

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

ETHEL SABO, Complainant

v.

SUPERIOR VALVE COMPANY, Respondent

Docket No. E-33055

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT

To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
C.E. Complainant's Exhibit
R.E. Respondent's Exhibit
S.F. Stipulations of Fact

1. Ethel Sabo, (hereinafter either "Sabo" or "Complainant"), is an adult individual of the female sex. (S.F. 1 & 2)
2. Superior Valve Company, (hereinafter either "Superior Valve" or "Respondent"), manufactures valves which are sold to approximately 400 regular customers and 3,500 semi-regular customers for an annual national sales volume of approximately \$35 million dollars. (N.T. 292)
3. Sabo first became an employee of Superior Valve in May, 1951. (N.T. 15)

4. Sabo initially worked as a Production Clerk until 1963 when Sabo's responsibilities were increased. (N.T. 15)
5. Sabo's position entailed typing work orders and dealing with invoices and receiving slips. (N.T. 15)
6. In 1974, Superior Valve began computerizing its work order functions which slightly changed Sabo's work. (N.T. 19)
7. In 1976, the title of Sabo's position was changed to Assistant Scheduler. (N.T. 19)
8. At the same time Sabo was designated Assistant Scheduler, William Ditmer ("Ditmer") was designated Master Scheduler, (N.T. 20, 175), and was paid more than Sabo. (N.T. 48)
9. Ditmer had been a Superior Valve employee since 1958. (N.T. 223)
10. Prior to being designated Master Scheduler, Ditmer had held a variety of positions including: punch press operator, drill press operator, machine operator, assembling valves, testing valves, stock room organizer, shipping, expeditor, and production scheduler. (N.T. 170-175)
11. Ditmer's vast experiences gave him first-hand knowledge of Superior Valve's entire production process. (N.T. 174, 186, 235, 236, 241, 255, 273, 297)
12. Ditmer's knowledge and experience enabled him to facilitate coordination of a customer's order through nearly every departmental function which existed at Superior Valve. (N.T. 177-192, R.E. 5)
13. Although Ditmer and Sabo had desks in the same office, Ditmer continually spent one-third to one-half of each day meeting with various departmental supervisors in a general problem solving capacity. (N.T. 21, 42, 43, 177, 178, 179, 181-189, 196, 243-246, 249, 254)
14. Ditmer helped expedite orders, plan schedules, prioritize orders, evaluate the capacity of equipment, decide alternative operations, formulate delivery dates, and make decisions regarding the use of temporary employees. (N.T. 184, 255, 269)
15. Sabo did not and could not perform these functions. (N.T. 178-179, 182, 184, 189, 198, 202, 203, 212, 252, 254, 258, 270, 283-284, 297)
16. Sabo's function was mainly clerical in scope as Sabo had almost no familiarization with either the actual manufacturing process or Superior Valve's product line, other than clerically working with work orders. (N.T. 15, 19, 25, 27, 28, 63, 65, 66, 72, 77, 79, 80, 108, 116, 117, 164, 203, 207-209, 215, 232, 251, 259, 270, 273, 297)
17. Sabo recognized that Ditmer's function was different in that Ditmer was in meetings 2-3 hours per day, (N.T. 42-43); Ditmer decided what work would be done each week, (N.T. 65, 66); Ditmer was part of the decision process, (N.T. 72, 73, 76); and Ditmer provided instruction for Sabo. (N.T. 142)
18. In Ditmer's absence, Sabo did perform the clerical portion of Ditmer's position, (N.T. 24, 29, 40, 165, 289); however, the more comprehensive and meaningful problem solving and expediting functions of Ditmer's job were done by Ditmer's supervisors in his absence. (N.T. 203)
19. In October, 1986, Superior Valve was purchased by AMCast. (N.T. 292)
20. In 1986, both Ditmer's and Sabo's titles were changed in a manner consistent with AMCast's title designations: Sabo's title became Senior Production Control Clerk and Ditmer's title became Production Planner. (N.T. 20, 33, 64, 160, 225, 294, 297; C.E. 1 & 2; R.E. 12)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The parties and the PHRC have fully complied with the procedural prerequisites to a Public Hearing in this case.
3. Superior Valve is an "employer" within the meaning of the PHRA.
4. Sabo is an "individual" within the meaning of the PHRA.
5. In order to make out a prima facie case of unequal pay a Complainant must establish:
 - a. That the Respondent pays unequal wages to employees of opposite sexes working within the same establishment; and
 - b. That the jobs in question involve equal work, which means work that is equal in skill, effort, and responsibility and that is performed under similar working conditions.
6. Sabo failed to establish that her job was substantially equal to Ditmer's position, the individual with whom Sabo compared herself.

OPINION

This case arises on a complaint filed by Ethel Sabo, ("Sabo"), against Superior Valve Company, ("Superior Valve"), with the Pennsylvania Human Relations Commission ("PHRC"). In her complaint filed on or about April 22, 1985, and amended on or about June 4, 1985, Sabo alleged that Superior Valve harassed her, refused to promote her, and paid her unequal wages for equal work, all because of her sex and age. The allegations of Sabo's complaint allege violations of Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. ("PHRA").

PHRC staff investigated the allegations and originally found no probable cause existed to credit Sabo's claims. After Sabo was notified of this determination in February, 1986, she filed a request for a preliminary hearing. The PHRC granted this request and on December 11, 1986, a preliminary hearing was held. The preliminary hearing upheld the no cause determination regarding the harassment and refusal to promote allegations, however, cause was found on Sabo's denial of equal pay claim. Subsequently, conciliation efforts failed, and this matter was approved for Public Hearing.

Prior to the Public Hearing, Sabo, in effect, withdrew the age-based portion of her allegation, thus, this matter was heard solely as a sex-based unequal pay claim.

The Public Hearing was held on July 19 and 20, 1989 in Washington, PA, before Permanent Hearing Examiner Carl H. Summerson. The case on behalf of the complaint was presented by PHRC staff attorney Lorraine Caplan. Henry W. Fulton, Jr., Esquire, appeared on behalf of Superior Valve. Following the Public Hearing, the parties were afforded an opportunity to submit briefs. Post-hearing briefs were received on November 6, 1989.

Section 5(a) of the PHRA states in pertinent part:

“It shall be an unlawful discriminatory practice...[f]or any employer because of the...sex...of any individual to...discriminate against such individual with respect to compensation...”

Several Pennsylvania cases have addressed the question of alleged denial of equal pay under the PHRA. See eg, County of Allegheny v. Wilcox, 76 Pa. Cmlth. Ct. 584, 465 A.2d 47 (1983), appeal dismissed, 488 A.2d 277 (1985); and McKeesport Area School District v. PHRC, 41 Pa. Cmlth. Ct. 397, 399 A.2d 458 (1979). In both cases, the court compared jobs to ascertain whether there was an appreciable variation in required skill, effort, responsibility, and working conditions. Comparisons of such factors are automatically made under the Federal Equal Pay Act, 29 U.S.C. §206.

In the case of Tell v. Pittsburgh Radiator Supply, 20 Pa. D. & C. 3d 59 (1981), the court interpreted a section of Pittsburgh's city ordinance No. 75, which section is, in effect, the same as Section 5(a) of the PHRA. In Tell, the court was also considering an allegation of sex-based discrimination in compensation. The court stated that when reviewing an unequal pay claim, the Pittsburgh Commission was bound by U.S. Supreme Court decisions interpreting the Equal Pay Act. Accordingly, in Tell, to show a prima facie case of unequal pay, a Complainant had to prove two things. First, the Complainant must show that an employee of the opposite sex receives more pay. Second, a Complainant must show that the employee of the opposite sex performs a job which involves equal work, the performance of which required equal skill, effort, and responsibility, and similar working conditions. Tell at 63, citing Brennan v. Corning Glass Works, 417 U. S. 188 (1974).

For the purpose of this matter, we adopt this two-pronged prima facie requirement outlined by the U. S. Supreme Court in Brennan.

Although little was said on the matter at the Public Hearing, Sabo did provide unrebutted general testimony that Ditmer received more pay than herself. However, the real dispute in this case is not in the first prong of the prima facie requirement. The main controversy was whether Sabo and Ditmer performed equal work.

At the outset of this necessary inquiry, we note a fundamental principle generally recognized by federal courts. The word “equal” does not require that jobs be identical but only that they be “substantially equal.” See, Shultz v. Wheaton Glass Co., 421 F.2d 259 (3rd Cir. 1970), cert. denied 398 U.S. 905 (1970). Furthermore, the full job cycle of compared positions must be considered, rather than time spent on a particular function. Id.

After comparing Sabo's position with Ditmer's, we find that Sabo has failed to establish that her job was substantially equal to Ditmer's position.

Looking first at the skill required in both positions, we include for consideration, experience and ability. Without question, Ditmer's work experience enabled him to perform skills Sabo was unable to perform. Ditmer's plant wide exposure provided him with a total grasp of each facet of the manufacturing process. Sabo, on the other hand, was not even familiar with Superior Valve's product line. Sabo had rarely left her office to go into the production area. Ditmer not only

continually circulated throughout the entire production area, his experience gave him a complete working knowledge of the capacity and capability of each and every machine on the production floor.

It is important to note that it is not of particular significance that an individual happens to possess greater experience. Instead, emphasis must be placed on the experience required by the job itself. Again, Ditmer's function went far beyond the clerical function of keeping a paper trail on the movement of an order through the process from start to finish. Ditmer spent considerable time problem solving by directly applying his vast experience. Sabo's position entailed only paper trail clerical functions. Accordingly, Ditmer's job required far more skill because to adequately perform his job, Ditmer needed a thorough knowledge of Superior Valve's entire operation, as well as the clerical skills which Sabo also had.

Actually, there is enough of a substantial difference in just the skill component between Ditmer's and Sabo's positions to declare their jobs were unequal. However, we will still briefly look at the remaining components.

Regarding the effort component, comparisons are made of both the quantity and the quality of effort. Additionally, effort may include mental as well as physical exertion. Here, Ditmer clearly exerted extra effort which was sufficiently continuous and substantial to support a wage differential. Ditmer had to continually meet with personnel from practically every department in Superior Valve's entire operation. These meetings were generally designed to find ways to facilitate a smooth and expeditious flow of production. Furthermore, one can only imagine the mental agility needed to prioritize orders and develop delivery dates which kept customers happy. Sabo's position required none of these functions.

The next component equally finds Ditmer's position with much more responsibility placed on it than that required of Sabo's job. Ditmer's position generally was responsible to insure a smooth operation. Ditmer made many decisions regarding prioritizing work, implementing alternative processings, and generally exercising independent judgment and discretion. Sabo, on the other hand, relied upon information which had either already been developed and computerized or was provided to her by others often including Ditmer. Sabo's position appeared to rarely require independent judgment and discretion, while such factors encircled Ditmer's daily activities.

The final component of working conditions was also clearly dissimilar. Ditmer spent approximately half his day circulating through the plant while Sabo remained in the office seated behind her computer screen. Added to the three other components, this difference simply helps to account for the wage differential between Sabo and Ditmer.

In summary, the evidence in this case, considered as a whole, reveals that Sabo failed to meet her initial burden of establishing a prima facie case. The jobs in question were not even close to being substantially equal. Accordingly, the complaint in this matter should be dismissed. An appropriate order follows.

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

ETHEL SABO, Complainant

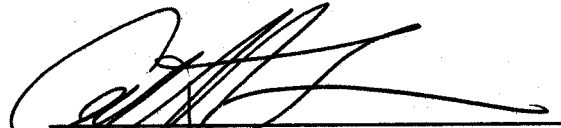
v.

SUPERIOR VALVE COMPANY, Respondent

Docket No. E-33055

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Complainant has failed to prove discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law and Opinion be Approved and Adopted by the full Pennsylvania Human Relations Commission. If so Approved and Adopted, the Permanent Hearing Examiner recommends issuance of the Attached Final Order.


Gary H. Summerson
Permanent Hearing Examiner

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FINAL ORDER

AND NOW, this 30th day of November, 1989, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

ORDERS

that the complaint in this case be, and the same hereby is dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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

ATTEST:

Raquel Otero de Yienst
Raquel Otero de Yienst, Secretary