STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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| JULIE HEMBROUGH, | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| vs. | ) | Case No. 03-3145 |
| | ) | |
| SIKORSKY SUPPORT SERVICES, | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

## RECOMMENDED ORDER

This cause came on for formal hearing before Diane Cleavinger, Administrative Law Judge with the Division of Administrative Hearings, on February 2 and 3, 2004, in Pensacola, Florida.

## APPEARANCES

For Petitioner: Debra Cooper, Esquire
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For Respondent: Gregor J. Schwinghammer, Esquire
Gunster, Yoakley & Stewart, P.A.
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777 South Flagler Drive, Suite 500
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## STATEMENT OF THE ISSUES

The issues in this proceeding is whether Petitioner was the subject of unlawful sexual harassment by Respondent and whether Petitioner was subjected to unlawful retaliation for

participation in an activity protected under Chapter 760, Florida Statutes.

## PRELIMINARY STATEMENT

On October 1, 2002, Petitioner, Julie Hembrough (Petitioner), filed a Charge of Discrimination against Respondent, Sikorsky Support Services (Sikorsky or Respondent). The Charge alleged that she was subjected to sexual harassment during her employment with Sikorsky, and further alleged that after complaining about the alleged harassment, she was terminated in retaliation for making such a complaint. Respondent denied the allegations in the Charge.

The allegations of sexual harassment and retaliation were investigated by the Florida Commission on Human Relations (FCHR). On July 28, 2003, FCHR issued its determination, finding "no cause." On August 29, 2003, Petitioner filed a Petition for Relief. The Petition reiterated the allegations in her Charge; Respondent denied the allegations contained in the Petition.

At the final hearing, Petitioner testified in her own behalf, and called two witnesses. Additionally, Petitioner offered three exhibits into evidence. Respondent called six witnesses to testify, and offered eight exhibits into evidence. Respondent filed a Proposed Recommended Order on March 12, 2004. Petitioner did not submit a proposed recommended order.

## FINDINGS OF FACT

1. Petitioner, Julie Hembrough, was a female employee of Respondent, Sikorsky Support Services. She was employed as a senior calibration technician at the Pensacola Naval Air Station (Pensacola NAS). As part of her duties she was in charge of monitoring the quality of the work her section performed and the employees who performed that work. Petitioner came to work at Pensacola NAS with Sikorsky's predecessor, Lear Siegler (LSI).

2. Sikorsky is a "drug free" workplace and has a written policy, entitled "Sikorsky Support Services, Inc. Strike Pensacola, Florida Drug-Free Work Force and Work Place Manual," as part of its collective bargaining agreement. The drug free workplace policy requires periodic random drug testing of employees. The policy states:

> An employee who refuses to take a drug test under Section . . .V.5 Random Testing will be terminated for violation of this policy.

3. Petitioner went through an initial drug test when Sikorsky took over the Pensacola NAS maintenance contract and hired the LSI workers. Petitioner was aware that random drug testing occurred and was required by Respondent. She knew that there had been previous random drug tests at the Pensacola NAS.

4. Petitioner was considered a hard worker and competent technical leader of her calibration section. However, there were personality conflicts throughout the section in which

Petitioner worked. The problems in the section stemmed from a weak supervisor, who was eventually terminated, who did not hold employees to the performance standards for the section, and who did not support the technical leaders, like Petitioner, when they tried to enforce those performance standards. The supervisory problems resulted in various factions in the work place. The factions were comprised of both male and female employees.

5. Petitioner had particular conflicts with two employees, Roger York and Leon Mills. Petitioner herself testified that her conflicts with Roger York stemmed from a work disagreement regarding the repair of certain Navy radios. Mr. Mills did not want to perform certain tests on Navy radios that Petitioner thought were required for thorough testing of the radios. Petitioner also felt, with some factual basis, that Mr. Mills was not honest with her when he represented to her that he had performed such tests. Petitioner's problems with Leon Mills were of a similar nature to those with Mr. York. However, Mr. Mills accused Petitioner of fraud in relation to trying to get rid of him. The evidence did not demonstrate that any of the difficulties with these men were related to Petitioner's gender, but what little unspecified name-calling or derogatory statements there were was the result of animosity toward Petitioner and her supervisory role. Some workers considered

Petitioner a “spy” for the Respondent. Other workers accused Petitioner of trying to “get rid of” Leon Mills through fraudulent means. Indeed Mr. Mills complained to the union about Petitioner and that he thought she was trying to get rid of him. Feelings against Petitioner were so strong that, even though she was a member of the union, she was asked by the union shop steward to not attend a union meeting. Respondent had no input or control over the union’s request to Petitioner.

6. In September 2000, Petitioner orally complained to her manager, Joe Diehl, that another male worker used the word "bitch" and talked about his sex life and that someone else told her to put on some makeup. The details of the facts surrounding these comments were not introduced into evidence. Therefore, it is unclear if they were harassing in nature. Petitioner was never physically grabbed or groped by anyone at Sikorsky, was not sexually propositioned, and no one ever threatened her with adverse action if she refused to perform any type of sexual activity. She did not see open pornography in the workplace. Moreover, such sporadic comments do not constitute sexual harassment. She again complained in August 2001. The actual written complaints were not introduced into evidence. In essence, the bulk of the oral complaints revolved around the work problems in the section and the multi-gender employee animosity toward Petitioner.

7. Sikorsky took Petitioner's complaints seriously and investigated the complaints.

8. During the investigation, people from the "upper echelon" of the company were brought in to investigate. However, the investigators could not corroborate Petitioner's claims of sexual harassment. They did find that the section had various problems as described above. Nevertheless, to make sure that everyone understood the seriousness of sexual harassment issues, the site manager held a training session on Sikorsky's sexual harassment policies. Petitioner attended the training session. The site manager also personally delivered the findings of the investigators to Petitioner, to show he was involved and to make Petitioner understand that Sikorsky was taking the issue seriously. Petitioner was invited to come forward with any complaints she may have at any time. After advising Petitioner of the results of the investigation, the site manager spoke to her several times encouraging her to come forward with any issues. He stopped by Petitioner's work area in the section and asked if she was having any problems. Petitioner told him things were going okay and that she was not having any problems.

9. Petitioner testified that sometime in May, she advised her supervisors that she intended to file another internal complaint because of actions by the union and because she had

found “hot sauce” on her vehicle. Petitioner complained that the union accused her of committing fraud and that she was excluded from a union meeting. However, as indicated above, it was the union steward, not Sikorsky, that asked Petitioner not to attend the union meeting. Sikorsky was not involved in the union meeting or any accusations of fraud by the union against Petitioner. These facts do not support a finding of sexual harassment by Sikorsky.

10. The “hot sauce” incident occurred while her vehicle was parked in an open, unfenced parking lot owned by the U.S. Navy. The Navy was responsible for security in the parking lot. Petitioner discovered that someone had poured hot sauce over her vehicle. Upon seeing the substance, Petitioner got in her vehicle and drove home. She called her manager from her vehicle to inform him about the incident. He advised her it was probably “too late” to do anything since she had left the scene. Petitioner did not see anyone put the substance on her vehicle, and does not know who did it, although she strongly suspects it was a particular coworker. Petitioner never reported the incident to Navy security. Without more detail and given the animosity in the workplace with allegations of spying and fraud, the incident does not support any finding that Petitioner was sexually harassed or that Sikorsky was responsible for such alleged harassment.

11. On May 6, 2002, seventeen Sikorsky employees were selected for random urinalysis at Sikorsky; five employees were selected as alternates. Petitioner was one of the employees selected.

12. Sikorsky employs a third-party contractor, Professional Health Examiners (PHE), to select the individuals to be drug tested and to administer the drug test. PHE and Sikorsky use a "name blind" system to select individuals for testing. Before a test day, Sikorsky's administrative manager sends a list of partial social security numbers to PHE. Sikorsky does not give names to PHE, but only partial social security numbers. PHE then inputs the partial social security numbers into a computer program, which randomly selects a percentage of the numbers. Once the numbers are selected, PHE sends the list of numbers to Sikorsky. The administrative manager then matches the selected numbers with an employee list to determine the employees named. On the day of the test, those selected are called to take the test at a specific time and location.

13. Petitioner was notified of her selection at approximately 7:15 a.m. and told to immediately report to the test site to take the test. She did not go to the drug test site, but went directly to the office of her manager, Joseph Diehl. Petitioner refused to take the drug test at the time the

test was scheduled. At the time, Petitioner had no knowledge of the drug testing selection procedures and did not ask what the procedures were; she also wanted to speak with her attorney. Joseph Diehl called the administrative manager. At approximately 7:30 a.m., the administrative manager went to Diehl's office. Since neither had been confronted with a situation similar to this one, Diehl and the manager allowed Petitioner to call her lawyer. However, her lawyer was unavailable.

14. The morning of the drug test, the site manager and Diehl's supervisor, Joe Colbert, had jury duty and had not arrived. Therefore, Mr. Diehl called Dan Pennington, the program manager, for guidance. Mr. Pennington stated in more colloquial language, that Petitioner must either immediately submit to the drug test per corporate policy or be terminated. Mr. Diehl, again in more colloquial language, passed the direct order to Petitioner to take the test or face termination. Petitioner said she would not take the test without calling her lawyer.

15. Later in the morning, Petitioner spoke with Michael Neri, her supervisor, and told him she was quitting. Mr Neri had been hired only three weeks earlier and was familiar with the drug test policy. Mr. Neri told Petitioner to take the

test, and that if she did not take the test, she would be terminated.

16. Petitioner met with the site manager, Joe Colbert, after 9:00 a.m. He told her to take the test or she would be terminated. He told her that once she took the test, her lawyer could take whatever steps she wanted to take, but that she needed to take the test.

17. All of Petitioner's supervisors wanted Petitioner to take the test because she was a good employee whom they did not want to terminate.

18. Petitioner did not take the test. Mr. Colbert then suspended Petitioner and gave her a letter of suspension, pending termination. The letter stated that the reason for the suspension was her refusal to take the drug test at the appointed time. Because Petitioner suggested that she had been targeted for selection for the drug test, Mr. Colbert assigned one of his managers, Frank Eggleton, to conduct an investigation of the procedures. Mr. Colbert told Petitioner that if the investigation came back clean, she would be terminated. Later in the morning, at approximately 11:00 a.m., on May 6, 2002, Petitioner called Joe Diehl and informed him that she had spoken to her lawyer and was willing to participate in the random drug testing. However, it was too late. Mr. Colbert refused to allow Petitioner to take the test at that time because she had

already been suspended. Mr. Colbert testified that Petitioner had had her opportunity more than once to participate. He was concerned that if he made exceptions to the mandatory random drug testing policy, then it would open the door for everyone to seek to defer taking a random drug test. This rationale was reasonable and not pretextual.

19. Mr. Colbert told Mr. Eggleton to investigate how individual employees were selected for the random drug test and to determine if Petitioner had somehow been targeted. Mr. Colbert did not pressure Mr. Eggleton to reach any particular conclusion and told him to conduct a thorough, open investigation. Mr. Eggleton visited the facilities of PHE to determine how individuals were selected. After conducting his investigation, Mr. Eggleton reported to Mr. Colbert that the drug-testing contractor used a name-blind system for selection and that there was no indication that Petitioner had been targeted. PHE had nothing to do with the decision to terminate Petitioner and Sikorsky did not pressure PHE to select Petitioner for the drug test. In fact, there was no evidence at the hearing that Petitioner was targeted for drug testing.

20. After receiving the investigation report, Mr. Colbert decided to terminate Petitioner’s employment based on her refusal to take the drug test at the appointed time. He

obtained the approval of the necessary authorities at Sikorsky. On May 10, 2002, Petitioner's employment was terminated.

21. In April 2002, employee Brian McHenry was selected for random drug testing. Mr. McHenry, prior to discovering he was going to be drug tested, used the restroom just before he was told of the drug test. As a result, Mr. McHenry was unable to produce a sufficient urine sample to allow PHE to perform a the test. He took part, tried to produce a sample, and actually produced a urine sample, but it was not enough for testing purposes. After a few hours of drinking fluids Mr. McHenry still could not produce a sufficient urine sample. Mr. Colbert wanted Mr. McHenry to stay late until he could provide a sample, but Mr. McHenry had a serious child care problem that day and needed to pick up his child in Alabama. Because Mr. McHenry had tried to complete the drug test, and because of the child care problem, Mr. Colbert told Mr. McHenry to go to the test facility in the morning. Unlike Petitioner, McHenry did not refuse the drug test; he could not provide a sufficient urine sample. The McHenry case is not similar to Petitioner's situation. Moreover, Mr. Colbert testified that if Mr. McHenry had refused to take the test, he would have been fired.

22. Likewise, there was no evidence at the hearing that Petitioner was terminated because of her previous internal complaints. There was no evidence Petitioner was selected for

drug testing because of her previous complaints. In fact Mr. Colbert did not have knowledge of Petitioner's two complaints, since both complaints were handled by the previous site manager. Mr. Colbert was aware of Petitioner's complaint about hot sauce thrown on her car, but said he did not even consider it a sexual harassment issue.

23. Petitioner did not put forth sufficient evidence to prove a claim of sexual harassment. She did not introduce evidence that any conduct she complained of was severe or pervasive, or that the allegedly harassing conduct was because of her gender, as opposed to some other reason such as thinking she was a spy. Likewise, Petitioner failed to establish that she was terminated for any complaints she had made to Respondent. Therefore, the Petition for Relief should be dismissed.

## CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this cause. § 120.57(1), Fla. Stat.

25. Under the provisions of Section 760.10(1), Florida Statutes, it is unlawful employment practice for an employer:

> (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such

> individual's race, color, religion, sex, national origin, age, handicap, or marital status.
>
> * * *
>
> (7) . . . to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

26. FCHR and the Florida courts have determined that federal discrimination law should be used as guidance when construing provisions of Section 760.10, Florida Statutes. See Brand vs. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994); Florida Dept. of Community Affairs vs. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

27. The Supreme Court of the United States established in McDonnell-Douglass Corp. vs. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII, which are persuasive in cases such as the one at bar. This analysis was reiterated and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

28. Pursuant to this analysis, Petitioner has the burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. If a prima facie case is

established, Respondent must articulate some legitimate, non-discriminatory reason for the action taken against Petitioner. Once this non-discriminatory reason is offered by Respondent, the burden then shifts back to Petitioner to demonstrate that the offered reason is merely a pretext for discrimination. As the Supreme Court stated in Hicks, before finding discrimination, "[t]he fact finder must believe the plaintiff's explanation of intentional discrimination." Hicks, 509 U.S. at 519.

29. In Hicks, the Court stressed that even if the fact-finder does not believe the proffered reason given by the employer, the burden remains with Petitioner to demonstrate a discriminatory motive for the adverse employment action. Id.

30. Petitioner complains of retaliation by Sikorsky after she complained about "harassment." To establish a prima facie case of retaliation, Petitioner must show that: (1) she engaged in statutorily protected activity; (2) an adverse employment action occurred; and (3) the adverse action was causally related to her protected activities. Little vs. United Technologies, 103 F.3d 956, 959 (11th Cir. 1997).

31. Petitioner has failed to make out a prima facie case of retaliation. First, it is unclear she engaged in statutorily protected activity. Section 760.10, Florida Statutes, provides that it is unlawful to discriminate "against any person because

that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section." Here, Petitioner did not offer her underlying complaints into evidence. Her testimony suggested that many of the complaints dealt with work-related issues, such as some of the technicians not doing their jobs properly.

32. Petitioner's retaliation claim also fails because she has failed to offer any evidence of a causal connection between her complaints and the adverse action. Petitioner's only testimony as to why she believed she was targeted was that three women were selected for drug testing. There is no evidence of any link between Petitioner's complaints and either her termination or her selection for drug testing.

33. Moreover, even assuming Petitioner made out a prima facie case, Sikorsky articulated a legitimate, non-retaliatory reason for her termination. She refused to take a random drug test, as required by company policy. Mr. Colbert, the site manager, along with other managers, repeatedly told Petitioner to take the test or be fired, but she would not take the test. After over two hours, Mr. Colbert suspended Petitioner, pending investigation into the selection procedures. The reason for her

termination was not pretextual, and therefore her retaliation claim fails.

34. Petitioner attempted two arguments regarding the drug test, but neither changes the result. First, she argued that she did not "refuse" the drug test, but merely asked for more time. Her argument seems to be that, because she arguably did not refuse, she did not violate the Sikorsky drug policy. The issue is whether Petitioner was terminated because of her complaints, or whether she was terminated for her actions regarding the drug test. The question of whether her refusal fits the definition in Sikorsky's drug test policy is a management decision for Sikorsky, and is not the type of decision that courts second-guess. See Mitchell v. USBI, Co., 186 F.3d 1352, 1354 (11th Cir. 1999) ("This Court repeatedly has stated that it will not second-guess a company's legitimate assessment of whether an employee is qualified for a particular position."); Elrod v. Sears, Roebuck and Co., 939 F.2d 1466, 1470 (11th Cir. 1991) (courts are not super-personnel departments that reexamine an entity's business decisions; the only question is whether the employer gave an honest explanation of its behavior.)

35. Petitioner makes a related argument that she eventually agreed to take the test, but was refused. Mr. Colbert would not change his decision because it would have

created a bad precedent in the workplace and undermine the mandatory random nature of the testing. These are the types of decisions managers make. There was no evidence that Mr. Colbert's decision was pretextual.

36. Petitioner also suggests that Sikorsky's stated reason is pretextual because another employee, Brian McHenry, was permitted to take a random drug test on another day. However, the facts of the McHenry test are not similar to Petitioner's refusal to take the random drug test at her appointed time. Mr. McHenry did not refuse testing, took part in the test at the time the test was scheduled, tried to produce a sample, and actually produced a urine sample, but it was not enough for testing purposes.

37. Petitioner's claim seems to rely on the fact that she complained and was later terminated as her causal nexus. However, Petitioner cannot rely on "mere curious timing coupled with speculative theories" to show awareness of protected expression. Raney v. Vinson Guard Service, Inc., 120 F.3d 1192, 1197 (11th Cir. 1997). Such timing alone does not support a finding of retaliation.

38. Petitioner admits she was not subject to quid pro quo harassment, in that no one ever demanded sexual favors in exchange for job benefits or threatened her with job detriments unless she engaged in sexual conduct. From Petitioner's

testimony, her complaints were in the nature of a "hostile work environment." To prove actionable sexual harassment based on a hostile work environment, Petitioner must prove that "the workplace is 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). In order to establish a prima facie case of a hostile work environment, Petitioner must show that:

> (1) She belongs to a protected group.
>
> (2) She was subject to unwelcome harassment.
>
> (3) The harassment was based on her gender.
>
> (4) The harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discrimatorily abusive working environment.
>
> (5) The employer is responsible for such environment under either a theory of vicarious or of direct liability. Miller v. Kensworth of Dothan Inc., 277 F.3d 1269, 1275 (11th Cir. 2002); Succar v. Dade Cty Sch. Bd., 229 F.3d 1343, 1344-45 (11th Cir. 2000).

39. In this case, Petitioner has failed to provide evidence that any alleged harassment was based on her sex, that the alleged harassment was sufficiently severe or pervasive to alter the terms and conditions of her employment, and that Sikorsky should be responsible.

40. To prove harassment, Petitioner must show that her employer, "through sexually-oriented conduct, created an intimidating, offensive, or hostile working environment." Chestnut v. Department of Corrections, DOAH Case No. 01-0604, 2002 Fla. Div. Adm. Hear. LEXIS 140, *15 (DOAH Feb. 1, 2002) (citing Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982)). Sexual harassment involving a "hostile work environment" is based on "bothersome attentions or sexual remarks that are sufficiently severe or pervasive so as to create a hostile work environment." Colon v Environmental Technologies Inc., 15 Fla. L. Weekly Fed. D34 (M.D. Fla. Nov. 5, 2001) (citing Burlington Industries Inc. v Ellerth, 524 U.S. 742, 751 (1998)).

41. In order to prevail in a sexual harassment action of this nature the Eleventh Circuit requires a Petitioner to demonstrate that "but for the fact of her sex, she would not have been the object of harassment." Colon Gupta v. Board of Regents, 212 F.2d 571, 582 (11th Cir. 2000). Further, "personal animosity is not the equivalent of sexual discrimination and is not proscribed by Title VII. . . [T]he plaintiff cannot turn a personal feud into a sex discrimination case." Colon (citing McCollum v. Bolger, 794 F.2d 602, 610 (11th Cir. 1986)). In short, Title VII is not a shield against harsh treatment in the workplace. Succar, 229 F.3d at 1345.

42. To prevail in a hostile work environment claim, a Petitioner must show that any abuse was so severe and pervasive as to alter the terms, conditions, or privileges of employment. Faragher v. City of Boca Raton, 524 U.S. 775, 118 S. Ct. 2275 (1998). The court must assess whether the alleged harassment is offensive on both subjective and objective levels. Colon. Harassment is subjectively offensive when the victim in fact perceived the harassment to be hostile or abusive. Id. Harassment is objectively offensive when a reasonable person would have found the alleged harassment hostile and abusive. Id. In determining whether the conduct at issue is objectively severe and pervasive, the court must look at the "totality of the circumstances." Id. The Supreme Court has established the following factors for evaluating the totality of the circumstances:

> (1) The frequency of discriminatory conduct.
>
> (2) The severity of the discrimination.
>
> (3) Whether the conduct is physically threatening or humiliating or a mere utterance.
>
> (4) Whether the conduct unreasonably interferes with the plaintiff's performance at work. Id. Faragher, 524 U.S. 775 (1998).

These standards for judging hostility are sufficiently demanding to ensure that Title VII does not become a general civility

code. Faragher, supra. These standards filter out complaints attacking the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes and occasional teasing. Faragher. In this case, the evidence demonstrates that the conduct of Petitioner's co-workers at Sikorsky was not so objectively offensive that a reasonable person would have found the alleged harassment hostile and abusive. Indeed, the evidence demonstrates only sporadic incidents of behavior which could arguably be considered related to sex.

43. Even if the Petitioner were to claim that the conduct constituting her claims of discrimination occurred frequently, the Eleventh Circuit has held that such frequent conduct does not constitute actionable sexual harassment. Colon (offensive utterances occurring on a daily basis for three months was not objectively severe and pervasive)(citing Mendoza v Borden Inc., 195 F.3d 1238 (11th Cir. 1999)).

44. Petitioner's sexual harassment claim also fails because she failed to show that any negative conduct was because of her gender. She described arguments with co-workers, but they involved work issues. Other witnesses testified that there were problems in the workplace, but that they were not caused by sexual harassment, but by a weak supervisor who did not enforce standards, and that some employees thought Petitioner was a spy

and/or trying to get rid of a fellow employee. As a result of weak supervision, there were various factions in the workplace that did not get along. The arguments were not just men versus women, but different groups of people at odds with other groups of people. In short, the problem was not based on gender. Thus, there was no evidence that any negative conduct was "because of" Petitioner's gender.

45. The evidence also showed that Sikorsky took action when Petitioner complained. After Petitioner complained in 2001, the site manager himself called a meeting and personally discussed the policies against sexual harassment in the workplace. After that, when the site manager walked through the work area, he would speak to Petitioner and ask her if she was having any problems. These facts do not place responsibility on Respondent for the individual conduct of its employees towards another co-worker. Therefore, Petitioner's claims of retaliation and sexual harassment are not supported by a preponderance of the evidence, and the Petition for Relief should be dismissed.

## RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is,

RECOMMENDED:

That the FCHR enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 26th day of April, 2004, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of April, 2004.

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## NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.