



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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460-2009-04182

Charge Number

Jane Draycott

Charging Party

[REDACTED]

City of Houston (Houston Fire Department)
Attention: Timothy Higley, Sr. Assistant City Attorney
Legal Department
P.O. Box 368
Houston, Texas 77001-0368

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"). All requirements for coverage have been met.

I. Charging Party's Allegations

Jane Draycott ("Charging Party"), contended in her charge filed on July 15, 2009, that, as a Firefighter for Respondent, she had been subjected to sexual discrimination and a hostile work environment based on her gender, female, as well as retaliation for engaging in protected activity, *i.e.*, complaining about the harassment. In addition, Charging Party made an individual claim for disparate treatment based on gender with regard to wages. Charging Party also asserted claims on behalf of a class of female Firefighters that Respondent has engaged and continues to engage in a pattern or practice of subjecting female Firefighters to harassment and discrimination, including through the use of policies pertaining to transfers and overtime assignments which allegedly have a disparate impact on female Firefighters. In her amended charge, filed on April 6, 2010, Charging Party more specifically identified incidents of harassment discrimination to which she and other female Firefighters have allegedly been subjected, as well as additional incidents of discrimination and retaliation to which she alleges she has been subjected since the original filing date. Such incidents are described in detail below, but include an allegation that Charging Party has been prevented by Respondent from returning to her assignment as a Firefighter at Station 54.

II. Respondent's Denial

Respondent Houston Fire Department has denied all of the allegations of sexual harassment, gender discrimination and retaliation in the original and amended charges.

III. Summary of Commission's Findings

The resultant investigation consisted of witness interviews and review of documentation provided by Respondent. Respondent did not initially cooperate with this and a related charge investigation, nor did it comply with a Determination on a Petition to Revoke or Modify a Subpoena issued by the Commission. Belatedly, after the Commission filed a motion to enforce its administrative subpoena, Respondent provided information which was subsequently reviewed by the Commission.

As more particulars set forth below, the Commission finds as to Charging Party's individual charge that there is reasonable cause to believe that Charging Party was subjected to a hostile work environment based on her gender and was retaliated against for engaging in a protected activity, and thus, that Respondent violated Title VII. At this time, no finding is made with regard to Charging Party's individual pay disparity claim because of its relation to the class claims. Further, no finding is made at this time as to the other claims raised in the charge filed by Charging Party, including class-based discrimination, a pattern and practice of discrimination, and adverse impact, as the investigation regarding such claims is on-going.

IV. The Investigative Findings

Information discovered during the investigation confirmed that Ms. Draycott began working for Respondent in or around August 2000. In late 2008, Charging Party was transferred to Station 54 at Houston's Bush Intercontinental Airport, where she was assigned to the "A" shift. She sought this transfer after her daughter died in a car accident, because this assignment did not entail working vehicular traffic accidents, which served as a painful reminder of her daughter's death. Unlike older fire stations, Station 54 has a separate sleeping/living/bathroom ("dormitory") area for female Firefighters. The investigation confirmed Charging Party's allegation that management instituted a policy which forbids male Firefighters from entering the female dormitory or using the bathroom in the female dormitory. Nevertheless, beginning in late 2008, Charging Party regularly encountered evidence that male Firefighters had entered and used the female dormitory in violation of the purported policy. Such evidence included finding cups containing tobacco spit, spilled soft drinks, dirty dishes, and used cotton swabs and other trash. On several occasions, Charging Party contends she found nail clippings on her bed and floor in the female dormitory. Charging Party also discovered, on several occasions, that the contents of her locker located in the female dormitory had been damaged and/or removed without her consent or prior knowledge. Charging Party claims that, through these and other actions by largely unidentified male Firefighters, she was repeatedly subjected to harassment and ill treatment as initially, the only female Firefighter, and subsequently, one of only two female Firefighters assigned to Station 54. Respondent did not deny these allegations and thus, they are undisputed.

According to the undisputed information provided by Charging Party, this ill treatment resulted in a hostile work environment. For example, Charging Party would regularly find the toilet seat up and urine on the outside of the toilet and floor. In addition, on occasion, Charging Party found wet spots on the floor in a corner of the dormitory and yellow areas in the sink of the female bathroom which she reasonably believed to be urine. Further, according to Charging

offensive and degrading comments about Charging Party without allowing Charging Party an opportunity to defend herself. Embarrassed and humiliated, Charging Party resumed leave. Thus, since the incident of vandalism at Station 54, Charging Party has been prevented from returning to that station to resume her assignment.

V. Determination of Statutory Violations as to Individual Discrimination,
Harassment and Retaliation Claims

In summary, the investigation demonstrated that Charging Party was subjected to a hostile work environment based on her gender. Testimonial and documentary evidence revealed that Charging Party's dormitory was indeed vandalized by an unknown person or persons. Moreover, the evidence shows that Charging Party's male coworkers were harassing her throughout her tenure at Station 54 by purposely leaving the female dorm room in a state of disarray and engaging in the behaviors set forth above. The investigation also revealed that even before she filed a charge, management was well aware of the fact that Charging Party was being subjected to a hostile work environment because of her gender, but failed to take corrective action. Moreover, Respondent's internal investigations of this and the related charge filed by Ms. Keyes were handled in a desultory manner not reasonably calculated to identify the perpetrator(s) or remedy the harassing conduct. Further, it may be said that more effort was seemingly undertaken to block the Commission's access to the internal investigation than to plan and implement an effective investigation of the underlying claims of this and the other female Charging Party.

Furthermore, the Commission's investigation warrants the conclusion that Charging Party has been subjected to acts of retaliation from members of management and her coworkers because of the verbal and written complaints she has lodged. For example, the vandalism of the dormitory and the racially-offensive and sexually-offensive epithets written on the walls of the female dormitory occurred no more than ten (10) days after Charging Party filed her formal written complaint with the Staff Services Department on June 29, 2009. Further, on January 13, 2010, Chief Boriskie allowed Captain Williamson and others in positions of power to stage an officially-sanctioned assault on Charging Party by allowing, and even encouraging, male Firefighters to disparage and humiliate Charging Party in the presence of a large group of her male coworkers and superiors. Respondent also denied Charging Party the privilege and opportunity of returning to Station 54 for an unreasonable period of time so that she could continue her employment as a Firefighter at her assigned station. It was well understood by Respondent that this particular placement was best suited for Charging Party's particular needs, given the circumstances of her daughter's death.

Accordingly, based on the evidence obtained during the investigation, there is reasonable cause to believe that Charging Party was personally and individually subjected to a hostile work environment based on her gender and that she was retaliated against for engaging in a protected activity. As such, Respondent is in violation of Title VII.

Party, in January or February 2009, firecrackers were rigged to explode when either stall door in the female bathroom was opened. On June 27, 2009, Charging Party discovered that the speakers in the female dormitory and bathroom had been turned off or otherwise tampered with, and as a result, she missed a telephone call. That same day, Charging Party maintains she was scalded by hot water because someone apparently disconnected the cold water to the shower in the female Firefighter's bathroom.

Throughout Charging Party's assignment at Station 54, she made various verbal complaints to the captains who supervised the station about the conditions in the female dormitory and bathroom and the ongoing hostile work environment. The investigation revealed no evidence to show that anything was done in response to Charging Party's complaints to remedy the harassment and hostile work environment she endured. Instead, Station 54's Supervisors took actions which facilitated additional punitive and harassing treatment of Charging Party by her male co-workers. According to Charging Party, such actions by supervisory personnel included, but were not limited to, recording her complaints in the station's log book which was open and available to review by any and all male Firefighters assigned to the station.

On June 29, 2009, Charging Party filed a formal written complaint of harassment and discrimination with Respondent's Staff Services Department. On July 7, 2009, the female dormitory then shared by Charging Party and an African-American female Firefighter, Paula Keyes, who had recently been assigned to Station 54, was vandalized by an unknown person(s). It is undisputed that, as a result of the vandalism, the words "die n [redacted]," "n [redacted] c] lover," and "die bitch" were written on the walls of the female dormitory with a black marker. Charging Party's personal photographs were also damaged and defaced with a black marker. Written on a picture of Charging Party with her deceased daughter were scrawled the words "dead" (pertaining to the deceased daughter) and "die" (referring to Charging Party).

Following the incident of vandalism, Charging Party and Ms. Keyes were placed on involuntary leave, which was initially unpaid, while an internal investigation was implemented by the City of Houston's Office of Inspector General. Though the investigation centered initially on repeatedly questioning and polygraphing Charging Party and Ms. Keyes, who also filed a charge of discrimination, and Respondent did little to dispel improper suggestions that Charging Party may have made false claims, OIG ultimately found that both Ms. Draycott and Ms. Keyes were harassed and that at least some of their claims were valid. Unfortunately, the OIG investigation did not reveal the identity of any perpetrator(s). Moreover, the investigation did not result in any counseling, monitoring or training of any of the officers or Firefighters who were assigned to that station and/or who acted inappropriately toward the women.

On January 13, 2010, Charging Party received official orders to return to Station 54 ("A" shift). On the day of her return, a "roll call" was held. Present during the roll call meeting were then-Houston Fire Chief Phil Boriskie, Union Representative Alvin White and a department psychologist, as well as Firefighters from the "A" shift, other ARFF staff, and Firefighters from other shifts/stations who did not work directly with Charging Party, but who were allowed to attend the meeting nonetheless. Chief Boriskie allowed Captain Brian Williamson and several male Firefighters, as well as the department psychologist, to berate and humiliate Charging Party in front of the entire group of attendees. Chief Boriskie allowed these individuals to make

VI. Class Claims and Wage Disparity Claim: No Determination
Due to On-Going Investigation

As set forth above, no finding is made at this time as to the other Title VII issues raised in the charge filed by Charging Party and not specifically addressed herein. Such claims include Charging Party's individual claim of wage disparity, as well as allegations of class-based discrimination, a pattern and practice of discrimination, and adverse impact on a class of female Firefighters. The investigation regarding such claims is on-going. It is expected that the parties will fully cooperate with that investigation.


VII. Conciliation and Settlement

The Commission shall now attempt to eliminate the discriminatory practices addressed in this letter, and to obtain voluntary compliance with the requirements of Title VII through informal methods of conciliation, and conference. This Letter of Determination serves as a notice that the Commission is prepared to begin conciliation procedures; therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter.

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the Director of the Houston District Office is not obtained, the Director will inform the parties and advise them of the court enforcement alternative available to aggrieved persons. A Commission Representative will contact each party to begin conciliation.

On Behalf of the Commission

12/17/2010
Date


RJ Ruff Jr.
District Director

cc:

