had been serving as Acting Engineer at Edna/Keith Elementary. By the second day, District #86 removed Petitioner from sub-engineering duties due to poor performance as evidenced by Principal of Edna Keith School for Joliet Public School District #86, Michelle Coleman's ("Coleman") (no protected activity) September 6, 2011 and September 8, 2011 Memorandum to Petitioner; the March 22, 2012 Memorandum to Manager of the Building Support Services, Darryl Duncan ("Duncan") (no protected activity) and September 14, 2012 Affidavit. Coleman was responsible for supervising teachers, paraprofessional employees, clerical personnel, the building engineer, and custodial personnel. She was also responsible for the condition and cleanliness of the building. At that time, Coleman continuously had to direct Petitioner regarding his failure to perform the routine and standard procedures of the building required by the engineer position and therefore sent Duncan a request to remove Petitioner from acting engineer duties. Coleman requested that senior custodian, Darryl Lyons ("Lyons") be installed to Acting Engineer at Keith Elementary School. Lyons also had more seniority than Petitioner. Lastly, neither Coleman nor Duncan were aware of Petitioner's protected activities. A grievance was filed by the Union on behalf of Petitioner.

Generally, to establish a *prima facie* case of retaliation, Petitioner must show: 1) he engaged in protected activity; 2) District #86 took an adverse action; and 3) a causal connection exists between the protected activity and the adverse action. See *Welch v. Hoeh*, 314 ILL.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd Dist. 2000).

Note that in an action alleging retaliation, the Commission and the courts have applied a three-step analysis to determine whether there has been a violation of the Human Rights Act. See *Thompson and Hoke Construction Co.*, IHRC, ALS No. S9135, June 2, 1998), and *Loyola University of Chicago v. Illinois Human Rights Commission*, 149 Ill.App.3d 8, 500 N.E.2d 639, 102 Ill. Dec. 746 (1st Dist., 3rd Div. 1986). Assuming arguendo that Petitioner established a *prima facie* case for retaliation, District #86 must articulate a legitimate, nondiscriminatory reason for its actions. If this is done, the Petitioner must prove by a preponderance of the evidence that the articulated reason advanced by District #86 is a pretext. See *Clyde and Caterpillar, Inc.*, IHRC, ALS No. 2794, Nov. 13, 1989, *aff'd sub nom Clyde v. Human Rights Com'n*, 206 Ill. App.3d 283, 564 N.E.2d 265 (4th Dist.1990); and *Texas Dep't. of Community Affairs v. Burdine*, 450 US 248, 254-55 (1981).

Here, the evidence is insufficient to establish a *prima facie* case of retaliation for filing previous charges with Respondent as Petitioner did not satisfy the third prong of his *prima facie* case. Petitioner was removed from his temporary assignment of sub-engineering duties on March 20, 2012 for poor performance. There is no nexus between the removal from temporary Acting Engineer and his previously filed charges. The two-years that elapsed between his May 24, 2010 charge and his removal is too long of a period to create an inference of retaliation. The Commission has previously ruled that five months and twenty-three days was too remote. See *Mitchell and Local Union 146*, 20 ILL. HRC Rep.95 (1985). A causal connection will be inferred if the period of time between the protected activity and the adverse action is sufficiently short; *Mims and State of Illinois, Department of Lottery*, ___ Ill. HRC Rep. ___, Charge No. 1988SF0171 (July 26, 1991) (nineteen-month time period between protected activity and adverse action too long to create an inference of retaliation). Additionally, while there is a much shorter time between the January 5, 2012 charge and Petitioner's removal, District #86 gave Petitioner twenty-one sub-engineering assignments, including seven assignments disbursed after the date of the alleged adverse action. Lastly, Petitioner fails to specify any statements of retaliatory animus.

Thus, District #86 articulated a legitimate, nondiscriminatory reason for removing Petitioner from temporary assignment of sub-engineering duties. Petitioner failed to present any compelling evidence that District #86's proffered reason for removal was a pretext in retaliation for filing previous charges. In the absence of any evidence that the business consideration relied upon by District #86 is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. See *Berry and State of IL, Dept. of Mental Health and Developmental Disabilities*, IHRC, ALS no. S-1946, Charge No. 1994SA0240 (December 10, 1997). Additionally, District #86 is entitled to make employment decisions based on its reasonable belief surrounding the situation. "Respondent may take its action for good reason, bad reason, reason based upon erroneous facts, or for no reason at all, as

long as its action is not for a discriminatory reason...The correctness of the reason is not important as there was good faith belief by Respondent in its decision..." See *Carlin v. Edsal Manufacturing Co.*, 1996 WL 652580, Charge No. 1992CN3428 (Ill. HRC, May 6, 1996).

All in all, Petitioner fails to show substantial evidence that he was removed from sub-engineering duties in retaliation for filing previous charges of discrimination against District #86.

In his Request for Review, there is no additional evidence provided by Petitioner that would warrant a reversal of Respondent's original determination.

Accordingly, the Petitioner has not presented substantial 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 Joliet Public Schools District #86, as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 17th day of December 2018.**
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden