IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL BOGDONAS,

OPINION and ORDER

Plaintiff,

10-cv-618-bbc

v.

ROBERT MUSEUS, in his official capacity as Town Administrator and in his individual capacity, JOHN WILSON, in his official capacity as Chief of Police and in his individual capacity, and TOWN OF BELOIT, a municipal corporation,

Defendants.[1]

- -

In this lawsuit, plaintiff Michael Bogdonas, a former police officer with the Town of Beloit Police Department contends that the town's then chief of police, defendant John Wilson, the town administrator, defendant Robert Museus, and the town itself retaliated against him when he opposed Wilson's racism and discrimination against the town's sole minority police officer. Plaintiff asserts claims under 42 U.S.C. §§ 1981, 1985, 1986, Title

[1] Originally, plaintiff also sued the town's attorney, Alan Levy, and "one or more John Does." Plaintiff's claims against Levy have been settled and plaintiff has not identified the John Does. Thus, I have omitted Levy and the John Does from the caption.

VI of the Civil Rights Act and the equal protection and due process clauses of the Fourteenth Amendment.

Defendants have each filed separate motions for summary judgment, contending that plaintiff has adduced no evidence that he engaged in protected activity, suffered adverse employment actions or that his working conditions were egregious or unbearable, which precludes his retaliation, constructive discharge and hostile work environment claims under § 1981 and Title VI. Additionally, defendants contend that plaintiff has not shown that the town received federal funding for the purpose of employing police officers, as required under Title VI. Defendants contend that plaintiff has not shown that he was treated differently under the equal protection clause or that he was denied due process. Finally, defendant Museus contends that plaintiff has failed to show that he was personally involved in the alleged retaliatory actions and defendant Town of Beloit contends that plaintiff has failed to establish that the town had any unlawful policy that resulted in a violation of plaintiff's rights.

After reviewing the parties' summary judgment materials, I conclude that defendants' motions must be granted in full. For plaintiff, this case boils down to a lack of evidence to support his claims and a failure to file adequate responses to defendants' arguments. Plaintiff did not respond at all to defendants' arguments regarding his §§ 1985, 1986, Title VI, hostile work environment and constructive discharge claims. Thus, defendants are

entitled to summary judgment on those claims. Additionally, plaintiff failed to adduce sufficient evidence of material adverse actions following his alleged complaints about defendant Wilson's discriminatory and retaliatory conduct, dooming his retaliation, equal protection and due process claims. As explained in the opinion below, these holdings moot the other arguments raised in defendants' summary judgment briefs concerning immunity and the town's liability under § 1983.

PRELIMINARY ISSUES

A. Plaintiff's Summary Judgment Materials

Before turning to the merits of this case, I must address several procedural issues. First, the materials plaintiff filed in opposition to defendants' motions for summary judgment are riddled with problems and show a disregard for this court's summary judgment procedures and the Federal Rules of Civil Procedure. Plaintiff did not submit his own proposed findings of fact. Instead, he attempts to offer additional facts through his own affidavit, dkt. #111-1, the affidavit of David Dransfield, dkt. #111-8, and by incorporating supplemental facts into his objections to defendants' proposed facts. Additionally, plaintiff's counsel attaches several exhibits directly to plaintiff's opposition brief and to counsel's affidavits without incorporating the exhibits into any proposed findings of fact.

Plaintiff's and Dransfield's affidavits are neither sworn under penalty of perjury nor

notorized and therefore, cannot be considered. 28 U.S.C. § 1746; see also DeBruyne v. Equitable Life Assurance Society of United States, 920 F.2d 457, 471 (7th Cir. 1990) (district court may not consider affidavits not in compliance with § 1746); Gilty v. Village of Oak Park, 919 F.2d 1247, 1255 n.5 (7th Cir. 1990). Even if the affidavits had been presented properly, many of the statements are hearsay, legal conclusions or lack foundation and would have to be disregarded anyway. E.g., Plf.'s Aff., dkt. #111-1, ¶ 6 ("[Defendant] Museus was a final decision maker or policy maker for Defendant Town of Beloit and its Police Department."), ¶ 18 ("It was common knowledge that Burkee was seeking employment elsewhere – but certainly there was no guarantee he would be hired by another agency.), ¶ 20 ("[T]he quality and quantity of training Burkee received was far inferior to that received by all of the white police officers."). See also Keri v. Board of Trustees of Purdue University, 458 F.3d 620, 628 (7th Cir. 2006) ("Conclusory allegations and self-serving affidavits, if not supported by the record, will not preclude summary judgment.").

Under this court's summary judgment procedures, "[t]he court will disregard any new facts that are not directly responsive to the proposed fact. If a responding party believes that more facts are necessary to tell its story, it should include them in its own proposed facts. . . ." Procedure to be Followed on Motions for Summary Judgment II.D.4, attached to Preliminary Pretrial Conference Order, dkt. #9. Plaintiff was warned in the pretrial conference order that "[e]ven if there is evidence in the record to support your position on

summary judgment, if you do not propose a finding of fact with the proper citation, the court will not consider that evidence when deciding the motion." Helpful Tips for Filing a Summary Judgment Motion in Cases Assigned to Judge Barbara B. Crabb #4. See also Hedrich v. Board of Regents of the University of Wisconsin, 274 F.3d 1174 , 1178 (7th Cir. 2001) (upholding this court's summary judgment procedures).

Plaintiff's counsel has been warned about these types of problems before. Recently, in Dransfield v. Wilson, 10-cv-544-wmc, Judge William Conley granted summary judgment to defendants, noting that the plaintiff had responded with only a "perfunctory, four-page brief." Op. & Order, Sept. 27, 2011, dkt. #124, at 2. Additionally, he noted that the "plaintiff failed to offer any proposed findings of fact. While not required to do so, plaintiff nevertheless attempts to offer additional facts through [plaintiff's] affidavit. All of this frustrates the court's efforts to determine the material undisputed facts." Id. at 7, n.3. Judge Conley warned plaintiff's counsel that although he would consider the plaintiff's filings in deciding the defendants' motions for summary judgment, "such leniency may not be afforded in the future." Id.

Despite receiving this warning in a recent case, plaintiff's counsel failed to comply with the court's summary judgment rules. As she was warned in the pretrial documents she was sent, the court has no obligation to "scour the record" on plaintiff's behalf to find admissible evidence that might support his claim of a material dispute of fact. Hemsworth

v. Quotesmith.com, Inc., 476 F.3d 487, 490 (7th Cir. 2007) ("[T]he nonmoving party must identify with reasonable particularity the evidence upon which the party relies."). See also Smith v. Lamz, 321 F.3d 680, 683 (7th Cir. 2003) ("A district court is not required to 'wade through improper denials and legal argument in search of a genuinely disputed fact.'") (citation omitted). Plaintiff's failure to adhere to this court's summary judgment procedures has the following consequences: I will not consider facts contained in any unsworn affidavits; I will not consider facts contained only in plaintiff's brief; I will not consider unauthenticated facts; I will not consider facts plaintiff proposed in his objections to defendants' proposed facts; and I will accept as undisputed defendants' proposed findings of fact that plaintiff failed to respond to directly or properly with a reference to proper evidentiary support in the record.

B. Plaintiff's Motion to Strike Defendant Museus's Affidavit, Dkt. #132

On December 13, 2011, more than one month after defendants filed their reply briefs in support of their motions for summary judgment, plaintiff filed a motion to strike portions of defendant Museus's declaration, dkt. #94, as contradictory to Museus's prior sworn testimony. I will deny this motion because it is untimely. Although plaintiff labels his motion as a "motion to strike," he is actually attempting to raise untimely objections to defendants' proposed findings of fact. It is too late to do that.

C. Settlement Agreement

In the first four pages of his opposition brief, plaintiff argues that the court should exclude from consideration the contents of plaintiff's personnel files. In particular, plaintiff contends that a settlement agreement entered into between plaintiff and the Town of Beloit regarding plaintiff's claims before the Equal Rights Division bars the admission of such evidence. The settlement agreement states in relevant part:

> 1. All discipline, counseling, and other negative references or actions which were instituted prior to the time of signing of this agreement shall be promptly removed from all personnel files of the complainants. It is the intent of the Parties that the personnel files normally referenced by employers will not negatively reflect upon complainants.
>
> 2. Notwithstanding paragraph 1, nothing in this agreement shall prevent the Parties from using the contents of the personnel files of complainants as they existed prior to the signing of this agreement for the purposes of pending EEOC/ERD or resulting litigation.

Dkt. #111-2. Plaintiff contends that because this case is not litigation "resulting" from his Equal Rights Division claims, defendants cannot use the information in his personnel file.

As an initial matter, defendants Wilson and Museus were not parties to the settlement agreement and plaintiff has not suggested any reason why they would be bound by its terms. More important, plaintiff has waived his argument regarding exclusion of evidence by failing to develop it adequately. Central States, Southeast & Southwest Areas Pension Fund v. Midwest Motor Express, Inc., 181 F.3d 799, 808 (7th Cir. 1999)

("Arguments not developed in any meaningful way are waived."). Plaintiff never identifies what specific documents or information should be excluded and does not explain the effect of the unidentified documents on the summary judgment analysis if they are considered. Plaintiff states only that the settlement agreement prevents defendants from using "negative information from [plaintiff's] personnel files," and that if defendants are precluded from using this information, they "have no factual bases to support their motions for summary judgment." Plt.'s Br., dkt. #118, at 2. However, collectively, defendants have proposed hundreds of factual findings, the majority of which rely on deposition and other testimony and do not rely on plaintiff's personnel file or refer to it. Plaintiff's own responses to defendants' proposed findings do not refer to this settlement agreement and plaintiff does not contend that it renders the proposed findings of fact inadmissible.

Moreover, I assume that the negative information plaintiff is referring to includes the disciplinary investigations that were initiated against him. However, the documents associated with these investigations are also the basis for some of plaintiff's claims of retaliation. Because plaintiff has alleged that defendants trumped-up charges and investigations against him, plaintiff cannot prevent defendants from referring to plaintiff's actual performance, actual complaints against him and defendants' responses to those complaints in order to defend themselves against his retaliation claims. Thus, I will not exclude from consideration evidence from plaintiff's personnel file.

UNDISPUTED FACTS

A. The Parties

Defendant the Town of Beloit is a Wisconsin municipality organized under Wisconsin laws. Defendant Robert Museus was the town administrator for the town from January 2003 until July 11, 2011. Defendant John Wilson was chief of police for the town from May 2003 until January 2011. Plaintiff Michael Bogdonas worked as a patrol officer for the town from October 2002 until February 19, 2010. Starting in 2003 or 2004, plaintiff acted as a union steward for the police union.

B. Issues Surrounding Officer Burkee's Training

In February 2004, David Burkee, a person of color, was hired as a Town of Beloit police officer on defendant Wilson's recommendation. (The parties do not identify Burkee's race. Burkee testified that he does not know his ethnicity because he is adopted. He marked "unknown" as his race on his application.) Burkee's race had not come up during the interview process and Burkee never discussed racial issues with defendant Wilson. Burkee never heard Wilson make comments about anyone's race. Plaintiff also had never heard defendant Wilson use racial slurs when talking about Burkee.

The state of Wisconsin requires police officers to participate in 24 hours of training each year to maintain certification. In 2006 and 2007, Burkee completed his training. As

was the case in previous years, at the end of 2007, the town's officers gave Deputy Chief Willis Abegglen a list of classes each wanted to take for training purposes. Defendant Wilson generally approved the training Abegglen recommended.

Sometime in 2006 or 2007, Burkee began looking for other employment because he wanted to live closer to his family. Burkee told defendant Wilson and the department about his job search in May 2007 and Wilson appeared to be supportive of Burkee's decision to look for other employment opportunities. However, Burkee's search proved unsuccessful.

In the spring of 2008, Burkee spoke to Abegglen about his need to obtain further training for the calender year 2008. Abegglen told Burkee to resubmit a list of requested training courses because there was no record of his having yet submitted a list of requested training courses for the year. In the fall of 2008, Burkee spoke with Sergeant Dransfield about his need for training, and Dransfield told Burkee to speak with Abegglen again about the issue. Burkee spoke with Abegglen, who said he would speak with defendant Wilson.

Before hearing back from Abegglen, Burkee spoke to union stewards plaintiff and Chris Luzinski about his lack of training. Plaintiff has no recollection of Burkee's bringing up race during the conversation and Burkee never said that he believed he was not getting his training because he was a minority officer. On or about November 18, 2008, Luzinski anonymously submitted a memorandum to defendant Wilson from the union regarding Burkee's lack of training. Plaintiff did not participate in drafting this memo and he did not

deliver it. The memo stated:

> To date, Officer Burkee hasn't received his mandatory hours of training as required by the State and by Article 13.03 of the contract. Officer Burkee has no training scheduled and has not been advised of any pending training.
>
> The Union is requesting an explanation why the police department's only minority officer has not received his minimum required hours of training. The Union is requesting Officer Burkee received his minimum hours of training.

Dkt. #94-7.

Defendant Wilson was surprised and upset by the memo. He testified that Burkee did not receive training right away because he was looking for a new job and the department believed he was leaving. Also, he testified that he did not consider Burkee to be a minority. Within several days of receiving the November 18 memorandum, Wilson instructed Abegglen to schedule Burkee's training so that it would be completed by the end of 2008. Ultimately, Burkee was able to complete the training on time.

Defendant Wilson forwarded the memo to defendant Museus, who requested that the town's labor attorney, Alan Levy, conduct an investigation into the training issue raised by the union. Levy interviewed Burkee as part of the investigation. Burkee did not discuss race during the interview with Levy. On December 2, 2008, Levy sent Museus a letter containing the findings of his investigation. According to Levy's report, both Burkee and Luzinski agreed that the delay in training was not discriminatory. Levy wrote, "Officer Burkee has consistently stated that he thought the failure to schedule his 2008 training was

due to his own search for other employment and the Deputy Chief's misplacement of his original paperwork; Officer Burkee never wanted race to be part of this inquiry or any other aspect of his employment with the Department." Dkt. #94-8. Plaintiff was not interviewed by Levy about the training memorandum and was not present when others were interviewed about it.

C. The December Memorandum and Vote of No Confidence

On December 12, 2008, Luzinski presented defendant Museus with a memorandum from the union, accusing defendant Wilson of using racial slurs on the job, including "nigger," "sand nigger," "towel head" and "spic." Plaintiff contributed to the memo his recollection of Wilson referring to African Americans as "niggers."

After receiving the December 2008 memorandum, defendant Museus recommended to the town board that it hire Levy to conduct an investigation into the allegations, which they did. Levy interviewed defendant Wilson and several of the police officers who had provided information for the December 2008 memorandum, including plaintiff. Levy then issued a written report to Museus, noting among other things that Wilson had admitted to using racial epithets in the workplace. Levy recommended that Wilson undergo racial sensitivity training and that a permanent reprimand be placed in his personnel file. Levy concluded that Wilson's termination or suspension was not warranted. The town board

accepted Levy's recommendation.

Believing these steps were inadequate, the union met and issued a unanimous vote of "no confidence" in the leadership of defendant Wilson on January 20, 2009. The no confidence vote provided:

> We the bargaining unit members, of Teamster Local 695, of the Town of Beloit Police Department, have no confidence in Chief John Wilson to effectively lead this Department. This is due to the following three reasons.
>
> 1) The issue presented to Administrator Robert Museus by the Union on 12-12-08[.]
>
> 2) The current hostile work environment.
>
> 3) Officers and Employees fear of retaliation by Chief John Wilson, due to the presented issue.

Dkt. #111-9.

D. Alleged Retaliatory Acts and Plaintiff's Resignation

Because plaintiff failed to submit his own proposed findings of fact, it is difficult for the court to discern the exact retaliatory acts he is complaining about. In his brief in opposition to defendants' motions for summary judgment he states, without citation to the record, that he was "continually being subjected to a variety of adverse employment actions, including but not limited to being denied training, having his shift changed, being denied overtime pay, being falsely accused of engaging in criminal conduct, being subject to lengthy

criminal investigations, and having his name and reputation dragged through the mud in local newspaper stories." Plt.'s Br., dkt. #118, at 5. In their summary judgment materials, defendants have identified five possible instances of retaliatory acts. Because plaintiff has not identified any other specific actions taken by defendants, I will restrict my analysis to those identified by defendants.

1. Investigation involving plaintiff's alleged phone call to a town board member

In February 2009, defendant Museus was approached by town supervisor Jim Stevens, who relayed a conversation he said he had with plaintiff. Stevens told Museus that plaintiff had called Stevens to offer him information on an ongoing criminal investigation involving the son of another town board member. Museus discussed the allegations with defendant Wilson and the town's attorney. They decided that because the allegations involved alleged disclosure of information related to an ongoing criminal investigation, they should contact a third party law enforcement agency to investigate. Museus contacted the Rock County Sheriff to investigate the allegations. Ultimately, plaintiff was not charged or disciplined for the allegations.

2. Investigation involving plaintiff's running of a state employee's license plate

Plaintiff believed that there was a policy or practice in the police department of

running the license plate of any unknown vehicle in the police department parking lot. Sometime in 2009, special agent Brad Montgomery of the State of Wisconsin Office of the Attorney General complained to defendant Museus that Town of Beloit police officers were running his license plate while he was visiting the Town of Beloit police department. Museus requested that the Rock County Sheriff investigate the allegation.

3. Shift change

At various times during his employment as a police officer for the Town of Beloit, plaintiff worked the first, second, third and split shifts. Plaintiff believed that because he was the most senior officer, he was entitled to work the first shift. In July 2009, plaintiff was transferred from first to second shift. While on second shift, plaintiff had several shift supervisors, including Willis Abegglen and Sergeant Felger.

4. Investigation regarding plaintiff's handling of a 911 call

On July 12, 2009, plaintiff responded to a 911 call at the home of Michelle Alseth concerning a domestic dispute between Alseth and her stepson. At some point during plaintiff's conversation with Alseth, he told her that if he was not a police officer, he would probably go punch his stepmother in the head. Plaintiff also told Alseth that defendant Museus was arrogant and defendant Wilson was a coward. (The parties dispute whether

plaintiff also disclosed information on internal police department investigations to Alseth.) In response to the handling of the call at her home, Alseth filed a citizen complaint against plaintiff. The police department opened an investigation into the complaint.

On September 22, 2009, plaintiff was served formal charges of discipline based on his handling of the Alseth 911 call. The Police and Fire Disciplinary Committee was set to have a formal due process hearing on November 24, 2009 regarding the charges at which plaintiff would be able to challenge the charges against him. Before the hearing was held, plaintiff settled the matter, agreeing to an unpaid 38-day suspension. Plaintiff discussed the settlement agreement with both his union attorney and his union representative and signed the agreement voluntarily. As part of the agreement, plaintiff agreed to release the Town of Beloit from all claims stemming from the charges brought against him for the Alseth 911 call.

5. Investigation regarding plaintiff's handling of the Larabee investigation

In January 2010, plaintiff was again accused of handling a citizen call improperly. Plaintiff was following up on an investigation started by another officer concerning alleged harassment by Kyle Larabee against Lisa Thompson. During the course of the Larabee investigation, Thompson told plaintiff that Larabee was harassing her in violation of his bail conditions. Thompson offered to provide plaintiff a copy of Larabee's bail conditions as proof, but plaintiff refused to look at the conditions. Thompson filed a citizen complaint

against plaintiff.

On February 1, 2010, plaintiff received notice from defendant Wilson that plaintiff was to appear for an investigatory interview on February 3, 2010. The Town of Beloit Police Department engaged attorney James Korom to assist in the investigation into plaintiff's actions during the Larabee investigation. Plaintiff hired attorney John Fuchs to represent him during the investigation. On Friday, February 19, 2010, plaintiff received a copy of an email from Korom to Fuchs that attached a draft statement of the charges to be filed against plaintiff the following Monday as a result of the Larabee investigation. Korom's email to Fuchs stated:

> I'd also note that the audio recording of [plaintiff's] conversation with Ms. Thompson at her home confirms that she offered him a copy of the court records setting the conditions of Larabee's bond, and he turned it down. His statements to [the police department investigators] that he had no way to check on those conditions aren't accurate in light of that recording.

Dkt. #111-20. Plaintiff could have contested the charges brought against him in front of the Police and Fire Disciplinary Committee. He never attended a hearing on the charges brought against him in the February 19, 2010 statement of charges. Instead, he submitted his resignation on February 19, 2010. His letter of resignation states in pertinent part:

> I am not resigning because of the charges you have pending against me . . . . It is because of the repeated harassment, retaliation, discrimination from being a union steward over the past few years and the hostile work environment you and others in the department have created for me over the last year . . . . I strongly feel that had I (being a union steward) and other members of the

> police dept not filed the 'vote of no confidence' for your racial remarks (in which you have received diversity training for) this and past charges against me would never have been filed.

Dkt. #111-21. Plaintiff resigned on advice of his legal counsel.

OPINION

Defendants have moved for summary judgment on all of the claims raised in plaintiff's complaint: (1) retaliation, constructive discharge and a hostile work environment under 42 U.S.C. § 1981 against all defendants; (4) retaliation under Title VI of the Civil Rights Act against the Town of Beloit; (5) equal protection and due process violations against the town; and (6) conspiracy under § 1985 and § 1986 against defendants Museus and Wilson.

Plaintiff did not respond to the arguments defendants made regarding his claims for constructive discharge and a hostile work environment, retaliation under Title VI against the town or conspiracy against defendants Museus and Wilson. By failing to respond to defendants' arguments, plaintiff has waived any arguments in opposition and has failed to meet his burden at summary judgment of showing that there are material facts in dispute. Wojtas v. Capital Guardian Trust Co., 477 F.3d 924, 926 (7th Cir. 2007) ("A failure to oppose an argument permits an inference of acquiescence and 'acquiescence operates as a waiver.'") (quoting Cincinnati Insurance Co. v. East Atlantic Insurance Co., 260 F.3d 742,

747 (7th Cir. 2001)). Therefore, I will grant defendants' motions for summary judgment with respect to plaintiff's claims for constructive discharge, hostile work environment, retaliation under Title VI and conspiracy.

This leaves plaintiff's claims for retaliation under § 1981 against all defendants and violation of his rights to equal protection and due process under the Fourteenth Amendment against the Town of Beloit.

A. Retaliation

Section 1981 prohibits retaliation for complaining about race discrimination. CBOCS West, Inc. v. Humphries, 553 U.S. 442, 451 (2008). A § 1981 retaliation claim shares the elements of proof with a claim under Title VII. 42 U.S.C. § 2000e. Stephens v. Erickson, 569 F.3d 779, 786 (7th Cir. 2009) ("We apply the same elements to retaliation claims under Title VII and § 1981."); Paul v. Theda Medical Center Inc., 465 F.3d 790, 794 (7th Cir. 2006) ("The framework governing liability under Title VII also applies to section 1981 claims.").

A plaintiff may prove a retaliation claim using either the direct or indirect method of proof. Stephens, 569 F.3d at 786. Under the direct method, a plaintiff must demonstrate "(1) he engaged in a statutorily protected activity; (2) he suffered a materially adverse action by his employer; and (3) a causal connection exists between the two." Id.; see also

Argyropoulos v. City of Alton, 539 F.3d 724, 733 (7th Cir. 2008); Humphries v. CBOCS West, Inc., 474 F.3d 387, 404 (7th Cir. 2007), aff'd, 533 U.S. 442 (2008). Under the indirect method, the first two elements remain the same, but instead of proving a direct causal link, the plaintiff must show that he was performing his job satisfactorily and that he was treated less favorably than a similarly situated employee who did not complain of discrimination." Stephens, 569 F.3d at 786-87 (citing Argyropoulos, 539 F.3d 733).

1. Protected conduct

Whether conduct constitutes protected activity is a question for the court. Spiegla v. Hull, 481 F.3d 961, 965 (7th Cir. 2007) (quoting Connick v. Meyers, 461 U.S. 138, 148 n.7 (1983)). In his opposition brief, plaintiff says he spoke against defendant Wilson's discrimination on four occasions: (1) when the union issued the November 17, 2008 memo complaining about Burkee's not receiving his required training; (2) when plaintiff contributed to the December 12, 2008 written complaint by the union about Wilson's using racial slurs in the workplace; (3) when plaintiff joined the union's vote of "no confidence" in Wilson because of Wilson's using racial slurs in the workplace; and (4) when plaintiff made complaints at a town board meeting in October 2009 about Wilson's and defendant Museus's acts of retaliation against him and other police officers for opposing Wilson's discriminatory and retaliatory conduct.

With respect to the alleged October 2009 town board meeting, there is no evidence in the record regarding this meeting or what plaintiff said at it. In light of plaintiff's failure to provide such evidence, I cannot find that any statements plaintiff made at the meeting constituted protected activity under § 1981. Similarly, plaintiff cannot rely on the November 18, 2008 memorandum regarding Burkee's training as protected speech by plaintiff because he has produced no evidence that he participated in drafting the memo or delivering it to defendant Wilson or even that he believed at that time that Burkee's training deficiencies were related to Burkee's minority status. Loudermilk v. Best Pallet Co., 636 F.3d 312, 315-16 (7th Cir. 2011) (plaintiff alleging retaliation under Title VII must prove that he opposed conduct he "reasonably believed to be unlawful"). Additionally, nothing in the record suggests that Wilson tied plaintiff to the memorandum. Plaintiff was not interviewed about the memorandum and never had any conversations with Wilson about Burkee's training, let alone any conversation about the delay in Burkee's training being related to his race. Gates v. Caterpillar, Inc., 513 F.3d 680, 687 (7th Cir. 2008); Stephens, 569 F.3d at 788 ("[A] superior cannot retaliate against an employee for a protected activity about which he has no knowledge.").

However, plaintiff's contributions to the December 12, 2008 complaint against defendant Wilson and plaintiff's participation in the January 2009 vote of no confidence constitute protected activity under § 1981. The complaint and the vote disclose plaintiff's

opposition to prohibited conduct, namely discrimination and a hostile work environment, assuming plaintiff held a good faith belief that Wilson's conduct violated § 1981.

2. Adverse action and causation

The next question is whether plaintiff suffered an adverse action as a result of his protected speech. "In a retaliation case, an adverse action is 'one that a reasonable employee would find to be materially adverse such that the employee would be dissuaded from engaging in the protected activity.'" Silverman v. Board of Education of City of Chicago, 637 F.3d 729, 740 (7th Cir. 2011) (quoting Roney v. Illinois Department of Transportation, 474 F.3d 455, 461 (7th Cir. 2007)). Plaintiff contends that after engaging in the protected activity described above, he "was subjected to an unrelenting barrage of adverse employment actions," including (1) being denied training; (2) receiving shift changes; (3) being denied overtime pay; (4) being subjected to unwarranted and unreasonable investigations; (5) being told to quit or be fired; and (6) being denied earned compensation after he quit. Plt.'s Br., dkt. #118, at 7. However, all of plaintiff's allegations fall short either because plaintiff has adduced no evidence for the claims or because they do not fall within a category of actionable, materially adverse actions.

Plaintiff has adduced no evidence to support his allegations that he was denied training, overtime pay, earned compensation or that he was told to quit or be fired. Thus,

I will not consider plaintiff's arguments related to those incidents. However, because defendants submitted evidence related to these allegations, I will consider plaintiff's arguments regarding his shift change and the several investigations brought against him.

a. Shift change

Plaintiff contends that defendant Wilson retaliated against him when he moved plaintiff from first to second shift in July 2009. However, plaintiff has not shown that the shift change was materially adverse. "A change in shift assignments will not normally be sufficient to qualify as an adverse employment action, unless it is accompanied by some other detriment." Ellis v. CCA of Tennessee LLC, 650 F.3d 640, 650 (7th Cir. 2011). See also Grube v. Lau Industries, Inc., 257 F.3d 723, 728 (7th Cir. 2001) (no adverse employment action where change in shift was not accompanied by reduction in pay or significantly diminished job responsibilities); Nichols v. Southern Illinois University, 510 F.3d 772, 780 (7th Cir. 2007) (purely lateral transfers involving no reduction in pay and no more than minor changes in working conditions are not materially adverse employment actions). Plaintiff has provided no evidence to support a finding that a transfer to a different shift affected him financially, significantly reduced his career prospects or otherwise caused a significant negative alteration of his workplace environment. In fact, plaintiff provides no explanation at all why he thought the shift change was adverse.

Moreover, even if plaintiff's shift change could qualify as a materially adverse action, plaintiff has proffered no evidence that would permit a reasonable jury to draw a causal connection between his opposition to defendant Wilson's discriminatory conduct and his shift change. Plaintiff's only arguments in support of a causal connection are that there is a temporal relationship between his protected activities and his shift change and that officers who did not complain about Wilson's discrimination did not have their shifts changed.

Plaintiff's protected activity occurred in December 2008 and January 2009 and his shift was not changed until July 2009. Thus, the alleged retaliatory act did not occur "so close on the heels of a protected activity that an inference of causation is sensible." Benuzzi v. Board of Education of City of Chicago, 647 F.3d 652, 654 (7th Cir. 2011) (quoting Loudermilk, 636 F.3d at 315)); see also Leonard v. Eastern Illinois University, 606 F.3d 428, 432 (7th Cir. 2010) ("The six-month lag between Leonard's April 2005 complaint to the civil rights office and his October 2005 unsuccessful interview is too long to infer a link between the two."); see also Turner v. The Saloon, Ltd., 595 F.3d 679, 687 (7th Cir. 2010) (finding no connection between firing and employee's complaints of sexual harassment more than half year earlier); Argyropoulos, 539 F.3d at 734 (holding lapse of seven weeks too long to infer causal link). Additionally, plaintiff has adduced no admissible evidence of a similarly situated police officer who did not oppose Wilson's discrimination and who received a more favorable shift.

b. Investigations involving plaintiff

Plaintiff contends that he was targeted for unwarranted investigations and reprimands and that these qualify as materially adverse actions. I can assume that numerous investigations and disciplinary charges regarding a person's conduct may deter an ordinary person from engaging in the protected activity in the future. In other words, the investigations may qualify as materially adverse actions.

The problem with plaintiff's claims concerning the investigations is that plaintiff has again failed to adduce any evidence of a causal connection between any of the investigations and his protected speech. In his brief, plaintiff contends that "there is a temporal proximity between [plaintiff's] protected activity" and the investigations. Plt.'s Br., dkt. #118, at 8. However, the court of appeals "has held repeatedly that temporal proximity alone is not sufficient to withstand summary judgment." Daugherty v. Wabash Center, Inc., 577 F.3d 747, 751 (7th Cir. 2009).

Plaintiff also argues that the investigations had a "biased tone" and that plaintiff was "treated less favorably and more harshly than . . . similarly situated non-complaining co-workers." Plt.'s Br., dkt. #118, at 8, 11. However, plaintiff never explains what he means by stating that the investigations had a "biased tone" and never points to any other police officers who were the subject of citizen complaints or who were under investigation for anything. The evidence in the record shows that plaintiff was accused by several third

parties of potentially unlawful or inappropriate activity, including: (1) disclosing information related to an ongoing criminal investigation to a town board member; (2) inappropriately running the license plates of a state employee's vehicle; and (3) mishandling a 911 call and a criminal investigation. Plaintiff has adduced no evidence that these third party complaints were not the trigger for the investigations or adduced evidence showing that there was anything unusual or suspicious about the investigations. He has no evidence that any other officer who was the subject of complaints materially equivalent to those the town received about him were not subject to similar investigations.

In sum, although in some circumstances, changes in shifts and numerous unwarranted investigations may dissuade a reasonable employee from engaging in protected activity, plaintiff has failed to offer any evidence to support his claim that his shift change or the numerous investigations against him were related in any way to his protected activity. Therefore, defendants are entitled to summary judgment on plaintiff's retaliation claims.

C. Remaining Issues and Claims

The foregoing conclusions render the parties' other arguments moot. In particular, plaintiff has raised claims under the due process and equal protection clauses of the Fourteenth Amendment against the Town of Beloit, alleging that he was treated differently from similarly-situated, non-complaining co-workers because he opposed the illegal racially

discriminatory conduct in which Wilson was engaging. Plaintiff does not elaborate on the nature of his Fourteenth Amendment claims, spending only one and a half pages on these claims in his brief. However, he relies on the same allegations and arguments to support his constitutional claims that he relied on for his retaliation claim. As with his retaliation claim, plaintiff has not shown that his protected speech caused any adverse action or that defendants treated any similarly-situated, non-complaining co-worker better treatment. Thus, defendants are entitled to summary judgment on plaintiff's constitutional claims as well.

Finally, because there is no evidence of statutory or constitutional violations, I need not consider defendants' immunity and personal involvement defenses or the issues surrounding the town's liability.

ORDER

IT IS ORDERED that

1. The motions for summary judgment filed by defendants John Wilson, dkt. #74, Robert Museus, dkt. #91, and the Town of Beloit, dkt. #81, are GRANTED.

2. Plaintiff Michael Bogdonas's motion to strike, dkt. #132, is DENIED.

3. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 16th day of December, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge