

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

Susan Langley,

Charging Party,

-v-

JL Gyms dba Gold's Gym,

Respondent,

Case # 0109014599

ORDER

Charging Party, Susan Langley (Langley), filed a complaint with the Department of Labor and Industry (Department) alleging that Respondent, JL Gyms d.b.a. Gold's Gym, discriminated against her in employment on the basis of sexual harrassment and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Susan Langley's allegations. The Department issued a Notice of Dismissal. Susan Langley filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 18, 2011. Matthew B. Thiel, attorney, appeared and presented oral argument on behalf of Langley. Douglas D. Harris, attorney, appeared and presented oral argument on behalf of JL Gyms dba Gold's Gym.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Section 49-2-511(2), MCA*. After careful consideration, the Commission unanimously concludes the determination of the Department to dismiss the complaint in this case is an abuse of discretion.

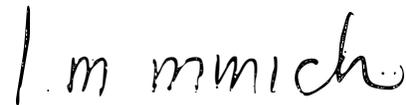
The Commission finds the investigator's decision to refrain from interviewing certain witnesses or to consider evidence suggested by Langley leaves the Commission with a sense that the investigation may not have been sufficiently thorough. The circumstances of Langley's separation from her employment appears to warrant further scrutiny, especially in light of the proceedings before the Hearings Bureau of the

Department of Labor and Industry regarding Langley's unemployment insurance claim. The Commission questions the applicability the legal theory of disparate impact to the investigator's legal analysis of Langley's sexual harassment claim. There are two forms of sexual harassment that violate the Montana Human Rights Act's prohibition against workplace discrimination: (1) harassment that involves the conditioning of concrete employment benefits on sexual favors (*quid pro quo*); and (2) harassment that creates a hostile or offensive work environment. *Stringer-Altmaier v. Haffner*, 2006 MT 129, ¶19 332 Mont. 293; ¶19, 138 P.3d 419, ¶19. See also, *Meritor Savings Bank, FSB v. Vinson* (1986), 477 U.S. 57, 62, 106 S. Ct. 2399, 2403, 91 L. Ed. 2d 49. For these reasons, the Commission sustains the objection and the case is hereby remanded for hearing to the Hearings Bureau pursuant to § 49-2-505, MCA.

Nothing in this order precludes the parties from engaging in the mediation or other settlement negotiations that would normally occur if the Department's investigative report had found cause. See, § 49-2-504(2)(b), MCA.

IT IS HEREBY ORDERED, that Susan Langley's objection is **sustained**. The Commission reopens and remands the case to the Hearings Bureau for hearing.

DATED this 20<sup>th</sup> day of May, 2011.



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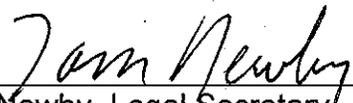
L.M. Minich, Chair  
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 20<sup>th</sup> day of May, 2011.

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Tam Newby, Legal Secretary  
Montana Human Rights Bureau