

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
<b>MELVIN CHAPMAN,</b>	)	
	)	
Complainant,	)	
	)	
and	)	CHARGE NO: 2000SF0646
	)	EEOC NO: 21BA020239
<b>HOWDEN BUFFALO INC.,</b>	)	ALS NO: S-11623
	)	
Respondent.	)	

**RECOMMENDED ORDER AND DECISION**

This matter comes to me on a motion by Respondent, Howden Buffalo Inc., for issuance of a summary decision pursuant to section 8-106.1 of the Illinois Human Rights Act (775 ILCS 5/8-106.1). Complainant has filed a *pro se* response. Accordingly, this matter is ready for a decision.

**Contentions of the Parties**

In his Complaint, Complainant, an African-American, asserts that he was the victim of race discrimination when Respondent failed to notify him in his role as a union steward of an investigational pre-grievance hearing scheduled for another African-American union worker while notifying two other white union officials. In its motion for summary decision, Respondent contends that the individuals notified for the pre-grievance hearing were selected in accordance with certain provisions of the union contract, and that this matter is preempted under federal law. Complainant, however, states that Respondent's explanation is suspect since union status was not applicable to the underlying investigation.

**Findings of Fact**

Based on the record in this matter and on the standards applicable to considering motions for summary decision, I make the following findings of fact:

1. At all times pertinent to this Complaint, Complainant, an African-American, worked as a layout welder at Respondent's Assembly and Test Shop and also served as a union committeeman for the first shift at the Assembly and Test Shop.

2. At all times pertinent to this Complaint, bargaining unit employees at Respondent were represented by two committeemen and a night shift steward. According to the collective bargaining agreement, one committeeman represented employees on days at Respondent's Fabricating Shop, another committeeman represented employees on days at Respondent's Assembly and Test Shop, and a night shift steward represented night shift bargaining unit members.

3. At all times pertinent to this Complaint, Leroy Carter, an African-American, was a night shift employee at the Fabricating Shop. When the night shift union steward was not available, employees at the Fabricating Shop would normally be represented by the union committeeman assigned on days at the Fabricating Shop.

4. On March 20, 2000, an unspecified incident involving Carter occurred on the second shift at the Fabricating Shop.

5. On March 20, 2000, Respondent's management notified Melvin Thornhill (white first shift committeeman for the Fabricating Shop) and Brian McCarthy (white night shift union steward). At the time of McCarthy's notification, McCarthy was available to assist Carter.

6. At all times pertinent to this Complaint, the union, as opposed to Respondent, assigned the steward for the night shift, as well as the committeemen for the Fabrication Shop and the Assembly and Test Shop.

### **Conclusions of Law**

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

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

3. A state claim is preempted under section 301(a) of the Labor Management Relations Act of 1947 (29 USC §185(a)) if the resolution of the state-law claim depends upon the meaning of a collective bargain agreement.

4. Purely factual questions concerning the conduct of the employee and the conduct and motivation of the employer are independent of the collective bargaining agreement, and thus are not preempted under section 301(a) of the Labor Management Relations Act of 1947.

#### **Determination**

This Complaint should be dismissed because Complainant has not provided any evidence that Respondent’s failure to notify Complainant about an investigational pre-grievance hearing concerning a co-worker was motivated by Complainant’s race.

#### **Discussion**

As with all motions for summary decision pending before the Commission, a motion for summary decision shall be granted if the record indicates that there is no genuine issue as to any material fact, and the moving party is entitled to a recommended order as a matter of law. (See, section 8-106.1 of the Human Rights Act (775 ILCS 5/8-106.1), and **Bolias and Millard Maintenance Service Company**, 41 Ill. HRC Rep. 3 (1988).) Moreover, in determining whether there is any genuine issue of material fact, the record is construed most strictly against the moving party and most liberally in favor of the opponent. (See, for example, **Armagast v. Medici Gallery and Coffee House**, 47 Ill.App.3d 892, 365 N.E.2d 446, 8 Ill.Dec. 208 (1<sup>st</sup> Dist., 5<sup>th</sup> Div. 1977).) Inasmuch as a summary order is a drastic method for disposing cases, it should only be allowed when the right of the moving party is clear and free from doubt. (See, **Susmano v. Associated Internists of Chicago**, 97 Ill.App.3d 215, 422 N.E.2d 879, 52 Ill.Dec. 670 (1<sup>st</sup> Dist. 1981).) Furthermore, although

there is no requirement that Complainant prove his case to overcome the motion, Complainant is still required to present some factual basis that would arguably entitle him to a judgment under the applicable law. See, **Schoondyke v. Heil, Heil, Smart & Golee, Inc.**, 89 Ill.App.3d 640, 411 N.E.2d 1168, 44 Ill.Dec. 802 (1<sup>st</sup> Dist., 2<sup>nd</sup> Div. 1980).

Typically, a *prima facie* case of race discrimination based on unequal treatment requires a showing that: (1) Complainant is a member of a protected classification; (2) Complainant suffered a materially adverse act; and (3) others outside of Complainant's protected classification received more favorable treatment. (See, for example, **Loyola University of Chicago v. Illinois Human Rights Commission**, 149 Ill.App.3d 8, 500 N.E.2d 639, 102 Ill.Dec. 746 (1<sup>st</sup> Dist., 3<sup>rd</sup> Div. 1986).) Here, the Complaint describes the discriminatory act as the failure of Respondent to notify Complainant of the Carter incident in the Fabricating Shop although it notified other union officials of a different race.

At first blush, one might wonder whether Complainant could ever satisfy the "material adverse act" component of the *prima facie* case of race discrimination where, as here, the alleged adverse act (i.e., failure to notify Complainant of an investigation involving a union co-worker) does not directly pertain to the terms or conditions of Complainant's employment with Respondent. (See, **Canady and Caterpillar, Inc.**, \_\_\_ Ill. HRC Rep. \_\_\_ (1994SA0027, March 17, 1998, where the Commission similarly emphasized that the actionable adverse act must affect a term or condition of an employee's employment.) Indeed, while Respondent's actions may have had an impact on Complainant's union activities, the instant record reflects that Respondent did not hire Complainant to be a union official, and Complainant has not otherwise explained how the lack of notice on an incident involving a co-worker in a different shop played any role on his duties as a layout welder. However, Respondent has not pressed this argument in its motion for summary decision, and the Commission, in **Thompson and Hoke Construction Co., Inc.**, \_\_\_ Ill. HRC Rep. \_\_\_ (1995SF0483, June 2, 1998), has at least hinted at the possibility of having a viable

cause of action under the Human Rights Act where an employee, who is also a union official, alleged that the employer treated other similarly situated union officials from a different race more leniently.<sup>1</sup>

Respondent, though, submits that the Commission lacks subject-matter jurisdiction to even consider Complainant's Complaint because any dispute as to the appropriate representation at an investigational pre-grievance hearing is a matter of federal law that is preempted by section 301 of the National Labor Relations Act (NLRA) (29 USC §185). Instructive on this issue is the case of **Carver Lumber Co. v. Illinois Human Rights Commission**, 162 Ill.App.3d 419, 515 N.E.2d 417, 113 Ill.Dec. 608 (3<sup>rd</sup> Dist. 1987). There, the court reversed on subject-matter jurisdiction grounds a Commission decision that found that the employer violated the handicap provisions of the Human Rights Act when it refused to disregard the seniority provisions of the collective bargaining agreement in order to accommodate the physical needs of the employee. Significantly, the court found that federal preemption was appropriate because the propriety of the Commission's decision was sufficiently intertwined with the interpretation of the collective bargaining agreement such that the claim was viable either under section 301 of the NLRA or under federal contract law. See, **Allis-Chalmers Corp. v. Lueck**, 471 U.S. 202, 105 S.Ct. 1904 (1985).

However, cases subsequent to **Lueck** have made it clear that federal preemption will not occur merely because an employee and employer are tied to a collective bargaining agreement. For example, in **Lingle v. Norge Division**, 486 U.S. 399, 108 S.Ct. (1988), the Court explained in the context of a state-law retaliatory discharge action where an issue of federal preemption was rejected, that a state court is not required to construe the terms of a collective-bargaining agreement when the questions before the court concerned purely factual questions pertaining to the conduct of the employee and the conduct and motivation

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<sup>1</sup> Of course the complainant in **Thompson** could establish a material adverse act where he was terminated over a union dispute with his employer.

of the employer. (Lingle, 108 S.Ct. at 1882.) This is so, even where a collective-bargaining agreement provides for relief for improperly discharged employees. See Gonzales v. Prestress Engineering Corp., 115 Ill.2d 1, 503 N.E.2d 308, 104 Ill.Dec. 751, 757 (1986).

In his Complaint, Complainant asserts that: (1) Respondent subjected him to unequal terms and conditions of his employment when it failed to notify him of an investigational pre-grievance hearing scheduled for Leroy Carter, another African-American union member, and yet it notified two white union representatives about the Carter incident; and (2) Respondent's explanation for its decision to notify the white union officials (i.e., that Complainant was not the union representative for the shop in which Carter worked) was pretextual. Thus, consistent with Lingle, I find that Complainant's Complaint is not preempted by federal law since the Commission is only called upon to determine whether Respondent's motivation for failing to contact Complainant about the Carter incident is false, and whether the real reason for Respondent's actions was related to Complainant's race. Indeed, one way of raising an issue of pretext is showing that Respondent did not actually consider Complainant's status as the first shift union committeeman at the Assembly and Test Shop when deciding to notify only the stewards responsible for Carter's Fabricating Shop.

The problem for Complainant, though, is that he failed to submit any evidence calling into question the accuracy of Respondent's articulation. Specifically, Complainant admits that he was on a different shift and in a different building than Carter at the time of the Carter incident, and, more important, that Respondent notified the appropriate union officials under the terms of the collective bargaining agreement if Carter had filed a formal written grievance. Complainant, though, argues that the white union officials should not have been notified about the Carter incident since, at the time of the notification, Carter had not filed a formal written grievance. But so what? The presence or absence of a written

grievance still does not call into question Respondent's assertion that it did not contact Complainant because he was not Carter's union representative. Additionally, Complainant has produced no evidence indicating that Respondent did not contact appropriate union representatives about workplace incidents in the absence of a formal written grievance. More important, Complainant has not shown why he should have received notification about anything that happened in the Fabricating Shop if, as he now suggests, the notification terms of the collective bargaining agreement did not apply due to a lack of a written grievance.

In short, Respondent's articulation that it did not notify Complainant about the Carter incident because Complainant was not Carter's union representative required that Complainant provide some evidence that casts doubt on the factual accuracy of Respondent's explanation. However, Complainant failed in this regard since he conceded that he was not Carter's union representative, and he otherwise neglected to present any evidence indicating that he should have received notification of the Carter matter in the absence of a written grievance. Finally, to the extent that Complainant's claim rests on the proposition that Respondent made a mistake in construing the notification provisions of the collective bargaining when it failed to notify Complainant about the Carter incident, I would agree with Respondent that Complainant's claim would be preempted under federal law.

**Recommendation**

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

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 19TH DAY OF MARCH, 2004

