

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT, OHIO
WESTERN DIVISION

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Plaintiff

GORETTI NEWMAN

Intervenor/Plaintiff

vs.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
NO. 998

Defendant

AND

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
Attn: Mr. Ed Hill, President
1125 15th Street, N.W.
Washington, D.C. 20005

New Party Defendant

CASE NO. 3:02CV7374

JUDGE JAMES G. CARR

**FIRST AMENDED COMPLAINT OF
INTERVENOR/ PLAINTIFF**

**(JURY DEMAND ENDORSED
HEREON)**

* * * *

PRELIMINARY STATEMENT

This action was instituted by the Plaintiff Equal Employment Opportunity Commission ("EEOC") to address violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e *et. seq.*, ("Title VII") and Title I of the Civil Right Act of 1991, to correct unlawful practices by the Defendant against Intervenor/Plaintiff Goretti Newman ("Intervenor"). The conduct complained of is a pattern of severe and pervasive workplace harassment based upon sex and retaliation for engagement in activity protected by Title VII and the laws of the State of Ohio.

JURISDICTION

1. Jurisdiction is founded on 28 U.S.C. §§451, 1331, 1337, 1343 and 1345.
2. Jurisdiction is also founded on 42 U.S.C. §§2000e-5(f)(1) and (3).
3. Jurisdiction is also founded on 42 U.S.C. §1981(a).
4. Jurisdiction is specifically invoked, as noted above, pursuant to 28 U.S.C. §1337 with respect to Intervenor's pendent state law claims described below.
5. Intervenor has fulfilled all conditions precedent to the filing of the instant action.
6. The unlawful practices alleged herein were committed within the jurisdiction of the United States District Court for the Northern District of Ohio.
7. The unlawful practices alleged herein violate Ohio law, which claims are brought by pendent jurisdiction.
8. All parties are within the jurisdiction of this Court.

PARTIES

9. Intervenor is at all times relevant herein a female citizen of the United States and a resident of Erie County, Ohio and an employee of Lithonia Down Lighting in Vermilion, Ohio.

10. EEOC is the Agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by 42 U.S.C. §2000e-5(f)(1) and (3).

11. At all times relevant, the New Party Defendant International Brotherhood of Electrical Workers ("IBEW") and Defendant IBEW Local Union No. 998 ("IBEW Local 998") (collectively herein "Defendants") have continuously been an association of participating employees located in the State of Ohio and the City of Vermilion, Ohio and/or have continuously had at all times relevant at least fifteen members, and a labor organization within the meaning of Title VII and Ohio Revised Code Chapter 4112. At all relevant times, Defendants have been recognized as a collective bargaining representative for the employees of Lithonia Down Lighting ("Lithonia").

12. Defendants are labor organizations subject to the provisions of Title VII and Ohio law. Labor organizations, as well as employers, have an affirmative duty to prevent discrimination and harassment.

13. IBEW is an alter ego of IBEW Local 998.

14. IBEW enjoys a close relationship with its locals. IBEW states within its Constitution (as provided to Intervenor) that it has "jurisdiction over all electrical workers in the United States and Canada." At all times relevant the IBEW advised, acted in concert, enabled, and abetted IBEW Local 998 in its contract negotiations and approval of collective bargaining with Lithonia. At all times relevant IBEW has benefited from its close relationship with IBEW Local 998. IBEW provides, advises, and participates in the IBEW Constitution as it is applied to members of IBEW locals. IBEW was involved and at all times relevant has advised IBEW Local 998 with respect to legal claims, including the defense of this lawsuit. IBEW is liable jointly and severally for the acts of IBEW Local 998.

15. At all times relevant, IBEW and IBEW Local 998 have been engaged in an industry affecting interstate commerce within the meaning of 42 U.S.C §2000e.

FACTS

16. At all times relevant, Intervenor has been a member in good standing of IBEW Local 998 since May 18, 1998.

17. Repeatedly during the period of her employment at Lithonia Down Lighting, Intervenor was the subject of harassment by a male union member despite her protests, objections and demands that such conduct cease and desist.

18. Intervenor repeatedly complained to her employer's management and Defendants about the harassing conduct alleged, but Defendants failed and refused to remedy the conduct. Rather, Defendants aided and abetted and participated in said conduct.

19. As a result of the wrongful, tortious and unlawful acts of Defendants, Intervenor has incurred physical pain and suffering, humiliation, embarrassment, extreme mental distress and emotional anguish, loss of reputation and has otherwise been damaged.

20. The effect of the unlawful practices herein above alleged has been to deprive Intervenor of her right to Equal Employment Opportunities and to otherwise adversely affect her status in the workplace.

21. The unlawful conduct of Defendants herein above alleged were intentional.

22. The unlawful conduct of Defendants herein alleged were taken with malice and reckless indifference to the federally protected rights of Intervenor.

FIRST CAUSE OF ACTION

23. Intervenor realleges and incorporates by reference herein each of the allegations contained in Paragraphs 1 through 22, as if fully set forth herein at length.

24. The actions of the Defendants were due solely to the female gender of Intervenor.

25. The actions of the Defendants constitute deliberate, intentional violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et. seq.

SECOND CAUSE OF ACTION

26. Intervenor realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 25, as if fully set forth herein at length.

27. The actions of the Defendants constitute a tort of sexual harassment under the laws of the State of Ohio.

28. Intervenor is entitled to bring this pendent state claim by virtue of the holding of the Supreme Court of Ohio in *Kerns v. Porter Paint Co.* (1991), 61 Ohio St. 3d 486.

THIRD CAUSE OF ACTION

29. Intervenor realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 28, as if fully set forth herein at length.

30. The actions of the Defendants constitute gender discrimination and unlawful retaliation with respect to the terms and conditions of her employment in violation of §4112.02 of the Ohio Revised Code.

FOURTH CAUSE OF ACTION

31. The Intervenor realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 30, as if fully set forth herein at length.

32. The conduct of the Defendants was extreme and outrageous and exceeded all bounds of decency tolerated in a civilized society.

33. At all times relevant herein the actions of Defendants were intentional and/or reckless and the Defendants knew or should have known to a substantial certainty that its conduct would cause Intervenor to suffer severe emotional distress.

34. Intervenor, as a direct and proximate result of the intentional acts of the Defendants, has suffered and will continue to suffer severe emotional mental anguish.

35. This Court has pendent jurisdiction to hear and adjudicate the state claims of Intervenor.

MONETARY RELIEF

36. Intervenor realleges and incorporates by reference herein all allegations contained in Paragraphs 1 through 35, as if fully rewritten at length herein.

37. Intervenor is entitled to an award of compensatory damages exceeding \$25,000.00 against Defendants for their wrongful, illegal and tortious conduct and the consequences thereof.

38. Intervenor is entitled to an award of punitive damages against Defendants for the intentional, willful, malicious and bad faith violations of her legal rights.

39. Intervenor is entitled to be made whole by Defendants for the violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et. seq., and Ohio law by including pre-judgment and post-judgment interest on all sums awarded.

PRAYER FOR RELIEF

WHEREFORE, Intervenor prays this Court for a judgment on all Counts as follows:

1. That an Order issue making Intervenor whole and that the Defendants be ordered to pay Intervenor compensatory damages in the amount to be determined at trial;

2. That the Defendants be ordered to pay Intervenor punitive damages in the amount to be determined at trial;

3. That the Intervenor recover from Defendants all costs of this action and reasonable attorney's fees;

4. That the Intervenor recover from Defendants pre-judgment and post-judgment interest on all sums recovered;

5. That Defendants be ordered to cease and desist all unlawful acts of discrimination and harassment; and

6. That the Intervenor be awarded such other and further relief as may be deemed just and proper by this Court or otherwise provided by law and equity.

JURY DEMAND

Intervenor demands a trial by jury on all issues raised in each of her claims as provided by law.

Respectfully submitted,

/s/ Linda C. Ashar

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ATTORNEYS FOR
INTERVENOR/PLAINTIFF
GORETTI NEWMAN

PROOF OF SERVICE

This is to certify that a copy of the foregoing Amended Complaint of Intervenor/Plaintiff (Jury Demand Endorsed Hereon) has been sent via the Court's electronic filing system on this 30th day of June 2004 to Plaintiff EEOC as follows:

C. Larry Watson, Esq.
Donna L. Williams Alexander, Esq.
John D. Sargent, Esq.
Equal Employment Opportunity Commission
1660 West Second Street
850 Skylight Tower
Cleveland, OH 44113-1454

Further, Defendant IBEW Local 998 and New Party Defendant IBEW have been served with the Amended Complaint of Intervenor/Plaintiff (Jury Demand Endorsed Hereon) on this 30th day of June 2004 by Certified Mail, Return Receipt Requested, and concurrently by ordinary U.S. Mail, postage prepaid as follows:

Mr. Ed Hill, President
International Brotherhood of Electrical Workers
1125 15th Street, N.W.
Washington, D.C. 20005

and

Mr. Panatleon A. Ancog
IBEW Local Union 998
P.O. Box 324
Vermilion, OH 44089

/s/ Linda C. Ashar

Linda C. Ashar

Thomas J. Stefanik, Jr.