

Charlene M. Silk)
New Hampshire Commission for)
Human Rights)
and)
Hampshire Chemical)
_____)

DECISION and ORDER

At Public Hearing October 5, 1979:

Sitting Commissioners: Ivorey Cobb, Acting Chair;
Commissioner Nancy Richards-Stower;
Commissioner Robert J. Normandeau.

Appearing for the Complainant: George Bruno, Esquire.

Appearing for Respondent: Mr. Paul C. Somers, Manager, Labor
Relations, W. R. Grace & Company.

Background:

- I. Complainant Charlene M. Silk timely filed her charge of employment discrimination with the New Hampshire Commission for Human Rights. Her complaint alleged that she was terminated from her position based on her sex on December 14, 1977. Her complaint was filed on December 21, 1977, well within the 90 day filing period allowed.

This case was assigned to Commissioner Gail Paine for investigation, and in August, 1978, Commissioner Paine found probable cause that complainant was terminated from her employment because of sex discrimination. Commissioner Paine reaffirmed that finding of probable cause on September 18, 1978.

Thereafter, attempts to conciliate this complaint failed, and a public hearing was scheduled for July 27, 1979; because of scheduling problems with the July date, the hearing was rescheduled for October 5, 1979, at which date the Hearing occurred, beginning at approximately 10:40 AM, and ending at approximately 5:30 PM.

II. Findings of Fact

1. Complainant was hired by Respondent, Hampshire Chemical Company (the Company) on 7 November 1977 as a custodian within the Company's maintenance department. Two males applied for a similar position but were found to be unqualified.
2. Mr. Erickson was aware before he hired complainant that she had no previous custodial experience.
3. Pursuant to the Company's contract with its employees' union, new employees were hired on probationary status, and as such, under the Union contract, no seniority could be acquired nor could a probationary employee make use of the union grievance procedure. Probationary status was not changed to regular status until an employee had worked 30 continuous work days from the most recent date of hire. Consequently, Complainant was hired as a probationary employee.
4. Upon her selection for the position, Mr. Erickson met with the Complainant to outline her duties. He provided her with access to a written list of these duties and Complainant copied it down in her own hand.
5. Two of her tasks were to vacuum the carpet in her assigned work area and shampoo the rug in that area. During the first two nights she worked, the company assigned another custodian to help her learn her tasks. His name is Mr. Guillett, who by his testimony apparently stayed with her for four hours for those two nights. He verbally told her how to operate the vacuum and shampooer, but never actually demonstrated the machines by actually using them. He also stated he thought men would have fewer problems with the buffer.
6. During the 28 days Complainant worked for the Company, her assigned equipment often failed to operate properly. There is conflicting testimony as to the severity of the problems with the vacuum and rug shampooer, but on at least one occasion the Company's mechanic was unable to fix the vacuum and it had to be sent to an outside specialist; on another occasion, Complainant called up a fellow custodian (Mr. Kennedy) assigned to a different building to help her with the vacuum,

- (6) and it was with difficulty he fixed part of the problem, but was unable to correct an electrical problem which was evidenced by an electric arc, rendering the vacuum unsafe for use. At other times when her equipment failed, Complainant wrote notes to Mr. Erickson.
7. The rug shampooer caused some difficulty as well. Apparently, the detergent dispenser hose was plugged with foreign matter and Complainant was unable to unclog it; then, the shampooer, filled with some kind of dirty liquid fell over, staining a rug. Complainant was apparently reprimanded for this.
8. Even though the faulty equipment was repaired each time Complainant so requested, the machines continued to periodically break, causing Complainant some difficulty in completing her tasks.
9. Respondent contends that Complainant was not hired to repair broken machinery, but suggested that some of the "needed repairs" were merely the unclogging of a stuck vacuum hose, or the like. However, there was testimony that the particular vacuum assigned to Complainant had electrical wiring going up the head attachment, and since the before-mentioned electrical arc problem existed, it was no easy task to unclog the machine, especially for an admittedly unexperienced custodian. Complainant was never trained to do even the so-called "easy" repairs, so could not have been expected to do so.
10. Plaintiff also provided testimony that other custodians of the Company had equipment that worked properly, namely, Mr. Brigham's. Mr. Brigham testified that his equipment was many years older than that equipment assigned to Complainant, but he also testified that he often fixed his own; and could easily do so since he had used the same equipment for about 10 years and had 18 years' experience as an automotive mechanic.
11. Plaintiff provided testimony through Mr. Arsenault, a Company employee, that on the occasions he had to visit Complainant's work area, the area seemed as clean as it always had. However, the Company provided testimony through an ex-employee, Ms. Finn, that plaintiff did a very poor job vacuuming, dusting and picking up scraps of paper. Mr. Erickson, testified that he

- (11) had on several occasions pointed out to Complainant that her work needed improving; one time pointing out dust and a moth on a window sill. Mr. Erickson also testified that Complainant did a poor job in washing the men's room floor. For example, one day he noticed a match about 1 inch off the floor on the wall. He stated that had she wet mopped as required, the mop would have cleaned away the match. Yet, for several days he watched and the match remained until he specifically pointed it out to her.
12. Mr. Erickson also testified that Complainant was often late "punching in" and early "punching out." He also complained that although it was Complainant's duty to shovel snow from the steps and then spread ice melter over the steps, during one particular storm she failed to do so and employees had to exit from their offices on unshoveled steps. He went to find out why she had not shoveled and found her taking a cigarette break. He also complained that on several days instead of taking the trash bags out to a dumpster, she left the bags by the back door. This was subsequent to his having told her to put the trash in the dumpster.
13. However, Complainant countered some of these accusations with her own testimony. For example, she testified that regarding punching in and out, that there were several clocks (3) in her work area, and none were synchronized. Thus, if she were on a break and that clock read 10:25, it could have been 10:30, thus, by the time she got to her clock to punch in or out, her time clock might indicate that she was late. In any event, she testified that the most time she was "off" even by her time cards, was 2 or 3 minutes. Complainant also disputed Mr. Erickson's version of the snow removal complaint. She said that most of the office workers had left prior to her arriving to work (she admitted she was 1/2 hour late that day due to the storm), and that she did shovel the steps before those who remained left the building.
14. Complainant also testified that she was never offered any overtime. Mr. Erickson testified that to give overtime to a probationary employee was against the union contract. In contrast, however, in violation of the union contract which did not and does not allow for overtime work for a probationary employee, Mr. Konts, Complainant's male predecessor, was given overtime work during his probationary period.

15. There was also testimony that Mr. Konts was allowed to come to work late and leave early, with permission, so as to allow him to work on his own private cleaning business. Also, there was testimony to the effect that for many months his cleaning job had been poor. However, instead of terminating Mr. Konts, Mr. Erickson gave him a series of verbal, then written warnings; then finally a temporary disciplinary layoff of several days, after which he was to return to work. However, he did not return on the appointed day. Yet, instead of immediately taking steps to notify the personnel office to write Konts' termination papers, Mr. Erickson waited an extra day. When Konts did show up there was apparently a verbal exchange, and it is not really clear whether or not Mr. Erickson fired Konts before he quit.
16. When Mr. Erickson was questioned as to why Complainant was not given the same verbal and written warnings prior to her dismissal, Mr. Erickson testified that he did speak to her several times about her poor work, but didn't give Complainant a written warning, because "if she worked out he didn't want her to have a negative paper in her personnel file."
17. The Commission has determined through evidence submitted on the record that, although Complainant was not an overly enthusiastic employee, neither were her male predecessors, and that in testimony Mr. Guillette testified that the Complainant's training was inadequate.
18. The Commission therefore finds that Complainant was not adequately trained to do her job although respondent knew she had no prior custodial experience; that Complainant was treated differently from her male predecessors and counterparts; and that Complainant was terminated in violation of RS354-A:8.

Ivorey Cobb, Acting Chair

Commissioner Nancy Richards-Stower

Commissioner Robert J. Normandeau

ORDER

- A. The respondent employer is required to provide the Commission within two (2) weeks of receipt of this Order, salary data (including but not limited to, raises, bonuses or commissions other custodians would have received at respondent company) through 5 October 1979.
- B. The Commission will deduct Complainant's income including, but not limited to, unemployment compensation, insurance, and earned income from the amount required in paragraph A.
- C. Respondent is Ordered to pay 50% of the amount in paragraph B, plus 6% interest rate,
- D. Respondent is Ordered to pay Complainant's attorney reasonable fees for bringing this matter to the attention of this Commission (Attachment A).
- E. All awards contained in paragraph C are to be made payable to Charlene M. Silk and mailed, certified, return receipt requested, to the New Hampshire Commission for Human Rights.
- F. All awards stipulated in paragraph D are to be made payable to Kahn, Brown and Bruno, and sent certified, return receipt requested, to the New Hampshire Commission for Human Rights.

SO ORDERED

s/ Ivorey Cobb, Acting Chair

s/ Commissioner Nancy Richards-Stower

s/ Commissioner Robert J. Normandeau

Kahn, Brown & Bruno

ATTACHMENT A

Attorneys at Law

Laura Jane Kahn
Kenneth M. Brown
George Bruno

Kris E. Durmer

Ms. Charlene Silk
54 Hills Ferry Road
Nashua, New Hampshire 03060

November 16, 1979

Re: Silk v. Hampshire Chemical; ES-1584-546-315
EEOC #011780610

FOR PROFESSIONAL SERVICES RENDERED IN THE ABOVE ENTITLED MATTER:

		<u>HOURS</u>
5-17-79	Initial interview with client.	1.3
8-3-79	Meeting with Mr. Berel Firestone; review of file.	1.4
8-3-79	Organized file; prepared draft of interrogatories; telephone call to W.R. Grace & Co.	1.2
8-6-79	Telephone conversation with Mr. Skeen with respect to settlement possibilities.	.3
8-6-79	Meeting with client to review progress and review next steps.	1.1
8-7-79	Edited and further drafted interrogatories.	.5
8-28-79	Reviewed interrogatories. Called for hearing date.	.2
8-31-79	Discussion with HRC re hearing date.	.2
9-24-79	Telephone conversation with client in preparation for hearing.	.2
10-1-79	Conference with client to prepare for hearing.	1.1
10-5-79	Preparation for hearing and actual hearing before Human Rights Commission.	<u>9.0</u>

TOTAL HOURS 16.5

16.5 Hours x \$55.00/Hr \$907.50

Plus Expenses

Travel \$ 16.00

Toll Calls \$ 4.25

BALANCE DUE \$927.75

THANK YOU

127 Main Street, Nashua, New Hampshire 03060 • 603-882-1600

Charlene M. Silk)
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)
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)
Hampshire Chemical)
_____)

ORDER

Pursuant to the Order, contained on page 6, paragraph C, of the Commission, Respondent Company (Hampshire Chemical) is ordered to pay Complainant a total award of \$4,039.72, arrived at in the following manner.

Hampshire Chemical supplied the Commission with the following information:

For the period December 11, 1977, to February 4, 1978 (7 weeks), Complainant's earnings would have been \$1,299.20.

For the period February 5, 1978, through February 3, 1979 (52 weeks), Complainant's income would have been \$10,691.20.

For the period February 4, 1979, through October 5, 1979, (35 weeks), Complainant's income would have been \$7,770.00.

Complainant's total income from all sources for the like period was \$12,068.31. Complainant's income of \$12,068.31 subtracted from Complainant's potential income as supplied by Hampshire Chemical of \$19,690.40 equals \$7,622.09.

In accordance with paragraph C, page 6, of the Order, fifty percent (50%) of the above total is \$3,811.05. Six percent (6%) interest of the above is \$228.16. Total award \$4,039.72.