STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

REGINALD BURDEN,

Petitioner,

vs. Case No. 11-5203

WINN-DIXIE CORPORATION,

Respondent.

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DONALD ROCKHOLD,

Petitioner,

vs. Case No. 11-5204

WINN-DIXIE CORPORATION,

Respondent.

_____/

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in Jacksonville, Florida, on July 27, 2012, October 17, 2012, December 12-14, 2012, and January 23, 2013,[1/] before W. David Watkins, the duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Nah-Deh Simmons, Esquire
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For Respondent: Karen Ibach Bowden, Esquire
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STATEMENT OF THE ISSUE

Did Respondent, Winn-Dixie Corporation (Winn-Dixie), discriminate against Petitioners on account of their race or sex, or retaliate against Petitioners in violation of chapter 760, Florida Statutes?

PRELIMINARY STATEMENT

Petitioners filed charges of discrimination with the Florida Commission on Human Relations (FCHR) on February 9, 2011, claiming that Winn-Dixie had discriminated against them on the basis of their race and gender, and had retaliated against them. The FCHR rendered a "No Cause" determination in both cases on July 26, 2011.

On August 31, 2011, Petitioners each filed a Petition for Relief requesting an administrative hearing regarding the FCHR's "No Cause" determination pursuant to Florida Statute 760.11(7). On December 15, 2011, the undersigned issued an Order of Consolidation to consolidate the two matters. On April 6, 2012, Petitioners filed a motion requesting the undersigned to remand these matters to the FCHR and forego the final hearing, which Winn-Dixie opposed. Both parties briefed the issue, and on April 13, 2012, the undersigned denied the Motion to Remand.

The final hearing was convened as noticed on July 27, 2012, but was not completed. Additional days of hearing took place on October 17, 2012, December 12 through 14, 2012, and January 23, 2013. As previously noted, the July and October hearings were held by video teleconference and the others were in person in Jacksonville, Florida. The parties agreed the evidence presented would be applicable to both cases except as to the issue of damages.

At hearing, Petitioners testified on their own behalf. Additional witnesses called by Petitioners and Respondent included Jayson Kielar (Petitioners' former supervisor), Robert Scott (Winn-Dixie human resources manager), Stacy Brink (Winn-Dixie associate relations specialist), Frank Butler (Petitioners' former co-worker), and Rick Jones (Petitioners' former co-worker). Petitioners' Exhibits 1 through 7 and Respondent's Exhibits 1 through 10, and 12 were admitted into evidence.

At the conclusion of the hearing, the parties agreed to file their proposed recommended orders within 20 days of the filing of the official transcript. The transcript of the final hearing was filed on March 25, 2013.

On the afternoon of April 15, 2013, the agreed deadline for the filing of proposed recommended orders, successor counsel[2/] for Petitioners filed a Motion for Extension of Time, seeking an

extension of the filing deadline to May 6, 2013. This request was opposed by Respondent, since its Proposed Recommended Order had been timely filed that afternoon, creating concern that if an extension were granted, Petitioners would have an unfair advantage in the preparation of their proposed recommended order. Over Respondent's objection, the undersigned granted the requested extension. However, Respondent was given leave to file a brief supplemental proposed order within 10 days from Petitioners' filing in order to minimize any prejudice that may have resulted from the filing extension.

Notwithstanding the extension of time granted to Petitioners, no proposed recommended order was filed on their behalf as of the May 6, 2013, deadline. However, one week later, on May 13, 2013, Petitioners' Proposed Recommended Order was filed with the Division. The late-filed Proposed Recommended Order immediately precipitated the filing of a Motion to Strike by Winn-Dixie on the grounds it was untimely. No response to the Motion to Strike was filed by Petitioners.

On May 21, 2013, the undersigned entered an Order denying the Motion to Strike Petitioners' Proposed Recommended Order but at the same time extending by seven days the period within which Winn-Dixie was permitted to file a brief supplemental response to Petitioners' filing. On May 30, 2013, Winn-Dixie filed a supplemental proposed order in response to Petitioners' filing.

The Proposed Recommended Orders submitted by Petitioners and Respondent, as well as Winn-Dixie's response to Petitioners' Proposed Recommended Order, have all been carefully considered in the preparation of this Recommended Order.

All citations are to Florida Statutes (2011) unless otherwise indicated.

FINDINGS OF FACT

Based upon the demeanor and credibility of the witnesses and other evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. Petitioners, Reginald Burden (Burden) and Donald Rockhold (Rockhold) were co-workers and Warehouse Supervisors for the night shift at Winn-Dixie's General Merchandise Distribution (GMD) facility on Edgewood Avenue in Jacksonville, Florida. At the time of their termination from Winn-Dixie, Rockhold had worked for Winn-Dixie for almost ten years and Burden for fourteen years.

2. In March 2009, Rockhold's supervisor, Mark Murray (Murray) received an anonymous letter accusing Rockhold (a/k/a Rocco) of being unable to control his libido and attempting to "sleep with as many women under him as possible, married or single." Murray showed the letter to his immediate supervisor, Operations Manager Jayson Kielar (Kielar), who in turn showed it

to his supervisor, Distribution Center Manager Robert Stewart (Stewart).

3. Contrary to Winn-Dixie policy, the existence of the letter accusing an employee of sexual harassment was not immediately brought to the attention of the Winn-Dixie Human Resources (HR) office. According to Kielar, Stewart did not inform HR because he was afraid someone would be fired. Instead, it was decided the matter would be handled internally at the GMD. Stewart and Kielar informally questioned Rockhold, who denied all of the allegations in the letter. Kielar questioned Stewart's decision not to involve HR, but because Stewart was his boss, he capitulated.

4. In December 2009, Winn-Dixie received a second, similar anonymous letter complaining about rampant sexual harassment in the GMD. This time, however, Peter Lynch, Winn-Dixie's CEO also received a copy. Entitled "Gross Abuse of Power Winn-Dixie Sex Camp," the letter contained lurid accusations of sexual misconduct and named Rockhold as the worst abuser. The letter also accused several other male supervisors, namely Burden (a/k/a Regis or Reggie), Kielar, Murray and Raynell Turner, of sexually harassing female employees.

5. Winn-Dixie immediately launched an investigation to determine whether the allegations were accurate. Robert Scott (an African-American male), Tanya Kornegay (an African-American

female), and Stacy Brink (a white female) interviewed numerous GMD employees and obtained written witness statements. Rockhold was interviewed twice (January 18 and 25, 2010) and Burden once (January 18, 2010).

6. During the course of the investigation, it became evident that many of the more sordid accusations of overt sexual misconduct in the letters were false or unsubstantiated. However, the investigation did reveal violations by Petitioners of Winn-Dixie's "Written Company Policy Statement on Harassment, Including Sexual and Racial Harassment." That Statement provides in relevant part:

> The company will not tolerate any harassment that degrades or shows hostility towards an individual because of race, color religion, sex, national origin, age or disability, including, but not limited to slurs, jokes, verbal abuse, stereotyping, threats, intimidation, hostile acts, or denigrating or hostile written or graphic material circulated or posted in the Company premises. Anyone who violates these guidelines will be subject to termination.
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> 3. Management at all levels is responsible for reporting and taking corrective action to prevent harassment in the work place.
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> * * *
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> The following conduct, especially by managers, can be as serious (or even more serious) than harassment itself:

- Ignoring or concealing harassment, or treating it as a joke.

- Failing to report known harassment.

- Retaliating against associates reporting or complaining of harassment.

- Being dishonest or refusing to cooperate with a harassment investigation.

7. With respect to Rockhold, the investigation revealed that Rockhold had heard racial slurs and racially inappropriate remarks among employees but failed to take any disciplinary action or report the harassment to HR. One employee complained that Rockhold observed African-American and white employees using the words "nigger" and "cracker" in the workplace. In addition, another employee complained that Rockhold ignored a co-worker saying, "If you come back in Middleburg, we'll show you how we used to do them black boys back in the days."

8. At hearing, Rockhold acknowledged that he heard GMD employees calling each other "nigger" or "cracker." He stated that he "called them out on it." He explained his failure to take any formal disciplinary action by stating, "It wasn't malicious. It was the n-word between black guys being thrown back and forth as a nickname." According to Rockhold, he didn't think it was inflammatory in that context and was merely their vernacular.

9. The investigation also revealed allegations from several employees that Burden made inappropriate sexual comments toward female employees. These included witness statements from John Mason, Tammy Underwood, Amber Brown and Frank Butler. Burden was reported as saying one female employee had "big titties," and telling another female employee that she looked good in her jeans, that Burden could "handle" her, and when was she going to let him be the one for her, and that she didn't need to mess with the young guys because he (Burden) could please her better in the bedroom. One GMD employee testified at hearing that he was present when Burden told a group of employees that he thought a particular female employee had "nice tits."

10. Petitioners knew Winn-Dixie did not tolerate sexual or racial harassment in the workplace, and they were tasked with making sure the environment was not one where employees felt it would be tolerated. Both Petitioners received sexual and racial harassment training as part of their leadership training.

11. Winn-Dixie's employment policies emphasize the importance of supervisors' roles as leaders and the importance of not giving the impression to employees that it is acceptable to make inappropriate jokes in the workplace. Moreover, a supervisor has a duty to act when observing harassing behavior

in the workplace. The failure to act communicates to subordinates the company condones or tolerates the behavior.

12. As a result of the investigation, Winn-Dixie decided to terminate Petitioners' employment. Several members of Winn-Dixie's management (male, female, white and African-American) were involved in making this decision. One of those involved in making the decision testified that the group never discussed or considered Petitioners' gender in their decision to terminate Petitioners' employment.

13. The termination notices given to Petitioners are identical, and read as follows: "As the result of an anonymous letter received in early January 2010, addressed to Peter Lynch, a thorough investigation was conducted relative to alleged allegations of inappropriate comments by Associates regarding sexual and racial comments in the presence of management in the Jax-GMD Warehouse. The investigation clearly identifies you as a willing participant or lack of effective execution of the proper protocol established through management training (Duty to Act) to address inappropriate comments from Associates as required by Winn-Dixie's Policy in your Supervisor position."

14. At hearing, Rockhold described his job as "being his life, other than his children." He also testified that being falsely accused of sexual misconduct or ignoring employees who engaged in sexual or racial misconduct, then being fired, ruined

his life. He "poured his heart and soul into the company" and testified that no one had ever come to him, as a supervisor, with any kind of a problem with regard to sexual or racial misconduct.

15. Burden testified that he believed that Robert Scott (African-American male) was the one that made the decision to terminate him, not Jayson Kielar (white male) since Kielar had written a letter of recommendation for Burden after he was terminated. Burden testified that he believed he was terminated because he was a man accused of sexual harassment and that somebody had to take the responsibility for the false allegations.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this cause pursuant to sections 120.569 and 120.57(1), Florida Statutes.

Race and Sex Discrimination Claims

17. Petitioners claim they were discriminated against by Winn-Dixie because of their race and sex (male), in violation of the Florida Civil Rights Act of 1992 ("FCRA"). Petitioners also allege that their firing was a retaliatory act by Winn-Dixie.

18. Section 760.10(1)(a), Florida Statutes, makes it unlawful for an employer to take adverse action against an

individual because of the individual's race or sex. Under the FCRA, an employer commits an unlawful employment practice if it terminates or retaliates against employees based on their protected status, which in this case, are race and gender. See § 760.10(1)(a), Florida Statutes.

19. Section 760.11(7) permits a party who receives a no cause determination to request a formal administrative hearing before the Division of Administrative Hearings. "If the administrative law judge finds that a violation of the Florida Civil Rights Act of 1992 has occurred, he or she shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay." Id.

20. Florida's chapter 760 is patterned after Title VII of the Civil Rights Act of 1964, as amended. Consequently, Florida courts look to federal case law when interpreting chapter 760. Valenzuela v GlobeGround N. Am., LLC., 18 So. 3d 17 (Fla. 3rd DCA 2009).

21. Petitioners claim disparate treatment (as opposed to disparate impact) under the FCRA; in other words, they claim they were treated differently because of their race and gender. Petitioners have the burden of proving by a preponderance of the evidence that Respondent discriminated against them. See Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA

1981). A party may prove unlawful race and sex discrimination by direct or circumstantial evidence. Smith v. Fla. Dep't of Corr., Case No. 2:07-cv-631, (M.D. Fla. May 27, 2009); 2009 U.S. Dist. LEXIS 44885 (M.D. Fla. 2009).

22. Direct evidence is evidence, that, "if believed, proves [the] existence of [a] fact in issue without inference or presumption." Burrell v. Bd. of Tr. of Ga. Military College, 125 F.3d 1390, 1393 (11th Cir. 1997). Direct evidence consists of "only the most blatant remarks, whose intent could be nothing other than to discriminate" on the basis of an impermissible factor. Carter v. City of Miami, 870 F.2d 578, 582 (11th Cir. 1989).

23. The record in this case did not establish unlawful race or gender discrimination by direct evidence.

24. To prove unlawful discrimination by circumstantial evidence, a party must establish a prima facie case of discrimination by a preponderance of the evidence. If successful, this creates a presumption of discrimination. Then the burden shifts to the employer to offer a legitimate, non-discriminatory reason for the adverse employment action. If the employer meets that burden, the presumption disappears and the employee must prove that the legitimate reasons were a pretext. Valenzuela v. GlobeGround N. Am., LLC., supra. Facts that are

sufficient to establish a prima facie case must be adequate to permit an inference of discrimination. Id.

25. Accordingly, Petitioners must prove discrimination by indirect or circumstantial evidence under the McDonnell Douglas framework. Petitioners must first establish a prima facie case by showing: (1) they are a member of a protected class; (2) they were qualified for the job; (3) they were subjected to an adverse employment action; and (4) other similarly-situated employees, who are not members of the protected group, were treated more favorably than Petitioners. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). "When comparing similarly situated individuals to raise an inference of discriminatory motivation, these individuals must be similarly situated in all relevant respects." Jackson v. BellSouth Telecomm., 372 F.3d 1250, 1273 (l1th Cir. 2004).

26. Thus, in order to establish a prima facie case of disparate treatment based on gender, Petitioners must show that Winn-Dixie treated similarly-situated female employees differently or less severely. Valdes v. Miami-Dade Coll., 463 Fed. Appx. 843, 845 (11th Cir. 2012); Camara v. Brinker Intern., 161 Fed. Appx. 893 (11th Cir. 2006). See also Longariello v. Sch. Bd. Of Monroe Cnty., Fla., 987 F. Supp. 1440,1449 (S.D.Fla.1997) (quoting Coleman v. B-G Maint. Mgmt. of Colo., Inc., 108 F.3d 1199, 1204 (10th Cir.1997)) ("Gender-plus

plaintiffs can never be successful if there is no corresponding subclass of members of the opposite gender. Such plaintiffs cannot make the requisite showing that they were treated differently from similarly-situated members of the opposite gender."). Similarly, to support a claim of race discrimination, Petitioners must establish that similarly situated Winn-Dixie employees of a different race were treated differently or less severely.

31. The findings of fact here are not sufficient to establish a prima facie case of discrimination based on gender or race. Petitioners failed to identify any other similarly-situated females who were treated more favorably. Indeed, there was no mention of any female in a remotely similar supervisory position at Winn-Dixie. Instead, Petitioners focused solely on other male employees whom they believed were treated more favorably, namely Murray, Turner and Kielar, who were also accused of sexual harassment in the anonymous December letter and whom Petitioners thought should have been terminated.

32. With respect to the claim of race discrimination, there is no evidence in this record to support the allegation that either Petitioner was treated differently than other similarly situated employees because of his race. To the contrary, the fact that both Petitioners were night-shift

supervisors at the GMD, one African-American and the other white, undermines their race discrimination claim.

33. Winn-Dixie presented ample evidence to support its position that Petitioners were fired for legitimate, nondiscriminatory reasons. Burden was terminated for making inappropriate sexual comments to employees and Rockhold was terminated for allowing racial and sexual comments to be made in his presence without taking corrective/disciplinary action.

34. Petitioners spent a significant amount of effort attempting to analyze and challenge the methodology, accuracy, substance, thoroughness and results of Winn-Dixie's internal investigation. However, it has been consistently held that the court's role is to prevent unlawful employment practices and "not to act as a super personnel department that second-guesses employers' business judgments." Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1092 (11th Cir. 2004). An employee cannot succeed by simply quarreling with the wisdom of the employer's reason. Chapman v. AI Transp., 229 F.3d 1012 (11th Cir. 2000); see also Alexander v. Fulton Cnty., Ga., 207 F.3d 1303, 1341 (lIth Cir. 2000) ("[I]t is not the court's role to second-guess the wisdom of an employer's decisions as long as the decisions are not racially motivated.").

35. Petitioners repeatedly attempted to establish that Winn-Dixie did not consistently apply its own policies,

particularly its anti-nepotism and progressive discipline policies. For example, Petitioners went to great lengths to try to establish that several male managers had been sexually involved and subsequently married a co-worker or subordinate. Even if true, however, those allegations are completely irrelevant to Petitioners' gender discrimination claims. Winn-Dixie never claimed it discharged either Petitioner for engaging in a sexual relationship with a co-worker. Moreover, the only purported exceptions to the policy in question were other male supervisors. There was no evidence that females were permitted to violate the anti-nepotism policy while males were not.

36. Essentially, Petitioners' position is that their termination was unfair. Both Petitioners asserted at hearing that following receipt of the second anonymous letter, Winn-Dixie management was under pressure "to do something to somebody." Regardless of whether Rockhold and Burden unfairly became the victims of a Winn-Dixie witch-hunt, courts have repeatedly held an employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts or for no reason at all, as long as its action is not for a discriminatory reason. Elrod v. Sears, Roebuck & Co., 939 F.2d 1466, 1470 (11th Cir. 1991); Nix v. WLCY Radio/Rahall Cmmc'ns, 738 F.2d 1181, 1187 (11th Cir. 1984); see also Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1361 (11th Cir. 1999)

("We are not in the business of adjudging whether employment decisions are prudent or fair. Instead, our sole concern is whether unlawful discriminatory animus motivates a challenged employment decision.").

37. The evidence of record does not support Petitioners' theory that they were fired for discriminatory reasons. There is no evidence that either Petitioner was fired because of his race or gender. Rather, the greater weight of the evidence established that both Petitioners were fired for violating Winn-Dixie's policy prohibiting sexual and racial harassment: Burden for making inappropriate sexual comments to fellow employees; and Rockhold for tolerating racial and sexual comments in his presence. There is no credible evidence that the stated reasons for the terminations were a pretext for racial or gender discrimination.

Retaliation Claim

38. Petitioners also assert a claim of unlawful retaliation, evidently based upon the fact that they were interviewed as part of Winn-Dixie's internal investigation and denied any wrongdoing.

39. "It is an unlawful employment practice for an employer. . .to discriminate against any person because the person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a

charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section." § 760.10(7), Fla. Stat.

40. Section 760.10(7) is identical to the language found at 42 U.S.C. section 2000e-3(a), with the exception that the paragraph begins, "It is" in the Florida version and begins, "It shall be" in the Federal version. The difference in the first few words has no effect on the meaning of the statutes.

41. "Under the opposition clause, an employer may not retaliate against an employee because the employee 'has opposed any practice made an unlawful employment practice by this subchapter.' 42 U.S.C. § 2000e-3(a). And, under the participation clause, an employer may not retaliate against an employee because the employee 'has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.' Id." EEOC v. Total Sys. Servs., Inc., 221 F.3d 1171, 1174 (11th Cir. 2000).

42. "The statute's participation clause 'protects proceedings and activities which occur in conjunction with or after the filing of a formal charge with the EEOC.' . . . The opposition clause, on the other hand, protects activity that occurs before the filing of a formal charge with the EEOC, such as submitting an internal complaint of discrimination to an

employer, or informally complaining of discrimination to a supervisor." Muhammad v. Audio Visual Servs. Grp., 380 Fed. Appx. 864, 872 (11th Cir. Ga. 2010) (quoting Total Sys. Servs., 221 F.3d at 1174)); see also Rollins v. State of Fla. Dep't of Law Enf., 868 F.2d 397, 400 (11th Cir. 1989).

43. This record is devoid of any evidence that Petitioners ever "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" prior to their termination from employment. Prior to filing their charges with the FCHR, neither Petitioner complained of any discrimination or opposed any discriminatory action. In fact, it was quite the opposite: Petitioners failed to stop and at times even participated in the racial slurs and sexual jokes/statements that occurred at the GMD. Accordingly, Petitioners cannot establish a retaliation claim under the statute's participation clause as a matter of law.

44. "To establish a prima facie case of retaliation under Title VII, Plaintiff 'must show that: (1) [she] engaged in statutorily protected activity; (2) [she] suffered a materially adverse action; and (3) there was a causal connection between the protected activity and the adverse action.'" Root v. Miami-Dade Cnty., 2010 U.S. Dist. LEXIS 117811 at *11 (S.D. Fla.

Aug. 6, 2010) (quoting Howard v. Walgreen Co., 605 F.3d 1239, 2010 WL 1904966, at *5 (11th Cir. 2010)); see also Goldsmith v. Bagby Elevator Co., 513 F.3d 1261, 1277 (11th Cir. 2008).

45. The first element of Petitioners' prima facie case of retaliation under the opposition clause requires them to establish that they engaged in statutorily protected opposition conduct. To do so, Petitioners must show that they opposed conduct by the employer based upon an objectively reasonable belief that the employer was engaged in unlawful employment practices. See, e.g., Harper v. Blockbuster Ent. Corp., 139 F.3d 1385, 1388 (llth Cir. 1998); Brown v. Sybase, Inc., 287 F. Supp 2d 1330, 1346-47 (S.D. Fla. 2093).

46. In addition, Petitioners must show that the decision-maker responsible for the adverse action was actually aware of the employee's protected opposition at the time the decision maker took the adverse action. See Brown, 287 F. Supp 2d at 1347; see also Brungart v. BellSouth Telecomm., Inc., 231 F.3d 791, 799 (11th Cir. 2000); Holifield v. Reno, 115 F.3d 1555, 1566 (11th Cir. 1997). A court will not presume that a decision maker was motivated to retaliate by something unknown to him or her. See Brungart, 231 F.3d at 799. Thus, in order to constitute protected opposition activity, Petitioners must, at the very least, communicate their belief that illegal discrimination is occurring. See Webb v. R & B Holding Co., 992

F. Supp. 1382, 1389 (S.D. Fla. 1998) ("It is not enough for the employee merely to complain about a certain policy or certain behavior . . . and rely on the employer to infer that discrimination has occurred."); see also Johnson v. Fla., 2010 U.S. Dist. LEXIS 42784, 4-5 (N.D. Fla. Mar. 30, 2010).

47. Petitioners failed to establish their prima facie case of retaliation under the opposition clause. There is no credible evidence that either Petitioner ever complained about discrimination or in any manner opposed what he believed to be unlawful conduct during his employment.

48. The sole basis for Petitioners' claim of retaliation is that they were engaged in protected activity by the mere fact that they were interviewed as part of Winn-Dixie's internal investigation and denied any wrongdoing. This argument is unsupported by law or logic. Denying allegations of sexual harassment does not constitute "participating in an investigation" of discrimination. If that were the case, the whole purpose of investigating allegations of discrimination would be defeated as no employer could ever terminate someone if he or she denied the discriminatory conduct being investigated. Petitioners did not engage in any protected activity, and they therefore failed to establish the first prong of a prima facie case of retaliation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations dismiss the Petitions for Relief from an Unlawful Employment Practice filed against Respondent.

DONE AND ENTERED this 17th day of June, 2013, in Tallahassee, Leon County, Florida.

W. DAVID WATKINS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of June, 2013.

ENDNOTES

[1/] The July and October hearings were held by video teleconference; the others were in person.

[2/] By Order dated April 5, 2013, Nah-Deh Simmons, Esquire, was recognized as counsel of record for Petitioners Burden and Rockhold in substitution for Lisa Lovingood Kelly. Previously, by Order dated March 12, 2013, Karen Ibach Bowden, Esquire, was recognized as counsel of record for Winn-Dixie in substitution for Latasha Garrison-Fullwood.

COPIES FURNISHED:

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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.