



5. The Parties agree that there shall be no discrimination or retaliation of any kind against any person because of opposition to any practice declared unlawful under Title VII of the U.S. Civil Rights Act of 1964 as amended or NHRS354-A as amended, or because of the filing of a charge; giving of testimony or assistance; or participation in any manner in any investigation, proceeding or hearing under Title VII of the U.S. Civil Rights Act of 1964 as amended or NHRS354-A as amended.
6. Respondent is ordered to compensate the Complainant in the amount of \$2,351.61, arrived at in the following manner:
  - a. 362 hours unfulfilled on the job training at \$4.25 per hour plus 6%, \$1,630.81;
  - b. 160 hours (40 hours per week, 4 weeks) for time Complainant was unemployed subsequent to termination, at \$4.25 per hour plus 6%, \$720.80.
7. Respondent is ordered to make all awards in this Order payable in full to the Complainant and mailed, certified, within thirty (30) days of receipt of this Order to the New Hampshire Commission for Human Rights, 66 South Street, Concord, New Hampshire.
8. Respondent is ordered to institute a program of training for its Equal Employment Opportunity Officers consonant to their duties and responsibilities and to be approved by the Commission.
9. The Commission agrees to lend technical services to the Respondent for the purpose of fulfilling the requirements in Paragraphs 4 and 8.
10. The Commission shall have sole authority to determine the provisions of this Order are fulfilled.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ira A. Rowlett

9/7/77  
Date

*Stephen M. Brox*  
for George Brox, Inc.

9/9/77  
Date

*Bud Firestone*  
Berel Firestone, Executive Director  
N.H. Commission for Human Rights

9/9/77  
Date

*Don Land*  
Don Land, Commissioner  
N.H. Commission for Human Rights

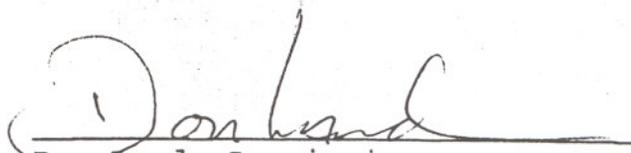
Findings of the New Hampshire Commission for Human Rights  
at Public Hearing August 1, 1975.

Presiding, Commissioners Land, Paine and Rejimbak.

Commissioners Land and Rejimbak find that the Complainant  
was discriminated against in terms of conditions of employ-  
ment because Complainant:

1. was subjected to racial slurs and insults, thereby  
creating an atmosphere not conducive to maximum  
performance;
2. was subjected to various forms of harrassment that  
were based in part on the inability of his superiors  
to relate to a minority group person in a non-  
prejudicial manner;
3. was not given the benefit of adequate conditions of  
training because the person responsible for Complainant's  
training could not, as testified, give adequate attention  
to the Complainant;
4. was terminated under conditions that were prejudicial  
and without proper or reasonable notice.

We hold that the above Findings indicate conduct that had an  
adverse affect on the Complainant as a minority group member (black)  
compared to members of non-minority groups.



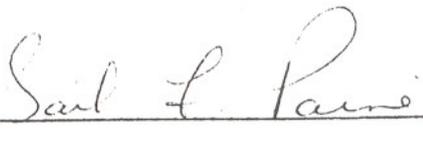
Don Land, Commissioner  
N.H. Commission for Human Rights

\* \* \* \* \*  
Ira A. Rowlett  
New Hampshire Commission  
For Human Rights  
  
vs.  
  
George Brox, Inc.  
\* \* \* \* \*

Opinion of Commissioner Paine

In carefully reviewing the evidence and the law in this case, I do not feel that the failure of Mr. Rowlett to complete the training course as grade foreman trainee for George Brox, Inc. was the result of discrimination, but was the result of Mr. Rowlett's inability to exhibit initiative, and perserverance in the pursuit of his training and job responsibilities. Certainly he had more training opportunities than were normally afforded the usual trainee. He has a high (14%) absentee rate. His comprehension of the job responsibilities certainly did not seem to improve with training. The ability of a minority group member to function in a job situation should not be diminished by a normal amount of job related problems.

The law is clear that the complaintant must have been discharged from his employment because of his race or that he was discriminated against because of his race in the term and condition of his employment. The complaintant has failed to submit proof on which such a finding could be made.

  
\_\_\_\_\_

There can be no argument that the U.S. Congress in passing the 1964 Civil Rights Act intended a uniformity of opportunity for all affected classes in employment, housing, education, et al. The New Hampshire Legislature committed itself to that uniformity by incorporating (354-A:3(4)) into its definition of unlawful discriminatory practices, "--- those practices specified in Chapter 8 and practices prohibited by the Federal Civil Rights Act of 1964 (P.L.88-352)." (Emphasis added.)

It is to this uniform treatment of employees constituting a condition of employment the Honorable Commission is asked to address itself. This is not a question of importing mores and disciplines from one section of the country into New Hampshire. Rather, it is to guarantee that all employment practices, be they conducted in Georgia, California, New York, New Hampshire, et al, recognize the distinction between geographic location and equality under the law.

In his analysis Griggs vs. Duke Power, Alfred W. Blumrosen wrote in the Rutgers University Law Review, "Discrimination consists of conduct which has adverse affect on minority group employees as compared to majority group employees."

Respondent Attorney Mr. Griffith attempted to draw the thrust of the Hearing to Mr. Rowlett's work performance while avoiding the larger issue of "adverse affect."

Mr. Griffith also attempted to disarm the complaint by referring to the complainant's charge of discrimination against Mr. Clough. Let it be noted that Mr. Clough, by amendment to the complaint, was removed as a co-respondent as the first order of the Hearing. Mr. Griffith admitted he would be on "shaky ground" in trying to attack the specificity of the complaint. The 5th Circuit U.S. Court of Appeals, in Georgia Power Company vs. EEOC, 412 Fed 2d 462, ruled, "A charge is deemed filed when the Commission receives from the person aggrieved a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of." Certainly

Mr. Rowlett met these requirements in his initial complaint to both the New Hampshire Commission for Human Rights and the Equal Employment Opportunity Commission by naming George Brox, Inc., as a co-respondent and, although accusing Mr. Clough as the author of harrasment and racial insults, there can be deemed sufficient information in the complaint for bringing charges against the company as a prime mover, directly responsible for the actions of all its agents.

There was direct contradiction in testimony from Mr. Yale, who stated he did not remember ever having used the word "nigger" in the presence of Mr. Rowlett, and Mr. Rowlett's testimony describing and detailing the circumstances under which the word allegedly was used. There can be no contradiction, however, in Mr. Clough's disingenuous admission that he never used racial slurs or told alleged jokes of a racially damaging nature and his insensitive admission under examination that he did indeed tell such stories but found "nothing wrong with them."

At the heart of this complaint is the company's responsibility as an equal opportunity employer to maintain and oversee with skill and sensitivity all of its agents and their dealings with members of minority groups. Mr. Jackson testified he had received his training as an EEO Officer under the aegis of the former George Brox, Inc., EEO Officer in New Hampshire. Mr. Yearki's expertise as a highway engineer is unquestioned, but his testimony that the Federal Highway Division "had to choose someone" as an EEO Officer makes suspect his qualifications for such a position. It must be noted that all EEO Officers, Messrs. Jackson, Yearki and Evarts, have had minimal exposure in New Hampshire to the problems of minority group employees, and although their good intentions and compassion are unquestioned, their expertise must be carefully examined.

The right of an individual member of an affected class to a condition of employment that makes the employment situation conducive to productivity is undeniable. The simple question is whether there are forbidden influences on the part of the respondent company to the complainant. Such a forbidden influence would certainly include jokes with a racial connotation. EEOC decision in CCH 6085 held respondent is responsible

for its supervisory personnel despite its disclaimer (also held in Tidwell vs. American Oil Company, 332 Fed Supp. 424, 4 EPD 7544 D Utah 1971).

I respectfully submit that the issue before the Commission is whether or not felicitous conditions of employment were maintained by the respondent company that would allow successful training on the part of the complainant, and not whether complainant was trained in a manner identical to all other non-minority group employees, for such treatment is often unequal.

BF:jw



The plaintiff, George Brox, Inc., is a Massachusetts Corporation doing business in Dracut, Massachusetts, as a general contractor. In 1973, the plaintiff was involved in a road construction project in Hudson, New Hampshire. Two minority group members, both of them black, were hired as on-the-job trainees for this project (Tr. 8). The complainant-defendant, Ira A. Rowlett, was hired as an apprentice grade foreman (Tr. 20). Rowlett had no previous experience in the road construction industry and had applied at the local DES office for employment as a truck driver (Tr. 42-44). His performance for the first five weeks from March 31, 1973, to April 28, 1973, as indicated on the OJT Weekly Progress Report forms (Exhibit 1), was "satisfactory". (See also Tr. 11-13). On every Weekly Progress Report from May 5, 1973, until the defendant Rowlett was terminated on June 22, 1973, the evaluation had changed to "needs improvement".

On July 2, 1973, Rowlett filed a complaint with the defendant, New Hampshire Commission for Human Rights, alleging discriminatory conduct by his employer, George Brox, Inc., in contravention of RSA 354-A:8(I)(Supp. 1975). The complaint was investigated by Commissioner Bolden, who notified George Brox, Inc., on February 21, 1975, that probable cause had been found to credit this allegation. George Brox, Inc. disputed this finding and also opposed a proposed agreement submitted by the Commissioner and requested a hearing on this matter.

On August 1, 1975, an administrative hearing was held before Commissioners Land, Rejimbai and Paine. On October 21, 1975, by a 2-1 decision (Commissioner Paine, dissenting), the Commission found that Rowlett had been discriminated against in the terms and conditions of his employment on four grounds, because he:

- " 1. was subjected to racial slurs and insults, thereby creating an atmosphere not conducive to maximum performance;
2. was subjected to various forms of harassment that were based in part on the inability of his superiors to relate to a minority group person in a non-prejudicial manner;
3. was not given the benefit of adequate conditions of training because the person responsible for Complainant's training could not, as testified, give adequate attention to the Complainant;
4. was terminated under conditions that were prejudicial and without proper or reasonable notice."

The Commission, pursuant to its statutory authority under RSA 354-A:9(II), ordered the plaintiff, George Brox, Inc., to compensate the defendant, Ira R. Rowlett, in the amount of \$2,351.61, representing wages lost due to 362 hours to unfulfilled on-the-job training (\$1,630.81), and for 160 hours that Rowlett was unemployed subsequent to termination (\$720.80). Brox was further ordered to conform its employment practices to the requirements of Title VII of the U.S. Civil Rights Act of 1964 as amended (42 U.S.C. s. 2000(e) et seq. (1970) ) or RSA 354-A as amended. Brox took an appeal from

this finding and order on November 10, 1975, pursuant to RSA 354-A:10.

This Appeal raises the issues of: (1) what standard of judicial review is to be applied; (2) whether, considering all the evidence presented to the Commission, there was an adequate basis to find that Ira A. Rowlett had been discriminated against in the terms and conditions of his employment; and (3) whether the Commission has the authority, pursuant to RSA 354-A:9(II), to order George Brox, Inc., to pay money damages to Rowlett as complainant.

RSA 354-A:10 delineates the power of the Superior Court in reviewing an appeal from a decision of the Commission for Human Rights. This statute, so far as pertinent, provides that:

"The findings of the commission as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole... . The jurisdiction of the superior court shall be exclusive and its final order or decree shall be subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final order or decree in proceedings in equity."

This statutory provision is in keeping with the New Hampshire practice to give great weight to the decision of a board, commission, or other administrative agency. It is similar in terms to the burden established in RSA 541:13 governing administrative appeals in general, which provides in pertinent part:

"Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of

fact properly before it shall be deemed to be prima facie lawful and reasonable ... ."

In appeals from the determinations of such administrative agencies as the parole board (Martel v. Hancock, 115 N.H. 237), the Public Utilities Commission (City of Manchester v. Boston & M.R.R., 98 N.H. 52), the Insurance Commission (Union Fidelity Life Insurance Co. v. Whaland, 114 N.H. 549), a presumption of reasonableness is to be accorded to the findings of fact made by these agencies. Similarly, it has been held that the findings of a master must stand on appeal when a review of the record discloses sufficient evidence to support the findings. Iafolla Industries v. Curran-Cossette Const. Corp., 116 N.H. (decided 12/30/76). In a situation where there is a conflict in the evidence, the trier of fact's determination (i.e., that of the administrative agency) controls unless it is clearly erroneous. Spectrum Enterprises, Inc. v. Helm Corp., 114 N.H. 773.

While no case has yet been decided by our Supreme Court interpreting the phrase "conclusive if supported by sufficient evidence on the record considered as a whole", which appears in RSA 354-A:10 (1966), it should be given the same force and effect as the administrative appeal statute. The Superior Court should not reverse the findings of the Commission, therefore, unless they are "clearly erroneous". Spectrum Enterprises, Inc., supra., at 777.

The test for determining whether administrative findings

are "clearly erroneous" has been stated in different ways by a number of courts. The most frequently encountered phrasing is that an administrative determination is "clearly erroneous" when, although there is evidence to support the finding, the reviewing court is left with a definite and firm conviction that a mistake has been committed. United States v. United States Gypsum Co., 333 U.S. 364 (1948). The test of administrative decisions enunciated in United States Gypsum, supra., has been almost universally followed by the state courts, including several in New England. See, e.g. Conte v. School Committee of Methuen, 356 N.E.2d 261 (Mass. App. Ct., 1976); Petition of Vermont Electric Power Co., Inc., 131 Vt. 427, 306 A.2d 687 (1973).

In cases involving appeals from the administrative agency responsible for determining whether a discriminatory practice has occurred, it has been held that the fact that the court might arrive at a different result is not sufficient to substitute its own discretion for that reposed by statute in the hearing tribunal. The Court must give due consideration to the presumption that an administrative body has acted fairly, with proper motives, and upon valid reasons, and not arbitrarily. The reviewing court's functions in some jurisdictions is generally said to be to determine whether the administrative body acted arbitrarily, unreasonably, or contrary to law. See, Annot., 44 A.L.R.2d 1138, 1141.

(1955). It has also been held that judicial review of the findings of an anti-discrimination commission is limited to whether the findings are, upon the entire record, supported by evidence so substantial that from it an inference of the existence of the fact found may reasonably be drawn. Holland v. Edwards, 307 N.Y. 38, 119 N.E.2d 581 (1954). Stated in another way, unless the finding of the Commission viewed in the light of the entire record, is so lacking in evidentiary support as to render it unreasonable, it may not be set aside. Northern Inyo Hospital v. Fair Employment Practice Commission., 38 Cal. App.3d 14, 112 Cal. Rptr. 872 (1974).

The plaintiff, George Brox, Inc., contends in its Brief that the so-called "substantial evidence" rule must control, and that substantial and competent evidence is necessary to support the findings of the Commission.

"Substantial and competent evidence is that which carries conviction. It is such evidence as a reasonable mind might accept as adequate to support a conclusion. It means something more than a mere scintilla and must do more than create a suspicion of the existence of the fact to be established." Corey v. Avco-Lycoming Division, Avco Corp., 163 Conn. 309, 307 A.2d 155, 162 (1972).

RSA 354-A:10 does not employ the term "substantial evidence". Rather, it uses the term "sufficient evidence." Whether this implies a slightly less strict standard of review than that urged by the plaintiff is a question open to some interpretation. It should be kept in mind that in Corey, supra., the case relied upon by the

plaintiff, the term "substantial and competent evidence" appears in the Connecticut anti-discrimination statute (Conn. Gen. Stat. sec. 31-128(b) ), whereas it was not included in RSA 354-A:10. The difference is merely in the choice of words; the term "sufficient evidence" is not quantitatively different from the term "substantial and competent." In any event, if "sufficient" is read to imply a lesser standard, the plaintiff's argument is rejected, as there was sufficient evidence, on the record as a whole, to support the findings of the commission in this case. Furthermore, the Court finds no error of law in the record.

An individual or organization perpetrating a discriminatory practice is not often disposed toward advertising that fact. As the Court stated in Holland v. Edwards, supra.:

"One intent on violating the Law Against Discrimination cannot be expected to declare or announce his purpose. Far more likely is it that he will pursue his discriminatory practices in ways that are devious by methods subtle and elusive -- for we deal with an area in which subtleties of conduct ... play no small part."  
119 N.E.2d at 584.

In this case, as previously indicated, the Commission made four findings. (Exhibit R-1). Both parties refer to portions of the transcript to buttress their contentions that a discriminatory act did, or did not, occur. The question for determination is whether the evidence on the record, considered as a whole, is sufficient to support the Commission's findings.

The first finding of the Commission was that defendant Rowlett "was subjected to racial slurs and insults, creating an atmosphere not conducive to maximum performance." The Court rules that the Commission's finding in this regard is supported by sufficient evidence. Rowlett testified that his supervisor, Scott Yale, did use the term "nigger" in his presence (Tr. 46). Rowlett also testified that his other supervisor, Robert Clough, asked him "What are you doing with a white girl?" (Mr. Rowlett's wife) (Tr. 51). Rowlett further related the incident of the "black-top" joke about the white girl and black boy told by Robert Clough (Tr. 50). These incidents support a finding of conduct which is discriminatory, as discussed in Holland v. Edwards, supra., in contravention of RSA 354-A:8(I).

The second finding of the Commission was that Rowlett "was subjected to various forms of harassment ... ." These forms of harassment included the incidents described above and several others. For example, the foreman, Scott Yale, never taught Rowlett the use of the transit (Tr. 45, 58, 61), but Yale did demonstrate the use of this device to a white laborer trainee (Tr. 46). According to Rowlett, this white trainee, who was Yale's friend, was supposed to be a laborer, but was actually doing the job of a grade foreman trainee, while Rowlett was the laborer (Tr. 62). There was also the incidents described by Rowlett where he was blamed by Clough for losing some blueprints (Tr. 63-64), breaking a ruler

(Tr. 71), and for having the trucks dump in a location that Clough had previously instructed him to use (Tr. 72). As for other harassment by Clough, Rowlett testified:

Q: Now, what other insulting remarks were made by Mr. Clough as a result of your being black?

A: The insulting remarks was he made harassment, insulting remarks.

Q. Just insulting remarks?

A. I can't think of any right now. I can't think of any right now; harassment, I know about that. (Tr. 71).

The record is more definite as to some of the incidents for which Scott Yale was allegedly responsible. These would include: the incident where Yale picked him up and made him sit in an open pick-up truck where no other passenger was in the cab (Tr. 88); another incident where Yale left Rowlett near a bridge for approximately three hours in the cold (Tr. 50); and another incident where Rowlett left the road for a moment to go to the toilet, and Clough berated him for letting a car travel on a newly hot-topped stretch of pavement (Tr. 73). There was also the fact that Clough told him specifically to stay away from the transit (Tr. 65) - certainly a rather odd instruction to one who was supposed to be learning the job of grade foreman. Such a pattern of recurring incidents cannot all be attributable to chance or accident, nor is there evidence that these incidents were experienced by white workers on the Hudson job site. It is therefore ruled these occurrences provide sufficient evidence of

discriminatory conduct in violation of RSA 354-A:8(I).

The plaintiff Brox submits that the Commission's order giving the defendant Rowlett money damages is in the nature of a fine and beyond the powers delegated to it by RSA 354-A:9(II) which reads, in pertinent part, as follows:

"If, upon all the evidence at the hearing, the commission shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this chapter, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, ... as in the judgment of the commission will effectuate the purpose of this chapter ... ."

The broad purpose of the statute is delineated in RSA 354-A:1 (Supp. 1975):

"This chapter shall be known as the 'Law Against Discrimination.' It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning Civil Rights, and the general court hereby finds and declares that practices of discrimination against any of its inhabitants because of ... race, ... or national origin are a matter of state concern... . A state agency is hereby created with power to eliminate and prevent discrimination in employment ... because of ... race ... or national origin, as herein provided; and the Commission established hereunder is hereby given general jurisdiction and power for such purposes."

The plaintiff Brox contends that an award of money damages to the defendant Rowlett was beyond the powers granted the Commission

in RSA 354-A:9(II). The plaintiff cites Zamantakis v. Commonwealth Human Rela. Com'n., 10 Pa. Cmwlth. 107, 308 A.2d 612 (1973) for the proposition that monetary damage awards are improper. Zamantakis, however, is inapplicable to the facts involved in the present case, as it dealt with a case involving a discriminatory practice in the rental of public accommodations. The court held that the Pennsylvania statute (43 P.S. s. 959), which is very similar to RSA 354-A:9 (II), granted the Commission no power to order affirmative action by awarding compensatory damages for mental anguish and humiliation resulting from discrimination. Zamantakis, supra., 308 A.2d at 616-617. This holding, however, is not directly relevant to the question of whether a monetary damage award, representing wages lost due to an employer's discriminatory conduct, is beyond the power of an agency like the Commission for Human Rights. The Pennsylvania court, in Commonwealth Human Rela. Com'n v. Transit Casualty Ins. Co., 20 Pa. Cmwlth. 43, 340 A.2d 624, 628 (1975), recognized the distinction:

"In Zamantakis v. Pennsylvania Human Relations Commission, 10 P. Cmwlth. 107, 308 A.2d 612 (1973), this Court held that the statute granted the Commission no power to order affirmative action by awarding compensatory damages for mental anguish and humiliation resulting from discrimination. Accord, Straw v. Pennsylvania Human Relations Commission, 10 Pa. Cmwlth. 99, 308 A.2d 619 (1973); St. Andrews Development Co., Inc. v. Pennsylvania Human Relations Commission, 10 Pa. Cmwlth. 123, 308 A.2d 623 (1973). Our concern in those cases, of course, was the fact that the General Assembly had not specifically granted authority to compensate for humiliation and mental anguish and to do so by judicial fiat would result in 'an unduly heavy force on the side of the proponents' of damages'

because the Commission and its employees are the investigators, the prosecutors, the judges and the jury. Without a readily and reasonably ascertainable formula by which to determine such damages, an award would be arbitrary at best and offends the notions of due process. Zamantakis, supra., 10 Pa. Cmwlt. at 117, 308 A.2d at 616. In cases of employment discrimination, however, an award of lost pay is clearly permissible. Freeport Area School District v. Pennsylvania Human Relations Commission, 18 Pa. Cmwlt. 400, 335 A.2d 873 (filed April 8, 1975). The statute directly authorizes such action, and the award of back pay is a readily and reasonably ascertainable figure."

The plaintiff's contention that the Commission has no power to award wage compensation in this case is erroneous. The Legislature expressly indicated how this statute is to be construed: "The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof." RSA 354-A:13 (Supp. 1975). Like any affirmative action statute, its purpose is remedial, and it should be read with this purpose in mind. As the New Jersey Supreme Court stated in Jackson v. Concord Co., 54 N.J. 113, 253 A.2d 793 (1969):

"Permissible affirmative action is not fully defined. The section (N.J.S.A. s. 10:5-17) only says 'including but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership, in any respondent labor organization' - obviously referring to discrimination in employment - or extending full and equal accommodations, advantages, facilities and privileges to all persons - undoubtedly referring in great generality to affirmative action in cases of unlawful discrimination in housing and places of public accommodation ... . (T)erms like 'include' are words of enlargement and not of limitation and ... examples specified thereafter are merely illustrative. (citations omitted). This is especially so here where the word 'including' is

followed by the phrase 'but not limited to.' "  
Jackson, supra., 253 A.2d at 800.

A correct reading of RSA 354-A:9(II) includes the Commission's power to order an employer to compensate for a discriminatory practice, and the claims of the plaintiff Brox to the contrary are rejected. To hold otherwise would emasculate the statute and leave an aggrieved claimant a right without remedy - a result which the Legislature could hardly have intended.

In view of the above rulings, the order of the Commission for Human Rights is affirmed, and the plaintiff's Appeal is accordingly dismissed.

Dated: July 12, 1977.

Charles G. Flynn,  
Presiding Justice

Docket Numbers  
EC-1101-81-6  
TBO4-0124 -reference

Ira A. Rowlett )  
New Hampshire Commission for )  
Human Rights )  
)  
vs. )  
)  
George Brox, Inc. )

RESPONDENT'S ARGUMENT

The above case, when presented to the Commission, tended to be lengthy and contained much testimony which was contradictory. There are memoranda which were written contemporaneously with events but even these sometimes contradict each other. As a result of the confusion, it would be quite easy for the Commission to fall into the thankless task of attempting to resolve all of the conflicts and to find all of the facts. This can be avoided by an initial determination of what violations are actually complained of; what findings of fact are necessary to support the complaint; and then determining if the weight of the evidence is in favor of the necessary facts.

The point of beginning is the state statute forbidding unlawful discrimination which, as the Commission knows is RSA 354-A. It is claimed that Respondent Brox was guilty of employment discrimination against Complainant Rowlett because of his race.

In this regard RSA 354-A in pertinent parts provides as follows:

354-A:3 (4) "The term 'unlawful discriminatory practice' includes only those practices specified in section 8 of this Chapter, and practices prohibited by the Federal Civil Rights Act of 1964 (PL 88-352)"\*

"354-A:8 Unlawful Discriminatory Practices. It shall be unlawful discriminatory practice:

I. For an employer, because of the ...race... of any individual, to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individuals in... conditions or privileges of employment, unless based upon a bona fide occupational qualification.

\*A copy of the Civil Rights Act of 1964 (PL 88-352) is attached hereto and Respondent can find nothing in addition to the New Hampshire definition of "discriminatory practice".

George Brox, Inc.

v.

Ira A. Rowlett

and

New Hampshire Commission for Human Rights

PETITION FOR JUDICIAL REVIEW

NOW COMES George Brox, Inc., a duly organized Massachusetts corporation, doing business at 1471 Methuen Street, Dracut, Commonwealth of Massachusetts, and complains against the New Hampshire Commission for Human Rights, 66 South Street, Concord, County of Merrimack, State of New Hampshire and Ira A. Rowlett, 23 Congress Street, Nashua, County of Hillsborough and State of New Hampshire and says:

1. Petitioner, George Brox, Inc. is a general contractor with headquarters in Dracut, Massachusetts.
2. On or about July 2, 1973, a former employee of Brox, Ira A. Rowlett, filed a complaint against Brox with the New Hampshire Commission for Human Rights charging discrimination in violation of N.H. RSA 354-A.
3. After an investigation, Brox was notified on February 21, 1975, that Commissioner Melvin R. Bolden had completed an investigation and found probable cause to credit the allegations contained in the complaint alleging discrimination because of color.
4. On or about March 3, 1975, Brox received the Commissioner's findings and proposed agreement and responded by denying the charges and requesting a hearing before the commission.
5. An administrative hearing was held before three of the Commissioners on August 1, 1975.
6. By decision, mailed on 21 October, 1975, said Commissioners, by a two to one majority, upheld the decision of Commissioner Bolden and ruled that their findings indicated conduct that had an adverse affect on the complainant as a minority group number compared to members of non-minority groups,

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

Superior Court

SEPTEMBER TERM, 1975

E-2011

George Brox, Inc.

v.

Ira A. Rowlett  
and  
New Hampshire Commission for Human Rights

MOTION TO PLACE ON TRIAL CALENDAR

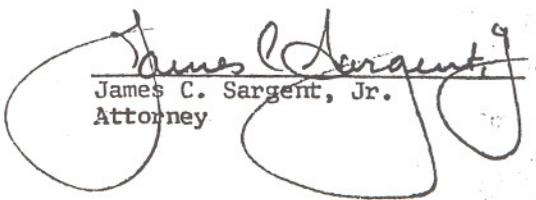
NOW COMES the New Hampshire Commission for Human Rights and respectfully requests that the Court place the above-captioned matter on the trial calendar so that the case may be expedited inasmuch as:

1. The movant knows of no reason why counsel for Petitioner is not ready to proceed to a hearing;
2. Petitioner is seeking judicial review of an order of the New Hampshire Commission for Human Rights pursuant to RSA 354-A:12; and
3. RSA 354-A:12 provides, in pertinent part, that all proceedings involving judicial review of an order of the New Hampshire Commission for Human Rights "shall be heard and determined by the court as expeditiously as possible and shall take precedence over all other matters before it, except matters of like nature".

Respectfully submitted,

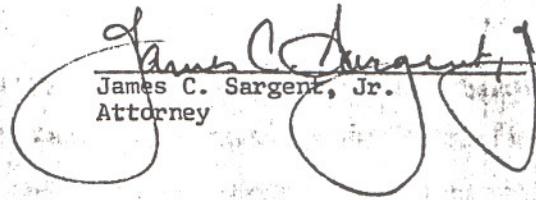
THE STATE OF NEW HAMPSHIRE

David H. Souter  
Attorney General

  
James C. Sargent, Jr.  
Attorney

May 3, 1976

I hereby certify that a copy of the foregoing Motion has been forwarded this date, postage prepaid, to John P. Griffith, Esquire, opposing counsel.

  
James C. Sargent, Jr.  
Attorney

E-2011

George Brox, Inc.

v.

Ira A. Rowlett  
and  
New Hampshire Commission for Human Rights

ANSWER OF RESPONDENT - NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS

1. Respondent neither admits nor denies the allegations of paragraph 1 of the petition.

2. Respondent admits the allegation of paragraph 2 of the petition.

3. Respondent admits the allegation of paragraph 3 of the petition.

4. Respondent neither admits nor denies the allegations of paragraph 4 of the petition.

5. Respondent admits to the allegation of paragraph 5 of the petition.

6. Respondent admits that Commissioners Land and Rejmbal mailed out a decision on October 21, 1975, that the Commissioners' decision contained both Findings and a conclusion based on these Findings, and that the Commissioners' conclusion was that Petitioner had engaged in conduct which had an adverse effect on Respondent Ira A. Rowlett as a minority group member as compared to members of non-minority groups. Respondent further admits that Respondent ordered Petitioner to pay Two thousand three hundred fifty-one dollars and sixty-one cents (\$2,351.61) based on the number of hours of unfulfilled job training and unemployment which Respondent Rowlett suffered after termination by Petitioner.

7. Respondent denies the statement and allegation in paragraph 7 of the petition.

AND IN FURTHER ANSWERING RESPONDENT STATES:

8. Respondent made its Findings based upon a full hearing on the merits during which witnesses for Petitioner and for Respondent Rowlett were subject to examination and cross examination.

9. RSA 354-A:10 provides in pertinent part: "The findings of the [Commission for Human Rights] shall be conclusive if supported by sufficient evidence on the record considered as a whole".

10. The evidence adduced at the August 1 hearing is sufficient to sustain Respondent's Findings; Respondent's conclusions of law based on such Findings are fully supported under RSA 354-A:1, et seq.; Respondent's Order should therefore be affirmed.

11. RSA 354-A:12 provides, in pertinent part, that all proceedings involving judicial review of an order of the New Hampshire Commission for Human Rights "shall be heard and determined by the court as expeditiously as possible and shall take precedence over all other matters before it, except matters of like nature". Respondent respectfully prays that the case be docketed in accordance with the directive of the statute.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

David H. Souter  
Attorney General

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James C. Sargent, Jr.  
Attorney

May 3, 1976

I hereby certify that a copy of the foregoing Answer has been forwarded this date, postage prepaid, to John P. Griffith, Esquire, opposing counsel.

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James C. Sargent, Jr.  
Attorney