

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

PRISCILLA HAGER,

Complainant,

v.

DOCKET NO. ES-552-79

TEAMSTERS LOCAL NO. 505,

Respondent.

ORDER

The Human Rights Commission upon reconsideration of the record in the above-captioned case, pursuant to its Order entered September 11, 1986, granting complainant's Motion for Reconsideration, does hereby rescind its previous directives as set forth in its Order of April 21, 1986, and instead adopts the Recommended Findings of Fact and Conclusions of Law of the Hearing Examiner on liability and damages, separately submitted, as its own, with the exceptions and amendments set forth below.

The Commission hereby amends the Examiner's Recommended Decision dated August 19, 1985, by modifying the Conclusions of Law as follows:

Paragraph 3 of said Conclusions of Law is hereby deleted and replaced by the following language:

"3. Although, neutral on its face, the respondent's policy that non-members must complete one thousand hours of on-the-job training prior to becoming eligible for union membership, has adverse impact on female truck driver trainees."

The Commission supplements the Recommended Decision with the following Conclusions of Law:

"4. The only justification offered by the respondent for its policy was that it interpreted federal law to require the contractor-employer to offer trainees 1,000 hours of training in a highway construction craft, and thus it was proper for the union to adopt this standard; however, neither the Federal Highway Act of 1968 nor the Highway Agreement, governing the S. J. Groves, Alum Creek, construction job site, contained any requirement, implicit or explicit, mandating the completion of 1,000 hours of training as a prerequisite for local union membership eligibility. Moreover, the statement of respondent's agent that he did not want females in his local union evidences imposition of a facially neutral membership requirement designed to have discriminatory impact against females. Bargaining agents may not use their power to discriminate against non-union or minority members of the craft they represent. Steele v. Louisville and Nashville Railroad, 323 U.S. 192 (1944); Sears v. Atchison, Topeka and Santa Fe Railway Co., 645 F.2d 1365 (10th Cir. 1981)"

"5. No other Teamsters' locals in West Virginia required truck driver trainees to complete 1,000 hours on-the-job training prior to becoming eligible for membership in their Teamsters' Local unions. Teamsters' locals 697, 789 and 175 all applied the union security clause in the Highway Agreement to both trainee and non-trainee truck drivers. This clause mandates that all truck drivers working at construction job sites within the geographic jurisdiction of a Teamsters' local and for construction contractors covered by the Highway Agreement must join that Teamsters' local within 8 to 30 days after employment commences. The explanation offered by Local 505, thus, does not meet the 'business necessity' test.

'[T]he applicable test is not merely whether there exists a business purpose for adhering to challenged practice. The test is whether there exists an overriding legitimate purpose such that the practice is necessary to the safe and efficient operation of the business [union]. Thus, the business purpose must be sufficiently compelling to override any [prohibited discriminatory] impact; the challenged practice must effectively carry out the business purpose it is alleged to serve; and there must be no acceptable alternative policies or practices that would better accomplish the business purpose advanced, or accomplish it equally well with a lesser differential impact.' Robinson v. Lorillard Corp., supra, 444 F.2d at 799."

"6. Teamsters' Local No. 505 committed an unlawful discriminatory practice in violation of WV Code 5-11-9, when it denied the complainant full and equal membership rights because of her sex."

The Commission hereby amends the Examiner's Recommended Order on damages dated December 16, 1985, as follows:

Paragraph 1 of said Findings of Fact is deleted in its entirety.

Paragraph 1 of said Conclusions of Law is deleted in its entirety.

In the subsection titled Proposed Order, paragraph A, the word "respondent" is deleted and the word "complainant" substituted therefore.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law, bifurcated as to liability and damages and submitted separately, are heretofore consolidated and incorporated by reference to each other, and said documents are made a part of this Order except as amended by this Order.

It is further ORDERED that:

1. Respondent shall immediately cease and desist from unlawful discrimination in violation of WV Code 5-11-9;

2. Respondent shall pay to the complainant \$5,211.72 plus statutory interest at a per annum rate of 10% on that amount representing backwages due the complainant because of respondent's discriminatory practice; and

3. Respondent shall pay to the complainant \$3,000.00 as compensatory damages for mental anguish and humiliation suffered by complainant as a result of respondent's discriminatory conduct.

The respondent is hereby ORDERED to provide to the Commission proof of compliance with the Commission's Order within 35 days of service of said Order by copies of cancelled checks, affidavit or other means calculated to provide such proof.

By this Order, a copy of which shall be sent by certified mail to the parties, the parties are hereby notified that they have ten days to request a reconsideration of this Order and that they have the right to judicial review.

Entered this 24th day of February, 1987.

RESPECTFULLY SUBMITTED

BY Betty A. Hamilton
BETTY A. HAMILTON
VICE CHAIR
WV HUMAN RIGHTS COMMISSION

RECEIVED

DEC 31 1985

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

W. HUMAN RIGHTS COMMISSION
[Signature]

PRISCILLA HAGER,

Complainant,

vs.

Docket Nos. ES-552-79

TEAMSTERS LOCAL 505

Respondent.

*RRS.
12/29/85*

EXAMINER'S RECOMMENDED ORDER ON DAMAGES

On October 30, 1985 and November 19, 1985, the Examiner received evidence on the record in this matter pertaining to the damages sustained by the Complainant as a result of the determination of liability against the Respondent made by this Examiner in his previous Recommended Findings of Fact and Conclusions of Law entered on August 19, 1985.

As a result of the testimony and documentary evidence received on the issue of damages the Examiner recommends the following:

FINDINGS OF FACT

1. The Examiner incorporates those findings of fact in their entirety as set forth in his previous Order entered on August 19, 1985.

2. As of April 24, 1979, the Complainant should have been fifth on the list of Teamster truck drivers for the Alum Creek job site.

3. On April 24, 1979, Ms. Hager's rate of pay was \$7.42 per hour. She was paid at that rate until the pay period for the

week beginning June 24, 1979, at which time she received a raise to \$8.04 per hour. During the pay period for the week beginning November 29, 1979, Ms. Hager received a pay raise from \$8.04 per hour to \$8.29 per hour. During the pay period for the week beginning December 23, 1979, Ms. Hager received a pay raise from \$8.29 per hour to \$8.86 per hour.

4. On or about May 8, 1979, Ms. Hager was laid off by S.J. Groves & Sons Co.

5. On June 18, 1979, Mr. Hager was reinstated as a trainee-truck driver by the S.J. Groves & Sons co.

6. The S.J. & Sons Co., Alum Creek, West Virginia job closed for the winter on December 21, 1979. On that date Ms. Hager and all the other truck drivers on the job were laid off.

7. During the period while Ms. Hager was laid off S.J. Groves hired Johnny Adkins to drive an end dump truck. He was an experienced journeyman driver. He was hired on May 21, 1979 and was the first Teamsters truck driver hired after Ms. Hager was laid off. Subsequently, Mr. Adkins also drove the fuel truck on the S.J. Groves & Sons, Alum Creek, West Virginia job site.

8. The Complainant drove an end dump truck solo prior to May 8, 1979, when she was laid off the job.

9. Ms. Hager worked fewer hours than she otherwise would have worked at the S.J. Grove & Sons job site had she not been laid off and lost her place on the list to Johnny Adkins.

10. The Complainant was capable of driving any truck on the construction site provided she had been given the opportunity to operate the same. The evidence is convincing that the

Complainant had no difficulty in successfully operating the fuel truck on another job at a later time.

11. The weekly hours worked by Ms. Hager from April 24 to May 8, 1979 and from June 18, 1979 to December 23, 1979 are set forth accurately in the S.J. Groves & sons Co. payroll records submitted as Complainant's Exhibit No. 8. The weekly hours worked by Johnny Adkins are set forth accurately in the S.J. Groves & Sons payroll records submitted as Complainant's Exhibit No. 8.

12. At all times during the months of April to December 1979, Ms. Hager was willing and able to work at the S.J. Groves & Sons, Alum Creek, West Virginia job site for as many hours as any other driver on the job drove.

13. The Complainant suffered mental pain and anguish as a result of not being permitted to join the Respondent's Local.

14. Ms. Hager is currently a member of Teamsters Local 175, Charleston, West Virginia and has been since 1980 when she was permitted to join by the eighth day of her employment as a truck driver at another highway construction job site in West Virginia.

15. The Examiner adopts the Complainant's calculations as an adequate and accurate reflection of the backpay to which she is entitled; more particularly that amount being \$5,211.72 plus interest at 10% per annum.

CONCLUSIONS OF LAW

1. The Examiner adopts in their entirety the Conclusions of Law set forth in his Order previously entered on August 19,

1985.

2. The Complainant's decision to compare herself, for purposes of calculating back-wages due, to Johnny Adkins is correct and proper.

Robinson v. City of Fairfield, 750 F2d 1507, 1512 (11th Cir. 1985).

3. The Complainant is entitled to damages in the amount of \$3,000.00 as compensation for her embarrassment and emotional distress.

PROPOSED ORDER

The Hearing Examiner recommends that the Commission take the following action:

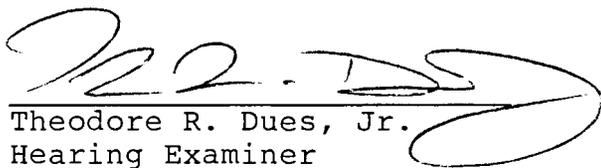
A. That the Respondent receive backpay in the amount of \$5,211.72 plus interest at 10% per annum;

B. That incidental damages be awarded in the amount of \$3,000.00;

C. That the Commission issue a cease and desist Order requiring the Respondent to comply with the West Virginia Human Rights Act in its interaction with the Complainant and any other targeted persons under the act.

DATED Dec. 16, 1985

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

PRISCILLA HAGER,

Complainant,

vs.

Docket No. ES-552-79

TEAMSTERS LOCAL 505,

Respondent.

Approved (as incorporated by HE's subsequent order) 12/29/85 REC.

EXAMINER'S RECOMMENDED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

The case matured for public hearing on June 6, 1985. The hearing was held at the conference room of the Extension Office for West Virginia University, Cabell County Courthouse, Huntington, W.V. The panel consisted of Theodore R. Dues, Jr., Hearing Examiner and Sid Allen, Hearing Commissioner. The Complainant appeared in person and by her counsel, Barbara Freedy. The Respondent appeared by its representative James Boyd and its counsel, Lafe Chafin.

FINDINGS OF FACT

1. The Complainant is a **female.**
2. The Complainant was initially employed by the S.J. Groves & Sons Company on April 23, 1979, as a truck driver trainee.
3. The job site at which the Complainant was hired was one in which the Respondent's conduct was covered by the Highway Agreement between the Constructor's Labor Council of West Virginia, Inc., and the Teamsters' Local of West Virginia and other West Virginia Labor Unions.

4. That Agreement provided that all employees who were not members of the Union and all employees who were hired thereafter (the Agreement) shall become and remain members of the appropriate Union as a condition of employment not later than the 8th day following the beginning of their employment or the effective date of this Agreement, which ever is the later.

5. The Complainant drove the rock truck on the job site during her first day on the job.

6. During her first two weeks on the job the Complainant drove the rock truck and rode as a passenger in said truck with fellow drivers.

7. The Complainant signed an application for membership in Teamsters' Local No. 505 on or about April 24, 1979, after receiving the same from David Ross, the Teamsters' Local No. 505 Union Steward.

8. The Complainant was later informed by the Union Steward that she would have to complete one thousand hours training before being permitted to join Local No. 505. The business agent had informed Mr. Ross previous that he did not want any women or Niggers in his Union unless he was forced to take them.

9. The Complainant was enthusiastic and eager to pursue her training on the equipment at the job site.

10. The Complainant suffered from no extraordinary apprehension about operating the equipment at the job site.

11. The Complainant between May 8, 1979 and June 18, 1979 approached the President of Teamsters' Local No. 505 and

proffered her initiation fees and one month's dues along with her application.

12. The president of the Respondent Local initially indicated to her she needed eight days of employment and then amended that information and advised her she needed to complete one thousand hours training to be eligible for membership in Respondent's Local.

13. The Complainant was able and willing to drive a truck solo within a few weeks after June 18, 1979.

14. When the job site shut down for the winter, the Complainant had completed nine hundred and forty-five and one-half hours of training for a period approximating six and one-half months. The record is void of any explanation by the officers of the Respondent Local as to the one thousand hour requirement for new members.

15. The trainee program of which the Complainant was a part was composed predominately of women and other minority groups.

16. The other Locals throughout the state of West Virginia, in particular Locals 789, 697 and 175 had employment requirements ranging from eight to thirty days for membership.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the subject matter and the parties in this matter.

2. As in all cases, the Complainant bears the burden of proving the allegations of her complaint that the Respondent

discriminated against her in its denial of Union Membership because of her sex.

3. The Respondent's policy that non-members must complete one thousand hours of employment prior to acceptance into the Local has a desperate impact on minorities; particularly females and blacks.

4. The Respondent failed to articulate a legitimate non-discriminatory reason for the one thousand hour requirement for its Local.

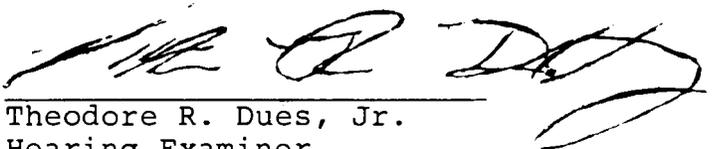
RELIEF

Judgement for the Complainant.

DATED

August 15, 1985

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner