

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

REBA ROMAIN, Complainant

v.

MIDDLETOWN AREA SCHOOL DISTRICT, Respondent

DOCKET NO. E-3361

OPINION

FINDINGS OF FACT

CONCLUSIONS OF LAW

COMMISSION'S DECISION

FINAL ORDER

The Complainant, Mrs. Reba Romain, a Negro, residing in the Borough of Middletown, Dauphin County, Pennsylvania, filed a complaint on July 2, 1969 alleging that the respondent, The Middletown Area School District was guilty of an unlawful discriminatory practice in that the respondent refused to hire her as a librarian aide because of her race.

The Commission investigated the allegations of the complaint and found that probable cause existed to credit such allegations. Efforts were made to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion. When such efforts failed, the Commission at its meeting held on January 26, 1970, ordered that a public hearing be held. Commissioners Andrew Freeman, Robert Goode and Jess Vicini were assigned by the Chairman as the Hearing Commissioners.

Due notice of the public hearing, together with a copy of the complaint was given to the respondent pursuant to the regulations of the Commission. The public hearing was scheduled for and was held on February 16, 1970 in Room 225, Main Building, Middletown Campus of Pennsylvania State University, Middletown, Pennsylvania.

Respondent filed an answer in which it alleged that Complainant was not hired because of her previous work experience with the Middletown Area School District.

The complainant and the respondent appeared and were afforded full opportunity to be heard, to examine and to cross-examine witnesses and to introduce evidence bearing upon the issues.

The case in support of the complaint was presented before the Hearing Commissioners by S. Asher Winikoff, Esq., General Counsel of the Commission. The respondent was represented by Thomas W. Caldwell, Jr., Esq., of Harrisburg, Pennsylvania.

Having observed all of the witnesses and considered all of the evidence presented at the public hearing, the Hearing Commissioners are of the opinion that, because of her race, the respondents, did refuse to hire her in violation of §5 of the Pennsylvania Human Relations Act, 43 P.S. §955.

FINDINGS OF FACT

1. The complainant, at the time she signed the complaint, resided at 317 Witherspoon Ave., Middletown, Pa.
2. The complainant filed an amended complaint on February 2, 1970. The sole difference between the original and amended complaints was a change of residence.
3. Complainant was a 1951 graduate of Middletown High School.
4. Complainant was hired by respondent in the summers of 1967, 1968 and 1969 as a teacher's aide in the "Head Start Program" conducted and administered by the respondent.
5. The teacher's aide positions in the Head Start Program required the complainant to assist certified teachers in the conduct of the program.
6. During the course of these three summers, she became acquainted with Mr. Carl Sinner, an employee of the respondent.
7. The respondent announced in February, 1969 that, pursuant to Title I of the Federal Elementary and Secondary Education Act, it would be hiring several persons as teacher's aides and librarian aides for the next school year.
8. Complainant heard about such positions at a meeting of the Middletown Community Action Program.
9. Complainant, unaware she could apply as a teacher's aide applied only for the position of librarian aide immediately after hearing the respondent's announcement.
10. No question concerning race was on the application form provided by the respondent.
11. Complainant spoke with Mr. Carl Sinner an employee of the respondent charged with the responsibility for conducting the Title I teacher's aide program.
12. At the time of the interview, Mr. Sinner lead complainant to believe she was qualified for the position.
13. At no time did the respondent inform complainant she was not a successful applicant.
14. Mr. Sinner stated to Mr. Alonzo Baxter, an employee of the Pennsylvania Human Relations Commission, that Mrs. Romain was better qualified for a position than several of the other persons hired.
15. All applications for the teacher's aide and librarian aide positions were given to Mrs. Virginia Costlow, elementary librarian for the Middletown Area School District.
16. Mrs. Costlow was instructed to select persons for the librarian aide positions.

17. Mrs. Costlow stated she did not know the race of the complainant but other witnesses testified that a reading of the address would be an indication of the race of the applicant.
18. Mrs. Costlow did not interview any applicant personally.
19. Mrs. Costlow did not have any experience in personnel hiring or selection techniques.
20. The record does not disclose that Mrs. Costlow used any objective criteria in the selection of librarian aide candidates.
21. Mrs. Costlow selected candidates only on the basis of her personal preferences.
22. Of the persons selected by Mrs. Costlow, three (3) had no library experience.
23. All of the applications for the Title I program positions were reviewed by a committee made up of Mr. Sinner, a Mr. Prokopchak and a Mr. Bartlett.
24. The above mentioned committee used no objective criteria for selection.
25. At all times, the respondent treated applications for librarian aide positions interchangeably with applications for teacher's aide positions.
26. The duties of a teacher's aide in the Head Start Programs are substantially similar to those in the Title I program.
27. The complainant was late or tardy several times during the period she was employed in the Head start Program. There is no evidence that her being late affected or inconvenienced the program in any way.
28. The record does not disclose anything in Mrs. Romain's previous work experience which would disqualify her for employment in the Title I program.

CONCLUSIONS OF LAW

Upon all the evidence at the public hearing and the foregoing findings of fact, the Commission, by the Hearing Commissioners, makes the following conclusions of law:

1. At all times mentioned herein, the complainant was and is a resident of the Commonwealth of Pennsylvania.
2. At all times, the respondent was and is an employer within the definition given in §4 of the Pennsylvania Human Relations Act.
3. The Pennsylvania Human Relations Commission had and still has jurisdiction over the respondent.
4. The Pennsylvania Human Relations Commission had and still has jurisdiction over the subject matter of the proceeding and over the instant complaint.
5. The unlawful discriminatory practices involved herein have occurred and still are occurring within the Commonwealth of Pennsylvania and deprive the complainant of her civil rights as defined in §3 of the Pennsylvania Human Relations Act.
6. Complainant filed her complaint against the respondent within ninety (90) days of the time after the respondent failed to hire the complainant.
7. The respondent has committed an unlawful discriminatory practice in violation of §5 of the Pennsylvania Human Relations Act in that respondent refused to hire complainant as a librarian aide or as teacher's aide, because of her race although complainant was the best able and most competent to perform the services required.

COMMISSION'S DECISION

Upon all of the evidence at the public hearing of this case, and in consideration of the findings of fact and conclusions of law by the Hearing Commissioners, the PHRC finds and determines:

1. The Commission had jurisdiction over the complainant, the respondent, the subject matter of this proceeding and the complaint.
2. The complaint was properly filed and was filed within the required 90-day period.
3. The respondent committed an unlawful discriminatory practice in violation of §5 of the Pennsylvania Human Relations Act in that respondent has refused and still refuses to hire or employ complainant because of her race.

The complainant and the witnesses for the complainant impressed the Hearing Commissioners favorably and, in our opinion, are worthy of belief.

Racial discrimination is difficult to prove even under ideal circumstances. In this case, however, the Hearing Commissioners are convinced that the refusal of the respondent to hire Mrs. Romain was based on race.

Mrs. Romain was hired by the respondent as a teacher's aide in the 1967 Head Start Program. Head Start is a federally funded program administered by the respondent. Its goal is a better social adjustment for pre-school children from "underprivileged" homes.

There was some evidence that Mrs. Romain was late for class on numerous occasions. At no time was she more than 20 minutes late. The nature of the program was such that it was not essential to start class at a precise time. The Commission views the fact that program attendance records did not show Mrs. Romain's lateness as evidence of the unimportance of that fact to the respondent.

Testimony revealed some confusion over whether Mrs. Romain did in fact encourage Mrs. Betty Hicks to leave school with her one day during the summer of 1968. The Hearing Commissioners believe that there was no relation between Mrs. Hicks' departure and Mrs. Romain's.

Mrs. Romain was the only Black applicant for a position under the Title I program. Although no mention was made of race on the application form, it was shown that the employees of respondent did know the race of the complainant because of her previous employment. In addition, the record shows that reference to a street address gives a reasonable indication of who lives in all Black sections of Middletown.

The record shows that Mrs. Romain received frequent calls from her children while working for the Head Start Program. There is no indication that this interfered with her work or whether the number of calls she received was greater than average. We conclude that this fact is relatively unimportant.

The evidence presented by the Commission clearly indicates that the complainant was better qualified than several of the other successful applicants. While there are certain recognizable differences between the Title I program and the Head Start program (age of students involved, programs presented), the Hearing Commissioners are of the opinion that the experience of Mrs.

Romain in the Head Start programs made her uniquely qualified for the Title I program. Complainant meets the "best qualified and most competent" requirement of §5(a) of the Pennsylvania Human Relations Act.

The record shows that several of employees did not think highly of Mrs. Romain. However, the fact that Mrs. Alexander allowed Mrs. Romain to use her as a reference and the fact Mr. Sinner hired her for the 1969 Summer Head Start program leads us to the conclusion that these negative opinions were inconsequential in view of the above actions. Mr. Sinner's decision to hire her for the Head Start program in the summer of 1969 is likewise proof of her qualification for the job in question.

At the hearing, Mrs. Hoffman testified that more Blacks would be in the Head Start program than in the Title I program. She placed great importance in seeing the complainant, a Black woman, in the program to give the whole school population a "broader outlook." The Hearing Commissioners see that more Black persons in responsible positions would benefit both the Negro and white population of Middletown.

It appears to the Commission that the School District used no objective standards or criteria in its hiring process. Mrs. Costlow had unbridled discretion as did Mr. Sinner.

Evidence showed that this lack of any standards resulted in the refusal to hire Mrs. Romain.

All of the facts in this case lead to but one conclusion -- the respondent refused to hire Mrs. Romain because of her race.

It is therefore recommended that the Commission enter a cease and desist order against the respondents in this case.

ANDREW FREEMAN
Hearing Commissioner

JESS VICINI
Hearing Commissioner

ROBERT W. GOODE
Hearing Commissioner

COMMISSION'S DECISION

AND NOW, April _____, 1970, upon recommendation of the Hearing Commissioners, upon all of the evidence at the public hearing of this case, and in consideration of the findings of fact and conclusions of law by the Hearing Commissioners, the Pennsylvania Human Relations Commission, by a unanimous decision of its members, finds and determines that the Middletown Area School District has committed an unlawful discriminatory practice in violation of §5 of the Pennsylvania Human Relations Act in that the respondent refused to hire Mrs. Reba Romain, because of her race, to a position as teacher's aide or librarian aide.

FINAL ORDER

AND NOW, April _____, 1970, upon consideration of the foregoing and pursuant to §9 of the Pennsylvania Human Relations Act, it is hereby ordered by PHRC:

1. That the respondent, its officers, agents and employees shall cease and desist from refusing to hire or employ the complainant, Mrs. Reba Romain.
2. The respondent, Middletown Area School District, its officers, agents and employees shall take the following affirmative action which, in the judgment of the Commission, will effectuate the purposes of the Pennsylvania Human Relations Act.
 - a. All recruitment, hiring, promotions, practices and all other terms, conditions and privileges of employment shall be maintained and conducted in a manner which does not discriminate on the basis of age, sex, race, color, creed, national origin in violation of §5 of the Pennsylvania Human Relations Act, and Title VII of the Civil Rights Act of 1964.
 - b. Distribute to all employees a statement reflecting that it is the policy of the School District to comply with the Pennsylvania Human Relations Act.
 - c. Respondent shall make an affirmative effort to recruit minority group applicants. In order to effectuate this policy the respondent:
 - i. shall notify all agencies listed in Appendix I of the availability of employment with the respondent.
 - ii. shall identify itself as an equal opportunity employer in all announcements and advertisements of jobs available.
 - d. That the respondent shall notify ill applicants for employment who are rejected of the reason they were not hired, send a copy of that notice to PHRC and all agencies listed in Appendix I, retain a copy thereof for at least 120 days.
 - e. All employment agencies, state employment service offices and all other sources of recruitment shall be instructed to refer or interview all minority group members who may be potential applicants.
 - f. Maintain an Affirmative Action File composed of minority group applicants for employment. These applicants shall be given first consideration for employment.
3. The respondent shall report the status of minority group employment and any improvements therein to the Commission upon request or every 180 days should no formal request be issued.
4. Pay or cause to be paid to Mrs. Romain the salary she would have earned from the time the Title I program to which she applied started operation until the end of the current school year.

5. Hire Mrs. Romain for the Title I program as a teacher's aide or as a librarian aide for the 1970-71 school year.
6. Notify the Pennsylvania Human Relations Commission within 30 days, in writing, of the respondent's compliance with this Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By _____

MAX ROSENN
Chairman

Attest:

ROBERT JOHNSON SMITH
Secretary