UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	§	
v.	§	CAUSE NO. SA-00-CA-0930-OG
LOCAL UNION NO. 142 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO; and SAN ANTONIO AREA PLUMBERS AND PIPEFITTERS JOINT APPRENTICESHIP AND TRAINING COMMITTEE, Defendants.	§	

ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Before the Court are the summary judgment motions of defendants Local Union No. 142 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Local 142) (docket no. 26) and the San Antonio Area Plumbers and Pipefitters Joint Apprenticeship and Training Committee (JATC) (docket no. 27). The Court has also reviewed the responses of plaintiff EEOC (docket nos. 37 & 38), defendants' replies (docket nos. 40 & 41).

Also before the Court is defendants' motion to strike evidence submitted by the EEOC in support of its responses. (Docket no. 39.) Having reviewed the motion and plaintiff's response (docket no. 42), the Court will strike all challenged evidence except for Cynthia Walters' testimony that Todd-Ford was hiring apprentices in the Spring of 1999, and the medical report by Dr. Edward Alderette. Even if the Court had reviewed the stricken hearsay-based testimony, however, it would not change the result of this order.

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The EEOC complains (1) that Cynthia Walters has been subjected to sexual harassment at JATC's San Antonio facility, (2) that Local 142 and JATC retaliated against Walters because she engaged in a protected activity, and (3) that JATC intentionally denied women admission to its apprenticeship program based on their gender.

Walters has been a member of Local 142 since 1995. In May 2000, she completed JATC's five-year apprenticeship program and became a journeyman pipefitter. Walters contends she began experiencing sexually harassing conduct in her second year of apprenticeship school. Male apprentices discussed their sexual activities and their activities in topless bars before and during class within Walters' hearing. In January 1998, Walters' classroom instructor allowed another apprentice to show an X-rated movie in the classroom prior to the beginning of class and during a break. Walters subsequently complained about an instructor she felt was unfair and about a student whom she felt was acting inappropriately towards her. Walters also contends that Local 142 retaliated against her by assigning her to work for A.J. Monier & Company at an out-of-town job in Jourdanton, Texas for a year, and by refusing to refer her to other jobs after Monier laid her off.

Summary judgment is proper when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). All facts and inferences are viewed in the light most favorable to the party opposing summary judgment. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986). The opposing party may not rely on mere allegations or denials, however, but must set forth specific facts establishing that genuine issues exist for trial. See FED. R. CIV. P. 56(e). Only factual disputes "that might affect the outcome of the suit under

the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Sexual harassment

JATC contends that the EEOC has failed to establish a prima facie case of sexual harassment. To establish an actionable claim of sexual harassment, plaintiff must demonstrate the following: (1) that she belongs to a protected class, (2) that she was subject to unwelcome sexual harassment, (3) that the harassment was based on sex, (4) that the harassment affected a "term, condition or privilege of employment," and (5) that the employer either knew or should have known of the harassment and failed to take prompt remedial action. DeAngelis v. El Paso Municipal Police Officers Ass'n, 51 F.3d 591, 593 (5th Cir. 1995). This test continues to apply when the harasser is a co-worker. Watts v. Kroger Co., 170 F.3d 505, 509 (5th Cir. 1999). When, however, the harasser is a supervisor with immediate or successive authority over the employee, under the analysis developed by the Supreme Court in Burlington Indus., Inc. v. Ellerth, 524 U.S. 742 (1998) and Faragher v. City of Boca Raton, 524 U.S. 775 (1998), the employee need only satisfy the first four elements of the test. Watts, 170 F.3d at 509. Once the employee makes this showing, an "employer is subject to vicarious liability to a victimized employee." Faragher, 524 U.S. at 807.

Walters complains of the following behavior. In several classes over a two-and-a half-year period, she was subjected to comments from her male classmates about their sexual exploits with women and their descriptions of strippers at topless clubs. Her instructor took students to a "Hooters" sports bar during class. On one occasion during her second year, one of her classmates pulled his penis out of his pants and began talking to it. On January 15, 1998, a

classmate showed a pornographic video before class and during a break. In the spring of 2000, one of Walters' classmates made sexual comments to her, moved his chair wherever she moved hers, and followed her home.

Walters complained about the profanity and sexual banter in her classroom to Walter Dill, the JATC training coordinator at the time. Dill talked to the class and told them not to use profanity. When the objectionable activity continued, Walters complained again to Dill who this time did nothing. Walters did not report the incident of the student talking to his penis and testified that the incident was not aimed at her but just happened in class. She also testified that the student appeared to be "under the influence of something."

A fellow student, Maggie Shelton, testified that Walters regularly used profanity at the school and engaged in discussions of a sexual nature and in sexual horseplay with fellow apprentices. Another union member, Gilbert Reina, remembers Walters participated in a discussion with him and another employee about X-rated videotapes they had seen. Walters asked to borrow an adult videotape and took one or more home with her. When she brought them back she claimed her husband watches them. Reina testified that Walters never indicated that she was offended by the videotapes or their discussions about them.

During Walters' third year, her instructor, Ken Dixon, did take his class, or at least some members of the class, to Hooters in River Center Mall. Dixon testified that he and a few students went to Hooters for a drink following a planned field trip with the class to tour the mall's heating and cooling plant. Walters testified that she went home that night before the class left for the mall and was unaware that a field trip was scheduled. Walters did not complain about the trip to Hooters until after the videotape incident.

The pornographic video incident also occurred in Dixon's class during Walters' third year. Dixon and some students were viewing the film before class. When Walters entered the classroom they turned off the videotape. They tried to convince Walters to watch the tape but she refused. At some point after the class had begun, Dixon was called out of the room and some students began playing the tape again. Walters asked them to stop the tape, and when they did not, she gathered her books and left the classroom. She saw Dixon in the hall and told him the students were watching the tape again. Dixon told them to turn off the tape and Walters went back in the classroom. The students again played the video during a break and discussed the tape at times during class. Walters reported the incident to Dill who told her she was making a mountain out of a molehill. She and her husband complained to Kirby Whitehead, business manager for Local 142 shortly after the incident. Whitehead's investigation led to the discovery of the student who was responsible for showing the tape. The JATC board considered the incident at its February 10, 1998 meeting. The Board requested and accepted Dixon's resignation as an instructor. It suspended for one week the apprentice who brought the tape to class and delayed his advancement to fourth-year apprentice by six months. The Board then apologized to Walters concerning the incident. When Walters complained of continued harassment, the Board brought her back to its next meeting in March and apologized again. The Board then met with all the students and instructors and stated that sexual harassment, pornographic material, and profanity would not be tolerated. The Board developed a sexual harassment policy, distributed it to students and required them to sign for it, provided sexual harassment training to the training coordinator and instructors, and provided sensitivity training classes for all students. The sexual harassment policy requires students to report any harassing

conduct. After consulting with Walters, JATC delayed the sensitivity training classes until January 1999 so it would not appear to the apprentices that the classes resulted from her complaints. Walters admitted that the profanity lessened after the Board talked to the students, but claimed that it started back during her fifth year of school. Walters did not report the continued profanity because she felt it would do no good.

The last incident of sexual harassment occurred during Walters' fifth year. She testified that a fellow apprentice, Daryl Friesenhahn, made two sexually suggestive remarks to her, tried to sit next to her in class, and followed her to the grocery store. She told her teacher and Sonny Tessman, who had replaced Dill as training coordinator, that Friesenhahn had been harassing her. Tessman spoke to the instructor who said he had noticed nothing out of the ordinary. Tessman then spoke with Friesenhahn who denied Walters' allegations. Nonetheless, Tessman took a written statement from Friesenhahn and asked him to have no further contact with Walters. Following Tessman's actions, she reported no further harassment by Friesenhahn.

Despite her allegations, Walters completed her JATC training on time and became a journeyman member of Local 142.

For harassment to affect a "term, condition or privilege" of employment, the workplace must be "permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993) (internal citations omitted); Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 78 (1998). Whether workplace harassment is abusive is determined by looking at all the circumstances, including frequency, severity, whether it is physically threatening or humiliating, and whether it reasonably

interferes with an employee's performance. See Harris, 510 U.S. at 21-23. Conduct that only "sporadically wounds or offends but does not hinder [an] . . . employee's performance" is not actionable. Weller v. Citation Oil & Gas Corp., 84 F.3d 191, 194 (5th Cir. 1996). "[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in terms and conditions of employment." Faragher, 524 U.S. at 788 (citations and internal quotation marks omitted). To amount to a change in the terms and conditions of employment, the conduct must be "extreme." Id.

Clearly, the conduct Walters complains of was rude, immature, and boorish. Just as clearly, she has failed to raise a fact issue that the conduct was so severe or pervasive to affect a term, condition, or privilege of her employment. Walters did not attend the gathering at Hooters and knew none of its details, so it can hardly be described as harassment of her. Likewise, the incident where a student talked to his exposed penis was an isolated occurrence and not directed toward Walters. A certain amount of vulgar banter, tinged with sexual innuendo, is inevitable in the modern workplace, particularly in trades traditionally dominated by males. Title VII is not a "general civility code for the American workplace." Oncale, 523 U.S. at 80. Complaints of events far more severe and pervasive that those raised by Walters have been held insufficient to constitute actionable sexual harassment. See Indest v. Freeman Decorating, Inc., 164 F.3d 258, 264-67 (5th Cir. 1999) (noting it was "dubious" whether several sexually-oriented comments and gestures and an implied threat of retaliation for refusing a sexual advance would be sufficient to establish a hostile environment); Shepard v. Comptroller of Pub. Accounts, 168 F.3d 871, 872-75 (5th Cir. 1999) (intermittent sexual comments, attempts to look down plaintiff's dress, and touching her arm did not establish hostile environment); Adusumilli v. City of Chicago, 164 F.3d

353, 361-62 (7th Cir. 1998) (plaintiff's complaints "of no more than teasing about waving at squad cars, ambiguous comments about bananas, rubber bands, and low-neck tops, staring and attempts to make eye contact, and four isolated incidents in which a co-worker briefly touched her arm, fingers, or buttocks" did not establish hostile environment); Weiss v. Coca-Cola Bottling Co., 990 F.2d 333, 337 (7th Cir. 1993) (plaintiff's claims that supervisor repeatedly asked about her personal life, told her how beautiful she was, asked her on dates, called her a dumb blonde, put his hand on her shoulder at least six times, placed "I love you" signs in her work area, and tried to kiss her once at a bar and twice at work were not sufficient for actionable sexual harassment).

Unlike the cases cited by the EEOC, the incidents Walters complains of were not directed specifically at her, were not physically threatening, did not involve touching or fondling, and were not pervasive or severe. See Farpella-Crosby v. Horizon Health Care, 97 F.3d 803, 806 (5th Cir. 1996) (frequent egregious comments about plaintiff's sexual proclivity created hostile environment); Hostetler v. Quality Dining, Inc., 218 F.3d 798, 807-08 (7th Cir. 2000) (complaints that co-worker grabbed plaintiff's face and "stuck his tongue down her throat," attempted to remove her bra, and lewdly propositioned her for sex clearly sufficient to state claim for harassment); Gregory v. Daly, 243 F.3d 687, 692-93 (2d Cir. 2001) (allegations that supervisor made demeaning comments about women, made sexually demeaning statements, initiated unwelcome physical conduct of a sexual nature, intimidated plaintiff by standing "uncomfortably close" to her, made references to women as easy victims of sexual assault, made demeaning remarks about women, and wove vulgar and sexually explicit language into his tirades against plaintiff, stated claim for hostile work environment sexual harassment); see also

Waltman v. International Paper Co., 875 F.2d 468, 478 (5th Cir. 1989) (hostile environment existed where female employee was sexually groped repeatedly). Furthermore, none of the talk or incidents Walters complaint of were directed at her. While the evidence is relevant to show the environment at the apprenticeship school, it is less significant than abuse aimed directly at the plaintiff. See Gleason v. Mesirow Fin., Inc., 118 F.3d 1134, 1144-45 (7th Cir. 1997) (harassing comments directed at female customers were relevant to hostile environment claims, but "second hand harassment" not as great an invasion as harassment directed at plaintiff); Black v. Zaring Homes, Inc., 104 F.3d 822, 826 (6th Cir. 1997) (fact that most comments not directed at plaintiff contributes to conclusion of insufficiency of evidence). Walters has failed to raise a fact issue that the harassment affected a term, condition or privilege of her employment.

Even if Walters had met her prima facie case burden, she still could not prevail because the Court finds as a matter of law that JATC took prompt remedial action. An employer is not liable for sexual harassment committed by an employee if it took prompt remedial action to remedy the harassment. Whether an employer's response to discriminatory conduct is sufficient "will necessarily depend on the particular facts of the case — the severity and persistence of the harassment, and the effectiveness of any initial remedial steps." Waltman v. International Paper Co., 875 F.2d 468, 479 (5th Cir. 1989) (citations omitted).

The EEOC argues that Dill's action in speaking to her class was ineffective because the harassment continued and culminated in the videotape incident. It argues that JATC's actions following Walters' report of the videotape were inadequate. It describes the investigation that uncovered the apprentice responsible for the videotape as "cursory" but does not explain why the investigation was inadequate. It cites Walters' testimony that sexual banter and profanity

continued after the February Board meeting, but Walters also testified that such talk died down immediately following the Board's remedial actions and only resumed again in her fifth year. In addition, after her complaints concerning the videotape incident, Walters failed to complain further of profanity or sexual language. Further, the fact that some talk offensive to, though not specifically directed toward, Walters persisted at some point after the Board took action does not establish that JATC's actions were not appropriate. Short of designating a Board member to monitor each class, it is difficult to determine what else JATC could have done to remedy the problem. The EEOC has no suggestions. An employer will be found to have taken prompt remedial action when "[i]t took the allegation seriously, it conducted prompt and thorough investigations, and it immediately implemented remedial and disciplinary measures based on the results of such investigations." Carmen v. Lubrizol Corp., 17 F.3d 791, 795 (5th Cir. 1994) (per curiam). These actions are "what a company *ought* to do when faced with allegations that an employee has been subjected to sexual harassment . . . ." Id. (emphasis in original). These are the actions JATC took in the present case. See also Scrivner v. Socorro Indep. Sch. Dist., 169 F.3d 969, 971 (5th Cir. 1999); Hirras v. National R.R. Passenger Corp., 95 F.3d 396, 399 (5th Cir. 1996); Waymire v. Harris County, 86 F.3d 424 (5th Cir. 1996); Nash v. Electrospace Sys., Inc., 9 F.3d 401, 404 (5th Cir. 1993).

Retaliation

The EEOC contends that Local 142, and to a lesser extent JATC, retaliated against Walters based on her complaints of sexual harassment. The EEOC contends that Local 142 retaliated against Walters in the following ways: (1) in April 1999, Local 142 sent Walters to

work for Monier in Jourdanton for a year instead of job sites within San Antonio; (2) in October 2000, Whitehead announced at a Union meeting that Walters had filed a suit against the Union, and subsequently no contractors selected her for jobs, forcing her to find work in Dallas; and (3) in January 2001, Walters had to travel to Arkansas to find work when she was not selected for jobs in San Antonio for over two months.

Defendants argue that the EEOC has failed to establish a fact question that Local 142 took an adverse employment action against Walters, that it has not raised a fact question concerning a causal connection between any adverse action taken by Local 142 and Walters' protected conduct, and that the EEOC cannot raise a genuine issue of pretext. A plaintiff establishes a prima facie case of retaliation by showing: (1) that she engaged in activity protected by Title VII; (2) that an adverse employment action occurred; and (3) that there was a causal connection between the participation in the protected activity and the adverse employment decision. Long v. Enfield College, 88 F.3d 300, 304 (5th Cir. 1996). The Court finds that the EEOC has failed to raise a fact question concerning an adverse employment action, an essential element of its prima facie case of retaliation, and therefore summary judgment must be granted on the retaliation cause of action.

The unrebutted summary judgment evidence shows that the decision to send Walters to the Jourdanton job site was made by Monier, not by Local 142. Apprentices are hired under rules established by the JATC. The names of eligible apprentices are shown on the pipefitters' eligibility list, with those out of work the longest listed first. The lists also show whether members are willing to travel and the types of work they are qualified to perform. If there are five or more apprentices on the list, contractors such as Monier can choose from among the top

five on the list. Contractors in need of apprentices contact the Union Hall and find out from the JATC Training Coordinator or the Business Manager the names of available apprentices. When Monier requested an apprentice for its Jourdanton job, Walters was the only qualified apprentice available on the list. The Union has properly maintained Walters' name on the pipefitters' eligibility list at all times. Local 142's role in the selection of pipefitters is to properly maintain the eligibility list, to correctly refer the top five eligible employees for each job, and to monitor the selection process to ensure that the contractors comply with the hiring hall procedures. Thus, it is the contractor who determines the work site to which the apprentice is assigned, not the Union. Monier's project manager testified that Monier makes its decisions about where apprentices will work without input from JATC.

Title VII's anti-retaliation provisions address ultimate employment decisions, not "interlocutory or mediate" decisions that might lead to ultimate decisions. Mattern v. Eastman Kodak Co., 104 F.3d 702, 708 (5th Cir. 1997). Adverse employment actions include discharges, demotions, refusals to hire, refusals to promote, and reprimands. Southard v. Texas Board of Criminal Justice, 114 F.3d 539, 555 (5th Cir. 1997); see also Mattern, 104 F.3d at 708; Dollis v. Rubin, 77 F.3d 777, 781-82 (5th Cir. 1995). Employment actions are not adverse where pay, benefits, and level of responsibility remain the same. Watts v. Kroger Co., 147 F.3d 460, 466 (5th Cir. 1988). Clearly, Monier's decision to employ Walters at its Jourdanton job site is not an adverse employment decision. Monier requested an apprentice, Local 142 properly referred Walters in accordance with hiring hall procedures set forth in the collective bargaining agreement, and Walters, who was then out of a job, began working. Monier made the decision to employ Walters in Jourdanton. She made no complaint to Monier about the job location.

The EEOC points to Walters' testimony that Whitehead told her he had to beg to get her the Monier job as evidence that Local 142 was involved in her selection. Even if this statement, in the face of vast uncontradicted evidence to the contrary, amounts to evidence that Local 142 sent her to the Jourdanton job, it still is no evidence that that job amounted to an adverse employment action. The fact that Walters would have preferred to work in San Antonio is of no moment. Undesirable work assignments are not adverse employment actions. Southard, 114 F.3d at 555; Harrington v. Harris, 118 F.3d 359, 365 (5th Cir. 1997). Further, the evidence shows that several other apprentices worked out of town for approximately a year, and work outside San Antonio is undoubtedly a regular occurrence in a Local whose jurisdiction extends from San Antonio to Laredo.

The EEOC also contends that Walters suffered retaliation when she failed to obtain employment after October 2000. To reiterate, it is clear from the evidence that Local 142 was not involved in the decisions of the contractors not to hire Walters. The Union properly maintained her name on its eligibility list and referred her for jobs when she was among the top five on the list. Plaintiff has produced no competent summary judgment evidence that the Union failed to properly maintain her name on the eligibility list, took any steps to discourage any contractor from hiring Walters for available jobs, or referred any member to employers in violation of Union procedures. The EEOC has also failed to show that Whitehead's announcement of the lawsuit negatively affected any contractors' attitude toward Walters. And even if they refused to hire her because of her lawsuit, that would constitute retaliation by the contractors, not the Union. Finally, the retaliatory actions Walters raised against JATC — that unknown students spit tobacco juice on her car and moved her name to the out-of-work side of a

bulletin board, that two instructors referred to her as a troublemaker, and that Whitehead told her no one wanted to hire her — do not constitute adverse employment actions.

In short, the EEOC has failed to raise a fact question concerning an adverse employment action, an essential element of its prima facie case of retaliation.

Gender discrimination

JATC contends that the EEOC has not satisfied the administrative prerequisites for bringing its discrimination claim, and even if it had, it has not raised a fact issue regarding pretext. The Court agrees with the first premise and therefore does not reach the second.

The conditions precedent for the EEOC to file a lawsuit are: filing a timely charge of discrimination with the Commission; notice of the charge served on the respondent; investigation of the charge; a determination by the Commission that reasonable cause exists to believe that the charge is true; an attempt by the EEOC to eliminate the unlawful employment practices by informal methods of conference, conciliation and persuasion; and inability of the Commission to secure from the respondent a conciliation agreement acceptable to the EEOC. EEOC v. Premier Operator Services, Inc., 75 F.Supp.2d 550, 562 (N.D. Tex. 1999); see also EEOC v. Hearst Corp., 103 F.3d 462, 468-69 (5th Cir. 1997) (outlining the same steps in the procedure). The key is that the respondent receive adequate notice during the administrative investigation of the issues raised in the charge so that these issues are investigated and presented for conciliation. EEOC v. Occidental Life Ins. Co., 535 F.2d 533, 542 (9th Cir. 1976); see 42 U.S.C. § 2000e-5(f)(1). While the EEOC is not limited to the allegations in the charge, it may file suit only on allegations of discriminatory practices developed in the course of a reasonable investigation of the original charge. EEOC v. Huttig Sash & Door Co., 511 F.2d 453, 455 (5th

Cir. 1975).

In her discrimination complaint, Walters complained of hostile environment sexual harassment at the JATC, and later added her retaliation claims against Local 142. The EEOC's determination and proposed conciliation agreement addressed only sexual harassment. The EEOC's original complaint concerned only defendants' conduct toward Walters. The EEOC amended its complaint in March of this year to allege for the first time gender discrimination against female applicants to the apprenticeship program. This allegation was neither made nor investigated during the administrative process, nor was it discussed during conciliation efforts. All this is admitted by the EEOC.

The EEOC nevertheless argues that the allegations of sex discrimination in the apprenticeship program are properly before the Court. In support of its argument the EEOC cites Gottlieb v. Tulane Univ., 809 F.2d 278, 284 (5th Cir. 1987) and Gupta v. East Texas State Univ., 654 F.2d 411, 414 (5th Cir. 1981), but those cases are distinguishable. In Gottlieb and Gupta, the Fifth Circuit fashioned an exception to the exhaustion requirement for claims of retaliation arising out of the original charge of discrimination. The court held that "it is unnecessary for a plaintiff to exhaust administrative remedies prior to urging a retaliation claim growing out of an earlier charge; the district court has ancillary jurisdiction to hear such a claim when it grows out of an administrative charge that is properly before the court." Gupta, 654 F.2d at 414. The primary justification for the court's holding is that "[i]t is the nature of retaliation claims that they arise after the filing of the EEOC charge." Id. From this premise the Fifth Circuit concluded that to require a second charge to be filed to assert retaliation "would serve no purpose except to create additional procedural technicalities when a single filing would comply with the

intent of Title VII," and "[e]liminating this needless procedural barrier will deter employers from attempting to discourage employees from exercising their rights under Title VII." Id.

The EEOC asks this Court, as a matter of first impression, to fashion a "Gupta exception" in the present case. The Court declines the honor. The policy considerations that compelled the Fifth Circuit in Gupta to fashion its practical and eminently reasonable rule are simply not present here. First and foremost, it is *not* in the nature of sex discrimination claims that they arise from sexual harassment claims. In addition, much of the discrimination complained of in the amended complaint occurred *before* the alleged harassment against Walters. These separate discrimination claims of unnamed female apprenticeship applicants (who obviously do not even include Walters) in no way flow naturally from Walters' sexual harassment claims. These discrimination claims were not investigated, were not the subject of any cause finding, were not the subject of any conciliation efforts, and are therefore not properly before this Court.

Defendants' motion to strike evidence (docket no. 39) is GRANTED IN PART AND DENIED IN PART as indicated above. The summary judgment motions of Local 142 (docket no. 26) and JATC (docket no. 27) are GRANTED, and plaintiff's claims against defendants are dismissed in their entirety.

SIGNED and ENTERED this 8 day of January, ~~2001~~ 2002.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE