

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BETTY L. SLAPPY, )  
Complainant )  
-vs- ) Docket No. E-4146  
WESTINGHOUSE ELECTRIC )  
CORPORATION, DISTRIBUTION )  
AND CONTROL EQUIPMENT DIVISIONS,) )  
Beaver, Pennsylvania, )  
Respondent )

HISTORY OF THE CASE, FINDINGS OF FACT,  
CONCLUSIONS OF LAW, COMMISSION'S  
DECISION, AND FINAL ORDER

HISTORY OF THE CASE

On March 1, 1971, Betty L. Slappy filed a complaint at the instant docket number with the Pennsylvania Human Relations Commission against the instant respondent, which alleged that the respondent erroneously discharged her from employment as an assembler for purportedly violating the prevailing Labor/Management Contract in reference to notification of pregnancy, because of her sex and race, Negro.

It was alleged that such an action was a violation of Section 5(b)(a) of the Pennsylvania Human Relations Act (Act of October 27, 1955, P.L. 744, as amended).

On August 22, 1973, respondent filed an answer to the instant complaint denying any discriminatory actions on its part. Respondent also indicated in its answer that the respondent's name was improper as originally filed in the complaint and the correct name should be as is indicated in the instant caption.

An investigation into the allegations contained in the complaint was made by representatives of the Pennsylvania Human Relations Commission and a determination was made that there was probable cause to credit the allegations of the complaint.

Thereafter, attempts to effectuate an amicable settlement of the complaint being unsuccessful, the Commission scheduled a public hearing for the presentation of evidence in the case which was heard on August 29, 1973, by a hearing panel consisting of Commissioner Alvin E. Echols, Jr., Esquire, Chairman, Commissioner Everett E. Smith, and Commissioner John P. Wisniewski.

The hearing commissioners recommend, on the basis of the evidence adduced at the public hearing, that the Commission find in favor of the complainant and make the following findings of fact and conclusions of law.



### FINDINGS OF FACT

1. Complainant is Betty L. Slappy, residing at 4 Mt. Washington Apartments, Beaver Falls, Pennsylvania 15010.
2. Respondent is Westinghouse Electric Corporation, Distribution and Control Equipment Divisions, Beaver, Pennsylvania.
3. The allegation in the instant complaint concerning discrimination on the basis of race is dismissed upon request of Commission Assistant General Counsel, Jay Harris Feldstein, Esquire, and consented to by respondent's counsel, Ronald G. Ingham, Esquire, on the basis that no evidence exists to sustain that particular allegation.
4. Complainant was employed by respondent on July 5, 1965 as an assembler and tester, and remained in that position until she was dismissed, effective November 6, 1970. (T-7 and 8)
5. On November 10, 1970, complainant saw C. E. Dunn, M.D. for a problem with her urinary tract and, at that visit, was informed by Dr. Dunn that she was pregnant. (T-10 and 11)
6. Contemporaneous with his examination and diagnosis on November 10, 1970, Dr. Dunn called respondent and informed it that complainant was pregnant. (T-12 and 13)
7. On November 12, 1970, complainant gave birth to a stillborn child. (T-13)
8. Complainant ceased work on November 10, 1970, and, on December 12, 1970, when she called respondent to make an appointment to have a physical examination so she could return to work, she was informed that she could not return because she did not comply with a pregnancy notification provision in the Union contract.



9. At that time, respondent informed complainant that she could not return to work because she had broken Article XIV, Section 2 of the Labor-Management Contract Agreement between Westinghouse Electric Corporation at the Beaver Plant and Local Union 201 of the International Brotherhood of Electrical Workers, dated March 5, 1970, and effective until June 10, 1973, which reads as follows:

Employees having nine months or more service who become pregnant, shall report such pregnancy to the Medical Department within four months after conception. At the time the employee may request a leave of absence, such leave of absence to begin not later than three months prior to the anticipated date of confinement, and extend to one month following confinement. The employee must make arrangements with the Employment Department to return to work anytime between one month and three months after confinement, and extend to one month following confinement. The employee must make arrangements with the Employment Department to return to work anytime between one month and three months after confinement. A further extension of leave may be permitted at the request of the employee's attending physician, approved by the Medical Department. Failure of an employee to comply with the provision of this section will result in termination of employment.

(T-14, 57, 58 and 69, and complainant's exhibit #2)

10. At the time of her visit to Dr. Dunn, complainant was approximately six months pregnant. (Complainant's exhibit No. 2)

11. Although the instant matter can and will be decided on the issue of whether or not respondent's requirement of notification of pregnancy within a certain time period is violative of the Pennsylvania Human Relations Act, it behooves us to articulate our finding that complainant did not realize she was pregnant when she visited Dr. Dunn on November 10, 1970. (T-19 and Complainant's Exhibit No. 1)



12. Complainant's termination of employment was effective November 6, 1970, at which time she was receiving an average wage of \$121.02 per week. (T-74 and 75)\*

13. Complainant, following her termination, became employed as a barmaid in early January, 1971, at a salary of \$1.50 per hour for 4 hours per day for 5 or 6 days per week, or an average weekly income of \$33.00, until December 1, 1971, and has been unemployed since that time. (T-24 through 27) \*\*

14. Complainant has made numerous, repeated and reasonable attempts to find employment since December, 1971. (T-27 through 30)

15. The complaint in this matter was timely filed. (T-61 through 63)

16. Although it is possible that a requirement to notify of a pregnancy is of vital interest to an employer, no justification is evidenced that, upon receiving such notification, the instant respondent made any effort whatsoever to determine whether or not the pregnant condition had any effect on the instant -- or any other -- employee's health or ability to perform her job. (T-83 through 89)

\* Although complainant testified at the public hearing to a slightly higher weekly wage, information requested at that hearing and submitted by respondent indicates complainant's average wage, weekly, prior to her termination, was \$121.02 per week.

\*\* Complainant's average wages for 11 months as a barmaid are based on an average of 22 hours work per week. (An average of a 5 1/2 day week) (T-26)

### CONCLUSIONS OF LAW

1. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over complainant and respondent, and the subject matter of the complaint herein under the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended.

2. The Pennsylvania Human Relations Act at 43 P.S. Section 954 (b) provides as follows:

It shall be an unlawful discriminatory practice unless based upon a bonafide occupational qualification . . . (a) for any employer, because of . . . sex, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions, or privileges of employment . . . (emphasis added)

3. The requirement that Betty Slappy must notify respondent by the fourth month of her pregnancy did not take into consideration the individual and did not consider her individual ability to perform the functions and duties of her job; rather, the decision of the respondent employer was based on general assumptions attributed to a given sex, and is therefore arbitrary and unreasonable.

4. The reporting of pregnancy requirement in the matter now before the Commission was a term and/or condition of employment under which all women employees, and only women employees, were forced to abide, and, because of its discriminate application only to pregnant female employees, is violative of the Pennsylvania Human Relations Act.



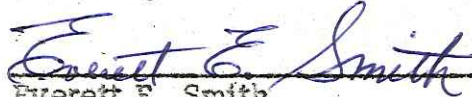
5. Article XIV, Section 2, of the Collective Bargaining Agreement entered into between Westinghouse Electric Corporation and Local 201 IBEW on March 5, 1970, was violative of the Pennsylvania Human Relations Act in that it:

- (a) Contains a nine month qualification period to qualify for a maternity absence;
- (b) Contains a four month notification of pregnancy requirement, whereas the only other notification of absence required of any other employee is " . . . sufficiently in advance of the date such absence is to start as to provide time for proper consideration" (Article XIV, Section 3);
- (c) Stipulates a pregnant employee must begin her absence three months before her due date;
- (d) Requires a minimum one month absence after delivery;
- (e) Specifically provides that failure of an employee to comply with the above provisions will result in termination of employment.

6. The complaint in the instant matter was filed timely and in accordance with the requirements of the Pennsylvania Human Relations Commission.



Alvin E. Echols, Jr., Esquire,  
Presiding Commissioner



Everett E. Smith,  
Hearing Commissioner



John P. Wisniewski,  
Hearing Commissioner



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BETTY L. SLAPPY,

Complainant

-vs-

WESTINGHOUSE ELECTRIC  
CORPORATION DISTRIBUTION AND  
CONTROL EQUIPMENT DIVISIONS,  
Beaver, Pennsylvania,  
Respondent

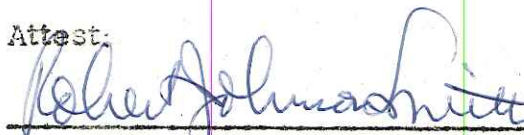
Docket No. E-4146

COMMISSION'S DECISION


AND NOW, this 28<sup>th</sup> day of January, 19 74,

upon consideration of the History of the Case, Findings of Fact, Conclusions of Law and Transcript of Testimony, and Recommendations of the Hearing Commissioners, the Pennsylvania Human Relations Commission finds and determines that respondent, Westinghouse Electric Corporation, Distribution and Control Equipment Division, Beaver, Pennsylvania, has committed an unlawful discriminatory practice in violation of Section 5(a) of the Pennsylvania Human Relations Act, cited supra, in that they wrongfully enforced a discriminatory policy requiring termination of employment for failure to notify of a pregnancy at four months gestation. It is, therefore, the decision of the Commission to enter an Order against respondent requiring it to pay special damages to the instant aggrieved party and to revise any policy requiring notification of absence for pregnancy, to be a date reasonably following when she knows she is pregnant and further to revise any disciplinary action policy, if any, for inadequate notification of pregnancy to apply equally to males and females for any known illnesses.

Attest:

  
Dr. Robert Johnson Smith,  
Secretary

PENNSYLVANIA HUMAN RELATIONS  
COMMISSION

By:   
Joseph X. Yaffe,  
Chairman



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BETTY L. SLAPPY, )  
Complainant )  
-vs- ) Docket No. E-4145  
WESTINGHOUSE ELECTRIC CORPORATION )  
DISTRIBUTION AND CONTROL EQUIPMENT )  
DIVISIONS, Beaver, Pennsylvania, )  
Respondent )

FINAL ORDER

AND NOW, this 28<sup>th</sup> day of January, 1974, upon consideration of the foregoing Findings of Fact and Conclusions of Law, and pursuant to Section 9 of the Pennsylvania Human Relations Act, cited supra, the Pennsylvania Human Relations Commission

ORDERS:

1. Respondent shall pay Betty L. Slappy the sum of \$10,050.42, plus incremental benefits, to which she would have been entitled from November 6, 1970 through August 29, 1973, had she continued her employment (and continuing from August 29, 1973 at the rate of \$121.02 per week as long as Betty L. Slappy remains unemployed) less the amount she would not have received because of her hospitalization in November and December, 1970 for pregnancy. The amount indicated above includes a credit of \$1,567.50, which is the amount Betty L. Slappy earned as a barmaid for 47 1/2 weeks, based upon an average weekly wage of \$33.00 per week. The only amount to be deducted from the \$10,050.42 figure, above, will be the amount of income Betty L. Slappy would normally have lost during her pregnancy absence from November 6, 1970 through December 12, 1970. In computing that loss,

she shall be given full credit for any accumulated sick, disability, vacation, or other benefits accrued by her as if a leave of absence had been granted as of November 6, 1970. It is directed that this Order be personally delivered to respondent by a representative of the Pennsylvania Human Relations Commission who shall, at that time, obtain the necessary information to make the proper deduction for the November 10, 1970 - November 12, 1970 period. The gross figure thus computed shall be immediately delivered both to the Commission and to the respondent, which shall be the exact amount due and owing Betty L. Slappy through August 29, 1973. Any amount due Betty L. Slappy at the rate of \$121.02 per week from August 29, 1973 until the date Betty Slappy was employed elsewhere or has been re-employed by the instant respondent, shall be added to the aforementioned figure and the amount so paid by respondent shall be paid through the Pittsburgh Regional Office of the Pennsylvania Human Relations Commission and approved by that office before distribution.

2. The total amount of the instant award will bear interest at the rate of 6% per annum, said interest beginning 30 days from the date the final computation is made by the representative of the Pennsylvania Human Relations Commission noted in paragraph 1 supra, if the order has not been complied with at that time.

3. Respondent is directed to offer complainant the first available position in a classification at least equal to her former position, at their Beaver Plant.





NOW, THEREFORE, Westinghouse and the Commission do hereby agree to be legally bound as follows:

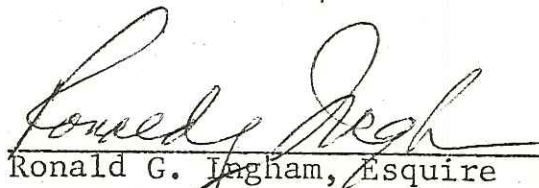
1. Within two weeks of the Commission's approval of this Agreement, Westinghouse shall place Complainant Betty L. Slappy in a position at the Beaver plant in a classification at least equal to her former position. Betty L. Slappy's seniority and fringe benefits shall be calculated as if she had been granted a leave of absence on November 6, 1970. Betty Slappy has agreed that, in exchange for her placement according to the above terms, she will release and forego all other claims for relief.

2. The Commission agrees that the steps above specified shall constitute satisfaction of Westinghouse's obligations in regard to the Commission's determinations reflected in the "History Of The Case, Findings Of Fact, Conclusions Of Law, Commission's Decision, And Final Order" entered in the above-captioned matter so far as those determinations affect the situation of Betty L. Slappy. This Agreement shall constitute an amendment to said "History Of The Case, Findings Of Fact, Conclusions Of Law, Commission's Decision, And Final Order."

3. The Commission and Westinghouse enter into this Agreement intending to be legally bound hereby. Westinghouse has not been coerced into entering this Agreement and has been advised of all of its legal rights. This Agreement shall not become final and binding until approved by the Commission and a Final Order is thereupon issued.



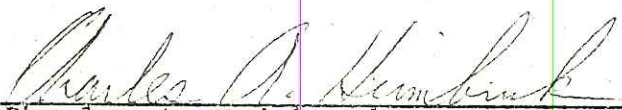
IN WITNESS WHEREOF, an appropriate official of Westinghouse, being duly authorized so to do, has executed the foregoing on behalf of Westinghouse on August 12, 1974.



Ronald G. Ingham, Esquire

Attorney  
Westinghouse Electric Corporation,  
Distribution and Control Equipment  
Divisions, Beaver, Pennsylvania

ATTEST:



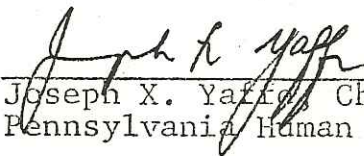
Charles A. Heimbrook

Westinghouse Electric Corporation,  
Distribution and Control Equipment  
Divisions, Beaver, Pennsylvania



Homer C. Floyd, Executive Director  
Pennsylvania Human Relations Commission

Approved and ratified at a meeting of the Pennsylvania Human Relations Commission on the 26th day of August, 1974.



Joseph X. Yaffa, Chairperson  
Pennsylvania Human Relations Commission

ATTEST:



Elizabeth M. Scott  
Assistant Secretary



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BETTY L. SLAPPY, )  
Complainant )  
-vs- ) Docket No. E-4146  
WESTINGHOUSE ELECTRIC )  
CORPORATION, )  
Respondent )

MEMORANDUM OF LAW

INTRODUCTION

Complainant herein, Betty L. Slappy, lodged a complaint with the Pennsylvania Human Relations Commission alleging that the respondent terminated her from employment because she failed to comply with a requirement in the respondent's contract with their labor union which called for notification to respondent of a female's pregnancy no later than four months from conception and required her involuntary dismissal from employment for failure to so notify respondent.

Complainant contends that such a notification requirement constitutes an unlawful discriminatory practice on the basis of sex in violation of Section 5(b)(2) of the Pennsylvania Human Relations Act.

At the public hearing in this matter, the hearing commissioners raised the following question, the reply to which constitutes the contents of this memorandum of law:

1. Does the Pennsylvania Human Relations Commission have the power and legal authority to rule that a requirement of all female employees to notify her employer within four months of conception constitutes a discriminatory practice under the Pennsylvania Human Relations Act?



SUMMARY OF ARGUMENT

1. THE PENNSYLVANIA HUMAN RELATIONS COMMISSION HAS THE POWER AND LEGAL AUTHORITY TO FIND THAT A REQUIREMENT THAT ALL FEMALES NOTIFY THEIR EMPLOYER WITHIN FOUR MONTHS OF CONCEPTION IS DISCRIMINATORY ON THE BASIS OF SEX UNDER THE PENNSYLVANIA HUMAN RELATIONS ACT.



## ARGUMENT

1. THE PENNSYLVANIA HUMAN RELATIONS COMMISSION HAS THE POWER AND LEGAL AUTHORITY TO FIND THAT A REQUIREMENT THAT ALL FEMALES NOTIFY THEIR EMPLOYER WITHIN FOUR MONTHS OF CONCEPTION IS DISCRIMINATORY ON THE BASIS OF SEX UNDER THE PENNSYLVANIA HUMAN RELATIONS ACT.

The instant labor management contract entered into between Westinghouse Electric Corporation and the International Brotherhood of Electrical Workers requires, in Article 14, Section 2, that all female employees of respondent company report the fact of a pregnancy to respondent company within four months of the date of conception.

The provision stipulates that failure to make such a report will cause the employee's involuntary termination of employment with respondent.

The subject provision also requires involuntary leave of absence at the sixth month of pregnancy but, since the law is so well settled in this area that that also constitutes a discriminatory practice, it need not be mentioned further in this memorandum of law.

The only issue in this case is whether or not such a reporting requirement is discriminatory and violative of the Pennsylvania Human Relations Act on the basis that it is only applied to females.

A case in point is Doe v. Osteopathic Hospital of Wichita, Inc., United States District Court, Kansas, Civil No. W-4488, decided October 18, 1971 at 4 E PD 5188, wherein the District Court stated:

" If plaintiff was discharged for failure to notify defendant of her unwed pregnant condition, such termination likewise constituted unlawful discrimination in that she was dismissed for failure to exercise an arbitrary duty not imposed upon any member of the male sex, and totally unrelated to job performance."



In the instant case, complainant was dismissed for failure to exercise an arbitrary duty not imposed upon any member of the male sex. Furthermore, from the testimony adduced at the public hearing, it is patent that the requirement was totally unrelated to job performance as there was no attempt made by respondent to inquire as to each individual case wherein pregnancy was or should have been reported, to see if same would be inimical to the welfare of the respondent, the complainant, or the unborn fetus.

The reporting of pregnancy requirement is a term or condition of employment. The Pennsylvania Human Relations Act at 43 P.S. Section 954(b) provides as follows:

" If shall be an unlawful discriminatory practice unless based upon a bonafide occupational qualification . . . (a) for any employer, because of . . . sex . . . or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions, or privileges of employment . . ."  
(emphasis added)

The reporting of pregnancy requirement in the matter now before the Commission was a term and/or a condition of employment under which all women employees, and only women employees, were forced to abide.

The Pennsylvania Supreme Court has conclusively determined this matter as being one of a discriminatory nature by their decision in the case of Cerra v. East Stroudsburg Area School District, No. 359 January Term 1972, opinion filed January 19, 1973, where, at page 4 of the opinion, the court states as follows:

" In short, Mrs. Cerra and other pregnant women are singled out and placed in a class to their disadvantage. They are discharged from their employment on the basis of a physical condition peculiar to their sex. This is sex discrimination, pure and simple."

By strong analogy, the requirement that female employees of respondent company report the fact of their pregnancy by the fourth month after conception, is based on a physical condition peculiar to their sex . . . and this is sex discrimination, pure and simple.



Therefore, the Pennsylvania Human Relations Commission has jurisdiction over the subject matter of the instant action and the actions complained of fall within the purview of discriminatory actions as contemplated by the Act.

Respectfully submitted,



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JAY HARRIS FELDSTEIN, ESQUIRE  
Assistant General Counsel  
Pennsylvania Human Relations Commission