



Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT E12-0486

Date Issued: December 13, 2013

[REDACTED]

v.

[REDACTED]

I. Complainant's Complaint:

Complainant [REDACTED] alleged that he was subjected to unlawful sexual¹ harassment and retaliation and that Respondent [REDACTED] (hereinafter "[REDACTED]") did not take prompt and appropriate action to stop it.

II. Respondent's Answer:

Respondent alleges that no behavior exhibited by [REDACTED] employees rose to the level of harassment; that Complainant's supervisor was counseled; and that a manager gave a talk to all employees about harassment not being tolerated and re-issued the [REDACTED] harassment policy.

III. Jurisdictional Data:

- 1) Dates of alleged discrimination: Winter 2010 to April 2, 2012.
- 2) Date complaint filed with the Maine Human Rights Commission: October 10, 2012.
- 3) Respondent has 1300 employees and is subject to the Maine Human Rights Act ("MHRA") and Title VII of the Civil Rights Act of 1964, as amended, as well as state and federal employment regulations.
- 4) Respondent is represented by Jennifer L. Thompson, Esq. Complainant is not represented by counsel.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties and an Issues and Resolution Conference. This preliminary investigation is believed to be

¹ Complainant also alleged that he was subjected to sexual orientation harassment because one form that the harassment took was a note reading, "[REDACTED] is a fag." For the sake of simplicity, this report will refer only to sexual harassment.

sufficient to enable the Commissioners to make a finding of reasonable grounds or no reasonable grounds in this case.

IV. Development of Facts:

1) The parties and issues in this case are as follows:

- a) Mr. [REDACTED] is a male who worked for the [REDACTED] as a Solid Waste Maintenance Worker II at the time of these events.
- b) Important third parties: Supervisors and managers mentioned in this report are referred to by their job titles. They include "Solid Waste Supervisor," "Solid Waste Coordinator," "Human Resources Director," "Director of Public Services," and "Employee Relations Manager." Solid Waste Supervisor is female; the other managers are male.
- c) Mr. [REDACTED] alleged that he was subjected to unlawful sexual harassment² by his direct supervisor, Solid Waste Supervisor, and that the [REDACTED] did not take prompt or appropriate action to stop it.
- d) The [REDACTED] alleged that no behavior exhibited by [REDACTED] employees rose to the level of harassment; that Solid Waste Supervisor was counseled; and that Solid Waste Coordinator gave a talk to all employees about harassment not being tolerated and re-issued the [REDACTED] harassment policy.

2) Relevant policies and training:

- a) The [REDACTED] has a policy that prohibits sexual harassment. Employees are instructed to promptly report harassment to their supervisor, their department head, the Director of Equal Employment Opportunity/Multicultural Affairs, or to the Human Resources ("HR") Department.
- b) All employees receive a day-long new employee orientation/training session. At this orientation, the [REDACTED] policy against harassment, discrimination and retaliation are discussed. Mr. [REDACTED] attended this training on October 17, 2007.
- c) At the Department of Public Safety building where Mr. [REDACTED] worked, there are bulletin boards on both the first and second floors displaying the Maine Human Rights Act Notice regarding sexual harassment.

² Complainant reported other conflicts between him and Solid Waste Supervisor that are not discussed here because they do not relate to his sex/sexual orientation discrimination complaint. For example, in May 2011, Solid Waste Supervisor ordered Complainant to perform work that was outside his work restrictions and then yelled at him when he got hurt. In June or July 2011, Solid Waste Supervisor told him to stop whining about every little thing when he reported that he was almost killed by a huge falling tree branch. As another example, in July 2011, Solid Waste Supervisor walked away from him, plugging her ears with both hands, saying to other employees that Complainant's voice drives her crazy and that he is loud and annoying, knowing that Complainant is loud and hyper due to his Attention Deficient Hyperactivity Disorder; Solid Waste Supervisor denied this allegation and Complainant himself did not file a complaint based on disability.

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- d) Each year, the [REDACTED] provides an annual notice to employees regarding its policy against harassment.
- 3) Complainant provided the following with regard to his sexual harassment claim:
- a) Solid Waste Supervisor had a habit of calling Complainant and other male employees "babe" and "darling" and putting her hand on their shoulders. Mr. [REDACTED] was offended by this.
 - b) In the winter of 2010, Solid Waste Supervisor called him a "scumbag" or "slime ball" in front of two young female students. Mr. [REDACTED] was not doing or saying anything wrong. He believes that Solid Waste Supervisor called him a derogatory name to make the young women, who were flirting with him, distrust or fear him.
 - c) On about December 15, 2011, Solid Waste Supervisor walked around and passed out annual evaluations to Mr. [REDACTED] and the rest of the crew. When she gave Mr. [REDACTED] his evaluation, she put her hand on his shoulder and said in front of others, "Some of these are worse than others." She told him to relax and that she would hear him out later if he had anything to complain about. Mr. [REDACTED] was upset that she let all of his co-workers know that his evaluation was bad. Mr. [REDACTED] was also upset that she put her hand on him.
 - d) At the end of the day, Solid Waste Supervisor asked for the evaluation back. Mr. [REDACTED] told her that he had not looked at it yet. She said that was too bad and that she wanted it back. When Mr. [REDACTED] started to read it, he was flabbergasted. It was demeaning and full of lies.
 - e) Solid Waste Supervisor told Mr. [REDACTED] that he could fill out a self-evaluation and gave him a form with his name and information typed on it. When Mr. [REDACTED] turned over the self-evaluation form, he saw what looked like a penis drawn on the back. He asked Solid Waste Supervisor what it was and she said she could have been doodling.
 - f) Mr. [REDACTED] was upset and showed the picture to many people to get their opinion of what the picture was. Everyone that he asked thought it looked like a penis, including his Nurse Practitioner/social clinical worker ("NP"). Mr. [REDACTED] felt that it was a childish, gross thing for Solid Waste Supervisor to do and borderline sexual harassment. His NP told him to make a complaint to HR and the union. Mr. [REDACTED] took a picture of the drawing with his cell phone before returning it to Solid Waste Supervisor.
 - g) When he gave the evaluation back to Solid Waste Supervisor, he asked her for copies of her evaluation and his self-evaluation and told her that he was going to file a complaint. She told him that he could not have the evaluations for two weeks, after senior managers looked them over.
 - h) Mr. [REDACTED] filed a complaint against Solid Waste Supervisor with the [REDACTED] HR Department.
 - i) Shortly after he filed the complaint, Mr. [REDACTED] opened his locker at work and found two pornographic DVDs with notes taped on them. One of the notes read, "[REDACTED] is a fag." The

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other note read, "Leave [Solid Waste Supervisor] Alone or Else Die."³

- j) Mr. [REDACTED] reported this further harassment and threat to Solid Waste Coordinator. All he said way, "Can't we just get along."
 - k) The [REDACTED] did an investigation. Mr. [REDACTED] was told that management did nothing wrong.
 - l) The penis drawing and then the porn tapes in his locker made Mr. [REDACTED] very uncomfortable going to work. He discussed how upset he was with his counselor. He started looking for another job. He did not feel comfortable anymore going to work knowing that Solid Waste Supervisor was out to get him.
 - m) On April 2, 2012, Mr. [REDACTED] went out of work on a medical leave of absence.
- 4) Respondent provides the following:
- a) On February 1, 2012, Mr. [REDACTED] filed a harassment complaint with the HR department. He specified among other things that his supervisor had sexually harassed him by drawing an inappropriate sexual picture on the back of his most recent performance evaluation.
 - b) On February 21, 2013, Mr. [REDACTED] reported the pornographic DVDs and notes to Solid Waste Coordinator.
 - c) On February 23, 2013, Solid Waste Coordinator gave a talk to all employees about harassment, stated that he would not tolerate any such acts, and provided them with a copy of the [REDACTED] harassment policy.
 - d) The [REDACTED] promptly responded to Mr. [REDACTED]'s allegations and conducted an extensive investigation of the same. An abbreviated chronology of investigation is as follows:
 - 2/1/2012 [REDACTED] filed harassment complaint regarding the penis drawing.
 - 2/7/2012 HR Director met with [REDACTED] regarding his complaint. [REDACTED] became emotional during the conversation. [REDACTED] stated that he was having a hard time coming to work and through about quitting but he liked and needed his job.
 - 2/22/2012 [REDACTED] asked to meet with HR Director. [REDACTED] showed HR Director the pornographic DVDs and notes and told him that he found these items in his locker the previous day.
 - 2/29/2012 Co-worker(1) interviewed.
 - 2/29/2012 Co-worker(2) interviewed. Solid Waste Supervisor calls employees "babe;" he was not offended by this.

³ See attached, Exhibit B and C.

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- 2/29/2012 Co-worker(3) interviewed. [REDACTED] seemed upset about the pornographic DVDs. Solid Waste Supervisor called employees "babe;" he was not offended by this.
- 2/29/2012 Solid Waste Coordinator interviewed. [REDACTED] evaluation forms, which had been missing since December 2011, were reviewed and discussed. The evaluation filled out by Solid Waste Supervisor appeared to be an original. The self-evaluation appeared to be a copy. There was no "doodling" on either form. [REDACTED] reported the pornographic DVDs to him on Tuesday, February 21, 2012 after the Monday holiday. Solid Waste Coordinator looked at the video surveillance tapes at the trailer to see who went in and out during the three day period, Sunday, Monday and Tuesday, February 19-21.⁴ Solid Waste Supervisor called employees "babe" and "darling," but not in a harassing or derogatory way.
- 3/7/2012 Solid Waste Supervisor interviewed.
- She had no recollection of ever calling [REDACTED] a scumbag or slime ball. She recalled that two students were job shadowing and that there was a grievance meeting and that she apologized to [REDACTED]
 - She did not recall putting her hand on [REDACTED] shoulder when she gave him his evaluation.
 - Her normal routine was to hand out the evaluations and to tell everyone that she will discuss them individually at a later time.
 - She adamantly denied drawing anything on the back [REDACTED] self-evaluation.
 - She admitted to calling people "babe" or "darling." It was just a habit and not meant to offend anyone. [REDACTED] never told her that he was offended by this.
 - She had no knowledge of the pornographic DVDs.
 - She expressed that she felt mistreated by [REDACTED] and dissatisfied that he was constantly "going over her head."
- 3/20/2012 Co-worker(4) interviewed. He was present when Solid Waste Supervisor went over the evaluation and self-evaluation with [REDACTED]. There was something drawn/doodled on the back of a page. [REDACTED] was adamant that it was a drawing of a penis. Once [REDACTED] saw the drawing that is all he focused on for the remainder of the meeting. Co-worker(4) asked to speak to [REDACTED] alone and told him that he was seeing something in the drawing that wasn't there and he was making himself look bad by focusing on it.
- 3/20/2012 Co-worker(5) interviewed. [REDACTED] seemed really upset about a drawing on the back of his evaluation. Solid Waste Supervisor occasionally calls employees "babe" or "hon" and puts her hand on someone's shoulder, but not to harass or demean anyone.

⁴ Twelve employees appeared on the surveillance video going in and out of the trailer, including Solid Waste Coordinator. Seven of these employees were interviewed during the [REDACTED] investigation; five of them were not.

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3/20/2012 Foreman interviewed. [REDACTED] blew up at him once when Foreman put his hand on [REDACTED] shoulder. Solid Waste Supervisor calls everyone "babe" or "darling," but not in a disrespectful, mean or disparaging manner. Foreman was present when Solid Waste Supervisor went over the evaluation and self-evaluation with [REDACTED] Foreman does not recall anything drawn or doodled on the back of the evaluation, and does not recall [REDACTED] making any comments about the drawing.

3/29/2012 Co-worker(6) "came forward" to be interviewed because Solid Waste Supervisor is being "set up." There is always something brewing with [REDACTED]

3/30/2012 Second interview with Solid Waste Supervisor.

- When asked again about the drawing on the back [REDACTED] evaluation, she did not recall the evaluation meeting with [REDACTED] and Co-worker(4).
- She expressed again feeling harassed by [REDACTED]
- [REDACTED] recently hugged and kissed another employee who was going out on medical leave.

e) After this thorough investigation, the [REDACTED] concluded that there was no behavior exhibited by Mr. [REDACTED] supervisor that rose to the level of harassment in violation of [REDACTED] policy.

f) The Investigative Report prepared by the Employee Relations Manager contained these conclusions in relevant part:

I believe that a comment that some of the evaluations were better than others was made when [Solid Waste Supervisor] handed out the evaluations.

.....

I do not believe that [Solid Waste Supervisor] put her hand on David's shoulder when she handed the evaluation to him.

.....

The issue regarding the drawing or doodle on the back of the self evaluation form is more difficult to determine credibility. The form I was given is clearly a copy and not the original. The only way to determine what, if anything was drawn on the back of the form is to actually see the original form that David filled out. This form was in management's control after David filled it out, if in fact David turned in the original. No one in management knows where the original is. [Co-worker(4)] confirms that there was in fact a drawing on the back of the self evaluation form and ... I found [him] to be credible and forthright... It is more likely than not that there was something drawn on the back of the self evaluation form that upset [REDACTED] It is inconclusive as to who made the drawing.

.....

It is clear that [Solid Waste Supervisor] does in fact address employees with "babe" or "darling". This type of behavior, whether an innocent habit or not is mildly inappropriate for the workplace. That being said, this behavior, in and of itself does not rise to sexual harassment.

.....

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There is no doubt that the pornographic DVD's with the notes attached were found by David in his locker. There is neither evidence nor proof of who put them in his locker. The surveillance tapes for the trailer indicate that only employees and supervisors entered the trailer during the three day period, including the day the DVD's were found. No one who was interviewed knew who placed the DVD's in David's locker and they could not think of anyone, including management, who would do such a thing.

- g) No [REDACTED] employee received any disciplinary action as a result of Mr. [REDACTED] complaint.
 - h) The Director of Public Services talked to Solid Waste Supervisor about her use of the word "babe" and "darling."
- 5) The parties provided the following about the photograph of the penis drawing submitted to the Commission by [REDACTED]
- a) On February 1, 2012, when HR Director interviewed [REDACTED] about his sexual harassment complaint, [REDACTED] told HR Director that he had taken a picture of the drawing with his phone camera. HR Director asked [REDACTED] to produce the picture. [REDACTED] told HR Director that he downloaded the picture onto his home computer but couldn't get the picture off his computer. HR Director told [REDACTED] that his case would be much stronger if he could get the picture off his computer. [REDACTED] did not retrieve the photo at that time.
 - b) [REDACTED] states that at the time, he was not all that concerned with providing the photo to HR Director because he knew that eventually Solid Waste Coordinator would have to turn in the original self evaluation form. (In fact, she did not do so; the only form that HR Director viewed was a copy.) [REDACTED] states that he knew that there were numerous witnesses who had seen the original drawing, including his NP. He could not imagine that Solid Waste Coordinator would destroy and or erase the picture, which she (or someone else) apparently did.
 - c) During the Commission's investigation of the instant complaint, [REDACTED] produced the photo that is attached hereto as Exhibit A.
 - d) The [REDACTED] challenged the authenticity of the photo submitted by [REDACTED] based on (1) his failure to produce the picture when asked by HR Director, (2) the timing of the disclosure, (3) the writing on the backside of the drawing is oriented in "landscape" whereas the [REDACTED] evaluation forms are printed in "portrait," (4) the check in the photo is dated December 14, 2011 whereas [REDACTED] evaluation was dated December 16, and (5) Co-Worker's informing HR Director that the drawing did not resemble a penis.
 - e) [REDACTED] provided the name and contact information for the person who helped retrieve the photo ("Friend"). He explained that his computer has always been synched with his i-Phone and that when he plugs in his phone, the pictures are automatically imported into a photo gallery on the computer and erased from his phone. He asked Friend, who previously helped him install a router, to help him retrieve his photos.
 - f) (Friend) Friend was briefly interviewed and confirmed that he helped [REDACTED] retrieve photographs from his computer.

V. Analysis:

1) The Maine Human Rights Act ("MHRA") provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

2) The Maine Human Rights Act provides, in part, as follows:

It is unlawful employment discrimination, in violation of this Act . . . for any employer to . . . because of . . . sex . . . discriminate with respect to the terms, conditions or privileges of employment or any other matter directly or indirectly related to employment. . . ." 5 M.R.S. § 4572(1)(A).

3) The Maine Human Rights Commission Regulations provide, in part, as follows:

Harassment on the basis of sex is a violation of Section 4572 of the Maine Human Rights Act. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature constitute sexual harassment when: . . .

- c) 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.

94-348 C.M.R. ch.3, § 3.06(I) (1) (July 17, 1999).

4) "Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive working environment." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57. In determining whether an actionable hostile work environment claim exists, it is necessary to view "all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.* (citations omitted). It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the workplace to become hostile or abusive. *Id.*; *Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996). "The standard requires an objectively hostile or abusive environment--one that a reasonable person would find hostile or abusive--as well as the victim's subjective perception that the environment is abusive." *Nadeau*, 675 A.2d at 976.

5) Accordingly, to succeed on such a claim, Complainant must demonstrate the following:

(1) that he is a member of a protected class; (2) that he was subject to unwelcome sexual harassment; (3) that the harassment was based upon sex; (4) that the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment; (5) that sexually objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and (6) that some basis for employer liability has been established.

Watt v. UniFirst Corp., 2009 ME 47, ¶ 22, 969 A.2d 897, 902-903.

- 6) The fact that the conduct complained of is unwelcome must be communicated directly or indirectly to the perpetrator of the conduct. *See Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 (1st Cir. 1988). In some instances, Complainant may have the responsibility for telling the alleged harasser directly that her comments or conduct is unwelcome. In other instances, however, Complainant's consistent failure to respond to suggestive comments or gestures may be sufficient to communicate that the conduct is unwelcome. *Id.* Where Complainant never verbally rejects a supervisor's sexual advances, yet there is no contention or evidence that Complainant ever invited them, evidence that Complainant consistently demonstrated unalterable resistance to all sexual advances is enough to establish their unwelcomeness. *See Chamberlin v. 101 Realty, Inc.*, 915 F.2d 777, 784 (1990). Complainant may also be relieved of the responsibility for directly communicating unwelcomeness when he reasonably perceives that doing so may prompt the termination of his employment, especially when the sexual overtures are made by the owner of the business. *Id.*
- 7) The MHRC Regulations provide the following standard for determining employer liability for sexual harassment committed by a supervisor:

An employer . . . is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment. When the supervisor's harassment culminates in a tangible employment action, such as, but not limited to, discharge, demotion, or undesirable reassignment, liability attaches to the employer regardless of whether the employer knew or should have known of the harassment, and regardless of whether the specific acts complained of were authorized or even forbidden by the employer. When the supervisor's harassment does not culminate in a tangible employment action, the employer may raise an affirmative defense to liability or damages by proving by a preponderance of the evidence:

- a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and
- b) that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

94-348 C.M.R. ch.3, § 3.06(I) (2) (July 17, 1999).

- 8) The Law Court has held as follows: "The immediate and appropriate corrective action standard does not lend itself to any fixed requirements regarding the quantity or quality of the corrective responses required of an employer in any given case. Accordingly, the rule of reason must prevail and an employer's responses should be evaluated as a whole, from a macro perspective." *Watt v. UniFirst Corp.*, 2009 ME 47, ¶ 28, 969 A.2d 897, 905.

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- 9) Complainant here alleged that he was subjected to unlawful sexual harassment and retaliation and Respondent did not take prompt and appropriate action to stop it.⁵
- 10) Respondent alleges that no behavior exhibited by the Complainant's supervisor or other [REDACTED] employees involved in this matter rose to the level of harassment; that the supervisor was counseled; and that a manager gave a talk to all employees about harassment not being tolerated and re-issued the [REDACTED] harassment policy.
- 11) Complainant has established a prima-facie case by showing the following:
- a) He is male.
 - b) He was subjected to unwelcome sexual harassment and harassment based on sex in that:
 - Solid Waste Supervisor called him a "scumbag" or "slime ball" when two female students were flirting with him;
 - Solid Waste Supervisor called him "babe" or "darling";
 - Solid Waste Supervisor put her hand on his shoulder;
 - Solid Waste Supervisor handed him a self-evaluation form with crude penis drawn on the back⁶; and
 - Shortly after Complainant reported the penis drawing, Solid Waste Supervisor, or a [REDACTED] employee who supports her, retaliated by putting pornographic DVDs in Complainant's locker with notes that read, "[REDACTED] is a fag" and "Leave [Solid Waste Supervisor] Alone or Else Die."
 - c) The harassment was pervasive (several incidents over a two year period) and increasingly severe; Complainant received a death threat shortly after he reported the crude sexual drawing to management.
 - d) The escalating harassment had a demonstratively negative impact on Complainant. Complainant's emotional response was witnessed by several co-workers as well as his counselor. He started looking for another job. He did not feel comfortable anymore going to work, reasonably believing that Solid Waste Supervisor was out to get him. A reasonable person who experienced these things would feel similarly offended and harassed.
 - e) Finally, there is a basis for finding Respondent liable for the hostile work environment in that the harassment continued after Complainant reported it. Complainant here reported that he was being sexually harassed on February 1, 2012. Solid Waste Supervisor knew that he was going to report the harassment, and was likely told by the [REDACTED] that a sexual harassment complaint had been made against her by Complainant. Three weeks later, Complainant found pornographic DVDs in his locker and notes that included a death threat.

⁵ Complainant's retaliation claim is that he was subjected to sexual harassment against after her reported that he was being sexual harassed, which makes it unnecessary to address the retaliation claim separately.

⁶ The photo submitted by Complainant is deemed authentic based on this preliminary investigation. Whether Solid Waste Supervisor made the drawing, or someone else did, the fact remains that she handed it to Complainant and he was upset and offended by it.

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12) Respondent here did not prove the available affirmative defenses, with reasoning as follows:

- a) Respondent takes reasonable care to prevent harassment by adopting and distributing a sexual harassment policy to employees, posting the policy, sending employees regular reminders about the policy, and by training employees about the policy when they are hired.
- b) Complainant knew about and took advantage of the policies by reporting the sexual harassment to Respondent on February 1, 2012 and on February 21, 2012.
- c) Respondent did not, however, exercise reasonable care to promptly correct the sexually harassing behavior and the hostile working environment.
- d) Although Respondent claims that it launched a prompt investigation into Complainant's February 1, 2012 complaint, it did not. The only action taken was to interview Complainant. Respondent did not interview Solid Waste Supervisor or any witnesses. There is no indication that Respondent warned Solid Waste Supervisor to refrain from harassment and retaliation. As noted above, three weeks after Complainant reported that he was being harassed, Respondent had done nothing about his complaint and Complainant was subjected to further harassment when he found pornographic DVDs in his locker and notes that included a death wish.
- e) The investigative and corrective actions taken by Respondent were inadequate.
- f) An employer should make clear that it will undertake immediate and appropriate corrective action, including discipline, whenever it determines that harassment has occurred in violation of the employer's policy. Management should inform both parties about these measures. That did not occur in this case.
- g) Remedial measures should be designed to stop the harassment, correct its effects on the employee, and ensure that the harassment does not recur. These remedial measures must be effective. Here, Respondent failed to stop the harassment (it occurred again three weeks after Complainant's initial complaint) and Respondent did not fully correct the effects of the harassment on Complainant.
- h) It is true that Respondent counseled Solid Waste Supervisor to stop calling employees "babe" and "darling." Solid Waste Supervisor was also made aware that Complainant did not want her to touch him on the shoulder, and that Complainant objected to being called "scumbag" and "slime ball." After Complainant reported these concerns, Solid Waste Supervisor did not engage in that behavior with Complainant again. As such, investigative and corrective actions taken by Respondent were partially effective.
- i) Respondent's investigative and corrective actions with regard to the penis drawing and the pornographic DVDs and notes were ineffective.
 - i) Penis drawing: In spite of the fact that Solid Waste Supervisor handed Complainant a form that was defaced with a drawing that resembled a penis, and told Complainant that it was just a "doodle," Respondent did not hold Solid Waste Supervisor or anyone else accountable for this behavior. No one apologized to Complainant for this incident. No one

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promised to monitor Solid Waste Supervisor's behavior to ensure that it did not occur again. The effects of the harassment on Complainant were never addressed.


- ii) Pornographic DVDs and notes: Respondent does not dispute that Complainant found two pornographic DVDs with notes attached in his locker. Surveillance tapes showed that the only people in and out of the locker area were Respondent's employees and supervisors during the time frame that the DVDs and notes were put there. In spite of this, Respondent did not even interview all of the employees seen on the surveillance tapes to find out what they knew about these materials. Respondent's investigation was inadequate.
- iii) As such, Respondent did not hold Solid Waste Supervisor or anyone else accountable for the pornographic DVDs and notes. No one apologized to Complainant for this incident. No one promised to monitor Complainant's locker or otherwise ensure that he did not encounter such disturbing materials in the workplace again.
- j) In short, the remedial measures taken by Respondent did not correct the effects of the harassment on Complainant.

13) The claim of hostile work environment based on sex is founded.

VI. Recommendation:

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

- 14) There are **Reasonable Grounds** to believe that Respondent [REDACTED] is liable for sexual harassment of Complainant [REDACTED] and
- 15) Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Barbara Lefi, Chief Investigator

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Four Hardcore Hours **LES**

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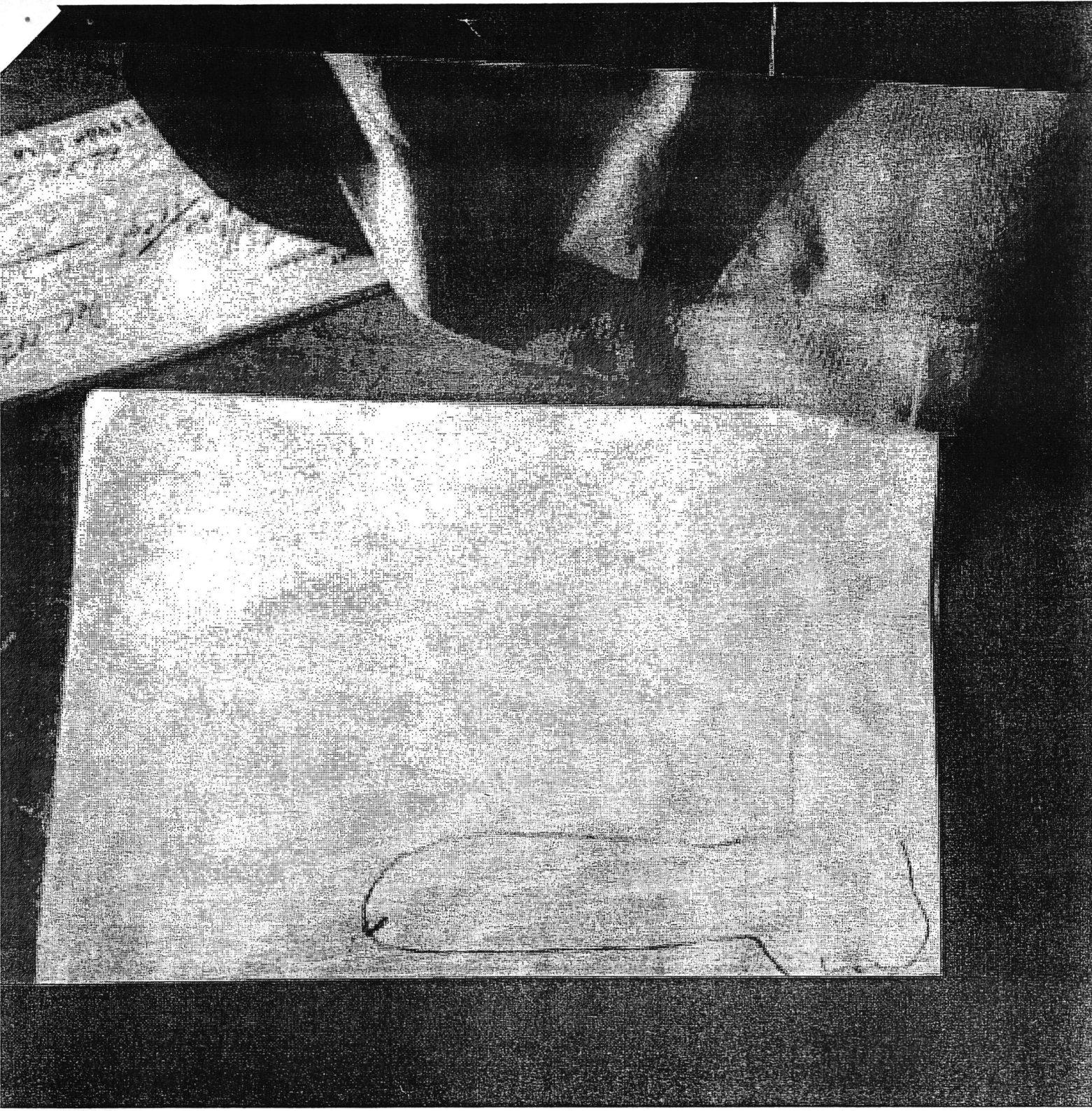
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