STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 09 ESE 201 EEOC No. 16J-2009-00161

In the matter of

Craig Krause
Complainant

v. DECISION AND ORDER

Arlette Dumais d/b/a Maids 'N More
Respondent

INTRODUCTION

On March 16, 2009, Craig Krause (hereafter referred to as the Complainant) filed a charge with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission) against Maids 'N More. On July 27, 2009, the Complainant filed an amended charge to correct the name of his former employer to Arlette Dumais d/b/a Maids 'N More (hereafter referred to as the Respondent). The Complainant alleged that the Respondent discriminated against him with respect to terms and conditions of employment and termination from employment because of his sex, a violation of R.I.G.L. Section 28-5-7. This charge was investigated. On May 27, 2010, Preliminary Investigating Commissioner Iraida Williams assessed the information gathered by a staff investigator and ruled that there was no probable cause to believe that the Respondent violated R.I.G.L. Section 28-5-7 with respect to discriminatory termination of employment as alleged in the charge. The Preliminary Investigating Commissioner also ruled that there was probable cause to believe that the Respondent violated R.I.G.L. Section 28-5-7 with respect to Complainant's allegations of discriminatory terms and conditions of employment.

On November 22, 2010, a Complaint and Notice of Hearing issued. The Complaint alleged that the Respondent violated the Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (hereafter referred to as the FEPA), by discriminating against the Complainant because of his sex with respect to terms and conditions of employment.

A hearing on the Complaint was held on August 4, 2011 before Commissioner Camille Vella-Wilkinson. Both parties were represented by counsel.

JURISDICTION

The Respondent is an individual who employs four or more employees within the State of Rhode Island and thus is an employer within the definition of R.I.G.L. Section 28-5-6(7)(i) and is subject to the jurisdiction of the Commission.

FINDINGS OF FACT

1. The Complainant is a male. By the fall of 2008, the Complainant had experience as an apartment cleaner, cleaning apartments after tenants moved out. He had worked as an apartment cleaner for six months. He had also worked for a commercial cleaner, cleaning office buildings for approximately two years.

2. The Respondent operates a business that does residential cleaning. It has been in operation approximately ten years. Respondent Arlette Dumais operates under the name of Maids 'N More. In order to compete with other cleaning services, the Respondent emphasizes quality and attention to detail.

3. In or around the end of September 2008, the Complainant applied for a job with the Respondent as a cleaner. He was interviewed by Sherry Carlino Kirk who was a supervisor at the Respondent. Generally, the Respondent does not hire individuals to be cleaners whose only cleaning experience is cleaning offices. The Respondent has found that applicants whose experience is with office cleaning do not work out. The Respondent decided to hire the Complainant because he had had experience cleaning apartments as well as office cleaning. The Respondent also hired the Complainant because he had very good recommendations and was very polite.

4. The Respondent's policy was to have a thirty-day training period during which a new employee was paired to work with an experienced cleaner. The Complainant was assigned to work with Jean Butler during his training period. Ms. Butler was an experienced cleaner who had worked for the Respondent for approximately a year at the time that the Complainant was hired.

5. The Complainant was the only male employed by the Respondent at that time.

6. The Complainant testified that Ms. Kirk said to him that that he couldn't work with any of the women cleaners in the office, other than Jean Butler, because they had boyfriends or husbands who would be jealous if the Complainant worked with them. Trans. p. 15. Ms. Dumais testified that she did not know of that statement, that it was not office policy and that Jean Butler had a boyfriend at that time. Trans. p. 38. The other employees of the

Respondent went on assignments in various groupings. While he was employed at the Respondent, the Complainant was still in his training period and it was Respondent's policy that he train with one person during his training period.

7. The Complainant cleaned the Lambiase home on October 1, 2008. The Respondent received a "Follow-up After Deep Clean" form which complained about poorly-cleaned floors, incomplete dusting and failure to clean the chandelier. Respondent's Exhibit A. The Respondent offered to re-do the cleaning but the customer declined and canceled her agreement for monthly cleaning.

8. On October 2, 2008, the Respondent, in an "Action Note" told Ms. Kirk that she should not schedule the Complainant to clean the Axelrod house. The note indicates that the Axelrods said that they did not want the Complainant as he "doesn't do the job right, dusting vacuum not good". Respondent's Exhibit B. The Respondent did not charge the Axelrods for that cleaning.

9. On or around October 13, 2008, the Respondent received a quality control questionnaire dated October 10, 2008, related to the work of the Complainant and Ms. Butler, with checks noting "needs improvement" on five boxes, four of which related to the floors and one to "overall" in the Living Areas. These ratings were not acceptable to the Respondent.

10. While he was employed, the Complainant would clean two to three houses each work day.

11. The Complainant took three days off from work in October 2008 to go to court to deal with speeding tickets and a matter relating to a license suspension.

12. At or around the end of October 2008, the Complainant was driving Ms. Butler in Respondent's car on a cleaning assignment. As the Complainant was making a turn, he got into a car accident. Ms. Butler returned to work for a few days after the accident but then went out of work with back and neck issues which the Respondent understood to be the result of the accident.

13. The Respondent terminated the Complainant's employment a few days after the car accident. The Complainant testified that Respondent Dumais said that Ms. Butler did not want to work with him any more and that he could not work with any of the other females, so she had to let him go. Trans. p. 16. Ms. Dumais denied that she told him that none of the other people wanted to work with him because he was a male. Trans. p. 56. Ms. Dumais testified that she did not alter the Complainant's work assignments or fail to give him any particular assignment because of his gender. Trans. p. 56.

CONCLUSIONS OF LAW

The Complainant did not prove by a preponderance of the evidence that the Respondent discriminated against him because of his sex with respect to terms and conditions of employment, as alleged in the Complaint.

DISCUSSION

The Commission utilizes the decisions of the R.I. Supreme Court, the Commission's prior decisions and decisions of the federal courts interpreting federal civil rights laws in establishing its standards for evaluating evidence of discrimination. The Rhode Island Supreme Court has utilized federal cases interpreting federal civil rights law as a guideline for interpreting the FEPA. "In construing these provisions, we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964. *See* Newport Shipyard, Inc., 484 A.2d at 897-98." Center for Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 685 (R.I. 1998).

It is a violation of anti-discrimination laws to give different job assignments because of the sex of the employee. *See* Sibley Memorial Hospital v. Wilson, 488 F.2d 1338, 160 U.S.App.D.C. 14 (D.C. Cir. 1973) (male nurse had a viable claim under Title VII of the Civil Rights Act of 1964 when he claimed that he had been denied assignments to female patients because of his sex); Santora v. All About You Home Care Collaborative Health Care SVC, LLC, 2012 WL 1964965 (D.Conn. 2012) (plaintiff alleged an adverse action of age and sex discrimination when she alleged that she was called for assignments less often because of her age and sex); Williams v. G4S Secure Solutions (USA), Inc., 2012 WL 1698282 (D. Md. 2012) (plaintiff alleged an unlawful discriminatory action when she alleged that the employer denied her a job assignment because the client did not want a female security guard).

In the instant case, the Complainant testified that his supervisor, Ms. Kirk, told him that he had to work with Jean Butler because all of the other female cleaners in the office had boyfriends or husbands who would be jealous if the Complainant worked with them. Trans. p. 15. Ms. Kirk did not testify, so the Complainant's testimony was not directly rebutted. However, the Commission credited the testimony of Respondent Dumais that new employees were assigned to work with one experienced person for thirty days. Trans. p. 32. The Commission credited Respondent Dumais' testimony that the Complainant was assigned to work with Ms. Butler as his trainer because she was an experienced cleaner and a good trainer. Trans. p. 36. The Complainant had been assigned to work with Ms. Butler and he was terminated within his training period. Therefore, during the period when the Complainant worked for the Respondent, he was treated the way female employees were treated – he was paired with one experienced cleaner. Since he was terminated before his training period ended, company policy provided that he would not work with employees other than his trainer. Whatever comments may have been made by Ms. Kirk, the Commission finds that

discrimination in assignments was never implemented.[1]

A threat to commit a discriminatory action is generally not an adverse action in itself. *See* Roberson v. Game Stop/Babbage's, Roberson v. Game Stop/Babbage's, 2005 WL 2622977 (5th Cir. 2005) (unpublished) (in a race discrimination suit, the employer's proposal to eliminate the Plaintiff's position and demote her did not constitute an adverse action, because the proposal was never implemented); Ajayi v. Aramark Business Services, Inc., 336 F.3d 520 (7th Cir. 2003) (Plaintiff did not allege an adverse action when she submitted evidence that the employer threatened to eliminate her position and demote her as the demotion never actually happened; if a threat is unfulfilled and results in no material harm, it is not sufficient to establish unlawful discrimination); Mitchell v. Vanderbilt University, 389 F.3d 177 (6th Cir. 2004) (the employer's threat to reduce the Plaintiff's pay and reassign him was not sufficient to constitute an adverse action of age discrimination because it was never implemented). Since the Respondent never discriminated in its assignment of the Complainant, the Complainant did not prove discrimination.

The Commission does not preclude the possibility that there could be cases in which threats of discriminatory action constitute discrimination. For example, if an employee were threatened with discriminatory treatment on a consistent basis, made adverse economic decisions based on the threat of discriminatory treatment, or were subjected to a hostile work environment, that person could claim an adverse action. The Complainant described the comment by Ms. Kirk as a single comment[2] which was not phrased in a hostile or disparaging way. Trans. p. 15. That comment, in itself, would not be sufficient to create a hostile work environment.

> As we pointed out in Meritor [Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 106 S. Ct. 2399, 91 L.Ed.2d 49 (1986)]: "mere utterance of an ... epithet which engenders offensive feelings in a employee," *ibid.* (internal quotation marks omitted) does not sufficiently affect the conditions of employment to implicate Title VII. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment-an environment that a reasonable person would find hostile or abusive-is beyond Title VII's purview.

Harris v. Forklift Systems, Inc., 510 U.S. 17, 21, 114 S. Ct. 367, 370 (1993)

After considering all of the evidence, the Commission finds that the Complainant failed to prove that he was discriminated against with respect to terms and conditions of employment because of his sex as alleged in the Complaint.

---

[1] The Respondent's testimony that she did not discriminate was persuasive in part because she had just hired the Complainant, knowing that he was male and knowing the make-up of her workforce.

[2] The Complainant testified that Respondent Dumais said that she had to let him go because Ms. Butler would not work with him and he could not work with anyone else. Trans. p. 16. Respondent Dumais disputed this testimony and denied assigning the Complainant because of his gender. Trans. pp. 56-57. In any case, the Commission previously found no probable cause to believe that the Complainant was terminated because of his sex so his termination was not a matter in issue before the Commission at the hearing.

Having found no discrimination, the Commission does not have the authority to order the Respondent to take action. R.I.G.L. Section 28-5-24. However, the Commission urges the Respondent to obtain training for herself and for her supervisors on anti-discrimination laws. If Ms. Kirk did make the comment attested to by the Complainant, she was setting the stage for future discrimination by the Respondent. The Respondent and her supervisors could only benefit from a thorough understanding of the anti-discrimination laws.

ORDER

Having reviewed the evidence presented on August 4, 2011, the Commission, with the authority granted it under R.I.G.L. Section 28-5-25, finds that the Complainant failed to prove the allegations of the Complaint and hereby dismisses the Complaint.

Entered this [18th] day of [July], 2012.

_____/S/_____

Camille Vella-Wilkinson
Hearing Officer

I have read the record and concur in the judgment.

_____/S/_____

John B. Susa
Commissioner

_____/S/_____

Rochelle B. Lee
Commissioner