

of employment, in violation of the New York Law Against Discrimination. Specifically, complainant alleged that respondent's policy sets an age ceiling of 35 years for continued employment as airline hostess, in line with which respondent informed her that she would be removed from flight duty in February 1966, when she would become 35. Complainant further alleges that no similar special age ceiling is applied to the pursers, whose job duties are largely similar and whose incumbents are all male.

Subsequently, on 2/28/66, complainant was removed by respondent from flight service, put on "leave of absence," and offered ground employment. Respondent has confirmed to the Commission that complainant's removal from flight service was based solely on its policy setting a maximum age of 35 for continued employment as hostess and indicated that had complainant's performance been in question she would have been discharged, not granted a leave of absence and offered other ground employment.

The first question before me is that relating to the charge of discrimination because of age. This question has been considered recently by the Commission in three other cases of airline hostesses in substantially similar situations, one of whom was employed by the same respondent as complainant; probable cause was found to credit the allegations of each of the three complaints charging such age discrimination.

A further field investigation was made in the instant matter pursuant to my direction, including an invitation to respondent to offer for my consideration any and all pertinent information on the merits as respondent might wish to provide; respondent has declined such opportunity to provide additional information on the merits.

I find there is probable cause to credit the charge of discrimination based on age.

Before proceeding to the second charge, I believe it may be useful to clarify one aspect of the significance of this finding. A determination that an airline may not, under the New York Law Against Discrimination, remove an airline hostess from flight duty based solely on her reaching a special chronological age, without regard to her individual qualifications, does not mean an elimination or change in lawful standards of individual qualifications—such as those relating to the maintenance of attractive personal appearance and the ability to do the work involved in the particular job category.

The second charge relates to sex discrimination. Respondent has confirmed that (a) there is no special chronological age at which pursers are removed from flight duty—prior to normal retirement at age 60; (b) the duties of the purser, although including some additional responsibilities largely clerical in nature, are similar to those of the hostess; (c) the pay scale of the purser is significantly above that of the hostess; and (d) respondent has hired only males as pursers since World War II.

On respondent airline, the purser is required to speak two foreign languages. Complainant has for several years worked for respondent from its bases in Egypt and France, and does speak both Arabic and French. If there were no sex bar to her promotion to purser, without regard to the question of age discrimination re hostesses, there is a substantial argument that complainant could have continued flying by securing a promotion to purser. Respondent has in the past year increased its purser complement, and expects it to continue to increase in size.

Respondent points to the following provision in its current contract with the union as justification for its limitation, in practice, of the purser position to males. Article XIII (G) reads:

"... future vacancies within the Flight Purser category will be filled either by qualified Hostesses in order of seniority, the Company retaining the right to resort to outside hire of new female employees in the absence of receipt by the Company of sufficient bids of such qualified Hostesses, or by hiring new male employees at the option of the Company." [Emphasis added.]

According to respondent, this clause recognizes that hostesses could qualify for the purser position, but also provides respondent with an option to hire males only; and respondent has seen fit to exercise this option. With the 1965 amendments to the Law Against Discrimination prohibiting discrimination based on sex, such a contract provision—even on its face—becomes of doubtful legality.

I find probable cause with respect to the charge of discrimination based on sex.