



STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
STEPHANIE GINN,)	
)	
Complainant,)	Charge No. 2002CF0882
)	ALS No. 11883
AND)	
)	
GRAYLINE TOURS)	
d/b/a AME,)	
)	
Respondent.)	

RECOMMENDED LIABILITY DETERMINATION

This matter is before me following a public hearing conducted on March 22, 23 and 24, 2004. Both parties filed initial post-hearing briefs and reply briefs. There are no further submissions from the parties. The matter is now ready for decision.

FINDINGS OF FACT

The following findings of fact are based upon the public hearing in this matter. The record consists of five-hundred and forty-six (546) pages of transcript and any exhibits admitted into evidence during the hearing. Factual assertions made at the public hearing, but not addressed in these findings, were determined to be unproven by a preponderance of the evidence or were otherwise immaterial to the issues at hand. Any citations to the public hearing record are indicated as "Tr. page ____". Any joint exhibits admitted into evidence are denoted "JX-#", Complainant's exhibits are denoted "CX-#" and Respondent's exhibits are denoted "RX-#".

1. Stephanie Ginn (Complainant or Ginn) filed Charge No. 2002CF0882 with the Illinois Department of Human Rights on October 22, 2001.

2. On September 16, 2002, the Illinois Department of Human Rights filed a two-count *Complaint of Civil Rights Violation* with the Illinois Human Rights Commission on behalf of Ginn. That complaint alleges that Ginn was subjected to sexual harassment and retaliation by her former employer, Respondent Grayline Tours d/b/a AME (Respondent or Grayline).
3. Respondent filed its verified *Answer to Complaint of Civil Rights Violation* on October 15, 2002.
4. Complainant is an adult, female resident of the State of Illinois, and falls within a class protected by the Illinois Human Rights Act. *775 ILCS 5/1-103*.
5. Respondent Grayline is an “employer” as defined by the Illinois Human Rights Act. *775 ILCS 5/2-101*.
6. Complainant was hired by Respondent as a tour bus driver on or about July 18th, 2000. *Joint Pre-Hearing Memorandum* filed January 20th, 2004.
7. Complainant has held a commercial driver’s license (CDL) since 1993, along with passenger and air brakes endorsements. Complainant was recently certified to haul hazardous materials. Tr. page 79.
8. Donald Ferrone is the Vice President and General Manager for Respondent. Tr. Page 23.
9. Donald Ferrone and his brother, Frances Ferrone, are the owners of Respondent company. Tr. page 23
10. Respondent fluctuates between 15 and 30 total employees at any given time depending on the time of year. Tr. page 33.
11. Respondent operates two garages as part of its business. One garage is located on South Wabash in Chicago (Wabash Garage). Respondent’s

second garage is located on South State Street (State Street Garage).
Tr. pages 89 and 292.

- 12.** Ginn reported to the Wabash Garage for her work as a bus driver. Tr. page 89.
- 13.** Respondent's business office is located 27 East Monroe Street in Chicago. Tr. page 50.
- 14.** Part of Donald Ferrone's daily routine is to park his car in the morning at the Wabash Garage at the start of his workday. He then spends approximately 1.5 to 2 hours at the garage before having one of Respondent's bus drivers transport him to Respondent's business office on Monroe Street where he would spend the bulk of his workday. Tr. pages 50, 88, and 382.
- 15.** Toward the end of his workday, Donald Ferrone routinely has one of Respondent's bus drivers pick him up at the office on Monroe Street and transport him back to the Wabash Garage. Tr. page 382.
- 16.** Donald Ferrone is responsible for formulating Respondent's operational policies and procedures. Donald Ferrone is part of Respondent's management. Tr. pages 24 and 375.
- 17.** Harold Moore (Moore) served as a driver supervisor for Respondent during the time that Respondent employed Ginn. Tr. page 87-88.
- 18.** Moore began working part-time for Respondent in the early 1990s. Tr. page 249-250.
- 19.** Moore was employed full-time by Respondent throughout the time that Respondent employed Ginn as a tour bus driver. Tr. pages 249-250.
- 20.** Donald Ferrone hired Moore. Tr. page 28.

21. Moore's work duties included spending a couple of hours a day at the Wabash Garage, checking on Respondent's drivers and occasionally visiting the State Street Garage for various work-related reasons. Tr. page 253.
22. Moore's daily work duties were dictated by Donald Ferrone. Ferrone would convey information and/or instructions to Moore pertaining to the bus drivers. Part of Moore's job was to pass along that information and/or instructions to the drivers. Tr. pages 86-88, 253 and 262.
23. Part of Moore's work responsibilities were to observe, document and report to Donald Ferrone any work violations by employees, including bus drivers, that would be cause for formal discipline. Tr. pages 264-265.
24. Donald Ferrone is the person responsible for firing and formally disciplining Respondent's employees. Tr. pages 27.
25. Aside from Moore and the bus drivers, the Wabash Garage was also occupied by Respondent's mechanics. The mechanics were responsible for fixing Grayline's buses. Tr. pages 274, 302-303, 307, and 318.
26. Both Donald Ferrone and Moore would accept employment applications from persons seeking to work for Respondent. Tr. pages 251 and 267-268.
27. When Ginn first sought employment as a bus driver by Respondent, Ginn went to the Wabash Garage where Moore provided her with an employment application. Ginn completed the application and was told by Moore to return to the garage the next day so that she could take a physical. Tr. page 84.
28. The very next day, Ginn returned to the garage and Moore sent her to Mercy Hospital in Chicago to get a physical. Tr. page 85.

29. Ginn did not speak to anyone about employment as a tour bus driver, other than Moore, before she was hired as a bus driver. Tr. page 86.
30. Ginn did not meet or speak to Donald Ferrone before she began her employment as a bus driver for Respondent. Tr. page 86.
31. On April 10, 2002, Moore drafted a written reprimand concerning one of Respondent's bus drivers, Connie Franke, wherein he signed his name along with the title "Supervisor". Tr. page 263-264.
32. The April 10, 2002 reprimand drafted by Moore stated the following:
During the course of 3 days, 4 different dispatchers reported to me about operator Connie Franke not following instructions and rude [sic] to passengers. I had a talk with her about her conduct and Don also had a talk with her 2 days before I did. She still wouldn't do as she was told. H. Moore, Supervisor.
33. Moore had been a supervisor for the Chicago Transit Authority before coming to work for Respondent in the early 1990s. Tr. pages 249-250.
34. On October 15, 2001, Donald Ferrone asked Moore to be present at a meeting wherein Ferrone terminated Ginn from employment. Tr. pages 270-271.
35. Donald Ferrone terminated Ginn's employment in the presence of Moore on October 15, 2001. Tr. pages 270 and 379. Donald Ferrone told Ginn that the reason he was discharging her from Respondent's employment was because she had dropped off the Edmonton Art Gallery group at the wrong boat tour on October 13, 2001 and that the company could not tolerate poor customer service. Tr. page 379.

36. Ginn's October 13th, 2001 written work order contained the following instructions with regard the various destinations Ginn was to take the Edmonton Art Gallery Group on that day:

*North Pier for Chicago on Lake Architecture Tour – 11:30 a.m.
depart for Navy Pier for visit to Smith Museum of Stained Glass –
2:30 p.m. depart Navy Pier for Contemporary Art Museum, use
side entrance at Pearson Street. RX-3.*

37. Donald Ferrone, with the help of his son, Chris Ferrone, prepared a manual entitled, *Driver's Manual: Policies and Procedures*. This manual was provided to Respondent's bus drivers, including Ginn. Tr. page 24 and CX-1.
38. Ginn signed a document on March 13, 2001 acknowledging that she received a copy of a company manual. In that document Ginn also agreed to familiarize herself with any future changes or additions to the manual. RX-1.
39. As of the date of completion of the public hearing in this matter, Respondent's *Driver's Manual* has never included a sexual harassment policy. Tr. page 25.
40. As of the date of completion of the public hearing in this matter, Respondent has no written policy regarding sexual harassment. Tr. page 25-26.
41. Throughout Ginn's employment with Respondent, Ginn would see Moore approximately five times per week. Tr. page 91.
42. On Ginn's first day of employment with Respondent, July 18, 2000, Moore told Ginn, "*if you go over there in the yard and one of the guys mention [sic] anything to you, tell them I am your man.*" Tr. page 90.

43. When Ginn would report for work, Moore would make comments of a sexual nature to Ginn stating that she had a *"big booty"* or *"nice tits"*. Tr. page 91.
44. Moore's sexual comments to Ginn increased in frequency over time. Tr. page 92.
45. Approximately one week before Easter in 2001, Ginn was sitting alone on her assigned bus in a parking lot near one of Respondent's garages waiting to do a hotel pick-up. Moore climbed aboard her bus and proceeded to use the toilet on the bus while intentionally leaving the door to the toilet area open. While doing so Moore stated: *"Ms. Ginn, don't come in the bathroom and look at my "dick" "*. Tr. page 93.
46. In June of 2001, Moore made a comment to Ginn regarding a new female bus driver named Shonte Roberson, whom Ginn happened to know personally outside of work. Moore commented to Ginn on Roberson's physical appearance stating *"how nice she looked"* and *how pretty and fine"* she was. Moore also told Ginn that he needed some cleaning done at his house and that it would be *"real nice for [Ginn] and Shonte to come over to [his] house [to] have one big happy orgy."* Tr. page 95-96.
47. On one occasion, Moore accused a bus driver named Bill Lowery of having a sexual relationship with Ginn. Ginn later confronted Moore and told Moore that Lowrey had always treated her in a respectful way, unlike the way Moore treated her, and that she was *"sick and tired of his [Moore's] bullshit"*. Tr. page 102.
48. On several occasions, Moore would ask Ginn to have sex with him for money. Moore would say such things as *"Ms. Ginn, you want to sell some pussy."* Tr. page 103.

49. The Wabash Garage is located near some of Chicago's housing projects. Tr. pages 103 and 253.
50. On several different occasions, female prostitutes from the area would visit the Wabash Garage and have sexual relations with garage employees, including Moore and a bus driver named Jesse Maggitt. Tr. pages 103-105. One such prostitute's name was "April". Another prostitute was known by garage employees as "Big Lips". Tr. pages 122 and 180-182;
51. The sexual activity between garage employees and the female prostitutes often took place in a washroom located in the back of the Wabash Garage and on Respondent's immobile buses. Tr. pages 187-189.
52. Moore was aware that sexual activity was occurring between employees and prostitutes on Respondent's premises. Tr. pages 181 and 190.
53. On one occasion, Ginn arrived for work at the Wabash Garage and witnessed Moore and Maggitt watching a prostitute named "April" masturbate. Ginn told Moore that she couldn't believe he, as the supervisor, was allowing that type of activity to occur in the garage and that it was a "*disgrace*". Ginn told Moore that she "*didn't appreciate it*" and that it was "*no environment for a woman to work.*" Tr. pages 104-105.
54. On another occasion, Ginn was aboard a bus with Maggitt and another bus driver named Bertell Walters. Subsequently, Moore boarded the same bus and said, "*Oh, Ms. Ginn, look at your cleavage, you got some big old sexy titties.*" Walters encouraged Ginn to report Moore's behavior to Chris Ferrone. Tr. page 106.

55. After the incident occurred in Finding of Fact No. 54 above, Ginn left the bus and complained to Chris Ferrone about Moore. Ginn was so upset about the incident that she yelled at Moore and then returned to her bus. Subsequently, Moore came to Ginn's bus and asked Ginn if she was mad at him and if she hated him. Ginn told Moore that she did hate him. Tr. pages 107-108 and 111.
56. On at least one occasion, Moore told Ginn that he loved toothless women because they give good "*head jobs*". Tr. page 122.
57. Moore's sexual comments regarding Ginn's anatomy occurred approximately two to three times per month throughout her employment with Respondent. Tr. pages 123-124.
58. Moore offered Ginn money for sex approximately four to five times throughout her employment with Respondent. Tr. page 124.
59. Ginn would get the "*chills*" whenever she was in the presence of Moore due to the constant sexual comments that he directed toward her. Tr. page 108.
60. Moore's sexual propositions and comments to Ginn made Ginn feel like she was "*just a slut*". Tr. page 112.
61. At the age of 15, Ginn was the victim of rape. Tr. page 466.
62. Ginn never personally complained about Moore's conduct to Donald Ferrone. The reason that Ginn did not complain to Ferrone was because on a prior occasion he had called Ginn a "god damn liar" when she complained to him about one of Respondent's male customers talking to her in a sexual way while she was driving a group of handicapped children. Tr. pages 96-100.

63. Ginn complained frequently to Maggitt about Moore's sexual comments to her. Maggitt never personally heard the comments Tr. pages 178-179, but he and Ginn discussed the situation all the time. Tr. page 185.
64. Maggitt, a bus driver, considered Moore his supervisor as he was required to follow any orders given to him by Moore. Tr. pages 174-176.
65. When Ginn first began her employment with Respondent, Moore instructed Maggitt to have Ginn ride on Maggitt's bus for driver orientation. Tr. page 176.
66. Maggitt personally witnessed non-employee women, including "April" and "Big Lips", frequenting the Wabash garage, doing things of a sexual nature on numerous occasions. Tr. page 181.
67. Aside from Maggitt and Moore having sexual relations with prostitutes on Respondent's premises, so were some of Respondent's mechanics. Tr. Tr. page 189.
68. Donald Ferrone had no knowledge of any sexual activity taking place on Respondent's premises, including the buses. Tr. page 50.
69. Aside from having to deal with Moore, Ginn enjoyed her job as a bus driver for Respondent. Tr. page 129.
70. Ginn's October 13, 2001 work order specified that she was to take the Edmonton Art Gallery Group to North Pier for the *Chicago on the Lake Architectural Tour*. RX-3.
71. On October 13, 2001 Ginn dropped the Edmonton Art Gallery Group off at the wrong pier and boat tour. RX-5.
72. On the morning of October 13, 2001, Ginn called Bertell Walters over the two-way radio to ask him the location of North Pier. Tr. page 199.

73. Christopher (Chris) Ferrone is Donald Ferrone's son. Chris Ferrone is Respondent's Chief of Maintenance. Tr. page 290
74. Chris Ferrone typically works Monday and Wednesday from approximately 5:30 a.m. to 9:00 a.m. and Saturday mornings from about 4:00 a.m. to 9:00 a.m. Tr. page 291
75. Chris Ferrone worked as Respondent's Chief of Maintenance in 2000 and 2001. Tr. page 291.
76. Chris Ferrone was the person primarily responsible for writing Respondent's Driver's Manual. Tr. pages 295-296.
77. Number 17 of the Driver's Manual, page 9, lists eighteen (18) (A through R) *Driver Behavior/Dismissal Conditions*. CX-1.
78. In the manual, immediately preceding letters A through R at number 17, page 9, are the written words: *The following list of items are what represents the grounds for driver dismissal. They are as listed below but not limited to:* CX-1.
79. Page 9, Number 17 of the Driver's Manual, A and B state as follows:
- A. Failing to follow your written orders.
 - B. Failing to act in a safe and professional manner. CX-1.
80. Eugene Tate (Tate) has been a bus driver for Respondent for approximately eleven (11) years. As of the date of the public hearing in this matter, Tate was employed as a bus driver for Respondent. Tr. page 223.
81. In 1999, Tate also tested positive for cocaine. CX-3. At that time, Tate told Donald Ferrone that he needed some time off because he was "drinking and drugging". Tr. 238. Ferrone told Tate that if Tate could keep

himself “straight” Ferrone would give him a “second chance”. Tr. 238.

Tate then went on to complete a rehab program. Tr. page 235.

82. Then around the end of 2001, Tate was off of work from Respondent for approximately one (1) year after a random drug test determined that he tested positive for cocaine once again. CX-2; Tr. pages 228-229. This was an unpaid leave. Tr. page 224. Tate again went through a drug rehabilitation program. Tr. page 239. Donald Ferrone was aware that Tate had tested positive again for cocaine. Tr. 239.

83. In 1998, Tate was involved in a traffic accident while driving one of Respondent’s buses. While making a left-hand turn in a Chicago intersection, Tate hit a woman in a cross walk. CX-5; Tr. pages 226-228.

84. Tate was off from work for approximately one (1) week after the accident. Tr. page 240.

85. Tate had never received a complaint about his driving from any tour group or client of Respondent. Tr. page 224.

86. While employed by Respondent, Ginn had told Tate that she was having a problem with Moore. Tr. page 241. Tate never personally heard Moore say anything of a sexual nature to Ginn. Tr. page 225.

87. Tate has witnessed women coming into Respondent’s Wabash garage begging. Tate had heard rumors about what the women were doing there as far as sexual activity with employees. Tr. page 244.

88. Tate has witnessed non-employees using the washroom located at the back of the Wabash garage. Tr. page 244-245.

CONCLUSIONS OF LAW

1. Complainant was an “*employee*” of Respondent, as that term is defined under the Illinois Human Rights Act.

2. Respondent is an “*employer*”, as that term is defined under the Illinois Human Rights Act, and is subject to the provisions of the Illinois Human Rights Act.
3. The Commission has jurisdiction over the parties and the subject matter of this action.
4. Complainant has established by a preponderance of the evidence that she was a victim of “*sexual harassment*” by Respondent employer, as that term is defined under the Illinois Human Rights Act.
5. Complainant has failed to establish by a preponderance of the evidence that Respondent discharged her from employment in “*retaliation*” for opposing sexual harassment, as the term “*retaliation*” is defined under the Illinois Human Rights Act.

DISCUSSION

SEXUAL HARASSMENT

In Count I of the *Complaint of Civil Rights Violation*, Complainant Ginn alleges that Respondent Grayline should be held liable for sexual harassment because of Harold Moore’s treatment of her during the time that she was employed as a bus driver. Complainant’s contention throughout the public hearing, as well as in her post-hearing briefs, is that Moore worked for Respondent as Ginn’s “supervisor”. Respondent, through oral and documentary evidence, has attempted to prove that Moore was not a “supervisor”, but merely an “assistant” to Donald Ferrone. Respondent argues that Moore was a just a regular employee with no supervisory or managerial authority and that Respondent was unaware that Ginn was being harassed by Moore.

Under the Illinois Human Rights Act, 775 ILCS 5/101(E) (the Act), “sexual harassment” is defined as “*any unwelcome sexual advances or requests for sexual*

favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (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.” In addition, the Act makes it a civil rights violation for “*any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided that any employer shall be responsible for sexual harassment of the employer's employees by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.* 775 ILCS 5/2-102(D).

The first step in the analysis of Complainant's claim is to determine whether or not Moore's treatment of Complainant amounted to “*sexual harassment*” as defined by the Act. During the public hearing, Ginn testified with great specificity regarding Moore's outrageous treatment of her and overall this tribunal found her to be an extremely credible witness. Lending to Complainant's credibility, Respondent's own witness, Robert Esquivel, a bus mechanic employed by Respondent at the time of the public hearing, testified that in 2001 Ginn had told him, on more than one occasion, that Moore was sexually harassing her. Tr. pages 332-335. No doubt, Moore's use of crude language to describe Ginn's anatomy, his own anatomy, along with his explicit propositions to Ginn for sexual activity, including sexual activity in exchange for money (see *Findings of Fact* numbers 42, 43, 45, 46, 48, 53, 54, 56 and 58), amounts to “*conduct of a sexual nature*” and “*requests for sexual favors*” as defined by the Act and by case law. *State v. Human Rights Commission*, 178 Ill. App. 3d 1033, 534 N.E.2d161

(4th Dist. 1989); *Farmer and Harper Oil Co.*, Charge No 1996SF0604, ALS No. S-9806, 1997 WL 680633 (Ill. Hum. Rts. Comm. 1997).

Moreover, the third type of sexual harassment is most relevant in this case: “(3) *such conduct that . . . creates an intimidating, hostile or offensive working environment.*” 775 ILCS 5/2-101(E). The facts adduced at the public hearing, as outlined above in Findings of Fact numbers 42, 43, 45, 46, 48, 50, 53, 54, 56, and 58, prove by a preponderance of the evidence that Harold Moore’s conduct created a work environment that was hostile, intimidating and offensive to women in general and specifically to Complainant individually. During her testimony Ginn became increasingly upset and angry as she spoke of her experiences with Moore. Ginn testified that she would get “*the chills*” whenever she found herself in the presence of Moore due to the frequent sexual remarks and suggestions that he directed toward her. Tr. page 108. Moore made crude remarks about Ginn’s anatomy at least two to three times per month throughout her employment with Respondent and that on at least four or five occasions Moore offered Ginn money in exchange for sex. Tr. pages 123-124. Clearly, Ginn was subjected to an intimidating and offensive working environment while employed by Respondent.

Finally, Respondent is responsible for Moore’s sexual harassment of Ginn because Moore was no doubt Complainant’s supervisor. 775 ILCS 5/2-102(D). It is a fundamental rule of statutory construction that every word in a statute must be given meaning. *Office of the Lake County State’s Attorney v. Human Rights Comm’n*, 601 N.E.2d 1294 (1992). Section 5/102(D) of the Act distinguishes between the terms “nonmanagerial and “nonsupervisory”. As recognized by the Commission in *Betty J. Cunningham and Wal-Mart Stores, Inc.*, Charge No. 1992CF0496, ALS No. 9048, 1998 WL 254520 at 10 (Ill. Hum. Rts. Comm. April 16, 1998), the legislature clearly intended for there to be a conceptual difference between management and supervisory

employees. From the testimony presented at the hearing, it is clear that Donald Ferrone is a member of Respondent's management. As vice-president, general manager, fifty percent owner and formulator of Respondent's operational policies and procedures, Donald Ferrone most certainly holds the status of "manager". Although it is clear that Moore was not a member of Respondent's "management", Moore most certainly held the status of "supervisory" employee. Several different facts unveiled at the hearing lead this tribunal to that conclusion and will be discussed in detail below.

Respondent insists that during Moore's employment Moore was nothing more than an "assistant" or "helper" to Donald Ferrone and not a "supervisor". Tr. page 29. During the public hearing, as well as in its post-hearing brief, Respondent has continually focused on Moore's alleged lack of authority to hire, fire and/or discipline and cites to *Donna Feleccia and Sangamon County Sheriff's Dept*, Charge No. 1999SF0713, ALS No S-11300, 2003 WL 22764318 (*remanded on other grounds* by the Commission, 2004 WL 3372596 November 22, 2004) for support. This tribunal finds, however, that Respondent has relied too heavily on *Feleccia* and has failed to take into account the broader definition of "supervisor" as laid out in the Commission's *Order and Decision in Cunningham*. 1998 WL 254520.

In *Cunningham*, the Commission addressed the "status" of an alleged harasser. There the Commission recognized that if an employee has the ability to fire a complainant that employee is certainly supervisory or managerial. The Commission went on to hold, however, that it does not follow that an employee who *does not* have the ability to fire is *never* a supervisory or managerial employee. *Cunningham*, Order and Decision, 1998 WL 254520 at 8. The Commission pointed to another critical factor in determining whether an employee is supervisory or managerial: the employee's ability to dictate the conditions of a complainant's employment. In other words, does the employee have any authority over the complainant? *Id.* at 8.

In this case, while it is true that Mr. Ferrone terminated Ginn's employment, Ginn credibly testified that she had spoken to no one *but* Moore regarding the bus driver position prior to her first day on the job. Tr. pages 84-86. Ginn testified that Moore accepted her employment application, told her to come back the next day so that she could take a physical and when she did return the very next day, Moore sent her to Chicago's Mercy Hospital or some affiliate thereof to get the physical. Ginn further testified that after having a physical Moore immediately told her that she was hired. Tr. pages 84-86. Respondent has attempted, but failed to prove that Donald Ferrone was involved at all with the hiring of Ginn. Contrary to Ginn's testimony, when questioned, Donald Ferrone had no specific recollection of the circumstances surrounding Ginn's hire except to say that he had talked to her before her start date. Tr. pages 31-32. Thus, as far as this tribunal is concerned, the "authority to hire" standard as laid out in *Feleccia* is no hurdle for Complainant.

Moreover, without question, Moore had authority to reprimand Respondent's bus drivers. On April 10, 2002, Moore hand wrote a note for placement in bus operator Connie Franke's personnel file which reads as follows:

During the course of 3 days 4 different dispatchers reported to me about operator Connie Franke not following instructions [and] [sic] rude to passengers. I had a talk with her about her conduct and Don also had a talk with her 2 days before I did. She still wouldn't do as she was told.

H. Moore
Supervisor

See CX-8. At the hearing, Moore admitted writing the note and when questioned about why he included the title "Supervisor" under his name, Moore attempted to explain it away by stating that it was just an "old habit" from his days as a supervisor for the Chicago Transit Authority. Apart from this tribunal's finding that Moore's "old habit" explanation is utterly absurd, the substantive content of the note must also be addressed. It is most difficult for this tribunal to believe that Moore did not possess

supervisory authority over the bus drivers when *four (4) different dispatchers, over a course of three (3) days, "reported" to him* that one of Respondent's bus driver's was not following instructions and was being rude to passengers. Additionally, Moore's statement that he talked to Franke about her conduct . . . and that "*she still wouldn't do as she was told*" further supports the conclusion that Moore held a position of authority over the drivers and had the power to formally reprimand them for work violations. In fact, Moore's written reprimand meets the tests of both *Feleccia* and *Cunningham*.

Ginn credibly testified that Respondent's bus drivers would carry passengers to whatever location Ferrone or Moore would tell them to go. Tr. pages 86-88. Donald Ferrone himself admitted that Harold Moore was "*just underneath*" him and that Moore's job was to give directions to people in the garage including the bus drivers. Tr. page 30. He also admitted that Moore would interview prospective employees, that Moore could have very well have interviewed Ginn and communicated to her that she was hired. Tr. pages 31-32. Ferrone admitted that Moore and Ginn were not "equals" and that Moore did not drive except on rare occasions. Tr. page 33. With regard to the day that Ginn was fired, Ferrone further testified that he himself terminated Ginn and that he had asked Moore to bring Ginn into the garage so that Ferrone could terminate her. Ferrone admitted that the persons present for Ginn's termination were himself, Moore and Ginn. Tr. pages 32- 33. Moore admitted that Ferrone asked him to be present for Ginn's termination. Tr. pages 270-271. Notably, Respondent's own witness, bus driver Bertell Walters who was employed by Respondent at the time of the public hearing, testified that Moore had been his supervisor, as well as Ginn's. Tr. pages 194-196, 202, 206 and 217. Former bus driver, Jesse Maggitt, also testified that Moore had directed his work and that he had been required to follow any orders given to him by Moore. Tr. page 174. One such order in particular given by Moore to Maggitt was to take Ginn along on

Maggitt's bus for a "ride-along" orientation at the time she first began working for Respondent. Tr. page 176.

Donald Ferrone spent approximately two hours in the morning and two hours in the evening at the Wabash Garage. The rest of Mr. Ferrone's day was spent at Respondent's business office on Monroe Street. Tr. pages 50, 88 and 382. This tribunal is simply unconvinced that Respondent had no one physically present at the garage with supervisory authority over the bus drivers while Ferrone worked most of his day at the Monroe Street office. Based on the testimony presented at the hearing, Complainant has proven by a preponderance of the evidence that that supervisory employee was Mr. Moore.

RETALIATION

Under the Illinois Human Rights Act, 775 ILCS 5/6-101(A), it is a civil rights violation to retaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be . . . sexual harassment in employment To establish a *prima facie* case of retaliation, a Complainant must prove that: (1) she engaged in a protected activity (i.e. either opposing practices forbidden under the Human Rights Act or participating in proceedings or investigations under the Act) that was known by the alleged retaliator; (2) Respondent subsequently took an "adverse action" against the Complainant; and (3) the circumstances indicate a causal connection between the protected activity and the adverse act. *Donald Witty and Illinois Department of Public Health*, 1998SN0246, ALS No. 4407(S), 1995 WL 853329 (Ill. Hum. Rts. Comm.) (1995).

Once Complainant has established a *prima facie* case, the burden is on the Respondent to provide a legitimate, non-discriminatory reason for the adverse employment action. If the Respondent meets this burden, the burden then shifts back to

the Complainant to prove that the proffered reason is merely a pretext for retaliation.

Zaderaka v. Illinois Human Rights Comm'n, 131 Ill.2d 172, 545 N.E.2d 684 (1989).

Complainant testified that around June 2001, and again around August or September 2001, she complained to Chris Ferrone, Donald Ferrone's son and Respondent's Chief of Maintenance, that Moore was sexually harassing her. Tr. pages 106-107, 466-467. Furthermore, Ginn testified about two specific incidents in which she opposed Moore's behavior directly to Moore himself. The first occurred after arriving for work at the Wabash Garage and witnessing Moore engage a prostitute named "April" in a sex act. At that time, Ginn confronted Moore and told him that she did not appreciate that kind of conduct going on and that it was "no environment for a woman to work". Ginn also told Moore that she could not believe that he was allowing that type of activity to occur in the garage and that it was a "disgrace". Tr. pages 104-105. On another occasion, Ginn yelled at Moore after he commented on Ginn's cleavage and breast size. Tr. page 106-108 and 111. On this particular occasion Ginn then reported Moore's conduct to Chris Ferrone. Tr. pages 107-108. Throughout the public hearing Ginn proved to be an extremely credible witness and this tribunal believes that Ginn did in fact oppose Moore's harassment to both Moore himself and to Chris Ferrone on the occasions discussed above. Complainant has not proved, however, that Donald Ferrone had any knowledge of Moore's harassing conduct or Ginn's opposition thereto at the time he discharged her from employment.

Complainant contends that after complaining to Chris Ferrone and Moore, she was then terminated on October 15, 2001 by Donald Ferrone in the presence of Harold Moore. Complainant's position is that she was terminated in retaliation for opposing Moore's harassment. The reason given by Donald Ferrone to Complainant for her discharge was that she failed to drop the Edmonton Art Gallery Group off at North Pier for the *Chicago from the Lake Architectural Cruise*, but rather dropped the group off at a

different pier and tour altogether. At the hearing, Donald Ferrone cited Ginn's failure to follow the instructions on her October 13, 2001 work order, along with other customer complaints, as the reasons for Ginn's discharge. RX-3. Complainant maintains that these reasons are simply pretext for retaliation.

On October 18, 2001, Lillian Street of the *Alberta Motor Association* faxed a letter to Donald Ferrone regarding the October 13th boat tour taken by the Edmonton Art Gallery Group. The letter states that the leader of the group, Virginia Stevens, had informed Street that the tour bus (driven by Ginn) had dropped the group off at *Shoreline Sightseeing Tours* rather than at North Pier for the *Chicago from the Lake Architecture Tour*. RX-5. Ginn's October 13th work order did indeed instruct her to take the Edmonton group to *North Pier for Chicago on the Lake Architecture Tour*. RX-3. The faxed letter alone is strong evidence that Ginn did in fact mistakenly drop the passengers off at the wrong boat. Stevens, as leader of the Edmonton group, would certainly know if the group had been given the wrong boat tour. Street was clearly just relaying the information she received from Stevens to Donald Ferrone. In addition, Bertell Walters credibly testified that Ginn called him on the radio on the morning of the 13th to ask him where North Pier was located. Tr. page 199. This fact is significant in that it shows that Ginn was unfamiliar with the North Pier location and this particular architectural tour. Thus, this tribunal concludes that Ginn mistakenly dropped the Edmonton Art Gallery Group off at the wrong pier and boat tour on October 13, 2001.

Respondent has attempted to show that the North Pier incident, along with another incident, that involving the GATX company group, shows a pattern of customer complaints about Ginn as a driver. At hearing, Respondent was permitted to use a copy of a complaint letter addressed to Respondent from a Christiane S. Wilczura, the Manager of Community Affairs for the GAXT Corporation, to refresh Ginn's recollection of an incident which occurred on September 29, 2000. The GATX incident apparently

involved a very fatigued, female tour bus driver that became lost while driving a group of GATX employees to a Halsted Street location. Tr. pages 136-142. The complaint letter, however, did not provide the name of the driver. When asked if she recalled the incident or remembered discussing it with Donald Ferrone, Ginn repeatedly denied having any knowledge of the occurrence or a customer named GAXT. Tr. pages 136-142.

In rebuttal to Ginn's testimony, Respondent introduced a typewritten memo created on Grayline stationary which lists Ginn's work hours from September 25 through September 28, 2000. The writing includes the Department of Human Rights charge number, along with the words *Complainant Stephanie Ginn* and *Respondent Grayline Tours, Chicago, Ill. RX-4*. When asked about RX-4, Donald Ferrone testified that this typewritten memo was created from his own handwritten notes which he had made back in 2000 (Tr. page 361), as well Ginn's time sheets (Tr. page 395), after he received the GAXT complaint letter. This typewritten memo was obviously created as part of the formal response to the charge that Ginn filed at the Department in order to show that Ginn had worked fairly regular hours on the days leading up to September 29, 2000. However, at the public hearing, Respondent failed to produce both Ferrone's handwritten notes - - the notes he claims to have made in 2000 after receiving the GAXT complaint - - as well as Ginn's timesheets for the week of September 25, 2000. Without Ferrone's actual handwritten notes, Ginn's time sheets, or a September 29th, 2000 work order indicating Ginn as the designated driver for the GAXT group, Respondent's typewritten memo (RX-4) does nothing to convince this tribunal that Ginn was in fact the driver for the GAXT group on September 29, 2000. Without anything more, this tribunal can hardly attribute the GATX complaint to Ginn's performance as a driver. Respondent has not shown that Ginn had any involvement in the GAXT incident.

Thus, the only legitimate, nondiscriminatory reason Respondent has provided for terminating Ginn on October 15, 2001 is the North Pier incident - - a failure to follow a

work order. Respondent's driver's manual does indeed state that failure to follow a written work order is grounds for dismissal. CX-1. Ginn acknowledged receipt of such a manual on March 13, 2001 and agreed to familiarize herself with any changes or additions thereto. RX-1. As concluded above, this tribunal does believe that Ginn drove the Edmonton Art Gallery Group to the wrong pier on October 13, 2001.

This tribunal is simply unconvinced that Donald Ferrone had knowledge of Moore's harassment of Ginn, Ginn's opposition thereto, nor any knowledge of the sexual activity that was going on between employees and prostitutes at the Wabash garage. From the evidence presented at the hearing, it appears that all of the sexual conduct at the Wabash garage more likely than not occurred during the hours that Donald Ferrone spent at the Monroe Street office. There was credible testimony by Donald Ferrone and others that Ferrone only spends three to four hours total time per day at the Wabash Garage - -1.5 to 2 hours in the morning and 1.5 to 2 hours toward the end of the work day. The rest of his time is spent at Respondent's Monroe Street office. Tr. pages 50, 88 and 382. This left many hours in the day for Harold Moore and the other employees to freely engage in inappropriate conduct without concern about the presence of management, meaning Donald Ferrone. Even Chris Ferrone, Respondent's Chief of Maintenance, testified that he himself only works on Monday and Wednesday from approximately 5:30 a.m. to 9:00 a.m., and Saturday from approximately 4:00 a.m. to 9:00 a.m. No doubt, Respondent's Wabash garage employees had very little physical supervision by management. The only supervisor physically present at the Wabash garage for the bulk of any work-day was Harold Moore, the harasser himself.

Most importantly, for purposes of establishing a prima facie case of retaliation, Complainant has not proven that Donald Ferrone had knowledge of her opposition to sexual harassment at the time he terminated her. First, aside from there being absolutely nothing in the record which shows that Don Ferrone had knowledge of Ginn's

complaint to Chris Ferrone, Chris Ferrone's cavalier attitude regarding even the need for a sexual harassment policy (Tr. page 312-313) makes it more likely than not that he did not take Ginn's complaint very seriously. There is simply nothing in the record that proves, either directly or indirectly, that Chris Ferrone informed Don Ferrone of Ginn's complaint. Moreover, this tribunal is unwilling to draw the inference that Chris Ferrone *must* have told Donald Ferrone simply because they are related. Finally, to no surprise, Moore flatly denies that he ever engaged in sexual harassment or that Ginn ever complained to him about harassment. There is nothing in the record linking Ginn's complaints to Moore about sexual harassment to Donald Ferrone. Thus, Complainant has failed to prove that Donald Ferrone had any knowledge of Ginn's complaints to either Chris Ferrone or Moore at the time of her termination.

Even if Complainant did satisfy all of the elements needed to establish a prima facie case of retaliation, Respondent's legitimate, nondiscriminatory reason for firing Ginn - - dropping the Edmonton Art Gallery Group off at the wrong location - - has not been proven to be pretextual. First, as mentioned above, this tribunal is convinced that Ginn did in fact drop the Edmonton group off at the wrong tour location and thus failed to follow her October 13, 2001 work order - - a reason stated in the driver's manual for dismissal. Second, the record is devoid of any evidence which would lead this tribunal to believe that Moore's discriminatory animus somehow tainted or affected Mr. Ferrone's decision to terminate Ginn. *See Maria Rivera and Group W Cable, Inc.*, Charge No. 1985CF1866, ALS No. 2559, 1993 WL 818134. It is true that on the day of her termination Moore instructed Ginn to wait for Donald Ferrone. However, Moore's mere instruction to Ginn, along with the fact that Ferrone asked Moore to be present when Ferrone terminated Ginn, is not enough to draw the inference that Ferrone had been affected by Moore's discriminatory attitude. What it does in fact show is that Moore was the bus drivers' supervisor.

Finally, while driver Eugene Tate clearly had drug and alcohol issues, nowhere in the record does it show that these issues ever negatively impacted Respondent's customers. Although Tate did have a traffic accident with a pedestrian in a crosswalk and another minor accident with a cab, there is no evidence that Respondent's customers were in any way affected by these incidents. From his testimony, Donald Ferrone made it clear that Tate had a good rapport with customers and had been praised by customers on several occasions. On the other hand, Ginn's mistake of dropping the Edmonton group off at the wrong pier did have a negative impact on Respondent's customers in that they were given the wrong tour. By what standards Respondent chooses to evaluate the performance and value of its drivers and the degree of seriousness Respondent assigns to certain infractions is not for this tribunal's review.

DAMAGES

The Human Rights Act provides that actual damages, "as reasonably determined by the Commission, for injury or loss suffered by the Complainant," may be awarded as a remedy for the Complainant. 775 ILCS 5/8-104(B). "Actual damages" has been interpreted by the Appellate Court (First District) to encompass "compensation for emotional harm and mental suffering." *Village of Bellwood Board of Fire and Police Commissioners v. Human Rights Commission*, 184 Ill.App. 3d 339, 541 N.E. 2d 1248 (1st Dist. 1989).

Complainant has presented credible evidence that she has suffered mentally due to the harassment she endured while employed by Respondent. Thus, it is clear that the sexual harassment in this case warrants damages for emotional distress. From the time Complainant began her position as a bus driver for Respondent in July of 2000 until the time that she was terminated in October 2001, Moore created an intimidating, hostile environment that was offensive to women in general and to Complainant, specifically.

Moore's sexual comments to Complainant increased over time. Tr. pages 92 and 465. Apparently, the more confident Moore became that he could get away with his crude behavior, the bolder he became.

There are several factors present in this case that must be taken into account when awarding Complainant damages for her emotional distress. When testifying, Complainant was visibly distressed when asked about Harold Moore's conduct toward her and how that conduct affected her. Complainant made clear to this tribunal that Moore's sexual harassment caused her severe humiliation and a break down of her self-esteem. Specifically, she testified that Moore's comments made her "feel like a whore" Tr. page 453 and "a slut" - - just like the prostitutes that came into the garage. Tr. page 469. She stated that she felt that the prostitutes were getting more respect than she was as an employee. Tr. page 469. Complainant clearly found it extremely distressing to work in an environment in which it was commonplace for the male employees, including Moore, to engage in sexual activities with neighborhood prostitutes. Complainant testified that she would get "*the chills*" whenever she was in the presence of Moore. Tr. page 108. Jesse Maggitt, whom this tribunal found to be an extremely credible witness, testified that anytime Complainant talked about the confrontation that she had had with Moore she always became very emotional and cried. Tr. page 489. Most significantly, Complainant revealed during the hearing that at the age of fifteen she was the victim of rape. Tr. page 466.

In *Savage and Illinois Department of Corrections*, 37 Ill. HRC Rep. 265, *aff'd* in *State of Illinois, Department of Corrections v. Human Rights Commission*, 178 Ill.App.3d 1033, 434 N.E.2d 161 (4th Dist. 1989), the Commission affirmed an award of \$10,000 to Complainant Savage for emotional distress suffered due to sexual harassment which consisted of verbal conduct. There, the harasser had made references to Savage's buttocks, pornographic telephone services, as well as, derogatory comments about

women in general and their body parts. The commonality found between the *Savage* case and Complainant Ginn's case is that neither matter involved any physical touching by the harasser. However, unlike the Complainant in *Savage*, Complainant Ginn has a background which includes having been raped as a young girl. That background, combined with Moore's crude comments, most certainly heightens the emotional suffering endured by Ginn. The Commission has found that the perpetrator of a civil rights violation takes its victim in the condition in which he or she is found. *Marta Leseiko and Chase/Ehrenberg & Rosene, Inc.*, Charge No 2000CF1882, ALS No. 11592, 2003 WL 24045377 (Ill. Hum. Rts. Comm. 2003) and *Perla Sanchez and Arrowsmith Shoes*, Charge No. 2002CF0289, ALS No. 12073, 2003 WL 24045400 (Ill. Hum. Rts. Comm. 2003), citing, *Helga Palumbo and Palos Community Hospital*, Charge No.1996CA0145, ALS No. 9240, 2000 WL 33256829 (January 10, 2000), *reversed and remanded on other grounds, Palos Community Hospital v. Ill. Hum. Rts. Comm.*, 317 Ill.App.3d 1153, 783 N.E.2d 236, 270 Ill. Dec. 661. (November 17, 2000). In this case, Ginn was emotionally vulnerable prior to her experiences with Moore.

Moreover, subsequent to the *Savage* decision, in *ISS International Service System, Inc. v. The Illinois Human Rights Commission, et. al*, 272 Ill.App.3d 969, 651 N.E.2d 592 (1st Dist. 1995), the Illinois Appellate Court directed the Commission to "examine more closely the injury caused by the offending party" when awarding damages for emotional distress. 272 Ill.App.3d at 980, 651 N.E.2d at 599. Following that 1995 directive, Commission damage awards for emotional distress have been steadily rising.

In *Donald Garrity and Ellie Lockett*, Charge No. 1992CN0538, ALS No. 6389 (March 3, 1996), an award of \$50,000 was made for emotional distress stemming from sexual comments and propositions made by the Respondent to the Complainant, as well as prolonged stalking-type behavior by the Respondent. In that case, Complainant

Garrity also presented evidence from a mental health care professional indicating that he suffered mental depression as a direct result of Respondent's harassment.

In light of the above cases and the factual circumstances unique to the matter at hand, this tribunal recommends \$35,000 as a reasonable award to compensate Ginn for her emotional distress.

RECOMMENDATION

Based on the foregoing, this tribunal recommends the following:

1. That Count II of the *Complaint of Civil Rights Violation* alleging that Complainant was discharged from Respondent's employ in *retaliation* for opposing sexual harassment be dismissed with prejudice;
2. That Count I of the *Complaint of Civil Rights Violation* alleging sexual harassment be sustained;
3. That Respondent pay to Complainant \$35,000 for emotional distress;
4. That Complainant's personnel file or any other file kept by Respondent concerning Complainant be purged of any reference to this discrimination charge and this litigation;
5. That Respondent cease and desist from any discriminatory actions with regard to any of its employees and that Respondent, its managers, supervisors and employees are referred to the Department of Human Rights Training Institute (or any similar program specified by the Department) to receive such training as is necessary to prevent future civil rights violations, with all expenses for such training to be borne by Respondent;
6. That Respondent pay Complainant reasonable attorney's fees and costs incurred as a result of the civil rights violation herein;
7. That Complainant's request for attorney's fees and costs be set forth in a petition within 21 days of service of this Recommended Liability Determination. The

petition must conform with 56 Ill. Admin. Code Part 5300 Section 765 (5300.765);
and

8. That Respondent file any objections to Complainant's petition for attorney's fees and costs within 21 days of service thereof. Failure to file such objections shall be deemed a waiver of any objections to the award of fees.

ENTERED: June 28th, 2005

HUMAN RIGHTS COMMISSION

**MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**