

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

ALLAN HOWARD individually and :
ALLAN HOWARD as representative :
of the class of Blacks being :
discriminated against by the :
defendant's racially discrimi- : DOCKET NO. E-4534P
natory employment practices :

vs. :

JOHN WANAMAKER-PHILADELPHIA, :
INCORPORATED; READING STORE :

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

FINDINGS OF FACT

1. The Complainant herein is Allan Howard, a Black male, who resides at 1208 Avenue C, Glenside, Reading, Pennsylvania and Allan Howard, as representative of a class of Blacks being discriminated against by the Respondent's employment practices.

2. Respondent herein is John Wanamaker-Philadelphia, Incorporated, 13th and Market Streets, Philadelphia, Pennsylvania, and specifically the John Wanamaker Reading store, Berkshire Mall, Wyomissing, Pennsylvania.

3. On August 25, 1971, Respondent's Philadelphia display manager, Bernie Hauserman, interviewed Lisa Homan, Caucasian, and Kenneth Robinson, Black, for the vacant position of display assistant in Respondent's Reading store.

4. At the conclusion of those interviews, and prior to leaving Respondent's Reading store, Hauserman informed both Craig Daboin, Respondent's display manager, and Joyce Blouch, administrative assistant in Respondent's personnel office, that he had decided to hire Ms. Homan.

5. On the following day, August 26, 1971, Complainant appeared at Respondent's Reading store to be interviewed for the display assistant job, which interview had previously been arranged for him by the Reading office of the Pennsylvania Bureau of Employment Security.

6. Complainant met with Mr. Price, who advised him that the position for which he was applying had been filled. He further advised the Complainant to complete Respondent's Pre-Employment Application form.

7. Complainant completed the Pre-Employment Application, indicating that he desired full-time employment, and was advised by Mr. Price that he would call the Complainant if anything came up. The Complainant had not been contacted by the Respondent concerning employment subsequent to that time.

8. As of the date of the Public Hearing in this matter, December 19, 1972, Respondent had not hired any new employees as display assistants on a full-time permanent basis.

9. Respondent's personnel manager, Louis A. Bucher, Jr., confirmed that Complainant's application was an "active application", being one that would continue to be considered.

10. At some time subsequent to May of 1972, Respondent's store manager, Mr. Price, indicated that even if the Complainant won his case, Price would not hire him because it would be an indication of guilt. Price further indicated that the Complainant would probably feel that he owned the store and could run it, having put the Respondent in this position. It was not shown that Respondent had acted upon this statement of intent to the detriment of the Complainant.

11. For the year 1971, Respondent employed 400 employees in its Reading store, seven of whom were Black. Accordingly,

1.75% of Respondent's employees during 1971 were Black. (The Complaint in this case was filed on November 17, 1971.)

12. Respondent's Reading store is located in Wyomissing, outside of the city limits of Reading. Of 115 employees hired during 1971, approximately 83% resided within a 4 1/2 mile radius of the City of Reading. The Black population of the 4 1/2 mile radius of the City of Reading, including the City, is 3.8%.

13. The Black population of Berks County is 2.2%. Blacks comprised 1.7% of the Berks County work force, as of June, 1972.

14. As of June, 1972, Blacks comprised 6.3% of the population of the City of Reading and 5.8% of the work force of Reading.

15. As of December 19, 1972, 3.95% of Respondent's employees in its Reading store were Black.

16. On its Pre-Employment Application, Respondent asks "Have you ever been arrested for other than a minor traffic violation?", and further asks for the date of arrest and the reason for arrest.

17. Of all criminal arrests made in the United States, approximately 27% of those arrested are Black, and approximately 45% of those Black arrests are based upon suspicion of the commission of a crime.

18. Respondent has asserted that the question regarding arrests on its Pre-Employment Application is relevant to certain sensitive and intimate jobs such as the job of Santa Claus which has attracted applications by child molesters. The relevance of this question to the successful performance of any other job in Respondent's store was not asserted.

19. Respondent has hired 9 individuals who have arrest records and has rejected 8 applicants who have arrest records.

20. Respondent's employment applications indicate that 22% of its employees were referred to it through newspaper advertising, 17% through other employees of the Respondent, 25% were referred from other sources and 36% of the applications contained no indication as to the referral source.

21. Of all new employees hired between May, 1970 and July, 1972, 11% indicated that they had relatives who were employed by the Respondent, 86% indicated that they had no relatives in the Respondent's employ and 3% failed to answer the inquiry.

22. Respondent has a personnel policy which prohibits employment of relatives in the same department. New employees are formally asked whether they have relatives employed by the Respondent only after they have been hired, although such an inquiry is occasionally made and noted during an applicant's pre-employment interview.

CONCLUSIONS OF LAW

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

1. At all times herein mentioned, the Pennsylvania Human Relations Commission had and still has jurisdiction over the Complainant and Respondent and the subject matter of the Complaint herein under the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq.

2. Respondent's failure to hire the Complainant as a display assistant did not constitute an unlawful discriminatory practice in violation of the Pennsylvania Human Relations Act, supra.

3. Despite convincing evidence that the Respondent was predisposed not to further consider the Complainant for employment because he had filed a Complaint with the Pennsylvania Human Relations Commission, it cannot be concluded that Respondent has acted upon such predisposition. Accordingly, Respondent has not engaged in an unlawful discriminatory practice in violation of Section 5(d) of the Pennsylvania Human Relations Act, supra.

4. Respondent has engaged in an unlawful discriminatory practice in violation of Sections 5(a) and (b), and of Section 14 of the "Guidelines on Employee Selection Procedures" of the Pennsylvania Human Relations Commission (Pa. Bulletin Doc. No. 71-2019, October 15, 1971), by eliciting the arrest record of applicants on its Pre-Employment Application. The use of such information has been demonstrated statistically to have an adverse impact upon Black applicants by excluding disparate

numbers of such applicants. Respondent elicited such information without a demonstration that such inquiry bears a demonstrable relationship to successful job performance and without a further demonstration that there was a business necessity or other rationale for making such an inquiry on applications for all positions with the Respondent.

5. Other recruitment and hiring practices of the Respondent were not shown to constitute unlawful discriminatory practices in violation of the Pennsylvania Human Relations Act, supra.

Upon consideration of the foregoing Findings of Fact and Conclusions of Law, the Hearing Commissioners hereby recommend that the Pennsylvania Human Relations Commission find and determine that Respondent John Wanamaker-Philadelphia, Incorporated, Reading Store, has committed an unlawful discriminatory practice in violation of Sections 5(a) and (b) of the Pennsylvania Human Relations Act, supra, as more fully set forth above. It is, therefore, recommended, that the Commission enter an Order requiring Respondents to cease and desist from such discriminatory practices and to dismiss the remaining allegations set forth in the Amended Complaint.

Dr. Robert Johnson Smith
Presiding Commissioner

Doris Leader
Hearing Commissioner

Elizabeth M. Scott
Hearing Commissioner

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COMMISSION'S DECISION

AND NOW, this 25th day of February, 1974, upon the recommendation of the Hearing Commissioners and upon and in consideration of the Findings of Fact and Conclusions of Law, the Pennsylvania Human Relations Commission finds and determines that Respondent, John Wanamaker-Philadelphia, Incorporated, Reading Store, has engaged in unlawful discriminatory practices in violation of Sections 5(a) and (b) of the Pennsylvania Human Relations Act, supra, and the Guidelines on Employee Selection Procedures of the Pennsylvania Human Relations Commission, by eliciting information on its Pre-Employment Application concerning an applicant's arrest record.

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FINAL ORDER

AND NOW, this 25th day of February, 1974, upon consideration of the foregoing Findings of Fact and Conclusions of Law, and pursuant to Section 9 of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq., the Pennsylvania Human Relations Commission orders as follows:

1. Respondent shall delete from its Pre-Employment Applications any inquiry concerning the arrest record of applicants, and shall refrain from making such inquiry until such time as it has demonstrated to the Pennsylvania Human Relations Commission that such inquiry or a related inquiry bears a demonstrable relationship to successful job performance.

2. Respondent shall advise in writing all employees in its personnel departments and any other employees who have any contact whatsoever with applicants for employment with the Respondent that no information regarding an applicant's arrest record shall be elicited from such applicant, either orally or in writing, and that all applicants are to be instructed to disregard all arrest inquiries on Respondent's Pre-Employment

Application. A copy of said written instructions shall be submitted to the Pennsylvania Human Relations Commission at its Harrisburg Regional Office within thirty (30) days of the date of this Order.

3. Paragraphs 3(a), (b), (d), (e), (f), (g) and (h) of the Amended Complaint are dismissed, as is Paragraph 3(c) with the exception of the allegation regarding arrest records.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

By _____
Joseph X. Yaffe, Esq.
Chairman

ATTEST:

Dr. Robert Johnson Smith
Secretary