



4. The Complainant, on or about June 2, 1982, filed a notarized amended complaint with the Pennsylvania Human Relations Commission ("Commission") at Docket Nos. P-1753, E-20780. A copy of the formal complaint is attached hereto as Appendix "B" and is incorporated by reference as if fully set forth.

5. On August 7, 1981, Commission staff duly served all parties to this action with a copy of the complaint described in item #3 above. A copy of the certification of service is attached hereto as Appendix "C" and is incorporated by reference herein as if fully set forth.

6. On June 21, 1982, Commission staff duly served all parties to this action with a copy of the complaint described in item #4 above. A copy of the certification of service is attached hereto as Appendix "D" and is incorporated by reference herein as if fully set forth.

7. In correspondence dated April 26, 1982, the Commission notified the Respondent that Probable Cause existed to credit the allegations contained in the above captioned complaint. A copy of this correspondence is attached hereto as Appendix "E" and is incorporated by reference herein as if fully set forth.

8. Subsequent to the determination of probable cause, the Commission and the Respondent attempted to eliminate the alleged unlawful discriminatory practice through conference, conciliation and persuasion but were unable to do so.

9. Respondent had the right to accept or reject Complainant as a member of the Association.

10. Respondent has the power to discharge Complainant as a member of the Association at any time.

11. Respondent has the authority to direct the work to be done by Complainant and the manner in which such work should be done.

12. Respondent solicits and/or receives donations from the community.

13. Respondent's primary function is to provide ambulance service for Hanover Township, Warrior Run, and Sugar Notch.

14. In April of 1974, Complainant was approved by Respondent as a member of its association.

15. Complainant met the certification eligibility criteria for the position of Ambulance Driver/Crew Chief which consisted of having a red cross first aid card and a red cross pulmonary resuscitation card.

16. The Complainant in addition possessed an Emergency Medical Technicians Certification (EMTC).

17. On a number of occasions, Complainant requested that she be permitted the opportunity to be an ambulance

driver/crew chief.

18. Each request by Complainant was denied by Respondent.

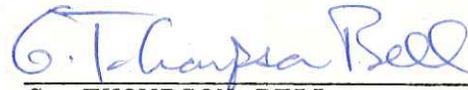
19. Complainant was one of six persons in Respondent's association who received an EMTC in 1975.

20. Three men and three women received their EMTC in 1975.

21. All three men who received their EMTC's became ambulance driver/crew chiefs.

22. No woman association member has ever been an ambulance driver/crew chief.

  
RONALD J. WYDO  
Counsel for Respondent

  
G. THOMPSON BELL  
Counsel for Complainant



4. In emergency situations, prompt action by Association members is critical. (N.T. 133-4, 181).

5. Association members must be nominated by a member, questioned by a committee, and elected by vote of the entire membership. (N.T. 11-2).

6. Members must be trained in first aid and cardio-pulmonary resuscitation(CPR). (N.T. 12).

7. When ambulance services are needed, Respondent contacts its members. The first qualified driver/crew chief to arrive at the station is in charge of the call. (N.T. 13-14).

8. The crew chief makes all medically necessary decisions on a call, as well as driving the ambulance. (N.T. 14, 136).

9. Members who wish to function as driver/crew chief must have first aid and CPR certification, and must be eighteen years of age. (N.T. 14, 139-40; S.F. 15).

10. Mr. Pete Steve has been captain of the Association since 1941. (N.T. 107).

11. Mr. Steve tests members wishing to function as driver/crew chief by questioning them to determine their familiarity with the ambulances' equipment. (N.T. 14, 110).

12. Members receive monetary compensation at the end

of each year when tips received during that year are divided in proportion to the number of calls made by each member. Members may receive as much as \$300.00. (N.T. 23-4, 35, 125-6).

13. Four of the twenty-four current male members are not qualified to serve as driver/crew chief. Those four themselves decided not to request qualification. (N.T. 140).

14. Mr. Steve never denied a male member's request to be qualified as a driver/crew chief. (N.T. 132).

15. Ms. Luba joined the Association in 1974 and first requested to become a driver/crew chief in 1975. (N.T. 11, 16; S.F. 19).

16. Certification as an Emergency Medical Technician requires more extensive training than does passing a standard first aid course. (N.T. 21).

17. Mr. Steve's refusal to qualify Ms. Luba as a driver/crew chief in 1975 was not the result of any verbal altercation between them. (N.T. 196-8).

18. Mr. Steve and several of Complainant's co-workers in the Association continued to oppose her qualification as driver/crew chief up to the time of hearing because of what they characterized as her arrogant and uncooperative attitude. (N.T. 117, 129, 146, 147, 158, 161, 162, 163, 164, 172, 179, 191, 192, 194).

19. No incident cited to demonstrate Ms. Luba's supposedly poor attitude occurred prior to April of 1975. (N.T. 115, 126, 127, 152, 165, 169, 173, 180).

20. During a special Association meeting in 1978, Ms. Luba protested against the continuing refusal to qualify her as a driver/crew chief. Much of the animosity against her arose after that meeting. (N.T. 118, 119, 151, 152, 179, 180; J.E. 1).

21. Mr. Steve refused to let Ms. Halesy and Ms. Kuharchik serve as driver/crew chief because he claimed they lacked sufficient prior experience on calls. (N.T. 122).

22. No specific number of prior calls was necessary before qualification as a driver/crew chief. (N.T. 123).

23. Mr. Steve felt that women are less valuable on ambulance calls because they lack physical strength and are unable to handle heavy ambulance equipment. (N.T. 138-9).

24. Mr. Steve testified that no male Association member has displayed a poor attitude during his (Mr. Steve's) tenure as captain. (N.T. 132).

25. Ms. Luba, Ms. Halesy and Ms. Kuharchik were all certified as E.M.T.'s in 1975. (N.T. 21, 38, 55).

26. Ms. Halesy and Ms. Kuharchik have asked to be qualified as driver/crew chief. (N.T. 39, 55, 56).

27. Ms. Luba, Ms. Halesy and Ms. Kuharchik all lived very close to the ambulance station. (N.T. 15, 34, 40, 58, 59).

28. On several occasions, Ms. Luba and Ms. Kuharchik were the first members to answer a call and had to wait as much as twenty minutes for the arrival of a qualified driver. (N.T. 40).

CONCLUSIONS OF LAW

1. Complainant is an individual within the meaning of the Act.

2. Respondent is an employer within the meaning of the Act.

3. The Commission has jurisdiction over the parties and subject matter of this case.

4. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.

5. Complainant bears the initial burden of making out a prima facie case. She may do so in this case by proving that:

- a. she is a member of a protected class;
- b. she applied for a position for which she was qualified;
- c. her application was rejected; and
- d. the employer continued to seek applicants or hired a person not of her protected class.

6. Complainant has established a prima facie case.

7. Respondent may prevail by establishing a legitimate, non-discriminatory reason for its conduct.

8. Respondent has failed to establish a legitimate, non-discriminatory reason for refusing to qualify Ms. Luba as a driver/crew chief.

9. Employment decisions based on subjective criteria are highly suspect.

10. Respondent has utilized subjective employment criteria in a sexually discriminatory manner.

11. Co-worker preference is not sufficient to justify a discriminatory employment decision.

12. Respondent's stated reasons for its treatment of Ms. Luba are pretextual.

13. Respondent refused to qualify Ms. Luba as a driver/crew chief on the basis of her sex, in violation of the Act.

14. Following a finding of discrimination, the Commission may award such relief as will effectuate the Act's purposes.

OPINION

This case arises on a complaint filed by Mildred Luba ("Complainant") against the Hanover Township Community Ambulance Association ("Respondent" or "Association") with the Pennsylvania Human Relations Commission ("Commission") on or about July 20, 1981; an amended complaint was filed on or about June 2, 1982. The complaint alleged that Respondent discriminated against Complainant on the basis of her sex, female, by admitting her to membership in the Association but refusing to qualify her as an ambulance driver/crew chief, in violation of Section 5 of the Pennsylvania Human Relations Act, 43 P.S. §§951 et seq. ("Act"). The original complaint claimed violations of both Section 5(a) and Section 5(i)(1) of the Act; the amended complaint referred only to Section 5(a).

Commission staff investigated the complaint and found probable cause to credit the allegations of discrimination. Efforts to resolve the situation through conference and conciliation were not successful, and the case was approved for hearing. The public hearing was held on October 18, 1983, in Kingston, Pennsylvania, before Commissioners Doris Leader, Chairperson of the Panel, Rita Clark, and John Wisniewski. After the conclusion of the hearing, the notarized statement of Judyann C. Munley was admitted into the record upon the

joint request of counsel to the parties.

The Association in serving its primary function, provides three types of service. It provides emergency medical service and transportation; it transports patients to and from medical facilities; and it provides "standby" services at events such as football games. Transfer situations in some cases turn into emergencies. In any emergency, prompt action is critical.

Persons wishing to become members of the Association must be nominated by a member and go before an investigating committee to answer questions relevant to their suitability as members. After approval of this committee is obtained, the entire Association votes on the proposed membership. Successful candidates must complete courses in first aid and cardio pulmonary resuscitation(CPR), and then may go out on calls.

When a request for its services is made, Respondent puts out a call to its members. The first member to arrive at the ambulance station who is qualified to act as a driver and crew chief takes charge of the call. Members who subsequently arrive ride with the patient or sit in the front seat with the driver. The driver/crew chief, in addition to driving the ambulance, directs the activities of other members on that call. This includes making all necessary medical decisions.

Members who wish to function as driver/crew chief are qualified to do so by the Association's captain, Pete Steve. In addition to being certified in first aid and CPR, they must be at least eighteen years old. Mr. Steve "tests" qualified members by questioning them to determine their familiarity with the ambulances' equipment.

Members are not regularly paid for their services, but do receive monetary compensation at the end of each year when tips received during that year are divided among the members. The amount received by each member is a function of the number of calls made by that member during the year; it may be as much as \$300.00.

Preliminarily, we find that Respondent is an employer within the meaning of the Act. The parties stipulated that Respondent has the right to accept or reject members, to discharge members at any time, and to direct the work to be done by members, including the manner in which such work should be done. These factors were found to be dispositive of the issue of whether an employment relationship exists in the factually indistinguishable case of Harmony Volunteer Fire Company and Relief Association v. Pennsylvania Human Relations Commission, \_\_\_\_ Pa. Cmwlth. \_\_\_\_, 459 A.2d 439 (1983). We therefore need not consider whether Respondent is also a place of public accommodation.

Complainant bears the initial burden of establishing a prima facie case of discrimination. Philadelphia Electric

Company v. Pennsylvania Human Relations Commission, 68 Pa. Cmwlth. 212, 448 A.2d 701 (1982). She may do so in this case by proving:

- (1) that she is a member of a protected class;
- (2) that she applied for a position for which she was qualified;
- (3) that her application was rejected; and
- (4) that the employer continued to seek applicants or hired a person not of Complainant's protected class.

McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1972);

General Electric Corp. V. Pennsylvania Human Relations Commission, 469 Pa. 292, 365 A.2d 649 (1976). Should Complainant establish a prima facie case, the burden shifts to Respondent to prove that its conduct did not violate the Act. Pennsylvania State Police v. Pennsylvania Human Relations Commission, \_\_\_\_ Cmwlth. \_\_\_\_, 457 A.2d 584 (1982).

We find that Complainant has met her initial burden. She is protected by the Act from discrimination on the basis of her sex. The parties stipulated that she asked several times to be permitted the opportunity to be an ambulance driver/crew chief and that each request was denied. Testimony did not establish that any similar request by a male member was ever denied; the great majority of male members were also drivers.

The parties also stipulated that Ms. Luba " ... met

the certification eligibility criteria for the position of Ambulance Driver/Crew Chief which consisted of having a red cross first aid card and a pulmonary resuscitation card." (S.F. 15). Indeed, at the time of her first request in 1975, Complainant had been certified as an Emergency Medical Technician (EMT), and thus possessed training more advanced than that required by the Association. Whatever the necessary number of prior calls as a crew member might have been, an issue which will be discussed below, lack of prior crew experience was never advanced by Respondent as a reason for refusing to qualify her.

Respondent essentially concedes that Ms. Luba was qualified for the driver/crew chief position, and claims that its rejection of her was caused solely by her unsuitable attitude. As she has made out a prima facie case, we must consider the sufficiency of this explanation.

The parties agree that Ms. Luba joined the Association in 1974 and initially experienced no difficulty. In 1975, after receiving EMT certification, she asked for the first time to be qualified as a driver/crew chief, and was for the first time rejected. Association captain Pete Steve testified that he was prepared to test her for the position at that time but decided not to after a claimed verbal altercation when they happened to meet and, in Mr. Steve's words, she "... just run me up and down ... she just told me everything she thought." (N.T. 116). No clarifying

testimony about this incident was offered. Ms. Luba testified that no such altercation took place; we find her testimony on this point to be the more credible, and therefore reject Respondent's explanation of the initial refusal to qualify her.

Numerous Respondent witnesses in addition to Mr. Steve testified that they continue to oppose Ms. Luba's qualification as a driver because of her attitude, which was characterized as arrogant, overbearing, and uncooperative. Several incidents in support of this conclusion were described. For the reasons which follow, we find this testimony utterly insufficient to overcome Complainant's prima facie case.

Two general problems are apparent. First, determination of suitable attitude is a necessarily subjective decision and therefore highly suspect. As the Pennsylvania Supreme Court stated in General Electric, "(e)mployment decisions predicated on subjective appraisals have been treated with particular suspicion and have generally been condemned." 469 Pa. at 307, 365 A.2d at 657, n. 14, citations omitted.

Second, Respondent relies heavily on the opposition of fellow workers to Ms. Luba. We agree with federal case-law rejecting co-worker preference as legally sufficient justification for discriminatory employment decisions. SEE: Furr v. Goodwill Industries, 513 F.Supp. 161 (W.D. Tenn. 1981).

Respondent's explanation presents more specific shortcomings as well. The incidents described by Association members for the purpose of demonstrating Ms. Luba's poor attitude all took place well after 1975; many followed the 1978 meeting where she protested Respondent's treatment of her. These incidents therefore are not relevant to the initial refusal to qualify her, which remains unexplained. Further, testimony of a number of members revealed their reliance on Mr. Steve's opinion of Complainant, which we find has not changed since 1975 and has since then continuously operated to bar her from the driver/crew chief position.

Factors in addition to those already discussed convince us that this bar is the result of strong sexual bias which has affected other female Association members as well as Complainant. Though women have been admitted to the Association since the early 1970's, none has ever been qualified as a driver/crew chief, although others as well as Ms. Luba have sought that opportunity. In sharp contrast, only four of twenty-four male Association members were not so qualified at the time this case was heard. According to Mr. Steve's uncontradicted testimony, those four were not qualified because they themselves had decided not to accept that responsibility.

Mr. Steve's testimony revealed that subjective criteria, in addition to determination of suitable attitude, are used in a discriminatory manner in Respondent's selection

process. While claiming that two other female members were not qualified as drivers because they had not made a sufficient number of prior calls, he admitted that there was no set number of necessary calls. The record is less than clear but suggests that he refused to qualify Paulette Halesy after she completed 160 calls, but did qualify a Mr. Zotevich, whose total number of calls with the Association was 165. In no instance was a male member rejected on the basis of insufficient experience (or, for that matter, for any other reason disclosed by this record).

Mr. Steve's sexual bias was revealed openly in the following interchange during cross-examination:

Q. Do you feel that on ambulance calls, that women are less valuable because of their physical strength?

A. Less valuable?

Q. Because of their physical strength.

A. At times.

Q. Or lack of physical strength.

A. At times.

Q. Can you elaborate on that a little bit, please?

A. Well, throughout Hanover Township we have many miles of throughways, and there is many accidents involved. If I was to send the Modge [modular unit ambulance] on a call like that, and suppose they had to use the "jaws of life"?

The "jaws of life" weighs something like 150 pound, 175 pounds. I don't know where women could handle it and

pull it out of the ambulance.

It's things that has to be understood with getting both working together, and I don't think they could handle it.

(N.T. 138-9).

Significantly, Mr. Steve testified that never, in his forty-some years with the Association, has he had a male member who displayed a poor attitude. When pressed he volunteered a single incident, thirty-five years ago, involving a member who "came out of a saloon" (N.T. 133) and was consequently asked to stay off the ambulance for three months. His testimony suggested that his concern about the incident was with the possible appearance of impropriety, rather than with the member's attitude.

Finally, all witnesses who addressed these issues agreed that the Association exists to serve the public, and that the public is best served if well-trained personnel respond in the least possible time to emergency calls. In this context, Ms. Luba, Ms. Kuharchik and Ms. Halesy were all particularly well qualified to serve as driver/crew chief. We have already noted that Ms. Luba completed EMT certification in 1975; Ms. Halesy and Ms. Kuharchik (who is also a licensed practical nurse and CPR instructor) completed the program at roughly the same time. Less than half of the male members were EMT's. All three women also lived very close to the ambulance station. Their testimony established credibly that on more than one occasion Ms.

Luba and Ms. Kuharchik were the first two members to answer a call, and had to wait as much as twenty minutes for the arrival of a qualified driver. The refusal to qualify them as drivers thus impeded the Association's ability to provide prompt service in situations where prompt response was critical.

In conclusion, we find that Respondent has failed to come forward with any legitimate, non-discriminatory reason for its refusal to qualify Ms. Luba as a driver/crew chief. Far from demonstrating that Ms. Luba was unqualified because of her poor attitude (and we note that there was substantial contrary testimony, even from some of Respondent witnesses), the record compels the conclusion that the Association's stated reasons are pretextual, and that it has continuously refused to grant equal opportunity to its female members, solely because of the deeply held sexual bias of those in control of its decision making. We conclude that the perception of Ms. Luba's arrogance is in fact a reaction to her persistent attempts to improve the Association's functioning and to receive equal treatment. The result has been injury to female Association members and to members of the public who could benefit more fully from their training and willingness to serve.

Section 9 of the Act provides in relevant part:

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in

any unlawful discriminatory practice ...  
the Commission shall ... issue and cause  
to be served on such respondent an order  
requiring such respondent to cease and  
desist ... and to take such affirmative  
action ... as, in the judgment of the  
Commission, will effectuate the purposes  
of this act ...

We therefore direct relief as described in the order which  
follows.





4. That Respondent within thirty (30) days of the date of this Order report on the manner of compliance with the above terms by letter addressed to G. Thompson Bell, Esquire, Pennsylvania Human Relations Commission, 3405 N. Sixth Street, Harrisburg, Pennsylvania 17110, copy to Kaaba Brunson, Director of Compliance, Pennsylvania Human Relations Commission, 101 South Second Street, Harrisburg, Pennsylvania 17105.

THE PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: *Joseph X. Yaffe*  
JOSEPH X. YAFFE, CHAIRPERSON

ATTEST:

*Elizabeth M. Scott*  
ELIZABETH M. SCOTT, SECRETARY