

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ROBIN BOUEY,

EEOC Case No. 15D201700114

Petitioner,

FCHR Case No. 2017-00035

v.

DOAH Case No. 17-2652

ORANGE COUNTY SERVICE UNIT,
ORANGE COUNTY CLASSROOM TEACHERS
ASSOCIATION, ORANGE COUNTY
EDUCATION SUPPORT PROFESSIONAL
ASSOCIATION,

FCHR Order No. 17-073

Respondents.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Robin Bouey filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondents Orange County Service Unit, Orange County Classroom Teachers Association, and Orange County Education Support Professional Association committed an unlawful employment practice on the basis of retaliation by distributing Petitioner's photo to employees working at school polling sites for a union election, with instructions to report if Petitioner was seen at any of the polling locations.

The allegations set forth in the complaint were investigated, and, on March 31, 2017, the Executive Director issued a determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

Prior to an evidentiary hearing being held, Administrative Law Judge J. Bruce Culpepper issued an "Order of Dismissal and Order Relinquishing Jurisdiction," dated July 5, 2017.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the "Order of Dismissal and Order Relinquishing Jurisdiction."

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We note that footnote 3 of the "Order of Dismissal and Order Relinquishing Jurisdiction" seems to suggest that action taken by an employer toward a former employee after the employee had been dismissed cannot be actionable. We disagree with this suggestion. See Fernandez v. Sprint / United Management Co., FCHR Order No. 10-028 (March 17, 2010), and the accompanying Recommended Order in DOAH Case No. 09-4009, which describes an action in which Petitioner alleged that Respondent had unlawfully retaliated against Petitioner after Respondent had terminated Petitioner.

We also note that in paragraph 18 of the "Order of Dismissal and Order Relinquishing Jurisdiction," the Administrative Law Judge states, "...Petitioner does not allege damages that may be awarded under the FCRA." In our view, this alone does not prevent a finding that an unlawful employment practice occurred, given the directive that, "If the administrative law judge finds that a violation of the Florida Civil Rights Act has occurred, he or she shall issue an appropriate recommended order to the commission prohibiting the practice..." Section 760.11(7), Florida Statutes (2017).

With these comments, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's "Order of Dismissal and Order Relinquishing Jurisdiction," received by the Commission on or about July 20, 2017, in a document entitled, "Petitioner's Exceptions to the Recommended Order."

In our view, Petitioner's exceptions document contains two exceptions.

Petitioner excepts to the statement by the Administrative Law Judge that the Commission "based its ['no cause' determination] decision on its finding that Petitioner's employer employed less than 20 employees, which is a prerequisite for filing a claim under the Florida Civil Rights Act of 1992." Petitioner then argues that the employer did have more than 20 employees. This, however, was not the basis for the dismissal of the matter by the Administrative Law Judge.

This exception is rejected.

Petitioner also excepts to the Administrative Law Judge's conclusion that Petitioner did not suffer a "materially adverse employment action."

Since, as indicated above, we have adopted the Administrative Law Judge's findings of fact and conclusions of law, this exception is rejected.

Dismissal


The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 14 day of September, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Derick Daniel, Panel Chairperson;
Commissioner Jay Pichard; and
Commissioner Sandra Turner

Filed this 14 day of September, 2017,
in Tallahassee, Florida.


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J. Bruce Culpepper, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 14 day of September, 2017.

By: Tommy Barton
Clerk of the Commission
Florida Commission on Human Relations