MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse12051164
[redacted]

[redacted],
Complainant,

v.

GRAEBEL VANLINES
& HUBBARD TRUCKING,
Respondents.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred. 910 IAC 1-3-2(b).

On May 1, 2012, [redacted] (Complainant) filed a Complaint with the Commission against Graebel Van Lines and Hubbard Trucking ("Respondents") alleging sexual harassment in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) [redacted] Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was sexually harassed. In order to prevail, Complainant must show that (1) she experience unwelcome sexual comments or actions in the workplace; (2) the comments/actions were severe and/or pervasive; (3) Respondent knew or should have known of the harassment; and (4) Respondent failed to take corrective action to address the hostile work environment.

Graebel Van Lines indicated that Complainant did not work for them but rather, worked for Hubbard Trucking, a separate company that acts as a private contractor for Graebel Van Lines. The evidence, supported in part by Complainant's own statements, indicates that Graebel Van

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Lines did not set terms and conditions upon her employment but simply provided training so she would be "Graebel qualified." Since all of Complainant's job assignments, supervision, hours of employment, and pay came from Hubbard Trucking, the evidence is insufficient to show that Complainant was actually an employee of Graebel Van Lines. Even, for purposes of this analysis, it were to be assumed that Complainant was an employee of Graebel, the evidence indicates that she did not notify them about alleged harassment until the date of her severance; in short, the company lacked knowledge of the alleged harassment toward Complainant and as such, was unable to take corrective action. Based upon the above-findings, probable cause does not exist to believe that Graebel Van Lines has committed an unlawful discriminatory practice.

While Hubbard Trucking contends that the Commission lacks jurisdiction in this case because the company has no employees, and Complainant was a private contractor, not an employee, this is incorrect. The evidence shows that Respondent did control Complainant's actions as an employee in that it provided her with specific work assignments and locations, hours, and paid her wages. Moreover, one of Complainant's co-workers (also classified as a packer/loader), corroborated Complainant's claim that [redacted], the owner's son and a fellow packer/loader, subjected Complainant to unwanted sexual touching and comments in the workplace on numerous occasions. The evidence also shows that Mr. [redacted]'s actions were clearly offensive such that a reasonable person's work performance would suffer as a result. While Complainant informed the alleged harasser as well as Hubbard Trucking's president that the comments and touching were unwelcome, they failed to take corrective action to address the hostile work environment. Instead, evidence indicates that Respondent ceased scheduling Complainant for work after she complained about the harassment even though she continued requesting work and Respondent scheduled other employees for assignments.

Based upon the above finding, probable cause exists to believe that Respondent #2, Hubbard Trucking, has committed an unlawful discriminatory practice. As such, a public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

February 26, 2013
Date

Akia A. Haynes
Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission