

CHERYL SOMMER,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 00-01,243
	:	
LYCOMING COUNTY SOCIETY	:	
FOR THE PREVENTION OF	:	
CRUELTY TO ANIMALS,	:	
	:	
Defendant	:	

Date: December 7, 2000

OPINION and ORDER

Facts

Before the Court are the preliminary objections of the Defendant to Plaintiff's Complaint, which alleges the Defendant's termination of her employment constitutes unfair retaliation in violation of the Whistleblower Law 43 P.S. § 1421.¹ The facts are not in dispute.² In her complaint, Plaintiff alleges that she was subjected to conduct which constituted sexual harassment. Plaintiff contends that she reported this conduct to her employer. Plaintiff alleges that she was terminated because of her reports of wrongful conduct. Defendant's Preliminary Objections argue that Plaintiff's action(s) fall under the purview of the Pennsylvania Human Relations Act 43 P.S. §951 and as such, her exclusive remedy lies with the Human Relations Commission.

¹ The Complaint was filed on August 4, 2000. The Plaintiff filed an Amended Complaint on October 17, 2000. The Defendant filed Preliminary Objections on October 20, 2000. Defendant filed briefs on November 16, 2000 and by Plaintiff on November 21, 2000. Argument was held on November 22, 2000.

² In Plaintiff's brief filed contra to Defendant's Preliminary Objections, Plaintiff accepted the Defendant's statement of facts as set forth in the brief.

Discussion

A careful examination of 43 P.S. §§1421 *et seq.* (hereafter referred to as the Whistleblower Law), and an application of the statute to the facts, reveals why it is the governing legal authority in this case. As such, Defendant's Preliminary Objections must be dismissed.

The heart of the Whistleblower Law is §1423 which provides that “ no employer may discharge, threaten, or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.” Section 1422 provides a definition of wrongdoing as a “violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.” Subsequent decisions indicate that for the action to rise to the level of a wrongdoing, the infraction must be serious enough to violate a statute, regulation, or code of conduct/ethics and the statute, regulation, or code must be of the type that an employer is charged to enforce for the good of the public or one dealing with an internal administration of power. *Gray v. Hafer*, 651 A.2d 221, affirmed 669 A.2d 335.

In this case, Plaintiff's allegations of sexual harassment are certainly a violation of federal and state statutes³. Eliminating this practice is definitely in the public interest.⁴ Furthermore, it is not difficult to understand how sexual harassment is corrosive to maintaining control of an organization. This Court concludes that a charge of sexual harassment fits within the Whistleblower Law's definition of wrongdoing.

Defendant argues that because Plaintiff is alleging sexual harassment, Plaintiff must process the claim as a violation of Pennsylvania's Human Relations Act. *Atopiedi v. Memorex Telex Corp.*, 834 F.Supp 800 (E.D. Pa 1993), *Clay v. Advanced Computer System*, 559 A.2d 917 (Pa. 1989). There is no question that an act of sexual harassment constitutes a violation of the Human Relations Act. *Hoy v. Angelone*, 456 Pa. Super 596, 691 A.2d 476 (1997). The Human Relations Act goes on to mandate that complaints must be submitted to the Pennsylvania Human Relations Commission which has exclusive jurisdiction over violations of the Act. After a claim is submitted to the Commission, the complainant must wait for one year before initiating a private suit.

While this Court has no doubt Defendant states the proper procedure to be followed to assert a claim under the Human Relations Act, Defendant is mistaken asserting the

³ When work environment becomes so intimidating, hostile, or offensive so as to constitute sexual harassment, it is a violation of Title VII of Civil Rights Act of 1964 as amended (42 U.S.C.A §200e *et.seq.*). The harassment can be a violation of 18 Pa.C.S.A. §5504. 35 P.S. §10225 prohibits sexual harassment against elders. 63 P.S. §422.41 provides that sexual harassment can be grounds for the suspension of a physician's license. The Pennsylvania Constitution Art. 5 §18 has interpreted persistent sexual harassment by a member of the judiciary as grounds for discipline. Under 71 P.S. §741 sexual harassment can be grounds for dismissal from the civil service. Of course 43 P.S. §955 (Human Relations Act) prohibits sexual discrimination.

⁴ "It is clear that there is a well-defined, dominant public policy against sexual harassment in the workplace and the behavior such as that alleged by *Wiegand* is considered sexual harassment under the law. In addition to the public policy against sexual harassment in the workplace, a well-defined, dominant public policy favoring voluntary employer prevention and application of sanctions against sexual harassment in the workplace exists.

recovery Plaintiff seeks in this (lawsuit) action are also within the Human Relations Commission jurisdiction. Plaintiff is not trying to bring a sexual harassment suit in this action, but rather is arguing that she was fired in retaliation for reporting the sexual harassment. She seeks damages for loss of income and benefits, loss of future income, loss of future earning capacity, physical illness, emotional distress, harm to her reputation, embarrassment and anxiety resulting from this alleged retaliation. This is precisely the type of evil the Whistleblower Act seeks to eradicate. Consequently, as a violation of the Whistleblower Act is alleged, this Court holds that it has the jurisdiction over this case.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator
J. David Smith, Esquire
John R. Bonner, Esquire
Judges
Jeffrey L. Wallitsch, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

The Supreme Court recognized the importance of this public policy in both *Grace* and *Misco*. See *Misco*, 108 S.Ct. at 373; *Grace*, 461 U.S. at 770-71, 103 S.Ct. at 2185-86.” 61 USLW 2040 (3d Cir. 1992).