STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GLORIA J. HOLLOWAY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 00-3866
	)	
ROLLINS COLLEGE,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

A formal hearing was held before the Division of Administrative Hearings by Daniel M. Kilbride, Administrative Law Judge, on November 21, 2000, in Orlando, Florida. The following appearances were entered:

APPEARANCES

For Petitioner: Gloria J. Holloway, pro se
397 Chaucer Lane, South
Lake Mary, Florida 32746

For Respondent: Mark Van Valkenburgh, Esquire
Winderweedle, Haines, Ward & Woodham
250 Park Avenue South, 5th Floor
Winter Park, Florida 32789

STATEMENT OF ISSUE

Whether Petitioner was wrongfully terminated from her position as a custodial worker with Respondent because of her race, in violation of Section 760.10(1)(a), Florida Statutes.

PRELIMINARY STATEMENT

Petitioner timely filed a Charge of Discrimination with the Orlando Human Relations Department on November 20, 1995. The file was transferred to the Florida Commission on Human Relations (Commission) on December 6, 1995. Following an investigation by the Commission, a Determination: No Cause was issued by the Commission on August 7, 2000. Petitioner timely filed a Petition for Relief. Thereafter, on September 19, 2000, this matter was transmitted to the Division of Administrative Hearings for hearing. Following discovery, the hearing was held on November 21, 2000.

At the hearing, Petitioner testified in her own behalf, offered the testimony of two witnesses, and did not offer any exhibits in evidence. Respondent offered the testimony of one witness and entered eight exhibits in evidence. The proceedings were recorded but not transcribed. Petitioner filed her proposals on December 12, 2000. Respondent filed a Proposed Findings of Facts and Conclusions of Law on December 6, 2000. Each party's proposals has been given careful consideration in the preparation of this order.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

1. Petitioner, an African-American female, was hired by Respondent in the fall of 1994, as a custodial worker and she continued in that position until October 17, 1995, when she was terminated.

2. On or about October 12, 1995, Rollins College (Respondent) received two letters of complaint regarding Petitioner's conduct and work performance.

3. One of these was from a group of students living in a dorm which Petitioner was assigned to clean. The other letter was from the parent of a student living in another dorm assigned to Petitioner.

4. These letters were not the first complaints Respondent had received regarding Petitioner's work performance.

5. After receiving the letters, Petitioner was placed on a three-day suspension by Tom Waters, Director of Respondent's Facilities Management Department.

6. After investigating the complaints, Respondent, on October 17, 1995, terminated Petitioner's employment.

7. Prior to the termination of her employment, Petitioner attended a training and safety meeting of custodial workers.

8. During that meeting, Petitioner's immediate supervisor, Frank Pravdik placed his hand on Petitioner's uniform shirt and stated words to the effect that the shirt was "nasty."

9. Pravdik was generally known to be a difficult person to work under. He was eventually terminated by Respondent because of his abrasive management style.

10. Fredrick Wooden, called as Petitioner's witness, assisted with the management of the custodial workers prior to his retirement. He often disagreed with Pravdik's style of management.

11. In the case of Petitioner, he did not believe that any disciplinary actions taken against her were unwarranted, and Respondent had legitimate grounds to terminate her employment.

12. Wooden further believed that Pravdik treated all subordinate employees equally, if not with respect.

13. On November 20, 1995, Petitioner filed a Charge of Discrimination with the Orlando Human Relations Department.

14. The Charge of Discrimination indicated that Petitioner believed that Respondent discriminated against her because of her race.

15. Petitioner testified that the Charge of Discrimination was incorrect. Petitioner did not actually believe that the termination of her employment was related to her race.

16. However, she permitted a representative of the Orlando Human Relations Commission to complete for her the Charge of Discrimination.

17. The Charge does not allege a claim of retaliation nor does it allege that Petitioner ever complained about Pravdik's behavior to Respondent.

18. While Petitioner testified that she first visited the Orlando Human Relations Department prior to the date of her termination, the Charge is signed, dated and notarized on November 20, 1995, three days after the effective date of her termination.

19. After the Commission issued a No Cause Determination in this matter, Petitioner filed a Petition for Relief. The Petition for Relief alleges that Respondent terminated her employment in retaliation for complaining about Pravdik.

20. Petitioner again testified that the Petition for Relief was also incorrect stating her case was not about whether Respondent had a right to terminate her employment, but instead was about whether Pravdik violated her civil rights for impermissibly touching her person and calling her shirt "nasty."

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding, and the parties thereto, pursuant to Subsections 120.569 and 120.57(1), Florida Statutes.

22. Petitioner originally contended that she was unlawfully discharged by Respondent because it discriminated

against her due to her race. Petitioner relies on the Florida Civil Rights Act of 1992, Section 760.10, et seq., Florida Statutes (1994). The Civil Rights Act prohibits certain specified unlawful employment practices and provides remedies for such violations.

23. That statute provides, in pertinent part, as follows:

> 760.01 PURPOSES, CONSTRUCTION; TITLE
>
> * * *
>
> (2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the State freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health and general welfare, and to promote the interests, rights, and privileges of individuals within the state.
>
> (3) The Florida Civil Rights Act of 1992 shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provisions involved.
>
> * * *
>
> 760.10 Unlawful employment practices.
>
> (1) It is an unlawful employment practice for an employer:

> (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.
>
> * * *

24. The Florida Civil Rights Act is patterned after Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-2. School Board of Leon County v. Weaver, 556 So. 2d 443 (Fla. 1st DCA 1990). In Florida, there is a long-standing rule of statutory construction which recognizes that if a state law is patterned after a federal law on the same subject, the Florida law will be accorded the same construction as in the federal courts to the extent the construction is harmonious with the spirit of the Florida legislation. O'Loughlin v. Pinchback, 579 So. 2d 788 (Fla. 1st DCA, 1991).

25. In Department of Corrections v. Chandler, 581 So. 2d 1183 (Fla. 1st DCA 1991), the court analyzed the types of claims under the Florida Civil Rights Act. In that case, the court noted as follows:

> Pertinent federal case law discloses two means by which a discriminatory employment claim may be tried. The first, . . ., by showing disparate treatment, and the second, by showing discriminatory impact. When employing the former, a claimant must establish an employer's intentional discrimination, however, as to the latter, intentional discrimination is not required,

> and the claimant essentially challenges practices which are fair in form but discriminatory in operation. (Citations omitted) Id. at 1821 n.2

26. Section 760.10, Florida Statutes, prohibits an employer from taking any adverse employment action against an employee due to that employee's race.

27. The statute also prohibits an employer from retaliating against an employee for complaining of an unlawful practice.

28. Failure to allege or indicate particular grounds for discrimination in a petitioner's charge of discrimination prohibits Petitioner from arguing that discrimination occurred based on those grounds in later proceedings. See, e.g., Haynes vs. State of Florida, 1998 W.L. 271462 (U.S.D.C. So. Dist. Fla. 1998). See also Abeta vs. Transamerica Mailings, Inc., 159 F.3rd 246, 254 (6th Cir. 1998) (Plaintiff's failure to check the retaliation box and describe anything indicating that she might have a retaliation claim prevented her from pursuing retaliation claim); and Auston vs. Schubnell, 116 F.3rd 251, 254 (7th Cir. 1997).

29. Petitioner's Petition for Relief is fatally flawed on its face in that it is based on grounds not alleged in Petitioner's Charge of Discrimination. Haynes, supra.

30. At the hearing on this matter, however, Petitioner agreed that her complaint was limited to those facts set forth in her initial Charge of Discrimination. Those facts allege a claim of discrimination based on race. Any allegations of retaliation, therefore, are waived by Petitioner.

31. At the hearing, Petitioner specifically stated that she did not believe that race was a factor in the decision to terminate her employment.

32. While the actions of Petitioner's supervisor in touching her shirt and insulting her in front of her co-workers at the training and safety meeting were unwarranted and inappropriate, they did not violate Chapter 760, Florida Statutes.

33. Petitioner at all times relevant to this action, has failed to prove that she was discriminated for any of the reasons specified within the meaning of the Florida Civil Rights Act.

34. Petitioner produced no credible evidence that any supervisor or other employee of Respondent made the decision to terminate her based upon an unlawful employment practice. Nix vs. WLCY Radio, 738 F.2nd 1183, reh. denied 747 F.2nd 710 (11th Cir. 1984).

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing Petitioner's Petition for Relief with prejudice.

DONE AND ENTERED this 26th day of December, 2000, in Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of December, 2000.

COPIES FURNISHED:

Gloria J. Holloway
397 Chaucer Lane, South
Lake Mary, Florida 32746

Sharon Moultry, Agency Clerk
Florida Commission on Human Relations
325 John Knox Road
Suite 240, Building F
Tallahassee, Florida 32303-4149

Mark Van Valkenburgh, Esquire
Winderweedle, Haines, Ward & Woodham
250 Park Avenue South, 5th Floor
Winter Park, Florida 32789

Dana A. Baird, General Counsel
Florida Commission on Human Relations
Building F, Suite 240
325 John Knox Road
Tallahassee, Florida 32303-4149

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.