

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)		
	)		
LINDA METELKO,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2004SN3994
	)	EEOC NO(S):	N/A
and	)	ALS NO(S):	S06-046
	)		
LEVI ROSS,	)		
	)		
	)		
Respondent.	)		

**NOTICE**

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS	)	
HUMAN RIGHTS COMMISSION	)	Entered this 17 <sup>th</sup> day of March 2009

---

N. KEITH CHAMBERS  
EXECUTIVE DIRECTOR



Precision Products Inc. manufactured lawn care equipment including tow bars, trailer carts, lawn spreaders and dethatchers.

2. At some point in 1999, Respondent was hired by Precision Products, Inc to work on one of its assembly lines.

3. At all times pertinent to the instant Complaint, Precision Products, Inc. operated a tow bar assembly line, which consisted of a 20 to 30 feet long conveyor belt that was located approximately ten feet away from three or four other conveyor belts that were in use on Complainant's shift.

4. At all times pertinent to the instant Complaint, the tow bar assembly line had three workers doing separate functions as the tow bar was being assembled. Typically, one worker performed certain functions on the tow bar at the beginning of the line and then transported the tow bar down the conveyor belt to the second worker, who put on the tow bar a clevis, a latch and a parts sack. The third worker, who was approximately two-arms' lengths from the second worker, folded a box, stapled the box shut with the tow bar inside, stacked the box and counted the stacked boxes.

5. At all times pertinent to the instant Complaint, Precision Products, Inc. employed Sally Delahunt as a "lead worker" at the plant. In this position, Delahunt was responsible for running certain assembly lines, including the tow bar assembly line, and did the worker assignments for said line. In her role as a lead worker, Delahunt was one of the individuals to whom both Complainant and Respondent could report problems that either experienced at the work site.

6. At least by October of 2003, Delahunt began to schedule both Complainant and Respondent to the tow bar assembly line at least two to three times a week, and sometimes all five days of the work week. Typically, during this time period Respondent worked as the third worker on the line since Delahunt believed that Respondent was good at encouraging Complainant and the other worker to keep up with

the quotas required for that line. Complainant during this same time period was typically assigned either to the first or second position, although Complainant usually performed the second position because she was better at it.

7. At some point in 2003, Respondent and another worker named Jim Price began to ride together to work. At that time, Respondent lived about 22 miles from the work site, and Price picked up Respondent in his car.

8. At some point in 2003, but before November of 2003, Price began dating Complainant and all three individuals rode to and from the work site in Price's car.

9. At some point in November of 2003, Complainant picked up Respondent in her car and drove to and from the work site without Price, who at that time had obtained another job.

10. By December of 2003, Respondent purchased a van and began to drive himself to and from work. At that time, Respondent also drove into work with his girlfriend, who also worked at Precision Products, Inc.

11. By January of 2004, Complainant had worked with Respondent at the tow bar assembly line without any incident during her tenure at Precision Products, Inc.

12. At some point during the week before February 12, 2004, Complainant kissed Respondent by the baler in the warehouse where the tow bar assembly line was located. Shortly after the incident, Complainant told a co-worker named Joyce Dixon that Respondent had tried to kiss her by the baler.

13. On February 12, 2004, Complainant and Respondent became involved in an argument on the sprayer assembly line regarding the one of the sprayers that Respondent asserted was not constructed appropriately. After Respondent told Complainant to fix the problem, Complainant began to yell and cuss at Respondent. Respondent brought Delahunt over to intervene in the matter, and Delahunt told Complainant that she could not be yelling and cussing at co-workers since another

individual had recently been fired for doing the same thing. Complainant then told Delahunt that Respondent had been sexually harassing her.

14. Complainant's report of sexual harassment to Delahunt was the first time that she had complained to Delahunt about any conduct of Respondent. Delahunt had not witnessed any of the sexual conduct attributed to Respondent by Complainant.

15. After Complainant told Delahunt that she had been sexually harassed by Respondent, Delahunt informed her supervisor (Jeff Polcher) on the same day of Complainant's allegation. Polcher then relayed Complainant's complaint to Becky Juliffs, who served as the Human Resources Manager at Precision Products, Inc.

16. On the afternoon of February 12, 2004, Juliffs confronted Respondent about Complainant's sexual harassment allegations. At the end of the conversation, Respondent was assigned to another section of the plant apart from Complainant.

17. Complainant rarely came into contact with Respondent after his reassignment, and Complainant continued to work at Precision Products, Inc. until July 18, 2005, when Complainant sustained a workers' compensation injury that has kept her from going back to work as of the time of the public hearing.

18. At all times pertinent to the instant case, Precision Products, Inc. had established a compensation policy calling for a quota system on the tow bar assembly line that required that the workers produce a minimum amount of tow bars per hour, with each worker receiving additional compensation for each tow bar produced over the minimum per-hour quota. For the "1002" tow bar, Precision Products, Inc. required that the group of workers produce at least 45 tow bars per hour, and it required a minimum of 135 tow bars per hour for the "1003" tow bar.

19. During the months of January and February of 2004, Complainant, Respondent and a co-worker at the tow bar assembly line satisfied the quota established

by Precision Products, Inc., and at times produced up to 200 "1003" tow bars per hour, and between 70 and 80 "1002" tow bars per hour

20 At all times pertinent to the instant Complaint, Respondent performed his third worker position on the tow bar assembly line by constantly rotating his body from the assembly line to the stack of boxed tow bars.

21. At all times pertinent to the instant Complaint, Delahunt would go to the tow bar assembly two to three times per hour and did not observe Respondent make any sexually-related gestures and/or comments towards Complainant.

22. During the months of January and February 2004, Timothy Westenhaver served as a fork-lift driver that required that he make deliveries every 20 to 30 minutes to the tow bar assembly line. Westenhaver did not observe Respondent make any sexually-related gestures or comments towards Complainant during this time frame

23 In February of 2004, Joyce Dixon worked on occasion at the tow bar assembly line with Complainant and Respondent. At no time during this period did Dixon observe Respondent touch Complainant in an inappropriate way or make any inappropriate facial gestures or comments to Complainant.

24. At no time during the months of January or February, 2004 did Respondent press up his body against Complainant in a sexual manner.

25. At no time during the months of January or February, 2004 did Respondent blow kisses at Complainant or contort his face to suggest a request for sex.

26 At no time during the months of January or February, 2004, did Respondent initiate a kiss of Complainant.

#### **Conclusions of Law**

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an “employee” as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act

3. Complainant has failed to establish a *prima facie* case of sexual harassment by showing by a preponderance of the evidence that the conduct she experienced in the workplace had the purpose or effect of substantially interfering with her work performance or created an intimidating, hostile or offensive work environment.

#### **Determination**

Complainant has failed to prove by a preponderance of the evidence that she was the victim of sexual harassment as contemplated by section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D))

#### **Discussion**

This case arises under section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)), which provides that it is a civil rights violation “[f]or any ...employee ...to engage in sexual harassment of the employer’s employees...” The Act further defines sexual harassment as “any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when...(3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.” (See, 775 ILCS 5/2-101(E).) The Commission has declared that there is no “bright line” test for determining what behavior will lead to liability under a sexual harassment theory and has charged the administrative law judge to assess not only what was done, but how it was done in relationship to the total working environment. (See, *Robinson v Jewel Food Stores*, 29 Ill HRC Rep 198, 204 (1986) ) Ultimately, however, the threshold issue in any sexual harassment case is whether the instances of harassment as established by Complainant rise to the level of hostility so as to be considered actionable conduct. See, *Scott v Sears, Roebuck & Co*, 798 F2d 210 (7<sup>th</sup> Cir 1986).

Before examining whether Complainant has established a *prima facie* case of sexual harassment, I must first determine what actually happened in the workplace, for indeed, credibility is typically the heart of any sexual harassment case. (See, *Camden v AAA-Chicago Motor Club*, 26 Ill HRC Rep 2 (1986).) Here, that maxim is altogether true, for outside of a kiss/attempted kiss that occurred at the worksite's baler, the parties agree to little else that Complainant asserts happened on the tow bar assembly line. Specifically, Complainant contends that: (1) Respondent subjected her to at least one incident in which he touched her breasts and pressed his genitals on her as he passed her on the line; (2) Respondent continually blew her kisses and winked at her; (3) on at least one occasion Respondent made a remark that "if we had sex, it would not last for long because I hadn't had sex for a long time;" and (4) Respondent kissed Complainant while the two of them were at the baler. In his brief, Respondent generally denies all allegations of harassment against him and submits that he and the other co-workers on the tow bar assembly line were simply too busy making and exceeding the established quotas to have committed the alleged acts of harassment.

After reviewing the record, I agree that the weight of the evidence does not factually support Complainant's contention that she was sexually harassed by Respondent. Specifically, the record shows that the tow bar assembly line was in an open area where others throughout the plant could have seen Respondent sexually harass Complainant, and yet Complainant failed to produce any witness who could corroborate any of her allegations of harassment. In contrast, Respondent produced testimony from his supervisor and co-workers, who indicated that they did not observe Respondent touch Complainant in any inappropriate way or make any inappropriate facial gestures or comments even though they were consistently in a place to observe what went on at the tow bar assembly line. As a result, I find it difficult to accept that the alleged offensive touching or the blowing of kisses actually occurred since either

Complainant's supervisor, or her co-worker on the tow bar assembly line, or her forklift driver would have seen something amiss given the open nature of the work site and the frequency of the alleged occurrences.

Similarly, I did not believe Complainant's version of the alleged kiss at the baler in which Complainant insisted that Respondent had kissed her. In this regard, Respondent admits to the kissing incident, but insists that it was Complainant who had initiated the kiss. Admittedly, these testimonies present a classic credibility issue. Yet, Complainant's co-worker (Dixon) credibly testified that Complainant had told her at the time of the incident that Respondent had only tried to kiss her. Thus, it would seem that Complainant would have told Dixon that Respondent had actually kissed her at the baler if, as she now insists, it had actually occurred at that time. As such, I have discounted Complainant's version of the event and found Respondent more believable in his contention that Complainant had kissed him at the baler, and not the other way around.

Other aspects of Complainant's testimony raised suspicions that she was not telling me the truth about what occurred in the workplace. Specifically, Complainant testified that after she encountered Respondent's unwelcome offensive touching, kisses or sexual comments, she typically told him that he "was not supposed to do that in the factory. If you need to do that, you need to do that outside where -- the two people can be together." (Tr at p 21.) However, this testimony just does not make sense since one would think that Respondent's alleged touching of her breasts/pressing of his penis against her body would have been offensive regardless of where the alleged incident occurred. Too, I find it odd that Respondent would wait to sexually harass Complainant at the workplace when he had ample time to do so while riding to and from work with Complainant at a time that Complainant admits no sexual conduct occurred. Similarly, I find it more than curious that, in spite of her good relationship with Delahunt, Complainant: (1) did not report any of the alleged incidents of harassment to Delahunt at

the time they allegedly occurred; and (2) did not ask Delahunt to be placed on a different assembly line. Indeed, the context in which Complainant finally complained about the alleged sexual harassment, i.e. during an unrelated work dispute about the quality of a constructed spreader, suggests that her claim of sexual harassment was only raised as a mechanism to avoid criticism of her own conduct in the workplace.

Finally, I did not believe Complainant's assertion that she frequently could not concentrate on her job at the time of the alleged harassment, and that, as a result she would excuse herself from the shift up to three times a day to go to the bathroom to cry. Specifically, this testimony did not square with Delahunt's testimony that Complainant did not take bathroom breaks during the shift with any increased frequency during the relevant time frame. Nor was Complainant's contention consistent with the fact that Complainant and her co-workers not only met the required quota, but actually performed well over the established quota during the same time frame Complainant insists that she could not do her job. Thus, I find that, with exception to the kissing incident, Complainant failed to establish any of her factual allegations of sexual harassment lodged against Respondent. Moreover, I find that the kissing incident is insufficient to support a *prima facie* sexual harassment claim where Complainant had initiated the kiss.

#### **Recommendation**

For all of the above reasons, I recommend that the Complaint and the underlying Charge of Discrimination of Linda Metelko be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY:

MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 23RD DAY OF OCTOBER, 2008