

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 35439

**LYNDA YOUNG,
PLAINTIFF BELOW, APPELLEE**

vs.

**BELLOFRAM CORPORATION, D/B/A MARSH
BELLOFRAM CORPORATION, AND JOSEPH COLLETTI,
DEFENDANTS BELOW, APPELLANTS**

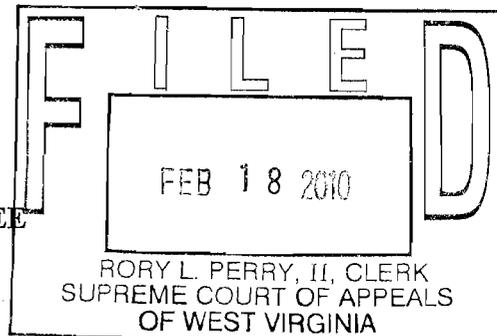
HONORABLE ARTHUR M. RECHT, JUDGE
CIRCUIT COURT OF HANCOCK COUNTY
CIVIL ACTION No. 06-C-55R

BRIEF OF THE *AMICUS CURIAE*

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL 416 as *Amicus
Curiae***

By Counsel

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I. INTRODUCTION AND STATEMENT OF INTEREST

The International Brotherhood of Teamsters Local 416 (“Union”) submits this brief in support of Defendants-Appellants. Since 1957, the Union has been a chartered labor organization representing approximately 1,000 members working in West Virginia, Pennsylvania, Ohio and Kentucky. The Union’s members are employed in industrial, maintenance, warehouse, manufacturing, delivery, security, electro dynamics, extrusion, paper, toiletries, printing, car wash and vending positions.

The Union is party to collective bargaining agreements with thirty-five small and mid-sized employers, employing as few as three and as many as 300 employees in covered positions. The Union is affiliated with the International Brotherhood of Teamsters (“IBT”), which represents 1.4 million men and women working in the United States and Canada.

Many years ago, the IBT established a Human Rights Commission to eliminate all forms of discrimination that divide its members on the job, in society and in the union. The IBT and its affiliates have long recognized the need to educate, and to learn that different physical and cultural qualities such as race, age, color, religion, sex, sexual orientation, disability or national origin make individuals unique and deserving of respect.

Marsh Bellofram (“Bellofram”) is one of the largest employers under contract with the Union. For over twenty years, the Union has represented approximately 200 of its manufacturing employees (“bargaining unit employees”).

Consistent with the IBT’s mission, the CBA between Bellofram and the Union prohibits workplace discrimination and harassment. Trial Ex. 21, Article X. The CBA also contains a provision that allows the Union to act as a gatekeeper to regulate the return of salaried employees

to the bargaining unit on those occasions when Bellofram's management proposes to do so. Trial Ex. 21, Article VII.¹

As a matter of policy and application of its CBA, the Union has a compelling interest in the question of whether a supervisor who sanctioned discrimination and a hostile work environment has a legal right to work side-by-side with the same employees who were the victims of the harassment. The Union feels strongly that such a remedy disregards the Union's CBA and will only perpetuate a discriminatory and hostile work environment. Just as an employer could discharge a bargaining unit employee for engaging in unlawful conduct at work, an employer should be free to discharge a supervisor who has engaged in or condoned unlawful conduct, rather than demote the supervisor back to the bargaining unit.

II. FACTS

A. Plaintiff Lynda Young's Employment as a Supervisor

Plaintiff was employed by Bellofram for eleven years. As a Union member, she began as a molder and eventually became a "lead" molder in the diaphragm division's second shift, a position she held for six years. Trial Tr. 236. Plaintiff was promoted to supervisor of the second shift, a non-bargaining unit salaried position. Order, p. 3. Plaintiff was aware that sexual harassment and racial discrimination were prohibited and that permitting it could result in immediate termination. Trial Tr. 287.

During her tenure as a supervisor, employees on the second shift harassed fellow bargaining unit members. Plaintiff overheard offensive comments and instead of addressing them, she simply shook her head. Trial Tr. 430. Union member Mandy Chipps quit her position because of the abusive treatment. Trial Tr. 555-56. Ray Gonzales, a Hispanic union member,

¹ In relevant part, Article VII provides that "[t]his transfer [of a supervisor] back to the union is the decision of the [Joint Labor-Management] Review Committee."

transferred shifts, as he was uncomfortable working the second shift because of the ongoing harassment. Trial Tr. 411. Angela Kirkbide testified that Plaintiff watched a male employee kick a disabled female employee in the butt. Trial Tr. 438.

Bargaining unit members Bill Friley, Adam Farmer and Alan Lockwood all engaged in inappropriate conduct. Trial Tr. 488. The three men directed racial and sexually inappropriate language towards other employees. Trial Tr. 488-90. Plaintiff admitted that she heard Friley use the terms “niggers,” “sand niggers,” and “spics” while a supervisor. Trial Tr. 275-276. Ron Jackson testified that instead of Plaintiff addressing the conduct, she laughed at the comments and told Jackson to ignore them. Trial Tr. 663-665. Heather Wells stated that Plaintiff ignored employees’ complaints or even laughed at Friley, Farmer and Lockwood’s inappropriate conduct. Trial Tr. 431.

Sharon Coleman, Plaintiff’s human resource manager, testified that Plaintiff admitted that she heard a lot of things, but simply ignored them and told others to do the same. Trial Tr. 670. Plaintiff knew of the conduct, that it was prohibited, and that failure to correct it could result in termination. Trial Tr. 275-280.

Bellofram hired an independent investigator to look into these allegations. The independent investigator said she was “struck by the amount of fear that people expressed about their work environment.” Trial Tr. 413. Employees the investigator interviewed were concerned about their personal security. Trial Tr. 725-726.

Bellofram considered whether Plaintiff should have been allowed the option of returning to her bargaining unit position or terminated. It decided that allowing her to return would create tension in the shift, both because of the number of employees who had given damaging information about her conduct and that she had allowed others to be the subject of the

harassment. These facts weighed in favor of termination. Trial Tr. 770-771, 783. Plaintiff was terminated on October 25, 2005. Defendants' Trial Exhibit No. 24; Order at p. 2.²

The Circuit Court found that Friley, Farmer and Lockwood were "miscreants," and Plaintiff's response to their conduct was indifference. Order, p. 5. Bellofram terminated the employment of the two men and suspended one. Yet, the Circuit Court found that Bellofram should have demoted Plaintiff, who was not even protected by the just cause provisions of a collective bargaining agreement.

B. Donnie Shuman's Employment as a Supervisor

Donnie Shuman was also a bargaining unit member who had been promoted to a shift supervisor. His performance as a shift supervisor was unsatisfactory because he did not follow through with assignments, did not report information back to management and generally failed to control his shift. Trial Tr. 52, 221, 608-609. As a result, Shuman was demoted back to a bargaining unit position. Trial Tr. 52, 596-597. The reason for his demotion was in no way related to harassment, discrimination or allowing employees to create a hostile work environment. Bellofram was not aware of any racial or sexual harassment that had taken place under Shuman's supervision. Trial Tr. 608-609. Plaintiff herself testified that Shuman "didn't have a clue" about the rampant harassment. Trial Tr. 63-63, 289.

III. DISCUSSION

The Circuit Court's Order requires Bellofram to demote Plaintiff, a former supervisor, back to a bargaining unit position despite having permitted bargaining unit members to be harassed during her tenure as a supervisor. The Circuit Court decided that Plaintiff should have

² Had Bellofram opted to return Young to the bargaining unit, it first would have been obligated to obtain the consent of the joint labor-management Review Committee established under Article VII of the CBA. Because Bellofram never proposed to return Young to the bargaining unit, Article VII was never invoked. *See*, Trial Tr. 758-760.

been demoted instead of terminated, as Shuman had. For the reasons set forth below, the Union respectfully disagrees with the Circuit Court's reasoning and conclusion.

A. Plaintiff Should Not be Demoted to a Bargaining Unit Position

The Circuit Court found that Shuman and Plaintiff are comparable, and that because Shuman was demoted instead of terminated, that Bellofram improperly terminated Plaintiff. Shuman's and Plaintiff's conduct as supervisors was drastically different. Shuman's demotion did not in any way perpetuate hostile working conditions, while Plaintiff's demotion will likely exacerbate them.

Shuman was demoted to his bargaining unit position after he was unable to control his shift. His most egregious behavior was allowing Union members to take longer breaks than the contract allowed. He also had difficulty reporting to Bellofram. All of Shuman's misconduct as a supervisor was related to Bellofram's interest in efficiency and profitability. The Union did not have a problem with Shuman being demoted to his bargaining unit position, as he had done nothing as a supervisor that was adverse to the interests of his co-workers, specifically nothing that contributed to a hostile work environment. If anything, he returned to the bargaining unit more liked than before he had left, because of the leniency he allowed as a supervisor.

By contrast, Plaintiff allowed rampant discrimination and harassment. As a supervisor, she failed to take any action to stop ongoing racial and sexual harassment about which bargaining unit members had complained. The harassment was so severe that one employee quit and another requested a shift change. Plaintiff stood by and allowed bargaining unit members to be harassed despite being aware of the conduct and having the authority to put a stop to it. If she is to return to the bargaining unit, harassed employees will be forced to work side-by-side with a person who perpetuated a hostile work environment. Indeed, the Circuit Court record reflects

that there was great fear among employees about their work environment under her supervision. Employees who were interviewed went so far as to say they were concerned about their personal safety.

Article VII of the CBA allows the Union to prevent individuals like Plaintiff from automatically returning to the bargaining unit from a salaried position. The Union, through the Review Committee, has a contractual right to exclude Plaintiff from the bargaining unit. Before the Circuit Court ordered a remedy demoting Plaintiff to the bargaining unit, at a minimum, the Union should have been added as a Rule 19 defendant to effectuate a remedy that interferes with the collective bargaining agreement. *Zipes v. TWA*, 455 385 (1982).

Demoting Plaintiff back to a lead on the second shift will only increase the hostility of the work environment. It is in the best interest of the Union and its members to prevent Plaintiff from returning to work with her victims. The Union has a duty of fair representation to protect its members, including prevention of harassment. *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 301 (U.S. 1971) (“[A union’s] duty of fair representation was judicially evolved...to enforce fully the important principle that no individual union member may suffer invidious, hostile treatment at the hands of the majority of his coworkers.”); *See also Breininger v. Sheet Metal Workers Int'l Ass'n Local Union No. 6*, 493 U.S. 67, 79 (U.S. 1989).

B. Supervisors and Bargaining Unit Members Must be Treated Equally

Bellofram has a nondiscrimination and anti-harassment policy that applies to both salaried positions and bargaining unit members. Hostile working conditions are also barred by the CBA. Immediate termination is a punishment for violation of either the company’s unilateral policy or the CBA’s contractual one.

Plaintiff was aware that engaging in or allowing inappropriate conduct could result in immediate termination. Bellofram terminated two of the “miscreants” and suspended the other. The Union did not oppose the discipline, as it agrees Bellofram took appropriate action to maintain a positive work environment. The Union also agrees that Bellofram took appropriate action in terminating Plaintiff.

Bellofram’s anti-harassment policy and the CBA are clear that inappropriate conduct will not be tolerated. Were Bellofram not to have terminated Plaintiff, it would be discriminating against Union members while protecting supervisors. If an employer enforces anti-harassment policies, it must have the ability to do so in a way that does not favor supervisors over bargaining unit members. Any other outcome would send a clear signal that those with more authority may perpetuate a hostile work environment with impunity while those without any authority must continue to suffer and work with those that victimize them.

The Union submits that the Circuit Court was incorrect in inserting its own judgment as to how Bellofram should control its workforce and implement its discipline policy, to the detriment of bargaining unit members. Moreover, the Circuit Court’s decision sends a message that an employer is required to give supervisors preferential treatment over union members.

IV. CONCLUSION

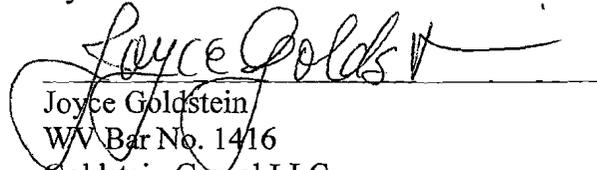
The Circuit Court improperly compared dissimilar actions taken by different supervisors and disregarded the impact on affected bargaining unit members and the Union’s collective bargaining agreement. By virtue of this comparison, the Circuit Court improperly determined that Plaintiff, a perpetrator of harassment, has a right to return to work with those she allowed to be victimized.

Furthermore, the Circuit Court sends a message to employers that it can treat managers or supervisors differently than union members in terms of discipline for inappropriate conduct. This creates friction in the workplace and is simply not fair.

WHEREFORE, the *amicus curiae*, the International Brotherhood of Teamsters Local 416, respectfully request that the order of the Circuit Court of Hancock County be reversed and remanded with instructions to enter judgment in Appellants' favor.

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL 416 as *Amicus
Curiae***

By Counsel

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CERTIFICATE OF SERVICE

I, Joyce Goldstein, Esq., do hereby certify that on the 17th day of February, 2010, I served the foregoing "BRIEF OF THE *AMICUS CURIAE*" upon the following by depositing a true copy thereof in the United States mail, postage prepaid, addressed as follows:

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