

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

AUG 15 11 27 AM '78
RECEIVED BY
PA. HUMAN RELATIONS
COMMISSION
HEADQUARTERS

MICHAEL D. SAPOVITS,
Complainant

v.

Docket No. E-10108

CHESTER-UPLAND SCHOOL DISTRICT,
Respondent

NOT
SIGNED

HISTORY OF CASE
FINDINGS OF FACT
CONCLUSIONS OF LAW
HEARING PANEL DECISION
COMMISSION'S DECISION
FINAL ORDER
OPINION

HISTORY OF THE CASE

This case involves a complaint filed with the Pennsylvania Human Relations Commission (hereinafter referred to as the "Commission") at Docket No. E-10108, charging the respondent, Chester-Upland School District, (hereinafter referred to as "School District"), the complainant's employer, with refusing to promote the complainant to the position of Head Baseball Coach because of his religion, Jewish, in violation of Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, (hereinafter referred to as the "Act").

An investigation into the allegations contained in the complaint was made by representatives of the Commission, and a determination was made that there was probable cause to credit

the allegations of the complaint. Thereupon, the Commission endeavored to eliminate the unlawful practice complained of by conciliation. This endeavor was unsuccessful and a public hearing was convened pursuant to Section 9 of the Act. The hearing panel consisted of Commissioners Benjamin S. Loewenstein, Alvin E. Echols, Jr., and Robert Johnson Smith. John E. Benjes, Esq. served as advisor to the hearing panel. The public hearing was convened and completed on May 31, 1978.

James Pagliaro, Esquire, Assistant General Counsel of the Commission, presented the case on behalf of the complainant. Leo A. Hackett, Esq., represented the respondent.

FINDINGS OF FACT

1. Michael D. Sapovits, the complainant herein, is an adult who resides at Pennsbury West, Chadds Ford, Pa.
2. Chester-Upland School District, the respondent herein, is an employer within the meaning of the Pennsylvania Human Relations Act and has as its address, Melrose Avenue, and 18th Street, Chester, Pa.
3. The complainant has been employed as a teacher by the respondent since 1962. From 1964 to 1974, the complainant was the Baseball Coach at Smedley Jr. High School. In 1974, the complainant was transferred to Chester High School where he became Assistant Baseball Coach (Stip. 6, Tr. 16-18).
4. The complainant applied for the position of Head Baseball Coach at Chester High School in 1975 and was interviewed along with the five other applicants for that position. (Stip. 7).
5. The person chosen for the position was Francis

Ryan of 406 Municipal Avenue, Thorndale, Pa. (Stip. 9).

6. The complainant has 11 years of coaching experience at Smedley Jr. High School and at Chester High School, but has no experience as a high school head baseball coach. (Tr. 16-7, 23, 78).

7. The complainant had played baseball for three years on the varsity team at Chester High School and three years on the varsity team at Widener College. (Tr. 17)

8. The successful applicant, Francis Ryan, had 5 years of prior experience as a high school head baseball coach. (Tr. 78).

9. The successful applicant, Francis Ryan, had 4 years of Varsity high school baseball playing experience and four years of college baseball playing experience, and eight years of semi-professional baseball playing experience (Tr. 81, 83).

10. Complaints about the behavior of Michael Sapovits with the students and on the baseball field were received from parents by the Principal of the Smedley Jr. High School who constructively criticized the complainant about his behavior. (Tr. 166, 168-9).

11. While Michael Sapovits was the baseball coach at Smedley Jr. High School, there were occasions on which he would holler and scream and get angry with the players and forget his capacity as a coach of a Jr. High School Baseball team. (Tr. 157, 167)

12. A principal at another junior high school received reports through the Athletic Director and coaches concerning the complainant's unusual behavior. (Tr. 156)

13. While Michael Sapovits was head basketball coach

at Smedley Jr. High School, he left the bench as a coach during a game in 1969 and took a position in the stands as a spectator and did not return to coaching the team during the game. (Tr. 156).

14. In 1973 a conference was held with Michael Sapovits and the Director of Health, Physical Education and Athletics of the Chester-Upland School District to discuss various problems relating to his coaching history with the Chester-Upland School District. (Tr. 96).

15. At the 1973 conference, parent complaints, the complainant's immature attitude at games, and short practice sessions were all discussed. (Tr. 96-7).

16. The complainant did not deny any of the allegations made against him at the conference held in 1973. (Tr. 98, 134).

17. The complainant had problems as assistant baseball coach at Chester High School concerning his relationship with the players and in maintaining good organization of the team and equipment. (Tr. 98, 157-8).

18. The complainant's conduct as a coach did not measure up to the standards of the Athletic Department philosophy, staff, responsibilities and duties in maintaining self-control and communicating and relating to students. (Tr. 99, 101, 161).

19. Complaints received by the school district concerning coaches are usually shared and were shared in this case with the selection committee for coaches during the interviewing and selection of head coaching positions. (Tr. 133, 138, 157).

20. The selection committee made its decision to hire Mr. Ryan based on a combination of prior experience (both playing and coaching) and his value as a leader. (154, 157).

21. At the time of the interviews and recommendations for head baseball coach at Chester High School, the religion of the applicants was neither considered nor discussed. (Tr. 140).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the complainant and the respondent and the subject matter of the complaint under the Pennsylvania Human Relations Act, pursuant to Section 9, 43 P.S. §959.

2. Respondent is an "employer" within the meaning of Sections 4(b) and 5(a) of the Pennsylvania Human Relations Act, 43, 43 P.S. §§954(b), 955(a).

3. Complainant is an "individual" within the meaning of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §955(a).

4. The evidence failed to disclose that the respondent's conduct towards complainant in failing to promote the complainant to the position of Head Football Coach was discrimination against the complainant in violation of Section 5(a) of the Act.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MICHAEL D. SAPOVITS,
Complainant

v.

Docket No. E-10108

CHESTER-UPLAND SCHOOL DISTRICT,
Respondent

RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, to wit this day of 1978, upon consideration of all the evidence presented at the public hearing in the above captioned matter, and pursuant to the findings of fact and conclusions of law, the hearing commissioners recommend to the entire Commission that an order be entered dismissing the above docketed complaint.

Benjamin S. Loewenstein
Presiding Commissioner

Alvin E. Echols, Jr.
Commissioner

Robert Johnson Smith
Commissioner

C O M M O N W E A L T H O F P E N N S Y L V A N I A

GOVERNOR'S OFFICE

MICHAEL D. SAPOVITS,
Complainant

V.

CHESTER-UPLAND SCHOOL DISTRICT,
Respondent

:
:
:
:
:
:
:
:
:
:

DOCKET NO. E-10108

COMMISSION'S DECISION

AND NOW, to wit this day of , 1978, upon
the recommendation of the public hearing commissioner and
upon all the evidence at the public hearing of this case, and
upon the consideration of the findings of fact and conclusions
of law, the Pennsylvania Human Relations Commission finds and
determines that the respondent's conduct toward complainant
in failing to promote the complainant to the position to Head
Football Coach was not demonstrated to be against the complainant
in violation of Section 5(a) of the Pennsylvania Human Relations
Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §955
(a) (supp. 1974-1975).

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joseph X. Yaffe, Chairperson

ATTEST:

Elizabeth M. Scott, Secretary

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MICHAEL D. SAPOVITS,
Complainant

v.

Docket No. E-10108

CHESTER-UPLAND SCHOOL DISTRICT,
Respondent

FINAL ORDER

AND NOW, to wit, this day of , 1978,
upon consideration of the findings of fact, conclusions of
law, and the Commission's decision and pursuant to Section
9 of the Human Relations Act, 43 P.S. §959, the Pennsylvania
Human Relations Commission hereby

ORDERS:

that the complaint in the above docketed matter be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Joseph X. Yaffe
Chairperson

ATTEST

BY: Elizabeth M. Scott, Secretary

while at Smedley. In 1974 the complainant was transferred to Chester High School where he coached the 10th grade basketball team. Thus, the complainant met his burden of proving that he was minimally qualified for the position in question in that he had a strong background in coaching baseball, albeit at the Jr. High School and 10th grade level. The complainant has met the requirements for making out a prima facie claim under McDonnell Douglas vs. Green, 411 U.S. 792 (1973), cited with approval by the Pennsylvania Supreme Court in General Electric vs. PHRC, 365 A.2d 649 (1976) by showing:

- (i) that he belongs to a minority (protected class);
- (ii) that he applied and was qualified for a job for which the employer was seeking applicants;
- (iii) that, despite his qualifications, he was rejected;
- (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

However, proof of a prima facie claim cannot be equated with an ultimate finding under the Human Relations Act. Indeed the two are quite different as stated recently by the U.S. Supreme Court in Furnco vs. Waters, _____ U.S. _____ (1978):

The method suggested in McDonnell Douglas for pursuing this inquiry, however, was never intended to be rigid, mechanized, or ritualistic. Rather, it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination. A prima facie case under McDonnell Douglas raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors.

The Supreme Court goes on to note that:

- (i) it is apparent that the burden which shifts to the employer is merely that of proving that he based his employment decision on a legitimate consideration and not an illegitimate one such as race.

Clearly, in this case the respondent has articulated and proven a legitimate reason for failure to promote Mr. Sapovits, that being, their assessment that Francis S. Ryan was the superior candidate. The respondents established, during their defense, that the school district had received numerous complaints concerning the complainant's coaching behavior from parents, other coaches, and principals of the school district itself. Further, the respondents established that this information was shared with the Selection Committee and that it formed a basis for their decision to choose Mr. Ryan over the complainant. Also, the respondent's testimony reveals that religion was never considered at the time the Selection Committee made its choice.

The testimony of William H. Polk a member of the Committee which selected Mr. Ryan is indicative of the respondent's defense to the prima facie case of complainant:

Q. During that time that you were principal at Showalter, did you have any opportunity to observe Mr. Sapovits in his coaching capacity?

A. On several occasions.

Q. And can you relate to us what happened during those occasions?

A. Well, it was because of my experience as a coach and athletic director prior to becoming principal that I was concerned about the quality of the athletic program in my school. And I made it a point to be present at all home basketball games and if information came to me concerning conditions that would affect my athletes, I also attended away games. And through the Athletic Director and through coaches I had reports of Mr. Sapovits' unusual behavior on occasions, so I made it a point to observe him. And on one occasion at a basketball game played at Showalter, between Showalter and Smedley, in 1969--

Q. Was Mr. Sapovits a coach at that time?

A. He was Head Basketball Coach. I think his team had a very good record and we thought our team was very good. However, towards the end of the game, because his team was behind, he left the bench as a coach and took a position in the stands as a spectator. And the following spring when our baseball team played Smedley in the park, I made sure that I was present and observed some of the activities, that I did not consider desirable in a coach, conducted by Mr. Sapovits in challenging the calls of the umpire and other demonstrations that I did not think was setting an example for impressionable youths as a coach and as a teacher. (Tr. 155-157)

...

Q. And what was the basis on which you selected, in your own personal choice other applicants over Mr. Sapovits?

A. The overall quality of experience and performance. Chester High School has been suspended from the Pennsylvania Interscholastic Association in 1961 and we were still in the process of reestablishing our position in athletics, to the point where we could build a schedule without travelling to York and Harrisburg for interscholastic games because schools in this area did not wish to play us. And as principal, one of the directives that was given to me was to change the attitude of the students and the faculty from negative to positive, to change the image of the athletic program, and we needed strong mature coaches to set an example for our athletes in order to do this.

Q. And was it your feeling that Mr. Sapovits did not fit into this description as to what was needed as Head Baseball Coach?

A. That's correct. (Tr. 159)

The respondent having proven their defense, the burden of proof shifts back to the complainant to establish that the reasons asserted for the failure to promote complainant are mere pretexts covering up discrimination. The complainant failed to establish that the reasons proffered for the failure

to promote the complainant were pretextual. The only witness presented in rebuttal was the complainant himself who denied only portions of the preceding extensive testimony of respondent's witnesses. For instance, the complainant did not deny that he argued with umpires nor did he deny that he left the bench to sit in the stands when his team was behind as testified to by Mr. Polk.

In light of the extensive testimony presented by the respondent in support of their legitimate and non-discriminatory refusal to promote Michael Sapovits and to chose another more qualified individual, and the concomitant failure of the complainant to present evidence showing these reasons to be pretexts, the Commission finds that the evidence failed to establish that the complainant was discriminated against in violation of Section 5(a) of the Human Relations Act, 43 P.S. §955(a).

order

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

AUG 15 11 27 AM '78

RECEIVED BY
PA. HUMAN RELATIONS
COMMISSION
HEADQUARTERS

NOT
SIGNED

MICHAEL D. SAPOVITS,
Complainant

v.

Docket No. E-10108

CHESTER-UPLAND SCHOOL DISTRICT,
Respondent

HISTORY OF CASE
FINDINGS OF FACT
CONCLUSIONS OF LAW
HEARING PANEL DECISION
COMMISSION'S DECISION
FINAL ORDER
OPINION

HISTORY OF THE CASE

This case involves a complaint filed with the Pennsylvania Human Relations Commission (hereinafter referred to as the "Commission") at Docket No. E-10108, charging the respondent, Chester-Upland School District, (hereinafter referred to as "School District"), the complainant's employer, with refusing to promote the complainant to the position of Head Baseball Coach because of his religion, Jewish, in violation of Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, (hereinafter referred to as the "Act").

An investigation into the allegations contained in the complaint was made by representatives of the Commission, and a determination was made that there was probable cause to credit

the allegations of the complaint. Thereupon, the Commission endeavored to eliminate the unlawful practice complained of by conciliation. This endeavor was unsuccessful and a public hearing was convened pursuant to Section 9 of the Act. The hearing panel consisted of Commissioners Benjamin S. Loewenstein, Alvin E. Echols, Jr., and Robert Johnson Smith. John E. Benjes, Esq. served as advisor to the hearing panel. The public hearing was convened and completed on May 31, 1978.

James Pagliaro, Esquire, Assistant General Counsel of the Commission, presented the case on behalf of the complainant. Leo A. Hackett, Esq., represented the respondent.

FINDINGS OF FACT

1. Michael D. Sapovits, the complainant herein, is an adult who resides at Pennsbury West, Chadds Ford, Pa.
2. Chester-Upland School District, the respondent herein, is an employer within the meaning of the Pennsylvania Human Relations Act and has as its address, Melrose Avenue, and 18th Street, Chester, Pa.
3. The complainant has been employed as a teacher by the respondent since 1962. From 1964 to 1974, the complainant was the Baseball Coach at Smedley Jr. High School. In 1974, the complainant was transferred to Chester High School where he became Assistant Baseball Coach (Stip. 6, Tr. 16-18).
4. The complainant applied for the position of Head Baseball Coach at Chester High School in 1975 and was interviewed along with the five other applicants for that position. (Stip. 7).
5. The person chosen for the position was Francis

Ryan of 406 Municipal Avenue, Thorndale, Pa. (Stip. 9).

6. The complainant has 11 years of coaching experience at Smedley Jr. High School and at Chester High School, but has no experience as a high school head baseball coach. (Tr. 16-7, 23, 78).

7. The complainant had played baseball for three years on the varsity team at Chester High School and three years on the varsity team at Widener College. (Tr. 17)

8. The successful applicant, Francis Ryan, had 5 years of prior experience as a high school head baseball coach. (Tr. 78).

9. The successful applicant, Francis Ryan, had 4 years of Varsity high school baseball playing experience and four years of college baseball playing experience, and eight years of semi-professional baseball playing experience (Tr. 81, 83).

10. Complaints about the behavior of Michael Sapovits with the students and on the baseball field were received from parents by the Principal of the Smedley Jr. High School who constructively criticized the complainant about his behavior. (Tr. 166, 168-9).

11. While Michael Sapovits was the baseball coach at Smedley Jr. High School, there were occasions on which he would holler and scream and get angry with the players and forget his capacity as a coach of a Jr. High School Baseball team. (Tr. 157, 167)

12. A principal at another junior high school received reports through the Athletic Director and coaches concerning the complainant's unusual behavior. (Tr. 156)

13. While Michael Sapovits was head basketball coach

at Smedley Jr. High School, he left the bench as a coach during a game in 1969 and took a position in the stands as a spectator and did not return to coaching the team during the game. (Tr. 156).

14. In 1973 a conference was held with Michael Sapovits and the Director of Health, Physical Education and Athletics of the Chester-Upland School District to discuss various problems relating to his coaching history with the Chester-Upland School District. (Tr. 96).

15. At the 1973 conference, parent complaints, the complainant's immature attitude at games, and short practice sessions were all discussed. (Tr. 96-7).

16. The complainant did not deny any of the allegations made against him at the conference held in 1973. (Tr. 98, 134).

17. The complainant had problems as assistant baseball coach at Chester High School concerning his relationship with the players and in maintaining good organization of the team and equipment. (Tr. 98, 157-8).

18. The complainant's conduct as a coach did not measure up to the standards of the Athletic Department philosophy, staff, responsibilities and duties in maintaining self-control and communicating and relating to students. (Tr. 99, 101, 161).

19. Complaints received by the school district concerning coaches are usually shared and were shared in this case with the selection committee for coaches during the interviewing and selection of head coaching positions. (Tr. 133, 138, 157).

20. The selection committee made its decision to hire Mr. Ryan based on a combination of prior experience (both playing and coaching) and his value as a leader. (154, 157).

21. At the time of the interviews and recommendations for head baseball coach at Chester High School, the religion of the applicants was neither considered nor discussed. (Tr. 140).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the complainant and the respondent and the subject matter of the complaint under the Pennsylvania Human Relations Act, pursuant to Section 9, 43 P.S. §959.

2. Respondent is an "employer" within the meaning of Sections 4(b) and 5(a) of the Pennsylvania Human Relations Act, 43, 43 P.S. §§954(b), 955(a).

3. Complainant is an "individual" within the meaning of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §955(a).

4. The evidence failed to disclose that the respondent's conduct towards complainant in failing to promote the complainant to the position of Head Football Coach was discrimination against the complainant in violation of Section 5(a) of the Act.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MICHAEL D. SAPOVITS,
Complainant

v.

CHESTER-UPLAND SCHOOL DISTRICT,
Respondent

Docket No. E-10108

RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, to wit this day of 1978, upon
consideration of all the evidence presented at the public
hearing in the above captioned matter, and pursuant to the
findings of fact and conclusions of law, the hearing
commissioners recommend to the entire Commission that an
order be entered dismissing the above docketed complaint.

Benjamin S. Loewenstein
Presiding Commissioner

Alvin E. Echols, Jr.
Commissioner

Robert Johnson Smith
Commissioner

C O M M O N W E A L T H O F P E N N S Y L V A N I A
GOVERNOR'S OFFICE

MICHAEL D. SAPOVITS,
Complainant

V.

CHESTER-UPLAND SCHOOL DISTRICT,
Respondent

:
:
:
:
:
:
:
:
:
:

DOCKET NO. E-10108

COMMISSION'S DECISION

AND NOW, to wit this day of , 1978, upon
the recommendation of the public hearing commissioner and
upon all the evidence at the public hearing of this case, and
upon the consideration of the findings of fact and conclusions
of law, the Pennsylvania Human Relations Commission finds and
determines that the respondent's conduct toward complainant
in failing to promote the complainant to the position to Head
Football Coach was not demonstrated to be against the complainant
in violation of Section 5(a) of the Pennsylvania Human Relations
Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §955
(a) (supp. 1974-1975).

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joseph X. Yaffe, Chairperson

ATTEST:

Elizabeth M. Scott, Secretary

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MICHAEL D. SAPOVITS,
Complainant

v.

Docket No. E-10108

CHESTER-UPLAND SCHOOL DISTRICT,
Respondent

FINAL ORDER

AND NOW, to wit, this day of , 1978,
upon consideration of the findings of fact, conclusions of
law, and the Commission's decision and pursuant to Section
9 of the Human Relations Act, 43 P.S. §959, the Pennsylvania
Human Relations Commission hereby

ORDERS:

that the complaint in the above docketed matter be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY:

Joseph X. Yaffe
Chairperson

ATTEST

BY:

Elizabeth M. Scott, Secretary

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MICHAEL D. SAPOVITS,
Complainant

v.

CHESTER-UPLAND SCHOOL DISTRICT,
Respondent

Docket No. E-10108

OPINION

This matter arises on the complaint of Michael D. Sapovits, filed with the Pennsylvania Human Relations Commission alleging that his employer, the Chester-Upland School District, failed to promote him to the position of Head Baseball Coach because of his religion, Jewish.

During 1975, the position of Head Baseball Coach at the respondent's school district became vacant. Eventually, six interviews were scheduled, among them the interview of the complainant and the successful applicant Francis S. Ryan. Shortly thereafter the complainant was informed that he was not chosen for the coaching position for which he had applied. At the public hearing convened in this matter, the complainant established that he had coached baseball for the respondent since 1963. He had been Head Baseball Coach at Smedley Jr. High School from 1966 to 1973 and had also coached basketball

while at Smedley. In 1974 the complainant was transferred to Chester High School where he coached the 10th grade basketball team. Thus, the complainant met his burden of proving that he was minimally qualified for the position in question in that he had a strong background in coaching baseball, albeit at the Jr. High School and 10th grade level. The complainant has met the requirements for making out a prima facie claim under McDonnell Douglas vs. Green, 411 U.S. 792 (1973), cited with approval by the Pennsylvania Supreme Court in General Electric vs. PHRC, 365 A.2d 649 (1976) by showing:

- (i) that he belongs to a minority (protected class);
- (ii) that he applied and was qualified for a job for which the employer was seeking applicants;
- (iii) that, despite his qualifications, he was rejected;
- (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

However, proof of a prima facie claim cannot be equated with an ultimate finding under the Human Relations Act. Indeed the two are quite different as stated recently by the U.S. Supreme Court in Furnco vs. Waters, _____ U.S. _____ (1978):

The method suggested in McDonnell Douglas for pursuing this inquiry, however, was never intended to be rigid, mechanized, or ritualistic. Rather, it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination. A prima facie case under McDonnell Douglas raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors.

The Supreme Court goes on to note that:

- (i) it is apparent that the burden which shifts to the employer is merely that of proving that he based his employment decision on a legitimate consideration and not an illegitimate one such as race.

Clearly, in this case the respondent has articulated and proven a legitimate reason for failure to promote Mr. Sapovits, that being, their assessment that Francis S. Ryan was the superior candidate. The respondents established, during their defense, that the school district had received numerous complaints concerning the complainant's coaching behavior from parents, other coaches, and principals of the school district itself. Further, the respondents established that this information was shared with the Selection Committee and that it formed a basis for their decision to choose Mr. Ryan over the complainant. Also, the respondent's testimony reveals that religion was never considered at the time the Selection Committee made its choice.

The testimony of William H. Polk a member of the Committee which selected Mr. Ryan is indicative of the respondent's defense to the prima facie case of complainant:

Q. During that time that you were principal at Showalter, did you have any opportunity to observe Mr. Sapovits in his coaching capacity?

A. On several occasions.

Q. And can you relate to us what happened during those occasions?

A. Well, it was because of my experience as a coach and athletic director prior to becoming principal that I was concerned about the quality of the athletic program in my school. And I made it a point to be present at all home basketball games and if information came to me concerning conditions that would affect my athletes, I also attended away games. And through the Athletic Director and through coaches I had reports of Mr. Sapovits' unusual behavior on occasions, so I made it a point to observe him. And on one occasion at a basketball game played at Showalter, between Showalter and Smedley, in 1969--

Q. Was Mr. Sapovits a coach at that time?

A. He was Head Basketball Coach. I think his team had a very good record and we thought our team was very good. However, towards the end of the game, because his team was behind, he left the bench as a coach and took a position in the stands as a spectator. And the following spring when our baseball team played Smedley in the park, I made sure that I was present and observed some of the activities, that I did not consider desirable in a coach, conducted by Mr. Sapovits in challenging the calls of the umpire and other demonstrations that I did not think was setting an example for impressionable youths as a coach and as a teacher. (Tr. 155-157)

...

Q. And what was the basis on which you selected, in your own personal choice other applicants over Mr. Sapovits?

A. The overall quality of experience and performance. Chester High School has been suspended from the Pennsylvania Interscholastic Association in 1961 and we were still in the process of reestablishing our position in athletics, to the point where we could build a schedule without travelling to York and Harrisburg for interscholastic games because schools in this area did not wish to play us. And as principal, one of the directives that was given to me was to change the attitude of the students and the faculty from negative to positive, to change the image of the athletic program, and we needed strong mature coaches to set an example for our athletes in order to do this.

Q. And was it your feeling that Mr. Sapovits did not fit into this description as to what was needed as Head Baseball Coach?

A. That's correct. (Tr. 159)

The respondent having proven their defense, the burden of proof shifts back to the complainant to establish that the reasons asserted for the failure to promote complainant are mere pretexts covering up discrimination. The complainant failed to establish that the reasons proffered for the failure

to promote the complainant were pretextual. The only witness presented in rebuttal was the complainant himself who denied only portions of the preceding extensive testimony of respondent's witnesses. For instance, the complainant did not deny that he argued with umpires nor did he deny that he left the bench to sit in the stands when his team was behind as testified to by Mr. Polk.

In light of the extensive testimony presented by the respondent in support of their legitimate and non-discriminatory refusal to promote Michael Sapovits and to chose another more qualified individual, and the concomitant failure of the complainant to present evidence showing these reasons to be pretexts, the Commission finds that the evidence failed to establish that the complainant was discriminated against in violation of Section 5(a) of the Human Relations Act, 43 P.S. §955(a).