STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	
	)	CHARGE NO.: **2021CF2634**
	)	EEOC/HUD NO.: **21BA20469**
EMILY HYLAND,	)	ALS NO.: **23-0081**
Petitioner.	)	

ORDER

This matter coming before the Commission on July 26, 2023 by a panel of three, Vice-Chair Barbara R. Barreno-Paschall, Commissioners Jacqueline Y. Collins and Stephen A. Kouri II presiding, upon the Request for Review ("Request") of Emily Hyland ("Petitioner"), of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2021CF2634, 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

A) Respondent's dismissal of Counts A, B, C, D, E, and F of Petitioner's charge for **LACK OF JURISDICTION** is **SUSTAINED.**

B) Respondent's dismissal of Counts G, H, I, J, K, L, M, N, O, and W of Petitioner's charge is **VACATED** and **REMANDED** to Respondent for a finding of **SUBSTANTIAL EVIDENCE**.

C) Respondent's dismissal of Counts P, Q, R, S, T, U, and V of Petitioner's charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED.**[2]

DISCUSSION

On May 3, 2021, Petitioner filed a charge of discrimination with Respondent alleging that Naperville Presbyterian Church ("Employer") subjected Petitioner to unequal pay (Counts A-O), unequal terms and conditions of employment (Counts P, Q, S, U), unequal job assignments (Count R), removal of job responsibilities (Count T), harassment (Count V), and discharge (Count W), all due to her sex (female), and discharged her in retaliation for opposing unlawful discrimination (Count X); in violation of Sections 2-102 and 6-101(A) of the Illinois Human Rights Act ("the Act"). On May 11, 2023, Respondent dismissed Counts A-F of Petitioner's charge for lack of jurisdiction, dismissed Counts G-W

[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."

[2] This order is entered pursuant to a 3-0-0 vote by the Commissioners.

for lack of substantial evidence, and made a finding of substantial evidence on Count X of Petitioner's charge.[3] Petitioner filed a timely Request.

Factual Background

Petitioner was hired as the part-time Director of Operations at Naperville Presbyterian Church on June 3, 2013. In this role, Petitioner was responsible for daily operations of the Church including vendor relationships and contracts, facilities maintenance, purchasing, oversight of all external communications (including website and social media management), coordinating volunteer programs, and supervising eight administrative and janitorial employees.

Unequal Pay: Counts G-O[4]

In January of 2020, Petitioner was paid $28.45 per hour. Paul Veach was a part-time Facilities Manager who reported directly to Petitioner. After initially leaving the role, Veach was rehired in January of 2020 and was paid $35 per hour (with a cap of 30 hours per week). Petitioner had initially offered Veach a lower salary, but he negotiated the raise with the Church Elders and the associate pastor, Paul David Chu. As Facilities Manager, Veach's position included general cleaning and maintenance of the Church building, setting up spaces for events, and supervising maintenance staff and contractors while on site. Employer stated that they paid Veach $35 per hour because that was the market rate for a facilities manager. Petitioner stated that a cursory internet search of her job title reveals that the market rate for a director of operations is $45 per hour.

Though Veach was the facilities manager when Petitioner was hired, he was not considered for the role of Director of Operations because he was not qualified. When Veach was on vacation or otherwise unavailable, Petitioner would fill in for his role as required. Veach was not asked to fill in for Petitioner's role when she was likewise out of the office.

Harassment and Unequal Terms and Conditions of Employment: Counts P-V

During the period of October 2020 through March 19, 2021, Dane Ortlund held the position of Senior Pastor. Ortlund was both Chu and Petitioner's immediate supervisor; neither Chu nor Petitioner reported to one another, and each was a member of the leadership team. Despite this, Ortlund seemed to perceive Chu to be in a supervisory position in relation to Petitioner. Ortlund wrote in an email to Chu that, "it is troubling to me that [Petitioner] did not omit [a website detail] after twice being instructed by her supervisor [Chu] to do so. It sounds like insubordination to me–which I will not tolerate."

It was Ortlund's practice to refer to lay women and men in the Church as "Sister" and "Brother." Though Petitioner had expressed that she was uncomfortable with the title "Sister" in their professional

[3] Petitioner filed a complaint in the Commission's Administrative Law Section on Count X. That case is currently pending under ALS No. 23-0039.
[4] In her Request, Petitioner acknowledges that Counts A-F are untimely and need not be reviewed by the Commission. 775 ILCS 7A-102(A)(1).

context, Ortlund wrote an email to Chu on a November 17, 2020, “I’m going to start keeping a bit of a paper trail of things with our sister...” Later, in Respondent’s fact-finding conference, Ortlund stated that he found it “perverse and bizarre” that Petitioner didn’t like being called Sister because it was a sign of “respect.”

Following the November 17 email, Ortlund maintained a list of things he disapproved of regarding Petitioner’s actions, professional behavior, and personality. He did not communicate any issues written on the list to Petitioner herself until he referenced it as evidence in her discharge. One of the issues included on the list was Petitioner’s alleged poor communication skills. Petitioner provided evidence that Ortlund had, several times, emailed Petitioner (sometimes outside of her working hours) and would then, only hours later, reach out to Chu to say that Petitioner had failed to respond. Petitioner alleges, and Employer confirmed, that Ortlund held weekly or monthly meetings with essentially all other members of Church leadership but that he did not hold any regular meetings with Petitioner.

Over the course of this period, Ortlund removed Petitioner from her role as the main website and social media administrator. In an email to Chu, he wrote that he was not comfortable with Petitioner vetting any content to be put on social media. After asking Petitioner who had permissions to operate and edit the website, he emailed Chu to say that he was glad they had “healthy” redundancies in case he needed to make an organizational change. Ortlund later informed Petitioner that two of the administrators who helped manage the website, who had previously reported directly to Petitioner, would report to Chu and Ortlund going forward.

To this end, Ortlund also instructed Petitioner not to reach out to other administrative professionals or website vendors without his approval, even for informational calls. He included on his list that she was “getting out ahead” of him and that she was overstepping. Establishing and managing vendor relationships, contracts, and external communications (including the website) were all specifically included in Petitioner’s job description.

Discharge: Count W

On March 15, 2021, Petitioner reported a claim of sex discrimination to the Elders (the higher leadership) of the Church regarding Ortlund and Chu’s behavior. The next day, the Elders communicated the complaint to Ortlund and suggested to Petitioner that she meet with him to try and clear the air. Ortlund expressed to Petitioner that he wanted her to retract her complaint. Petitioner refused. In his list, Ortlund wrote, “[Petitioner] goes to elders to gripe and slander me.”

On March 19, 2021, Petitioner was presented with a termination agreement and was told that she was being fired for poor communication. Petitioner alleges that she was told to take the agreement home and have her husband read over it. Dave Veerman, one of the Church Elders who had presented the termination agreement to Petitioner, stated in an affidavit that, prior to Ortlund’s hiring, the Elders had only ever heard positive things about Petitioner’s work. Veerman said that they were “shocked” by Ortlund’s perception of Petitioner as a problem employee and at Ortlund’s suggestion to discharge her, but that the Elders wanted to trust their pastor. Veerman, who resigned from his position as an Elder

several months later, attested that he felt he had made a mistake in discharging Petitioner based on Ortlund's rationalizations and explanations after the fact. He stated that he had since apologized to Petitioner for the role he played in her discharge.

Analysis

The Commission concludes that the Respondent properly dismissed Counts P-V of 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 5/7A-102(D). Under the Act, substantial evidence is "evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D)(2). However, the Commission concludes that Petitioner has presented substantial evidence for Counts G-O and W.

Counts G-O: Unequal Pay

In cases of unequal pay, Petitioner must establish a *prima facie* case by showing that (1) she is a member of a protected class; (2) she performed her job satisfactorily; (3) the employer took an adverse action against her; and (4) a similarly situated employee, who is not a member of her protected class, was not subject to the same adverse action. *Anderson v. Chief Legal Counsel*, 334 Ill. App. 3d 630, 634 (3d Dist. 2002). Being subjected to disparate pay qualifies as an adverse action under this standard. *Id.* at 635. However, Petitioner is unable to provide a similarly situated employee who is outside of her protected class because she is the only employee working within the role of director of Operations. Veach would not be considered a similarly situated employee because he does not perform duties ascribed to Petitioner (such as supervising permanent employees and participating in leadership planning meetings).

When a petitioner is unable to provide a suitable comparator for the purposes of a *prima facie* case, the Commission may consider whether the evidence as a whole would permit a reasonable factfinder to conclude that a petitioner's protected class caused the adverse action. *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 765 (7th Cir. 2016). In this case, Petitioner is Veach's direct supervisor. Petitioner has in the past filled in for Veach during his time off and completed his responsibilities, but Veach is not able to fill in for Petitioner during her time off because he is not qualified.

Respondent's investigation showed that Petitioner, who also worked part time but whose hours were not capped, made more per pay period than Veach, whose hours were capped at 30 per week. However, Veach is paid $35 per hour while Petitioner was only paid $28.45 per hour. Therefore, but for the hour cap set by Employer, Veach could be making significantly more per pay period than his direct supervisor. Employer stated that they decided to overrule Petitioner's initial salary offer to Veach because $35 per hour aligned with the market value for a facilities manager. Petitioner has alleged that a cursory internet search reveals that the market value for a director of operations position starts at $45 per hour.

The *Ortiz* standard ensures that charges containing more than a scintilla of evidence of discrimination are able be heard. Given the above facts, Petitioner has met this standard of evidence and therefore Counts G-O of Petitioner's charge should be vacated and remanded to Respondent for a finding of substantial evidence.

Counts P, Q, R, S, T, U: Unequal Terms and Conditions of Employment[5]

In order to establish a *prima facie* case of discrimination, Petitioner must show that (1) Petitioner falls within a protected class; (2) Petitioner was performing her job satisfactorily; (3) Petitioner was subject to an adverse action; and (4) Employer treated a similarly situated employee outside of Petitioner's protected class more favorably under similar circumstances. *Anderson,* 334 Ill. App. 3d at 630, 634. In order to satisfy the third prong, Petitioner must show that the conduct was "materially adverse and not a mere inconvenience or an alteration of job responsibilities . . . to be actionable there must be a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibility, or a decision causing a significant change in benefits." *Young v. Ill. Human Rights Comm'n,* 2012 IL App (1st) 112204*,* ¶ 35. All of Petitioner's claims of unequal terms and conditions fail at this prong because none are so material as to be considered adverse actions.

In Count P, Petitioner alleges that Ortlund kept a written list of disciplinary items which, against company policy, he neither shared with Petitioner nor allowed her to respond to officially. Generally, written warnings do not constitute adverse actions even when they are delivered to an employee. *Spencer v. Illinois Human Rights Comm'n*, 2021 IL App (1st) 170026, ¶ 34. As Petitioner was unaware of this list and it did not alter her job performance or materially change her employment status during the time she was employed, it does not constitute an unequal term and condition.

In Count Q, Petitioner alleges that Ortlund held many regular meetings with other, male, members of the staff but that he did not hold any regular meetings with her. In Count R, Petitioner alleges that she was required to work, to a limited extent, outside of her regular work hours. In Count S Petitioner alleges that in two instances Ortlund required her to ask permission before contacting vendors, even though their services fell well within the bounds of her oversight as the director of operations. In Count T, Petitioner alleges that Ortlund effectively removed her from her leadership position regarding Employer's website and social media accounts even though being in charge of those elements of Employer's business was specifically written into Petitioner's job description. In Count U, Petitioner alleges that she was contacted to work during her scheduled paid time off. Taking all of these allegations as true, none qualify as materially adverse because, though they were inconvenient and showed alterations in her job responsibilities, none constituted a significant change in Petitioner's employment status. *Johnson v. Cambridge Indus.*, 325 F.3d 892, 901 (7th Cir. 2003).

[5] Though Respondent has separated Count R (unequal job assignments) and Count T (removal of job responsibilities) from the other counts of unequal terms and conditions, they follow the same analysis and utilize the same legal standard.

For these reasons the Commission sustains Respondent's dismissal of Counts P-U of Petitioner's charge for lack of substantial evidence.

Count V: Harassment

In order to establish actionable harassment, Petitioner must show that the workplace was permeated with discrimination, ridicule, or insult which was sufficiently severe or pervasive to alter the conditions of Petitioner's employment and create a hostile working environment. *See Harris v. Forklift Systems, Inc.,* 510 U.S. 17, 21 (1993). The "severe or pervasive" standard sets a high bar but provides multiple avenues towards reaching it. Courts consider "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Zoepfel-Thuline v. Black Hawk Coll.*, 2019 IL App (3d) 180524, ¶ 34 (quoting *Harris*, 510 U.S. at 23).

Petitioner has not here shown that she was subject to conduct that was so severe or pervasive as to constitute harassment. Many of Petitioner's allegations concern her treatment in comparison to Chu. She alleges that Ortlund was more communicative with Chu than he was with her, that Ortlund was less critical of Chu than he was with either Petitioner or other female members of the staff, and that Chu had more substantive leadership opportunities (like access to weekly prayer cohorts and speaking opportunities). None of these instances are directly related to Petitioner's sex, nor did Petitioner allege that they interfered with her work performance. Petitioner does recount two instances of comments related to her sex (being referred to as "Sister" and being instructed to have her husband read over her termination agreement), however they were not so severe as to meet the high standard required nor did they occur often enough to be considered pervasive. Further, Petitioner has not established that the conduct related to her sex unreasonably prevented her from performing her duties.

Therefore, the Commission sustains Respondent's dismissal of Counts P-U of Petitioner's charge for a lack of substantial evidence.

Count W: Discharge

In order to establish a *prima facie* case of employment discrimination, Petitioner must show that (1) she is a member of a protected class; (2) that she was performing her work satisfactorily; (3) that she was subject to an adverse action; and (4) that a similarly situated employee was treated more favorably under similar circumstances. *Anderson,* 334 Ill. App. 3d at 630, 634. Because Petitioner is the sole director of operations, she has no direct comparator. Further, neither Petitioner nor Employer were able to provide any past employee who had been discharged for any reason. Petitioner stated that because of Employer's size, discharges are very unusual in general.

Returning again to the standard set out in *Ortiz*, the Commission must consider all of the evidence as a whole. Respondent made a finding of substantial evidence regarding Petitioner's allegation of retaliatory discharge. The retaliation was in response to Petitioner filing a sex

discrimination complaint with Employer. Prior to the meeting in which Petitioner was discharged, Ortlund had kept a running list of all the ways in which he disapproved of Petitioner's behavior (which he did not share with Petitioner at any point prior to her discharge) but did not keep any such list for his male employees. And he had begun keeping track of the list explicitly for the purpose of creating a "paper trail." During the meeting, Employer suggested she have her husband look over her termination agreement on Petitioner's behalf. After the discharge, one of the Elders who had decided to discharge Petitioner on Ortlund's advice stated that he regretted his decision and believed he had made a mistake due to Ortlund's behavior and justifications of the firing after the fact. This, in addition to our finding of substantial evidence regarding Petitioner's charge of unequal pay due to her sex, satisfies the requirement of more than a mere scintilla of discriminatory evidence to make a finding of substantial evidence.

Therefore, Count W of Petitioner's charge should be reversed and remanded for a finding of substantial evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of Counts A-F of Petitioner's charge for lack of jurisdiction is hereby **SUSTAINED.**

2. The dismissal of Counts G-O and W of Petitioner's charge is **VACATED** and **REMANDED** to Respondent for a finding of substantial evidence.

3. The dismissal of Counts P-V of Petitioner's charge for lack of substantial evidence is **SUSTAINED.**

4. This Order is not yet final and appealable.

STATE OF ILLINOIS)
) **Entered this 1st day of August 2023.**
HUMAN RIGHTS COMMISSION)

Commissioner Barbara R. Barreno-Paschall

Commissioner Jacqueline Y. Collins

Commissioner Stephen A. Kouri II