GOVERNMENT OF THE DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS

In the Matter of:

SUSAN KNOBL,
Complainant,

v. Docket No. 08-379-P (CN)

AMERICAN ISRAEL PUBLIC
AFFAIRS COMMITTEE,
Respondent.

_____/

BEFORE:

Commissioner Earline Budd
Commissioner Gabriel Rojo
Commissioner David Scruggs

APPEARANCES:

For the Complainant

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For the Respondent

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FINAL DECISION AND ORDER
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. STATEMENT OF THE CASE

On July 15, 2008, Susan Knobl ("Complainant") filed a complaint with the D.C. Office of Human Rights ("OHR") alleging the American Israel Public Affairs Committee ("Respondent" or "AIPAC") discriminated against her because of her sex (female) and age (64), and also retaliated against her for engaging in activity protected under the D.C. Human Rights Act ("DCHRA"). D.C. CODE §§ 2-1401.01 - 2-1411.06 (2009). On June 17, 2009, OHR found probable cause with regard to Ms. Knobl's claim of retaliation, but no probable cause was found to support her sex and age discrimination claims. Therefore, the retaliation claim is Complainant's sole surviving claim. On May 2, 2010, after conciliation failed, OHR certified the retaliation claim to the D.C. Commission on Human Rights ("Commission").

On February 25, 2011, Respondent filed a Motion for Summary Judgment ("Motion"). Complainant filed its Opposition to Respondent's Motion for Summary Judgment ("Opposition") on March 18, 2011. On March 28, 2011, Respondent filed a Reply Brief ("Reply"). Upon careful consideration of the Motion, Response, Reply, and the applicable law, and for the reasons set forth below, the Commission grants summary judgment in favor of Respondent as to Complainant's retaliation claim.

II. ISSUE

The issue in this case is whether AIPAC retaliated against Ms. Knobl by terminating her employment for engaging in protected activity.

III. FINDINGS OF FACT[1]

1. Susan Knobl began working for Respondent on October 30, 2005 in the position of Director of Human Resources. Knobl Deposition ("Dep.") at 40, 43.
2. Respondent is a non-profit advocacy organization which advances the U.S.–Israel relationship and is headquartered in Washington, DC. Knobl Dep. at 45.
3. Ms. Knobl was an at-will employee while working for Respondent. Knobl Dep. at 64; Resp't Ex. A at AIPAC-000085. Ms. Knobl signed an employment agreement indicating that she may be terminated at any time for any reason with or without notice. *Id.*
4. Ms. Knobl's starting salary was $100,000 per year. Knobl Dep. at 66.
5. At the time Ms. Knobl applied, Respondent did not have a Human Resources Department. *Id.*; Meridy Dep. at 8.
6. Ms. Knobl interviewed for the position with Mark Meridy, John Missner, Jonathan Kessler, Richard Fishman, and Howard Kohr. Knobl Dep. at 42.
7. Upon being hired, Ms. Knobl reported to Mr. Meridy, Respondent's Director of Operations. Knobl Dep. at 44. Among other duties, Mr. Meridy oversaw the Human Resources Department. Meridy Dep. at 7.
8. Mr. Meridy reported to Mr. Fishman, who served as Respondent's Managing Director. Knobl Dep. at 44-45.
9. Ms. Knobl's duties included creating a human resources department, writing human resources policies and procedures, training managers on hiring processes, and handling employee relations issues. Knobl Dep. at 46-47; Meridy Dep. at 9.

[1] This decision involves a case at the summary judgment stage. As will be discussed further, all factual conflicts are resolved in Ms. Knobl's favor and all permissible inferences drawn on her behalf. Therefore, these "Findings of Fact" represent only those facts being used for purposes of summary judgment, and would not govern in any subsequent proceedings.

10. The job description for Ms. Knobl's position required her to be a strategic thinker, and be able to understand and act upon Respondent's "operational, financial and political objectives." Knobl Dep. at 51.

11. Ms. Knobl's duties were to resolve conflicts, train others to resolve conflicts, translate the organizations business plans into comprehensive policies and procedures, and exercise considerable judgment and discretion in "establishing and maintaining confidentiality and good working relationships." Knobl Dep. at 52.

12. Ms. Knobl's job was to investigate employees' concerns and complaints, including those involving discrimination. Knobl Dep. at 64-65, 139.

13. Mr. Meridy stated that Ms. Knobl's position required her to make management aware of employee complaints, and to serve as a resource for matters involving both employees and management. Meridy Dep. at 9, 51, 89.

14. Ms. Knobl was not responsible for disciplining employees who engaged in discriminatory or unprofessional conduct. Knobl Dep. at 65-66. Rather, this was the responsibility of Mr. Fishman and Mr. Kohr. *Id.* Ms. Knobl could only recommend discipline. *Id.*

15. One of Ms. Knobl's job duties was creating an employee handbook containing human resources policies and protocols. Knobl Dep. at 53. Ms. Knobl ultimately created such a handbook and possessed a copy herself. Knobl Dep. at 54.

16. Respondent had a Harassment Policy in place prohibiting workplace discrimination. Resp't Ex. A at AIPAC-000355; Knobl Dep. at 64. The policy included a prohibition against retaliation for filing a *bona fide* complaint. *Id.*

17. Respondent's human resources policies required that complaints to the Human Resources Department be reported up the chain of command. Knobl Dep. at 107.

18. Respondent had in place a Confidential Information Policy. Knobl Dep. at 60; Resp't. Ex. A at AIPAC-000087-88. This policy prohibited an employee from disclosing any confidential information, including non-public information about other employees, learned as a result of being employed by Respondent. Resp't. Ex. A at AIPAC-000087. Violation of this policy could result in termination. *Id.*; Knobl Dep. at 61.

19. Respondent had an Open Door Policy, which encouraged employees to discuss problems or concerns regarding workplace issues with their supervisors or with Mr. Fishman. Resp't. Ex. A at AIPAC-000087.

20. In January 2006, Ms. Knobl was given her first performance review, which was generally positive. Resp't Ex. A at 000280-282. However, it stated that Ms. Knobl needed to refrain from discussing employees' "personal health and welfare" situations with others. Knobl Dep. at 149-50; Resp't Ex. A at 000281.

21. In January 2006, Ms. Knobl brought salary surveys to the attention of Mr. Meridy demonstrating she was underpaid in comparison to others in similar positions in similar organizations. Knobl Dep. at 73. Meridy Dep. at 43-44.

22. To keep Ms. Knobl's pay "consistent with the market and consistent within the organization," Ms. Knobl was given a $50,000 per year increase in pay. Meridy Dep. at 43-44; Fishman Dep. at 34-35.

23. In January and February of 2006, Ms. Knobl told Mr. Meridy about alleged mistreatment of subordinates by Jonathan Kessler. Knobl Dep. at 74. Ms. Knobl conducted an investigation into the matter and discussed the substance of the investigation with Mr. Meridy, Mr. Kohr and Mr. Fishman. Knobl Dep. at 75-76. Mr. Meridy asked Ms. Knobl to prepare a report about Mr. Kessler's management style. *Id.*

24. In March 2006, Erika Wienery was terminated for not meeting performance expectations of her supervisor, Evan Nierman. Knobl Dep. at 77. Although her supervisor informed Ms. Wienery that she was making progress, Mr. Nierman informed Ms. Knobl that this was not the case. *Id.*

25. When Mr. Nierman informed Ms. Knobl that he planned on terminating Ms. Wienery via telephone, Ms. Knobl objected. Knobl Dep. at 78-79. Ms. Knobl indicated that this method of terminating an employee was unprofessional to Mr. Meridy. *Id.* Compl. Response to Interrogatories at 6. Based on Ms. Knobl's recommendation, the termination was instead performed in-person. Knobl Dep. at 79.

26. After this incident, Ms. Knobl stated that managers needed to be trained on how to properly terminate employees, which resulted in new policies being put into place. Knobl Dep. at 79-80.

27. In March 2006, Leah Odinec requested to be allowed to work a reduced schedule of three days per week after the birth of a child. Knobl Dep. at 80.

28. Respondent had a general policy that employees in development jobs were required to work full-time schedules. Missner Dep. at 23.

29. Ultimately, after discussions between involved parties, Ms. Odinec was allowed to work a reduced schedule of three days per week. Knobl Dep. at 82-83. However, she was asked to sign an agreement allowing review of her working arrangements after six months. Compl. Response to Interrogatories at 6.

30. In August 2006, an employee was placed on administrative leave for stealing from AIPAC. Knobl Dep. at 160-61; Resp't. Ex. A at AIPAC-01-0000396491. At the

employee's request, although under investigation by Respondent, Ms. Knobl sent the employee copies of files saved on his computer. *Id.*

31. Ms. Knobl was subsequently informed by Mr. Meridy that the files should not have been sent to this employee. Knobl Dep. at 161. Mr. Meridy informed her that this was a serious error in judgment and he could find "no justification" for her actions. Knobl Dep. at 163-65; Resp't Ex. A at 01-0000444880.

32. In an email to Mr. Meridy, Ms. Knobl acknowledged that the files "should not have been sent" and accepted full responsibility for her actions. Resp't Ex. A at 01-0000396491.

33. In August 2006, Marcie Brecher was asked to take management training courses at Jerry Ball Institute. Knobl Dep. at 84.

34. Ms. Brecher had some performance issues related to the micromanagement of employees that warranted sending her to this class. Knobl Dep. at 90-91; Resp't Ex. A at 01-0000170926.

35. Ms. Brecher raised concerns about attending this training to Ms. Knobl, and these concerns were reported to Mr. Meridy and Mr. Missner. Knobl Dep. at 84.

36. After attending the Jerry Bell Institute, Ms. Brecher wrote an email to Mr. Missner and Ms. Knobl thanking them for the "learning and growth opportunity." Missner Dep. at 21; Knobl Dep. Ex. 6-8.

37. Mr. Kessler also attended the Jerry Ball Institute and found it to be "useful." Missner Dep. at 22.

38. On September 16, 2006, Mr. Meridy sent Ms. Knobl an email informing her that she had too much "mumbo-jumbo" language in her summaries of retirement plans for a

presentation to be given to senior executives. Knobl Dep. at 165-66; Resp't Ex. A at 01-0000445327. *Id.*

39. On October 11, 2006, with respect to a memo regarding pension plans, Mr. Meridy asked Ms. Knobl to consider organizing her memo without using jargon, technical terms or acronyms. Knobl Dep. at 167; Resp't Ex. A at 01-0000445221.

40. In October 2006, Dani Fisher expressed her frustration to Ms. Knobl about women's roles in Respondent's organization. Knobl Dep. at 92. Ms. Fisher was concerned that women were rarely placed in a Regional Director position, were asked to take jobs out of their current regions, and had to put off having children due to the demands of their positions. Knobl. Dep. at 94.

41. Ms. Knobl discussed Ms. Fisher's concerns with Mr. Meridy and Craig Dreilinger, an outside consultant. Knobl Dep. at 92.

42. Mr. Meridy told Ms. Knobl that management was "opposed to letting women have the role of Regional Director because they could not afford to have a woman out on maternity leave for three (3) or (4) months." Knobl Affidavit at 4.

43. In November 2006, Amy Goldstein was told she could work in the Washington, D.C. office, but was later asked to instead take position in Houston office. Knobl Dep. at 96-101.

44. In November 2006, Davida Brook and Jacci Shiff spoke to Ms. Knobl about issues with Mr. Kessler's treatment of his staff. Knobl Dep. at 104. Ms. Knobl relayed these concerns to Mr. Meridy and Mr. Kessler. *Id.* Specifically, these complaints involved concerns regarding Mr. Kessler's unrealistic expectations, his management style, and "harsh" and

"disrespectful" behavior that his staff felt was "abusive." Meridy Dep. at 48; Fishman Dep. at 38; Kessler Dep. at 12.

45. Complaints regarding Mr. Kessler's management style were brought forward by both male and female employees. Kessler Dep. at 12. Ms. Knobl did not indicate to Mr. Kessler that there were claims of discriminatory conduct. Kessler Dep. at 14-16.

46. In discussing the complaints with Mr. Kessler, Ms. Knobl informed him that his staff was "unhappy" with his management style. Kessler Dep. at 21. Ms. Knobl then coached Mr. Kessler on appropriate treatment of subordinate employees, including talking individually with subordinates who failed to perform and to "tone down" some of his comments. Knobl Affidavit at 4.

47. As a result of the complaints, Mr. Kessler attended training on management skills in order to become a "better and more responsive" manager. Kessler Dep. at 23.

48. Mr. Fishman met with Mr. Kessler's staff and indicated that they should have no fear of retaliation for raising concerns about Mr. Kessler's management style. Fishman Dep. at 42.

49. In December 2006, Beverly Gans expressed to Ms. Knobl her frustration with a lack of support from Brian Abrahams. Knobl Dep. at 108. This concern was relayed to Mr. Meridy and Mr. Missner. *Id.* Ms. Gans also felt that promises were made to her that never materialized. Knobl Dep. at 109. Although stating she held no animus towards Mr. Abrahams, Ms. Gans ultimately left her employment with Respondent. Knobl Dep. at 109-10.

50. Several incidents occurred between David Epstein and his administrative assistant, Amy Golub, which were brought to Ms. Knobl's attention. Knobl Dep. at 111; Resp't Ex. A,

Affidavit of Brian Abrahams; Missner Dep. at 11-12. Mr. Epstein's behavior included crude language, walking around the office in an undershirt, and asking Ms. Golub about her personal life. *Id*; Abrahams Dep. at 20-21.

51. Mr. Missner and Mr. Abrahams issued a reprimand in response to Mr. Epstein's behavior. Knobl Dep. at 111. Ms. Knobl was involved in the resolution of this matter after being notified of the issue. Knobl Dep. at 112; Abrahams Dep. at 22. Eventually, Mr. Epstein was terminated by Respondent. Missner Dep. at 12.

52. In December 2006, Susan Diamond reported experiencing problems with Mr. Abrahams' management style to Mr. Missner. Knobl Dep. at 114-15. Ms. Diamond was referred to Mr. Missner by Ms. Knobl. Knobl Dep. at 115. Ms. Knobl also spoke to Mr. Meridy about the matter. Knobl Dep. at 116.

53. Ms. Knobl counseled both Mr. Abrahams and Ms. Diamond on how to interact with each other in a professional manner. Knobl Dep. at 117.

54. Ms. Diamond was eventually placed on notice that she would be asked to leave if her performance did not improve. *Id.*; Resp't Ex. A at 01-0000086221. Ultimately, she resigned from Respondent's employment. Knobl Dep. at 116. Ms. Knobl believed Ms. Diamond's resignation was the best solution for this situation. Knobl Dep. at 119-20.

55. In January 2007, Melanie Pearlman was asked to take a position in Chicago over her objections and had difficulty working with Mr. Abrahams. Knobl Dep. at 121; Missner Dep. at 14, 15. Ms. Knobl reported her complaints to Mr. Meridy and Mr. Missner. Knobl Affidavit at 4. Previously, Ms. Pearlman was successful as a member of Respondent's Denver office. Missner Dep. at 14. Ultimately, Ms. Pearlman resigned from Respondent's employment. Knobl Dep. at 123-24.

56. After Ms. Pearlman left Respondent's employment, Mr. Missner admitted he should have taken her complaints more seriously and stepped in sooner. Compl. Response to Interrogatories at 10.

57. In January 2007, Ms. Knobl received her second performance review. Resp't Ex. A at 000286. The performance review was generally positive. *Id.*

58. The performance review indicated that Ms. Knobl needed to find a balance between being overly concerned and helpful and being able to accomplish the "big picture" of her job. Knobl Dep. at 151-3; Resp't Ex. A at 000286.

59. It mentioned that there should be no discussion of confidential personnel issues with others unless "absolutely essential." Knobl Dep. at 153; Resp't Ex. A at 000287.

60. In the "Areas Requiring Development and Improvement" section of her evaluation, it was stated that Ms. Knobl's "[c]ommunications style with all staff must be modified in that tasks/conversations must not be co-mingled." Knobl Dep. at 154; Resp't Ex. A at 000287. Mr. Meridy also mentioned these concerns to her in person. Knobl Dep. at 154-55.

61. Ms. Knobl was also informed that she needed to improve in communicating with staff and building relationships with department heads. Knobl Dep. at 156-57.

62. Mr. Meridy felt that Ms. Knobl failed to establish personal relationships with higher-level directors in Respondent's organization, which affected her credibility as Director of Human Resources. Meridy Dep. at 22.

63. During the review, Mr. Meridy indicated that Ms. Knobl's correspondences and communications often needed to be rewritten, as they included jargon and were difficult to understand. Meridy Dep. at 95-96.

64. On January 31, 2007, Mr. Meridy sent Ms. Knobl an email asking her to be more sensitive to the tone of emails she sent to the Meltzer Group. Knobl Dep. at 168.

65. In February 2007, Jackie Indek was asked to leave the Atlanta office and take a position in Baltimore, from which she was ultimately fired. Knobl Dep. at 125-26.

66. Ms. Indek complained about her treatment in Baltimore, stating to Ms. Knobl that she had never been properly trained to do the job and was not given enough support by Mr. Missner. Knobl Dep. at 128. Ms. Knobl talked with Mr. Missner, Mr. Meridy, and Brian Shankman regarding Ms. Indek's lack of training, and informed them that she may have been "set up" to fail. Knobl Affidavit at 4.

67. On May 22, 2007, Ms. Knobl was sent an email from Mr. Fishman discussing her use of the word "classified" in a previous email. Knobl Dep. at 173. This word was considered especially sensitive because of the potential political impact of AIPAC possessing classified information. Knobl Dep. at 174-77.

68. In June 2007, Ms. Knobl spoke to Mr. Meridy about continuing concerns with Mr. Kessler's behavior. Knobl Dep. at 129. Mr. Kessler's behavior included removing employees out of bathrooms for meetings and giving employees different positions than those for which they were hired. Knobl Affidavit at 1. Mr. Meridy did not forward those issues to Mr. Fishman or Mr. Kohr and no action was taken with regards to this matter. Knobl Dep. at 130-31.

69. In April through June 2007, Ms. Knobl met with Craig Dreilinger, Respondent's organizational development psychologist, to provide him with information about turnover rates, the role of women in AIPAC's workplace, and the need for management training

for management employees. Knobl Affidavit at 4-5. She also shared the concerns of departing employees obtained through exit interviews. *Id.*

70. In June 2007, Ms. Knobl met with Mr. Dreilinger and Chaim Yudkowsky to discuss Mr. Meridy's management style. Knobl Dep. at 132. After attending this meeting, Ms. Knobl did not attend any additional managers' meetings. Knobl Affidavit at 5. At future meetings, women's issues, among other topics, were discussed. *Id.*

71. In June 2007, Ms. Knobl met with Mr. Fishman to discuss the treatment of Miriam Berg. Knobl Affidavit at 5. Mr. Fishman did not view her supervisor's behavior as mistreating his subordinates, but stated her did not think highly of Ms. Berg's work performance. *Id.* Ms. Knobl shared the results of this meeting with Mr. Meridy. *Id.*

72. In July 2007, Wendy Day complained to Ms. Knobl about Mr. Meridy's treatment of her, as he wanted her to take on additional responsibilities without increasing her salary. Knobl Affidavit at 5. Ms. Day subsequently resigned. *Id.* Ms. Knobl spoke to Sandy Afes about the situation. Knobl Affidavit at 5.

73. On several occasions, Sandy Afes, Respondent's CFO, spoke to Ms. Knobl about Mr. Meridy's management of her. Knobl Dep. at 133. Specifically, Ms. Afes asserted that she had never received a three or six month performance review. Knobl Dep. at 134. She also stated that Mr. Meridy kept her on a "short leash" and felt his treatment was "demeaning." Knobl Affidavit at 5.

74. Ms. Knobl referred Ms. Afes' concerns to Mr. Meridy, who acknowledged not providing Ms. Afes with a performance review and discussed his concerns with her work performance. *Id.*

75. Ms. Knobl recommended to Ms. Afes that she should speak to an attorney and gave her the name and telephone number of an attorney. *Id.*

76. On July 9, 2007, Ms. Knobl received an email from Leah Odinec regarding concerns with pediatric health care coverage. Knobl Dep. at 178; Resp't Ex. A at 01-0000245158. Ms. Knobl communicated to Ms. Odinec that she could not meet with her. Knobl Dep. at 180.

77. Mr. Meridy dictated to Ms. Knobl an email that was later sent to Ms. Odinec apologizing for not making time to meet with her. *Id.* Ms. Knobl felt that there was nothing that could be done to resolve Ms. Odinec's concerns because their health care provider could not be changed. Knobl Dep. at 182-83.

78. Mr. Meridy indicated that Ms. Knobl's decision to not meet with Ms. Odinec regarding her health care concerns "seriously compromised" Ms. Knobl's credibility with veteran employees and that this problem was "not reconcilable." Meridy Dep. at 23, 25.

79. In July 2007, Luiza Levit discussed concerns regarding Mark Toubin, alleging he was "demeaning, demanding, ill-prepared, and untruthful." Knobl Affidavit at 5. Ms. Knobl discussed these concerns with Mr. Meridy and Mr. Missner. *Id.* Mr. Toubin ultimately was fired, for reasons not disclosed, in November 2007. Knobl Dep. at 243.

80. In July 2007, Ms. Knobl informed management about concerns raised by female senior employees. Knobl Affidavit at 5.

81. Ms. Knobl was involved in the process of creating a 401(k) retirement plan for the organization. Fishman Dep. at 15.

82. Mr. Fishman and Ms. Knobl had a "back-and-forth" about how to assess the different plans. Fishman Dep. at 16. Mr. Fishman indicated to Ms. Knobl what factors should be taken into account. Fishman Dep. at 17.

83. In his opinion, Ms. Knobl was ineffective in balancing these factors. Fishman Dep. at 17-18. As a result, Mr. Meridy took a greater role in this process. *Id.*

84. Ms. Knobl was also involved in the process of creating a 457(d) deferred compensation plan for senior employees. Fishman Dep. at 19.

85. Ms. Knobl gave a presentation on the 457(d) plan to Respondent's executives, during which she was unable to answer even simple questions about the plans. Meridy Dep. at 11-12; Fishman Dep. at 19.

86. This resulted in Ms. Knobl's losing credibility with Respondent's executives. Meridy Dep. at 12.

87. Mr. Fishman believed Ms. Knobl was unprepared and that her presentation was an "embarrassment." Fishman Dep. at 20. Mr. Fishman indicated that her management of the project was "entirely bungled." *Id.*

88. David Victor, who ultimately became the president of the organization, perceived Ms. Knobl as "wildly incompetent." *Id.*

89. On several occasions throughout her employment with Respondent, Ms. Knobl shared employees' confidential information, including medical information, with others. Meridy Dep. at 20-21; Missner Dep. at 26-27; Kessler Dep. at 27.

90. Ms. Knobl would also share confidential information regarding personnel issues with others within the organization. Abrahams Dep. at 29.

91. Mr. Meridy stated that these disclosures were "inappropriate" and "affect[ed] her credibility as an HR director." Meridy Dep. at 21.

92. The issue of confidentiality was discussed with Ms. Knobl on several occasions. Meridy Dep. at 23.

93. In several documents and charts prepared by Ms. Knobl, mistakes occurred as a result of frequently shifting goals and information. Knobl Dep. at 189.

94. In July 2007, Mr. Meridy, after consulting Mr. Fishman and Mr. Kohr, informed Ms. Knobl that she was being terminated. Fishman Dep. at 26; Knobl Dep. at 195.

95. The stated reason for her termination was that Respondent was moving in a "different direction." Knobl Dep. at 195-96; Meridy Dep. at 30. Mr. Meridy did not inform her that she was being terminated for performance-based reasons. Meridy Dep. at 33-34.

96. Before being terminated, Ms. Knobl was not placed on a Performance Improvement Plan because such plans were inconsistently used throughout the organization. Meridy Dep. at 56.

97. Mr. Meridy and Mr. Fishman, in discussing the topic of Ms. Knobl's termination, discussed her "unbelievable lack of judgment" and decided a change needed to be made. Meridy Dep. at 26.

98. Mr. Meridy stated that Ms. Knobl was unable to "maintain the level of oversight and visioning that was necessary for the department" as her duties increased. Meridy Dep. at 9-10.

99. Mr. Meridy stated that Ms. Knobl did not institute an "on boarding process" for new employees that met his expectations and she did not sufficiently implement testing for employees. Meridy Dep. at 10-11.

100. Ms. Knobl indicated that she wished to stay on with Respondent through the end of October. Knobl Dep. at 200; Resp't Ex. A at AIPAC-000384.

101. Mr. Meridy allowed her to stay employed with Respondent beyond her termination because he "had a HR function that had to be completed." Meridy Dep. at 28-29.

102. Mr. Meridy also wanted Ms. Knobl to stay employed with Respondent until a replacement was found. *Id.*

103. Ms. Knobl was replaced by Malcolm Hooker. Meridy Dep. at 38. The two were simultaneously employed for a week or possibly two, during which Ms. Knobl provided Mr. Hooker with some background information on the department and orientation. Meridy Dep. at 38-39. Ms. Knobl did not have any further responsibility in training Mr. Hooker. *Id.*

104. Before leaving Respondent's employment, Ms. Knobl was given an additional $5000. Meridy Dep. at 40. She was given this money "out of appreciation for the work she performed," particularly in staying after she was terminated. Meridy Dep. at 41-42; Fishman Dep. at 32. Both Mr. Kohr and Mr. Fishman were involved in the decision to give her the bonus. Meridy Dep. at 42.

105. Ms. Knobl ceased to be employed with Respondent in January 2008. Meridy Dep. at 28.

106. Ms. Knobl never indicated to Mr. Meridy that she believed any employee was going to file a charge of discrimination against Respondent. Meridy Dep. at 89.

107. Ms. Knobl neither advised any employee to file a complaint of discrimination against Respondent with a federal agency or court, nor did she assist an employee in filing a complaint of discrimination. Knobl Dep. at 141.

108. Throughout her tenure in Respondent's employment, Ms. Knobl's job duties included discussing employee complaints and concerns with management. Meridy Dep. at 46-47.

109. Ms. Knobl did not frame any complaint or incident as discriminatory or violating equal opportunity laws. *Id*; Fishman Dep. at 35-36; Missner Dep. at 10-11.

IV. SUMMARY JUDGMENT STANDARD OF REVIEW

Under both federal and District law, summary judgment is granted where the pleadings, affidavits, and evidence provided indicate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 322-24 (1986); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986); *Smith v. Washington Metro. Area Transit Auth.,* 631 A.2d 387, 390 (D.C. 1993). Material facts are those that may change the outcome of the suit under the governing law. *Anderson,* 477 U.S. at 248. A genuine issue exists where the evidence is such that "a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. However, a party may not merely rest upon allegations or stated conclusions of law in her pleading to prevail, but must instead "set forth specific facts showing there is a genuine issue for trial." *Id.* at 248 (citing *First National Bank of Arizona v. Cities Service Co.,* 391 U.S. 253 (1968)).

V. DISCUSSION

Ms. Knobl, while employed as Respondent's Director of Human Resources, alleges that she opposed discriminatory practices in the workplace and was then unlawfully terminated in retaliation. *See* D.C. CODE § 2-1402.61. As discussed below, Ms. Knobl fails to establish a *prima facie* case of retaliation because she cannot show she engaged in protected activity. Furthermore, even assuming Ms. Knobl was able to establish a *prima facie* case of retaliation, Respondent has provided a legitimate, nondiscriminatory reason for her termination which is supported by substantial evidence, and Ms. Knobl fails to rebut or present evidence establishing Respondent's proffered reason for her termination was a pretext for retaliation. As a result, since no genuine issue of material fact exists, the Commission grants summary judgment in favor of Respondent.

Like federal law, the DCHRA prohibits retaliatory action against employees who "oppose" unlawful employment practices. *Id.* at § 2-1402.61(a)-(b); *see also Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 59 (2006) (anti-retaliation provisions forbid employer actions discriminating against an employee for opposing a practice forbidden by Title VII). This ensures that the anti-discrimination provisions of the DCHRA remain meaningful, preventing an employer from interfering with an employee's attempts to enforce the Act's guarantees. *See Burlington,* 548 U.S. at 63. When interpreting the DCHRA, courts have generally looked to cases brought under the Civil Rights Act of 1964 for guidance. *See Wallace v. Skadden, Arps, Slate, Meagher & Flom, et al.*, 715 A.2d 873, 889 n. 31 (D.C. 1988).

In considering claims under the DCHRA, the Commission employs the same three-part, burden-shifting test set forth by the Supreme Court for Title VII cases in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1973). *See Hollins v. Fed. Nat'l Mortg. Ass'n,* 760 A.2d 563, 571 (D.C. 2000); *see also Kersey v. Washington Metro. Area Transit Authority,* 586 F.3d 13, 16-17 (D.C. Cir. 2009) (applying *McDonnell Douglas* construct to retaliation claim). This test requires the employee to establish first a *prima facie* case of discrimination by a preponderance of the evidence, which, if made, raises a rebuttable presumption of unlawful discrimination. *Id.* (citing *Arthur Young & Co. v. Sutherland,* 631 A.2d 354, 361 (D.C.1993)). Second, once this *prima facie* showing is made, the burden shifts to the employer to rebut the presumption "by articulating 'some legitimate, nondiscriminatory reason for the employment action.'" *Id.* (quoting *Atlantic Richfield Co. v. District of Columbia Comm'n on Human Rights,* 515 A.2d 1095, 1099 (D.C.1986)). The employer can meet this burden by producing evidence from which the trier of fact can conclude that its action was not motivated by a discriminatory reason. *Id.* (citing *Atlantic Richfield,* 515 A.2d at 1099–1100). Third and finally, the burden shifts back to

the employee to prove by a preponderance of the evidence that the employer's stated reason was a pretext for an unlawful discriminatory purpose. *Id.* (citing *Arthur Young,* 631 A.2d at 361). The ultimate burden of proving that the employer discriminated remains with the employee at all times. *Id.* (citing *Texas Dep't of Cmty. Affairs v. Burdine,* 450 U.S. 248, 253 (1981)).

In order to make out a *prima facie* case of retaliation, a complainant must show: (1) she engaged in a protected activity or opposed an unlawful employment practice, (2) she suffered a materially adverse employment action, and (3) a causal connection exists between the first and the second prong. *Propp v. Counterpart Int'l*, No. 07-CV-988, 2012 WL 739418 (D.C. Mar. 12, 2012).

Ms. Knobl fails to prove the first prong of her *prima facie* case. This element requires a complainant to show that she was engaged in a protected activity or opposed unlawful employment practices. *Howard Univ.,* 652 A.2d at 45. The protection afforded by the anti-retaliation provision extends to human resources employees charged with ensuring an employers' compliance with equal opportunity laws. *See EEOC v. HBE Corp.,* 135 F.3d 543, 554-55 (8th Cir. 1998) (member of personnel department protected from retaliation for refusal to implement potentially discriminatory company policy). However, the scope of this protection is narrowed as compared to that afforded other employees.[2] In order for a human resource employee's actions to constitute protected activity, these actions consist of stepping outside of her normal role as an employee. *See id.* at 554 (noting requirement of "stepping outside" of normal role as employee); *McKenzie v. Renberg's Inc.,* 94 F.3d 1478, 1486-87 (10th Cir. 1996) (in order to constitute protected activity, "the employee must step outside his or her role of representing the company"); *Atkinson v. Lafayette College,* 653 F. Supp. 2d 581, 596 (E.D. Pa.

[2] The Commission is aware that human resource professionals are often placed in difficult positions when performing their job duties. *See* Floyd D. Weather spoon, *"Don't Kill the Messenger": Reprisal Discrimination in the Enforcement of Civil Rights Laws*, 2000 Mich. St. L. Rev. 367 (2000).

2009) ("complaints made within the scope of an employee's job cannot constitute protected conduct"); *Welzel v. Bernstein,* 436 F. Supp. 2d 110, 120-121 (D.D.C. 2006) (contrasting "oppositional activity" with "performing [plaintiff's] job as Director of Human Resources").[3]

For a complainant whose job duties include normally protected activities, such as reporting discrimination complaints to management, this restricts her potential grounds for a retaliation claim beyond those available to other affected employees. *See Correa v. Mana Products,* 550 F. Supp. 2d 319, 330-31 (E.D.N.Y. 2008). In *Correa*, the human resource department employee filed or threatened to file an action adverse to the employer, actively assists other employees in asserting statutory rights, or otherwise engages in activities that were reasonably believed to be directed towards the assertion of statutory rights adverse to the employer. *Id: see also McKenzie's,* 94 F.3d at 1486-87. Therefore, in order for Ms. Knobl to fulfill the first prong of her *prima facie* claim---that she engaged in a protected activity or opposed an unlawful employment practices---Ms. Knobl must allege that she has engaged in protected conduct or has acted to oppose unlawful discriminatory practices in a manner falling outside of her role as Director of Human Resources.

In seeking to prove the first prong of her *prima facie* case, Ms. Knobl notes seventeen incidents where she allegedly engaged in protected activity. *See* Opposition 2-5. Each incident will be examined as to whether the alleged facts support the engagement of protected activity.

1. Ms. Knobl notes her bringing forward complaints to Mr. Meridy about the alleged offensive treatment of subordinates by Mr. Kessler. Opposition at 2. Ms. Knobl received

[3] Ms. Knobl asserts that several of these precedents are inapplicable in the instant case because they relate to anti-retaliation provisions under the Fair Labor Standards Act or Title IX. Opposition at 10-12. However, these different sources of law have often been treated together in determining the contours of anti-retaliation provisions. *See EEOC v. HBE Corp.*, 135 F.3d 543, 554 (8th Cir. 1998) (citing *McKenzie* in interpreting Title VII provision); *Correa v. Mana Products, Inc.*, 550 F. Supp. 2d 319, 330-31 (E.D.N.Y. 2008) (citing *McKenzie* in interpreting Title VII provision); *Atkinson v. Lafayette College,* 653 F. Supp. 2d 581, 594 (E.D. Pa. 2009) (using Title VII framework to analyze Title IX retaliation claims).

complaints from several employees, investigated the matter, and discussed her findings with several of AIPAC's executives. Findings of Fact ["FF"] 23. As mentioned previously, part of Ms. Knobl's job duties were to respond to employee concerns and to make management aware of employee complaints. FF 12. Here, there is no indication that Ms. Knobl took any adverse action against the company or stepped outside of her role in reporting these concerns to management. Further, these complaints do not appear to be complaints of unlawful discrimination based on sex, as both male and female employees complained about Mr. Kessler's conduct. FF 45. The DCHRA does not bar rude or abusive conduct within the workplace, but only that conduct amounting to unlawful discrimination based on membership in a protected class. *See McMillan v. Powell,* 526 F. Supp. 2d 51, 55 (D.D.C. 2007). *See also Williams v. Spencer,* 2012 WL 3264569, at *8 (D.D.C. Aug.13, 2012) (the protected activity must in some way allege discrimination made unlawful by DCHRA). Thus, Ms. Knobl's reporting of poor management practices does not qualify for protection under the DCHRA because nothing in the record demonstrates these complaints alleged discrimination on the basis of the characteristics protected by DCHRA. Thus, this action does not constitute protected activity under the DCHRA.

2. Complainant cites the termination of Ms. Wienery, asserting that she had advised Mr. Nierman—who was responsible for the decision—that terminating an employee in-person was preferred compared to firing an employee over the telephone. FF 25. Ms. Knobl asserts she complained to Mr. Meridy about the method of the termination, and ultimately spoke to Mr. Fishman about the matter. *Id.* Ms. Knobl indicated to her superiors that she believed the termination was about to be handled poorly and that managers needed training on how to properly terminate employees. FF 26. This ultimately resulted in the creation of new policies regarding termination practices. *Id.* The actions taken above fall directly within Ms. Knobl's role

as Director of Human Resources, which required her to write and promulgate policies for the organization, discussing human resources concerns with management, and training managers on proper conduct. FF 9. This action is clearly an issue of business etiquette, and therefore, does not constitute protected activity under the DCHRA.

3. Ms. Knobl notes a situation involving Ms. Odinec's attempt to work three days per week after having a baby. FF 27. Despite Respondent having a general policy that employees in development jobs were required to work full-time schedules, Ms. Odinec was ultimately allowed to work a reduced schedule. FF 28. However, Ms. Odinec was asked to sign an arrangement that would require review after six months—a requirement that was not allegedly imposed on a similarly situated male employee. FF 29. The question at issue is not whether unlawful discrimination may have existed within Respondent's organization, but whether Ms. Knobl engaged in protected activity that resulted in retaliatory action being taken against her. With regards to this incident, Ms. Knobl alleges only that she spoke to several individuals at AIPAC—including both management and Ms. Odinec—about the possibility of a reduced schedule. *Id.* When engaging in these conversations, Ms. Knobl was clearly acting within her role as Director of Human Resources and did not at any time step outside it. Thus, this action does not constitute protected activity under the DCHRA.

4. Ms. Knobl brings forward a situation involving Ms. Brecher, who was sent to a management training courses at the Jerry Bell Institute.[4] FF 33. Ms. Brecher had complaints about her treatment while employed with Respondent, which Ms. Knobl brought to the attention of Mr. Meridy and Mr. Missner. FF 35. However, as noted previously, reporting employee concerns to senior management was part of Ms. Knobl's job as Director of Human Resources.

[4] After attending the Jerry Bell Institute, Ms. Brecher wrote an email to Mr. Missner and Ms. Knobl thanking them for the "learning and growth opportunity." FF 36.

FF 12. Therefore, Ms. Knobl did not step outside her role as Director of Human Resources with regard to this action. Thus, this action does not constitute protected activity under the DCHRA.

5. Ms. Knobl notes Ms. Fisher's concern about the lack of women in Regional Director and other management positions. FF 40. Ms. Knobl discussed these concerns with Mr. Meridy and Mr. Dreilinger, an outside consultant. FF 41. Merely discussing this situation with management and giving advice on how to proceed in addressing an employee's concerns does not place Ms. Knobl in a position adverse to the organization. Instead, it represents an important duty she is required to perform as part of her position. *See McKenzie,* 94 F.3d at 1486 (requiring plaintiff to "cross[] the line from being an employee merely performing her job as personnel director to an employee lodging a personal complaint about the wage and hour practices of her employer and *asserting* a right adverse to the company " to recover) (alteration in original). Ms. Knobl did not herself assert, threaten or assist any claim with regards to the alleged discrimination; instead, she brought the concerns of others to the attention of her superiors, which was expected of her as the Director of Human Resources. Therefore, Ms. Knobl did not step outside her role with regard to this situation. Thus, this action does not constitute protected activity under the DCHRA.

6. Ms. Knobl notes a situation involving Ms. Goldstein's departure from Respondent's organization, where Ms. Goldstein was forced to tender her resignation after being told that she must take a position in Houston or she would be terminated. FF 43. Ms. Knobl asserts that her action consisted of apprising Mr. Meridy, Mr. Missner and Mr. Toubin of Ms. Goldstein's concern. *Id.* As noted above, bringing employee concerns to management's attention was part of Ms. Knobl's job description. Therefore, she did not step outside her role as Director

of Human Resources with regard to this situation. Thus, this action does not constitute protected activity under the DCHRA.

7. Ms. Knobl cites Ms. Fisher's concerns that Respondent's workplace was not a "family friendly" environment and Ms. Fisher's resignation due to the long hours she was worked. Opposition at 3. In addition, Ms. Knobl also notes that Respondent's management possessed negative attitudes towards high-ranking women taking maternity leave under the Family and Medical Leave Act. Ms. Knobl's involvement in this situation included discussing Ms. Fisher's concerns with Mr. Meridy and Mr. Fishman. FF 41. In bringing this employee's concerns to senior management, Ms. Knobl was again acting within her role as Director of Human Resources. Thus, this action does not constitute protected activity under the DCHRA.

8. Ms. Knobl notes a November 2006 incident where Ms. Brook and Ms. Schiff spoke to Ms. Knobl about Mr. Kessler's treatment of subordinates. FF 44. Ms. Knobl relayed these concerns to Mr. Kessler and Mr. Meridy, and ultimately coached Mr. Kessler on how to better treat his employees. FF 46. In doing so, Ms. Knobl acted within her role as Director of Human Resources, as her position required her to bring employee complaints to management and serve as a resource for management regarding addressing employee concerns. FF 12. In addition, there is no indication that Mr. Kessler's treatment was discriminatory, as opposed to simply being rude or undesirable. FF 45. Like Title VII, the DCHRA only addresses discriminatory conduct and it was not designed as a "civility code" extending to undesirable management practices. *See McMillan v. Powell,* 526 F. Supp. 2d 51, 55 (D.D.C. 2007). Therefore, in bringing these employees' concerns to senior management, Ms. Knobl was again acting within her role as Director of Human Resources. And even assuming Ms. Knobl's action was outside the scope of

her job description, this action would still not implicate the DCHRA. Thus, this action does not constitute protected activity under the DCHRA.

9. Ms. Knobl notes concerns expressed by Ms. Gans that she was not receiving sufficient support from Mr. Abraham, and that career advancement promises made to her did not materialize. FF 49. Ms. Gans ultimately resigned as a result. *Id.* Ms. Knobl's action with regard to this situation was to discuss Ms. Gans' concerns with Mr. Missner and Mr. Meridy. *Id.* Importantly, Ms. Gans' complaints were not of discrimination based on sex or any other trait protected by the DCHRA. In communicating these complaints to management, Ms. Knobl was acting within her role as Director of Human Resources. Thus, this action does not constitute protected activity under the DCHRA.

10. Ms. Knobl notes Ms. Pearlman's resignation due to conflicts with Mr. Abrahams. FF 55. Mr. Missner allegedly acknowledged to Ms. Knobl that management made a mistake regarding the handling of Ms. Pearlman's concerns, but still blamed Ms. Pearlman's resignation on her inability to work with Mr. Abrahams. FF 56. Ms. Knobl's involvement in this situation entailed receiving complaints from Ms. Pearlman, reporting them to Mr. Meridy, and engaging in conversations with management. *Id.* Importantly, Ms. Pearlman's complaints were not based on discrimination based on sex or any other trait protected by the DCHRA. Here, Ms. Knobl was acting entirely within her role as Director of Human Resources. Thus, this action does not constitute protected activity under the DCHRA.

11. Ms. Knobl cites the termination of Ms. Indek, who was forced to relocate to Baltimore after working for Respondent's Atlanta office. FF 65. Ms. Indek claimed she was provided insufficient training for her new position and was ultimately fired for failing to meet expectations. FF 66. Ms. Knobl spoke to Mr. Meridy, Mr. Shankman and Mr. Missner about this

situation and indicated that Ms. Indek may have been "set up" to fail. *Id.* In bringing this concern to management, Ms. Knobl was acting within her role as Director of Human Resources. FF 11. Further, nothing in the record indicates Ms. Indek's concerns were based on discrimination barred by the DCHRA. Thus, this action does not constitute protected activity under the DCHRA.

12. Ms. Knobl notes several meetings she had in the first half of 2007 regarding continued problems with Mr. Kessler's management style. FF 68. She states that she had meetings with people in the department and then shared their concerns with Mr. Meridy and Mr. Fishman. *Id.* Ms. Knobl believed token actions were taken by management and the complaints were ignored. *Id.* However, Ms. Knobl does not indicate that she took any action adverse to Respondent or that the complaints involved unlawful discrimination prohibited by the DCHRA. Instead, she only alleges that she met with concerned employees and passed their concerns to management. *Id.* This action fell within her role as Director of Human Resources, as her position required her to report employee concerns to management and meet with aggrieved employees. FF 12. Thus, this action does not constitute protected activity under the DCHRA.

13. Ms. Knobl notes meetings with Mr. Dreilinger in April through June 2007, discussing concerns about the organization's high turnover rates, the role of women in the workplace, and the need for management training for all managers, supervisors and directors. FF 69. At these meetings, Ms. Knobl shared departing employees' concerns and discussed Mr. Meridy's management style. FF 70. Collectively, these conversations entail the communication of employee grievances to management, advice on the need for changes in training policies, and discussion of issues facing the organization. None of these actions can properly be said to constitute action adverse to Respondent. Rather, these actions constituted part of Ms. Knobl's job

responsibilities, as she was reporting to and advising management. Therefore, Ms. Knobl did not step outside her role as Director of Human Resources. Thus, this action does not constitute protected activity under the DCHRA.

14. Ms. Knobl notes an incident in June 2007 where she met with Mr. Fishman to discuss the treatment of Miriam Berg by her supervisor. FF 71. Ms. Knobl believed Mr. Fishman was dismissive of the accusations that the supervisor mistreated his subordinates. *Id.* Ms. Knobl then shared the results of this meeting with Mr. Meridy. *Id.* Ms. Knobl's actions did not cross the line into action adverse to Respondent, as her actions would best be viewed as part of her required duties to advise management and report employee concerns. Further, there is no indication that Ms. Knobl indicated that she believed that the treatment of Ms. Berg was discriminatory based on any protected trait. Thus, this action does not constitute protected activity under the DCHRA.

15. Ms. Knobl notes an incident in July 2007 where Ms. Day met with her to discuss her treatment by Mr. Meridy, asserting that Mr. Meridy wanted her to take on additional responsibilities without increasing her salary. FF 72. Ms. Day subsequently quit, and Ms. Knobl discussed this matter with Ms. Afes. *Id.* Ms. Knobl does not indicate that she took any further action with regards to this matter, only that she had spoken to Ms. Afes. In bringing this concern and the employee's subsequent resignation to management's attention, Ms. Knobl was clearly acting within her role as Human Resources Director and not adverse to Respondent. Further, there is no indication that Ms. Knobl believed that the treatment of Ms. Day was in any way discriminatory. Thus, this action does not constitute protected activity under the DCHRA.

16. Ms. Knobl notes meetings with Ms. Afes discussing Mr. Meridy's treatment of her. FF 73. Ms. Afes stated that Mr. Meridy kept her on a "short leash" and was "demeaning"

towards her. *Id.* She also stated that Mr. Meridy failed to provide her with performance reviews. *Id.* Ms. Knobl brought Ms. Afes concerns to the attention of Mr. Meridy. FF 74. The actions taken by Ms. Knobl were within her normal job duties and not adverse to the organization. Ms. Knobl does, however, note that she also recommended that Ms. Afes speak with an attorney about her concerns and gave her the name and number of an attorney.[5] FF 75. In doing so, Ms. Knobl actively assisted Ms. Afes in taking potential adverse action against the company and was outside her role as Director of Human Resources. However, the action is still insufficient to constitute protected activity under the DCHRA as there is no indication in the record that Ms. Afes perceived Mr. Meridy's actions toward her implicated any protected trait under the DCHRA.

The DCHRA is designed to combat discrimination; therefore, its retaliation provisions offer protection only to those exercising rights potentially related to discrimination claims. *See Burlington,* 548 U.S. at 68 (Title VII designed to prevent employer actions "likely to deter victims of *discrimination* from complaining to the EEOC"). It is not enough for an employee to object to a violation of personnel policies or mistreatment in general, without connecting it to membership in a protected class, for such practices, however repugnant they may be, are outside the purview of the DCHRA. *See Vogel v. District of Columbia Office of Planning,* 944 A.2d 456, 464 (D.C. 2008) *See also McMillan,* 526 F. Supp. 2d at 55 (complaints about nondiscriminatory rude behavior do not implicate Title VII). Based on Ms. Knobl's own version of the facts, Ms. Knobl's actions in referring Ms. Afes to an attorney relate to Ms. Afes' complaints of "demeaning" conduct and failure to give performance reviews as required by AIPAC's internal policy---not to a claim of discrimination. Therefore, because Ms. Knobl's adverse action was not

[5] Despite several months of discovery, Ms. Knobl first informs Respondent about her referring an attorney to Ms. Afes in an affidavit attached to her Opposition brief.

tied to claims of discrimination under the DCHRA, her action does not does not constitute protected activity under the DCHRA.

17. Finally, Ms. Knobl notes Ms. Levit's complaints about her supervisor, Mr. Toubin, asserting he was allegedly "demeaning, demanding, ill-prepared and untruthful." FF 79. Ms. Knobl discussed these concerns with Mr. Meridy and Mr. Missner. These concerns were similar to those previously made by Ms. Goldstein. FF 79-80. Mr. Toubin was ultimately terminated after being placed on a performance improvement plan. FF 79. Here, Ms. Knobl's actions appear largely to be notifying management of an employee's complaint and there are no facts indicating that the behavior alleged was discriminatory. As a result, it would appear that Ms. Knobl's actions here largely constitute giving advice to management and bringing employee concerns to their attention. This falls within Ms. Knobl's role as Director of Human Resources. *See McKenzie,* 94 F.3d at 1486 (noting that informing the company of the risk of potential claims against it did not go beyond plaintiff's role as personnel director). Thus, this action does not constitute protected activity under the DCHRA.[6]

In seeking to prove the first prong of her *prima facie* case, Ms. Knobl notes seventeen alleged incidents where she engaged in protected activity. However, after examining each incident in detail, not a single incident can be deemed protected activity under the DCHRA.[7]

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[6] In her brief, Ms. Knobl states she "expressed her concerns about what was happening to women in senior positions." Opposition at 6. Without more, this vague statement does not show that Ms. Knobl engaged in protected activity. Ms. Knobl does not state with any specificity with whom she expressed her concerns with or what was "happening" to women in senior positions. Furthermore, the statement shows no connection to the facts presented in the enumerated paragraph. For the reasons stated previously, bringing forward employee concerns was expected of her as the Director of Human Resources and she communicated these employees' concerns to the attention of her superiors.

[7] In her brief, Ms. Knobl argues the activities listed above are sufficient to constitute protected activity. Opposition at 1-6. Ms. Knobl asserts that *Welzel v. Bernstein,* 436 F. Supp. 2d 110 (D.D.C. 2006) leaves open the possibility that a director of human resources opposing discriminatory practices would be engaging in legally protected activity. Yet the District Court in *Welzel* drew a distinction between opposing discriminatory practices and performing the duties of "advising" and "counseling" management regarding possible risks and beneficial courses of action. *Id.* at 125. This essentially restates the requirement that Ms. Knobl must step outside her role as an employee in order to have engaged in protected activity, a requirement that she has not met. Ms. Knobl also cites *Muniz v. United Parcel*

Instead, these instances of "protected activity" are best characterized as responding to management style complaints or personality conflicts. Ms. Knobl admits that she never filed or threatened to file an action against her employer while employed at AIPAC, admits that her investigation of complaints and the resolution of those complaints was part of her job description, and admits that she was acting on behalf of the company while investigating these grievances. FF 106-09. Other than referring Ms. Afes to an attorney—and there is no indication in the record Ms. Afes' complaints involved discrimination prohibited by the DCHRA—none of her actions were outside the scope of her employment and adverse to her employer.[8] Adopting Ms. Knobl's position that all seventeen instances listed above are protected activity would render all work activities performed by human resource professionals subject to DCHRA protection. *See Correa,* 550 F.Supp.2d at 330. Since Ms. Knobl has failed to establish her *prima facie* case, Ms. Knobl would not be able to ultimately prevail even after an evidentiary hearing. Therefore, summary judgment is appropriate is this matter.

However, even assuming that Ms. Knobl had proven her *prima facie* case, Respondent would still be entitled to summary judgment. After the *prima facie* case has been shown, the burden shifts to Respondent to show a legitimate, nondiscriminatory reason for the action taken. *See Atlantic Richfield Co.,* 515 A.2d at 1099. If this burden is met, the burden shifts back to a complainant to prove that this reason was pretextual. *Id.* Respondent asserts that Ms. Knobl was

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Service, Inc., 731 F. Supp. 2d 961, 970 (N.D. Cal. 2010), which held that an employee's refusal to accede to an alleged practice of wage-and-hour violations could be construed as acting adversely to the employer. However, Ms. Knobl has not alleged that she refused to participate in a discriminatory practice—merely that she performed her job responsibilities in notifying management of employee complaints and counseling these employees on compliance. Finally, Complainant cites to *Carter-Obayuwana v. Howard Univ.,* 764 A.2d 779, 790-91 (D.C. 2001) for the proposition that "protected activity" extends beyond the filing of a lawsuit or formal complaint to reach the filing of informal complaints of discrimination. However, in *Carter-Obayuwana,* the plaintiff was an associate professor without any human resource responsibilities. *Id.* at 781-82. In the instant case, in bringing an employee's complaints to management, Ms. Knobl was simply performing the role she was hired to do. Therefore, her case differs starkly from that presented in *Carter-Obayuwana.*

[8] There is no evidence in the record that anyone from AIPAC knew Ms. Knobl referred Ms. Afes an attorney.

discharged for performance-based reasons. Motion at 2. Specifically, Respondent states that it terminated Ms. Knobl's employment due to "serious performance deficiencies, including her overall lack of professional judgment, inability to keep information confidential, and a failure to lead the Human Resources Department with a vision that AIPAC expected." *Id.* Respondent further states that Ms. Knobl was unable to meet Respondent's expectations going forward, that she exhibited unprofessional behavior, and performed poorly in executing her tasks. *Id.* at 37-42.

An undisputed record reveals ample support for Respondent's rationale for the termination. On several occasions, Ms. Knobl shared confidential information, despite an organizational policy to the contrary and the requirement of confidentiality as part of her job description. FF 89. The issue of confidentiality was discussed with Ms. Knobl several times during the course of her employment and was documented in her performance reviews. FF 20, 59, 92. In August 2006, Ms. Knobl sent files to an employee who was under investigation by the organization for theft, an action which Mr. Meridy perceived as an unjustifiable error in judgment. FF 30-32. There were also concerns with Ms. Knobl's ability to communicate effectively, as her communications often needed to be rewritten, frequently contained jargon, and were sometimes difficult to understand. FF 63. Mr. Meridy felt that Ms. Knobl did not build effective relationships with Respondent's directors and department heads, which affected her credibility in her position. FF 62.

Additionally, several senior level employees expressed concerns that Ms. Knobl could not perform the duties of her position. FF 86. Mr. Fishman indicated that she was ineffective in her work in finding a suitable 401(k) plan for the organization, resulting in Mr. Meridy's being brought in to assist. FF 83. Ms. Knobl was also responsible for the creation of a 457(d) deferred compensation plan, a project that she "entirely bungled" according to her superiors. FF 87. In

giving a presentation to Respondent's executives on the plan, Ms. Knobl was unable to answer even simple questions, resulting in a loss of credibility to the executives. FF 85. These reasons are sufficient to fulfill the threshold burden of stating a nondiscriminatory reason for the termination, shifting the burden back to the complainant to show pretext.

Ms. Knobl offers several arguments to demonstrate pretext. However, in looking to the record in this case—even when viewed in the light most favorable to Ms. Knobl—there is insufficient evidence to show that Respondent's asserted reason for her termination was a pretext for discrimination.

First, Ms. Knobl argues she was never informed she was not meeting performance standards prior to her termination (*i.e.* her performance reviews giving generally positive and she was never put on a Performance Improvement Plan). Opposition at 14-15. During her tenure, Ms. Knobl was given two performance reviews, in January 2006 and January 2007. Compl. Ex. A., B. While both performance reviews were generally positive, both included noted concerns with Ms. Knobl's performance and professional behavior. *Id.* Her January 2006 performance review stated that Ms. Knobl needed to refrain from discussing employees' "health and welfare situations" with others. FF 20. The record shows that Ms. Knobl had a history of discussing employees' confidential information. FF 92. Likewise, her January 2007 performance review stated that Ms. Knobl needed to find a balance between being overly concerned with employees and accomplishing the "big picture" tasks of her position, needed to improve her cooperation with department heads, and that she needed to improve her communication skills and judgment. FF 58-63. Additionally, this performance review again restated the previous performance review's concerns about Ms. Knobl's lack of confidentiality. FF 20. Thus, even at the time of these reviews, there were documented concerns about Ms. Knobl's performance.

Importantly, several of the specific events noted by management employees in demonstrating Ms. Knobl's poor performance and judgment occurred after her January 2007 performance review. At the end of January 2007, Ms. Knobl was sent an email discussing the tone and use of jargon in her communications. FF 64. In May 2007, Ms. Knobl was sent an email discussing her use of the word "classified" with regards to information possessed by Respondent---an error which was considered major due to the potential political fallout stemming from the implication of Respondent's possessing classified information. FF 67. In July 2007, Ms. Knobl failed to meet with Ms. Odinec regarding her concerns for obtaining pediatric health care, an action Mr. Meridy believed "seriously compromised" Ms. Knobl's credibility with veteran employees. FF 76-78. Additionally, Ms. Knobl did not perform satisfactorily in regards to both the 401(k) and 457(d) projects resulting in a loss of confidence of organization's executive team in her. FF 83, 85. Despite her general positive performance reviews, it is clear that there were concerns with Ms. Knobl's job performance at the time of her termination, and that the existence of these reviews does not demonstrate pretext. Further, the fact that she was not placed on a Performance Improvement Plan involving progressive discipline is equally unpersuasive as such plans were used infrequently within the organization at the time of Respondent's termination. FF 96.

Second, Ms. Knobl attempts to show pretext based on Mr. Meridy's failure to specifically mention her performance problems during the termination conversation. FF 95. During the termination conversation between Mr. Meridy and Ms. Knobl, Ms. Knobl was not given a detailed explanation for Respondent's decision to cease her employment. *Id.* Rather, all Ms. Knobl was told was that Respondent was moving in a "different direction" with its human resources department. *Id.* Mr. Meridy testified at his deposition that he may not have discussed

performance deficiencies in order to make it "easier" for Ms. Knobl. Meridy Dep. at 34. As Respondent correctly points out, an employer is not required by law to give an at-will employee a detailed explanation for its termination decision. *See In re Vase*, 129 F. Supp. 2d 113, 115-18 (D. Conn 2001). The mere fact the Respondent elected not to give a thorough explanation for its decision to terminate Ms. Knobl is not enough to demonstrate pretext.

Third, Ms. Knobl asserts that her work performance warranted both a $50,000 pay raise soon after she began employment and a $5,000 bonus at the end of her tenure, thus, showing pretext. However, nothing in the record shows either was given for performance based reasons. The pay increase—raising her annual salary from $100,000 to $150,000—was given for the purpose of making her salary consistent with others on the market in the similar position and in a similar organization. FF 22. Likewise, the $5,000 bonus Ms. Knobl received upon leaving Respondent's organization was also given for non-performance-based reasons---rewarding her for remaining in her position beyond her termination. FF 104. All of the deposition testimony indicates that this bonus was a token of appreciation, not an indication of good performance. Moreover, the decision to give Ms. Knobl this bonus was made several months after Respondent terminated her.

Finally, Ms. Knobl argues that because she remained employed with Respondent for several months after her termination, it shows she was not terminated for performance-based reasons, and that the rationale given by Respondent must be a pretext. In July 2007, Knobl was first informed she was being terminated, but Ms. Knobl, at her request, asked to remain employed with the organization. FF 100. The retention of an employee after termination is a somewhat unusual practice, but Mr. Meridy testified he allowed her to stay employed beyond the termination due to human resource functions that needed to be completed. FF 101. The

deposition testimony further indicates that Ms. Knobl was retained in order to ensure that human recourses functions were performed while her replacement was sought. FF 102. Nothing in the record offers any suggestion that this stated reason is a pretext for retaliation.

The record demonstrates substantial support for Respondent's assertion that Ms. Knobl was terminated for performance-based reasons, not unlawful retaliation. Nothing in the record even hints—directly or indirectly—that Respondent possessed any form of retaliatory animus toward Ms. Knobl or Respondent's legitimate, nondiscriminatory reason for terminating Ms. Knobl was a pretext for retaliation. Therefore, summary judgment is granted.[10]

[10] Although Ms. Knobl brings her claim under the "opposition clause," her claim would likewise fail if she had argued her claim under the "participation clause." A human resource employee conducting an internal investigation into harassment complaints is not be protected by the "participation clause" of the anti-retaliation provision of Title VII. *See Townsend v Benjamin Enterprises, Inc.*, 679 F.3d 41 (2d Cir. 2012).

VI. CONCLUSIONS OF LAW

Ms. Knobl failed to establish a *prima facie* case of retaliation because she cannot show she engaged in protected activity. Furthermore, even assuming Ms. Knobl was able to establish a *prima facie* case of retaliation, Respondent has provided a legitimate, nondiscriminatory reason for her termination which is supported by substantial evidence, and Ms. Knobl failed to present evidence establishing Respondent's proffered reason for her termination was a pretext for retaliation.

VII. ORDER

Based on the foregoing, the Commission **GRANTS** summary judgment to Respondent on Ms. Knobl's retaliation claim. Therefore, Ms. Knobl's claim is **DISMISSED**.

So **ORDERED** this 22 day of October, 2013.

Commissioner Earline Budd

Commissioner Gabriel Rojo

Commissioner David Scruggs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS

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October 22, 2013

To: All Parties

From: The D.C. Commission on Human Rights

Subject: Notice of Final Decision and Order
Susan Knobl v. AIPAC, Docket number: 08-379-P

In accordance with D.C. Mun. Regs. tit. 4, § 431 (1995) of the Commission's Rules of Procedure for Contested Cases, any party adversely affected may apply to the Commission Tribunal for reconsideration within fifteen (15) calendar days of receipt of the ruling. Parties wishing to file a motion for reconsideration shall submit it to the Commission office and serve copies on each remaining party to the proceeding. Failure to file a motion for reconsideration shall not be deemed a failure to exhaust the administrative remedies under the D.C. Human Rights Act of 1977, D.C. CODE §§ 2-1401.01 - 2-1411.06 (2009).

Final Decision and Orders of the Commission are reviewable by the District of Columbia Court of Appeals. D.C. CODE § 2-1403.14. Any party adversely affected by the Final Decision and Order may seek judicial review by filing a Petition for Review with the District of Columbia Court of Appeals at the following address:

Clerk
District of Columbia Court of Appeals
430 E Street, NW, Room 115
Washington, DC 20001
(202) 879-2700

The Petition for Review must be received there within thirty (30) calendar days of the mailing date of this Order. D.C. App. R. 15(a)(2) (2011). Information on the process for filing a Petition for Review can be found in Title III of the District of Columbia Court of Appeals' Rules, which are available from the Clerk of the Court of Appeals, or at www.dcappeals.gov.