

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILMER J. BAKER,
Complainant

v.

THE FROG SWITCH &
MANUFACTURING CO.,
Respondent

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PHRC Case No. 199800386
Docket No. E-88319DAH
EEOC No. 17F983368

STIPULATIONS OF FACT
FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
RECOMMENDATION OF HEARING PANEL
FINAL ORDER

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

Wilmer J. Baker,

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v.

The Frog, Switch & Manufacturing Co.,

Respondent

Docket No. E-88319-DAH

STIPULATIONS

Procedural Stipulations

Respondent and Pennsylvania Human Relations Commission, Harrisburg Regional Office staff hereby stipulate to the following:

1. The Complainant-- Wilmer J. Baker-- is a competent adult who resides at 430 Run Road, Carlisle, Pennsylvania 17013.
2. Respondent-- The Frog, Switch & Manufacturing Co. ("Frog Switch")-- is an "employer" for purposes of the Pennsylvania Human Relations Act, with a mailing address of P.O. Box 70, Carlisle, PA 17013.
3. The employment actions challenged in the Complaint occurred in Cumberland County.
4. Mr. Baker filed a timely Complaint with the Pennsylvania Human Relations Commission (the "PHRC"), alleging that Frog Switch first suspended and then dismissed him in retaliation for having opposed practices forbidden by the Pennsylvania Human Relations Act.
5. PHRC Harrisburg Regional Office staff docketed the Complaint on August 12, 1998.
6. PHRC Harrisburg Regional Office staff served Frog Switch with a true and correct copy of the Complaint on September 9, 1998.

Joint exhibit #1

7. PHRC Harrisburg Regional Office staff conducted a Fact Finding Conference on November 17, 1998, which was attended by both Mr. Baker and Frog Switch.
8. PHRC Harrisburg Regional Office staff served Frog Switch with a Probable Cause Finding on May 25, 2000.
9. By letter dated May 25, 2000, PHRC Harrisburg Regional Office staff invited Frog Switch to attend a Conciliation Conference.
10. PHRC Harrisburg Regional Office staff convened a Conciliation Conference on June 6, 2000.
11. The case did not conciliate.
12. All jurisdictional prerequisites for a public hearing have been satisfied.
13. Jerry Kucharczyk is no longer employed by Respondent. He resides outside of Pennsylvania and more than 100 miles away.

Fact Stipulations

14. Frog Switch hired Mr. Baker on or about June 18, 1973, as a "rough grinder."
15. Mr. Baker later became a welder for Frog Switch.
16. From on or about May 15, 1993, to on or about May 15, 1997, Mr. Baker was president of the union representing Frog Switch's production employees.
17. On March 6, 1998, Mr. Baker was employed as a Welder on first shift in the grinding room at Frog Switch. First shift ended at 2:00 p.m., but employees were permitted to quit working at 1:50 p.m. in order to clean up and take a shower, if they desired.
18. The welders in the grinding room performed welding duties in the welding booths and on certain mills, including the VBM.
19. At approximately 1:25 p.m. on March 6, 1998, Tracy Carter, a Tool Mill Operator, asked Mr. Baker if he could weld a piece on her mill at the VBM.
20. At approximately 1:30 p.m. on March 6, 1998, Mr. Baker was standing outside of the welding booth in the grinding room with his welding gear under his arm.

21. At that time, Jerry Kucharczyk and Ken Alexander were walking through the area and approached Mr. Baker.
22. Mr. Kucharczyk asked Mr. Baker if he was done for the day. Mr. Baker responded that he was because he could not get the crane and the piece in his welding booth was finished. Mr. Kucharczyk told Mr. Baker that he had 20 minutes left in his workday and that he was required to go back to work until 10 minutes of 2:00 p.m. Mr. Baker responded that he understood Mr. Kucharczyk's instruction. Mr. Baker then turned in the direction of his welding booth and Mr. Kucharczyk and Mr. Anderson proceeded to walk through the plant.
23. Some time thereafter, Mr. Baker left his work area and walked over to the other side of the building, put his gear in his cupboard and proceeded to the shower room.
24. Mr. Baker arrived in the shower room prior to 1:50 p.m.
25. Mr. Kucharczyk and Mr. Alexander then approached Mr. Baker in the shower room and told him that they wanted to see him in the office on Monday, March 9, 1998, and that he should bring a shop steward with him.
26. On March 9, 1998, Glenn Gribble, Frog Switch's director of human resources, issued Mr. Baker a five-day suspension with an intent to discharge for "insubordination."
27. On March 12, 1998, Frog Switch discharged Mr. Baker.
28. Frog Switch's computerized records for the period between November 2, 1995 through September 21, 1998 purport to list the following employees as having been charged with "insubordination" on the indicated dates:
 - Jason Rohrer - 8/18/98;
 - Samuel Wolfe - 1/7/98;
 - George Hoffman - 6/6/97;
 - Harvey Fawber - 4/18/96, 3/30/98, 8/15/98;
 - W. Jay Baker - 3/29/96, 3/9/98; and
 - Michael Chalusian - 12/18/95, 4/10/96.
29. In March of 1998, Frog Switch did not have any knowledge of any efforts undertaken by Mr. Baker between January 1, 1998 and March 12, 1998, to assist any co-employees in filing charges with the Pennsylvania Human Relations Commission.

30. The Union pursued Mr. Baker's grievance to arbitration under the Collective Bargaining Agreement between Frog Switch and the United Steelworkers, Local 4442. An arbitration hearing was held on September 3, 1998 before Arbitrator Richard Kasher.
31. The Collective Bargaining Agreement calls for arbitration hearings to be conducted in accordance with the Rules for Labor Arbitration published by the American Arbitration Association.
32. The evidence offered by the Union at the arbitration hearing included Mr. Baker's own testimony and the testimony of five witnesses on his behalf.
33. In the arbitration proceeding, the Union sought the remedies of both back pay and reinstatement.
34. Mr. Baker was represented at the arbitration hearing by United Steelworkers Staff Representative Joe Pozza.
35. The Union filed a Post-Hearing Brief to the Arbitrator after the hearing was concluded.
36. On December 18, 1998, Arbitrator Kasher issued his Arbitration Opinion and Award. Arbitrator Kasher's Award provided, in pertinent part:

"The grievance is sustained in part and denied in part in accordance with the above findings. The Company is directed to reinstate the Grievant with seniority unimpaired but without backpay."

37. In his Arbitration Opinion and Award, Arbitrator Kasher included the following specific findings:
 - a. Mr. Baker was approached by Mr. Kucharczyk and Mr. Alexander at approximately 1:30 p.m. on the afternoon of March 6, 1998.
 - b. Mr. Baker was told and understood that there were "twenty minutes to go" on his shift.
 - c. When they next confronted Mr. Baker he was in the shower, "lathered up," and that at the latest it was 1:41 p.m.
 - d. Mr. Baker "quit work" at the latest between 1:38 and 1:40 p.m.
 - e. Mr. Baker did not produce any reliable probative evidence that Messrs. Kucharczyk and Alexander observed other employees in the process of putting

down their gear and leaving the vicinity of their work stations at 1:30 p.m.

- f. Mr. Baker was not "singled out" on the afternoon of March 6, 1998, and was not treated differently in terms of a quitting time directive.
- g. Mr. Baker failed to follow a direct order from management to work until his 1:50 p.m. quitting time.
- h. Frog Switch agreed to reinstate Mr. Baker, in spite of his insubordination, if he would acknowledge that he had been insubordinate.
- i. The termination of Mr. Baker's employment was an overly severe penalty under the labor contract in the context of what might be considered mitigating circumstances.
- j. Frog Switch had not in the past terminated employees for insubordination, except in one circumstance when an employee was guilty of repeated offenses of the same nature and had "pushed a supervisor."
- k. There had been numerous instances of insubordination, including Mr. Baker having previously been disciplined for being insubordinate, and such acts have not resulted in termination of employment.
- l. Mr. Baker, to some extent, followed Mr. Kucharczyk's direction and returned to his work area and performed some work.
- m. While Mr. Baker should not have left his workstation ten minutes early, the fact is that Mr. Baker did not "sneak off" immediately after being directed to return to work.
- n. Prior to March 6, 1998, Frog Switch had been lax in the manner in which it enforced the rules regarding break times and quitting times.
- o. Mr. Baker was not the only employee who quit early on March 6, 1998.
- p. George Sheriff was in the shower at least as early as was Mr. Baker.
- q. While Sheriff could have been considered to have been "stealing time" from Frog Switch, he received no more than a verbal warning.
- r. Mr. Baker and Mr. Sheriff were guilty of different types of offenses.

- s. Frog Switch had not viewed early quits as serious breaches of the rules of conduct.
 - t. Mr. Baker by his own actions failed to mitigate his damages and was not entitled to any back pay.
 - u. "The Grievant was clearly guilty of conduct justifying his being disciplined. The Company, in good faith, offered the Grievant an opportunity to return to work with the only condition being that he acknowledge his wrongdoing. The Grievant's failure to do so, although he was clearly guilty of the charges leveled by management, resulted in his termination. In these circumstances the grievant would be unjustly enriched if this Arbitrator was to award him any back pay."
 - v. Mr. Baker bears substantial animus toward the Company.
38. Mr. Baker did not file any claims against the Union for breach of its duty of fair representation at the arbitration hearing.
39. On January 4, 1999, Mr. Baker was reinstated to his job at Frog Switch.
40. Frog Switch has offered Mr. Baker more than one full week of back wages plus reasonable expenses incurred in pursuing his claim before the Commission. Mr. Baker has refused this offer.

Damages Stipulations

41. Mr. Baker's rate of pay at the time of his termination was \$ 14.70 per hour.
42. Mr. Baker earned \$ 967.24 in other employment between the period of March 6, 1998 and his reinstatement by Respondent on January 4, 1999.

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FINDINGS OF FACT *

1. Wilmer J. Baker (hereinafter "Complainant") participated in numerous PHRC proceedings while serving as his union's local president. (N.T. IV, 118-119)
2. Glenn Gribble, Respondent's Human Resource Director, knew that the Complainant was present at various PHRC fact-finding conferences. (N.T. IV, 59-60)
3. On May 25, 1994, Respondent employee Lindora Johnson filed a PHRC complaint alleging that the Respondent had removed her from her crane operator's position because she is black and/or because she is female. (N.T. II, 118-119)
4. In November 1994, the Complainant provided a witness statement to the PHRC investigator who was investigating Ms. Johnson's complaint. (N.T. I, 91)
5. In August 1995, the Complainant provided assistance to Ms. Johnson in settling her union grievance and her PHRC complaint. (N.T. I, 92-96)
6. In August 1995, both Complainant and Mr. Gribble signed a Respondent and Complainant Agreement settling Ms. Johnson's PHRC complaint. (N.T. I, 91-92)
7. In May 1994, the Complainant assisted Respondent employee Dale Flaherty in pursuing a union grievance alleging disability discrimination. (N.T. I, 104)
8. In July 1996, Ms. Flaherty filed a PHRC complaint concerning her allegation of disability discrimination. (R.E. 53)

* The foregoing "Stipulations of Facts" 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. I – Notes of Testimony, October 9, 2003
N.T. II – Notes of Testimony, November 3, 2003
N.T. III – Notes of Testimony, November 17, 2003
N.T. IV – Notes of Testimony, December 17, 2003
VPK – Deposition of Kucharczyk
C.E. – Complainant's Exhibit
R.E. – Respondent's Exhibit
S.F. – Stipulation of Fact

9. Mr. Gribble and the Complainant both attended Mr. Flaherty's union grievance meeting. (N.T. I, 104).
10. In 1995, the Complainant was involved in cases where he assisted employees in obtaining workers' compensation benefits for hearing loss. (N.T. II, 23)
11. In 1996, the Complainant assisted Clair Starnier, Respondent employee, in filing a PHRC complaint. (N.T. I, 100)
12. Mr. Starnier alleged that he had been wrongfully denied a return to a crane operator position because the Respondent regarded him as having a disability. (N.T. I, 100)
13. The Complainant believed that the Respondent regarded Mr. Starnier as having a disabling mental condition. (N.T. I, 97)
14. The Complainant met with Mr. Starnier's attorney and provided information for Mr. Starnier's complaint. (N.T. I, 100)
15. The Complainant assisted Respondent employee, Harvey Fawber, in filing a PHRC complaint. (N.T. I, 100-101)
16. In 1995 and 1996, the Complainant assisted Mr. Starnier and Mr. Fawber with union grievances. (N.T. I, 123-124)
17. Mr. Gribble, with the Complainant, attended the grievance meetings and PHRC fact-finding conferences regarding the allegations of Starnier and Fawber. (N.T. I, 124)
18. In 1996, the Complainant assisted Respondent employee John Carter in pursuing allegations that he was denied overtime because of his race. (N.T. I, 101-102)
19. The Complainant assisted Mr. Carter in filing twelve union grievances and suggested that Mr. Carter take his case to the PHRC. (N.T. I, 101-102)
20. The Complainant, in 1996, assisted Respondent employee Morris Gadsen in pursuing allegations that he was being denied overtime because of race. (N.T. I, 107)
21. In 1996, the Complainant assisted Respondent employee LeVan Zorn with his PHRC complaint. (N.T. III, 27)
22. In November 1996, the Complainant assisted Russell Stone and Dale Stone in pursuing allegations of age discrimination with the PHRC. (N.T. I, 109-110; C.E. 7; C.E. 10)

23. The Complainant had concerns regarding allegations of age discrimination against one shift of Respondent's work force. (N.T. I, 110-113)
24. Starner, Dale Stone and Russell Stone were all members of that particular shift. (N.T. I, 110-113)
25. The Complainant questioned whether the Respondent was discriminating against older crew members of the Respondent's V-I team. (N.T. II, 38)
26. The Complainant formed the impression that older members "were constantly being taken to the office and told they might lose their jobs," "were getting slips for discipline," and "were being compared to younger crews." (N.T. II, 38)
27. The Complainant took Starner, Dale Stone and Russel Stone to the PHRC in Harrisburg to file their age discrimination complaints. (N.T. I, 117)
28. In 1996, the Complainant assisted Harvey Gandy and Ralph Zorn in pursuing union grievances about alleged discrimination. (N.T. I, 135-136)
29. Mr. Gribble was present at the meetings concerning Ralph Zorn's grievance. (N.T. I, 135-136)
30. In September 1996, the Complainant and Respondent representatives met with United Steelworkers of America (hereinafter "USWA") International Union Civil Rights Specialist Alex Powell, at which time the PHRC complaints filed by employees were discussed. (N.T. I, 128)
31. Mr. Gribble attended this meeting. (N.T. IV, 111)
32. Approximately 30-40% of the union grievances the Complainant administered as local president were allegations of unlawful discriminatory practices under the Pennsylvania Human Relations Act. (N.T. II, 77)
33. Mr. Gribble attended all grievance meetings. (N.T. I, 103)
34. While union President, the Complainant was always present at union grievance meetings regarding discrimination allegations at the PHRC. (N.T. II, 20)
35. On March 6, 1998, the Complainant was employed as a welder on the first shift in the grinding room at Frog Switch. (S.F. 17)
36. The first shift ended at 2:00 p.m., but employees were permitted to quit working at 1:50 p.m. in order to clean up and take a shower. (S.F. 17)

37. The welders in the grinding room performed welding duties in the welding booths and on certain mills. (S.F. 18)
38. At approximately 1:25 p.m. on March 6, 1998, Tracey Carter, a Tool Mill Operator, asked the Complainant if he could weld a piece on her mill. (S.F. 19)
39. The Complainant told her that he would rather finish his work if he could get a crane and further asked Carter to find someone else to help her. (N.T. I, 139, 140; N.T. II, 72)
40. At approximately 1:30 p.m., the Complainant was standing outside of the welding booth in the grinding room with his welding gear under his arm. (S.F. 20)
41. At that time, Jerry Kucharczyk, Vice President of Operations and Ken Alexander, Foundry Superintendent, both supervisors, were walking through the area and approached the Complainant. (S.F. 21)
42. Mr. Kucharczyk asked the Complainant if he was done for the day and the Complainant replied that he was because at that moment no crane was available and, in order to continue working, a crane had to move the item on which he was working. (S.F. 22)
43. Mr. Kucharczyk told the Complainant that he [Complainant] had 20 minutes left in his workday and he was required to work until 1:50 p.m. (S.F. 22)
44. The Complainant responded that he understood and turned in the direction of his welding booth. (S.F. 22)
45. Mr. Kucharczyk and Mr. Alexander left Complainant's area. (S.F. 22)
46. Some time thereafter, the Complainant left his work area and walked to the other side of the building, put his gear in his cupboard and proceeded to the shower room. (S.F. 23)
47. Mr. Kucharczyk and Mr. Alexander came back to the Complainant's area at approximately 1:35 p.m. and Complainant was gone. (S.F. 25)
48. The Complainant arrived in the shower room prior to 1:50 p.m. (S.F. 24)
49. Mr. Kucharczyk and Mr. Alexander began to search for the Complainant and found him in the shower room at approximately 1:40 and told him they wanted to see him in the office on Monday. (N.T. I, 143-144; N.T. IV, 94)

50. There was one other employee from the second shift taking a shower when Mr. Kucharczyk and Mr. Alexander approached the Complainant. (N.T. I, 83; N.T. II, 148; N.T. IV, 94; C.E. 15)
51. Both Mr. Sheriff and the Complainant received a verbal warning for leaving early; but, because he had disobeyed Mr. Kucharczyk, only the Complainant was charged with insubordination. (N.T. IV, 27; R.E. 7, 8)
52. Mr. Kucharczyk was extremely angry that his order was not followed and wanted "to throw the book" at Complainant. (N.T. IV, 96, 98)
53. On March 9, 1998, Mr. Gribble issued the Complainant a five-day suspension with an intent to discharge for "insubordination." (S.F. 26)
54. Between March 9th and March 12th, Mr. Kucharczyk and Mr. Gribble discussed the possibility of offering the Complainant reinstatement. (N.T. III, 92)
55. Because it was common for the Respondent to make such offers, Mr. Kucharczyk agreed that the Complainant could be reinstated if he would simply acknowledge wrongdoing. (N.T. III, 93)
56. A Discharge Hearing was held on March 12, 1998. (N.T. III, 96)
57. Present at the Complainant's Discharge Hearing were: the Complainant; Mr. Kucharczyk, Mr. Gribble, Union Staff Representative Wayne Rentzel; and 6 persons that constituted the union committee. (N.T. III, 96)
58. At the hearing, the Complainant was asked to admit to having been insubordinate as a condition of reinstatement. (N.T. I, 147, 179)
59. In effect, the Complainant refused to acknowledge wrongdoing, totally rejected the offer, and abruptly began to leave saying, "we'll just go to arbitration". (N.T. I, 147-149)
60. The Respondent had previously imposed discipline on other insubordinate employees amounting to suspensions with the intent to terminate. (N.T. III, 24-25, 105, 107, 108; N.T. IV, 37-38, 50; R.E. 21, 22, 23)
61. The Respondent's own work rules do not require that an employee be terminated for insubordination. (N.T. IV, 22; R.E. 6)
62. The severity of discipline for insubordination is at the discretion of the Respondent and depends on an employee's disciplinary history, the magnitude of the insubordination, and the presence or absence of mitigating factors. (N.T. IV, 22, 85-87; R.E. 6)

63. In April 1996, Harvey Fawber was issued a verbal warning for insubordination and abusive language to another employee and a manager. (N.T. I, 162; N.T. IV, 39-40; C.E. 25)
64. On March 26, 1998, Harvey Fawber was given a five-day suspension with an intent to discharge for being argumentative and having a confrontation with a supervisor. (N.T. III, 108; R.E. 22)
65. After accepting responsibility for his actions, Fawber was reinstated and his discipline was changed to a five-day suspension without pay and a written warning. (N.T. III, 110; R.E. 22)
66. Fawber also agreed to see the Company EAP program counselor. (R.E. 22)
67. On August 25, 1998, Fawber was again issued a written warning in lieu of a three-day suspension for insubordination, and careless, inefficient, inattention to his work. (N.T. IV, 71; C.E. 26)
68. Fawber was warned that the next time would result in a five-day suspension with an intent to terminate. (N.T. IV, 71; C.E. 26)
69. On June 6, 1997, George Hoffman was issued a verbal warning for an insubordinate refusal of a supervisor's order. (N.T. IV, 44; C.E. 28)
70. George Hoffman had parked his car in the wrong place. (N.T. IV, 44)
71. In the verbal warning, George Hoffman was told that the next incident would result in a five-day suspension with an intent to terminate. (N.T. IV, 44; C.E. 28)
72. On January 7, 1998, Samuel Wolfe received a written warning after questioning and refusing a supervisor's order. (N.T. IV, 43; C.E. 27)
73. The warning to Samuel Wolfe informed him that the next incident of insubordination would result in a five-day suspension with the intent to terminate. (C.E. 27)
74. On May 5, 1993, Elmer Stone was issued a written warning in lieu of a one-day suspension for insubordination. (N.T. IV, 49; C.E. 31)
75. Elmer Stone was accused of refusing a supervisor's order by failing to clean and drain equipment in his area. (N.T. IV, 49; C.E. 31)
76. On May 24, 1996, Charlie Carothers was terminated for insubordination. (N.T. IV, 50; C.E. 32)

77. Charlie Carothers had refused a direct order from a supervisor. (N.T. 50)
78. After his termination, Charlie Carothers personally visited the Respondent's then Chairman at his home where he acknowledged his wrongdoing and requested reinstatement. (N.T. IV, 51, 74)
79. Subsequently, Charlie Carothers was reinstated with a one-day suspension and a warning that the next incident would result in a five-day suspension with the intent to terminate. (N.T. IV, 50; C.E. 32)
80. On July 6, 1998, Russell Stone received a written warning in lieu of a three-day suspension for insubordination. (N.T. IV, 52; C.E. 34)
81. The Respondent considered a discrepancy in Russell Stone's submission of FMLA paperwork a refusal of an order. (N.T. IV, 52; C.E. 34)
82. On May 6, 1999, Russell Stone received a written warning in lieu of a three-day suspension for a failure to meet production standards and a confrontation with a supervisor. (C.E. 36)
83. On May 27, 1999, Russell Stone received a verbal warning for refusing a supervisor's order and a deliberate failure to meet production standards. (C.E. 35)
84. Russell Stone was warned that the next incident would result in a five-day suspension with the intent to terminate. (C.E. 35)
85. On August 19, 1997, Jason Rohrer received a five-day suspension with the intent to terminate for abusive language and insubordination. (N.T. III, 105; R.E. 21)
86. When Jason Rohrer acknowledged his wrongdoing, his five-day suspension and termination was reduced to a four-day suspension without pay and he was reinstated. (N.T. III, 105; R.E. 21)
87. As a condition of his reinstatement, Jason Rohrer was also made to attend and comply with a drug rehabilitation program. (N.T. IV, 42)
88. On July 18, 1997, Leroy Stone was issued a five-day suspension with an intent to terminate for abusive language and insubordination. (N.T. IV, 37-38; R.E. 23)
89. On July 24, 1997, Leroy Stone's five-day suspension and termination was converted to a four-day suspension and reinstatement contingent on Leroy Stone conducting himself appropriately. (N.T. III, 108; N.T. IV, 37-38; R.E. 23)
90. Prior to their disciplines, Leroy Stone, Harvey Fawber, and Russell Stone had each filed PHRC claims. (N.T. IV, 70)

91. Prior to his termination, the Complainant had been issued other disciplines. (R.E. 19, 29, 42, 43, 64)
92. On March 26, 1996, the Complainant was issued a verbal warning for disrupting production by talking with a co-worker without permission from the floor supervisor – insubordination and unauthorized visiting. (N.T. III, 102; R.E. 42)
93. Reportedly, when confronted, the Complainant defiantly stated “so what, write me up.” (R.E. 42)
94. On or about May 28, 1996, the Respondent and the union negotiated the removal of the March 26th verbal warning. (R.E. 42)
95. On June 12, 1996, the Complainant was given a verbal warning for inattention to work and other acts, which are detrimental to quality and production operations. (N.T. III, 103; R.E. 20)
96. The June 12, 1996 verbal warning related to an accusation that the Complainant had performed minimal work on a casting and at 1:40 p.m. he was out of his area. (N.T. II, 109; R.E. 19)

CONCLUSIONS OF LAW

1. The Commonwealth Court has remanded this matter back to the Commission with instructions to give reconsideration of specific areas of the Commission's Order of December 21, 2004.
2. The Commission has conducted the review as instructed by Commonwealth Court.
3. The Commission finds that the Complainant generally lacks credibility.
4. The Respondent's exercise of discretion in issuing discipline was reasonable under all of the circumstances of this case.
5. The Complainant fails to show that the reasons offered for Respondent's actions were pretextual.

OPINION

After consideration of Frog, Switch & Manufacturing Company's (Respondent) appeal, the Commonwealth Court vacated the PHRC December 21, 2004 finding both that the Respondent had retaliated against Wilmer Baker (Complainant) and the award of damages. In vacating the PHRC finding the Commonwealth Court remanded the matter for reconsideration of the PHRC's December 21, 2004 Final Order.

The Court's remand generally instructed the PHRC to conduct a proper "winnowing and sifting" of the evidence. More specifically, the Court expressed the concern that essential credibility determinations had not been made and critical conflicts in the evidence had not been resolved. The Court listed five specific areas the Court believed the PHRC did not properly explain critical evidence of record. The Court articulated these five areas as:

1. In concluding that Vice President Kucharczyk's March 9, 1998 offer of reinstatement was contingent on both acknowledging wrongdoing and agreeing not to continue to assist employees file PHRC complaint, the PHRC failed to discuss Kucharczyk and Gribble's denial that the Complainant was asked to agree to discontinue assistance with PHRC complaints. Additionally, the Complainant's testimony at the PHRC's Public Hearing was inconsistent with several prior statements.
2. The PHRC failed to fully address the disciplinary history, level of insubordination, and mitigation factors regarding five other similarly situated employees. Further, the PHRC had not considered that other employees who were suspended pending termination were not discharged when they acknowledged wrongdoing.
3. The PHRC had not addressed differences regarding to whom an employee had been insubordinate. The Court observed that, "it is much different to be insubordinate to a corporal than to a general."

4. The PHRC failed to fully consider the Complainant's disciplinary history, and that only one other employee had more than one charge.
5. The PHRC did not comment on a "lack of any evidence" supporting the Complainant's claim that there was a "pattern of antagonism" against him. Further, the PHRC failed to address the evidence showing that purported antagonism towards the Complainant began before he assisted co-workers to file PHRC complaints.

In reconsidering our December 21, 2004 opinion, we begin with a general reconsideration of the credibility of those witnesses who provided conflicting testimony on the critical issues outlined by the Court. The Court's remand first observed that the Complainant's testimony sharply contrasted the testimony of both Kucharczyk and Gribble with respect to what conditions were placed on the offer of reinstatement extended to the Complainant at his Discharge Hearing.

A full review of the record reveals there are numerous instances when the Complainant was less than credible. We begin by reviewing the Complainant's testimony regarding events of March 6, 1998. On that date, it is undisputed that the Complainant was initially confronted outside his work area with his gear off, ready to leave 20 minutes early. The Complainant testified that he had removed his gear because he had nothing to do until a crane flipped the piece he had been working on. (N.T. I, 138). It is also clear that approximately 5 minutes earlier, Tracy Carter, a co-worker, had requested his help. The Complainant testified that he told Carter that he would rather finish his work. (N.T. I, 139-140; N.T. II, 72). On cross-examination, the Complainant offered that he did not help Carter because she was leaving at 1:45 p.m. (N.T. II, 97). One minute the Complainant would offer he thought a crane would be

freed up, (N.T. I, 141) then totally change by saying he did not think a crane would be freed up. (N.T. II, 71). On cross-examination, the Complainant offered that he knew at 1:30 p.m. that he was not going to get a crane. (N.T. II, 96). Perhaps the Complainant's real reason for getting ready to leave 20 minutes early can be found when the Complainant testified on rebuttal where he stated that at 1:30 there was nothing else he could do and that he had worked two jobs that day. (N.T. IV 108). It seems the Complainant had simply decided he had done enough for the day and was caught leaving early.

After being told he had 20 more minutes to work, the Complainant's testimony regarding when he left his work area again lacks credibility. At one point the Complainant states that he "thinks" he was back in his booth 15-20 minutes. (N.T. I, 143). A short while later he testified that he went back to his booth until he thought 20 minutes was up then he left when everyone was leaving. (N.T. I, 149). In fact, on cross-examination the Complainant denied that he even quit early. (N.T. I, 171, 173).

Interestingly, the Complainant acknowledged that after leaving his area on his way to the shower, he stopped by the work area of Bob Wolfe, a co-worker, telling him to be careful, Vice-President Kucharczyk had told the Complainant he quit too early. (N.T. I, 171). The Complainant indicated that he told Wolfe to be careful because he did not want Wolfe to get into trouble. (N.T. I, 173). Uncontradicted testimony was offered that Gribble subsequently spoke with Wolfe who told Gribble that 5 to 10 minutes after the Vice-President left the Complainant, the Complainant headed for the showers. (N.T.

III, 89; R.E. 14). It is apparent that Wolfe was the Complainant's friend, yet he still confirmed that the Complainant left between 10-15 minutes early.

A combination of several sources makes it clear that the Complainant did not stay in his area until 1:50. For instance, Gribble also spoke with another of the Complainant's co-workers, Paul Anderson, who told Gribble that when the Vice-President left the Complainant's area, the Complainant just stood there for a little bit then he left the area less than a minute later. (R.E. 15). Also, a second shift employee, Reuben Nace, offered that he saw the Complainant in the shower area when he arrived. (N.T. I, 85-86). It seems that second shift employees had to be at their machines 15 minutes before 2:00 p.m. (N.T. II, 151). To be at his machine in time, Nace would have had to see the Complainant in the shower area at approximately 1:40, the precise time Kucharczyk says he found the Complainant lathered up in the shower. (N.T. IV, 93, 103).

The Complainant would have us believe employees used a "buddy system" to know when a shift ended. While some workers do see some employees leaving early, (N.T. II, 132-133, 135) the Respondent utilized a buzzer system that sounded at quitting time. (N.T. II, 151; N.T. IV 19).

In the details of the Complainant's version, his lack of credibility is readily apparent. For instance, the Complainant offered that it took him approximately 7 minutes to walk 175 feet. (N.T. I, 144). He later said it had taken him 5 to 7 minutes to walk 120 feet. (N.T. I, 175). At one point, the Complainant suggested that when

Kucharczyk found him in the shower area, there were seven or eight other employees, but Kucharczyk walked right past them and singled the Complainant out. (N.T. I, 140). The Complainant went so far as to tell the PHRC investigator others were in the shower 10-15 minutes before he was. (R.E. 29).

What is abundantly clear is that the Complainant's story was anything but consistent. Indeed, it is abundantly clear the Complainant lacks credibility. The evidence shows that the Complainant had simply decided he had done enough work for the day. He was not going to help anyone else, except to warn a co-worker to be careful as he was on his way to the shower. It seems the Complainant left his area sometime before 1:35, at least 15 minutes early, and was discovered by Kucharczyk showering at approximately 1:40.

An area of significant meaningful dispute surrounds the circumstances of the Complainant being offered reinstatement at his Discharge Hearing. The Complainant says that there were two conditions to being reinstated: (1) acknowledge wrongdoing; and (2) agree not to file any PHRC charge. (N.T. I, 60, 74). On this point, the Complainant's credibility is again in serious question. As the remanding Court observes, both Gribble and Kucharczyk contradict the Complainant's version of the conditions of his reinstatement. Both Gribble and Kucharczyk testified that there was only one condition the Complainant had to fulfill to be reinstated: admit he had been insubordinate and take responsibility for his actions. (N.T. III, 96; VPK 19).

First, we note that at the moment the Complainant says he was asked to agree not to file any more PHRC charges, seven others were present besides the Complainant, Gribble and Kucharczyk. Not one of those seven individuals was called as a witness to corroborate the Complainant's version. Importantly, the seven individuals present were all union members: Wayne Rentzel, a union staff representative; and 6 members of a union committee.

Following the Complainant's termination, he filed for unemployment and also filed an internal grievance. In both forums, the Complainant referenced the condition of his reinstatement offer was that he had to admit he had been insubordinate. (N.T. I, 38, 70-71; N.T. II, 10-11, 73-74; R.E. 31). The Complainant did not mention the PHRC.

Along the same line, when the Complainant offered his explanation for why he rejected the Respondent's offer of reinstatement, his lack of credibility is apparent. The Complainant suggested that the offer was a last chance agreement for a first offense so he refused the offer. (N.T. I, 148). The Complainant offered that he figured that within a week he would be charged with insubordination again and he would be finished without recourse to the grievance process. (N.T. I, 148; N.T. II, 93). Three separate credibility areas arise from the Complainant's version.

First, Gribble credibly testified that the Complainant had not been offered a last chance agreement. (N.T. III, 100). Last chance agreements require union participation and in the Complainant's case, there is no evidence the union was asked to participate in the offer extended to the Complainant. Second, on cross-examination, the

Complainant admitted that if he would be charged again, he would have grievance rights provided under the collective bargaining agreement. (N.T. I, 180). Third, it was abundantly clear that this charge had not been the Complainant's first as he claimed. Indeed, the Complainant had numerous prior disciplines including insubordination. (N.T. III, 95). On March 26, 1996, a verbal warning had been issued to the Complainant for alleged disruption of production when the Complainant was found speaking with another working employee without prior permission from the floor supervisor. (R.E. 42). Subsequent to that verbal warning, the Respondent and the union negotiated the removal of that verbal warning. (R.E. 42). On March 29, 1996, the Complainant was charged with violating two work rules: insubordination and unauthorized visiting. (N.T. III, 102). The Complainant filed a grievance and a NLRB charge claiming interference with union activity. (N.T. II, 25; N.T. III, III; R. E. 42, 43). When the matter was resolved through the grievance process, the NLRB dismissed the Complainant's charge. (N.T. III, 113). On June 12, 1996, the Complainant was issued a written warning for "continuous low production", (N.T. III, 103; R. E. 19), and on May 28, 1997, the Complainant was given another verbal warning for inattention to work and other acts which are detrimental to quality, and production operations. (N.T. III, 103; R.E. 20). Interestingly, a part of the June 12, 1996 warning dealt with the Complainant being out of his work area at 1:40 p.m. (N.T. II, 109; R.E. 19).

Collectively, these circumstances show that the Complainant's version lacks credibility. Indeed, the evidence shows that there was not even time to say anything

more than ask the Complainant if he would acknowledge wrongdoing. At the point the Complainant was told that reinstatement was an option and asked if he would acknowledge wrongdoing, the Complainant just asked for his five days on suspension back, stated that he had not done anything wrong and refused to accept responsibility. (N.T. I, 147, 179; N.T. III, 96). The Complainant described the reaction to his comment as those in attendance looked at him like he was crazy so he left simply stating that, "we'll just go to arbitration." (N.T. I, 147-149). It would appear that even the seven union persons reacted with incredulity to the Complainant's adamant refusal to acknowledge wrongdoing in exchange for reinstatement.

Another glaring example of the Complainant directly contradicting himself involves the issue of mitigation efforts after the Complainant's termination. Initially, the Complainant inferred that he began searching for jobs right after his termination. (N.T. I, 168). However, upon further probing, it became clear that the Complainant did nothing between his termination and the end of August 1998, a period of almost six months. (N.T. II, 61). The Complainant went so far as to offer that you cannot get a job if you are receiving unemployment compensation. (N.T. II, 99). Ultimately, the Complainant simply admitted that he felt he did not need to apply anywhere because he was receiving unemployment compensation. (N.T. II, 99).

A careful reading of the entire record reveals that the Complainant lacked credibility on nearly all aspects of his testimony. With this in mind, we must conclude that the only condition attached to the offer to reinstate the Complainant was that he

acknowledge he had been insubordinate. Of course, the Complainant adamantly refused to so acknowledge.

In making the observation that the PHRC's December 21, 2004 opinion did not address differences regarding to whom a disciplined employee had been insubordinate, the Court expressed the opinion that, "it is much different to be insubordinate to a corporal than to a general." A review of the entire record regarding instances of discipline for insubordination reveals that there were meaningful differences in two respects. First, as noted by the Court, there are differences in the levels of authority held by those against whom an employee had been insubordinate. Second, there are also notable differences with respect to the various conducts that resulted in insubordination charges.

The record reflects the following employees were accused of insubordination: Michael Chaleuisan, Leroy Stone, Jason Rohrer, Samuel Wolfe, George Hoffman, Harvey Fawber, Elmer Stone, Charlie Carothers, Russel Stone and the Complainant. As the records of these employees are reviewed, we are mindful of the credible testimony and documentary evidence admitted showing that the severity of discipline for insubordination is discretionary and dependent on an employee's disciplinary history, the magnitude of the insubordination and whether or not there are mitigating factors. (N.T. IV 22, 85-87; R.E. 6).

Beginning with Michael Chaleuisan, we note that in April 1996, he was issued a written warning in lieu of a three-day suspension for refusing to work overtime without a

reasonable excuse. (N.T. IV, 45-46; C.E. 29). This instance of Chaleuisan's insubordination was his refusal to follow an order of his supervisor who had not warned him that he would be disciplined if he refused overtime. Additionally, the Respondent submits that another mitigating factor was that there was a question regarding whether overtime in that instance was mandatory. (N.T. IV 46-47; C.E. 29).

In July 1997, Leroy Stone was charged with two offenses: use of abusive language to another employee and insubordination. The insubordination charge grew out of Stone's conduct at a meeting during which Stone was given a verbal warning for violating a rest period. When Stone was handed the verbal warning write up, he crumpled it up and threw it in a trash can. While doing this, Stone stated, "I can see where this is going" and left the office. (N.T. III, 107; N.T. IV, 37-38; R.E. 23). Stone's crumpling the write up and leaving the meeting was the basis for the insubordination charge. Initially, Stone was given a five-day suspension with an intent to discharge, but this was later reduced to a four-day suspension without pay, contingent on Stone conducting himself appropriately and complying with plant rules. (N.T. III, 108; N.T. IV, 36-39; R.E. 23).

Jason Rohrer's August 1997 insubordination involved the use of foul and abusive language towards a supervisor. (R.E. 21). Initially, Rohrer was issued a five-day suspension with an intent to discharge, but after he acknowledged his wrongdoing, the discipline was reduced to a four-day suspension without pay. (N.T. III, 106; N.T. IV, 36; R.E. 21).

In January 1998, Samuel Wolfe received a written warning for questioning a supervisor's instructions about the set up of a machine Wolfe was operating. The Respondent termed Wolfe's failure to cooperate with his supervisor as insubordination. (C.E. 27).

In June 1997, George Hoffman received a verbal warning after he parked his car in an area being cleaned. (C.E. 28). A bulletin board notice and another notice placed on the windshield of Hoffman's car advised him not to park for a few days in an area to be cleaned. When he did, the Respondent charged him with insubordination. (C.E. 28).

On three occasions, Harvey Fawber received discipline for insubordination. (C.E. 25, 26; R.E. 22). Fawber's first discipline for insubordination occurred in April 1996. On that occasion, Fawber stopped by a supervisor's office and was disrespectful in his behavior and language. Fawber had been asked if he was looking for a particular person and Fawber replied, "I ain't looking for that Asshole." Then, when the supervisor tried to stop and discuss his actions, Fawber would not stop, and left. (C.E. 25). For his actions, Fawber was issued a verbal warning which cautioned him that future insubordination would result in a five-day suspension with intent to discharge. (C.E. 25)

Indeed, in March 1998, Fawber was issued a five-day suspension with intent to discharge for being uncooperative, loud, and verbally abusive towards his supervisor. (R.E. 22). Subsequently, Fawber accepted responsibility for his wrongdoing and his discipline was reduced to a written warning and a five-day suspension without pay. (R.E. 22)

In August 1998, Fawber was disciplined again for insubordination. On that occasion, Fawber had failed to follow his supervisor's instructions. He was issued a written warning in lieu of a three-day suspension. (C.E. 26)

In May 1993, Elmer Stone received a written warning in lieu of a one-day suspension when he failed to clean and drain a heat tank and also discharged excess water without permission. (C.E. 31). The Respondent considered Stone's actions as an insubordinate refusal of a supervisor's orders. (C. E. 31)

In May 1996, Charlie Carothers refused his supervisor's order to go to the maintenance department to look at some materials. Carothers received a one-day suspension for his insubordinate refusal of his supervisor's instruction. (C.E. 32). Initially, Carothers had been terminated for his actions, but Carothers visited the Respondent's CEO at his home and admitted his wrongdoing. (N.T. IV, 50, 74). Upon doing this, Carothers' discipline was reduced.

In July 1998, Russel Stone was given a written warning in lieu of a three-day suspension for his refusal to obey an order of his supervisor. (C.E. 34). It appears that Stone had not completed some FMLA forms he had been given.

In May 1999, Stone was issued another written warning in lieu of a three-day suspension. In this instance, Russel Stone became argumentative, belligerent, and abrasive when counseled about short falls in production requirements. (C.E. 36)

Later in May 1999, Russel Stone received a verbal warning for a refusal to obey a supervisor's order. (C.E. 35). This instance is an extension of his earlier May 1999

written warning in that Russel Stone refused to acknowledge the Respondent's right to establish manufacturing standards and goals. (C.E. 35)

Of course, in March 1998, the Complainant was issued the five-day suspension with intent to discharge that actually led to his discharge when he refused to acknowledge wrongdoing. Additionally, among other disciplinary actions for various infractions, in March 1996, the Complainant was issued a verbal warning for insubordination. (N.T. III, 102; N.T. IV, 69-70)

Under all of the circumstance outlined, the underlying insubordination of all but the Complainant involved an employee's interaction or order refusal of a supervisor. The Complainant disobeyed the Respondent's Vice President of Operations. In the Court's words, the Complainant disobeyed the general while all others disobeyed a corporal.

On this point, the testimony of two of the Complainant's co-workers illustrates this difference. LaVan Zorn indicated that if the Vice President of Operations told him to go back to work, he would, and that if he didn't, he knew he would be discharged. (N.T. III, 37) Another co-worker, said to be a good friend of the Complainant's, Clair Starner, agreed that leaving early after being told not to is an act of insubordination. (N.T. III, 20). Further, Starner offered that he wouldn't disobey Vice President Kucharczyk and that he doesn't know anyone who would. (N.T. III, 20)

Vice President Kucharczyk's immediate reaction to the Complainant disobeying him was outrage. (N.T. III, 78) When Kucharczyk met with Gribble on March 6, 1998, Kucharczyk's outrage led him to insist that the Complainant be punished to the maximum. (N.T. III, 78) Only later did he agree to offer the Complainant reinstatement if he would acknowledge wrongdoing.

Differences in insubordinate conduct were ultimately subjected to the discretion of the Respondent. Rarely will there be identical comparisons when reviewing the application of discretionary discipline. Here, however, a general pattern is readily apparent. Almost always, when an employee is issued a five-day suspension with intent to discharge, that employee is offered reinstatement in exchange for the employee's admission of wrongdoing. (N.T. I, 178; N.T. III, 23-24, 28; N.T. IV, 75) A review of all employees who received a five-day suspension with intent to discharge for an act of insubordination reveals that the Complainant was the only employee to reject the Respondent's offer of reinstatement. Those who accepted offers of reinstatement rather than be terminated are: Leroy Stone; Jason Rohrer; Harvey Fawber; and Charlie Carothers. This leaves the following employees who were insubordinate but received less than a five-day suspension with intent to discharge: Michael Chaleusisan; Samuel Wolfe; George Hoffman; Elmer Stone; and Russel Stone.

As we look at the records of these five employees, we remain mindful that the Complainant had also received discipline short of a five-day suspension with intent to discharge for an act of insubordination. In comparing conduct, we begin with the

Complainant's history. In March 1996, a supervisor had observed the Complainant disrupting production by engaging one of his workers. The supervisor had spoken to the Complainant before telling the Complainant he would not tolerate production disruption. Reportedly, the Complainant was defiant and stated, "so what, write me up." (R.E. 42) For that incident, the Complainant received a verbal warning which informed him that future violations would result in progressive discipline. Interestingly, others who received warnings were told that future acts would result in five-day suspensions with intent to discharge.

Of the five employees charged with insubordination and who did not received a five-day suspension with intent to discharge, four had only one charged instance of insubordination. Only Russel Stone had more than one charge of insubordination. The underlying conduct which led to the discipline of the four one-timers generally includes: failure to work overtime with mitigating factors; questioning and refusing a supervisor's order; parking in an unauthorized area; and failing to properly clean a work area. We are not prepared to conclude that the Respondent's exercise of discretion in issuing discipline less than a five-day suspension with intent to discharge in these instances in anyway amount to disparate treatment as compared to the Complainant's discipline.

This leaves the three instances of discipline given to Russel Stone for his acts of insubordination. On one occasion, Russel Stone failed to file FMLA paperwork. Next, Russel Stone reacted poorly to counseling about production requirements. Finally,

Russel Stone remained unwilling to acknowledge the Respondent's right to have production standards and goals.

Considered as a whole, the Respondent's meting out of different levels of discipline for varied acts of insubordination was reasonably related to the stated factors of an employee's discipline history, the level of insubordination, and consideration of mitigating factors. Under the circumstances of the Complainant's actions on March 6, 1998, he was treated neither better nor worse than any other employee who had been insubordinate.

A final concern of the Court was how the PHRC dealt with the Complainant's allegation that he was subjected to a "pattern of antagonism".

The PHRC's opinion focused on the Complainant's allegation that he was, in essence, a marked man. Indeed, the Complainant did state, "I was held accountable for everything I did at Frog and Switch. Sort of like I was the rabbit waiting for the dog to jump on me in hunting season. Everything I did was called into question. Any time I was anywhere, going to the bathroom or anything, I was followed and timed, wrote up for how long I went to the bathroom. I take my breaks too early, I leave work too early. Was I on the job when this happened? I take too long of a break. They wrote me up for any incidental thing they could think of. They made things up just to write me up." (N.T. II, 78).

However, as noted by the Court, our review finds that the record does not support the Complainant's claim that he was besieged with write-ups on any and every issue. On the contrary, as shown by the Complainant's disciplinary history, his infractions were violations of the work rules and policies of the Respondent. It is apparent that the Complainant prefers to view legitimate concerns as "nit picking."

Noting that the Complainant had testified that the Respondent, "made things up", the Complainant was asked by Commissioner Toni Gilhooley, "what kind of stuff did they say or do when they made things up? What was the nature of things they made up to harass you?" (N.T. II, 101). The Complainant's response is very telling in that he only enumerates things that are indeed either legitimate concerns or infractions. The Complainant's response was "...they put a no smoking policy in effect after I went to OSHA about some of the flammable materials they had there. They made false accusations against me so that I...people smoking cigarettes and tanks that were flammable, they would follow me to the bathroom timing me telling me I was in the bathroom too long, I took breaks too long, I took lunch too long, quit work early." (N.T. II, 101). However, even though the Complainant dismisses these issues as "nit picking", he never showed he hadn't committed these things. Clearly, being late for breaks, taking too long for lunch and leaving work early are infractions that may expose an employee to discipline. The Complainant seems to believe that these issues should be overlooked since he was union President. In addition, the record before the Commission reveals that these purported infractions occurred prior to the Complainant's

assisting others in filing PHRC complaints. The Complainant does not have a credible argument, that the purported "nit picking" is related to his assisting Respondent employees.

Even more importantly, the Complainant, though given the opportunity by the Commissioner, did not produce any write ups that would support his broad claim that things were made up by the Respondent.

In summary, the Commission's review of the areas the Commonwealth Court instructed the Commission to reconsider leads to the inescapable conclusion that the Commission's order dated December 21, 2004, should be reversed and an Order entered dismissing the Complainant's complaint.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILMER J. BAKER,
Complainant

v.

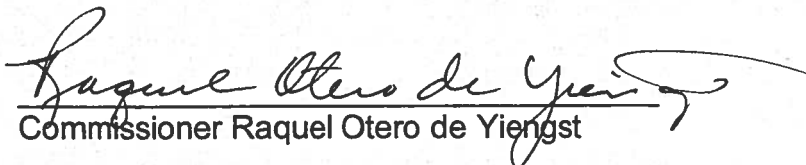
THE FROG SWITCH &
MANUFACTURING CO.,
Respondent

PHRC Case No. 199800386
Docket No. E-88319DAH
EEOC No. 17F983368

RECOMMENDATION OF HEARING PANEL

Following recommended instructions from the Commonwealth Court of Pennsylvania, the Hearing Panel has now reconsidered the entire record in the above captioned case and the Hearing Panel now recommends that the PHRC's December 21, 2004 Final Order be reversed because the Complainant has not proven discrimination in violation of the Pennsylvania Human Relations Act.

It is, therefore, the Hearing Panel's Recommendation that the attached 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, this Hearing Panel recommends issuance of the attached Final Order.


Commissioner Raquel Otero de Yienst


Commissioner Toni M. Gilhooley


Commissioner J. Whyatt Mondesire

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

**WILMER J. BAKER,
Complainant**

v.

**THE FROG SWITCH &
MANUFACTURING CO.,
Respondent**

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**PHRC Case No. 199800386
Docket No. E-88319DAH
EEOC No. 17F983368**

FINAL ORDER

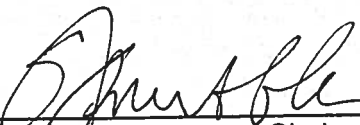
AND NOW, this ____ day of _____ 2006, after reconsideration of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion of the Hearing Panel. Further, the Commission adopts said Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion as its own findings in this matter and incorporates the 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

ORDERS

that the PHRC's December 21, 2004 Final Order is reversed. Accordingly, the Complainant's complaint is hereby dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY:



Stephen A. Glassman, Chairperson

ATTEST:



Daniel D. Yun, Assistant Secretary