EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

T Holin Kennen
217 W Main St
Evansville WI 53536

Complainant

vs.

Coalition of Wisconsin Aging Groups Inc
2850 Dairy Dr
Madison WI 53716

Respondent

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

CASE NO. 20122042

EEOC CASE NO. 26B201200034

On March 19, 20 and 25, 2013, the Equal Opportunities Commission Hearing Examiner, Clifford E. Blackwell, III, conducted a public hearing on the merits of the complaint. The Complainant, T. Holin Kennen, appeared in person and by her attorney, Richard Rice of Fox and Fox, S.C. The Respondent, Coalition of Wisconsin Aging Groups (CWAG) appeared by its corporate representative Nino Amato and by its attorney, David McFarlane of Bell, Moore & Richter, S.C. Based upon the record in this matter, the Hearing Examiner now enters his Recommended Findings of Fact, Conclusions of Law and Order.

RECOMMENDED FINDINGS OF FACT

1. The Complainant is an individual who worked for the Respondent at all times relevant to this complaint.

2. The Complainant was employed by the Respondent from January 1, 2005 until December 31, 2012 as a Benefits Specialist and for much of the relevant period was a Lead Benefits Specialist. The funds from which the Complainant was paid came primarily from a grant from Dane County.

3. The Respondent is a not-for-profit corporation whose primary purpose was to provide various forms of legal and other assistance to elderly individuals in Wisconsin. The Respondent's principle place of business was located at 2850 Dairy Drive, Suite 100, Madison, Wisconsin.

4. As a corporation, the operation of the Respondent is overseen by a Board of Directors. At all times relevant to this complaint, the President of the Board of Directors was Michael Linton. Day-to-day operation of the Respondent was overseen by its Executive Director, Nino Amato.

5. During 2011 and 2012, the Respondent faced budgetary and operational challenges due to other not-for-profit organizations serving purposes similar to that of the Respondent.

6. On or about October 4, 2011, Julie Short, an attorney in the Benefits program of the Respondent, filed an internal complaint alleging wrongdoing on the part of the Respondent's Executive Director. Shortly thereafter, Short also filed a complaint with the Madison Department of Civil Rights.

7. Short, at the time she filed her complaints, was the supervisor of the Complainant. In addition to this work relationship, Short and the Complainant were personal friends.

8. On or about October 28, 2011, the Respondent terminated the employment of Short. Upon Short's termination, John Hendrick, another attorney employed by the Respondent, became the Complainant's supervisor.

9. On December 8, 2011, the Respondent's Board of Directors met to finalize its response to Short's complaints. The Board of Directors was concerned about rumors within the staff of the Respondent and questions from entities and individuals from outside of the Respondent. In order to make sure that all employees and representatives of the Respondent had the same information when addressing questions about the Respondent's position, the Board of Directors directed Amato to have each employee read the Respondent's report of its investigation into Short's complaints and to read and sign a Statement of Confidentiality agreeing not to disclose the contents of the Respondent's report. The Statement of Confidentiality stated that a violation of the Statement could lead to discipline up to and including termination. The Respondent's response to the Department was to be filed on December 10, 2011.

10. On December 9, 2011, Amato called an all-employees staff meeting and presented the Board's directive about reading the report and reading and signing the Statement of Confidentiality. The Complainant objected to the directive, asserting that it violated Short's rights of privacy. Subsequent to the meeting, the Complainant sent Amato an emailing further objecting to having to read the Respondent's report and to the signing of the Statement of Confidentiality. The Complainant copied the complete staff of the Respondent on her email to Amato.

11. On or about December 13, 2011, Amato called the Complainant to a meeting in his office. Also attending were the Office Manager, Angie Tuckwood, John Hendrick and Maria Selsor. Selsor was another attorney employed by the Respondent. Selsor was a friend of both the Complainant and Short. At this meeting, Amato accused the Complainant of "stirring the pot" by sending her email to the entire staff and directed her not to do that again. If she did send another "all staff" email, she could be disciplined for it, but would not be disciplined for her past email or her refusal to sign the Statement of Confidentiality.

12. On January 30, 2012, the Board of Directors met to discuss the year's budget. Amato indicated that the Complainant and two other employees in her work group would receive mandatory furloughs due to a reduction in the grant funding those positions. Additionally, the salary of three attorney's would be reduced while other employees

whose salaries were, at least in part, funded by the same grant, would not be affected. Amato and Hendrick fell into this last category.

13. On or about February 2, 2012, eight employees including the Complainant filed an internal complaint with the Board of Directors also identified as the Governing Board, charging the Executive Director, Amato, with harassment, intimidation and retaliation because of their support of Julie Short.

14. On February 14, 2012, the Complainant filed the complaint in this matter and amended it on May 7, 2012.

15. Linton, on behalf of the Board, and Selsor, disputed the proper standard and process for reviewing the February 2, 2012 complaint. Linton considered it to be a complaint under the Board's "whistleblower" provisions, while Selsor viewed it as a claim of discrimination and retaliation. The importance of the characterization is whether the complaint needed to have been filed with supporting evidence or not.

16. The Board met fairly quickly with Amato and Selsor urging Linton for a similar quick hearing of the employee complaints. The Board set February 20, 2012 as the date for hearing the employee allegations and cancelled any previously granted leave to assure the employees would be present. In fact, not all complaining employees were able to attend the meeting on February 20, 2012.

17. On February 10, 2012, Amato called an all-employee staff meeting and complained about the lack of professionalism of some employees without naming individuals. On February 15, 2012, Amato followed up his complaint's with a further complaint about how some employees had behaved at the February 10, 2012 staff meeting.

18. Kennen and several other employees objected to Amato's email and criticisms asserting that they were intended to humiliate and embarrass the employees who had filed the complaint.

19. Amato sent an all-staff email indicating that Amato was going to propose to the Board that the proposed furloughs of all employees be lifted.

20. Linton indicated on February 15, 2012 that he concurred with Amato's proposal to lift the furloughs and that the matter would be taken up at the February 20, 2012 meeting of the Board of Directors.

21. Later on February 15, 2012, Amato wrote an email to the Complainant and the other affected employees that the furloughs were lifted.

22. In the days leading up to the February 20, 2012 and the days immediately thereafter, the complaining employees objected to the process, submitted materials to be considered and responded to questions raised by the Board during the February 20, 2012 meeting.

23. On February 24, 2012, the Personnel Committee determined that the allegations of retaliation were not sustained, and dismissed the complaint of the eight employees. The Committee transmitted its findings and conclusion by email the same day.

24. Several employees, including three attorneys, quit.

25. On February 25, 2012, the Respondent changed the locks on the doors and offices. Allegedly, only employees supportive of Amato were given keys.

26. On March 2, 2012, the Complainant was unable to gain access to her office due to the changing of the locks. She had a dispute with another employee, Elizabeth Conrad, over whether Ms. Conrad had a key or could let the Complainant in. Later the Complainant apologized for her language in her dispute with Conrad.

27. After seeing Conrad, the Complainant emailed her supervisor, Hendrick, to inquire about the changed locks and indicate that she was unable to enter her office. She also stated that she believed she'd experienced nearly daily harassment and retaliation since Ms. Short's termination and had suffered physically as a result of the treatment.

28. On March 6, 2012, the Complainant sent another email to Hendrick indicating her belief that only the eight employees who submitted the complaint on February 2, 2012 had not received keys and that her questions about the keys had not yet been answered. The email further states that the Complainant viewed this as yet another example of retaliation.

29. On March 8, 2012, Hendrick wrote an all-staff email explaining the reasons for the changed locks and the perceived need for additional security. Hendrick indicated the due to the resignation of three of the attorneys and concerns for the work product of the Respondent along with the files that the attorneys had been working on, the Respondent felt the need for additional security. Employees could obtain keys from the Office Manager, Angie Tuckwood.

30. In April, 2012, the Complainant became concerned about missing documents in her personnel file. Specifically, there were missing evaluations. In response to the Complainant's concerns, Hendrick searched Ms. Short's office and discovered the missing evaluations. These documents were placed in the Complainant's personnel file.

31. In June, 2012, the process of winding up the Benefits Specialist program began with Dane County. The Complainant was requested to participate in the planning of the transition.

32. The Complainant was terminated as of December 31, 2012, when the program by which she was employed was transferred to Dane County.

CONCLUSIONS OF LAW

1. The Complainant is an individual who supported another employee's filing of a complaint and opposed the alleged retaliation of the Respondent and as such is a person covered by Section 9 of the Equal Opportunities Ordinance.

2. The Respondent is an employer and a person within the contemplation of Section 9 of the Equal Opportunities Ordinance.

3. The Complainant experienced significant trauma and difficulties at work from the period of October, 2011, through the end of her employment on December 31, 2012.

4. While the working conditions and employment of the Complainant and the operation of the Respondent may have contributed to the difficult employment situation of the Complainant, the Complainant's opposition to retaliation and her support of Ms. Short were not motivating factors in her treatment.

ORDER

The complaint is dismissed. The parties shall bear their own costs.

MEMORANDUM DECISION

The record in this case reveals a community-based organization in turmoil. The turmoil appears to have its antecedents in funding difficulties that eventually translated into distrust among the employees, management, and the Board of Directors. In the experience of the Hearing Examiner, while this presents an unhappy and often dysfunctional situation, it is not unique to the parties in this matter. In such an environment, things are sometimes said and done that give rise to litigation of various claims. That is precisely what happened in this circumstance.

The Complainant filed her complaint with the Department of Civil Rights in February, 2012, and set forth a number of allegations of discrimination or retaliation. The complaint was amended in May of 2012 and squarely set forth the allegations of retaliation. The Initial Determination issued in this matter concluded that there was no probable cause for most of this allegations, but did find that there was probable cause to believe that retaliation had occurred in one respect. That claim survived to the hearing in this matter.

The Complainant in her initial post-hearing brief outlines two specific claims for retaliation. First, she asserts that the Respondent's determination to require her and all other Respondent employees to read the Respondent's report of its investigation into the allegations made by a previously dismissed employee, Julie Short, a report that was going to be filed with the Department of Civil Rights in response to Ms. Short's complaint, and to sign a confidentiality provision represented retaliation as that term is used in the Equal Opportunities Ordinance 39.03(9) Mad. Gen. Ord. The confidentiality provision indicated that a breach of that provision could subject the signatory to discipline up to and including dismissal.

The second assertion is that the Complainant was exposed to possible furloughs during 2012 until the end of her employment on December 31, 2012. It is the Complainant's contention that she and several co-workers who also supported Julie Short were the only ones subjected to possible furloughs and that Respondent's failure to clearly rescind those furloughs created a continuing threat of loss that was in retaliation for the Complainant's opposition to a discriminatory practice.

The Respondent denies that it treated the Complainant less favorably than any other employee. Rather, the Respondent asserts that it valued the work performed by the Complainant and took no steps to discipline her or to threaten her employment.

The Complainant states that she can prevail by using either the method of direct proof or that of indirect proof and that the record supports proof by either method. In a case of direct proof, the Hearing Examiner examines the allegations and facts and based upon the evidence and the inferences drawn from that evidence determines whether the Complainant has met her burden of proof to show that discrimination has been demonstrated by the greater weight of the credible evidence. In a claim presented by indirect evidence, the Hearing Examiner will use the McDonnell Douglas/Burdine burden-shifting framework to determine whether discrimination or in this case, retaliation, has been demonstrated. Direct evidence relies on statements and objective evidence while the indirect approach relies on inferences and proof leading to the ultimate conclusion.

In the mind of the Hearing Examiner, this is a case that is more subject to proof by the indirect method. The Hearing Examiner does not find the type of clear statements of animus that he would expect to find in a case presented by the direct method.

The first step in the indirect method is to determine if the Complainant has presented a *prima facie* claim of retaliation. Both parties correctly state that, in general, a *prima facie* claim of retaliation consists of the following elements: 1. Proof of the exercise of a right protected by the Ordinance; 2. Proof of an adverse action, and 3. Some causal connection between the protected activity and the adverse action. Should the Complainant make out the *prima facie* claim, the burden shifts to the Respondent to present a legitimate, nonretaliatory explanation for its actions. Presuming that the Respondent makes such a presentation, the Complainant may still prevail if she can point to convincing evidence that the proffered explanation of the Respondent is either not credible or represents a pretext for an otherwise discriminatory or retaliatory explanation.

Looking first at the Complainant's claim that she was retaliated against when she was required to read the Respondent's report of its investigation of Ms. Short's whistleblower allegations and MEOC complaint, and was then subject to a threat of termination if she disclosed the contents of that report, the Hearing Examiner finds some confusion over what might be the protected activity. On one hand, the record indicates that the Complainant believed that being forced to read the results of the Respondent's investigation into Ms. Short's complaints violated Ms. Short's rights of privacy. On the other hand, the Complainant seems to argue that her opposition was based upon her support of Ms. Short and Ms. Short's right to file her complaints. In either case, the Complainant asserts that the requirement to sign a confidentiality provision that was not lifted during the pendency of the Complainant's employment represents retaliation.

The Hearing Examiner disagrees with the Complainant that the Complainant's wish to protect Ms. Short's privacy represents a right protected by the Ordinance. While Ms. Short may have certainly had a right of privacy, the Complainant's enforcement of that right does not involve any provision of the Equal Opportunities Ordinance. Once filed, a complaint becomes a public record and all documents submitted in connection with that complaint are public records. That the Complainant wished to protect her colleague and her colleague's rights is laudable, but it is not the exercise of a right protected by the Ordinance that might trigger the retaliation protections of the Ordinance.

A claim that the Complainant was seeking to support Ms. Short's right to file Ms. Short's complaint is more closely linked to the retaliation provisions of the Ordinance and is arguably a right protected by the Ordinance. While the Hearing Examiner finds the connection between the Complainant's opposition to reading the report of the Respondent's investigation into Ms. Short's complaints a little tenuous, the Hearing Examiner finds that the Complainant, in good faith, believed that she was supporting Ms. Short's interests and her rights under the Ordinance by opposing the Respondent's requirement that all the employees of the Respondent read its report and conclusions.

The next question is, did reading the Respondent's report of its investigation into Ms. Short's whistleblower or MEOC complaint represent an adverse action? The actual reading and possession of the information contained in the Respondent's report of its investigation did not adversely affect the Complainant or her employment with the Respondent. If there is an adverse action involved in this part of the Complainant's charge, it must stem from the requirement to sign a confidentiality agreement that remained in effect until the end of the Complainant's employment.

The Hearing Examiners believes that the Complainant truly felt that the Respondent could/was holding the threat of termination over her if she disclosed any of the terms of the report that she was required to read. While the Hearing Examiner believes that the Complainant held that conviction, based upon a general mistrust of the Respondent's management, the Hearing Examiner is not convinced that such a belief was reasonable under the general circumstances.

The document in question, the Respondent's response to Ms. Short's whistleblower and MEOC complaints, though confidential at the time of the December 9, 2011 meeting, was going to be filed with the MEOC the next day. Once filed that document would become a public record and there would be no reasonable purpose to considering it confidential. The record indicates that the Complainant was told this in some form by both Maria Selsor and John Hendrick, both attorneys with the Respondent. Hendrick was also the Complainant's supervisor at the time.

The Hearing Examiner understands the Complainant's feelings of mistrust and uncertainty even given the advice of two attorneys, but a reasonable person would not have feared possible termination or some other form of discipline for disclosure of the contents of the Respondent's report once it had been filed with the Commission. The Hearing Examiner cannot conclude that the Complainant has presented sufficient evidence to establish an adverse action from either being required to read the Respondent's report or to sign and be subject to the requirements of the confidentiality agreement.

Even if the Complainant could demonstrate an adverse employment action, she would still need to demonstrate that there was a causal connection between her opposition to reading the report or her opposition to signing the confidentiality statement, and her support of Ms. Short's filing of her complaint. As the same requirements were placed on all of the Respondent's employees, the Hearing Examiner does not find that the Complainant can satisfy this final element of the *prima facie* claim. While the Complainant contends that she was the only employee to publicly oppose the requirement to read and sign the report and confidentiality statement, that does not demonstrate the link that the Complainant believes it does. What the Hearing Examiner finds more compelling is that the requirement was placed on all employees regardless of their support or lack of support for Ms. Short.

Even if the Complainant could make out a *prima facie* claim of retaliation on the first of her claims, it shifts the burden to the Respondent to present a legitimate, nondiscriminatory explanation. The record indicates that the Respondent's Board of Directors at its meeting on December 8, 2011, directed the Respondent's Executive Director, Nino Amato, to require the Respondent's complete workforce to read the report and to sign the agreement. This was the report presented to the employees at the meeting on December 9, 2011. The stated purpose for this requirement was to make sure that all of the employees had the same information and were aware of the Respondent's position with respect to Ms. Short's complaints. The Board of Directors felt this universal knowledge was important because several client organizations and news organizations were interested in what was happening at the Respondent's offices. The Board of Directors wanted the organization to speak from the same knowledge base and with, as much as possible, one voice.

Such a desire to present a unified response to public inquiry represents a legitimate, nondiscriminatory reason for the Respondent's actions. The Respondent's actions might have been somewhat better executed, but the underlying purpose is sound.

In attempting to overcome the production of the Respondent's explanation, the Complainant points to copies of the minutes of the Board of Directors meeting of December 8, 2011, to point out that there are no notes of the directive to require the reading of the report and the signing of the confidentiality statement by all employees. Of itself, this does not overcome the Respondent's production of a legitimate, nondiscriminatory explanation. First, even if the "all-employee" requirement were made up by Amato on his own, the fact that it was required of all employees overcomes any possible argument that it was intended as retaliation against the Complainant. Second, the Respondent points to an entry on the December 8, 2011, minutes indicating that the Board of Directors had gone into closed session.

When a Board goes into closed session, no notes are kept of the discussion and only final decisions, if any, are noted for the record. While the decision to require all employees to read the report and to sign a confidentiality agreement might have been the type of final decision that could be disclosed after a closed session, it is not necessarily required to be disclosed.

The Complainant asserts that Amato's actions at a staff meeting on December 12, 2011, reinforced her belief that she could be terminated for disclosing the contents of the confidential report. It is important to note this meeting took place after the report was submitted to the MEOC and, presumably, became a public record. The Complainant contends that Amato threatened her with termination after she sent an email summarizing her concerns over having been made to read the report and to sign the confidentiality statement to all of the Respondent's email users. While a private recording of this meeting discloses that Amato was upset with the Complainant's actions, the recording makes it clear that it was not the Complainant's objections that caused Amato's concern, but the use of the Respondent's email system to send the message to all of the Respondent's employees. While Amato did threaten the Complainant with termination, it was not for her past actions, but came with a warning about future inappropriate use of the email system.

While these events show a workplace that was filled with mistrust and unhappy employees, the record does not demonstrate that the Respondent retaliated against the

Complainant for her opposition to reading the Respondent's report of its investigation of Ms. Short's complaint or for the Complainant's expression of concern over the requirement that she sign the confidentiality statement with the threat of termination for violation of confidentiality. Equally, the record does not demonstrate that the Respondent retaliated against the Complainant for her support of Ms. Short's complaints. The record does demonstrate that the Complainant felt intimidated by the language of the confidentiality statement and Amato's demeanor in staff meetings, but there is nothing in the record to connect these feelings with the exercise of any right protected by the Ordinance.

The Complainant's second claim of retaliation stems from the proposed imposition of furloughs in February of 2012 on the Complainant and other employees who were supportive of Ms. Short and Ms. Short's complaints. The Hearing Examiner does not find that the proof in this matter fits best with the direct proof method. Rather, the facts and allegations are more subject to proof through the use of the indirect method outlined in the McDonnell Douglas/Burdine approach.

The first question to be addressed is whether the Complainant exercised a right protected by the Ordinance. The Complainant's protracted and open support for Ms. Short and Ms. Short's complaint to the MEOC represents such a generalized right subject to the protection of the Ordinance. The Ordinance is clearly set up to enable co-workers and others to encourage and support others in their exercise of rights under the Ordinance. The Complainant's vocal and enduring support for Ms. Short and her complaint is sufficient to meet the first prong of the *prima facie* claim of retaliation.

The second question to be addressed is whether the Complainant experienced an adverse employment action. The threat of furlough and the accompanying loss of income and benefits that is part of a furlough certainly represent an adverse action. The mere threat of furlough even if, as here, no single day is spent on a furlough, likely decreases ones enjoyment of their employment and casts a pall upon everyday life. The Complainant contends that this threat remained constant with her until the end of her employment at the end of 2012.

The third and key question in the first part of the McDonnell Douglas/Burdine analysis is determining whether there is a causal link between the adverse action experienced by the Complainant and her exercise of a right protected by the Ordinance.

One factor that often indicates a connection between the first two elements is time. The closer to the event of support and the adverse action, the more likely the adverse action is to be causally linked. While almost two months had elapsed between Ms. Short's termination and the decision to impose furloughs, that is not so long a time as to discount entirely a connection. However, the termination of Ms. Short is not truly the date that should be used in judging temporal closeness. What the Complainant argues is that her continued statements of support and her actions taken in support of Ms. Short are what resulted in the decision to place her employment in jeopardy. This might be analogized with the grain of sand in the oyster that causes the growth of a pearl. It is not the mere placement of the sand that causes the pearl to grow but the constant irritation.

From the record, it is not clear in what form the Complainant's actions supported Ms. Short from early December up until the end of January when the Board made its decision that furloughs would be imposed. It seems clear that there was at best an uncomfortable

working relationship between the Complainant and Amato, and perhaps others, but in what form or to what extent that manifested itself as support for Ms. Short and her complaint is not clear.

Giving the Complainant the benefit of the doubt on this point, the Hearing Examiner might be able to find that Amato and others were irritated by the Complainant's vocal support of Ms. Short and Ms. Short's complaint. Assuming that the Complainant is able to show such a causal link between her support of Ms. Short and the creation of the furloughs, it shifts the burden to the Respondent to state a legitimate, nonretaliatory explanation for its action.

The Respondent described that its new accountants utilized a different method for tracking grant funds and their expenditure. While it appears that prior to 2012, grant funds were more or less aggregated into a common pool for the use of the entire organization, the 2012 approach was to tie specific grants to their specific expenditure, e.g., overhead, employee costs, etc. When viewing the Respondent's grant income in this transactional manner, the Benefits Specialist program was over budget for 2012 and the initial method for bringing the program into balance with its funding was to cut costs in the form of furloughs. This represents a legitimate, nonretaliatory reason for imposing furloughs on the employees paid by the supporting grant.

The Hearing Examiner notes that furloughs represented an initial method of meeting the grant limitations faced by the Respondent. Another approach, though generally less certain, was to increase the funding for the program. It is this approach that the Respondent states resulted in the lifting of the furloughs later in February, 2012.

Though the furloughs were never actually imposed, the Complainant contends that the lack of a clear statement by the Board of Directors to the effect that the furloughs would not be imposed created and maintained a dark cloud over the Complainant until the end of her employment with the Respondent. While the Hearing Examiner understands the impact of uncertainty on the Complainant, it is more an issue of a lack of communication than a tactical technique used by the Respondent to maintain the Complainant's cooperation and to limit her support of Ms. Short or her own complaints of retaliation.

An additional basis for the Complainant's claim of retaliation is based upon her own filing of an internal complaint with the Board of Directors on February 2, 2012. Though the Board of Directors found that there was no basis for the Complainant's and seven other employees complaint of retaliation on February 24, 2012, the fact that the Complainant exercised her right to complain in that form certainly could support her own complaint of retaliation which was filed as an amendment to her initial complaint on May 7, 2012. Between the filing of the complaint on February 2, 2012, and the amending of her complaint on May 7, 2012, the Complaint indicates that she experienced "almost" daily retaliation. The record does not describe in what manner the Complainant was retaliated against except for the incident involving the changing of the lock at the Respondent's offices in early March of 2012.

In this incident, the Complainant appeared for work on March 2, 2012 only to find that the locks to the suite had been changed and additional locks placed on the offices. The key originally provided to the Complainant did not work.

It was not until sometime on March 8, 2012, that the Complainant and all other employees were told the reasons for the additional security, and how to obtain a new lock. As of

March 6, 2012, the Complainant was not provided with an explanation or a new key to the office.

It is not clear from the record whether this was retaliation or a case of a badly managed change implemented by the Respondent. On one hand, it fairly shortly followed the Board's decision that there was no basis for a complaint filed, in part, by the Complainant. It clearly disrupted the Complainant's ability to work and would likely cause the Complainant to be upset and concerned about her employment. There may be evidence connecting the action with the filing of the February complaint, if as alleged by the Complainant, the only employees not given keys in a timely manner were the employees who filed the February 2, 2012 complaint.

On the other hand, the Respondent's explanation was that it was reacting to the resignation of three of the attorneys in the office with some apparent threat to remove files and material from the office. There is no doubt that this situation posed a problem for the Respondent and for all of its employees, both those who had filed the complaint and those who hadn't.

While the Hearing Examiner is troubled by the manner in which the Respondent handled communication with its employees during this circumstance, the Hearing Examiner finds that the stated reason for the Respondent's actions, the need to protect its files and materials from possible removal, states a legitimate reason and that the record does not demonstrate any basis for finding the proffered explanation not to be credible or a pretext for any otherwise discriminatory or retaliatory motive.

One final situation in the record might form the basis for the Complainant's claim of retaliation. In April of 2012, the Complainant became aware that there were evaluations and possibly other documents missing from her personnel file. If the Respondent had removed those positive evaluations from the Complainant's file, it could represent an adverse action in that it might make it more difficult for the Complainant to maintain her employment or to find future employment. Though the temporal connection with any protected activity appears tenuous, it is arguably close enough to fall within the zone of protection.

The Respondent indicates that it did not remove the items from the Complainant's file, but that it found the documents in Ms. Short's former office and placed them in the Complainant's files therafter. There is nothing in the record that challenges this explanation. It does provide yet another example of a lack of professionalism and organization on the part of the Respondent, but the Hearing Examiner cannot find that it represents any form of retaliation.

The record of this proceeding demonstrated that the Complainant clearly felt threatened and upset about the events affecting her work environment and the operation of the Respondent. While the Hearing Examiner does not find that any of the conduct represented illegal retaliation, he is sympathetic to the emotional toll a workplace in chaos can have on employees and managers alike. Management may have been struggling with a shifting political and funding base, but it does not appear to have been the best-organized office and management structure. It is that confusion and lack of organization that generated the distrust and emotions that form the basis of this complaint.

Signed and dated this 23rd day of May, 2017.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Richard F Rice
David E McFarlane