

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>MARY L. HARP,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 04-951-MJR</b>
	)	
<b>CHARTER COMMUNICATIONS, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**MEMORANDUM AND ORDER**

**REAGAN, District Judge:**

**I. Introduction and Background**

This matter comes before the Court on motion of Defendant Charter Communications Inc. (“Charter”) for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7.1.

On December 21, 2004, Plaintiff Mary L. Harp (“Harp”) filed a two-count complaint against Charter, her former employer. In Count I, Harp alleges that Charter discharged her, in violation of the **Sarbanes-Oxley Act, 18 U.S.C. §1514A et seq.** (“SOX”), because she reported certain acts involving improper payments to and/or billing by one of Charter’s contractors and complained that those acts were a fraud against Charter’s stockholders. In Count II, Harp alleges retaliatory discharge in violation of Illinois common law.

Charter provides cable television, internet and other related broadband services. Harp became employed by a Charter subsidiary when Charter acquired a number of AT&T-owned cable systems in July, 2001. In March, 2003, Harp became responsible for supervising the Technical

Audit Department for the St. Louis key market area (“KMA”). The Audit Department’s purpose was to find people who were getting cable without paying for it and to turn them into paying customers or to disconnect them permanently.

Citing the depositions of Rusty Keeley, the owner of American Directional Boring (“ADB”), and Jack Thomas, a St. Louis City employee responsible for Minority Business Enterprise (“MBE”) and Women’s Business Enterprise (“WBE”) matters, Harp alleges that Charter was having problems meeting the requirements of the City of St. Louis Franchise Agreement, which included a goal of Charter’s spending 40% of its contract dollars for upgrading the City’s cable system with MBEs. According to Harp, Charter employee Scott Helsinger created a scheme whereby two minority-owned business, MSTA and Americon, would bill Charter for work provided by two non-minority contractors, ADB and Spectrum. Harp states that when the City refused to give retroactive MBE credits for contracts with companies not certified at the time the work was performed, Charter stopped payment on a nearly \$400,000 check to MSTA and reissued it three days after MSTA’s MBE certification came through. Plaintiff’s Exhibit 6, 010409-15 and Exhibit 2, 007785-89.

Harp alleges that Charter employees, Barry Wilson<sup>1</sup>, Charter’s Senior General Manager, and Helsinger, used the audit team to steer more money to MSTA. In addition to its involvement in the upgrade of the City’s cable system, MSTA contracted to do audit work for

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<sup>1</sup>When Wilson joined Charter in July, 2003, he was the Senior General Manager of the St. Louis Key Market Area (“KMA”) and Harp’s supervisor. On January 7, 2004, Wilson changed the reporting structure, and Tom Baker became Harp’s direct supervisor. According to Charter, Wilson wanted to reduce the number of employees who reported directly to him. According to Harp, Wilson wanted to insulate himself from Harp and have someone in place on whom he could count to follow, without questions, his instructions regarding MSTA.

Charter beginning September 8, 2003, and ending December 10, 2003, at the rate of \$3.00 per residence, for a total of \$498,000.00. Deposition of Mary Harp ("Harp Depo."), 239-40. Harp noticed problems with MSTA's audit invoices and reported these problems to Wilson and Helsinger. Wilson instructed Harp to continue with her investigation of the invoices, and Helsinger suggested that she withhold certain amounts from the invoices, which she did. Harp alleges she found irregularities in the invoices and lowered, but did not deny payment, because she believed that MSTA had performed some portion of the work.

Harp alleges that, during this same period, the City again questioned Charter's use of MBEs to perform construction work in connection with the cable upgrade. According to Harp, the City notified Helsinger that the situation was unacceptable and that Charter's third quarter report would be closely reviewed.

On or about January 5, 2004, MSTA's president, Phyllis Shumpert Davis, spoke with Harp, and then with Wilson, regarding unpaid portions of the audit invoices MSTA had submitted. Davis complained that Harp had changed the scope of the agreement as to whether the contract required MSTA to audit houses of active Charter subscribers to determine whether they were receiving channels for which they were not paying, or only houses of non-subscribers.

On January 12, 2004, Davis and MSTA representatives met with Wilson, Baker and Harp. Harp states that she pointed out specific problems with MSTA's invoices, such as billing for 12,000 audits in a zip code with only 5,000 addresses. She further states that she was successfully confronting MSTA's representatives when Wilson called the meeting to a halt and ordered Baker to get together with MSTA and decide on an amount to pay. Harp asserts that she believed that Wilson was about to commit a fraud on Charter's shareholders by paying MSTA invoices either in

full or in an amount in excess of what had been approved.

Davis sent an e-mail, circulated among Charter's managers, recounting her involvement with Charter. Defendant's Exhibits 4, 13. Davis stated that while it initially sounded great that "ADB and Spectrum would be allowed to continue their work and Charter would on the surface increase it's [sic] minority participation with the city," her company had been used when "we were just being Team Players." *Id.* Wilson was concerned that MSTA's exit be accomplished in a manner that did not create political fall-out for Charter with the City. Deposition of Barry Wilson ("Wilson Dep."), 122:5-124:24.

Harp states that she complained to Brooke Wilson, the Human Resources manager, and to Barry Wilson that it was a violation of the Code of Conduct and a breach of ethics to negotiate settlement where fraudulent billing practices have been uncovered. Harp also related her concerns to Hunt Brown ("Brown"), Charter's in-house counsel, who said that he would make a report.

Harp claims that, ultimately, Charter reached a settlement to pay MSTA \$169,521.03 and, thus, "bought" MSTA's silence. Charter asserts that Harp, by her own testimony, was never told to stop investigating the MSTA billing issue and that she did not believe that any amount other than the amount she authorized was paid on MSTA's auditing invoices. Charter states that MSTA was removed as an approved Charter contractor shortly after the January 12th meeting.

Harp claims that Charter paid \$225,000 to ADB and \$175,000 to Spectrum under settlement agreements that included promises to keep the terms and the underlying subject matter confidential. Harp believes that these amounts were paid to prevent exposure of Charter's schemes regarding MBEs.

Then, in February, 2004, Charter implemented a reduction in force (“RIF”). According to Charter, Wilson’s supervisor, Lee Clayton Roper (“Clayton”), met with Maggie Bellville (“Bellville”), Chief Operating Officer, and Carl Vogel (“Vogel”), Chief Executive Officer, in late January or early February, 2004, to review the performance of the St. Louis KMA for January, 2004. Charter contends that the St. Louis KMA had significantly missed its budgeted revenue and cash flow targets for January, 2004. Charter states that Bellville and Vogel instructed Clayton that the St. Louis KMA needed to correct this problem “immediately” by reducing expenses. Charter alleges that its St. Louis KMA management team determined that the only way to achieve the expense reduction was to eliminate more than fifty full time positions. According to Charter, the team decided that, in order to avoid harming Charter’s ability to attract and retain customers, the Technical Audit Department, most of the Training Group and employees who had received a performance review of 2.4 or less would be eliminated.

Harp claims that Charter employees have told inconsistent stories regarding when and why the directive was issued and what the purpose of the directive was. Harp asserts that there are no notes from the meeting and no document reflecting a directive which cost more than fifty people their jobs. Harp contends that Charter’s story does not add up because the salary and benefits costs saved as a result of the RIF do not approach the increase in profits allegedly sought. Furthermore, Harp states, discharging employees at the end of February could not result in increased profits for the months of January through March, particularly when the planned severance payments of approximately \$200,000 are added in. Harp states that her termination papers were marked “not eligible for rehire,” while Barry Wilson testified that nobody fired as part of the reduction was ineligible for rehire. According to Harp, within a couple of weeks after eliminating the audit team,

Wilson was already discussing reinstating the function.

## **II. Analysis**

### **A. Applicable legal standards**

Summary judgment is proper if the pleadings, depositions, interrogatory answers, admissions and affidavits reveal 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. *Vukadinovich v. Board of Sch. Trs. of N. Newton Sch. Corp.*, 278 F.3d 693, 698-99 (7th Cir. 2002).

The mere existence of an alleged factual dispute is not sufficient to defeat a summary judgment motion. *Anderson v. Liberty Lobby*, 477 U.S. 242, 247 (1986); *Salvadori v. Franklin Sch. Dist.*, 293 F.3d 989, 996 (7th Cir. 2002). Rather, to successfully oppose summary judgment, the nonmovant must present definite, competent evidence in rebuttal. *Vukadinovich*, 278 F.3d at 699.

In order to state a claim under § 1514A, Harp must prove, by a preponderance of the evidence that (1) she engaged in protected activity; (2) the employer knew of the protected activity; (3) she suffered an unfavorable personnel action; and (4) circumstances exist to suggest that the protected activity was a contributing factor to the unfavorable action.” *Bishop v. PCS Administration, Inc.*, 2006 WL 1460032, \*1 (N.D.Ill. 2006) (citing *Collins v. Beazer Homes USA, Inc.*, 334 F.Supp.2d 1365, 1375 (N.D.Ga. 2004); 18 U.S.C. § 1514(A)(b)(2)(C) (action brought under SOX “shall be governed by the legal burdens of proof set forth in 42121(b) of Title 49, [U. S.] Code.”). The defendant may avoid liability if it can demonstrate by clear and convincing evidence that it “would have taken the same unfavorable personnel action in the absence of [protected] behavior,” *i. e.*, a legitimate nondiscriminatory reason. *Collins*, 334 F.Supp.2d at

1375-76 (quoting 49 U.S.C. § 42121(b)(2)(B)(iv)).

### III. Harp's § 1514A Claim

#### 1. Whether Harp engaged in a protected activity

The parties dispute whether Harp engaged in protected activity under § 1514A. An employee engages in a protected activity when she

provide[s] information, cause[s] information to be provided, or otherwise assist[s] in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by--

- (A) a Federal regulatory or law enforcement agency;
- (B) any Member of Congress or any committee of Congress; or
- (C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); . . . 18 U.S.C.A. § 1514A.

“ The plain language of § 1514A(a)(1) refers to providing information that is reasonably believed to ‘constitute[ ] a violation’ of one of the enumerated statutes or regulations.” *Bishop*, WL 1460032 at 8. The Court, in *Bishop*, went on to explain that, “the word ‘constitute’ should be understood to mean an actual violation has occurred, which could include an attempt (in the criminal sense),” *i. e.*, that defendant “knowingly took a substantial step toward the commission of the offense with the specific intent to commit that offense.” *Id.*, fn. 7. Thus, even if plaintiff has an incorrect, but reasonable belief, that reasonable belief must be “. . . that an actual violation has occurred or is being attempted.” *Id.*; accord *Collins*, 334 F.Supp.2d at 1376 (citing 18 U.S.C. § 1514A(a)(1); *Passaic Valley Sewerage Comm’rs v. United States Dept of Labor*, 992 F.2d 474 (3d Cir.1993)).

Unlike the plaintiff in *Collins*, Harp has not alleged that Charter was knowingly overpaying invoices. See *Collins*, 334 F.Supp.2d at 1376. Harp told Brooke Wilson (human

resources) that Barry Wilson had stopped the January 12, 2004, meeting short and “left the impression with everyone in the room” that MSTA would be paid more than the amount to which she believed it was entitled. Defendant’s Exhibit 14, 170800. Brooke Wilson responded that Harp should wait because “it wasn’t paid yet” and Harp might be “jumping the gun.” *Id.* at 170800, 170801. “An impression” that fraudulent conduct may take place in the future is not, by itself a reasonable belief that a violation has occurred or been attempted. Plaintiff’s “reasonable belief” must be founded on something more to show that the presence of, or a substantial step toward, violation.

Wilson’s discussion and actions during the days following the January 12, 2004, meeting, further undermine Harp’s claim that she reasonably believed a violation was being committed or that there was specific intent to commit a violation. While there is no dispute that Wilson cut short the fractious January 12, 2004, meeting between Charter and MSTA, subsequent to the meeting, Harp was not taken out of the loop on the MSTA payment issue, and Wilson reiterated his determination not to pay MSTA for work that it had not completed.

On January 14, 2004, Harp e-mailed Wilson, copying in Baker, that she understood that contractor disqualification was a “huge issue.” Charter’s Memorandum of Law, Exh. 13.<sup>2</sup> She also stated that Baker had pulled a list that showed “900,000 homes passed in those zip codes.” That statement indicates that Harp knew that Baker was not simply paying the invoices as submitted by MSTA but was investigating MSTA’s claims. Harp indicated that she was continuing with re-auditing MSTA areas for instances of additional overbilling. She stated that she believed it was

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<sup>2</sup>The e-mail string, as quoted and paraphrased below, is found in Charter’s Memorandum of Law, Exhibit 13, 110019, 110020.

“very wrong to pay them for work not performed.” She also stated, “. . . we owe it to our stock holders to be very diligent in this regard and I trust that you will support this process as you work through all of the other issues.”

Wilson responded that he had “no qualms about supporting you [*i. e.*, Harp] as we move forward with this.” He assured Harp that the reason he ended the meeting was that nothing was being accomplished. Wilson stated, “i [sic] agree we owe extreme diligence to our shareholders.” He stated that they could not move forward in a “he said - she said” fashion but needed to be sure that they were correct and to document their claims. Wilson asserted, “under no circumstances will we pay them for work not done.” He indicated that he had told Baker to get together with her to lay out the claims chronologically.

Harp responded, asking Wilson if they could legally get access to MSTA’s personnel payroll records. She stated that this idea had originally been suggested by Wilson. In the final e-mail in the string, Wilson stated that Harp would have to check that with Hunt (in-house counsel).

On January 23, 2004, in another e-mail string, Baker advised Wilson, copying in Harp, that he and Harp had met regarding the next steps to be taken regarding MSTA. Defendant’s Exhibit 1.<sup>3</sup> Baker suggested writing MSTA a formal letter detailing a formula for obtaining a total to be paid to MSTA. Baker indicated that Harp was coming up with the numbers and that he wanted to be able to prove each of the totals to MSTA. He said that MSTA’s billing did not match reports and that he did not think that Charter should be put in the position of auditing MSTA’s billing. Baker again delineated a number of problems in MSTA’s billing, stated that he wanted to pass the

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<sup>3</sup>The e-mail string, as quoted and paraphrased below is found in Charter’s Memorandum of Law, Exhibit 1, 991233.

letter “by legal” to cover Charter. He stated that he thought they were going down a road which might not be capable of amicable negotiation.

On January 24, 2004, Wilson responded to Baker, copying in Harp, that he wanted to “get it done.” He raised a number of questions that he thought should be answered and stated that they needed to prepare “. . . with the same level of accuracy we would use if we were going to court.” Baker reiterated that he did not “want to pay a dollar for work not done,” but he wanted Charter’s position to have “unequivocal support.”

Harp bases her argument that MSTA invoices were going to be overpaid and shareholders defrauded on the statement made by Wilson when he terminated the January 12th meeting. Yet, the e-mail interchanges between Harp, Wilson and Baker make it very clear that the investigation was ongoing, that Baker was to confer with her and did confer with her, and that it was Wilson’s intention “under no circumstances” to pay MSTA for work not done.

Harp could not have reasonably believed, on the basis she sets forth, that Wilson was authorizing payment of Charter’s money to MSTA, in spite of his knowledge that MSTA was billing for work it had not performed. Harp speculates on what Wilson meant by his remark in terminating the meeting, inferring that he meant to overpay MSTA, but she discounts and discredits his straightforward statements that he had no such intention and the actions that were taken. Harp speculates as to Wilson’s thought processes but has provided no evidence to support her contentions except for her own self-serving, conclusory suspicions. *See Bozeman v. Per-Se Technologies, Inc.*, **456 F. Supp. 2d 1282 (N.D.Ga. 2006)**.

She speculates that Wilson was going around her to have Baker negotiate the settlement because she was opposed to paying any amount not justified by audit worksheets. To the

contrary, Wilson stated that Baker was to confer with her to lay the issues out chronologically, and Baker was copied in on the e-mail. It was Harp who was re-auditing and who was “gathering the numbers” that would substantiate Charter’s position on the amount to be paid to MSTTA. In light of this evidence, Harp’s suspicions and speculations fail to support a finding that she reasonably believed Charter’s conduct constituted a violation of federal law or of a Securities and Exchange Commission rule or regulation.

Moreover, Charter submits Declaration of Michele Vunck, Charter’s Accounts Payable Manager, who declares that the only amounts paid to MSTTA in connection with audit invoices 40000, 40001, 40002, 40003 and 40004 were the amounts authorized by Harp. Charter’s Memorandum of Law, Exh. 10.<sup>4</sup> While Harp need not show an actual violation of the law, *Collins*, **334 F.Supp.2d at 1376**, she must show more than merely suspicious circumstances. Harp authorized the actual payments that were made on these invoices and offers nothing but her speculation that more was going to be paid than she had authorized. Harp states in her Supplemental Response to Defendant’s First Interrogatories that she believed payment on the listed invoices was improper. Plaintiff’s Exhibit 5, p.2. However, Harp had the authority to investigate the invoices and to refuse to authorize payment. *Id.* at p. 3.

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<sup>4</sup>The exhibits attached to Ms. Vunck’s Declaration, (Exhibits F - J) are Accounts Payable Voucher Forms for MSTTA invoices, approved by Harp, indicating the following payments:

Invoice 40000	Original Invoice: \$ 40,407.00	Actual Amount: \$28,091.00
Invoice 40001	Original Invoice: \$ 69,825.00	Actual Amount: \$45,188.55
Invoice 40002	Original Invoice: \$117,051.00	Actual Amount: \$28,480.95
Invoice 40003	Original Invoice: \$189,729.00	Actual Amount: \$50,920.95
Invoice 40004	Original Invoice: \$ 88,266.00	Actual Amount: \$32,541.00

NOTE: On Invoice 40004, \$32,541.00 represents the amount accrued; \$27,659.85 was the amount payable.

Furthermore, Harp testified that Wilson did not tell her to pay MST A more than she had authorized and that he never told her that he did not like the way she was handling the MST A matter. Harp Deposition, pp. 310-11. She also testified that Wilson did not disagree with her decision to tell MST A to stop doing the auditing work. Harp Dep., 311-12.

Finally, Harp attempts to bolster her case by suggesting that the MST A invoices were going to be paid as a form of “hush money.” The alleged object of the “hush money” was to prevent MST A from making it known that Charter had used MST A as a shill to meet the minority participation goal set by the City. While there may have been events going on behind the scenes regarding meeting those goals, there is no evidence that Harp was aware of this during the course of her employment. Moreover, the only alleged wrongdoing reported by Harp was her belief that Wilson was going to pay a sum of money to MST A beyond what she believed was owed on the audit invoices.

Harp testified that she had no knowledge of anything that Wilson had done, prior to the January 12, 2004, meeting that was wrong, inappropriate or improper in his dealings with MST A. Harp Dep., 330-31. Furthermore, Harp admitted that, during the course of her employment with Charter, she had no knowledge of MST A’s relationship with either ADB or Spectrum, the non-minority construction companies. Defendant’s Exhibit 9, Nos. 69, 70.

Thus, by Harp’s own testimony and admissions, she had no contemporaneous knowledge of any wrongdoing or impropriety on Wilson’s part before the meeting or of the relationship between MST A and either ADB or Spectrum. Consequently, there appears to be no nexus between the concerns Harp expressed after the meeting and the alleged “hush money” scheme. Thus, the alleged scheme provides no foundation for a finding that she “reasonably believed” that

MSTA invoices were going to be overpaid and Charter's shareholders defrauded. *See, e. g., Swanson v. Leggett & Platt, Inc.*, 154 F.3d 730, 733 (7th Cir. 1998) (noting that a plaintiff's speculation about a "plausible scenario" is insufficient to counter direct evidence offered in support of summary judgment).

**2. Whether Harp would have been terminated without the RIF**

While there is no per se rule that a RIF constitutes good cause for termination, employers certainly have the right to adjust their work forces in response to market forces and business necessity. They may not, however, use such claims as a pretext for discharging an employee who engaged in a protected activity under § 1514A.

Harp's employment was terminated, which is, undoubtedly, an unfavorable personnel action. In order to prevail on her claim, however, Harp must prove, by a preponderance of the evidence, that her protected activity was a contributing factor in the unfavorable personnel action. *Allen v. Stewart Enterprises*, 2004-SOX-60 (DOL, A.R.B. July 27, 2006) (citing 49 U.S.C. § 42121(b)(2)(B)(iii)). Assuming, *arguendo*, that Harp had made out a prima facie case of retaliation in violation of SOX, Charter would still be entitled to summary judgment as to this claim because Harp did not adequately establish that a protected activity contributed to her termination. *See Collins*, 334 F.Supp.2d at 1376.

Harp contends that Charter's different versions on the timing of the RIF directive, the directive's source and purpose, as well as the lack of documentation to support the selection of the employees for the RIF demonstrate that Charter had a retaliatory motive. Wilson, Exhibit 30, ¶ 8; Roper, 18-19, 21-22; Charter I, 28-30, 33-35. Harp asserts that she was singled out in that her termination papers were marked "not eligible for rehire." Plaintiff's Exhibit 6, Attachment 3. In

other words, she contends that the RIF was a pretext and that the fifty plus persons selected for the RIF were actually chosen as “cover” for terminating her. The record does not support a finding that Harp could prove, by a preponderance of the evidence, that Charter’s reasons for the RIF were pretextual.

The testimony of Charter’s management reveals that the decision to eliminate the Technical Audit Department and most of the Training Group team was made in order to avoid harming Charter’s ability to attract and retain customers.<sup>5</sup> Wilson’s supervisor, Lee Clayton Roper, testified that Charter’s object in cutting expenses was not to “. . . cut them in any way that would impact our ability to get back on budget with revenues. In other words, not to cut the marketing expenses, or not to cut anything that would impact a customer’s - either our ability to acquire a customer or to retain a customer.” Deposition of Lee Clayton Roper (“Roper Dep.”) 29: 4-14. According to Hunt Brown, Charter’s in-house counsel, the St. Louis KMA management team decided that the only way to achieve the expense reductions necessary was to eliminate fifty full-time positions that were not considered to be “customer facing.” Brown 6/7/06 Dep. 16:16-18:23. The management team concluded that the Technical Audit Department was a logical choice because eliminating it would not result in an immediate decrease in revenues. Brown 8/8/06 Dep. 11:23-13:19. Clayton approved the elimination of the audit department because “it had an immediate impact on expense reduction and improving our cash flow” and “did it in a way that didn’t significantly harm our ability to continue to perform.” Roper Dep. 36:18-37:17.

The testimony is compelling and constitutes substantial evidence that Charter

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<sup>5</sup>Employees who performed poorly, *i. e.*, who had received a performance review of 2.4 or less, were also eliminated.

eliminated positions, not persons. Harp has not shown by a preponderance of the evidence that Charter's argument is pretextual and that the job eliminations were related to her complaints regarding Wilson's handling of the MSTTA meeting. The job functions that were eliminated were those that are obviously unrelated to generating revenues. Neither the Technical Audit Department nor the Training Group Team dealt directly with customers. *See Allen, 2004-SOX-60 (affirming ALJ's finding that complainants' § 1514A claim failed because they were eliminated as part of a RIF; their duties were eliminated because complainants "did not deal with or interface directly with customers or clients" but performed support functions)*. Ms. Harp's argument that these groups were terminated as a cover for discharging her is unsupported and without merit.

Harp's suspicions or "plausible scenario" regarding a link between her termination and Charter's concerns with minority hiring are not supported by proper evidence. She argues in a *post hoc, ergo propter hoc* fashion, assuming causation from temporal sequence. She contends that she was discharged because she reported certain acts involving improper payments to and/or billing by a contractor of Charter's. However, she fails to show causal connection between her conduct in reporting these acts was related to her termination as part of a fifty plus employee RIF. Harp admitted that there was a legal dispute over the scope of Charter's contract with MSTTA and, thus, a dispute over the amount to be paid to MSTTA. Harp lacks competent evidence or legal authority that complaints made when a supervisor instructs a subordinate to negotiate a settlement of a legitimate legal dispute constitutes protected conduct. The nexus Harp has attempted to create between the alleged behind-the-scenes scheming and her termination fails in light of the direct evidence presented (e-mails, testimony, Harp's responses and admissions) which indicates that there was a legitimate legal dispute and that Charter had no intention of paying MSTTA an amount greater

than that to which it was entitled

Harp has failed to show, by a preponderance of the evidence, that Charter's reasons for the RIF were pretextual. Therefore, the Court finds that the protected activity did not contribute to Charter's decision to impose a RIF.

#### **IV. Harp's state law claim**

Harp also brings a state law claim for retaliatory discharge under Illinois law. Because the Court will dismiss all claims over which it has original jurisdiction, it declines, under **28 U.S.C. § 1367(c)**, to exercise supplemental jurisdiction over Harp's state law claim and dismisses that claim without prejudice. *See 28 U.S.C. § 1367(c)(3); Centres, Inc. v. Town of Brookfield, Wis.*, **148 F.3d 699, 704 (7th Cir.1998)**; *Kennedy v. Schoenberg, Fisher & Newman, Ltd.*, **140 F.3d 716, 727-28 (7th Cir.1998)**

As the Seventh Circuit stated in *Wentzka v. Gellman*, **991 F.2d 423, 425 (7th Cir. 1993)**, “. . . where a federal claim drops out before trial, a district court should not retain the state claims absent extraordinary circumstances.” Here, the Court finds no extraordinary circumstances which would lead the Court to believe that the retention of jurisdiction was necessary in this instance. Rather, the Court finds that at least one good reason exists for not reaching the merits of Harp's state law claim: one of the elements necessary to establish a claim for retaliatory discharge under Illinois law is that the discharge violated a clear mandate of public policy. *Hartlein v. Ill. Power Co.*, **601 N.E.2d 720, 728 (Ill. 1992)**. The Court believes that a question of Illinois public policy is best adjudicated in Illinois state courts.

#### **V. Conclusion**

The pleadings, depositions, and related materials before this Court disclose no

genuine issue of material fact, and the moving Defendant is entitled to judgment as a matter of law.

Accordingly, the Court **GRANTS** the summary judgment motion filed by Charter Communications, Inc. (Doc. 49). The Clerk of Court is **DIRECTED** to enter judgment in favor of Defendant Charter Communications, Inc., and against Plaintiff Mary Harp. The Court dismisses *with prejudice* Plaintiff's claim under 18 U.S.C. § 1514A; the Court declines to exercise jurisdiction over Plaintiff's state law claim and, therefore, dismisses *without prejudice* Plaintiff's state law claim.

All pending motions are **DENIED** as moot. As summary judgment now has been entered on all claims against Defendant, this case may be closed.

**IT IS SO ORDERED.**

**DATED this 22nd day of January, 2007**

**s/Michael J. Reagan**  
**MICHAEL J. REAGAN**  
**United States District Judge**