

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE  
REQUEST FOR REVIEW BY:

**ROSINA NEGINSKY,**

Petitioner.

Charge No.: 2022SF1390

EEOC No.: 21BA20669

ALS No.: 23-0279

**ORDER**

This matter coming before the Commission on May 22, 2024, by a panel of three, Chair Mona Noriega, Commissioner Jacqueline Y. Collins, and Commissioner Janice M. Glenn presiding, upon the Request for Review (“Request”) of Rosina Neginsky (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2022SF1390, 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;

Respondent’s dismissal of Petitioner’s charge is **VACATED** and Count A is **REMANDED** to Respondent for **FURTHER INVESTIGATION** and for further proceedings on Count A that are consistent with this Order and the Illinois Human Rights Act (“Act”), Respondent’s dismissal of Count B is **SUSTAINED** for **LACK of SUBSTANTIAL EVIDENCE**, and Respondent’s dismissal of Count C is **VACATED** and Count C is **REMANDED** to Respondent for a finding of **SUBSTANTIAL EVIDENCE** and for further proceedings that are consistent with this Order and Act.<sup>2</sup>

**DISCUSSION**

On May 23, 2022, Petitioner filed a perfected charge of discrimination with Respondent, alleging that the University of Illinois Springfield (“UIS”) denied her promotion on account of her national origin, Russia (Count A), sex, female (Count B), and in retaliation for engaging in a protected activity (Count C), in violation of Sections 2-102(A) and 6-101(A) of the Act. On December 7, 2022, Respondent dismissed Petitioner’s charge for lack of substantial evidence. On March 9, 2023, Petitioner filed a timely Request. On May 9, 2023, the Commission vacated Respondent’s December 7, 2022, dismissal and reinstated and remanded the charge to Respondent for further investigation. On September 14, 2023, Respondent again dismissed Petitioner’s charge for lack of substantial evidence. Petitioner again filed a timely Request.

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<sup>1</sup> In a Request for Review proceeding, the party filing the Request for Review is referred to as the “Petitioner” and the Illinois Department of Human Rights is the “Respondent.”

<sup>2</sup> This Order is entered pursuant to a 3-0-0 vote by the Commissioners.

## Factual Background

According to UIS's promotion policy, to be awarded with a promotion to Full Professor, a faculty member must have held the position of Associate Professor for six years and must demonstrate a clear record of excellence in teaching at UIS, as well as a record of at least high quality in either scholarship or service, with performance in the other category being, at minimum, satisfactory. The promotion policy also indicates that the faculty member is responsible for preparing a portfolio documenting their eligibility for promotion. After preparing and submitting their portfolio, the next step of the application process is for the Personnel Committee of the faculty member's assigned department to review the faculty member's materials. The Personnel Committee of the faculty member's department would then send a letter of recommendation or non-recommendation to the Dean assigned to the department. The Dean would review the faculty member's materials and author their own letter of recommendation or non-recommendation, which would then be transmitted to the Vice Chancellor for Academic Affairs. The Vice Chancellor makes a determination as to the faculty member's eligibility for promotion based on the materials and the letters from the previous levels of review. According to Vice Chancellor for Academic Affairs and Provost Pappini, applications for promotion are also reviewed by UIS's college personnel committee, UIS's campus promotions committee, UIS's Chancellor, and UIS's Board.

On August 16, 2000, UIS hired Petitioner as an Assistant Professor. On August 16, 2003, UIS promoted her to Associate Professor. On September 14, 2021, Petitioner applied for a promotion to Full Professor of Art History. In December 2021, while her application for promotion to Professor of Art History was pending, Petitioner requested that a written statement she obtained from a fellow faculty member be placed in her file so those reviewing her application for promotion could take it into consideration. In the written statement, the faculty member, who was serving on the review committee for Petitioner's application for promotion, disclosed that one of UIS's Deans made a harassing statement about Petitioner when he said that UIS should have never hired her. At first, Pappini refused to include the written statement in Petitioner's file. According to Petitioner, only after she threatened legal action did Pappini then add the written statement to her file.

On April 14, 2022, UIS notified Petitioner that she would not be promoted. According to Petitioner, she was told by UIS that she did not meet UIS's standards for excellence in teaching. In her Request, Petitioner asserts that she is the only foreign-born faculty member in her department. According to Petitioner, being foreign born, she has an accent and English is her fourth language. Petitioner asserts that the members of her department's Personnel Committee who reviewed her application for promotion wrote in a letter of non-recommendation that Petitioner's English is not good, and that they did not like how she expresses herself and presents the material. In accordance with UIS's promotion policy, the department members' letter of non-recommendation was then used by others who reviewed Petitioner's file to justify denying Petitioner the promotion. Petitioner asserts in her Request that her assigned Dean, who was also foreign-born, was the only one during the application process who reviewed Petitioner's file and found that Petitioner met the standards for excellence in teaching and found that Petitioner was fit for a promotion. Petitioner asserts that her department members neglected to consider material in her file, such as peer reviews and student letters recommending her for promotion. In particular, Petitioner asserts that her department failed to consider Professor of Art History J. Perkins's peer review. Perkins, who was Petitioner's immediate supervisor

and sat in on her classes, rated Petitioner's teaching as excellent. Petitioner also asserts that her department members failed to consider all the other peer reviews from faculty members in different departments who sat in on Petitioner's classes and praised her teaching.

In her Request, Petitioner also asserts that her colleague Missy Thibodeau-Thompson was promoted. According to Petitioner, Thompson is American-born and served in the same department as Petitioner at UIS. Thibodeau-Thompson is also the department chair's wife. Petitioner asserts that even though Thibodeau-Thompson had a less excellent record than herself, everyone in the department endorsed Thibodeau-Thompson for promotion.

Petitioner also asserts in her Request that, even though Interim Chancellor Karen Whitney signed off on Petitioner's application for promotion, Whitney advised Petitioner that she may have been subject to discrimination. According to Petitioner, Whitney contacted UIS's anti-discrimination officer on Petitioner's behalf and asked the officer to contact Petitioner.

According to Pappini, at each level of the application for promotion process, it was determined that Petitioner did not meet the excellence in teaching requirement. Pappini stated that on March 24, 2022, he sent Whitney a memorandum indicating that, although Petitioner met the Full Professor requirements for scholarship and service, she did not meet the standard of excellence in teaching.

According to EEO Officer Shelby Betford, in September 2021, there were five other Associate Professors, including Thibodeau-Thompson, that applied for promotion to Full Professor. Thibodeau-Thompson was officially promoted in April 2022 and the only professor from Petitioner's department to be promoted at that time.

### Analysis

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). 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). Accordingly, the Commission concludes that Respondent improperly dismissed Petitioner's charge for lack of substantial evidence as to Counts A and C, but properly dismissed Count B for lack of substantial evidence.

### Count A

In order to establish a *prima facie* failure-to-promote case on account of national origin, the evidence must show that: (1) Petitioner is in a protected class; (2) Petitioner applied for an available position; (3) she was qualified for the position but was not selected; and (4) another individual outside Petitioner's protected class and with lesser or equal qualifications was selected in lieu of Petitioner. See *In re Request for Review by: Rudy Rosillo*, IHRC, ALS No. 18-0102, 2019 ILHUM LEXIS 1059, \*2-3 (August 7, 2019).

Here, Petitioner claims that, despite receiving excellent student and peer reviews for her classroom teaching, she was denied a promotion to Professor of Art History on account of her national origin. However, the Commission finds that further investigation is needed to determine whether there is a mere scintilla of evidence to support a *prima facie* case as to Count A. Without further investigation, the Commission cannot properly assess whether prongs three and four of the *prima facie* test are satisfied. As it stands, the Commission cannot properly determine whether the other Associate Professors who applied for promotion in September 2021, and were promoted to Full Professor, had qualifications that were less than or equal to Petitioner's. A review of the applicants' application portfolios, personnel records, and the objective standards (i.e., scoring rubrics, metrics, formulas, etc.), if any, used by UIS's different tiers of review to score each candidate for promotion is necessary. Such a review would help clarify how UIS ultimately makes a final determination about who is eligible for promotion to Full Professor. Without a more thorough assessment of how the applicants' application portfolios, personnel records, and scores compare with Petitioner's, it is indeterminable whether Petitioner was qualified for the promotion she sought. Further, a comparison of application portfolios and personnel records would clarify which of the September 2021 applicants are similarly situated to Petitioner so as to constitute valid comparators, if any.<sup>3</sup>

### Count B

In order to establish a *prima facie* failure-to-promote case on account of sex, the evidence must show that: (1) Petitioner is in a protected class; (2) Petitioner applied for an available position; (3) she was qualified for the position but was not selected; and (4) another individual outside Petitioner's protected class and with lesser or equal qualifications was selected in lieu of Petitioner. See *Rosillo*, 2019 ILHUM LEXIS 1059, \*2-3.

Although the Commission finds that further investigation is necessary to determine whether Petitioner was qualified for the role she sought as to Count A, here, as to Count B, the evidence establishes that prong four of the *prima facie* test is not met. Because prong four is not met, there is no need remand Count B to Respondent for further investigation. The record is devoid of a similarly situated faculty member outside Petitioner's protected class who received a promotion. The evidence shows that other female applicants who applied in September 2021 were promoted to Full Professor, namely Elizabeth Kozmatou, Tena Helton, and Thibodeau-Thompson, who is also from the same department as Petitioner. This refutes Petitioner's claim that she was discriminated against on account of her sex. Accordingly, there is insufficient evidence to support a *prima facie* failure to promote case as to Count B.

### Count C

In order to establish a *prima facie* case of retaliation for engaging in a protected activity, the evidence must show that: (1) Petitioner was engaged in a protected activity; (2) her employer committed a material adverse act against her; and (3) a causal nexus existed between the protected activity and

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<sup>3</sup> Pursuant to 775 ILCS 5/7A-102(C)(2), Respondent "shall have authority to request any member of the Commission to issue subpoenas to compel the attendance of a witness or the production for examination of any books, records or documents whatsoever."

the adverse act. See *Spencer v. Ill. Human Rights Comm'n*, 2021 IL App (1st) 170026, ¶ 40. Engaging in a “protected activity” under the Act consists of opposing unlawful discrimination, such as discrimination based on, race, gender, age, disability, religion etc. *In re Request for Review by: Frank J. Campobasso*, IHRC, ALS No. 13-0179, 2018 ILHUM LEXIS 350, \*8 (October 29, 2018). A “causal nexus” can be established by a showing that the time period between the protected activity and the adverse action is short enough to create an inference of “connectedness.” *In re Lu M. Buenaventura and Springfield Service Corp.*, IHRC, ALS No. 11-0393, 2016 ILHUM LEXIS 52, \*40 (February 25, 2016) (citing *Maye v. Ill. Human Rights Comm'n*, 224 Ill. App. 3d 353, 361-62 (1st Dist. 1991)).

Petitioner claims that she engaged in a protected activity in December 2021 when she requested that Pappini include a written statement from another faculty member in her personnel file, which would be reviewed as part of her application for promotion. According to Petitioner, the written statement constituted evidence that she had been discriminated against at UIS. In March 2022, after Petitioner’s application made its way to him, Pappini sent the memorandum of non-recommendation to Whitney toward the conclusion of Petitioner’s application process. The evidence shows that prong one of the *prima facie* test is met, as Petitioner engaged in a protected activity. Prong two is also met, as UIS denied Petitioner a promotion based on Pappini’s memorandum of non-recommendation. Prong three is also met, as the time period between the protected activity and the adverse action is short enough to create an inference of “connectedness.” See *Lu M. Buenaventura*, 2016 ILHUM LEXIS 52 at \*40. The Commission has found that where the protected activity and adverse act occur within six months of one another, drawing an inference of connectedness is appropriate. See *In re Request for Review by: Annie Burton*, IHRC, ALS No. 17-0238, 2019 ILHUM LEXIS 836, \*4 (June 4, 2019). Accordingly, there is more than a mere scintilla of evidence to support a *prima facie* case of retaliation for engaging in a protected activity.

### CONCLUSION

After reviewing the record, the Commission concludes that the Respondent’s dismissal of Counts A and C of Petitioner’s charge for lack of substantial evidence was not in accordance with the Act. Respondent’s dismissal of Count B was in accordance with the Act.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Respondent's dismissal of Petitioner's charge is **VACATED** and Count A is **REMANDED** to Respondent for **FURTHER INVESTIGATION** and for further proceedings on Count A that are consistent with this Order and the Act;
2. Respondent's dismissal of Count B is **SUSTAINED** for **LACK of SUBSTANTIAL EVIDENCE**;
3. Respondent's dismissal of Count C is **VACATED** and Count C is **REMANDED** to Respondent for a finding of **SUBSTANTIAL EVIDENCE** and for further proceedings that are consistent with this Order and Act.

***This Order is not yet final and appealable.***

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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**Entered this 29th day of MAY 2024.**

Chair Mona Noriega

Commissioner Jacqueline Y. Collins

Commissioner Janice M. Glenn