

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WALTER WORTHY,  
Complainant

v.

ARISTECH CHEMICAL CORPORATION,  
Respondent

:  
:  
:  
:  
:  
:  
:  
:

DOCKET NO. E-52139D

JOINT STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WALTER WORTHY,	:	
Complainant	:	
	:	Docket No. E-52139-D
v.	:	
	:	
ARISTECH CHEMICAL	:	
CORPORATION,	:	
Respondent	:	

JOINT STIPULATIONS OF FACT

The Pennsylvania Human Relations Commission and Aristech Chemical Corporation ("Aristech") agree that the following facts are true:

1. Complainant Walter Worthy ("Worthy") (E-52139-D) is an adult black male residing at 1405 Columbus Avenue, Pittsburgh, Pennsylvania 15233.
2. Worthy is an "individual" within the meaning of §5(a) of the Human Relations Act.
3. Aristech is an employer with four or more employees in the Commonwealth of Pennsylvania.
4. Worthy filed a complaint with the Pennsylvania Human Relations Commission.
5. The complaint was timely filed on August 9, 1990.
6. The Commission made a prompt investigation in connection with the complaint filed by Worthy.

7. The Commission determined that probable cause existed for crediting the allegations of the complaint.

8. The Commission thereafter endeavored to settle the matter by conference, conciliation and persuasion.

9. Worthy was employed by Aristech from December 4, 1986 to May 13, 1990.

10. Worthy was attempting to steal Aristech property on May 6, 1990.

11. Joseph Aversa was employed by Aristech on May 13, 1990.

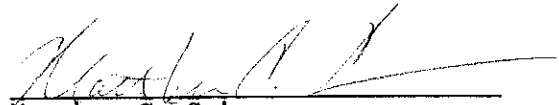
12. Worthy was discharged effective May 13, 1990.

13. United States Steel Corporation (now USX Corporation) formed the USS Chemicals Division in 1966 to produce and market chemicals.

14. Pursuant to the terms of a Reorganization Agreement effective December 4, 1986, USX transferred to Aristech substantially all of the assets of the USS Chemicals Division.



Vincent A. Ciccone  
Assistant Chief Counsel  
PA Human Relations Commission  
State Office Bldg. - 11th Flr.  
300 Liberty Avenue  
Pittsburgh, PA 15222-1210



Matthew C. Cairone  
Attorney for Respondent  
Aristech Chemical Corporation  
600 Grant Street - 11th Floor  
Pittsburgh, PA 15219-2704

FINDINGS OF FACT\*

1. The Respondent, Aristech Chemical Corporation, (hereinafter "Aristech") operates approximately 10 plants nationally. (N.T. 136)
2. One of Aristech's facilities is its Neville Island Plant. (N.T. 136)
3. Prior to December 4, 1986, the Neville Island Plant facilities were owned by USS Chemicals, a division of U.S. Steel, (hereinafter "USX"). (N.T. 17)
4. Upon assuming ownership on May 4, 1986, Aristech's operation at the Neville Island Plant was identical to the prior USX operations. (N.T. 17, 18, 188, 228-229)
5. Aristech's Neville Island Plant was situated on 46 acres, at which 200-500 employees worked 3 shifts, 24 hours per day, 7 days a week. (N.T. 73, 97, 112, 127, 136, 350)
6. Aristech shift employees' work hours varied and employees frequently rotated shifts. (N.T. 110)
7. The Complainant, Walter Worthy, (hereinafter "Worthy") was a long term maintenance worker at Aristech's Neville Island Plant. (N.T. 94-95, 143)

\* The foregoing "Joint Stipulations of Fact" are hereby incorporated herein as if fully set forth. 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 Facts. 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. Joint Stipulations of Fact

8. The Maintenance department chain of command at Aristech began with the Plant Manager, Stanley Kerkentzes, (hereinafter "Kerkentzes"), who directly supervised the Manager of Maintenance and Engineering, John Wright (hereinafter "Wright"), who directly supervised the superintendent of maintenance, Mike Klobuka (hereinafter "Klobuka"), who directly supervised the Maintenance Foreman, Fred Miller (hereinafter "Miller"), who directly supervised Worthy. (N.T. 136, 142, 143, 155)

9. Aristech maintained a strict company wide general rule against theft which in effect declared that if an employee is caught stealing that employee will be discharged. (N.T. 305; C.E. 2)

10. Aristech activated this general rule on three occasions: (a) in 1988 a White employee was discharged for theft from Aristech's Pasadena, Texas facility; (b) in May 1990, a White employee was discharged for theft from Aristech's Jacksonville, Arkansas facility; and (c) in May 1990, Worthy was discharged from Aristech's Neville Island Plant. (N.T. 309-310, 318)

11. In Mid-April, 1991, Kerkentzes received an anonymous letter. (N.T. 104, 329, 360; C.E. 15)

12. The letter was composed principally of various sizes of hand printed letters, but also contained several words which were cut from printed materials, and two typed words. (C.E. 15)

13. Prior to the Public Hearing of this case, a handwriting expert analyzed the letter and provided an opinion that Dennis Sell (hereinafter "Sell"), a co-worker of Worthy's, wrote the letter. (C.E. 16)

14. Upon his receipt of this letter, Kerkentzes made some attempts to ascertain who had written the letter. (N.T. 109)

15. For approximately one to one and half years, in the early 1970's Kerkentzes had supervised Sell when Sell was both a refinery operator and service operator. (N.T. 123, 210, 224, 227)

16. While a service operator, Sell was required to complete daily logs which were reviewed by Kerkentzes. (N.T. 228)

17. Despite having seen Sell's handwriting years earlier, Kerkentzes did not recognize the disguised printing of the anonymous letter as having been written by Sell. (N.T. 71, 72, 105, 106, 109)

18. In effect, the anonymous letter indicated someone was stealing company property, that it was occurring outside Kerkentzes' office window both at night and during the daylight shift on weekends. (C.E. 15)

19. Additionally, the letter noted guards may be involved and to look for a truck parked near the trailer. (C.E. 15)

20. Aristech's plant was situated adjacent to a building which normally housed both Aristech's administrative offices and Aristech's engineers. (N.T. 98)

21. A temporary trailer which housed engineers was placed between the plant entrance and the office building while the engineering space was being renovated. (C.E. 2)

22. Worthy and two White maintenance department co-workers, Sell and Joe Lasewski, had been assigned to do remodeling work in the 1st floor offices of Aristech's office building. (N.T. 97, 155, 284, 339)

23. Following the receipt of the mid-April anonymous letter, the only action taken by Aristech was to spot check occasionally. (N.T. 330)

24. After his receipt of the letter, Kerkentzes also received 3 phone calls from the letter writer. (N.T. 86, 115, 116)

25. Kerkentzes did not recognize the caller's voice. (N.T. 116)
26. The third phone call on Thursday, May 3, 1990, specifically indicated that company materials would be leaving on Sunday, May 6, 1990 in a green truck. (N.T. 119)
27. The phone call of May 3 also warned to be careful of possible violence. (N.T. 120)
28. Aristech contracted with an off duty police officer, Yonchic, to assist Aristech videotape on Sunday, May 6, 1990 around the area near the temporary trailer. (N.T. 58, 88, 121, 333)
29. This was the first time Aristech had ever hired a private detective. (N.T. 61)
30. Three individuals participated in the videotaping on May 6, 1990: Aristech's chief of security, Henderson, Aristech's manager of employee relations, Sutilla, and the private detective Yonchic. (N.T. 333)
31. The video operation was set up in the second floor office which looked out over the parking area in front of the trailer and the plant entrance. (N.T. 333; R.E. 2)
32. There were 3 crews working at the Neville Island Plant on Sunday, May 6, 1990: (a) several dozen production crew employees; (b) approximately 6 employees on a maintenance crew; and (c) the remodeling crew of Worthy, Sell, and Lasewski. (N.T. 94, 96)
33. Once an employee entered the main plant, to get out an employee normally needed a pass signed by the supervisor, and a guard. (N.T. 101, 102)
34. This pass would normally indicate the time left, time returned and reason for leaving. (N.T. 102)

35. The office remodeling crew had open access from the plant through the parking area to the adjacent office building. (R.E. 2)

36. Lab personnel and other maintenance personnel also had free access from the plant. (N.T. 102)

37. On May 6, 1990, the videotape captured Worthy putting company property in his truck on 3 occasions. (R.E. 2)

38. Worthy's greenish-blue truck was parked closest to the trailer instead of in an area farther away reserved for truck parking. (R.E. 2)

39. Aristech initially suspends an employee for 5 days to provide a period during which both sides have an opportunity to be heard. (N.T. 78)

40. Worthy was initially suspended for 5 days and ultimately terminated on May 12, 1990. (S.F. 12)

41. Initially, Worthy filed a grievance and was defended through the grievance process by his union. (N.T. 199, 211, 213, 217, 221, 250, 252, 253)

42. Race was not raised as an issue during the grievance process. (N.T. 199, 211, 253)

43. The general defenses asserted on Worthy's behalf were that the videotaping was a changed condition of employment and that prior notices regarding the consequences of theft were confusing. (N.T. 250, 252)

44. Prior to arbitration, the union withdrew Worthy's grievance. (N.T. 221)

45. The union recognized they had no defense for the theft charge. (N.T. 217)



46. Two long-standing White employees at Aristech's Neville Island Plant had been commonly rumored to be stealing company property: Aversa and Smith. (N.T. 61, 131, 134, 150, 153, 206, 235, 236, 346, 351)

47. Aversa had been watched very carefully and targeted at gate searches both before and after May 6, 1990. (N.T. 153)

48. Aversa's work provided him with regular access through the 46 acre plant. (N.T. 66, 73)

49. In early 1990, Aversa was called in and confronted with the existence of rumors that he was stealing. (N.T. 63, 346)

50. Aversa became upset and denied the accusations. (N.T. 65)

51. Aversa was eventually videotaped leaving the plant, and ultimately discharged for insubordination when he refused to open a bag. (N.T. 66)

52. On two occasions, Smith too was targeted at gate searches; however, nothing was ever found. (N.T. 351, 370)

53. In May 1981, Sutilla observed an Aristech employee, Ray Wagner (hereinafter "Wagner"), acting suspicious. (N.T. 44)

54. Aristech guards were instructed to target Wagner for a search as he was leaving the plant. (N.T. 45, 79)

55. When stopped, Wagner refused to consent to a search of his lunch box. (N.T. 45)

56. This was the first gate search attempted by USX. (N.T. 80)

57. Wagner also ignored an order not to return to the plant. (N.T. 48)

58. Later that evening, a search of Wagner's locker revealed Wagner improperly had a 3" brass valve in the locker. (N.T. 49, 54, 315, 345, 366)

59. Wagner was initially suspended for 5 days pending discharge. (N.T. 55, 204, 205; C.E. 13)

60. USX settled Wagner's grievance because company officials feared a discharge would not be upheld through arbitration. (N.T. 89, 316)

61. At Wagner's hearing, the union took the position that Wagner was not guilty of theft. (N.T. 204, 216)

62. In Wagner's case the union felt it had a decent defense to a theft charge. (N.T. 216)

63. It became apparent that many employees had company property in their lockers and further, foremen knew about it and condoned this practice. (N.T. 216, 217, 301, 315, 321, 346)

64. As a result of the settlement of Wagner's grievance, Wagner was to be suspended for 30 days provided Wagner recognized the suspension was for just cause for unauthorized possession and hiding of company property. (N.T. 205; C.E. 14)

## OPINION

This case arises on a complaint filed on or about August 9, 1990, by Walter Worthy (hereinafter "Worthy") against Aristech Chemical Corporation, (hereinafter "Aristech"), with the Pennsylvania Human Relations Commission (hereinafter "PHRC"). Worthy's complaint alleges that he was terminated because of his race, Black. This race-based allegation alleges a violation 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. (hereinafter "PHRA").

PHRC staff investigated the allegation and at the investigation's conclusion, informed Aristech that probable cause existed to credit Worthy's allegation. Thereafter, the PHRC attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion but such efforts proved unsuccessful. Subsequently, the PHRC notified Aristech that it had approved a Public Hearing.

The Public Hearing was held on January 29 and 30, 1992, in Pittsburgh, PA, before Permanent Hearing Examiner Carl H. Summerson. The case on behalf of the complaint was presented by PHRC staff attorney Vincent Ciccone. Matthew Cairone, Esquire, appeared on behalf of Aristech. Following the Public Hearing, the parties were afforded an opportunity to submit briefs. The post-hearing brief on behalf of the complaint was received on April 24, 1992, and the brief for Aristech was received on April 8, 1992.

Normally, in a disparate treatment case such as this one, we utilize the very common and oft used pattern of proof analysis first articulated by the U.S. Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under this three part pattern of proof a complainant

must normally first establish a prima facie case. Once this has been established, a respondent has the burden of articulating a legitimate non-discriminatory reason for its action. If a respondent meets this production burden, then, ~~in order to prevail~~, the complainant has the burden to prove by a preponderance of the entire body of evidence produced that the complainant was the victim of intentional discrimination Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1982).

Very early in this case, the parties agreed that the analysis in this case should begin at the second stage of the normal proof pattern. Clearly, Aristech submitted evidence of the reason for Worthy's dismissal: Attempted theft of company property. Because this case literally begins with Aristech's response to the allegation, the factual inquiry moves to the ultimate issue of whether Worthy has met his ultimate burden of persuasion that his discharge was discriminatory within the meaning of the PHRA. See U.S. Postal Service Board of Governors v. Aikens, 31 FEP 609 (U.S. Supreme Ct. 1983).

Basically, Worthy focused his case on an attempt to establish discrimination by arguing he was treated less favorably than White employees who had either been charged with unauthorized possession of company property or rumored to be stealing. Second, Worthy argues Aristech "targeted" him for video surveillance and discharge.

Looking first to the "targeting" argument, Worthy paints a very narrow and sometimes strained portrait of several circumstances and series of events. In general, Worthy asks that judgment be arrived at by assumption and supposition.

We look first at the letter Aristech's plant manager received in mid-April 1990. There are really two analytical components which surround

the letter: (1) Did Aristech know who wrote the letter; and (2) Did Aristech know to whom the letter pointed. Taken as a whole, the evidence Worthy presented in this case fails to prove by a preponderance of the evidence that Aristech either knew who wrote the letter or precisely to whom the letter referred.

Regarding the issue of whether Aristech knew who wrote the letter, there is very little evidence which even suggests anyone could have known who wrote the anonymous letter. Worthy submits that Kerkentzes had at one point supervised the man a handwriting expert concluded was the letter writer and that as a supervisor Kerkentzes had an opportunity to read daily reports submitted by the letter writer. Evidence shows that Kerkentzes supervised Sell, the employee believed by the expert to be the letter writer, however, this period of supervision occurred in the early 1970's. This could be as much as 20 years earlier. Also, one need only look at the letter to immediately conclude that it had been prepared in such a way as to disguise the writing to maintain anonymity.

Worthy also argues that the information in the letter should have been sufficient to provide Aristech with enough clues to make a determination who wrote the letter. Kerkentzes testified that he did randomly check personnel files in an attempt to compare handwriting. Worthy submits that the information in the letter regarding the alleged timing of thefts could have been used to assess who might be involved. Worthy suggests only he, Sell, and Lasewski worked the times outlined by the letter.

Two things are fundamentally wrong with reaching the conclusion Worthy seeks. First, what Aristech could have done is far different than

what a litigant can prove was done. Second, there was un rebutted evidence that employees frequently changed shifts or worked rotating shifts. Clearly, the letter was not specific enough to narrow the possible employee as close as Worthy submits could have been done. Often it is easier to look in hindsight than with foresight. Worthy asks that we conclude as factual what is strictly a theory.

Aristech's initial lack of action upon receipt of the letter supports Aristech's position that they neither knew who wrote the letter nor to whom the letter referred. Although the letter was received in mid-April, 1990, the eventual videotaping did not occur until May 6, 1990. This is approximately a three week period. The un rebutted evidence presented here is that no action was taken until additional information was received by Aristech through at least three subsequent anonymous phone calls from the letter writer.

A phone call to Aristech on May 3, 1990 finally prompted Aristech's action. Also, the record in this case does not support a finding that Aristech knew who made the phone calls. Instead, there is ample un rebutted evidence to suggest that prior to videotaping, Kerkentzes even considered curtailing the work of the maintenance crew on which Worthy worked. The record also suggests that although Kerkentzes could have made an analysis of Aristech employees' work shifts, he did not.

Another telling aspect of the decision to videotape is the lack of involvement of Worthy's direct supervisors. Aristech argues that they were not involved because Worthy was not targeted. Further, Worthy's immediate supervisor testified he was "surprised and disappointed" to learn Worthy had been caught.

Having concluded Worthy failed to establish that Aristech knew the letter and phone calls were pointing him out, we move to an important factor regarding the issue of disparate treatment. The individuals working on Sunday, May 6, 1990, with access to the parking area were both Black and White. The videotape clearly begins by surveillance of both Black and White employees and their vehicles.

Naturally, attention would initially be drawn to Worthy as he parked his blue-green truck next to the trailer instead of in the parking area reserved by Aristech for truck parking. The anonymous call had indicated company property would be removed in a green truck. The parking of his truck where Worthy did would be suspicious in and of itself.

Then the videotape process picks up Worthy putting items into his truck not once, but three times. To view Worthy driving a small vehicle up to his truck and boldly unloading company materials into his truck makes it pretty clear that the anonymous letter accurately described the situation. The company was being "ripped off for hundreds of dollars in materials per week."

Worthy's boldness in his actions suggests he had been doing this for a while. He was taped not once, but three times putting materials into his truck. The videotape could have captured anyone on May 6, 1990. The simple fact is that the camera's eye did capture Worthy.

Next, we move to Worthy's general argument that he was disciplined more severely than White employees either rumored to be stealing or actually being caught stealing. First, Worthy seeks to compare himself with two White employees who were commonly rumored to be stealing: Aversa and Smith.

We have already concluded that Worthy failed to establish Aristech knew they would catch a Black employee on May 6, 1990. Aristech's actions

of May 6, 1990 could have caught anyone. This factor alone is enough to frustrate Worthy's arguments regarding Aristech's efforts to check on the rumors about Aversa and Smith. Furthermore, evidence shows that Aristech had taken some measures with respect to both Aversa and Smith.

Aversa was watched carefully and targeted at gate searches both before and after the May 6, 1990 incident. Eventually, Aversa was also discharged for insubordination when he refused to submit to a gate search. Another thing Aristech did with Aversa was that an Aristech manager confronted Aversa about the rumors. Aversa became upset and adamantly denied that he was stealing.

Smith too was targeted by Aristech gate searches. However, Smith was never actually caught stealing.

The other employee with whom Worthy seeks to compare himself is Ray Wagner. In 1981, Wagner was initially suspended for five days pending discharge after he refused a search of his lunch box at a gate search. Wagner also returned to the plant after being ordered not to do so. Finally, a 3" brass valve was later found during a search of Wagner's locker.

Wagner ultimately received a 30 day suspension for unauthorized possession of and hiding company property. This discipline was the result of a settlement of Wagner's grievance after the union defended a theft charge. The union asserted that a lot of employees kept company property in their lockers and more importantly, foremen knew of it and condoned the practice. After Aristech verified this position, Aristech became concerned that the theft charge would not survive the arbitration process. Instead, Aristech chose to settle the Wagner case.



Worthy's incident is clearly different from the Wagner case. Here, there is an additional factor which again frustrates Worthy's position. Aristech's evidence portrayed Aristech as having a company-wide rule which generally mandates termination for stealing.

In May 1990 Worthy was not the only Aristech employee to have been discharged for theft. In May 1990, at Aristech's Jacksonville, Arkansas facility, a White employee was terminated for theft. Also, in 1988, another White Aristech employee at Aristech's Pasadena, Texas plant was fired for theft.

Worthy and these two other employees were the only Aristech employees who had ever been caught stealing. All three were fired. The penalty imposed on Worthy was identical to the punishment imposed on the two White employees who were also caught stealing - all three were discharged.


The White individuals Worthy contends were treated more favorably were substantially less similarly situated to Worthy than the two employees who were fired. Accordingly, Worthy has failed to prove that his discharge was discriminatorily motivated. An Order dismissing this matter follows.

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WALTER WORTHY,	:	
Complainant	:	
	:	
v.	:	DOCKET NO. E-52139D
	:	
ARISTECH CHEMICAL CORPORATION,	:	
Respondent	:	

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 Joint Stipulations of Fact, 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.

BY:   
\_\_\_\_\_  
Carl H. Summerson  
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WALTER WORTHY,  
Complainant  
v.  
ARISTECH CHEMICAL CORPORATION,  
Respondent

:  
:  
:  
:  
:  
:  
:  
:

DOCKET NO. E-52139D

FINAL ORDER

AND NOW, this 25th day of August, 1992, 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 Joint Stipulations of Fact, Findings of Fact, Conclusions of Law and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Joint Stipulations of Fact, Findings of Fact, Conclusions of Law and Opinion as its own findings in this matter and incorporates the Joint Stipulations of Fact, 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

O R D E R S

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

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Raquel Otero de Yiengst  
Raquel Otero de Yiengst  
Vice-Chairperson ✓

ATTEST:

Gregory J. Celia, Jr.  
Gregory J. Celia, Jr., Secretary