



COPY

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301**

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.
Governor

July 5, 1985

Richard L. Withers, Esquire
Attorney-at-Law
P. O. Box 1111
Charleston, WV 25324

Roger Wolfe, Esquire and
Cheryl Wolfe, Esquire
Jackson, Kelly, Holt & O'Farrell
P. O. Box 553
Charleston, WV 25322

Lafe Chafin, Esquire
P. O. Box 402
Huntington, WV 25078

RE: Ruth Ann Vickers
v. American Stevedoring Corporation, and
Teamsters Local Union No. 175 - Docket No. ES-328-76

Dear Counsel:

In reviewing the above-styled case it came to my attention that several errors existed. The first of which was that my letter dated March 20, 1985, that should have been a courtesy cover letter was not attached to the official letter of notice signed by the Executive Director.

Secondly, the second paragraph of the Order contains a clerical error which says "the complaint filed by Phyllis Moore" when in fact it should have read "the complaint filed by Ruth Ann Vickers".

Thirdly, by letter dated June 20, 1985, counsel for the complainant, Richard L. Withers, informed the Commission that he did not receive his copy of the Final Order nor can we produce proof that the same was mailed to him by Certified Mail as required.

Therefore, in order to put all of the parties properly on notice a copy of the Final Order, Notice of Right to Review, under signature of

Page two
July 5, 1985

Howard D. Kenney, Executive Director is now being sent by Certified Mail.

Very truly yours,



John M. Richardson
Attorney for the West Virginia
Human Rights Commission

JMR/kpv

Enclosures:
Findings of Fact, Conclusions of Law, Exceptions and Order

Certified Mail - Registered Return Receipt Requested



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Huntington, WV 25078

Re: Ruth Ann Vickers v. American Stevedoring Corporation and
Teamsters Local Union No. 175 - Docket No. ES-328-76

Dear Counsel:

Herewith please find the Findings of Fact, Conclusions of Law and the Order of the WV Human Rights Commission in the case of Ruth Ann Vickers v. American Stevedoring Corporation, and Teamsters Local Union No. 175 - Docket No. ES-328-76.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If

Page two
Richard L. Withers, Esquire
Roger Wolfe, Esquire
Cheryl Wolfe, Esquire
Lafe Chafin, Esquire

July 5, 1985

no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,

Howard D. Kenney
Executive Director

HDK/kpv
Enclosure
CERTIFIED MAIL-RETURN RECEIPT REQUESTED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RUTH ANN VICKERS

Complainant,

v.

DOCKET NO.: ES-328-76

AMERICAN STEVEDORING CORPORATION,

UNION CARBIDE CORPORATION, and

TEAMSTERS LOCAL UNION NO. 175

Respondent.

FINAL ORDER

On March 14, 1985, the West Virginia Human Rights Commission did review the Record and the Recommended Order of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Notice of Exceptions; thereafter the Commission authorized the Chairperson, Russell Van Cleve, to sign this Order.

It is accordingly ORDERED that the Recommended Order of Examiner's Findings of Fact, Conclusions of Law, and Notice of Exceptions be attached and made a part of this Order. The Complaint filed by Phyllis Moore, be dismissed with prejudiced, and that she recover nothing from the Respondent and that each of the parties be responsible for paying their own costs, including any attorney's fees.

It is further ORDERED that a copy of this Order be sent by certified mail to each of the parties and they are hereby notified that they have 10 days upon which to request a review of this decision.

Entered this 7th day of March 1985.

Order Entered:

WEST VIRGINIA HUMAN RIGHTS
COMMISSION

By its:

Russell W. Clave

Chairperson

JMR/kpv

RECEIVED

FEB -7 1985

W.V. HUMAN RIGHTS COMM.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RUTH ANN VICKERS

Complainant,

v.

DOCKET NO. ES-328-76

AMERICAN STEVEDORING CORPORATION,
UNION CARBIDE CORPORATION, and
TEAMSTERS LOCAL UNION NO. 175,

Respondents.

**EXAMINER'S RECOMMENDED FINDINGS OF FACT
AND CONCLUSION OF LAW**

This case came on for hearing on June 26, 27 and 28, 1984, and reconvened for completion on August 28, 1984. The panel consisted of Theodore R. Dues, Jr., Hearing Examiner, and the Honorable Bette Thornhill, Hearing Commissioner.

The West Virginia Human Rights Commission appeared by its counsel, Gail Ferguson. The Complainant was represented by Richard Withers. The Respondent, American Stevedoring, was represented by Roger A. Wolfe and the Respondent, Union Carbide Corporation was represented by Cheryl H. Wolfe.

FINDINGS OF FACT

1. The Complainant, Ruth Ann Vickers, is a female.

2. In October 1975, the Complainant enrolled in the Northeastern Training Institute, which is a school for instructing persons to drive tractor-trailers.

3. In November 1975, the Complainant successfully completed the Northeastern Training Institute's tractor-trailer driving course.

4. In October 1975, the Complainant received her Department of Transportation physical card.

5. On or about January 30, 1976, the Complainant applied for employment with the Respondent, American Stevedoring Corporation, as a truck driver.

6. At the time of her application with American Stevedoring Corporation, the Complainant had eight (8) weeks driving experience as is more particularly reflected in her application for employment.

7. The Respondent, American Stevedoring Corporation, refused to hire the Complainant because she did not meet the minimum two year experience requirement that the contractee of American Stevedoring's truck drivers, particularly Union Carbide, required.

8. The Complainant was hired by McClean Trucking on or about March 13, 1976.

9. At that time, McClean Trucking did not have a minimum previous experience requirement for its truck drivers.

10. That during the period of the year from January 1975 to January 1976, the Respondent, American Stevedoring Corporation, reflected two (2) female applicants out of fifty (50).

11. Out of those fifty (50) applying seven (7) individuals were actually hired during the course of that year; all men. In addition, from January 1976 until on or about June 1978, one hundred (100) applications were received. None of which were women.

12. The applicant flow data in evidence does not reflect a statistically significant biased effect from the use of the minimum two year driving experience requirement for newly hired drivers.

13. That the statistical evidence of record does not reflect that women are discouraged from seeking truck driver positions as a result of the use of the minimum experience requirement.

14. The fleet of trucks from which the drivers of the Respondent, American Stevedoring, would be driving during the time relevant to the matters pending before this Examiner, were tank trucks.

15. The product transported by the Respondent, Union Carbide, during the period relevant to the matters pending before this Examiner were often times hazardous materials and/or in a liquid state.

16. The evidence of record pertaining to the number of women truck drivers in the work force is inadequate to reach the determination that that number is directly or substantially a derivation of the utilization of the minimum experience requirement.

CONCLUSIONS OF LAW

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

2. All matters prerequisite to the maturing of this matter for final hearing have been timely met.

3. As in all cases, the Complainant bears the burden of proving the allegations of her complaint that the Respondent failed to hire her due to her sex and not for job related reasons. The same burden applies to the Complainant's proof of her allegations that the minimum experience requirement utilized by the Respondent in its hiring practices had a disparate impact on women.

4. The Complainant established a prima facie case of disparate treatment in the Respondents', American Stevedoring and Union Carbide, hiring practices by introducing evidence to establish that she is a member of a protected class; that she was capable of driving a tractor-trailer at

the time of her application; that the Respondent was looking for employees to drive tractor-trailers; and that she was not hired although men were hired for the positions.

5. The Complainant also established a prima facie case that the Respondents' use of the minimum experience requirement of two years for its newly hired truck drivers disparately impacted against women.

6. The Respondent, American Stevedoring, proffered a nonpretextual job related reason for refusing to hire the Complainant for the position of truck driver; more particularly being the decision by the Respondents to require a minimum requirement of two years previous experience in truck driving for its newly hired drivers.

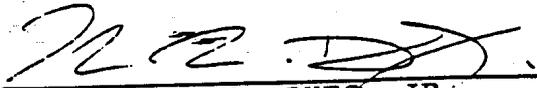
7. The Respondent, American Stevedoring, established a job related necessity of the two year minimum requirement by providing evidence as to the dangers of the "slosh" factor involved in the driving of tank trucks; the fact that the loads to be transported by its truck drivers were more than not hazardous products; that the utilization of its minimum experience requirement did not impact disparately on the exposure of women in the work force employed as truck drivers in the Respondent's work force area; and that the utilization of the minimum experience requirement does not have the effect of discouraging females from applying for employment as truck drivers in the Respondent's work force area.

Accordingly, it is the recommendation of this Examiner that judgment be entered in this matter for the Respondents, American Stevedoring Corporation and Union Carbide Corporation, on the issue of liability. In addition, it is the recommendation of this Examiner that the Respondent, Teamsters Local Union No. 175 and the International Brotherhood of Teamsters, Chauffeurs and Warehouse Helpers of America be held without obligation as to any seniority and/or otherwise obligatory responsibilities to the Complainant in this matter in as much as the Complainant joined said Local and International Union for the sole purpose of protecting whatever rights she may have to seniority and such other relief should she had prevailed in this matter. And lastly, it is the recommendation of this Examiner that the Complainant receive no damages including attorneys fees as a result of the prosecution of this matter.

The parties are hereby given notice that they have fifteen (15) days from the date of entry of this order to submit exceptions to this order to the Chairperson of the Commission.

DATED: February 6, 1985

ENTER:


THEODORE R. DUES, JR.
HEARING EXAMINER

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RUTH ANN VICKERS,

Complainant,

vs.

Docket No. ES-328-76

AMERICAN STEVEDORING CORPORATION,
UNION CARBIDE CORPORATION, and
TEAMSTERS LOCAL UNION NO. 175,

Respondents.

RECEIVED

FEB 27 1985

W.V. HUMAN RIGHTS COMM.

NOTICE OF EXCEPTIONS

TO THE CHAIRMAN OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION:

Now comes the complainant Ruth Ann Vickers, by counsel Richard L. Withers, and does submit these her exceptions to the Examiner's Recommended Findings of Fact and Conclusions of Law, dated February 6, 1985, and more specifically she does say as follows:

1. The complainant objects and excepts to the failure of the Examiner to make rulings upon the motions and objections of the parties made during the course of hearings with regard to the introduction of evidence and the testimony of certain witnesses which rulings were reserved at the time of hearing;
2. The complainant objects to finding of fact numbered seven (7) as not supported by the evidence and insofar as it is in contradiction to the probative and reliable evidence submitted by the complainant.

3. The complainant objects and takes exception to the conclusions of law contained in conclusion numbered six (6).

4. The complainant objects and takes exception to the conclusions of law contained in conclusion numbered seven (7).

5. The Examiner's report failed to take into consideration or otherwise address the evidence of the complainant to rebut the evidence of the respondent American Stevedoring that it had a non-pretextual job related reason for refusing to hire the complainant.

6. The Examiner's report failed to take into consideration or otherwise address the evidence of the complaint to rebut the evidence of the respondent American Stevedoring its two year minimum experience requirement was a job related necessity.

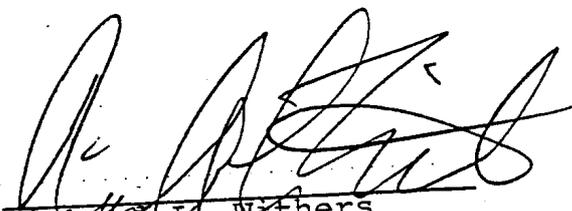
7. The Examiner's report failed to address the evidence of the complainant that respondent Union Carbide Corporation was an employer in fact and responsible for the hiring practices of respondent American Stevedoring.

8. The Examiner's report errs in that it fails to find liability on the part of one or both of the respondents and in holding respondent Teamsters Local No. 175 without obligation and in declining to recommend an award of damages, fees and costs in these proceedings.

9. The complainant takes exception to all other errors contained in the Examiner's report which appear on

its face and upon review thereof and to those further errors
of law and fact as are addressed in the memorandum accompanying
this Notice.

RUTH ANN VICKERS
By Counsel



Richard L. Withers
HICKOK & WITHERS, L.C.
P. O. Box 1111
Charleston, WV 25324

Counsel for Complainant