

Complaint whereupon the Commission endeavored to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion, as required by Section 9 of the Pennsylvania Human Relations Act, 43 P.S. §959. Conciliation having failed, the Commission caused to be issued a written notice of hearing, together with a copy of the Complaint, and served the same upon the Respondent on April 10, 1976. Pursuant to this notice and as provided in Section 9 of the Pennsylvania Human Relations Act, 43 P.S. §959, a public hearing was convened, on May 19, 1976, before a hearing panel consisting of Commissioner Everett E. Smith, Chairperson of the panel, and Commissioners Mary D. Donovan and Consuelo R. Jordan. James D. Keeney, Esquire, Assistant General Counsel in the Harrisburg Regional Office of the Commission, sat as legal advisor to the hearing panel. Anne Farrer, Esquire, Assistant General Counsel in the Philadelphia Regional Office of the Commission, presented the case on behalf of the Complainant. Richard M. Goldberg, Esquire, represented the Respondent.

Subsequent to receipt of the Notes of Testimony, briefs on behalf of the Complainant and the Respondent were filed with the Commission.

the best qualified candidate, and they thereafter recommended her for appointment by the Board of Trustees. (Stipulations ¶9-10; N.T. 25).

7. At a meeting on February 5, 1973, the Board of Trustees considered and rejected this recommendation and instead chose a male individual, Mr. Robert Loftus, to fill the vacancy. (Stipulation ¶15; N.T. 25, 56, 60-67).

8. At this time, the Board of Trustees consisted of thirteen (13) males and two (2) females; all eight (8) of the Administrators were male; all four (4) "Director" positions on the Student Personnel Staff were held by males; every academic department was headed by a male; and of seventy-nine (79) faculty members, only seven (7) were female. The faculty included seven (7) full professors, all male; twenty-one (21) associate professors, all male; forty-five (45) assistant professors, thirty-eight (38) male and seven (7) female; three (3) instructors, all male; and three (3) technical assistants, all male. Thus, every faculty rank was 100% male except the rank of assistant professors, which was 84% male and 16% female. (Complainant's Ex. 4).

9. At the hearing, the President of the Board of Trustees cited three (3) reasons for the Board's decision to select Mr. Loftus over Dr. Skurnowicz:

- a. Loftus was better qualified to teach the courses in question. (N.T. 61, 75).
- b. Loftus was a resident of Luzerne County. (N.T. 62-63).
- c. Loftus could be paid only \$3,500 whereas Skurnowicz would have to be paid \$4,000. (N.T. 63, 72).

10. In fact, Mr. Loftus was markedly less qualified than Dr. Skurnowicz:

- a. Skurnowicz had a Ph.D. in Modern European History with a specialization in Russian and European History from the University of Wisconsin plus a Master's Degree in History from Penn State University. Loftus had only a Master's Degree in International Affairs from George Washington University. (N.T. 15, 83).

- b. Skurnowicz had taught history at the secondary level for one year; she had been a college teaching assistant in U.S. and Russian History while earning her Master's Degree at Penn State; and she had been a college instructor for one year at Misericordia College, teaching almost exactly the same subjects as were to be taught by the successful candidate for the position in question. Loftus, in contrast, had no teaching experience whatsoever. (Stipulation ¶13; N.T. 15-16, 61).
- c. Skurnowicz had proven ability as a researcher, as evidenced by her Ph.D. degree. Loftus' research experience was limited to a single year as a military intelligence analyst. (N.T. 15, 61).

11. Every member of the faculty serving in the History Department in 1972-73 had prior teaching experience when initially hired. The Board of Trustees' decision to hire someone with no prior teaching experience (Loftus) marked a departure from past practice. (Complainant's Exs. C-7 - C-11).

12. Luzerne County residency is not a requirement for employment at the Respondent College. Both before and after Dr. Skurnowicz's rejection, residents of other counties were hired by the College. (Stipulation ¶18; N.T. 67, 102-03).

13. The evidence does not support the claim that Skurnowicz would have to be paid \$4,000 whereas Loftus could be hired for only \$3,500. While the College did produce an outdated (1969) salary scale (Respondent's Brief, Exhibit "A") showing the Step 1 Instructor's salary as \$7,000 and the Step 1 Assistant Professor's salary as \$8,000, the document makes no mention of salary levels for temporary positions, and the Chairman of the Board of Trustees testified that he was uncertain whether this scale applied to temporary positions, and that temporary employees are usually considered in a manner different from full-time faculty members. (N.T. 69-71, 90, 95). Moreover, Dr. Skurnowicz

would have accepted \$3,500, but it was never offered nor discussed with her. (N.T. 104).

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joan S. Skurnowicz,
Complainant

vs.

Docket No. E-5585

Board of Trustees, Luzerne
County Community College,
Dr. James Toole, Board Chairman,
Respondent

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over both of the parties and the subject matter of this Complaint, pursuant to Section 9 of the Pennsylvania Human Relations Act, 43 P.S. §959.
2. Respondent received proper notice of this Complaint and proper notice and opportunity for public hearing as required by Section 9 of the Pennsylvania Human Relations Act, 43 P.S. §959.
3. Respondent, Luzerne County Community College, is an "employer" within the meaning of Sections 4(b) and 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §954(b) and 955(a).
4. Complainant, Joan S. Skurnowicz, is an "individual" within the meaning of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §955(a).
5. Respondent's action in refusing to hire Complainant constituted a refusal to hire or a bar to employment because of the sex of an individual, and thus constitutes a violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §955(a).

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

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Dr. James Toole, Board Chairman,
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OPINION

At the hearing, the evidence introduced on behalf of the Complainant made out a clear prima facie case of sex discrimination. Complainant was shown to be a member of a class (female) which has suffered wide-spread discrimination in the academic world in general and at Respondent College in particular, as evidenced, in part, by low or non-existent representation at all levels of the Respondent's work force. She was shown to have been available and to have made timely and proper application for the position, and to have been fully qualified. It was undisputed that the job was given to a male.

These facts were sufficient to shift the burden to the Respondent to show a legitimate business reason for hiring the male rather than the female applicant. McDonnell-Douglas Corp. vs. Green, 411 U.S. 792 (1973).

Respondent came forward with three reasons for preferring the male over the female:

- (1) The male was better qualified.
- (2) The male was a Luzerne County resident.
- (3) The male could be paid less than the female.

After carefully examining the Record, we have concluded that each of these reasons was no more than a pretext for illegal discrimination. The first is so plainly pretextual that it strains the imagination: It is argued that Dr. Skurnowicz, with a Ph.D. and several years of teaching experience, was "less qualified" than Mr. Loftus, who had only a Master's Degree and no teaching experience. The enormous respect accorded both to the Ph.D. degree and to teaching experience throughout the academic world is indisputable, and Respondent's own salary scale shows that they are the only factors considered for establishing academic rank at Respondent College. Yet, here, where a woman has both and a man has neither, the College Trustees unabashedly maintain that neither is really of much importance, and the real test of a good teacher is something else altogether (which the man happens to possess).

The second explanation offered was less spurious but the fact that non-residents were hired both before and after the Complainant was rejected, together with the admission that the alleged residency policy was never put in writing and never mentioned to the Complainant, leads us to conclude that this explanation also was merely a convenient pretext for refusal to hire an otherwise eminently well-qualified female.

The final explanation offered by the Respondent is similarly unpersuasive. Even though Respondent now relies on a written salary schedule to prove that Dr. Skurnowicz would have been entitled to a higher salary than Mr. Loftus under the applicable collective bargaining agreement, the President of the Board of Trustees (which made the decision to reject Skurnowicz) testified at the Hearing that he was not sure whether the agreement would apply to a temporary position at all.

And even if it did apply, Respondent has still failed to carry the burden of showing how the agreement would have prevented Respondent from paying Dr. Skurnowicz less if she was willing to take less, as she testified she was. This reason, too, must therefore be dismissed as a mere pretext.

We conclude, therefore, that Complainant was not hired because she was female. Accordingly, full backpay for the second semester of the 1972-73 school year must be awarded in accordance with the rationale of Albemarle vs. Moody, _____ U.S. _____, 95 S.Ct. 2362 (1975).

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RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, this 22nd day of August, 1976, upon consideration of the entire Record in this matter, including the Complaint, the Notes of Testimony and Exhibits adduced at the public hearing, and the briefs filed on behalf of the Complainant and the Respondent, the Hearing Commissioners hereby adopt the attached as their proposed History of the Case, Findings of Fact, Conclusions of Law, Opinion, and Final Order, and hereby recommend that the same be finally adopted and issued by the Pennsylvania Human Relations Commission.



Everett E. Smith
Chairperson, Hearing Panel

Mary Dennis Donovan, CSJ
Hearing Commissioner



Consuelo R. Jordan
Hearing Commissioner

be the only statement made to prospective employers of Dr. Skurnowicz

4. Respondent shall offer Complainant the first available position for which she is reasonably qualified by virtue of her education and experience.

5. Respondent is hereby enjoined from retaliating against any group or individual who may have assisted or encouraged Dr. Skurnowicz to file this Complaint.


PENNSYLVANIA HUMAN RELATIONS COMMISSION

By:


Joseph X. Yaffe, Chairperson

ATTEST:

By:


Elizabeth M. Scott, Secretary