

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

FAITH L. HODGE, :
Complainant :
vs. : Docket No. E-14987
: EEOC No. 034-790212
ALLEGHENY HOUSING :
REHABILITATION CORPORATION, :
Respondent. :

STIPULATIONS OF FACT

NOW THEREFORE, this 22 day of June, 1982,
the Pennsylvania Human Relations Commission and Allegheny Housing
Rehabilitation Corporation, enter into the following stipulation of
facts as evidenced by the signature of their respective repre-
sentatives:

1. Complainant, Faith L. Hodge, is an adult individual
who resides at 2902 East Hills Drive, Apt. 8, Pittsburgh,
Pennsylvania 15221.
2. Respondent, Allegheny Housing Rehabilitation Corpora-
tion, is a limited profit corporation with principal offices
located at 5604 Baum Boulevard, Pittsburgh, PA 15206 and is an
employer of four or more persons within the Commonwealth of
Pennsylvania.
3. On November 16, 1978, Complainant filed a complaint
with the Commission alleging that Respondent discharged her from
her position as Security Manager of Second East Hills Park on

Police Unit 644 held a meeting to discuss thier problems with Respondent's management personnel. Among the problems discussed was Complainant's employment.

14. By letter dated November 2, 1978, Hosea Young, Jr., Respondent's Director of Management, advised Complainant that her services as Security Manager of Second East Hills Park had been terminated due to a realignment of the Security force. (A copy of the letter is attached hereto as Exhibit 2)

15. Respondent has never assigned any female security personnel to Second East Hills Park other than the Complainant.

16. In 1978 six (6) persons including the Complainant worked in security at Second East Hills Park.

17. In 1979, at least nine (9) persons, all of whom were male, worked in security at Second East Hills Park.

18. Complainant worked from August 15 through November 1, 1978. At the time of her termination she was working forty (40) hours per week at a rate of \$4.50 per hour.

19. Respondent paid its security force at a rate of \$4.50 per hour from November 1, 1978 through December 31, 1980.

20. Respondent has paid its security force at a rate of \$5.00 per hour from January 1, 1981 to the present.

21. The authenticity and admissibility of exhibits listed below has been stipulated to by the parties and no further proof thereof will be required prior for use at the public hearing. These exhibits were obtained from Respondent. All parties have copies of these exhibits.

Exhibit Number

Exhibit

1

Second East Hills Security Policy.
(2 pages) attached

account of her sex, female. (A copy of the complaint is attached hereto as Appendix A)

4. A copy of the complaint was served upon the Respondent on or about November 21, 1978.

5. The Commission conducted an investigation and in December, 1981, found probable cause to credit the allegations of the complaint.

6. After attempts to conciliate the matter were unsuccessful, the Commission by its Executive Director, approved the case for public hearing on February 24, 1982.

7. Complainant was a 1977 graduate of the Allegheny County Police Academy and was certified by the Municipal Police Officers' Education and Training Commission.

8. In July, 1978, Complainant became a tenant of Second East Hills Park, a housing development managed by Respondent.

9. On or about August 15, 1978, Complainant began to work as a security officer at Second East Hills Park.

~~10. Complainant later became security manager.~~ EMD

11. The duties of the security personnel are set forth in a document provided by Respondent entitled "Second East Hills Security Force Policy," a copy of which is attached hereto as Exhibit 1.

12. Except for the Complainant, all security personnel at Second East Hills Park were recruited from Certified Police Unit 644, a non-profit association of state certified police officers who contracted with housing developments and business establishments to provide security services.

13. On or about October 14, 1978, the Members of Certified

Exhibit Number

Exhibit

2	Letter to Hodge from Young d. November 2, 1978 (1 page attached)
3 et seq.	Copies of IRS 1099 forms and Re- spondent's payroll records for security personnel from 1978 through 1981
4a et seq.	Copies of requests for vouchers and other payroll and employment records of security personnel during 1978.
5a et seq.	Copies of requests for vouchers and other payroll and employment records of security personnel during 1979.
6a et seq.	Copies of requests for vouchers, contract agreements, pay vouchers and other payroll and employment records of security personnel during 1980.
7 et seq.	Copies of employment records of security personnel during 1981.
8 et seq.	Respondent's Quarterly Payroll Report Continuation Sheet d. June 30, 1981.

DATE: 9/30/1982

Michael L. Foreman

Michael L. Foreman
Assistant General Counsel
Pa. Human Relations Commission
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300 Liberty Avenue
Pittsburgh, PA 15222

DATE: 11/23/82

Wendell Freeland

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Counsel for Allegheny Housing
Rehabilitation Corporation

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

FAITH L. HODGE,
Complainant

vs.

ALLEGHENY HOUSING
REHABILITATION CORPORATION,
Respondent

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DOCKET NO. E-14987
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EEOC NO. 034-790212
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FINDINGS OF FACT*

1. Complainant Faith Hodge is a high school graduate who attended Case Western Reserve University for three years and worked on the Case Western security force. (N.T. 5-6).

2. Between 1976 and 1978, Complainant was employed by the City of Pittsburgh as a police officer. She resigned to move to California. (N.T. 7-8).

3. Upon her return to Pittsburgh, in 1978, Complainant moved into Second East Hills Park, a housing development managed by Respondent Allegheny Housing Rehabilitation Corporation. (N.T. 8-9).

4. Complainant applied for a position as security officer at Second East Hills Park. She submitted her application to a Mr. Pennington, an AHRCO employee who was resident manager

*The foregoing Stipulations of Fact are hereby adopted as part of these Findings and are incorporated herein as if fully set forth.

at Second East Hills Park. (N.T. 8-9).

5. Complainant was interviewed by Mr. Pennington, who subsequently advised her to report to work as a security officer. (N.T. 10-11).

6. Complainant's security officer duties included patrolling the Second East Hills Park area, responding to tenant's calls, and submitting routine reports. (N.T. 11).

7. Shortly after she went to work as a security officer in August of 1978, Complainant's duties were increased to include supervisory responsibilities. Mr. Pennington advised her that she had been promoted to Security Manager. (N.T. 11-16).

8. Complainant was never told that her work was unsatisfactory. (N.T. 25).

9. Complainant was terminated by letter dated November 2, 1978, advising her that she was terminated from her position as Security Manager because of a realignment of the security force. (N.T. 29; C.E. 2).

10. Complainant attempted to find other employment after her discharge by AHRCO, but has remained unemployed. (N.T. 29-30).

11. During her employment with Respondent, Complainant at all times reported to Mr. Pennington. (N.T. 19, 70-72).

12. Complainant was not told that membership in Unit 644, a Certified Police Unit, was a requirement of her employment with Respondent. (N.T. 80, 143).

13. Complainant's second child was born in 1980. (N.T. 127). She was physically disabled and unable to work for a

period of time in connection with the birth. (N.T. 133).

14. Following Complainant's termination, more security officers worked more hours at Second East Hills Park than were being worked at the time of her termination; all Second East Hills security officers other than Complainant were male. (N.T. 162-165).

15. Complainant earned \$4.25 per hour at the time she was hired and was earning \$4.50 per hour at the time of her termination. (N.T. 168). When terminated, she was working forty (40) hours per week. Respondent began paying its security force \$5.00 per hour on January 1, 1981.

16. While Respondent's witness Ponds testified that Complainant was terminated because she was not a member of Unit 644, no documentary evidence of an exclusive "hiring hall" arrangement was produced. (N.T. 178-180).

17. Respondent's witness Ponds testified that there was no position of Security Manager at Second East Hills Park. (N.T. 204).

18. The duties of the Security Force Supervisor, as specified in Respondent's Security Force Policy, are essentially the same as those performed by Complainant as Security Manager. (C.E. 1; N.T. 22-24).

19. Respondent did not manage Second East Hills Park after February of 1982. (N.T. 174).

CONCLUSIONS OF LAW

1. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 et seq. ("Act").

2. Respondent is an employer within the meaning of the Act.

3. The Pennsylvania Human Relations Commission ("Commission") has jurisdiction over the parties and subject matter of this complaint.

4. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this matter.

5. Respondent discriminated against Complainant on the basis of her sex when it discharged her from her position as Security Manager, in violation of Section 5 of the Act.

6. Complainant has the initial burden of establishing a prima facie case of discrimination.

7. Complainant met her burden by proving that she was terminated from her position for reasons not having to do with her performance, and that she was replaced by one or more males.

8. Respondent has failed to demonstrate that its conduct in terminating Complainant did not violate the Act. Its explanations for the termination were pretextual.

9. After a finding of discrimination, the Commission may award relief including any wages lost as a result of the discriminatory conduct, and such other affirmative action as will effectuate the purposes of the Act.

O P I N I O N

This case arises on a complaint filed by Faith L. Hodge ("Complainant") against Allegheny Housing Rehabilitation Corporation ("Respondent") with the Pennsylvania Human Relations Commission ("Commission") on November 16, 1978 at Docket No. E-14987. Commission staff investigated the matter and found probable cause to credit the allegations of discrimination. The case was approved for public hearing when efforts to conciliate were unsuccessful. Both parties waived their right under Section 9 of the Pennsylvania Human Relations Act ("Act"), 43 P.S. §§ 951 et seq., to a public hearing before a panel of three Commissioners. The hearing was held before Commissioner Elizabeth M. Scott, Chairperson of the designated hearing panel, on November 23 and 24, 1982.

Ms. Hodge alleged that AHRCO violated Section 5 of the Act by discharging her from her position as Security Manager of Second East Hills Park because of her sex, female.

Complainant bears the initial burden of making out a prima facie case of sex discrimination under the Act. General Electric Corp. v. Pennsylvania Human Relations Commission, 365 A.2d 649 (1976). In this case, she may do so by proving that she was discharged for reasons not having to do with her performance, and that males were subsequently hired to perform essentially the same duties as she performed prior to her discharge. If she makes this showing, Respondent may still prevail

by showing that its conduct did not violate the Act. Philadelphia Electric Co. v. Pennsylvania Human Relations Commission, Pa. Cmwlth. 448 A.2d 701 (1982); Pennsylvania State Police v. Pennsylvania Human Relations Commission, Pa. Cmwlth. A.2d (1983).

Complainant, a 1977 graduate of the Allegheny County Police Academy, began to work as a security officer at Second East Hills Park in August of 1978. Second East Hills Park is a housing development which was managed by Respondent at that time. Initially she performed routine patrol work. Within a short period her duties were expanded to include supervisory responsibilities. Nevertheless, by letter dated November 2, 1978, she was advised by Respondent that her services as Security Manager were terminated due to "a realignment of our security force." Following her discharge, more security officers, all of them male, worked more hours than had been worked by the security force prior to Complainant's termination. Complainant has thus made out a prima facie case, and we must consider AHRCO's explanation of events.

This explanation is less than crystal clear. Respondent's brief first urges that there was no such position as security manager when Ms. Hodge worked for AHRCO; the argument ignores the language of AHRCO's own termination letter, firing her from the position of Security Manager. We find it in any event to be inadequate justification for this discharge to state that the position from which Ms. Hodge was discharged, never existed.

Respondent next refers to its claimed arrangement with Certified Police Unit 644, by which arrangement members of Unit 644 served as security officers at Second East Hills Park, in the capacity of independent contractors. Having so characterized them, Respondent confusingly indicates that it does not contest their status as employees within the meaning of the Act.

Whatever Respondent's intent with regard to Ms. Hodge's status, we find that she was an employee of AHRCO: AHRCO hired her, fired her, and directed the manner in which her work was to be performed. These very factors were recently found by Commonwealth Court to be determinative as to whether an employment relationship existed within the meaning of the Act. Harmony Volunteer Fire Company and Relief Association v. Pennsylvania Human Relations Commission, Pa. Cmwlth. ___ A.2d ___ (1983).

We need deal only briefly with the realignment of the security force referred to in Complainant's termination letter. While suggesting that economic necessities prompted Complainant's discharge, Respondent fails to rebut her evidence that more male officers worked more hours following her discharge.

Finally, Respondent claims that Ms. Hodge was discharged because she did not belong to Certified Police Unit 644. We do not find this assertion to be credible. No mention of a membership requirement was made to Ms. Hodge when she was hired or when she was fired. If AHRCO genuinely had an exclusive, "hiring hall" arrangement with Unit 644 (no documentary evidence of such an arrangement was produced), Complainant's termination

letter would reasonably have mentioned the requirement of membership.

We therefore find that AHRCO terminated Ms. Hodge from her position on the basis of her sex, female, in violation of Section 5 of the Act. Having made this finding, we are empowered by Section 9 of the Act to award back pay and such other relief as will in our judgment effectuate the Act's purposes.

Complainant seeks back pay for the period between November 2, 1978, the date of her discharge, and February 1, 1982, the date on which AHRCO ceased to manage Second East Hills Park. We find that she is entitled to this amount. While Respondent attacks the credibility of her testimony regarding her efforts to seek other employment, it introduced no evidence of its own to establish her lack of diligence. We find that Complainant has credibly testified to reasonable attempts to mitigate, and that Respondent has not shown that she failed to do so. SEE: Marks v. Prattco, 633 F.2d 1122 (5th Cir. 1981). We therefore order back pay and other relief as specified in the order which follows.

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COMMONWEALTH OF PENNSYLVANIA

RECEIVED BY
PA. HUMAN RELATIONS
COMMISSION
HEADQUARTERS

EXECUTIVE OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

FAITH L. HODGE,
Complainant

vs.

ALLEGHENY HOUSING
REHABILITATION CORPORATION,
Respondent

DOCKET NO. E-14987

RECOMMENDATION OF HEARING PANEL

Upon consideration of the entire record in this case, the Hearing Commissioner concludes that Respondent violated Section 5 of the Act, and recommends that the attached Findings of Fact, Conclusions of Law, Opinion and Order be adopted and entered by the full Pennsylvania Human Relations Commission.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: *Elizabeth M. Scott*
ELIZABETH M. SCOTT

DATE: *June 12, 1983*

Payment shall be by check made payable to Faith L. Hodge, delivered in care of Michael L. Foreman, Esquire, Pennsylvania Human Relations Commission, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222, within thirty (30) days of the date of this Order.

3. That Respondent shall publicize any and all openings on its security force by means reasonably calculated to assure female applicants.


4. That notice of such openings be provided to Complainant and the Commission before they are filled, for a period of three years from the date of this Order.

5. That Respondent report to the Commission on a quarterly basis for three years from the date of this Order, indicating all security positions filled by it including the names and addresses of all rejected applicants and the reasons therefore.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: 
JOSEPH X. YAFFE, Chairperson

ATTEST:

BY: 
ELIZABETH M. SCOTT, Secretary

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

FAITH L. HODGE,
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v.

ALLEGHENY HOUSING REHABILITATION
Respondent

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FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

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NOW THEREFORE, this _____ day of _____, 1982,
the Pennsylvania Human Relations Commission and Allegheny Housing
Rehabilitation Corporation, enter into the following stipulation of
facts as evidenced by the signature of their respective repre-
sentatives:

1. Complainant, Faith L. Hodge, is an adult individual
who resides at 2902 East Hills Drive, Apt. 8, Pittsburgh,
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2. Respondent, Allegheny Housing Rehabilitation Corpora-
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located at 5604 Baum Boulevard, Pittsburgh, PA 15206 and is an
employer of four or more persons within the Commonwealth of
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3. On November 16, 1978, Complainant filed a complaint
with the Commission alleging that Respondent discharged her from
her position as Security Manager of Second East Hills Park on

account of her sex, female. (A copy of the complaint is attached hereto as Appendix A)

4. A copy of the complaint was served upon the Respondent on or about November 21, 1978.

5. The Commission conducted an investigation and in December, 1981, found probable cause to credit the allegations of the complaint.

6. After attempts to conciliate the matter were unsuccessful, the Commission by its Executive Director, approved the case for public hearing on February 24, 1982.

7. Complainant was a 1977 graduate of the Allegheny County Police Academy and was certified by the Municipal Police Officers' Education and Training Commission.

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13. On or about October 14, 1978, the Members of Certified

Police Unit 644 held a meeting to discuss thier problems with Respondent's management personnel. Among the problems discussed was Complainant's employment.

14. By letter dated November 2, 1978, Hosea Young, Jr., Respondent's Director of Management, advised Complainant that her services as Security Manager of Second East Hills Park had been terminated due to a realignment of the Security force. (A copy of the letter is attached hereto as Exhibit 2)

15. Respondent has never assigned any female security personnel to Second East Hills Park other than the Complainant.

16. In 1978 six (6) persons including the Complainant worked in security at Second East Hills Park.

17. In 1979, at least nine (9) persons, all of whom were male, worked in security at Second East Hills Park.

18. Complainant worked from August 15 through November 1, 1978. At the time of her termination she was working forty (40) hours per week at a rate of \$4.50 per hour.

19. Respondent paid its security force at a rate of \$4.50 per hour from November 1, 1978 through December 31, 1980.

20. Respondent has paid its security force at a rate of \$5.00 per hour from January 1, 1981 to the present.

21. The authenticity and admissibility of exhibits listed below has been stipulated to by the parties and no further proof thereof will be required prior for use at the public hearing. These exhibits were obtained from Respondent. All parties have copies of these exhibits.

Exhibit Number

Exhibit

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Second East Hills Security Policy.
4 (2 pages) attached

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3 et seq.	Copies of IRS 1099 forms and Re- spondent's payroll records for security personnel from 1978 through 1981
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DATE: 9/20/1992

Michael L. Foreman
Michael L. Foreman
Assistant General Counsel
Pa. Human Relations Commission
11th Floor State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

DATE: 11/23/82

Wendell Freeland
Wendell Freeland, Esq.
1111 Manor Building
564 Forbes Avenue
Pittsburgh, PA 15219
Counsel for Allegheny Housing
Rehabilitation Corporation

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

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	:	
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	:	
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REHABILITATION CORPORATION,	:	
	:	
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FINDINGS OF FACT*

1. Complainant Faith Hodge is a high school graduate who attended Case Western Reserve University for three years and worked on the Case Western security force. (N.T. 5-6).

2. Between 1976 and 1978, Complainant was employed by the City of Pittsburgh as a police officer. She resigned to move to California. (N.T. 7-8).

3. Upon her return to Pittsburgh, in 1978, Complainant moved into Second East Hills Park, a housing development managed by Respondent Allegheny Housing Rehabilitation Corporation. (N.T. 8-9).

4. Complainant applied for a position as security officer at Second East Hills Park. She submitted her application to a Mr. Pennington, an AHRCO employee who was resident manager

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5. Complainant was interviewed by Mr. Pennington, who subsequently advised her to report to work as a security officer. (N.T. 10-11).

6. Complainant's security officer duties included patrolling the Second East Hills Park area, responding to tenant's calls, and submitting routine reports. (N.T. 11).

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8. Complainant was never told that her work was unsatisfactory. (N.T. 25).

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11. During her employment with Respondent, Complainant at all times reported to Mr. Pennington. (N.T. 19, 70-72).

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period of time in connection with the birth. (N.T. 133).

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15. Complainant earned \$4.25 per hour at the time she was hired and was earning \$4.50 per hour at the time of her termination. (N.T. 168). When terminated, she was working forty (40) hours per week. Respondent began paying its security force \$5.00 per hour on January 1, 1981.

16. While Respondent's witness Ponds testified that Complainant was terminated because she was not a member of Unit 644, no documentary evidence of an exclusive "hiring hall" arrangement was produced. (N.T. 178-180).

17. Respondent's witness Ponds testified that there was no position of Security Manager at Second East Hills Park. (N.T. 204).

18. The duties of the Security Force Supervisor, as specified in Respondent's Security Force Policy, are essentially the same as those performed by Complainant as Security Manager. (C.E. 1; N.T. 22-24).

19. Respondent did not manage Second East Hills Park after February of 1982. (N.T. 174).

CONCLUSIONS OF LAW

1. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act 43 P.S. §951 et seq ("Act").
2. Respondent is an employer within the meaning of the Act.
3. The Pennsylvania Human Relations Commission ("Commission") has jurisdiction over the parties and subject matter of this complaint.
4. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this matter.
5. Respondent discriminated against Complainant on the basis of her sex when it discharged her from her position as Security Manager, in violation of Section 5 of the Act.
6. Complainant has the initial burden of establishing a prima facie case of discrimination.
7. Complainant, in this matter, met her burden by proving that she was terminated from her position for reasons other than performance, and that she was replaced by one or more males.
8. The Respondent has met its burden of producing evidence of a legitimate, non-discriminatory reason for its action.
9. The Complainant has met her ultimate burden of proving that, by a preponderance of the evidence, she was a victim of discrimination.
10. After a finding of discrimination, the Commission may award relief including any wages lost as a result of the discriminatory conduct, and such other affirmative action as will effectuate the purposes of the Act.

OPINION

This case arose on a complaint filed by Faith L. Hodge ("Complainant"), against Allegheny Housing Rehabilitation Corporation ("Respondent"), with the Pennsylvania Human Relations Commission ("Commission"), on November 16, 1978 at Docket No. E-14987. The Complainant alleged that the Respondent violated Section 5 of the Act by discharging her from her position as Security Manager of Second East Hills Park because of her sex; female. Commission Staff investigated the matter and found probable cause to credit the allegations of discrimination. The case was approved for public hearing after efforts to conciliate were unsuccessful. Both parties waived their right under Section 9 of the Pennsylvania Human Relations Act ("Act"), 43 P.S. §§951, et seq., to a public hearing before a panel of three Commissioners. The hearing was held before Commissioner Elizabeth M. Scott, Chairperson of the designated hearing panel, on November 23 and 24, 1982.

After two days of public hearing and upon consideration of the record, the Hearing Commissioner concluded that the Respondent did violate Section 5 of the Act, and recommended that Findings of Fact, Conclusions of Law, and Opinion and Order be adopted by the full Pennsylvania Human Relations Commission. On July 5, 1983, the Pennsylvania Human Relations Commission adopted the Recommendation of the Hearing Commissioner and ordered:

"1. That Respondent Allegheny Housing Rehabilitation Corporation cease and desist from discriminating on the basis of sex in the operation of its security force.

2. That Respondent pay to Complainant back pay an amount representing that which she would have earned working forty (40) hours per week for the period between November 2, 1978 and February 1, 1982, less six weeks' pay, plus interest at the rate of six percent per annum.

Payment shall be by check made payable to Faith L. Hodge, delivered in care of Michael L. Foreman, Esquire, Pennsylvania Human Relations Commission, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222, within thirty (30) days of the date of this Order.

3. That Respondent shall publicize any and all openings on its security force by means reasonably calculated to assure female applicants.

4. That notice of such openings be provided to Complainant and the Commission before they are filled, for a period of three years from the date of this Order.

5. That Respondent report to the Commission on a quarterly basis for three years from the date of this Order, indicating all security positions filled by it including the names and addresses of all rejected applicants and the reasons therefore."

The Respondent then appealed the final order of the Commission to Commonwealth Court. On March 29, 1985, Commonwealth Court held that the Commission's finding of discrimination was supported by substantial evidence and affirmed the order of July 5, 1983 by the Commission. The Respondent then appealed Commonwealth Court's order to the Supreme Court of Pennsylvania. The Supreme Court granted the petition for allowance of

appeal for the purpose of examining the method of applying the law in examining evidence to reach a decision on the issue of discrimination. On October 15, 1987, the Supreme Court rendered a decision:

"ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the COMMONWEALTH COURT OF PENNSYLVANIA be, and the same is, hereby vacated and case remanded to the Commission for further proceedings consistent with this opinion."

Subsequent to the decision rendered by the Supreme Court of Pennsylvania, Thomas L. McGill, Jr., Chairperson of the Pennsylvania Human Relations Commission, directed Hearing Examiner Phillip Ayers to review the record and make a recommendation to the full Commission consistent with the Supreme Court's decision.

The Complainant, a 1977 graduate of the Allegheny County Police Academy, began work as a security officer at Second East Hills Park in August of 1978. Second East Hills Park is a housing development which was managed by the Respondent at that time. After an initial period of patrol work, the Complainant's duties were expanded to include supervisory responsibilities. However, by a letter dated November 2, 1978, the Complainant was advised by Respondent that her services as a Security Manager were terminated due to "a realignment of our security force."

In a discrimination case, the Complainant clearly carries the initial burden of making a prima facie case under the Act. The elements of a prima facie case of discrimination were first shown by the United States Supreme Court in McDonnell-Douglas v. Green, 411 U.S. 792 (1973), and later adopted in Pennsylvania in General Electric Corp. v. PHRC 469 Pa. 202, 265 A.2d 649 (1976). In McDonnell-Douglas, the Court noted that a Complainant in a race based refusal to hire case could establish a prima facie case by showing:

- (1) That the Complainant belongs to a racial minority;
- (2) That the Complainant applied for a job for which the Respondent was seeking applicants;
- (3) That, despite the Complainant's qualifications, he was rejected; and
- (4) That, after the rejection, the position remained open and the Respondent continued to seek applications from persons of Complainant's qualification.

The instant case differs from McDonnell-Douglas in that the allegation is sex based, and she was terminated by the Respondent. Also, the model established by McDonnell-Douglas and later cases is not inflexible. The Court did make it clear that it was creating a general process which would need adaptations to the particular facts presented. In this case, the Complainant has made a prima facie case by showing she was discharged for reasons not having to do with performance, and that males were subsequently hired to perform the same duties she performed prior to her discharge. More precisely stated, the Complainant has shown that:

- (1) she is a member of a protected class (female);
- (2) that she was hired for the job for which she was qualified;
- (3) that she was discharged; and
- (4) that she was replaced with one or more males with equal, or lesser qualifications.

Both the Pennsylvania Supreme Court and Commonwealth Court agree that a prima facie case has been established in this case. Once the Complainant has established a prima facie case, then the burden shifts to the Respondent to produce evidence of a legitimate non-discriminatory reason for the discharge of the Complainant. Texas Department of Community Affairs v. Burdine, ___ U.S. ___, 101 S.Ct. 1089, 67 L.Ed. 2d 207 (1981) once the evidence of a legitimate non-discriminatory reason has been articulated,

then the Complainant still has the ultimate burden of showing, by a preponderance of evidence, that the Respondent intentionally discriminated against her. In reviewing the record of this case, the Respondent alleges that Complainant was discharged "due to the realignment of our security force." Furthermore, the Respondent alleges that the Complainant was discharged because she was not a member of Certified Police Unit (C.P.U) 644, with whom the Respondent allegedly had an exclusive hiring agreement with regard to security. Finally, there is testimony in the record, by Respondent's Vice-President, that the Complainant was discharged from the position of Security Manager because there was no such position.

In utilizing the "shifting of the burdens" analysis in the proper manner, the above reasons are sufficient to meet the Respondent's burden of a legitimate non-discriminatory reason for discharging the Complainant. The posture of the case is now such that the evidence produced by both sides must be evaluated. In United States Postal Service Board of Governors v. Aikens 460 U.S. 711, 103 S. Ct. 1478 (1978), the Supreme Court said:

.... once the defendant offers evidence from which the trier of fact could rationally conclude that the decision was not discriminatorily motivated, the trier of fact must then "decide which party's explanation of the employer's motivation it believes."

The Complainant, in an attempt to meet her ultimate burden of persuasion, is free to challenge the reasons as being unworthy of credence or pretextual.

First, one of the proffered reasons for the discharge of Complainant was that there was no such position as Security Manager. However, the termination notice to the Complainant indicates she was being

terminated from the position of Security Manager. Obviously this argument is somewhat shaky, in that the Complainant cannot be discharged from a position that never existed.

Also, it is interesting to note that the duties of the Security Force Supervisor, as defined by Respondent's Security Force Policy, became essentially the same duties which had been performed by the Complainant as Security Manager.

The Respondent also states that the Complainant was not a member of C.P.U. 644 and therefore, had to be discharged due to an exclusive hiring arrangement with that Unit. The Pennsylvania Supreme Court specifically noted their concern that if such an agreement did exist, the Complainant would be hard pressed to show that her discharge was discriminatory.

Several factors lead to the ultimate conclusion that the Respondent's testimony regarding an exclusive hiring agreement with C.P.U. 644 was not credible. First, although the timing of AHRC's alleged negotiations with C.P.U. 644 might correspond with HUD imposed budget during the summer of 1978, it was clear from testimony received that AHRC had sought bids for security services but eventually hired independent contractors as security guards. Apparently, the bidding process was unsuccessful and the inference created was that AHRC hired their security officers individually.

Corroboration of this inference is found in the simple fact that despite the existence of an alleged exclusive agreement, AHRC's resident manager first hired the Complainant, and subsequently promoted her into the supervisory position from which she was terminated. Of all people who would be intimately familiar with terms of a hiring agreement, one would certainly believe a resident manager, responsible for hiring, should know such a

fundamental factor as the "exclusivity" of a hiring provision. Respondent would have us believe that the best interest of their business concern was totally ignored by the resident manager when he hired the Complainant in contravention of a purported term of the alleged hiring agreement. The alleged agreement would have been fresh in everyone's mind since it allegedly was just negotiated immediately before the Complainant's hiring.

It is not surprising that there was no writing to produce at the Public Hearing. The only real writing from which to draw our inferences was the Complainant's termination notice. This document is silent regarding a problem with a hiring agreement.

The evidence considered as a whole leads to the conclusion that no agreement existed. Instead, security guards under the Complainant's supervision only complained about the Complainant after her selection as supervisor. It would appear that their complaint was more concerned with being supervised by the Complainant, perhaps because she is a woman, than with the fact that the Complainant was not a member of C.P.U. 644.

On the evidence presented at Public Hearing, it is our opinion that there had been no agreement between AHRC and C.P.U. 644. The evidence submitted on this point simply was not credible.

Finally, the Respondent asserts that the discharge of the Complainant was due to a realignment of the security force. Once again the evidence does not support this argument. The record indicates that, prior to the Complainant's discharge, she and another Security Officer worked forty hours per week. Also, four other male officers worked between twenty and thirty-two hours per week. Subsequent to the Complainant's discharge, two male officers worked forty hours a week, and five other male employees worked between twenty and thirty-two hours per week. The Respondent has not disputed the evidence that more male officers worked more hours after the Complainant was discharged.

A review of all of the evidence in this case reveals that Complainant has clearly shown by a preponderance of the evidence that the Respondent terminated her for reasons other than those it articulated as legitimate non-discriminatory reasons. Instead, the totality of the evidence presented in this case indicates that the Complainant's ultimate burden has been met by showing by a preponderance that the reasons given are unworthy of belief and pretextual.

We, therefore, find that the Respondent terminated the Complainant from her position on the basis of her sex, female, in violation of Section 5 of the Act. Furthermore, we are empowered by Section 9 of the Act to award back pay and such other relief as will in our judgment effectuate the Act's purposes.

Complainant seeks back pay for the period between November 2, 1978, the date of her discharge, and February 1, 1982, the date on which AHRCO ceased to manage Second East Hills Park. We find that she is entitled to this amount. While Respondent attacks the credibility of her testimony regarding her efforts to seek other employment, it introduced no evidence of its own to establish her lack of diligence. We find that Complainant has credibly testified to reasonable attempts to mitigate, and that Respondent has not shown that she failed to do so. SEE: Marks v. Prattco, 633 F.2d 1122 (5th Cir. 1981). We, therefore, order back pay and other relief as specified in the Order which follows.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

FAITH L. HODGE,
COMPLAINANT

v.

ALLEGHENY HOUSING REHABILITATION
CORPORATION,
RESPONDENT

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DOCKET NO. E-14987

RECOMMENDATION OF HEARING EXAMINER

Upon consideration of the entire record in this case, the Hearing Examiner concludes that Respondent violated Section 5 of the Pennsylvania Human Relations Act, and recommends that the attached Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion and Order be adopted and entered by the full Pennsylvania Human Relations Commission.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Phillip Ayers, Hearing Examiner

DATE: June 16, 1988

PENNSYLVANIA HUMAN RELATIONS COMMISSION

FAITH L. HODGE,
COMPLAINANT

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ALLEGHENY HOUSING REHABILITATION
CORPORATION,
RESPONDENT

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DOCKET NO. E-14987

FINAL ORDER

AND NOW, this 7th day of July, 1988, the Pennsylvania Human Relations Commission hereby adopts the foregoing Findings of Fact, Stipulations of Fact, Conclusions of Law, and Opinion, in accordance with the Recommendation of the Hearing Commissioner, and therefore

O R D E R S

1. That Respondent Allegheny Housing Rehabilitation Corporation cease and desist from discriminating on the basis of sex in the operation of its security force.

2. That Respondent pay to Complainant back pay in an amount representing that which she would have earned working forty (40) hours per week for the period between November 2, 1978 and February 1, 1982, less six weeks' pay, plus interest at the rate of six percent per annum.

3. That Respondent shall publicize any and all openings on its security force by means reasonably calculated to assure female applicants.

4. That within 30 days of the effective date of this Order, the Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter, addressed to Theresa Homisak, Esquire in the PHRC Pittsburgh Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Thomas L. McGill, Jr.
Thomas L. McGill, Jr., Esquire
Chairperson

Attest: John P. Wisniewski
John P. Wisniewski
Secretary