

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

LORETTA A. MCGILL, Complainant

v.

THOMAS D. RICHARDSON, CO., Respondent – DOCKET NO. E-3634

and

**BAKERY AND CONVECTIONERY WORKERS INTERNATIONAL UNION, LOCAL NO. 6,
AFL-CIO and NICK MERCADANTE, Respondents – DOCKET NO. E-3677**

FINDINGS OF FACT

Re: Docket Nos. E-3634 and E-3677

1. Loretta A. McGill, Complainant herein, is a female residing at 923 E. Russell Street, Philadelphia, Pa.
2. Thomas D. Richardson Co., one of the Respondents herein, is a manufacturer of candy with its factory located at "I" and Atlantic Streets, Philadelphia, Pa.

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3. On October 14, 1969, Complainant was employed by Respondent Richardson Co. as a general helper to work in a job involving the removal of candy from trays stacked to a height of 6 - to 6½ feet, and restacking the trays to their original heights.
4. Complainant is five feet two inches in height.
5. Complainant worked for approximately two weeks on the afore-said tray-dumping operation.
6. Complainant, because of her height, was unable to handle the trays at the top of the stack and thereby slowed down Respondent Richardson Co.'s production.
7. Because of Respondent Richardson Co.'s need for additional labor power during the pre-Christmas holiday season, instead of terminating Complainant's employment because of her incompetence at the job for which she was specifically employed, after two weeks assigned Complainant, on a fill-in basis, to work in its laboratory and jelly departments, intending not to recall her after the customary seasonal lay-off.
8. Complainant was absent from her assigned work post during the work-day and behaved in a manner to distract fellow workers.
9. Respondent Richardson Co. customarily enlarged its labor force prior to the Christmas holiday season and customarily laid-off such seasonal employees at the end of said season.
10. On December 19, 1969, Respondent posted a list of workers to be laid-off beginning on said date, Complainant being one of the persons on said list; in consequence of which she was laid-off.
11. Other employees, similarly hired seasonally as was Complaint, and whose names were on the aforesaid list, were also laid-off at the same time as was Complainant.
12. The phrase "Do not rehire" appeared on Complainant's employment history card, as well as on the respective employment history cards of others on the aforesaid laid-off list.

13. Complainant was the only female on said list and was not recalled to work.
14. Males on said list whose respective employment history cards bore the phrase "Do not rehire" were not recalled to work.
15. Some persons on said list whose respective employment history cards did not have the phrase "Do not rehire" were recalled.
16. Respondent Richardson Co. employs approximately 50 females in its production operation and 3 females in the area for which Complainant was specifically employed; the latter 3 females, long-time employees, having in the past participated in the tray-dumping operation, were no longer so participating at their own requests.
17. Complainant was not recalled to work because of her inability properly to perform the job for which she was specifically employed.

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18. Respondent Bakery and Confectionery Workers International Union, Local No.6, AFL-CIO, (hereinafter referred to as "Respondent Union"), is the collective bargaining agent representing the employees of Respondent Richardson Co.
19. Respondent Nick Mercadante (hereinafter referred to as "Mercadante") is the business agent of Respondent Union.
20. Complainant became a member of Respondent Union before she was laid-off.
21. Complainant lodged a grievance of unfair labor practice against Respondent Richardson Co., in which proceedings Respondent Union, through its business agent, Respondent, Mercadante represented Complainant.
22. Complainant's grievance was accepted by Respondent Union and having been processed in accordance with the collective bargaining agreement between Respondent Richardson Co. and Respondent Union, was determined to be without merit and her failure to be recalled grounded on her poor work performance.
23. Subsequently, Complainant, through the National Labor Relations Board, charged Respondent Union with an unfair labor practice in that Respondent Union failed to represent her properly in processing her grievance with Respondent Richardson Co.
24. Respondent Union and Respondent Mercadante did not fail to accept or process Complainant's grievance that Respondent Richardson Co. improperly failed to recall her to work.
25. Neither during the intra-company grievance proceeding nor at the proceeding before the National Labor Relations Board did Complainant indicate that she was laid-off because of discrimination as to her sex.

CONCLUSIONS OF LAW

Re: Docket Nos. E-3634 and E-3677

1. At all times herein mentioned, Complainant Loretta A. McGill was a citizen and resident of the Commonwealth of Pennsylvania.
2. At all times herein mentioned, Respondent Thomas D. Richardson Co. was a corporation doing business in the Commonwealth of Pennsylvania.
3. At all times herein mentioned, Pennsylvania Human Relations Commission had and still has jurisdiction over the Complainant, Respondents and subject matter of these proceedings.
4. The Complaints herein were properly made, signed and filed in accordance with Section 9 of the Pennsylvania Human Relations Act.
5. Section 5 of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, provides:

"It shall be an unlawful discriminatory practice...

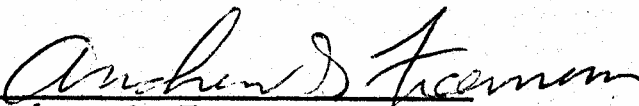
(a) For any employer because of...sex...to discharge from employment such individual or otherwise discriminate against such individual...if the individual is best able and most competent to perform the service required..."

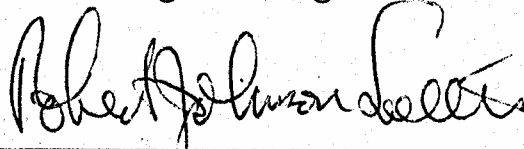
6. Complainant Loretta A. McGill did not competently perform the work for which she was employed and, consequently, was not the best able and most competent to perform as required by the Act, and, therefore, her failure to be recalled to employment was not because of her female sex and was not, therefore, an unlawful discriminatory practice in violation of the Pennsylvania Human Relations Act.

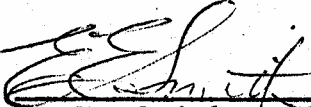
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7. At all times herein mentioned, Respondent Bakery and Confectionery Workers International Union, Local No.6, AFL-CIO was a labor organization operating within the Commonwealth of Pennsylvania.
8. At all times mentioned, Nick Mercadante was the business agent of Respondent Confectionery Workers International Union, Local No.6, AFL-CIO.
9. Respondent Union and Respondent Mercadante did not discriminate against Complainant Loretta A. McGill because of her sex in refusing to accept and process her grievance that she was refused to be recalled to work according to her seniority; on the contrary, said Respondents properly accepted and processed the grievance of Complainant as she had represented same to them without reference to Complainant's sex and, therefore, did not engage in an unlawful discriminatory practice in violation of the Pennsylvania Human Relations Act.

It is, therefore, recommended, that the Commission enter an Order herein dismissing the Complaint of Loretta A. McGill against Respondent Thomas D. Richardson Co. and dismissing the, Complaint of Loretta A. McGill against Bakery and Confectionery Workers International Union, Local No. 6, AFL-CIO and Nick Mercadante.


Andrew G. Freeman
Presiding Hearing Commissioner


Dr. Robert Johnson Smith
Hearing Commissioner


E. E. Smith
Hearing Commissioner

COMMISSION'S DECISION

AND NOW, this 27th day of September, 1971, upon recommendation of the Hearing Commissioners and upon all of the evidence taken at the public hearing of the cases and in consideration of the Findings of Fact and Conclusions of Law herein, the Pennsylvania Human Relations Commission finds and determines

1. The Commission has jurisdiction over Complainant and Respondents.
2. The Commission has jurisdiction over the subject matter of the Complaints.
3. The Respondents have not committed any unlawful discriminatory practices in violation of the Pennsylvania Human Relations Act.

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FINAL ORDER

AND NOW, this 1st day of November, 1971, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Commission's Decision and pursuant to Section 9 of the Pennsylvania Human Relations Act, it is hereby

ORDERED

by the Pennsylvania Human Relations Commission that the Complaints herein filed by Loretta A. McGill, Complainant, against Thomas D. Richardson Co. and Bakery and Confectioner Workers International Union, Local No.6, AFL-CIO and Nick Mercadante, Respondents, be and the same are hereby dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 

E. E. Smith
Chairman

Attest:

By: 

Dr. Robert Johnson Smith
Secretary