

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FREEPORT AREA SCHOOL DISTRICT,)	
Appellant)	
)	
Vs.)	No. 152 C.D., 1974
)	
COMMONWEALTH OF PENNSYLVANIA)	
PENNSYLVANIA HUMAN RELATIONS)	
COMMISSION)	

SUPPLEMENTAL BRIEF

Pursuant to the Order of this Honorable Court dated December 6, 1974, appellee files the within Supplemental Brief in accord with its' "Petition For Leave To File Supplemental Brief".

QUESTION INVOLVED

DOES THE PENNSYLVANIA HUMAN RELATIONS COMMISSION HAVE THE AUTHORITY TO ACCEPT AND PROCESS COMPLAINTS FROM INDIVIDUALS ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED WHERE THOSE OTHERS ARE NOT SPECIFICALLY NAMED IN THE COMPLAINT?

HISTORY

The original Briefs submitted in the instant case were argued before this Honorable Court December 3, 1974. Appellant did not raise, either in its' Brief or at oral argument, any question concerning the authority of the Pennsylvania Human Relations Commission to accept and process a pattern and practice complaint on behalf of an individual and all others similarly situated where those others were not specifically named in the complaint.

President Judge Bowman, sua sponte, questioned the authority of the Commission to accept so called "Class Action" complaints

from individuals on behalf of themselves and others similarly situated.

ARGUMENT

It is to be initially noted that, although President Judge Bowman referred to the instant proceeding as a so called "Class Action" proceeding the Pennsylvania Human Relations Commission does not and has never referred to a similar proceeding by that nomenclature.

This is a distinction with a significant difference in that the color of statutes and judicial interpretations applied to "Class Action" suits should not be considered when analyzing the power and procedure of the Pennsylvania Human Relations Commission to file a pattern and practice complaint such as is now before the Court.

In the instant case the precise language used is as follows:

"Complainant alleges that the respondent in the past and continues to the present to apply an arbitrary maternity leave policy which has a discriminatory effect on the complainant and other females similarly situated because of their sex, female." (Amended Complaint dated January 11, 1973)

The anomenclature used by the Pennsylvania Human Relations Commission is that of a "pattern and practice" complaint and is felt by the Commission to be the only reasonable vehicle available to it for processing cases involving invidious patterns of discrimination, whether it be on the basis of race, sex, national origin, color, religious creed, ancestry or age. The Commission has taken what it construes to be its duty, as articulated in the policy enacted by the Pennsylvania General Assembly, and its consequent authority from the act itself. Accordingly, Section 7 of the Act indicates that the Commission shall have the following powers and duties:

(e) "To formulate policies to effectuate the purposes of this Act, and make recommendations to agencies and officers of the Commonwealth or political subdivisions of Government or Board, Department, Commission or School District thereof to effectuate such policies." (Emphasis supplied)

Moreover, Section 7 (f) provides that the Commission shall have the power "to initiate, receive, investigate and pass upon complaints charging unlawful discriminatory practices." The Commission therefore has the power to receive and process complaints in whatever form the Commission deems appropriate in order to accomplish the objectives of the Human Relations Act.

What, then, are the purposes of the Act?

(a) "The practice or policy of discrimination against individuals or groups by reason of their race, color, religious creed, ancestry, use of guide dogs because of blindness of the user, age, sex or national origin is a matter of concern to the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state. The denial of equal employment, housing and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety and general welfare of the Commonwealth and its inhabitants.

(b) It is hereby declared to be the public policy of this Commonwealth to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry, age, sex or national origin, and to safeguard their right to obtain and hold employment

without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights at places of public accommodation and to secure commercial housing regardless of race, color, religious creed, ancestry, sex, use of guide dogs because of blindness of the user or national origin.

(c) This act shall be deemed an exercise of the Commonwealth for the protection of the public welfare, prosperity, health and peace of the people of the Commonwealth of Pennsylvania." Section 2, Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Sec. 951 et sec.

Section 9 of the Act requires a respondent to answer the charges of such complaint and is therein not limited to processing complaints filed by an individual on behalf of a named group of persons or a specific group for whom remedies have been designed by the Act. Section 4(a) of the Act defines the term "person" to include one or more individuals, partnerships, associations, organizations, corporations, . . ." and does nothing to preclude the authority of the Commission from accepting a complaint filed by an individual on behalf of himself or herself and other persons of the same category similarly situated.

As the Pennsylvania Supreme Court stated in Pennsylvania Human Relations Commission vs. Uniontown Area School District, 455 Pa. 52, 313 A2d 156 (1973):

"Although we are of opinion that the Commission definition of de facto segregation is not statutorily mandated, this is not to say that the Commission was without power to adopt it. To the contrary, we are of the view that the Legislature in Section 7 of the Human Relations Act, as amended, 43 P.S. Section 957, did empower the Commission to supply such a definition. In that Section it is provided that -

'The Commission shall have the following powers and duties:
(d) To adopt promulgate, amend and rescind rules and regulations to effectuate the policies and provisions of this Act.

(e) To formulate policies to effectuate the purposes of this Act and make recommendations to agencies and officers of the Commonwealth or political

subdivisions of government or Board, Department, Commission or School District thereof to effectuate such policies."

The Commission has, in good faith, attempted to formulate the policies to effectuate the purposes of this Act and the receipt and processing of pattern and practice complaints is one such policy and remedy. Were this Court to adopt an interpretation of the Pennsylvania Human Relations Act prohibiting pattern and practice actions this interpretation would almost totally deprive the Commission of effectiveness in the area of race, sex, national origin, color, religious creed, ancestry and age. In considering the interpretation to be placed on the Pennsylvania Human Relations Act by the 1961 Amendments on Education, the Pennsylvania Supreme Court stated in *Pennsylvania Human Relations Commission vs. Chester School District*, 427 Pa. 157, 233 A2d 290 (1967):

"Finally we must be cognizant of the consequences of a particular interpretation. The interpretation adopted by the Courts below would almost totally deprive the Commission of effectiveness in the area of racial imbalance..."

"Pennsylvanians are justly proud of this Commonwealth leadership in promoting equal opportunities for all its citizens, and we believe it to be more than coincidental that the 1961 Amendments were adopted at a time when many educators and sociologists were giving serious attention to the educational problems posed by de facto desegregation."

Certainly both the sociological and the legal history of recent years is replete with the effects of sex discrimination and the remedies attempted. It was not happenstance that the General Assembly of Pennsylvania directed a specific amendment to the Human Relations Act in 1969, to insert sex discrimination as a discriminatory practice which must be alleviated in order

to effectuate the policy of the Commonwealth as previously cited in Section 2 of the Human Relations Act. Had the Legislature not intended to remedy discrimination against women as a group, it would not have passed the 1969 Amendment.

What then is the Commission to do in attempting to accomplish the eradication of sex discrimination? Justice Roberts, in Pennsylvania Human Relations Commission vs Chester School District, cited supra, states:

"The canons of statutory construction require that a statute be read in a manner which will effectuate its purpose, a task which compels consideration of more than the statute's literal words."

"In ascertaining this legislative purpose especially when the act in question is a manifestation of a fundamental policy of the Commonwealth, Courts may properly consider the historical setting which gave impetus to its enactment."

The Pennsylvania Supreme Court, in Pennsylvania Human Relations Commission vs. Uniontown School District, cited supra, states:

"A Court, in reviewing such a regulation is not at liberty to substitute its own discretion for that of administrative officers who have kept within the bounds of their administrative powers. To show that these have been exceeded in the field of action...involved, it is not enough that the prescribed system of accounts shall appear to be unwise or burdensome or inferior to another. Error or unwisdom is not equivalent to abuse. What has been ordered must appear to be entirely at odds with fundamental principals...as to be the expression of a whim rather than an exercise of judgment." (Citations omitted).

That the procedure followed by the Human Relations Commission in the instant pattern and practice complaint and in all others of this nature was not a "whim" is detailed in the original Brief previously submitted under Argument IV and Argument V.

The Human Relations Act is, in effect, its own Class Action procedure. The statute develops a policy for the Commonwealth of Pennsylvania,

its Courts and Administrative Agencies. The statute itself provides the necessary procedure for the Human Relations Commission to effectuate its purpose in its ability to accept and process complaints involving the pattern and practices of discrimination on any of a number of discriminatory bases. The statute is thus self-effectuating, as it affects "women" and deals specifically with discriminatory practices based upon sex, and the Pennsylvania Human Relations Commission considers those persons "others similarly situated," and complies with the thrust of its statutory charge.

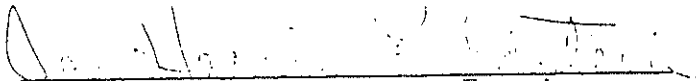
As Judge Kramer stated in Pittsburgh Press Company v. Pittsburgh Commission on Human Relations, et al., 4 Pa. C. 448, 287 A2d 161, Affm'd. 413 US 376:

"The nature of the charge herein filed is discrimination against a class (women). It is well established that when the Legislature proscribes discriminatory acts against a class it is unnecessary for the complaining class representative to allege specific injured parties."

(Emphasis supplied)

WHEREFORE, it is respectfully submitted that the Pennsylvania Human Relations Act itself, buttressed by judicial decisions and interpretations thereof, permit the Human Relations Commission to accept and process pattern and practice complaints such as the one now at Bar.

Respectfully submitted,


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