

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PAUL T. NIEHAUS, :
Complainant :
 :
 :
v. : DOCKET NO. E-6719
 :
 :
COMMONWEALTH EXTERMINATING :
INC., :
Respondent :

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

FINDINGS OF FACT

1. The Complainant herein is Paul T. Niehaus, 921 Indiana Avenue, Apartment "B", New Port Richley, Florida. Complainant was a resident of Charleroi, Pennsylvania at the time of the commencement of this action.
2. The Respondent herein is Commonwealth Exterminating, Inc., of Morgantown and Berkley Streets, Uniontown, Pennsylvania and of Pittsburgh, Pennsylvania.
3. At the commencement of the Public Hearing both Complainant and Respondent waived the requirement of Section 9 of the Pennsylvania Human Relations Act 43 P.S. §959, that, "Three or more members of the Commission shall constitute the Commission for any hearing required to be held by the Commission under this Act".
4. There are sixteen branches of Respondent's Company with a total number of fifty-five employees. Eleven of said employees are women and they are all clerical workers.

At the time of the complainant, the Uniontown Branch of Respondent had three male service persons and a branch manager.

5. A service person employed by the Respondent services different accounts, such as restaurants, stores and schools - and sprays chemicals in certain areas for protection against insects and pests.

6. Respondent does not have a formal policy regarding the length of hair of its employes.

7. Respondent does have an unwritten grooming policy which provides that service persons and other employes shall be well groomed to maintain the company image.

8. The immediate supervisor of each employe, either alone or in connection with William L. Yockey, Controller of the Respondent company, determines whether an employe's hair is groomed in compliance with Respondent's grooming policy. For service persons, this determination is based upon whether their hair looks proper with respect to the employe's uniform. Length of hair is a factor considered in such determination. For female employes, this determination is based upon whether their hair is well groomed. Length of hair is not a factor in such determination.

9. Respondent employs women whose hair is longer than that of the Complainant.

10. In the fall of 1973, Complainant met with employment as a service person with Commonwealth Exterminating, Inc.

11. At Complainant's initial interview the duties and salary of a service person were discussed.

12. At the time of that interview, Complainant's

hair was approximately shoulder length. Mr. George Washabaugh told the Complainant that he would probably have to get his hair cut to conform with the company image and grooming policy. Mr. Washabaugh allowed that this would not have to be done for two weeks to permit the Complainant an opportunity to work as a service person and to determine whether he liked the job.

13. Complainant started to work for Respondent on or about October 20, 1973.

14. Complainant was trained by Colin Marks and Thomas Lee Williams. They taught Complainant how, when and where to spray the chemicals, the route to be taken to service the accounts and the use of the route book in determining the time of day to service the different accounts.

15. During the time that Complainant worked for Respondent, he claimed that he cut his hair four (4) inches, so that it was still covering his ears but barely touching his collar. However, neither Mr. Washabaugh nor Mr. Williams observed that the Complainant had cut his hair during his employment with the Respondent.

16. Mr. Washabaugh did request that the Complainant cut his hair but did not threaten to discharge him from employment for failure to do so.

17. Respondent received no complaints from any customers concerning either the length or grooming of Complainant's hair.

18. On November 23, 1973, Mr. Washabaugh notified the Complainant that he was being discharged from the Respondent's employ.

19. Three factors formed the basis for the recommendation by Mr. Washabaugh that Complainant's employment be terminated by the Respondent:

a. Complainant failed to follow instructions and attempted to usurp the authority of Uniontown Branch Manager, George Washabaugh, by attempting to establish service times with representatives of the Blue Flame Restaurant and the Mon-Valley Health and Welfare Authority, despite instructions from Mr. Washabaugh to refrain from doing so.

b. Complainant failed to follow the instructions of his trainer, Thomas Lee Williams, and failed to comply with the requirements of the route book concerning the scheduling of extermination service at the Charleroi Area Junior-Senior High School. Despite instructions to arrive after 2:00 P.M. when all students would have departed from the cafeteria, Complainant arrived at the school at 12:10 P.M. His early arrival caused Catherine Kelly, Dietician in charge of school food services, to become extremely upset, and precipitated an argument during which the Complainant repeatedly insisted that he was on time and had a schedule to maintain. As a result of this incident, Ms. Kelly registered a complaint with Mr. Washabaugh.

c. Complainant demonstrated his unreliability and failure to follow instructions when he failed to keep his commitment to Mr. Washabaugh to cut his hair.

CONCLUSIONS OF LAW

Upon all the evidence in the Public Hearing and in consideration of the foregoing Findings of Fact, the Pennsylvania Human Relations Commission makes the following Conclusions of Law:

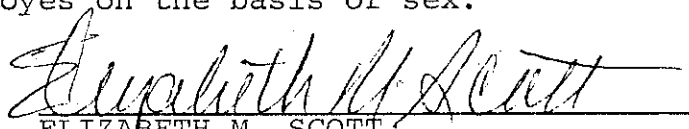
1. At all times herein mentioned the Pennsylvania Human Relations Commission had and still has jurisdiction over the Complainant, Respondent and the subject matter of the complaint pursuant to the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq.
2. The convening of the Public Hearing in this matter before one Hearing Commissioner was legally valid in that both Complainant and Respondent verbally agreed to waive the requirement set forth in Section 9 of the Pennsylvania Human Relations Act, supra, that "Three or more members of the Commission shall constitute the Commission for any hearing required to be held by the Commission under this Act". 43 P.S. §959.
3. Section 5(a) of the aforesaid Act, 43 P.S. §955(a) provides, in part, as follows: "It shall be an unlawful discriminatory practices, unless based on a bona fide occupational qualification... For any employer because of the ... sex... of any individual...to bar or discharge from employment or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions, or privileges of employment".
4. The Respondent's grooming policy as it applies to length and grooming of hair, although neutral on its face, has a disparate effect on male employees, on the basis of their sex, and therefore, constitutes an unlawful discriminatory practice in violation of Section 5 of the Pennsylvania Human Relations Act, supra.

5. There has been no showing that Respondent's grooming policy as it relates to the length of a service person's hair constitutes a bona fide occupational qualification as defined in the Commission's Guidelines on Discrimination Because of Sex, Section 6, 1 Pa. Bulletin No. 24, Page 707 (December 19, 1970), 3 CCH Employment Practices Guide, Paragraph 27,296; and Regulations on Bona Fide Occupational Qualifications, 16 Pa. Code §41.71 et seq.

6. The action of Mr. Washabaugh in requesting that Complainant cut his hair to conform with Respondent's grooming policy and in terminating Complainant, in part, for breaking his commitment to cut his hair constituted a discriminatory act against Complainant on the basis of his sex, male, in the terms and conditions of his employment under the Pennsylvania Human Relations Act, supra.

7. Since there was substantial evidence to show that there was non-discriminatory factors entering into Complainant's discharge which outweighed any discriminatory factor, it cannot be held as a matter of law that Complainant's discharge was on the basis of his sex. Therefore, his discharge did not constitute an unlawful discriminatory practice in violation of the Pennsylvania Human Relations Act, supra.

It is, therefore, recommended that the Commission enter an Order against the Respondent, its officers, servants, employes, agents successors in interest and assigns, requiring that it cease and desist from engaging in unlawful discriminatory practices as set forth herein, and further requiring that it formulate a grooming policy which shall be applied equally among all employes and which does not have disparate effect upon any class of employes on the basis of sex.



ELIZABETH M. SCOTT
Hearing Commissioner

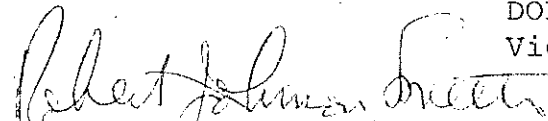
COMMISSION'S DECISION

AND NOW, this 26th day of January , 1975, upon the recommendation of the Hearing Commissioner and upon consideration of the Finding of Fact and Conclusions of Law, the Pennsylvania Human Relations Commission finds and determines that:

1. Respondent, Commonwealth Exterminating, Inc., has committed an unlawful discriminatory practice in violation of Section 5(a) of the Pennsylvania Human Relations Act, supra, in that it utilizes a grooming policy that has a disparate and discriminatory effect upon its male employees.

2. Since Respondent's discharge of Complainant was based on neutral factors, Respondent did not commit an unlawful act of discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act, supra, when it terminated the Complainant.


DORIS M. LEADER
Vice-Chairperson


DR. ROBERT JOHNSON SMITH
Secretary

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GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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COMMONWEALTH EXTERMINATING: INC., :
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FINAL ORDER

AND NOW, this 26th day of January , 1975,
upon consideration of the foregoing Findings of Fact,
Conclusions of Law, recommendation of the Hearing Commissioners
and Commission's Decision, and pursuant to Section 9 of the
Pennsylvania Human Relations Act, 43 P.S. §959, it is hereby

ORDERED

1. That Respondent shall cease and desist from
utilizing its present grooming policy. Respondent is further
directed to formulate a written grooming policy which shall not
have different standards or different applications for males
and female employes, or for clerical workers and service
persons, unless Respondent can show that any differences are
based on a bona fide occupational qualification, as defined
in Pennsylvania Human Relations Commission's Guidelines on
Discrimination Because of Sex, Section 6, 1 Pa. Bulletin No.
24, Page 707 (December 19, 1970), 3 CCH Employment Practices
Guide, Paragraphs 27,296; and Regulations on Bona Fide
Occupational Qualifications, 16 Pa. Code §41.71 et seq.

2. That within thirty (30) days of the date of this Order, Respondent shall forward such written grooming policy to the Pennsylvania Human Relations Commission, Room 810, Four Smithfield Street, Pittsburgh, Pennsylvania 15222, for its approval.

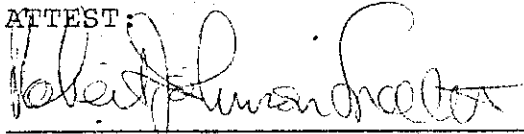
3. That Respondent shall notify all present employees of its grooming policy within thirty (30) days of its approval by the Commission, and shall advise all future employees of such policy at the time of their commencement of employment. All notifications should be in writing, and a copy of such notification should also be forwarded to the Commission for its approval along with the proposed grooming policy.

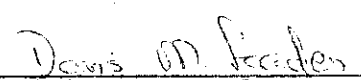
4. That Respondent shall post the Pennsylvania Human Relations Fair Employment Notice in an accessible, well-lighted place in each of its offices, and shall properly maintain such notices.

5. That the complaint is dismissed as to the Complainant's allegation that he was discharged because of his sex, male.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

ATTEST:


Dr. Robert Johnson Smith
Secretary

BY: 
Doris M. Leader
Vice-Chairperson

(Pennsylvania Human Relations Commission Chairperson, Joseph X. Yaffe, disqualified himself from the consideration and determination of this case.)