

**STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. EG02WB-67431**

Kesha Michelle Green,                                     )  
   )  
Complainant,   )  
   )  
   )  
v.   )  
   )  
Ironworkers Local 11,   )  
   )  
   )  
Respondent.   )

**Administrative Action**

**FINDING OF PROBABLE CAUSE**

On April 15, 2019, Newark resident Kesha Michelle Green (Complainant), a Black woman, filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Ironworkers Local 11 (Respondent or “the Union”) subjected her to a hostile work environment and differential treatment based on her race, and retaliated against her after she engaged in LAD-protected activity, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-12(b) and N.J.S.A. 10:5-12(d). DCR’s investigation found as follows.

**SUMMARY OF INVESTIGATION**

Respondent is a chapter of the International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers Union, AFL-CIO with union halls in Bloomfield and Perth Amboy. Respondent represents ironworkers who work on bridges, buildings, or in shops with rebar, structural steel, and/or ornamental, architectural, and miscellaneous metals. The Union also serves as a referral source for contractors in need of ironworkers.

In or around January 1998, Complainant became a member of the Union as an apprentice. In January 2002, Complainant completed her apprenticeship and became a journeyman with full Union rights and protections. Her status as a journeyman meant that Complainant was qualified to install iron and steel to form and support buildings, bridges, and roads.

In the verified complaint, Complainant alleged that since she became a journeyman, Respondent’s Business Manager Ray Woodall consistently assigned her and other Black union members to short-term jobs that lasted only one or two days while assigning steady, longer-term work to white union members.

Complainant also alleged that Woodall used racial slurs to refer to Black union members. In support of that allegation, Complainant claimed that she came into possession of video footage where Woodall could be heard referring to a Black Union member as a “nigger” and a “shine,” and to a non-Black Union member as a “white shine.”

Complainant further alleged that in or around February 2019, Woodall reduced her work assignments and referred her only short-term work in retaliation for her refusal to provide him with a copy of the video recording.

In its answer to the verified complaint, Respondent denied that it discriminated or retaliated against Complainant. Respondent denied that Woodall deliberately selected Complainant for short-term assignments based on her race or in retaliation for engaging in protected activity and asserted instead that the length of assignments is dictated by the contractor, depends on operational need and skill set, and is therefore beyond Respondent's control. Respondent also denied that Woodall used racial slurs when referring to Black workers. Respondent did not address the video of Woodall allegedly using racial slurs.

**a. The Union Referral Procedures**

According to Respondent's Referral Procedures, which were reviewed by DCR, union members seeking a job assignment/referral must sign a referral book located at the Union Hall in Bloomfield. Members must sign the book between 6:30 a.m. and 6:45 a.m. each day, or until the last member in line has signed. Members must be present in either the Bloomfield or Perth Amboy hiring hall room in order to accept an assignment when their name is called. Union members are generally referred to jobs in the order that they signed the referral book. As job assignments and referrals become available, Woodall, as Respondent's Business Manager, calls the Union member's name. If a member's name is called, but they are not present, Woodall calls the next name that appears in the referral book.

According to its Referral Procedures, Respondent must assign jobs to members in the order in which they appear on the referral list, except where:

- (1) The next available member on the referral list does not possess the skills and abilities requested by the contractor. When this happens, Respondent skips to the first member on the referral list who does possess the requested skills and abilities; or where
- (2) A contractor requests a specific member. In that case, that union member is assigned to the job regardless of their place in the referral book.

Additionally, if an assignment lasts less than three days, the member can request to be placed on the "short list," and will be given priority for a new assignment.

Respondent maintains a Collective Bargaining Agreement (CBA) with New Jersey Steel Association, Inc. (NJSAI), Rigging Contractors of New Jersey (RCNJ), and Individual Employers, According to Article XV of the CBA, Respondent's hiring halls "shall be operated by Local 11 in a nondiscriminatory manner."

**b. Differential treatment – job assignments**

In an interview with DCR, Woodall stated that he is primarily responsible for distributing job assignments to members each morning. He said that contractors call the Union hall to request

a referral, and that whoever answers the phone takes the request and creates a job ticket. Woodall said that he then sorts the job tickets according to the type of work requested – i.e. welding, structural, or rebar - and begins calling out names in accordance with Respondent’s referral procedure (described above). Woodall told DCR that contractors generally do not tell Respondent how long each job will last, but that there are occasions where he is aware a certain job could last longer than others.

In an interview with DCR, Complainant asserted that Woodall gave preferential treatment to white union members when making job referrals. Specifically, Complainant alleged that whites were assigned long-term, high-demand jobs while Black union members were relegated to short-term, less desirable jobs. As an example of this differential treatment, Complainant asserted that whites were assigned to long-term work at the American Dream, Newark Airport, Goethals Bridge, and Bayonne Bridge projects at a disproportionately higher rate than Blacks.

During his interview with DCR, Woodall acknowledged that Complainant at times expressed frustration with the fact that some of her assignments were short term, but denied that he distributed job assignments based on race or any other discriminatory factor.

Another union official, ██████████, provided sworn testimony at a hearing before the National Labor Relations Board (NLRB) concerning Respondent’s referral practices. ██████████ testified that during this period it was Woodall who gave out jobs and assigned names to the job tickets. He explained that every morning union members seeking a referral would line up at Woodall’s door and sign the book to get a job referral. Once everyone signed the book, Woodall would take the book into his office and close the door. The agents would then prepare to distribute the jobs at 7:00 a.m. ██████████ testified that Woodall decided which member to assign to each of the jobs and was the person that would assign names to the job tickets. He said that the job distribution process – going in order based on signing the out-of-work book – was not always observed and was not followed for at least one referral per day. He said sometimes when a good long-term job (described as lasting six months or more) would become available, the next person on the list would get passed over so Woodall could give the job to someone he preferred. Those that Woodall did not prefer would be assigned a job that would only last for a few days. ██████████ also stated that Woodall would not write down what jobs he was sending people out to.

DCR reviewed Complainant’s job assignment history dating back to 1998, when she joined the Union as an apprentice, as well as referral list records for 2018 and 2019 and employee lists for the American Dream, Newark Airport, Goethals Bridge, and Bayonne Bridge projects. A review of Complainant’s full job history did not support Complainant’s contention that she was consistently assigned one and two-day jobs as opposed to those of a longer duration. Specifically, the records indicate that Complainant worked on several assignments for several months at a time, sometimes up to one or two years.

However, the referral records from 2018 and 2019 do provide examples showing that Complainant was referred to short-term jobs while it appears better, long-term jobs were available but were assigned to union members who signed the book after her. Complainant signed the out-of-work book on September 6, 2018, and was referred out to a job on September 7, 2018 that lasted less than two weeks. The same day that Complainant was referred out, ██████████, who is white, was

referred to work on the American Dream project and [REDACTED], who is also white, was referred to work on the Bayonne Bridge project. There is no indication in Respondent's records provided to DCR that either [REDACTED] or [REDACTED] was specifically requested or called back for these projects, nor is there any indication that either had any specific skill or qualification that Complainant did not have. The records show that six members who signed the book after Complainant on September 7, 2018 were referred out.

Complainant signed the out-of-work book again on September 17, 2018 when her prior job ended. She was referred out to a job on September 19, 2018 that lasted less than two weeks. Seven other union members were referred out for work on September 19, 2018 who signed the out of work book after Complainant, two of those members were referred to the Bayonne Bridge project. There is no indication that these individuals were recalled or specifically requested for this job, or possessed any specific skill or qualification that Complainant lacked.

**c. Race-based hostile environment**

Other than her allegations regarding the above-mentioned video, Complainant did not provide DCR with additional examples of Woodall using racial slurs. However, in his interview with DCR, Woodall acknowledged that he has used the word "nigger" in the Union hall and on job sites though he said he did so only when he was "repeating stuff, repeating conversations." Woodall denied that he ever referred to a Black union member as a "nigger". Woodall also told DCR that he has heard others, including "minorities", refer to Black union members as "niggers". The following is an excerpt from the transcript of Woodall's interview with DCR:

**DCR:** Have you ever used the word "nigger" in the workplace during your tenure with the Union?

**RW:** In what context?

**DCR:** Just if you've ever used it.

**RW:** No – you know what, yea I have. I have.

**DCR:** In what context have you used it?

**RW:** Repeating stuff. Repeating conversations. I'm sure I have. I've had two minority members come in and wanted to discuss that they were on the job calling each other the N word. So yeah, obviously, ya know, you're involved in a conversation, sure.

**DCR:** Have you ever used it in a conversation with somebody referring to another individual as a "nigger"?

**RW:** No.

**DCR:** Have you ever heard others use that word in the workplace?

**RW:** Absolutely.

**DCR:** Who?

**RW:** Come on. I've been in this business for 41 years. I've heard everyone around me say it, I've heard minorities say it.

**DCR:** But you've never said it?

**RW:** I'm not gonna say that, of course. I probably have. I probably have. I probably repeated it. I probably had conversations with my minority friends and used the word.

**DCR:** Do you think it is appropriate to use that type of language in a work setting?

**RW:** I don't believe it's appropriate. I do believe when you're having some conversations or repeating stuff there's no way to avoid using it. Have I referred to any of my members in that way? Absolutely not.

According to Respondent, as a Manager, if Woodall heard anyone use a racial slur, he would "instruct the individual not to use such language." Respondent did not identify any other remedial, disciplinary, or corrective measures taken in response to the use of racial slurs.

Complainant provided DCR with video footage, which she stated was given to her by another Union member. Complainant told DCR that in the video, Woodall was in his office reprimanding Union member [REDACTED] (white), who, along with a Black, unidentified Union member, had either not shown up for work or had not shown up for a scheduled exam. DCR reviewed the video, which is thirty seconds long, and appears to have been recorded in the hallway outside of Woodall's office. Woodall can be heard saying, "It was you and the nigger that didn't show up. It was you and the fuckin' shine that didn't show up. Don't act like a fuckin' white shine."

In a DCR interview, Woodall confirmed that the voice heard in the video is his, and that he was in his office speaking to [REDACTED]. Woodall claimed that somebody had called him and directed the terms "nigger," "shine," and "white shine" towards him while [REDACTED] was sitting in his office. He claimed that after he hung up the phone with the caller, he repeated the slurs to [REDACTED]. He stated, "I was giving [REDACTED] crap for whatever he had done. He may not have shown up for work. This is a kid that never has a car that works. So I may have said to him, 'Is this your excuse as well?'" Woodall claimed that it was in this context that he repeated the racial slurs. According to Woodall:

**R.W.:** No. I believe the call came in as I had [REDACTED] in my office. And the guy was looking to come up and go to work. It could have been from Atlanta. I don't know where. I actually think the guy was from Atlanta. Doesn't have a driver's license. I can't get you to work and that's when I started catchin' the wrath that I won't put him to work because "this nigga doesn't have a driver's license, this nigga doesn't have a car. You won't put me to work." I said, "Buddy, you don't have a driver's

license, I can't do nothin' for ya." And then he started givin' me the crap about "you ain't nothing but a white shine yourself."

**DCR:** Okay so why would you then repeat it in that fashion? Do you want to hear [the tape] again?

**RW:** No, I know exactly what it is because I was giving [REDACTED] crap for whatever he had done. He may not have shown up for work. This is a kid that never has a car that works. So I may have said to him, "Is this your excuse as well?"

**DCR:** Okay.

**RW:** Okay? "Are you like this nigga that doesn't have a car. Are you a white shine? I just got done being called a white shine." I repeated exactly what was said to me. If that is the same conversation. Again, I have referred to no member of my Local in that manner.

DCR reviewed the video with Woodall where he can be heard using discriminatory language, and asked him to respond. The following is an excerpt of this portion of the interview:

**DCR:** Can you confirm that that is your voice?

**RW:** That sounds like a conversation I might have had, and your voice doesn't always sound the same. But that's a familiar conversation. Where's the rest of that audio?

**DCR:** The clip I was provided with is only about 30 seconds long and there is nothing notable in the rest of it.

**RW:** Okay. I would like to know where that came from, if there's a bug in my room. That may have been part of a 3-minute long conversation –

**DCR:** That is consistent with what I heard.

**RW:** Where somebody on the phone may have said that to me and [REDACTED] was there. And I asked "is this your excuse as well?" What this guy just said to me and I just repeated to him exactly what was said, "Is this what you're telling me?" You can't take that out of context. You have to have the whole 3-minute conversation to see where that came from.

**DCR:** So who called you and said that to you?

**RW:** To the best of my recollection, people are calling New Jersey looking to come to work. Because New Jersey has work that most other places don't. When you call me I'm gonna ask you three things – are you drug tested? Are you current in your

dues? And do you have a driver's license? When the answer is no, no, and no, well, you can go fix your dues, you can go get a drug test. If you don't have a driver's license and you're not from the area, I can't get you to work on time. So when you call me up and I say look buddy, you gotta have a driver's license, when you start tellin' me "you're not gonna put this nigger to work. You're not gonna give this nigger a job. You're nothin' but a white shine," that's the conversation I had with someone who I told you would be wasting your time to come up here because I cannot put you to work. Okay, so if you wanna hear a 3-minute conversation, and listen to what I heard, and what [REDACTED] heard, and when I said to him, "is this your excuse?" There's a whole more to this audio tape than that. That was selectively cut so it makes it look like I'm saying just that.

DCR asked Respondent to identify and provide contact information for the Atlanta caller whom Woodall alleged subjected him to derogatory language. Respondent was unable to produce this information.

DCR interviewed the individual who recorded the video. The witness stated that Woodall had been yelling at [REDACTED] for roughly three or four minutes before he started recording. He stated that Woodall was upset that [REDACTED] and a Black apprentice had missed a scheduled exam, and estimated that Woodall used the word "nigger" at least three or four times during the conversation.<sup>1</sup> The witness also stated that Woodall uses racially derogatory language, specifically, the word "nigger" in the Union hall "every single day."

DCR made multiple, unsuccessful attempts to contact [REDACTED] for an interview.

In an interview with DCR, a Black, female and former Union member, [REDACTED] (no relation to the individual described above) stated that while she never heard Woodall make racially derogatory comments, she was subjected to racism and sexism on the job that went unaddressed. She stated that throughout her time working as a journeyman, her white, male co-workers repeatedly subjected her to a hostile work environment. The witness told DCR that, among other things, her white, male co-workers, many of whom were union members, called her "nigger," locked her in the bathroom for hours at a time, repeatedly smacked her on the buttocks, once attempted to intentionally pour hot liquid on her feet, and gave her a pink hard hat to wear. [REDACTED] stated she reported the harassment to Woodall and other business agents on six or seven occasions. She told DCR that despite her repeated complaints and requests for help, Respondent did not conduct an investigation or attempt any remedial or corrective action and, instead, ignored her pleas for help.

DCR asked Respondent to produce its anti-discrimination policies and describe its anti-discrimination and anti-harassment training practices. In response, Respondent stated:

Local 11 has an anti-discrimination policy that is posted on the Union's bulletin board. Local 11 has no authority to require its members to attend any anti-

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<sup>1</sup> The witness told DCR that he stopped working with the Union on or about November 23, 2018. He stated that he recorded the video "a few months" prior to his departure, but was unable to provide a more specific date.

discrimination training. Rather, this obligation is left to the members' employers which have their own anti-discrimination policies. However, our attorneys recently conducted a training seminar for [its] agents.

Respondent did not produce a copy of the anti-discrimination policy purportedly posted on its bulletin board or any evidence that its agents underwent training.

**d. Reprisal – job assignments**

Complainant provided DCR with an audio recording of a conversation between her and Woodall, which she stated took place in early February 2019, after Woodall became aware that his use of racial slurs was captured on video. Complainant told DCR that during the meeting, Woodall told her to give him a copy of the video, but she refused. DCR reviewed and transcribed the audio file which contained the following exchange:

**RW:** Now give me the tape of me saying the N-word.

**KG:** I don't have the tape! But I heard the tape.

**RW:** What was I saying?

**KG:** "Nigger."

**RW:** I just, I just, I just – (inaudible)

**KG:** (quoting Woodall) – "It was you and the nigger." You was goin' crazy. "It was you and the fuckin nigger that didn't show up that day."

**RW:** Time out. Who was I talking to?

**KG:** I don't know. I don't wanna say.

**RW:** Look, there's something wrong here because you don't know me. You don't know nothin' about me. You're way off base on this. Maybe I was yelling at the TV about all this fuckin bullshit that goes on.

**KG:** I don't know. It just made me feel like is that how he feel about me? Is that how he look at me? Is that how he see me?

**RW:** Kesha, you don't know me, and you don't –

**KG:** I'm just tellin you.

**RW:** I always considered you to be one of my favorites here. I had people ask me all the time, why do you look after her like that?



...

**RW:** Get it out of your head that I have a fuckin' problem with you. I don't. I don't until you start fuckin yelling at me for shit. I'm trying my hardest. If that's not good enough for you, I can just say fuck everybody and walk away from this. Then let's see what you get. This is nothing but a fuckin' headache for me. I'm here at 5 in the morning and I don't get home until late at night. And I hear shit all day long. And then all I get is kids dyin' every motherfuckin day. We just had another one this morning. One of our members – 30 years old – dropped dead doing fuckin heroin, and then you with this every fuckin day. I'm really at the end. When you try your hardest to help people and then everybody goes, ya know what, fuck Woodall. Why would I need this? I can retire just like that asshole did.

Later in the recording, Woodall, referring to former Union member [REDACTED], who had filed a lawsuit against Respondent and Woodall, stated, "Once you sue the local, forget it, you're done."

In his interview with DCR, Woodall did not dispute Complainant's claim that the conversation transcribed above took place in early February 2019 - consistent with Complainant's timeline of events.

In the verified complaint, Complainant alleged that after she declined Woodall's request to provide him with the video recording, Woodall retaliated against her by assigning her to short-term jobs, rather than steady, longer term jobs. As stated, DCR reviewed a copy of Complainant's job history showing all of her job assignments dating back to when she joined the Union in 1998. That review revealed that prior to February 2019, specifically, between October 2018 and early-January 2019, Complainant was primarily assigned steady, full time work:

| <b>Payroll From Date</b> | <b>Payroll Thru Date</b> | <b>Total Hours</b> | <b>Contractor Name</b>    |
|--------------------------|--------------------------|--------------------|---------------------------|
| October 7, 2018          | October 13, 2018         | 43                 | Highland Steel, LLC       |
| October 14, 2018         | October 20, 2018         | 47.5               | Highland Steel, LLC       |
| October 21, 2018         | October 27, 2018         | 47.5               | Highland Steel, LLC       |
| October 28, 2018         | November 3, 2018         | 47.5               | Highland Steel, LLC       |
| November 18, 2018        | November 24, 2018        | 16                 | Mount Construction Co.    |
| November 25, 2018        | December 1, 2018         | 40                 | Mount Construction Co.    |
| December 2, 2018         | December 8, 2018         | 40                 | Mount Construction Co.    |
| December 9, 2018         | December 15, 2018        | 40                 | Mount Construction Co.    |
| December 16, 2018        | December 22, 2018        | 40                 | Mount Construction Co.    |
| December 30, 2018        | January 5, 2019          | 8                  | Structural Services, Inc. |

Complainant did not work in January 2019 due to an injury. However, Complainant's assignments beginning in February 2019, around the time she declined Woodall's request for the video, indicate that Woodall primarily assigned Complainant short term work at different companies where she worked less than 25 hours per pay period, with few exceptions:

| Payroll From Date | Payroll Thru Date | Total Hours | Contractor Name                |
|-------------------|-------------------|-------------|--------------------------------|
| February 3, 2019  | February 9, 2019  | 19          | Jemco Erectors                 |
| February 4, 2019  | February 10, 2019 | 22.25       | American Pile & Foundation LLC |
| February 11, 2019 | February 17, 2019 | 8           | Sarens USA, Inc.               |
| February 13, 2019 | February 19, 2019 | 16          | Precast Services, Inc.         |
| February 17, 2019 | February 23, 2019 | 24          | The Nicholson Corporation      |
| February 24, 2019 | March 2, 2019     | 40          | The Nicholson Corporation      |
| March 17, 2019    | March 23, 2019    | 16          | Kas Construction Consult.      |
| March 24, 2019    | March 30, 2019    | 2           | Kas Construction Consult.      |
| March 25, 2019    | March 31, 2019    | 8           | Stonebridge, Inc.              |

According to the work records, after Complainant filed the verified complaint in April 2019, Woodall assigned Complainant to a steady, long term job with Stonebridge, Inc., where, the records show, she typically worked between 40 and 52 hours per week through July 2019.

In his interview with DCR, Woodall denied intentionally assigning Complainant short term work in retaliation for her refusal to provide him with the video. In response to records showing Complainant’s assignments in February and March, Woodall stated that February and March are typically Respondent’s slowest months, and that most of Respondent’s members work reduced hours during that time of year.

DCR reviewed Respondent’s Weekly Steward’s Reports, which show how many hours each Union member assigned to a specific contractor worked per week. Those records did not support Woodall’s claim in this regard. Specifically, the records did not show a discernable pattern of reduced hours in February and March compared to any other months of the year.

In her DCR interview, █████ characterized Woodall as “vindictive.” Specifically, she stated, “If you don’t fall in line, he will make you pay. He will put you on short jobs and one-day pops.” – i.e., job assignments that Woodall knew would only last one day. █████ stated that each time she spoke to Woodall about the abuse she was subjected to, Woodall would “yell and scream” at her and assign her one-day pop jobs. █████ recalled that in 2015, she contacted a State Senator’s office to complain about Woodall’s conduct and the abuse she was experiencing on the job. █████ told DCR that, after her complaint, she was called into Woodall’s office, where Woodall admonished her and told her to stop complaining. █████ added that she has not been an active Union member since 2017 and that she will not return due to the racism and sexism she faced, and the lack of support she received from Respondent.

**e. Additional allegations of hostile environment**

During the course of DCR’s investigation of Complainant’s complaint, DCR learned of other allegations of hostile work environment against Woodall. During DCR’s interview of █████, a former Union member who filed a lawsuit against Woodall and Respondent, █████ alleged that Woodall commonly referred to women as “split tails” – a derogatory reference to women. He also stated that Woodall often threatened to “take care” of any union member that makes a complaint to “the international”, the Union’s headquarters. █████ stated that these statements had a chilling

effect on members and caused them to fear that Woodall would retaliate against anyone that complained about him.

████ also stated that Woodall frequently made prank calls to members and constituents, pretending to be █████. He stated that Woodall used a mass message broadcasting program called “Dial My Call” which allowed him to input █████ phone number and make prank phone calls to staff and constituents that appeared to originate from █████. █████ said that Woodall did this as a way to tarnish █████ reputation. He stated that the prank calls consisted of sexually explicit voice mails and derogatory impersonations of a stereotypical southern black man. █████ stated that only he and Woodall had access to the “Dial My Call” software and he was thus able to download the recordings off Respondent’s server. █████ provided a sampling of these recordings to DCR. While DCR cannot determine whether the prank calls were in fact made by Woodall, the speaker uses highly inappropriate, derogatory language.

████ told DCR that he complained about Woodall’s conduct to the appropriate parties but Respondent failed to take any remedial action. He said Woodall retaliated against him every time he lodged a complaint. He alleged that Woodall hacked into his personal accounts using passwords he found on █████ work computer and downloaded his personal photographs, some of which were nude photos of █████ and/or his girlfriend. He alleged that Woodall showed the photos to others and told staff that █████ was a sexual predator and a convicted felon.

████ also provided DCR with photographs that he alleged Woodall either mailed to him, taped to his work computer, placed in his work bag, or left on his desk. The photographs depict pornographic images, including, but not limited to, two men preparing to engage in oral sex with accompanying text stating, “████ getting ready for work,” the same two men engaging in oral sex with accompanying text stating, “████ at work,” a face with a penis for a nose with accompanying text stating, “Big nose faggot █████,” a penis with accompanying text stating, “Attn: █████,” and a man on all fours presenting his buttocks and penis with accompanying text stating, “████’s favorite view,” “Tongue here faggot █████,” and “Big nose █████ blows men.”

During his interview, DCR gave Woodall an opportunity to respond to █████ allegations. Woodall declined the opportunity on the advice of his counsel, citing █████ pending lawsuit.

## ANALYSIS

At the conclusion of an investigation, DCR is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2. “Probable cause” for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” *Id.* If the Director determines that probable cause exists, the matter will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). If, on the other hand, the Director finds there is no probable cause to believe the LAD has been violated, that finding is a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial “culling-out process” in which the Director makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Id.

**a. Differential treatment**

Under the LAD, it is unlawful for a labor union or labor organization to accord differential treatment to its members or applicants on the basis of membership in a protected class, including race or color. N.J.S.A. 10:5-12(b). Differential treatment is a form of illegal discrimination that occurs when a person in a protected class is treated less favorably than those not in the protected class. In enacting the LAD, the Legislature declared that discrimination “threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State.” N.J.S.A. 10:5-3.

Here, the investigation found sufficient evidence to support Complainant’s claim that Respondent engaged in race discrimination in job referrals. The investigation found that Respondent’s referral system is largely a manual system that gives Woodall discretion to decide which members are referred to a particular job. Members are required to physically sign the out-of-work book and be present at the union hall to receive a job referral. Woodall also manually collects the job tickets, or jobs available for referral, and “sorts” them behind closed doors before calling out members for specific jobs. The process is ripe for manipulation and allows Woodall to hold back certain jobs for members who may not be first in line for a referral on a particular day. While Woodall claims he does not necessarily know how long each job will last, he admitted that many times he may have an idea of the duration of a particular job. Complainant told DCR it was recognized that the American Dream, Newark Airport, Goethals Bridge, and Bayonne Bridge projects were large jobs that would generally be of longer duration. Records reviewed by DCR confirm that allegation.

The investigation found sufficient evidence to support Complainant’s claim that Woodall manipulated the referral system to refer white members to large-scale jobs of longer duration while referring Black members to jobs of shorter duration. On September 7, 2018, Complainant was referred out to a job that lasted less than two weeks, while that same day white members who signed the out of work book *after* Complainant were referred to the Bayonne Bridge project, a long-term project. Similarly, on September 19, 2018, Complainant was referred out to another job of less than two weeks, while that same day other members who signed the out-of-work book after her were assigned to other jobs, including the Bayonne Bridge project.

Consequently, based on the evidence reviewed during the investigation, DCR finds probable cause to credit the Complainant’s allegations of differential treatment based on race.

**b. Hostile Environment**

The LAD prohibits harassment on the basis of membership in a protected class, including race or color. The prohibition applies to labor organizations. N.J.S.A. 10:5-12(b). In enacting the

LAD, the Legislature declared " discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundations of a free democratic State. . . ." N.J.S.A. 10:5-3. Race-based harassment is a form of discrimination that is forbidden under the LAD. Taylor v. Metzger, 152 N.J. 490, 498 (1998). When a Black complainant alleges racial harassment under the LAD, she must demonstrate that the defendant's "conduct (1) would not have occurred but for the employee's [race]; and [the conduct] was (2) severe or pervasive enough to make a (3) reasonable [African American] believe that (4) the conditions of employment are altered and the working environment is hostile or abusive." Id., citing Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 603-04 (1993). The standard contemplates "the cumulative effect of the various incidents, bearing in mind that each successive episode has its predecessors, that the impact of the separate incidents may accumulate and that the work environment created may exceed the sum of the individual episodes." Lehmann, 132 N.J. at 607. While the cumulative effect of race-based hostility may give rise to a finding of severe or pervasive discrimination, a racially hostile work environment may also be found where a single racial epithet is uttered by a supervisor. Taylor, 152 N.J. at 498.

Here, DCR's investigation found sufficient evidence to support a reasonable suspicion that Respondent subjected Complainant to a hostile environment based on race. Complainant alleged that Woodall, Respondent's Business Manager, who was charged with giving job assignments and was the highest ranking official in the Union hall, regularly used racial slurs at the union hall. Complainant produced a video of Woodall referring to a Black Union member as a "nigger," and a "shine," and calling a white Union member a "white shine." Complainant told DCR that the use of racial epithets by the Business Manager was offensive and disconcerting to her, as she explained to Woodall when she confronted him about his comments, stating, "It just made me feel like is that how he feel about me? Is that how he look at me? Is that how he see me?"

One of Complainant's coworkers told DCR that Woodall used such derogatory language in the Union hall "every single day." Another witness told DCR that when she complained to Woodall and others about racism and sexism that she experienced on the job, Respondent ignored her complaints, and the offensive conduct continued unabated.

There is no evidence that Respondent has in place a policy that prohibits discrimination or harassment, or that it has a mechanism in place to receive and respond to complaints of unlawful discrimination. Despite requests from DCR, Respondent did not provide a written policy that addresses complaints of discrimination by its members. And, Woodall – the person accused of using racial slurs - stated that if he witnessed the use of racial slurs, he would merely "instruct the individual not to use such language."

Further, DCR obtained information that, while outside the scope of the instant complaint, revealed further evidence of a possible hostile environment at Respondent's facility. Specifically, a witness produced evidence that someone from the Union, if not Woodall, allegedly planted or sent him pornographic photos riddled with homophobic language, and used a Union-owned mass broadcasting system to harass him and damage his reputation by leaving offensive, racially and sexually-charged voice mails using his phone number. During a DCR interview, Woodall declined to respond to these allegations.

At this threshold stage in the process, there is a sufficient basis to warrant “proceed[ing] to the next step on the road to adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988). Therefore, DCR finds probable cause to support Complainant’s allegations of a hostile environment based on race.

**c. Reprisal**

Consistent with the broad remedial purpose of the LAD, the law prohibits retaliation against persons who engage in protected activity including asserting an LAD violation, supporting someone who asserts an LAD violation, or refusing to engage in or condone discriminatory conduct. N.J.S.A. 10:5-12(d). The prohibition applies to “any person,” including a labor organization, who retaliates against its members for engaging in LAD-protected activity.<sup>2</sup> The LAD's anti-retaliation provision, an “essential aspect of the LAD,” “ ‘is broad and pervasive, and must be seen as necessarily designed to promote the integrity of the underlying anti-discrimination policies of the [LAD] by protecting against reprisals 'any person' who has sought to protect his or her own rights not to be discriminated against....’ ” Quinlan v. Curtiss-Wright Corp., 204 N.J. 239, 259 (2010) (quoting Craig v. Suburban Cablevision, Inc., 274 N.J. Super. 303, 310 (App.Div.1994), aff'd, 140 N.J. 623 (1995)). The LAD prohibits retaliation against an individual because they reported, opposed, or objected to any practice prohibited by the LAD. N.J.S.A. 10:5-12(d); N.J.A.C. 13:4-12.1; Rios v. Meadowlands Hospital, Inc., 463 N.J. Super. 280 (App. Div. 2020); Battaglia v. UPS, 214 N.J. 518 (2013)(male employee's objection to vulgar comments about women made by a supervisor constitutes protected activity contemplated by the LAD); Craig v. Suburban Cablevision, Inc., 140 N.J. 623 (1995)(co-workers who supported employee who claim she was discriminated against had standing to sue for retaliatory discharge). A finding of reprisal requires a showing of a causal connection between the LAD-protected activity – i.e., Complainant’s objections to Woodall’s use of racist language during the taped conversation and refusal to provide Woodall with the video of him using racial slurs - and Respondent’s decision to reduce her work assignments.

Here, DCR’s investigation found sufficient evidence to support a reasonable suspicion that Respondent retaliated against Complainant by giving her job assignments of short duration. The investigation found that Complainant spoke to Woodall about his comments and declined to provide him with the video in or around early February 2019. Records show that in the months prior - specifically, between October 2018 and early-January 2019, Complainant was primarily assigned steady, full time work, and typically worked 40 hours per week or more. However, within weeks following her interaction with Woodall, Woodall assigned Complainant primarily to shorter term work at different companies where she worked less than 25 hours per week with few exceptions - a sudden reversal when compared to the duration of her previous assignments.

The timing of Woodall’s actions towards Complainant is sufficient, at this point in the investigation, to credit her allegations of reprisal. See Young v. Hobart West Group, 385 N.J. Super. 448, 467 (App. Div. 2005)(temporal proximity alone may support an inference of LAD retaliatory conduct).

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<sup>2</sup> The LAD defines “person” as “[O]ne or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.” N.J.S.A. 10:5-5(a).

The evidence did not support Respondent’s assertion that the decline in Complainant’s work during February and March was simply part of the cyclical nature of the work, and that all union members had less work during that time. Moreover, almost simultaneous with Complainant’s DCR complaint in April 2019, Complainant’s weekly work hours increased. Records show that Complainant typically worked between 40 and 52 hours per week from April 2019 through July 2019.

Further, witnesses interviewed by DCR characterized Woodall as “vindictive,” stating, “If you don’t fall in line, he will make you pay.” One witness stated that after she complained of discrimination, Woodall assigned her “one day pop jobs” – i.e., job assignments that Woodall knew would only last one day. She also told DCR that Woodall would “yell and scream” at her, and tell her to stop complaining, when she attempted to report discriminatory conduct.

Another witness alleged that after he reported allegations of discriminatory harassment against Woodall, Woodall retaliated against him by hacking into his personal accounts, downloading his private photos, and showing them to others.

Finally, in an audio recording reviewed by DCR, Woodall is heard stating, “Once you sue the local, forget it, you’re done.”

At this threshold stage in the process, there is a sufficient basis to warrant “proceed[ing] to the next step on the road to adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988). Therefore, the Director finds probable cause to support Complainant’s allegations of unlawful reprisal.

August 16, 2022  
DATE



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Rosemary DiSavino, Deputy Director  
New Jersey Division on Civil Rights