



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 9/22/04.

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

**IN THE MATTER OF:** )  
 )  
**CRAIG BRAUN,** )  
 )  
                  **Complainant,** )  
 )  
 )  
**and** )  
**MICHAEL WAGNER & SONS** )  
**PLUMBING & HEATING SUPPLY, INC.** )  
**AND THOMAS PRATT,** )  
                  **Respondents**

**CHARGE: 2000CF0734  
EEOC: 21BA00049  
ALS NO: 11234**

**RECOMMENDED ORDER AND DECISION**

On April 14, 2000, the Illinois Department of Human Rights (Department) filed a Complaint of Civil Rights Violation with the Commission, alleging that Respondents, Michael Wagner & Sons Plumbing and Heating Supply, Inc. (MWS) and Thomas Pratt, sexually harassed and constructively discharged Complainant, Craig Braun. Later, a retaliation allegation was added. A Public Hearing was held on July 29<sup>th</sup> and 30<sup>th</sup>, 2002.

The succession of closing briefs was originally due to be completed on December 15, 2002. However, Respondent was granted an extension to December 30, 2002 to file its Response brief, causing Complainant’s Reply brief to be due on January 30, 2003. On January 8, 2003, Complainant indicated that he would not be filing a Reply. This matter is now ready for decision.

### *Findings of Fact*

1. Complainant, Craig Braun, is a male.
2. Michael Wagner & Sons Plumbing and Heating Supply began in 1920 and is a family owned plumbing supply company. Complainant is a part of the Wagner family. His mother, Shirley Braun, is Michael Wagner's sister, so Michael Wagner is Complainant's uncle.
3. Braun was hired by MWS on January 1, 1975, and resigned on September 7, 1999. At the time of the allegations in question, he was a purchasing agent. Braun was under the supervision of Thomas Pratt during his entire tenure at Respondent.
4. Craig Braun was not a credible witness.
5. Braun alleges that beginning in Spring of 1999, Thomas Pratt, Complainant's supervisor, constantly told employees and customers that he was "gay," was "coming out of the closet." and "liked to suck dick."
6. Braun alleges that in May 1999, Pratt circulated an article about a man exposing himself to two women in Rolling Meadows, superimposed Braun's photograph onto the article and left it on a customer counter.
7. Braun alleges that in June 1999, there was an article in the newspaper stating that someone sexually assaulted a dog, and Pratt told customers and coworkers that Complainant was the subject of the article.
8. Braun alleges that in July 1999, Pratt removed his penis from his pants and said to Complainant, "Look at this beautiful thing, how would you like this big cock? I know you're gay."
9. Braun alleges that Pratt told a coworker, James McArthur, that Complainant was gay. McArthur then went behind Braun and humped him like a dog, while Pratt watched, laughed, and said "you like it in the ass."
10. Braun alleges that on or about the end of July and early August 1999, Pratt came to Braun's desk and said, "Come suck this big beautiful cock." Complainant replied, "Leave me alone, I'm sick, it's not funny, you make me sick." Braun reported this to Michael Wagner and said that if something wasn't done, he would sue. Michael Wagner allegedly replied, "Nobody better sue nobody." Braun then said, "I have to sue, nothing is getting done." Michael Wagner then allegedly stated, "Then I suggest that you resign immediately."

11. Pratt testified credibly. He superimposed Braun's picture onto a newspaper article over a decade ago, not in May 1999. Pratt denies all other allegations made by Complainant.
12. The article regarding a man exposing himself to two women indicated that the incident occurred on August 6<sup>th</sup>, but no year was contained in the article.
13. Braun testified that Brian Glasel was present when Pratt said that Complainant was gay, coming out of the closet and liked to suck dick.
14. Braun testified that James McArthur was present when Pratt said that Complainant was gay, and liked it in the ass, while McArthur humped Complainant like a dog.
15. Braun testified that Brian Glasel and Andy Kelly were present in July 1999 when Pratt removed his penis from his pants, urinated, and said, "Look at this beautiful thing, how would you like this big cock? I know you're gay."
16. Glasel worked for Respondent for 10 ½ years and left in September 1999 to work for Banner Supply. He possessed a truthful demeanor while testifying.
17. Glasel never witnessed Pratt exposing his penis to Braun, never heard Pratt state that Complainant was gay or coming out of the closet, and never saw an article about a man exposing himself to two girls with Braun's photo superimposed on it.
18. Andrew Kelly has worked at Respondent for 18 years; at the time of the public hearing, he was still employed by MWS. Kelly possessed a truthful demeanor while testifying.
19. Kelly never witnessed Pratt exposing his penis to Braun, or heard Pratt say, "Look at this beautiful thing, how would you like this big cock? I know you're gay." Further, Kelly never saw an article about a man exposing himself to two girls with Braun's photo superimposed on it.
20. James McArthur had worked for MWS for 15 years at the time of the public hearing. Still, McArthur possessed a truthful demeanor while testifying. McArthur did not ever hump Complainant and never heard Pratt call Braun gay.
21. Braun resigned from MWS on September 7, 1999. He began working for Banner Supply on September 13, 1999. Braun testified that he did not negotiate with Banner Supply regarding a job there before he left MWS.

22. Braun spoke with Glasel about going to Banner Supply and told several people at MWS about the job opening at Banner Supply prior to his resignation from MWS.
23. Braun spoke with Kelly about going to Banner Supply every day between May 1999 and September 7, 1999.
24. Braun spoke to McArthur about going to work for Banner Supply before he resigned from MWS.
25. One week before he resigned, Braun told his uncle, Michael Wagner, that he was going to make more money at Banner, plus get every other perk that he was getting at MWS.
26. In his resignation letter from MWS, Braun requested a pro rata share of his profit sharing money for 1999, and his performance bonus.
27. Pursuant to MWS policy, employees cannot receive either profit sharing money or a performance bonus for a given year unless they are employed for that entire year. Braun was aware of this policy before resigning.

### **Conclusions of Law**

1. Complainant, Craig Braun, is an "aggrieved party" as defined by Section 1-103(B) of the Illinois Human Rights Act.
2. Respondents, Michael Wagner & Sons Plumbing and Heating Supply, Inc. and Thomas Pratt, are "employers" within the meaning of Section 2-101(B) (1) (a) of the Act.
3. The Illinois Human Rights Commission has jurisdiction over the parties as well as the subject matter.
4. Complainant failed to prove a case of sexual harassment by a preponderance of the evidence.
5. Complainant failed to prove a case of constructive discharge by a preponderance of the evidence.
6. Complainant failed to prove a case of retaliation by a preponderance of the evidence.

## Discussion

When analyzing sexual harassment cases, the typical burden-shifting method of analyzing a discrimination case is not used. The Commission has reasoned that the burden-shifting method should not apply because "there can never be a 'legitimate' reason for sexual harassment." Accordingly, if the Complainant can prove that he was subjected to sexual harassment then he has proven a violation of the law, Rennison and Amax Coal Co., 31 Ill. HRC Rep. 178, 185 (1987).

Complainant alleges that:

- Thomas Pratt, Complainant's supervisor, constantly told employees and customers that Complainant was "gay," was "coming out of the closet," and "liked to suck dick." (*Tr.*, pg. 26, 42-43, 50).
- In May 1999, Pratt circulated an article about a man exposing himself to a woman in Rolling Meadows and superimposed Braun's photograph onto the article and left it on a customer counter. (*Tr.*, pg. 33-34). Complainant showed the article to Joanne Migaloria, Shirley Braun and William Wagner. William Wagner laughed and said, "You did this? Shame on you." and walked away laughing. (*Tr.*, pg., 37-38).
- In June 1999, there was an article in the newspaper stating that someone sexually assaulted a dog, and Pratt told customers and coworkers that the article was about Complainant. (*Tr.*, pg., 26, 31-32).
- In July 1999, Pratt removed his penis from his pants and said to Complainant, "Look at this beautiful thing, how would you like this big cock?" Also, Pratt said, "I know you're gay" and asked Complainant if he would like it, since he was coming out of the closet. Braun complained to Ken Braun and Michael Wagner about this incident and that Pratt was continuing to harass him. Michael Wagner said, "just try to avoid him as much as possible and don't take it so seriously." (*Tr.*, pg., 49-50).
- Pratt told a coworker, James McArthur, that Complainant was gay. McArthur then went behind Braun and humped him like a dog, while Pratt watched, laughed, and said "you like it in the ass." (*Tr.*, pg., 47-48).
- During the end of July and early August 1999, Pratt came to Braun's desk, holding his crotch and said, "Come suck this big beautiful cock." Complainant said, "leave me alone, I'm sick, it's not funny, you make me sick." Complainant

reported this incident to Michael Wagner and said that if something wasn't done, he would sue. Michael Wagner replied, "nobody better sue nobody." Braun then said, "I have to sue, nothing is getting done". Michael Wagner replied, "then I suggest that you resign immediately." (*Tr.*, pg., 52).

It is axiomatic that Complainant bears the burden of proving that he was subjected to sexual harassment by a preponderance of the evidence. As in most cases alleging sexual harassment, the determination of Braun's credibility is crucial in order to determine whether he has proven his case. In the present case, although genital grabbing, requests for oral sex and the like are clearly conduct of a sexual nature, and can create a hostile environment, Busheck & Snuggery Pub, \_\_Ill.HRC Rep.\_\_, Charge No. 1992CF1515 (April 23, 1996), Braun's credibility here is sorely lacking; he has failed to prove that he was subjected to sexual harassment. Braun's demeanor while testifying clearly indicated that he was not being truthful; his body language and failure to make eye contact with counsel or the Administrative Law Judge helped to betray him.

Further, in his original charge (*Defendant's Exhibit 1*), Complainant stated that Brian Glasel was present when Pratt said that Complainant was gay, coming out of the closet, and liked to suck dick. Also, Braun stated that Glasel and Andrew Kelly were present when Pratt removed his penis from his pants, urinated and said, "Look at this beautiful thing, wouldn't you like it? You're coming out of the closet."

Glasel denied ever witnessing Pratt expose his penis to Braun, ever hearing Pratt call Complainant gay or say that he was coming out of the closet, ever seeing an article with Braun's picture superimposed on it, or ever seeing an article about a man having sex with a dog, (*Tr.*, pg. 177-182). Braun was Glasel's supervisor at Respondent. Glasel worked at Respondent for 10 ½ yrs and, just as Braun did, left to work for Banner Supply. Glasel

presently has no connection to Respondent, so he has no reason to lie for MWS. Also, his demeanor while testifying indicated truthfulness.

Andrew Kelly worked for MWS for 18 years at the time of the public hearing, and is still employed there. Still, Kelly testified credibly, stating that he **never** saw Pratt display his penis to Complainant and say, “wouldn’t you like this beautiful thing?” and that he never saw an article regarding a man assaulting a dog or one regarding a man exposing himself to two girls with Braun’s picture superimposed on it. (*Tr. Pg. 198-201*).

Finally, James McArthur denied Complainant’s allegation that he humped him, and stated that he never heard Pratt call Braun gay. (*Tr. Pg. 166-167, 170*). McArthur has worked at Respondent for 15 years, but his demeanor while testifying indicated that he was doing so truthfully. None of the people that Complainant states witnessed the alleged harassment corroborate Complainant’s allegations.

Pratt denied all but one of Complainant’s allegations. Regarding the alleged incident where Pratt superimposed Braun’s picture onto an article about a man exposing himself to two women, Pratt admitted this, but stated that it occurred 10-12 years ago, not in May or June of 1999, as Complainant alleged. (*Tr. Pg 138-144*). The date on the article indicates August 6; there is no year on the exhibit. (*Complainant’s Exhibit 1*). Given Pratt’s admission, the fact that there is no date on the article, and Braun’s lack of credibility, discussed *supra*, this tribunal finds that this incident did occur, albeit a decade ago. However, isolated incidents do not qualify as harassment, *see, e.g., Koelesch v. Belfone Electronics Corp.*, 46 F.3d 705 (1995).

Additionally, on September 7, 1999, Complainant resigned. (*Tr., pg. 54, Complainant’s Exhibit 2*). He retained employment six days later at Banner Supply, on

September 13, 1999. Complainant testified that he did not negotiate with Banner for a job before his resignation from MWS. (*Tr.*, *pg.* 60). However, the evidence overwhelmingly indicates that the opposite is true.

Brian Glasel testified that he had several talks with Braun about going to Banner months before he and Complainant resigned from Respondent and began working at Banner. Also, Glasel testified that Braun told several people at Respondent about the job opening at Banner. (*Tr.*, *pg.* 183). Andrew Kelly testified that Complainant talked about going to Banner in May 1999 and that they talked about it every day between May of 1999 and September 7, 1999. (*Tr.*, *pg.* 202). James McArthur testified that Braun spoke to him about going to Banner before he resigned from MWS. (*Tr.*, *pg.* 172). The most damaging testimony came from Michael Wagner, Braun's uncle, who testified that Complainant told him that he was going to make more money at Banner, plus get everything MWS had given him, (e.g. profit sharing), one week before Complainant resigned his position at Respondent. (*Tr.*, *pg.* 106). Clearly, contrary to his testimony, Braun was negotiating with and had a job at Banner prior to his resignation.

None of the people that Complainant alleged saw Pratt harassing him corroborate those allegations. Braun's demeanor on the witness stand, as well as his clear lack of truthfulness regarding his negotiations with Banner, indicate that he is not to be believed.

Complainant worked at Respondent for over 27 years; Pratt had always been his supervisor. (*Tr.*, *pg.* 69). This begs the question, why did Pratt suddenly begin to harass Braun after over two decades of working together harmoniously? It is highly unlikely that Pratt engaged in the conduct of which Braun accuses him. The alleged harassment began in 1999, when Complainant was in negotiations to work at Respondent's

competitor, Banner Supply, where he would make a higher wage (\$23.50 versus \$32.00 per hour). Complainant wanted profit sharing money and a year-end performance bonus upon his resignation from Respondent, which, pursuant to MWS policy, he could not get unless he was at Respondent for the entire year of 1999. (*Complainant's Exhibit 2, Tr., pg. 115*). Braun testified that Michael Wagner told him of one person who received pro rata profit sharing money when he resigned from Respondent mid-year. (*Tr., pg. 55*). However, given Braun's lack of credibility, Michael Wagner told Braun nothing of the kind. In fact, when Braun stated that he believed that he was entitled to pro rata profit sharing money. (*Tr., pg. 56*), again, he was being less than truthful. It appears that Complainant sought to use the sexual harassment allegations as leverage, hoping to receive the performance bonus and profit sharing money in spite of MWS policy.

Next, regarding the constructive discharge allegation, since a hostile environment did not exist at MWS, no constructive discharge could have occurred. Regarding the retaliation allegation, Complainant states that Respondent retaliated against him when he told Wagner that he was being sexually harassed and would sue MWS, and Michael Wagner said, "nobody better sue nobody. If you intend to sue the company, I suggest that you resign immediately." (*Complainant's Brief at pg. 7*). Michael Wagner denies having said this. As discussed *supra*, Complainant has no credibility. On the other hand, Michael Wagner is a credible witness; his demeanor was truthful. Years ago, when Complainant was in some legal trouble, Michael Wagner took Braun, his nephew, into his home so that he would not have to go to reform school; Michael Wagner bears no ill will toward Craig Braun to this day – in spite of this pending action. There were no retaliatory threats made by Michael Wagner against Complainant.

Recommendation

Based upon the reasons stated above, I recommend that the instant complaint and underlying charges of discrimination against Michael Wagner & Sons Plumbing and Heating Supply, Inc. and Thomas Pratt be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

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BY:

WILLIAM H. HALL, IV  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: July 17, 2003