

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

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ALANA M. DeYOUNG,

Plaintiff,

v.

WEISER VALLEY HOSPITAL
DISTRICT, aka WEISER MEMORIAL
HOSPITAL; REUBEN DeKASTLE;
LORI COATES; and MAUREEN
RALEIGH,

Defendants.

CIV. NO. 1:13-322 WBS

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS

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This matter is before the court on defendants' motion to dismiss plaintiff's Complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. The Complaint contains claims under 1) 42 U.S.C. § 1983 for violation of plaintiff's First Amendment rights; 2) § 1983 for violations of her rights to procedural due process; 3) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2006); 4) the Idaho Human

1 Rights Act, Idaho Code §§ 67-5901 to 67-5912; and 5) Idaho state
2 law for wrongful termination. In response to defendants' motion,
3 plaintiff indicates that she does not oppose dismissal of her
4 Title VII and IHRA claims. (Pl.'s Opp'n at 5 (Docket No. 10).)
5 The court accordingly will address only the remaining claims.

6 I. Plaintiff's 42 U.S.C. § 1983 Claim for Violation of Her
7 First Amendment Rights

8 Plaintiff alleges that she worked as a Registered Nurse
9 ("RN") at Weiser Memorial Hospital ("Weiser Memorial"), primarily
10 in the operating room, for three years before RN supervisor Lori
11 Coates informed her that she was being reassigned to "floor
12 responsibilities" on the Med-Surgical Floor, would be required to
13 work a twelve-hour shift that week, and would have a fluctuating
14 schedule after the reassignment. (Compl. ¶¶ 4, 7, 11.)

15 Plaintiff alleges that part of the "agreed upon conditions" of
16 her employment with Weiser Memorial was that she would work a set
17 schedule of eight-hour shifts five days per week in order to
18 accommodate her responsibilities as a single mother. (Id. ¶ 12.)

19 After several alleged oral discussions between
20 plaintiff, Coates, RN supervisor Maureen Raleigh, Chief Nursing
21 Officer Reuben DeKastle, and Human Resources Manager Terri Kautz,
22 plaintiff alleges that on June 21, 2012, she filed a written
23 complaint with the Weiser Memorial Human Resources Department.
24 In her Complaint in this action, plaintiff alleges that on July
25 2, 2012, she was summoned to a meeting with DeKastle, Coates,
26 Raleigh, and Kautz in which she was given the ultimatum to
27 "resign or be fired." (Id. ¶¶ 17-18.) After requests for time
28 to consider the decision were denied, plaintiff was terminated.

1 (Id. ¶ 18.) The basis of plaintiff's First Amendment claim is
2 that her termination was "in retaliation against her for filing a
3 formal Grievance/Complaint on June 21, 2012." (Id.)

4 Although that grievance/complaint is not attached to
5 the Complaint in this action, in an affidavit by Kautz,
6 defendants have provided a copy of the "Employee Conflict
7 Resolution Form" with the same date, and Kautz attests that it is
8 a copy of the grievance plaintiff submitted. (Docket No. 5.)
9 Because plaintiff alleges the existence of this document in the
10 Complaint and does not dispute the authenticity of the copy
11 defendants submitted, the court may consider it for purposes of
12 the pending motion to dismiss. See Kniesel v. ESPN, 393 F.3d
13 1068, 1076 (9th Cir. 2006).¹

14 Plaintiff's formal grievance/complaint reads as
15 follows:

16 To Whom It May Concern

17 I was approached by Lori Coats RN in the hall outside
18 the recovery room and informed that I would have to
19 take a 12 hour shift on Tuesday or Wednesday on the
20 floor and I had no option. I would have to choose one
21 of those days. Lori was hostile in her approach and I
felt harassed and bullied at that time. I later went
to Maureen Raleigh as per Lori's request and asked her
about it. Maureen also insisted that I take a shift
because that was the fair thing to do.

22 I expressed frustration at the last several months and
23 how they had been handled by the management in regards
24 to conflicts between Jenny Serviates and myself. At
25 that time they requested Reuben's presence in the
meeting. I asked for an advocate and they refused me
that request. Reuben came in and also strongly
suggested that I work Tues 8 hours of orientation and

26 ¹ The court cannot, however, consider the affidavit
27 plaintiff submitted in support of her opposition to defendants'
28 motion to dismiss. See United States v. Ritchie, 342 F.3d 903,
909 (9th Cir. 2003).

1 then Wed 8 hour shift. I felt completely bullied and
2 harassed by the three of them. They made me feel
3 small and invaluable as an employee. They did offer
4 other suggestions in regard to the schedule on Tues
5 and Wed, but I did not feel at liberty to take them up
6 on any of them without retaliation.

7 For the last 4 months I have been bullied by the
8 administration at Weiser Memorial Hospital. I have
9 been informed that I had to take whatever they and
10 Jenny Serviates had to say or do to me and not tell
11 anyone. I was forced to sign a corrective action that
12 I would not talk about what was happening at work to
13 anyone. This in essence made it impossible for me to
14 feel safe at work. In order to keep my job I was
15 forced into mediation that was arranged by the
16 management at Weiser memorial Hospital and forced to
17 tolerate all of this without any kind of personal
18 advocate.

19 In essence, I feel bullied and harassed by the
20 Management in particular Lori Coats and Reuben
21 DeCastle. The work environment has been consistently
22 hostile and unfriendly with management especially in
23 the operating room.

24 At this time I am considering tendering my resignation
25 as it has become apparent that the management will
26 continue this hostile and harassing behavior towards
27 me until I take such actions.

28 Alana DeYoung RN

(Docket No. 5.)

29 In order to state a § 1983 First Amendment retaliation
30 claim against a government employer, a plaintiff must allege that
31 she spoke on a matter of public concern. Eng v. Cooley, 552 F.3d
32 1062, 1070 (9th Cir. 2009). Whether the plaintiff spoke on a
33 matter of public concern is "purely a question of law." Id.
34 "Whether an employee's speech addresses a matter of public
35 concern must be determined by the content, form, and context of a
36 given statement, as revealed by the whole record." Connick v.
37 Myers, 461 U.S. 138, 147-48 (1983). This inquiry "is not an
38 exact science," Weeks v. Bayer, 246 F.3d 1231, 1234 (9th Cir.

2001), but requires more of "a generalized analysis of the nature of the speech." Desrochers v. City of San Bernardino, 572 F.3d 703, 708-09 (9th Cir. 2009). If a public employee's speech does not touch on a matter of public concern, the speech is not protected under the First Amendment. Rendish v. City of Tacoma, 123 F.3d 1216, 1219 (9th Cir. 1997).

A. Content

The first inquiry--the content of a given statement--is "the greatest single factor in the Connick inquiry." Johnson v. Multnomah County, 48 F.3d 420, 424 (9th Cir. 1995) (quoting Havekost v. U.S. Dep't of the Navy, 925 F.2d 316, 318 (9th Cir. 1991)). "To address a matter of public concern, the content of the [employee's] speech must involve 'issues about which information is needed or appropriate to enable the members of society to make informed decisions about the operation of their government.'" Desrochers, 572 F.3d at 710. "On the other hand, speech that deals with 'individual personnel disputes and grievances' and that would be of 'no relevance to the public's evaluation of the performance of governmental agencies' is generally not of 'public concern.'" Coszalter v. City of Salem, 320 F.3d 968, 973 (9th Cir. 2003) (quoting McKinley v. City of Eloy, 705 F.2d 1110, 1114 (9th Cir. 1983)). Similarly, "'speech that relates to internal power struggles within the workplace,' and speech which is of no interest 'beyond the employee's bureaucratic niche'" generally do not involve matters of public concern. Desrochers, 572 F.3d at 710 (quoting Tucker v. Cal. Dep't of Educ., 97 F.3d 1204, 1210 (9th Cir. 1996)).

There can be no question here that the content of

1 plaintiff's written grievance does not address a matter of public
2 concern. The Ninth Circuit has repeatedly held that an
3 employee's private grievance about his or her superiors generally
4 does not involve a matter of public concern. See Desrochers, 572
5 F.3d at 712 n.8, 713 ("Merely cataloguing a strained working
6 relationship with a superior does not necessarily allege actual
7 or potential wrongdoing or breach of public trust. . . . [W]hen
8 working for the government, saying one's boss is a bully does not
9 necessarily a constitutional case make.") (internal quotation
10 marks omitted) (second alteration in original); Hyland v. Wonder,
11 972 F.2d 1129, 1137 (9th Cir. 1992) ("Speech focused solely on
12 internal policy and personnel grievances does not implicate the
13 First Amendment."); Havekost, 925 F.2d at 318 (holding that a
14 complaint about dress code and staffing policies is "nothing more
15 than a workplace grievance" and noting that a "critical inquiry
16 is whether employee spoke in order to bring wrongdoing to light
17 or merely to further some purely private interest"); see also
18 Desrochers, 572 F.3d at 713-14 (citing cases from the Seventh,
19 Fifth, and Tenth Circuits as reaching similar conclusion).

20 To lend support to a finding of public concern, the
21 content of complaints about management must reach beyond personal
22 grievances to issues of "broader societal concern." Desrochers,
23 572 F.3d at 713. For example, the Ninth Circuit found it
24 significant that public complaints about the management of a
25 library highlighted how the alleged mismanagement was negatively
26 affecting library service. See Lambert v. Richard, 59 F.3d 134,
27 136 (9th Cir. 1995) ("Given that operation of a public library is
28 among the most visible of the functions performed by city

1 governments, [the employee] had a Constitutional right--and
2 perhaps a civic duty--to inform the council if library service
3 was jeopardized by poor management at the top.").

4 In Desrochers, on the other hand, the Ninth Circuit
5 found the content of complaints insufficient to support a finding
6 of public concern even when the grievances at issues stated that
7 the supervisors' actions "made it difficult for [the sergeants']
8 teams to function" and impacted the police department "in a
9 negative way." Desrochers, 572 F.3d at 712. In finding the
10 content of the grievances insufficient, the Ninth Circuit
11 emphasized the absence of "accounts of failed law enforcement
12 efforts, [] descriptions of botched investigations, and []
13 discussion of duties the [police department] was unable to
14 perform in a competent fashion due to the actions of the
15 sergeants' supervisors." Id. Here, plaintiff's statements about
16 her supervisors are limited to her personal frustrations with
17 management and do not even suggest that her supervisors' conduct
18 was negatively impacting the hospital, other employees, or
19 patients.

20 B. Form

21 The Supreme Court has acknowledged that "'the public's
22 interest in receiving the well-informed views of government
23 employees engaging in civic discussion' is one of the primary
24 purposes of its First Amendment retaliation jurisprudence." Id.
25 at 714 (quoting Garcetti v. Ceballos, 547 U.S. 410, 419 (2006)).
26 Consequently, speech that takes the form of "internal employee
27 grievances which were not disseminated to the public . . . cuts
28 against a finding of public concern." Id. at 715; see also Roe

1 v. City & County of San Francisco, 109 F.3d 578, 585 (9th Cir.
2 1997) ("Although not dispositive, . . . [a] limited audience
3 weigh[s] against [an employee's] claim of protected speech.");
4 Gilbrook v. City of Westminster, 177 F.3d 839, 866 (9th Cir.
5 1999) ("An employee's motivation and the audience chosen for the
6 speech also are relevant to the public-concern inquiry.").

7 Here, plaintiff's statements were not directed at
8 the public. Her complaints were presented in a written, internal
9 personnel grievance, aimed neither toward the public nor made in
10 a form that the public would likely discover. The form of
11 plaintiff's statements thus also weighs against a finding of
12 public concern.

13 C. Context

14 The last Connick factor examines the context of the
15 statements, which seeks to decipher "the point of the speech."
16 Chateaubriand v. Gaspard, 97 F.3d 1218, 1223 (9th Cir. 1996).
17 The inquiry questions whether "speech 'seek[s] to bring to light
18 actual or potential wrongdoing or breach of public trust,' or is
19 [] animated instead by 'dissatisfaction' with one's employment
20 situation." Desrochers, 572 F.3d at 714 (quoting Connick, 461
21 U.S. at 148). Like the plaintiff in Connick, who was "strongly
22 opposed to [a] proposed transfer," 461 U.S. at 140, plaintiff's
23 formal grievance was clearly motivated by the way in which her
24 supervisors treated her, their change to her schedule, and their
25 requirement that she work on the Med-Surgical Floor. These
26 motivations likewise weigh against a finding of public concern.

27 Accordingly, the court concludes as a matter of law
28 that none of the statements contained in plaintiff's formal

1 complaint/grievance raised matters of public concern, and thus
2 may not form the basis for a claim under § 1983 for violation of
3 First Amendment rights.

4 Plaintiff argues that certain oral statements regarding
5 her lack of training which she allegedly made in the course of
6 her discussions with DeKastle, Coates, and Raleigh were "directly
7 related to the general well-being and concern for the patients"
8 and thus protected by the First Amendment. (Compl. ¶ 13.)
9 However, it is not alleged in the Complaint that plaintiff's
10 termination, or any other adverse employment action for that
11 matter, was in retaliation for any of those oral statements. To
12 the contrary, the Complaint expressly and unequivocally states
13 that plaintiff was "terminated in retaliation against her for
14 filing a formal Grievance/Complaint on June 21, 2012." (Id. ¶
15 18). To argue otherwise now is, in effect, to contradict those
16 express and unequivocal allegations of the Complaint.

17 II. Plaintiff's 42 U.S.C. § 1983 Claim for Violation of
18 Procedural Due Process

19 The Fourteenth Amendment provides that no state shall
20 "deprive any person of life, liberty, or property, without due
21 process of law." U.S. Const. amend. XIV, § 1. "[T]he range of
22 interests protected by procedural due process is not infinite,"
23 and "[t]o have a property interest in a benefit, a person clearly
24 must have more than an abstract need or desire for it. He must
25 have more than a unilateral expectation of it. He must, instead,
26 have a legitimate claim of entitlement to it." Bd. of Regents of
27 State Colleges v. Roth, 408 U.S. 564, 570, 577 (1972). Moreover,
28 property interests "are not created by the Constitution, . . .

1 they are created and their dimensions are defined by existing
2 rules or understandings that stem from an independent source such
3 as state law-rules or understandings that secure certain benefits
4 and that support claims of entitlement to those benefits." Id.

5 "In a pair of companion cases handed down the same day,
6 the Supreme Court explained that government employees can have a
7 protected property interest in their continued employment if they
8 have a legitimate claim to tenure or if the terms of the
9 employment make it clear that the employee can be fired only for
10 cause." Blantz v. Cal. Dep't of Corr. & Rehab., Div. of Corr.
11 Health Care Servs., 727 F.3d 917, 922 (9th Cir. 2013) (citing Bd.
12 of Regents of State Colleges v. Roth, 408 U.S. 564, 576-78
13 (1972); Perry v. Sindermann, 408 U.S. 593, 599-603 (1972)).

14 Here, plaintiff's Complaint lacks a single allegation even giving
15 rise to the inference that she had a legitimate claim of
16 entitlement to employment at Weiser Memorial Hospital, much less
17 to her schedule, floor assignment, or position. Absent a
18 protected property interest, plaintiff lacks a cognizable § 1983
19 claim based on the deprivation of any property without the
20 requisite procedural due process and the court must therefore
21 grant defendants' motion to dismiss that claim.²

22 ² Although plaintiff's Complaint alleges that her
23 termination "without appropriate investigation or evidentiary
24 hearing" deprived her of the "right to due process and equal
25 protection," the remaining allegations in the Complaint and
26 plaintiff's opposition to defendants' motion to dismiss do not
27 suggest that plaintiff is also alleging a § 1983 claim based on a
28 violation of the Equal Protection Clause. The Supreme Court has
also held that "the class-of-one theory of equal protection has
no application in the public employment context" based, in part,
on the "common-sense realization that government offices could
not function if every employment decision became a constitutional


1 III. Plaintiff's State Law Wrongful Termination Claim

2 Although plaintiff's Complaint alleges a state law
 3 claim for wrongful termination, plaintiff fails to address this
 4 claim in her opposition to defendants' motion to dismiss. More
 5 importantly, because plaintiff's federal claims do not survive
 6 defendants' motion to dismiss, the court declines to exercise
 7 supplemental jurisdiction over her state law claim. See 28
 8 U.S.C. § 1367(c)(3) ("[A court] may decline to exercise
 9 supplemental jurisdiction over a claim . . . if . . . [it] has
 10 dismissed all claims over which it has original jurisdiction.");
 11 Reynolds v. County of San Diego, 84 F.3d 1162, 1171 (9th Cir.
 12 1996), overruled on other grounds by Acri v. Varian Assocs.,
 13 Inc., 114 F.3d 999, 1000 (9th Cir. 1997) ("[I]n the usual case in
 14 which federal law claims are eliminated before trial, the balance
 15 of factors . . . will point toward declining to exercise
 16 jurisdiction over the remaining state law claims.").

17 IT IS THEREFORE ORDERED that defendants' motion to
 18 dismiss the Complaint be, and the same hereby is, GRANTED.

19 Plaintiff has twenty days from the date this Order is
 20 signed to file an amended complaint, if she can do so consistent
 21 with this Order.

22 Dated: March 31, 2014

23 
 24 **WILLIAM B. SHUBB**
UNITED STATES DISTRICT JUDGE

25 matter." Engquist v. Or. Dep't of Agric., 553 U.S. 591, 607
 26 (2008) (quoting Connick, 461 U.S. at 143) (internal quotation
 27 marks omitted). Nor does plaintiff allege that she was a part of
 28 some "identifiable group," as is required in a traditional equal
 protection claim. Id. at 601 (quoting Pers. Adm'r of Mass. v.
Feeney, 442 U.S. 256, 279 (1979)).