

B U S I N E S S

Cracker Barrel buckles

The family restaurant's change of heart provides a prime example for activists committed to reforming other antigay corporations
BY JEREMY QUITNER



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Cheryl Summerville still remembers the day in 1991 when Cracker Barrel Old Country Store fired her for being gay. She had worked as a backup cook at a Douglasville, Ga., Cracker Barrel restaurant for nearly three years. And though she says she never made a point of coming out to her coworkers, she didn't hide her sexual orientation either. In fact, she says, she often spoke of her life partner, Sandra Riley, at work, and nobody seemed to mind. Actually, she says, her colleagues regularly asked how Sandra was doing.

So Summerville says she was stunned when she learned that Cracker Barrel had issued a memo stating that people who did not demonstrate "normal heterosexual values" could not work for the company. Though she says her immediate manager did not want to fire her, a district manager did. The reason for termination on her separation papers read, "Employee is gay."

Summerville thought such a policy had to be illegal. But because Georgia and many other states where Cracker Barrel operates do not have a law preventing discrimination based on sexual orientation, it wasn't. "I called the ACLU and they said there was nothing I could do at all," she recalls.

Now, in an about-face, Cracker Barrel's parent company, the publicly traded CBRL Group Inc. based in Lebanon, Tenn., has announced that it is adding sexual orientation to its written employee nondiscrimination policy. The change follows years of angry protests from activists and shareholders and a decade-long boycott by gays and lesbians. On November 26, CBRL's board of directors voted unanimously to adopt a sexual orientation nondiscrimination policy.

According to company spokeswoman Julie Davis, the change of heart, which she says came about because of the "overwhelming support" for the antidiscrimination policy, actually wasn't a change of heart at all. "We have always had a strong written policy that prohibits discrimination of any kind in the workplace," she says.

But the Cracker Barrel employees who lost their jobs because of their sexual orientation more than disprove the inclusiveness of the company's previous nondiscrimination policy, Summerville says. And, she adds, it took much more

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than one stockholder vote to make the company budge on this issue.

Before all was said and done, at least 11 Cracker Barrel employees lost their jobs in the 1990s in disputes over their sexual orientation. (Summerville thinks the number might be as high as 20.) And the company's overtly bigoted employment practices sparked a firestorm; few companies in America's corporate landscape have been as reviled by gay men and lesbians as Cracker Barrel.

"It is important the poster boy for corporate antigay bigotry has finally acknowledged that lesbians and gays are part of their own workforce and part of their customer base as well," says Shelley Alpern, assistant vice president of Boston-based Trillium Asset Management Corp., which specializes in socially responsible investing. "The importance of this cannot be underestimated in terms of the company's ability to create a comfortable working environment for lesbian and gay employees."

The change stems in large part from the work of the New York City Employees' Retirement System, one of five pension funds for New York City workers, which together control 391,000 shares of stock in CBRL (NYCERS owns 189,000 shares.) For 10 years NYCERS has sponsored shareholder proposals that would push Cracker Barrel to overhaul its employment policy through a proxy vote. (A proxy vote is a referendum on company policy by owners of the company's stock. Such votes typically can happen once a year and are formally held at the company's annual meeting, although shareholders can submit votes in advance of the meeting by mail or online.)

Over the years activists and shareholders have also sent letters to and held talks with Cracker Barrel management, asking them to change the company's employment policies.

The hard work of NYCERS apparently paid off. Prior to the November 26 meeting, shareholders controlling 58% of CBRL's 49.8 million outstanding shares voted by proxy to approve the proposal. Although no vote was formally taken at the meeting, immediately afterward the board voted unanimously to adopt the nondiscrimination policy.

"It is a stunning victory and it was very gratifying," says New York City comptroller William C. Thompson Jr. about the board of directors' vote. "This

company had been one of the most egregious examples of discrimination against gays and lesbian employees."

There is nothing legally binding about a proxy vote—in fact, a company's board does not even have to follow the vote of its shareholders—but in this case Cracker Barrel's board decided to go with the prevailing sentiment of shareholders. "One thing we have done over a period of time is to be very aggressive in sponsoring shareholder resolutions on antidiscrimination and corporate governance," says Thompson, who adds that he and the employees' retirement system are also trying to change similar corporate policies at Exxon-Mobil and eight other U.S. companies through shareholder initiatives.

Others directly involved with the proxy vote say Cracker Barrel's antigay policies ultimately hurt its business and that this factor also played a significant role in the company's decision. "All of the controversy and the political pressure surrounding Cracker Barrel has diminished the company's value, and we have utilized this power in the best way possible," says Martha E. Stark, commissioner of the New York City Department of Finance and current NYCERS chairwoman.

But the company's economic profile doesn't seem to indicate that it's weathered much financial hardship in the past year. CBRL, which has about 50,000 employees in 41 states, is publicly traded on the NASDAQ and ranks 704th in the Fortune 1000. For the fiscal year ending August 2, 2002, it had \$92 million in net income, nearly a 90% increase over the \$49 million in net income reported a year earlier. At the end of the calendar year its stock was trading at around \$30 a share.

In contrast to CBRL's largely positive financial picture is its record on treatment of gay employees, as evidenced by ratings from the Human Rights Campaign, a Washington, D.C.-based gay advocacy organization. In 2002, before the policy change, HRC had given CBRL 0 points out of a possible 100 in its annual rating of company attitudes toward gay men and lesbians. HRC's WorkNet scale assigns each company points based on a number of attributes, such as whether it provides domestic-partner benefits or has a written corporate policy that prohibits discrimination based on sexual orientation and gender identity.

"They had no nondiscrimination poli-

cy, no gay and lesbian employees' organization, no appropriate and respectful marketing to the gay and lesbian community," explains HRC's education director, Kim Mills. "And working actively against the shareholder resolutions [in past years] got them that zero."

Mills adds that while the boycott may not have directly affected the company's bottom line, the adverse publicity accompanying it was detrimental to Cracker Barrel in the long run.

CBRL's new policy gives gay employees a legal leg to stand on, Thompson says. "This is a formal policy that makes it easier to bring charges and suits against [the company]," he says. "It becomes part of the corporate policy, and in spite of what the different state laws are, this gives the right to sue if people are violating that policy."

While most activists rejoiced at CBRL's announcement, others wondered whether this tiger could really change its stripes so quickly. They point to the company's 2002 annual report, which refers to several lawsuits, including two class actions, one by employees who claim they were required to work without compensation and another by the National Association for the Advancement of Colored People, alleging that the company has engaged in a "systematic pattern of racial discrimination in employment opportunities." In August 2002, the annual report notes, the Department of Justice launched its own investigation into allegations of racial discrimination at Cracker Barrel. "This [kind of discrimination] has been going on for so long," Summerville says. "I can't see that changing overnight."

Davis says both suits are without merit and adds that a judge denied the NAACP suit class action status in October. She also says the company is cooperating with the federal investigation.

Though Summerville guardedly gives credit to the company for its recent policy change, she notes the deep feeling of hurt that lingered for years after her dismissal, not to mention the financial hardship the termination caused her and her family. "Some things are too bad to ignore without trying to get some sort of change," she says. "And we can't get any change if we don't try to fight for it." ■

Quittner also has written for the New York Post and Business Week.