

**BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**PAR ELECTRICAL CONTRACTORS, INC.**

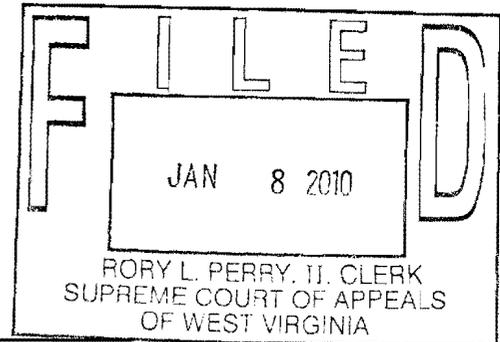
**Appellant,**

**v.**

**No. 35302**

**RICHARD WAYNE BEVELLE and  
THE WEST VIRGINIA  
HUMAN RIGHTS COMMISSION,**

**Appellees.**



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**APPELLANT'S REPLY BRIEF**

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## I. INTRODUCTION

The arguments raised in the Response Brief filed by Appellee Richard Wayne Bevelle (“Mr. Bevelle”) are in direct contravention of the law of West Virginia and stand in sharp contrast to the factual record of this proceeding.

Administrative Law Judge Robert B. Wilson of the West Virginia Human Rights Commission (“HRC”) erred when he ignored the overwhelming weight of the evidence and binding precedent and found that a single, isolated incident of racially-charged language in the workplace was sufficiently severe and pervasive to constitute a hostile working environment. In his Response Brief, Mr. Bevelle relies exclusively (as did Judge Wilson) on dicta from this Court, contained in a footnote, for the proposition that such an isolated incident can create a hostile working environment. This argument is seriously wide of the mark. Simply put, this Court has *never* held that a single incident of discriminatory language in the workplace can support a claim for a hostile working environment. To the contrary, this Court has expressly held that “isolated comments. . . *are insufficient* to create a hostile working environment.” Johnson v. Killmer, 219 W.Va. 320, 325, 633 S.E.2d 265, 271 (2006) (emphasis added). Judge Wilson and Mr. Bevelle are incorrect, as a matter of law, when they rely solely on dicta from a footnote, which is inapposite to express holdings of this Court, to suggest that Mr. Bevelle was subjected to a hostile working environment.

Moreover, Judge Wilson inexplicably ignored the clear weight of the evidence when he found that there was an “objectively reasonable belief” that Mr. Bevelle would be *murdered on the jobsite* such that Mr. Bevelle was constructively discharged from employment. Neither Judge Wilson, nor Mr. Bevelle in his Response Brief, address Mr. Bevelle’s uncontroverted admissions that he was never threatened, never felt endangered, and was not concerned with his co-workers *in any way*. This undisputed evidence demonstrates that Judge Wilson’s decision has no basis in any of the evidence presented at the public hearing of this matter and is plainly wrong.

Finally, Mr. Bevelle claims that PAR Electrical Contractors, Inc. (“PAR”) took no “remedial action whatsoever.” This assertion is directly contrary to all of the evidence adduced at the Public Hearing which clearly demonstrates that PAR acted promptly to address Mr. Bevelle’s complaints and that such actions were effective because no subsequent incident ever occurred. In fact, the very actions taken by PAR are the types of actions that this Court has held to be appropriate in response to a complaint of discrimination or harassment. In short, the clear weight of the evidence and the law indicate that Judge Wilson acted arbitrarily and capriciously and erred as a matter of law. Judge Wilson’s plainly erroneous decision must be reversed.

## II. POINTS AND DISCUSSION OF THE LAW

### A. Judge Wilson’s finding that Mr. Bevelle was subjected to a hostile working environment is contrary to the clear weight of the law and of the evidence and is plainly wrong.

The HRC (and the Circuit Court in its affirmation of the HRC’s decision) ignored twenty years of precedent, from both this Court and the United States Supreme Court, when it found that a single, isolated incident of racially-charged language<sup>1</sup> in the workplace was sufficiently severe and pervasive as to subject Mr. Bevelle to a hostile work environment.

In order for Mr. Bevelle to prove a *prima facie* case of hostile working environment under the West Virginia Human Rights Act (“the Act”) he must prove: (1) that the subject conduct was unwelcome; (2) it was based on his [race]; (3) *it was sufficiently severe or pervasive* to alter his

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<sup>1</sup> In his Response Brief, Mr. Bevelle repeatedly argues that, because the “n-word” was utilized more than once during the single conversation at issue, PAR cannot claim that this was a single, isolated incident. Mr. Bevelle is incorrect. PAR does not dispute that Mr. Tabor utilized a racially derogatory term more than once during his conversation with Mr. Bevelle (although the vast majority of the usage of that word occurred, as Mr. Bevelle has admitted, while Mr. Tabor was attempting – albeit, in his own inappropriate, misguided way – to apologize and explain that he meant no offense by his use of the term). But simply repeating the unacceptable word several times during the same conversation does not change the isolated nature of this incident. In fact, Mr. Bevelle admitted that, for the six months that he worked for PAR prior to this incident, he was not subjected to any discrimination or harassment. Tr. at p. 88. Mr. Bevelle further testified that, after this conversation occurred, he was not subjected to any other potentially harassing conduct. Tr. at p. 92. In short, it is undisputed that the *only* incident of racial harassment that Mr. Bevelle allegedly suffered during the entirety of his employment with PAR was a single conversation that occurred on September 19, 2005 and which could have lasted, at most, no more than one to two minutes. PAR’s characterization of that conversation as a single, isolated incident of inappropriate racial language is fair and accurate.

conditions of employment; and (4) it was imputable on some factual basis to PAR. Fairmont Specialty Serv. v. W. Va. Human Rights Comm'n, 206 W.Va. 86, 95, 522 S.E.2d 180, 189 (1999) (emphasis added). Judge Wilson's decision that a single, isolated incident of racially-charged language in the workplace was sufficiently severe and pervasive to alter Mr. Bevelle's conditions of employment is contrary to the great weight of the law and must be reversed.

In his Response Brief, Mr. Bevelle states that "the use of the word 'nigger' is horribly offensive to an African-American such that even a one-time use of that slur constitutes 'outrageous discriminatory conduct'" that creates a hostile working environment. *See* Bevelle's Response Brief at p. 10. The *only* legal authority that Mr. Bevelle relies on for this proposition, which underpins his entire theory of liability in this case, is *a footnote* from Fairmont Specialty Serv. v. W. Va. Human Rights Comm'n:

Conduct such as use of the "N" word to describe an African-American, the "C" word to describe women, the terms "Sic," [sic] "W.P.," or "Jap" to describe those of other ancestral heritages, or other racial, sexual, or ethnic pseudonym, intended to denigrate others, cannot be tolerated in the workplace. They are the type of outrageous discriminatory conduct that may be considered to be of an aggravated nature such that the threshold for it to be actionable is much lower than more subtle forms of discrimination which cumulatively cause conduct to be actionable under the Human Rights Act.

Fairmont Specialty Serv. v. W. Va. Human Rights Comm'n, 206 W.Va. 86, 93 n. 8, 522 S.E.2d 180, 188 n. 8 (1999). PAR does not dispute that the language at issue in the instant case is inappropriate always and everywhere. Nor does PAR dispute that the footnote, on which Mr. Bevelle bases his entire theory of liability, indicates that such wholly inappropriate language can create a hostile working environment when used much less frequently than other types of potentially discriminatory language. But nowhere in Footnote No. 8 does this Court state that a single, isolated incident involving racially charged language in the workplace creates a hostile working environment. Rather, this Court simply states that the threshold for an actionable hostile

working environment claim is lower than it otherwise would be when this type of language is involved. Accordingly, Judge Wilson and Mr. Bevelle have greatly overreached (and erred as a matter of law) by extrapolating the dicta contained in this footnote into a holding that “even a one-time use of that slur” constitutes a hostile working environment.

Indeed, this Court has *never* found that a single instance of racially-inappropriate language in the workplace constitutes a hostile working environment. To the contrary, this Court, and virtually every other court that has considered the issue, has repeatedly held that “isolated comments. . . *are insufficient* to create a hostile working environment.” Johnson v. Killmer, 219 W.Va. at 325, 633 S.E.2d at 271 (emphasis added); *see also* National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 116 (2002)<sup>2</sup> (a hostile work environment is one that “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 work environment”); Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986)<sup>3</sup> (“the mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee” does not affect the conditions of employment to the degree required to violate Title VII”); Snell v. Suffolk County, 782 F.2d 1094, 1103 (2d Cir. 1986) (requiring “more than a few isolated incidents of racial enmity” for racist comments, slurs, and jokes to constitute hostile work environment); Bolden v. PRC Inc., 43 F.3d 545, 551 (10<sup>th</sup> Cir. 1994) (holding that “[i]nstead of sporadic racial slurs, there must be a steady barrage of opprobrious racial comments”); Jordan v. Alternative Resources Corp., 458 F.3d 332, 339 (4th Cir. 2006) (“unlike other, more direct and discrete unlawful employment practices, hostile work environments generally result only after an accumulation of discrete instances of harassment.”).

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<sup>2</sup> West Virginia courts have a “longstanding practice of applying the same analytical framework used by the federal courts when deciding cases arising under the [West Virginia Human Rights] Act.” Willis v. Wal-Mart Stores, Inc., 202 W. Va. 413, 417, 504 S.E.2d 648, 652 (1998).

<sup>3</sup> This Court has cited favorably to this long-standing precedent from Meritor. Erps v. W.Va. Human Rights Comm’n, 224 W.Va. 126, 680 S.E.2d 371, 379 (2009).

Moreover, this Court stated in Fairmont Specialty Services that “[a]s a general rule ‘more than a few isolated incidents are required’ to meet the pervasive requirement of proof for a hostile work environment case.” Fairmont Specialty Serv., 206 W.Va. at 96, n. 9, 522 S.E.2d at 190, n.9. So the *very case on which Mr. Bevelle exclusively relies* for the proposition that “a one-time use of that slur” creates a hostile work environment expressly and unambiguously contradicts that argument. In short, Mr. Bevelle has not offered (and cannot offer) any legal authority which suggests that a single, isolated incident of racist language can support a hostile work environment claim. That is because no court has ever made such a finding. Judge Wilson’s decision is contrary to years of established jurisprudence and must be reversed.

**B. Mr. Bevelle was not, as a matter of law, constructively discharged from employment.**

Mr. Bevelle argues that he was constructively discharged, and thus retaliated against by PAR for complaining about alleged harassment, when he was transferred to another area of the construction project on which he was working so that he would not have to work around his alleged harasser. Incredibly, Judge Wilson determined that this transfer amounted to a constructive discharge because there was an “objectively reasonable fear” that Mr. Bevelle was in an “unduly dangerous position” that could lead to his “*murder on the jobsite.*” See “Administrative Law Judge’s Final Order” at pp. 12, 25. Such a finding is so far beyond the pale that it borders on the ridiculous; it has no footing, whatsoever, in any of the evidence adduced at the public hearing. In fact, Mr. Bevelle never attempts to argue that he might have been murdered nor does he even address Judge Wilson’s finding that he had a reasonable belief that he would be murdered. Mr. Bevelle’s failure to even mention Judge Wilson’s finding regarding his “reasonable fear” of being murdered indicates that even Mr. Bevelle recognizes that Judge Wilson’s finding was so outlandish that it cannot be defended.

In his Response Brief, Mr. Bevelle states that PAR “now quibbles” over whether Mr. Bevelle truly had an “objectively reasonable fear” of being injured by co-workers and that Judge Wilson “did not have such quibbles.” Response Brief at p. 18. PAR certainly takes issue with this finding, but such concerns are not mere “quibbles.” Rather, Judge Wilson abdicated his responsibility to weigh the evidence without bias<sup>4</sup> when he completely ignored Mr. Bevelle’s unambiguous admissions that he had no reason, whatsoever, to fear for his safety. Instead, Judge Wilson only lent credence to Mr. Bevelle’s subjective belief that he could *theoretically* have been in danger if any of his co-workers wished to injure him – a subjective belief that stands in stark contrast to Mr. Bevelle’s express admissions that he was in no such danger. If the uncontroverted evidence had been objectively considered by Judge Wilson, the only logical finding that could have been reached was that Mr. Bevelle suffered no adverse action when he was transferred to a different location within the jobsite but continued to work in the very same position for which he was hired and at the same pay.

Like Judge Wilson, Mr. Bevelle continues to ignore the overwhelming weight of the evidence in this case. Nowhere in Mr. Bevelle’s Response Brief will the Court find even a single citation to the factual record which supports Mr. Bevelle’s argument that Judge Wilson’s finding on the constructive discharge issue was appropriate. Rather, Mr. Bevelle relies on rampant speculation

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<sup>4</sup> Judge Wilson made no attempt to disguise his bias against PAR, and in favor of Mr. Bevelle, and that bias was made apparent in a number of his rulings. For example, at the end of the Public Hearing, Judge Wilson ordered the parties to “stipulate” to the amount of damages Mr. Bevelle had suffered. Tr. at pp. 188-89. While instructing the parties on the amounts to include in their “stipulation,” Judge Wilson addressed the issue of Mr. Bevelle’s mitigation of damages and the amounts that should be offset from any damage award. Mr. Bevelle testified that he had earned \$2,000.00 by working odd jobs during a period of unemployment. Tr. at pp. 119-20. And Judge Wilson acknowledged that Mr. Bevelle had clearly testified that he made \$2,000.00 working odd jobs. Tr. at p. 189. Yet, Judge Wilson then, inexplicably, declared that he was not going to deduct the entire \$2,000.00 from a damage award (as he should have), but would rather “split the difference” and allow mitigation of only \$1,000.00 for the time period in question. Tr. at p. 189. His entire rationale for doing so -- and, in the process, dispensing with the undisputed testimony of the one individual (Mr. Bevelle) who was best able to testify as to the amount of Mr. Bevelle’s potential economic damages -- was because Judge Wilson “[couldn’t] see how it would be more than a thousand dollars and that’s where I’m arriving at that figure.” *Id.* In essence, Judge Wilson -- despite the clear admissions against interest made by Mr. Bevelle -- conjured “evidence” out of thin air solely to award additional damages to Mr. Bevelle. This is simply one example of how Judge Wilson’s bias resulted in him bending over backwards to find in favor of Mr. Bevelle when the evidence clearly warranted a ruling in PAR’s favor.

as to the intentions of his co-workers and wild conjecture that they could act to injure him. This lack of reference to the factual record is not surprising because Mr. Bevelle's own admissions at the Public Hearing directly and completely contradict Judge Wilson's finding that he had an "objectively reasonable fear" that he would be *murdered* on the jobsite.

Specifically, Mr. Bevelle testified that, during the time he worked with the tower crew, he was never threatened or harassed by any of the other men working with him. Tr. at p. 102, 109. Nor did any of the men working with him ever mention Mr. Tabor or discuss the incident of September 19, 2005 during which the allegedly harassing remarks were made. Id. More importantly, Mr. Bevelle testified that *none* of his co-workers on the tower crew concerned him *in any way*:

Q: Okay. When you were – let's talk about the transfer. You worked that day for six hours before you had decided you were gonna call a union hall, you said. During that day, September 20, 2005, did anyone ever threaten you with violence?

A: No, sir.

Q: Approach you in a threatening manner?

A: No, sir.

\* \* \*

Q: Okay. Did you ever talk to anyone about Mr. Tabor during that six hours that you were still on the job?

A: No, sir.

\* \* \*

Q: Okay. And any of these men that you worked near, did you -- did any of them ever threaten you or harass you?

A: No.

Q: Did any of them concern you in any way?

A: *No.*

Tr. at pp. 102, 109. Moreover, when Mr. Bevelle resigned he never told anyone at PAR that he was resigning out of fear. Tr. at p. 111. To the contrary, Mr. Bevelle told PAR's superintendent that he had enjoyed working there and that he was leaving to pursue a job in sheet metal working (where Mr. Bevelle admitted he made more money). Tr. at p. 111.

Simply put, there is not a shred of evidence that supports the arbitrary and capricious factual finding that Mr. Bevelle was constructively discharged because he had an "objectively reasonable fear" that he would be *murdered* on the jobsite. Mr. Bevelle failed to direct this Court to any such evidence in his Response Brief because he was acutely aware that his own admissions undermined the entirety of that finding. So he was forced to rely on non-evidentiary speculation. Judge Wilson relied on the same subjective speculation – and not the clear weight of the evidence (or any evidence for that matter). Accordingly, his finding that Mr. Bevelle was constructively discharged from employment (and the Circuit Court's affirmation thereof) is contrary to the evidence, plainly wrong, and must be reversed.

C. **Even if a hostile working environment existed (and it did not), such conduct is not imputable to PAR because it took immediate remedial action which was successful in addressing the allegedly harassing and/or discriminatory behavior.**

Even assuming, *arguendo*, that the isolated comment at issue constituted harassment and/or discrimination (and it clearly did not), such conduct is not imputable to PAR such that it would be liable to Mr. Bevelle. Fairmont Specialty Serv., 206 W.Va. at 95, 522 S.E.2d at 189. It is well-settled that "where an employer implements timely and adequate corrective measures after harassing conduct has come to its attention, vicarious liability is barred regardless of the specific motivation for the wrongdoing or the particular cause of action." Dennis v. County of Fairfax, 55 F.3d 151, 156 (4<sup>th</sup> Cir. 1995). PAR implemented such corrective measures in this case.

But Mr. Bevelle now argues that PAR “failed to prove it took any remedial action whatsoever.”<sup>5</sup> Response Brief at p. 11. Such an assertion is mind-boggling in light of the evidence adduced at the Public Hearing which indicates that PAR acted immediately to address the complaint of harassment made by Mr. Bevelle. First, Mr. Bevelle admitted that PAR had effective policies prohibiting discriminatory and/or harassing behavior and that, at the time of his hire, PAR spent “quite a bit” of time training its employees on its anti-discrimination policies. Tr. at p. 56.

Moreover, on September 20, 2005 (the day after the incident), Mr. Bevelle reported the use of the “n-word” to Gary Graham who was a PAR Safety Manager assigned to the AEP project. Tr. at p. 42. Mr. Bevelle testified that he was told by Mr. Graham that PAR would immediately look into his complaint, because that type of language was totally inappropriate. *Id.* Indeed, after receiving Mr. Bevelle’s complaint Mr. Graham spoke to the alleged harasser and reprimanded him for his conduct. Tr. at p. 93. After the September 19 incident, PAR convened a meeting where it discussed and re-trained all of the contractors on PAR’s policies prohibiting discriminatory and/or harassing behavior. Tr. at p. 141. Finally, PAR moved Mr. Bevelle to another section of the construction project so that he would not have to have any contact with the alleged harasser. Tr. at p. 43.

It is particularly perplexing, in light of certain statements made in his Response Brief, that Mr. Bevelle now argues that the actions taken by PAR are inadequate. Specifically, Mr. Bevelle

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<sup>5</sup> A good portion of Mr. Bevelle’s response deals with his argument that PAR’s decision not to call certain fact witnesses at the public hearing, or its “failure” to provide Mr. Bevelle with contact information for those witnesses during discovery, somehow prevents PAR from arguing that it implemented appropriate corrective action. This argument is seriously misguided. First, PAR responded adequately to the discovery requests propounded upon it. This is evidenced by Mr. Bevelle never seeking to compel further responses. Because he never filed a motion to compel, Mr. Bevelle cannot now argue that PAR’s discovery responses were inadequate. More importantly, this line of argument is directly contrary to the clear instructions of this Court that were issued less than 2 months ago. Specifically, this Court recently stated (in another case involving the HRC) that a tactical decision to not call certain witnesses to testify *cannot be held against a party*, particularly when the complainant (like Mr. Bevelle) bears the burden of proof and could have called the same witnesses just as easily. Charleston Town Ctr. Co., LP v. W.Va. Human Rights Comm’n, Nos. 34739, 34740, -- S.E.2d ---, 2007 WL 3855960 (W.Va. Nov. 17, 2009). PAR’s decision not to call certain witnesses at the public hearing has no impact, whatsoever, on the evidence adduced at the hearing which clearly shows that appropriate corrective measures were implemented.

directs the Court's attention to the actions taken by the employer in Erps v. W. Va. Human Rights Comm'n, 224 W.Va. 126, n. 17, 680 S.E.2d 371, 384 n. 17 (2009), and indicates that such actions are appropriate remedial actions. Response Brief at p. 12. Mr. Bevelle indicates that the employer in Erps properly "informed the complainant that he should not have been called 'nigger' and that [the employer] would handle the situation." Response Brief at p. 12. PAR did the very same thing. As Mr. Bevelle testified: "they [PAR] said they were gonna look into it, *because that was no kind of language to be used in any kind of way on the job site.*" Tr. at p. 42. Mr. Bevelle further states that the Erps employer properly "gave verbal instructions to the offending employee not to use such language again." Response Brief at p. 12. Again, PAR did the very same thing, as Mr. Bevelle acknowledged. Tr. at p. 93. The *only* action that Mr. Bevelle claims should have been taken (as it was in Erps) that was not also taken by PAR was that the Erps employer interviewed witnesses. Response Brief at p. 12. But in this case, there was no need for PAR to interview any witnesses because PAR believed the complaint made by Mr. Bevelle. Because PAR had no reason to doubt Mr. Bevelle's veracity, there was nothing that would have been gained by taking witness statements. Rather than dilly-dallying, PAR immediately acted upon that complaint and took steps to remedy the situation. Otherwise, PAR responded exactly as the employer in Erps – the example extolled by this Court and Mr. Bevelle as the proper way for an employer to react.

But PAR did not stop there; it went well beyond the steps taken by the employer in Erps, in response to Mr. Bevelle's complaint. For example, PAR retrained all of its employees on its policies prohibiting harassment and/or discrimination. Tr. at p. 141. And, as has been discussed, PAR transferred Mr. Bevelle to another section of the jobsite so that he would not have to work

around the alleged harasser<sup>6</sup>. All in all, PAR surpassed the steps taken by the employer in Erps when it immediately responded to Mr. Bevelle's complaint of harassment.

Despite the numerous steps taken by PAR to address Mr. Bevelle's complaint of harassment, Mr. Bevelle continues to argue that the actions that PAR took (disciplining the alleged harasser, retraining all employees, and moving him away from the harasser) were inadequate. Apparently, Mr. Bevelle will be happy with nothing less than a public tarring-and-feathering of the alleged harasser. Objectively, however, PAR acted immediately and appropriately, in all respects, to address Mr. Bevelle's complaint of harassment. In fact, its actions went above and beyond the type of response that this Court has stated, and which Mr. Bevelle has affirmatively cited to this Court, "raise[s] significant questions" as to whether the harassing conduct was imputable to the employer. Erps, 224 W.Va. 126, n. 17, 680 S.E.2d 371, 384 n. 17.

Critically, Mr. Bevelle conveniently glosses over that PAR's actions were obviously effective at eliminating any further harassment and/or discrimination because Mr. Bevelle admitted that there were *no other incidents* after he complained and PAR took its remedial actions. Tr. at pp. 88, 99. Courts have determined that corrective action is "adequate" when no further harassment or discrimination occurs after the corrective action and that an employer is relieved from liability when such corrective actions are effective. Spicer v. Com. of Va., Dept. of Corrections, 66 F.3d 705, 711 (4th Cir. 1995). In sum, the evidence clearly shows that PAR acted promptly to address and correct the harassment of which Mr. Bevelle complained. The alleged harassment would not be imputable to PAR such that it would be liable to Mr. Bevelle, even if the single, isolated incident constituted a

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<sup>6</sup> Mr. Bevelle argues that this transfer was retaliatory in itself. But it is uncontroverted that the new job assignment involved the very same job duties, pay, and other terms and conditions of employment because it was the *exact same* position that Mr. Bevelle had held since he had been hired by PAR. Tr. at pp. 185-86. The only difference was that he was working at a slightly different physical location on the construction project – in order to address Mr. Bevelle's concerns of harassment. In fact, Mr. Bevelle would eventually have been reassigned to that very position because the work that he had been doing at his prior posting had been completed and he would have no longer been needed at that location. Tr. at pp. 163-64. The transfer was not retaliatory in any way and Mr. Bevelle suffered no adverse employment action.

hostile work environment (which, as discussed *supra*, it does not). Fairmont Specialty Serv., 206 W.Va. at 95, 522 S.E.2d at 189. Judge Wilson's decision must be reversed.

### III. CONCLUSION

For the reasons stated herein, and such further reasons contained in the Appellant's Brief, Appellant PAR Electrical Contractors, Inc. respectfully requests that the Supreme Court of Appeals of West Virginia reverse the orders issued by the Circuit Court of Kanawha County and the West Virginia Human Rights Commission and enter an Order directing the West Virginia Human Rights Commission to enter judgment in favor of PAR in this matter.

Respectfully Submitted,

**PAR ELECTRICAL CONTRACTORS, INC.**

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Appellees.

CERTIFICATE OF SERVICE

I, Richard M. Wallace, hereby certify that service of the foregoing “Appellant’s Reply Brief” has been made upon the following parties by placing a true copy thereof in an envelope deposited in the regular course of the United States Mail, First Class postage prepaid, on this 8th day of January, 2010 addressed as follows:

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