COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA, COMMUNTIY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

HISTORY OF THE CASE
FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
RECOMMENDATION OF HEARING COMMISSIONERS
COMMISSION'S DECISION
FINAL ORDER

HISTORY OF THE CASE

This case involves a Complaint filed with the Pennsylvania Human Relations Commission ("Commission") on January 6, 1977, as amended June 17, 1977 by Mariana Ortiz ("Complainant") against Hahnemann Medical College and Hospital of Philadelphia, Community Mental Health/Mental Retardation Center ("Respondent"). The Complainant alleged that Respondent denied her disability benefits in connection with her pregnancy and childbirth because of her sex.

An investigation into the allegations of the Complaint was made by representatives of the Commission, and a determination

was made that probable cause existed to credit the allegations. Thereupon, the Commission endeavored to eliminate the unlawful practice complained of by conference, conciliation, and persuasion. These endeavors were unsuccessful and the Commission approved the case for a public hearing on September 25, 1977.

The panel named to hear the case included Benjamin S. Loewenstein, Chairperson of the Panel, Robert Johnson Smith, Commissioner, E. E. Smith, Commissioner, and John E. Benjes, Esquire, Legal Advisor to the Panel.

The right to a public hearing was waived in all parties and the case was submitted to the Panel on the basis of stipulations of facts and exhibits. After submission of the stipulations of facts and exhibits to the Panel, both parties provided briefs on the legal issues involved in this case.

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

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA, COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

FINDINGS OF FACT

1. The Complainant herein is Ms. Mariana Ortiz, an adult female residing at 178 West Lehigh Avenue, Philadelphia, Pennsylvania, who has been an employee of the Hahnemann Medical College and Hospital of Philadelphia, Community Mental Health/ Mental Retardation Center as a secretary from December 2, 1974 to the present time. (Stipulation ¶1).

2. The Respondent in this case is Hahnemann Medical College and Hospital of Philadelphia, Community Mental Health/ Mental Retardation Center, a Pennsylvania employer located at 314 North Broad Street, Philadelphia, Pennsylvania. (Stipulation ¶2).

3. By letter dated December 30, 1976, the Complainant requested of her employer, in writing, whether she would be eligible for disability benefits during her maternity leave. (Stipulation ¶3, Exhibit A).

4. By letter dated January 5, 1977, the Complainant was informed by Mr. Thomas K. Kaney, the Assistant Hospital Administrator, that her employer made no provision for disability benefits during maternity leave. (Stipulation ¶4; Exhibit B).

5. By letter dated March 14, 1977, Mr. Ascher S. Barmish, Associate Vice President, Employee and Labor Relations for Respondent employer, enclosed a copy of the Respondent's long and short term disability plans and indicated that the exclusion of pregnancy from the long term disability coverage was also followed for the short term disability plan which is self-insured. (Stipulation ¶5; Exhibits C, D and E).

6. The aforementioned plans in Exhibits D and E are the disability plans which were in effect at all times at issue in this complaint. Both plans exclude disability benefits if that disability is the result of pregnancy, childbirth, or complications of pregnancy. (Stipulation ¶6; Exhibits D and E).

7. The Respondent's short term disability program for its employees provides that the first five (5) consecutive days of work missed because of illness or disability are charged to the employee's unused sick leave allowance or unused personal holidays or vacation time. On the sixth day, the employee goes on the Respondent's self-insured Short Term Disability Program and receives 100% of his/her salary for a number of days determined by the employee's length of service. If the disability continues beyond four (4) consecutive weeks, the first five (5)

days of absence are paid retroactively under the program and any sick leave, personal holiday or vacation time that had been charged for any portion of those first five days is restored to the employee's record. (Stipulation ¶7).

8. The Complainant worked up to January 14, 1977, the last work day before her due date of January 16, 1977. (Stipulation ¶8).

9. By letter dated February 21, 1977, the Complainant's attending obstetrician, Dr. Homi B. Kotwal, M.D., indicated that the Complainant delivered her child on February 4, 1977 and would receive post-partum care for a period of six (6) weeks following that date. There was no disability prior to the date of delivery. (Stipulation ¶9; Exhibit F).

10. During the time of her maternity leave, the Complainant used five (5) sick days (January 17, 1977 thru January 21, 1977), four (4) personal holidays (January 24, 1977 thru January 27, 1977), and twelve (12) vacation days (January 28, 1977 thru February 14, 1977). The Complainant used a total of twenty-one (21) accrued benefit days. (Stipulation ¶10).

11. The Complainant began her non-paid maternity leave of absence on February 15, 1977, and returned to work on March 21, 1977. She remained in her non-paid status during her period of actual disability up until she returned to her job. Her total non-paid time was twenty-four (24) days. (Stipulation ¶11).

12. By letter dated March 31, 1977, Mr. Ray M. Vento,

the Respondent Manager of Employment & Affirmative Action sent copies of the Respondent's Short Term Disability Chart and the Respondent's Leave of Absence Policy to the Commission. (Stipulation ¶12; Exhibits G, H and I).

13. In accordance with the Respondent's Short Term Disability Chart, the Complainant's date of hire being December 2, 1974, she would have been entitled to twenty (20) days of 100% of her salary under the Respondent's Short Term Disability Plan had her disability not been pregnancy or childbirth related. In addition, five (5) of the accrued benefit days she had to use would have been returned to her. (Stipulation ¶13, Exhibit H).

14. The Complainant's actual salary loss for the twenty (20) days amounted to Six Hundred Twenty-Nine Dollars and Sixteen Cents ($629.16). (Stipulation ¶14).

15. Respondent's disability benefit plans exclude disabilities: resulting from suicide or intentionally self-inflicted injuries; resulting from commission or attempted commission of assault, battery or felony; resulting from an act of war; resulting from pregnancy, childbirth or complications or pregnancy. (Exhibit D).

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over both 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, Hahnemann Medical College and Hospital of Philadelphia Community Mental Health/Mental Retardation Center, 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, Mariana Ortiz, is an "individual" within the meaning of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §955(a).

5. The Respondent's failure to provide coverage for the pregnancy related disability of the complainant constitutes

discrimination in the terms, conditions and privileges of her employment, because of her sex, in violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §955(a).

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA, COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

OPINION

This matter arises on the complaint of Mariana Ortiz filed with the Commission January 6, 1977, as amended June 17, 1977, alleging that her employer, Hahnemann Medical College and Hospital of Philadelphia, Community Mental Health/Mental Retardation Center, discriminated against her because of her sex, in violation of Section 5(a) of the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. §955(a).[1]

The Complainant asked the Respondent Hospital to inform her if she would be eligible to claim disability benefits during a portion of her maternity leave. The Short Term Disability Plan ("STD") of Respondent provides in pertinent part:

> 1. Commencing January 1, 1973 S.T.D. provides benefits equal to 100% current base salary for a confirmed illness or injury of six

---

1. Act of October 27, 1955, P.L. 744, as amended.

(6) or more consecutive scheduled work days up to the time limitations set forth in the chart below.[2]

3. If the disability continues beyond four (4) consecutive weeks, the first five (5) days of absence are paid retroactively under the Short Term Disability Program. Any sick leave, personal holiday or vacation time that has been charged for any portion of those first five (5) days is restored to the employee's record.

While not explicitly precluding coverage of pregnancy related disabilities, the STD was operated in conformity with the exclusions specified in Respondent Hospital's Long Term Disability Income Insurance Policy. The pertinent part of said policy is:

Exclusions: Monthly Income Benefits will not be paid for any disability or loss:

(c) resulting from pregnancy, childbirth or complications of pregnancy.

Thus, Ms. Ortiz was informed by the Respondent that there were no provisions for disability benefits during maternity leaves. The Complainant went on a maternity leave January 14, 1977 (last work day before her due date), utilized 21 accrued benefit days, and was then placed on non-paid status during the rest of her period of disability until her return to work March 21, 1977.

The disability program of Respondent hospital is in

---

2. On the date of the disability suffered by Complainant in this case, she was entitled to 20 days of benefits at 100% of salary; Stipulation ¶14, Exhibit H.

violation of Section 5(a) of the PHRA, 43 P.S. §955(a) which declares that:

> It shall be an unlawful discriminatory practice unless based upon a bona fide occupational qualification . . . .
>
> (a) For any employer because of the . . . sex . . . of any individual to . . . discriminate against such individual with respect to . . . terms, conditions or privileges of employment . . . .

The obligations of employers in this area are spelled out in this Commission's regulations which provide:

> Temporary disability due to pregnancy or childbirth. Written and unwritten employment practices and policies regarding job benefits and job security including, but not limited to, commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities. 16 Pa. Code §41.103(a).

The holding of the Commonwealth Court in Anderson v. Upper Bucks Area Vocational-Technical School, 30 Pa. Cmwlth. Ct. 103, 373 A.2d 126 (1977), involving essentially similar facts, is dispositive of this matter. The Court in Anderson, basing its decision on well established Pennsylvania case law[3] ruled that:

---

3. Cerra v. East Stroudsburg Area School District, 450 Pa. 207, 299 A.2d 277 (1973); Leechburg Area School District v. Human Relations Commission, 19 Pa. Cmwlth. Ct. 614, 339 A.2d 550 (1975); Freeport Area School District v. Pennsylvania Human Relations Commission, 18 Pa. Cmwlth. Ct. 400, 335 A.2d 873 (1975).

> . . . the appellant's practice of excluding from disability coverage, a disability unique to women, violates Section 5(a) of the PHRA.
>
> 30 Pa. Cmwlth. Ct. at 113, 373 A.2d at 130.

The Court also held that the cases of Geduldig v. Aiello, 417 U.S. 484 (1974) and General Electric v. Gilbert, 429 U.S. 125 (1976) were not binding on its construction of the PHRA, in that Title VII expressly provides for more comprehensive civil rights statutes.[4] Courts in other jurisdictions have also held that the decisions of the U.S. Supreme Court are not binding on the statutory construction of a state civil rights statute by a state tribunal.[5]

The Respondent Hospital seeks to have this Commission carve out an exception to the holding of the Anderson case for those employers in the Commonwealth which receive significant amounts of federal funding. It is argued that because this Respondent receives federal appropriations (with the corresponding commitment to follow federal laws, regulations and guidelines) state law is inapplicable. While it cannot be denied that this Respondent must follow all federal laws, regulations and guidelines, it is the holding of this Commission, consistent with the Anderson case, that these

---

4. U.S.C. §2000e-7; 42 U.S.C. 2000h-4.
5. Ray-O-Vac v. ILHR Department, 70 Wis.2d 919, 236 N.W.2d 909 (Sup. Ct. 1975); Goodyear Tire and Rubber Company v. ILHR Department, ___ Wis.2d ___, ___ N.W.2d ___ (Wis. Cir. Ct., Feb. 7, 1978); Brooklyn Union Gas Co. v. N.Y. Human Rights Appeal Board, 41 N.Y.2d 84, 359 N.E.2d 393 (Ct. App. 1976).

federal laws, regulations and guidelines do not set legally protected boundaries within which an employer may operate without regard to more comprehensive state law.

The Respondent also seeks to exempt itself from the operation of state law because the labor contracts negotiated with its employees are subject to the National Taft Hartley Act. NLRA[6] does not address the question of its preemptive effect on state regulations and this Commission refuses to infer a preemptive effect of a federal statutory scheme in a related area of law when Congress has expressly provided for more comprehensive state protection in the area of civil rights in Title VII.[7]

Respondent's last defense to the application of the Human Relations Act to their disability plan is that the Anderson case did not take cost considerations into account as mandated by General Electric Corp. v. Pa. Human Relations Commission, 365 A.2d 649 (1976). However, General Electric Corp. v. Pa. Human Relations Commission dealt with the issue of cost consideration in the context of construing the "best able" proviso of Section 5(a) of the Pennsylvania Human Relations Act; indicating that because of the need for efficiency, an employer would always be allowed to choose the most qualified applicant. Thus, the

---

6. 29 U.S.C. §151 (1970), et seq.
7. See, Goodyear Tire and Rubber Company v. ILHR Dept., supra.

cost considerations in question in the General Electric Corp. v. Pa. Human Relations Commission case are inapplicable to both the holding of the Anderson case and the facts in this matter. Presumably, the cost considerations urged upon this Commission are those associated with including coverage for pregnancy related disability within its disability plan. It is this Commission's view that the Respondent Hospital cannot avoid the Human Relations Act and regulations and the holding of Anderson by asserting that to do so would involve added cost.

Accordingly, the Commission enters the attached Final Order.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA, COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

COMMISSION'S DECISION

AND NOW, this 1st day of May, 1978, upon consideration of the full Record in this case, and upon consideration of the foregoing Recommendation of the Hearing Commissioners, the Pennsylvania Human Relations Commission hereby adopts the foregoing History of the Case, Findings of Fact, Conclusions of Law and Opinion.

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

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

FINAL ORDER

AND NOW, this 1st day of May, 1978, the Pennsylvania Human Relations Commission hereby:

ORDERS

1. Respondent shall cease and desist from refusing to provide coverage for pregnancy related disabilities under its disability benefit plans.

2. Respondent shall adopt disability benefit plans in conformity with the Pennsylvania Human Relations Commission's regulations, 16 Pa. Code §41.101, et seq.

3. Respondent shall immediately inform all present and future employees of its new policy regarding pregnancy related

disabilities. In this regard, Respondent shall incorporate its new policy regarding pregnancy related disabilities in all written policies regarding job benefits.

4. Respondent shall pay Complainant Six Hundred Twenty-Nine Dollars and Sixteen Cents ($629.16) plus six percent interest per annum (from March 21, 1977 to date of payment) which represents payment for her actual salary loss for twenty (20) days of her disability.

5. Respondent shall restore to Complainant five (5) of the twelve (12) vacation days used during her pregnancy related disability.

6. Respondent shall report the manner of compliance with this order within thirty (30) days of its issuance.

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 A. WELDON, Complainant	:	
v.	:	Docket No. E-8725P
PENNSYLVANIA LIQUOR CONTROL BOARD and PENNSYLVANIA CIVIL SERVICE COMMISSION, Respondents	:	
CAROLYN L. KELLY, Complainant	:	
v.	:	Docket No. E-8765P
PENNSYLVANIA LIQUOR CONTROL BOARD and PENNSYLVANIA CIVIL SERVICE COMMISSION, Respondents	:	

HISTORY OF THE CASE
FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
RECOMMENDATION OF HEARING COMMISSIONERS
COMMISSION'S DECISION
FINAL ORDER

HISTORY OF THE CASE

This matter involves Complaints filed with the Pennsylvania Human Relations Commission ("Commission") on April 3, 1975, as amended, October 20, 1975, by Michael A. Weldon ("Complainant") and on April 11, 1975, as amended, October 27, 1975, by Carolyn L.

Kelly ("Complainant") against the Pennsylvania Liquor Control Board ("Respondent"), and the Pennsylvania Civil Service Commission ("Respondent"). The Complaints alleged that the Respondents terminated Complainants based on a test which had a racially disparate impact upon blacks.

An investigation into the allegations of the Complaints was made by representatives of the Commission and a determination was made that probable cause existed to credit the allegations. Thereupon, the Commission endeavored to eliminate the unlawful practice complained of by conference, conciliation and persuasion. These endeavors were unsuccessful and the Commission approved the cases for public hearing on February 27, 1977. The panel named to hear the case included: Alvin E. Echols, Chairperson of the Panel, Doris M. Leader, Hearing Commissioner, and E. E. Smith, Hearing Commissioner. John E. Benjes, Assistant General Counsel, served as Legal Advisor to the Hearing Panel. James D. Keeney, Assistant General Counsel of the Commission presented the case on behalf of the Complainants. James P. Deeley, Assistant Attorney General, represented the Liquor Control Board and Barbara Raup, Assistant Attorney General, represented the Civil Service Commission.

Public hearings were held on November 14, 15, 16, 17, 18, 1977, Harrisburg, Pennsylvania, and were conducted at all times before the three duly appointed Hearing Commissioners pursuant to Section 9 of the Pennsylvania Human Relations Act ("Act"). By stipulation of the parties and by order of the Hearing Panel, a deposition of Roland T. Ramsey, Ph.D, was taken on December 1,

1977, and made part of the record with the same effect as if Dr. Ramsey had appeared personally before the Hearing Panel.

FINDINGS OF FACT

I. JURISDICTION

1. Complainant, Carolyn L. Kelly (a/k/a Carolyn Kelly Ward) is a Black female natural person residing at all times material at 28 Frances Avenue, Ambler, Pennsylvania. (Complaint E-8765P; Amended Complaint E-8765P; T. 132).

2. Complainant, Michael A. Weldon, is a Black male natural person, residing at 1318 Williams Street, Harrisburg, Pennsylvania, at the time this action initially arose. At the time his Amended Complaint was filed, Weldon was residing at 7 Oaks Apartments, Apartment #E, 19162 East Admiral Boulevard, Tulsa, Oklahoma 74116. At the time of hearing of this matter, Weldon was again residing at 1318 Williams Street, Harrisburg, Pa. (Complaint E-8725P; Amended Complaint E-8725P, T. 112).

3. The Pennsylvania Liquor Control Board (PLCB) is a Board of the Commonwealth of Pennsylvania, organized and existing pursuant to the laws thereof, with its principal offices at the Northwest Office Building, Harrisburg, Pennsylvania 17125.

4. The Pennsylvania Civil Service Commission (PCSC) is a Commission of the Commonwealth of Pennsylvania, organized and existing pursuant to the laws thereof, with its principal offices at the South Office Building, P. O. Box 569, Harrisburg, Pennsylvania 17120.

5. A Public Hearing was held in the cases designated as Docket Nos. E-8725P and E-8765P on November 14, 15, 16, 17 and 18, 1977, in Harrisburg. This Public Hearing was conducted at all times before three duly appointed Hearing Commissioners pursuant to Section 9 of the Pennsylvania Human Relations Act, Act of October 27, 1955, as amended, 43 P.L. §951, et seq. (hereinafter "the Act"), and 16 Pa. Code §42.101, et seq. A daily copy stenographic transcript of the proceedings was made. By stipulation of the parties, and by Order of the Hearing Panel, a deposition of Roland T. Ramsey, Ph.D., was taken on December 1, 1977, and made part of the record with the same effect as if Dr. Ramsey had appeared personally before the Hearing Panel. (T. 3-6; Ramsey Deposition, 1-34).

II. LIABILITY

A. Background

6. Entry into the Enforcement Officer I (EO-I) positions is ordinarily limited to persons who have served as Enforcement Officer Trainee (EOT). Entry into Enforcement Officer II (EO-II) positions is similarly limited to persons who have first served in lower EO positions. (T. 101, 108).

B. The Provisional Class

7. In September, 1974, the Liquor Control Board selected a group of fifteen (15) persons who thereupon became EOTs (hereinafter, the provisional class). Each of these persons was appointed on a provisional basis pursuant to the practice of PCSC to, on occasion, allow provisional classes, and in this instance because the Executive Director of the PCSC was unable to certify a list of eligible candidates for appointment on a regular probationary basis at that time. The appointments were made with the understanding and upon the condition that each of the provisional appointees must successfully compete on the next examination to be administered by the PCSC for the job classification of EOT in order to be retained in that classification. The two individual Complainants, Michael A. Weldon and Carolyn L. Kelly, were among the fifteen (15) provisional appointees comprising the provisional class. (Stip. ¶7; T. 44-50).

8. From September 8, 1974 onward, each member of the provisional class was paid at the same rate as that established for regular EOT employees. The provisionals also received the same benefits as probationary employees, and received the same training and performed the same job duties. (T. 43-44; 98-100).

9. The provisional class received approximately four (4) weeks of classroom instruction in Pittsburgh, and subsequently went to Harrisburg and other locations where its members began to perform substantially the same duties as EO-Is, primarily involving under-

cover surveillance of licensed and unlicensed liquor establishments. (T. 97-100, 137).

10. A few weeks after beginning their classroom instruction, each of the members of the provisional class sat for the written test portion of the PCSC examination for PLCB EOT known as Test 7050. Approximately 520 applicants for regular probationary positions also took this written test at the same time at various locations throughout the Commonwealth. (Stip. ¶7; T. 50, 122-23, 123).

11. The results of Test 7050 did not become available until several months later. Meanwhile, the provisional class continued to perform substantially the same duties as EO-Is. During this period, Complainants Weldon and Kelly were evaluated by their superiors and found to be good employees who were successfully performing their job duties. (T. 50-51, 100).

C. Termination of Weldon and Kelly

12. After the Complainants had satisfactorily completed their classroom training and satisfactorily performed their job duties, they were terminated by action of the PLCB solely due to their respective scores of 55 and 57 on Test 7050, the written test portion of the PCSC examination for PLCB EOT. The passing point had been finally set at 60, see ¶23, infra. (T. 56, 60, 113, 133; Stip. ¶8, 9, 11, 12).

D. Adverse Impact of Test 7050

13. Civil Service Test 7050 had a racially disparate impact on all blacks tested, including all regular and provisional applicants. (T. 554-55)[1]

a. 523 test takers identified their race; Of these, 96 (17.9%) were black and 418 (78.1%) were white. [Stip. ¶1(a), 1(b)].

b. 84 percent of the whites who took Test 7050 achieved the passing score of 60, while only 40 percent of the blacks passed. This difference in overall pass rates between blacks and whites is statistically significant well below the 5 percent level. The probability that the results of Test 7050 were a product of chance rather than a statistically significant event having a disparate impact adverse to blacks is virtually nonexistent. The statistical pattern disclosed resulting from Test 7050 would occur by chance one time in every quintillion, or 1 in 100,000,000,000,000,000. It is substantially the same as the probability of a dealer dealing himself three straight royal flushes in a row in an honest game of poker. [T. 21; Stip ¶1(g), 1(h)].

c. The average score of the whites tested was 76.36 while the average score of the blacks tested was 54.50.

[1] Complainants' expert witness, Dr. Bernard R. Siskin, is the Chairman of the Department of Statistics at Temple University, has authored numerous publications and has been retained by both plaintiffs and defendants in several cases involving employment discrimination. (T-7)

d. The overall passing rate of tested whites was 2.1 times greater than the overall passing rates of blacks; thus, the pass rate of blacks was less than 80 percent of the pass rate of whites. (T. 21, 23).

e. The difference between black and white pass rates remains statistically significant even if the comparison is made of the pass rate of "blacks with college education" versus "whites with college education," or "blacks with some college" versus "whites with some college," or "blacks with high school education" versus "whites with high school education." The pass rate of blacks is less than 80 percent of the pass rate of whites in every comparison. This difference in pass rates cannot be attributed to mere chance, the only conclusion being that Civil Service Test 7050 had a racially disparate impact adverse to blacks. [T. 22-24; Stip. ¶1(g), 1(i), 1(l), 1(m), 1(n), 1(o), 1(p), 1(r), 1(s), 1(t)].

14. As a result of Test 7050, the two Complainants were eliminated from further consideration while none of the white provisionals were so eliminated. (C-2, C-3; T. 151-70).

15. The impact of Test 7050 on black provisionals is statistically significant and was part of an overall process through which all four (4) of the white provisionals were retained while only two (2) of the original nine (9) blacks were retained. (C-2, C-3; T. 151-70, 573).

E. Special Consideration Given to Provisionals in Selection of Regular Probationary EOTs

16. The Complainants Weldon and Kelly were eliminated from consideration despite the preference given provisionals as opposed to regular applicants for the position of regular probationary EOT.

a. After the passing point of Test 7050 was finally set at 60, members of the provisional class and all other regular applicants who passed, took the oral and visual tests and were then given a composite score used in making the final selections for regular probationary employees. (T. 51, 71-77).

b. Through the use of "Selective Certification" and the "Rule of Three", the Liquor Control Board was able to appoint each of the remaining provisional employees when the final selection of employees was made. "Selective Certification" is a procedure by which the PCSC certifies separate lists of minorities, women and majority employees. The "Rule of Three" 71 P.S. §741.601 (Supp. 1976), allows the appointing agency, in this case LCB, to choose any one of the top three candidates on its employment lists. (T. 51, 68-77).

c. This preferential treatment was for the purpose of avoiding the necessity of terminating satisfactory provisional employees and the concomitant waste of resources spent on their training. (T. 71-77).

d. Because of the special consideration given to provisionals, members of the provisional class had a substantially higher probability of being selected as regular probationary employees than did other non-provisionals who took the same examination. The selection rate for provisionals was fifteen times as high as the selection rate for non-provisionals. White provisionals had a statistically significant higher probability of being selected than white non-provisionals and similarly, black provisionals had a higher probability of being selected than black non-provisionals. However, white provisionals had a probability of being selected as regular probationary EOT of 100 percent while black provisionals had a probability of being selected of 22.2 percent. [T. 550-558; C-15(e)].

e. For the reasons set forth in §a, b, c, d, infra., the overall selection process by which members of the provisional class were chosen to become regular probationary EOTs was, in fact, a separate process from the process by which regular applicants were selected for regular probationary EOT positions. As a matter of statistical methodology, it would be improper to lump the results of provisional and regular applicant selection together for the purpose of determining whether the selection process for

provisional applicants, in particular Complainants Weldon and Kelly, had a disparate impact on blacks. (T. 35-39, 548-98).

17. Overall, 535 candidates were considered (including provisional and regular applicants). Of those who identified their race, 418 or 79.9 percent were white and 19 or 18.4 percent were black. Of those eventually hired (including the four white provisionals and two of the original black provisionals), 19 or 70.4 percent were white, while 6 or 22 percent were black. [2]

F. Test 7050 Not Proven to be Job Related

18. The Respondents failed to present any validity study of Test 7050 and failed to show that Test 7050 was a job-related or a valid predictor of job success based on either the standards of the American Psychological Association, the Human Relations Guidelines or any other recognized standard in the field of test validation. There are three recognized methods of proving validity; criterion-related, content or construct validity.

a. Criterion-related validity is an empirical showing that there is a relationship between scores on the selection device and job performance. No criterion-related validity study has ever been made of Test 7050. Therefore, Test 7050 has not been shown to be criterion valid. (Stip. ¶13; T. 349-50, 475, 618, 627; C-16, C-17).

[2]Dr. Siskin testified that, given preferential treatment of provisionals, 44 percent of those finally selected by LCB should have been black.

b. Content validity is the showing that there is a direct correspondence between the behavior required by the test and the behavior required by the job. Demonstration of content validity requires, among other things, a proper job analysis of the behaviors required in performing the job duties. The job analysis conducted by the PCSC analyzed the job of Enforcement Officer Trainee (EOT), while attempting to construct a test to predict future job performance in the position of Enforcement Officer (EO), and was inadequate in other respects as well, see ¶19, 20, infra. Moreover, the nature of the items of Test 7050 itself was such that content validation was an improper strategy by which to attempt validation of all but one portion of the test. Items such as "the ability to learn the principles and methods of accounting, investigation and law enforcement" are constructs which can only be measured through a construct validation strategy. Thus, no part of Test 7050 was shown to be content valid. (T. 618, 627-28; Ramsey Deposition 21; C-15, C-17).

c. Construct validity is the showing that a particular defined psychological construct is, in fact, measured by the test and is important to the performance

of a function of the job. Like content validation, construct validation requires a proper job analysis. Many portions of Test 7050 could only be validated, if at all, as constructs. They attempt to measure such things as "the ability to learn," however, no proper demonstration of construct validity was made for any part of Test 7050. (T. 349-50, 618-19, 627-28; C-16, C-17).

19. The job analysis conducted by the Civil Service Commission failed to meet the standards of the Commission in the following respects in the opinion of Complainants' expert witness, Dr. Richard S. Barrett.[3]

a. The job analysis did not adequately describe the job. (T. 627).

b. The job analysis was for the position of Enforcement Officer Trainee and not Enforcement Officer. (T. 672).

20. The job analysis conducted by the Civil Service Commission failed to meet the standards of the profession in the opinion of Roland A. Ramsey, Ph.D., an expert in the field, in fourteen (14) specific ways. (C-16), these faults included, among others:

[3]Dr. Barrett was an Assistant and then Associate Professor of Psychology and Management Science at New York University for seven years and Professor of Management Science at Stevens Institute of Technology for four years, is a member of a number of professional societies, and has testified in several cases involving selection procedures and validation of selection procedures, including Griggs v. Duke Power, 401 U.S. 424 (1971) and Moody v. Albemarle Paper Co., 422 U.S. 407 (1975).

a. Examples of work performed are not in sufficient detail. (C-17).

b. Data is based on interview only. (C-17).

c. There are no functional job descriptions. (C-17).

21. Test 7050 was not shown to be either content or construct valid generally (T. 636, 675) and for the following specific reasons in Professor Barrett's expert opinion:

a. No adequate job analysis had been done by Respondent. (T. 627-28).

b. Even given the inadequate job analysis, a content validity study was an inappropriate strategy to validate the items on the job descriptions. The items in question were constructs which could only be validated, if at all, through a construct validity study. (T. 628).

c. One portion of Test 7050 involved identification of synonyms. Even if words used were directly related to job functions (which was not shown), this portion of the test would not be content valid because persons were expected to receive training in which relevant terminology would be learned. (T. 630-31; C-13).

d. Another portion of Test 7050 involved making analogies. Since the making of analogies was not found to be required by the job, this portion of the test could only be valid, if at all, as a construct. It

involves a type of verbal reasoning not directly used by people performing the Enforcement Officer job duties. It presumes that people who have the ill-defined construct of ability to perform such verbal reasoning will be better employees, but no evidence supporting that presumption was offered. (T. 333-34, 631; C-13).

e. A similar problem exists with a second set of verbal reasoning questions which included questions such as, "(blank) is to prison as Louvre is to (blank)," with the correct answers being "Bastille" and "museum." This particular test item presumes not only that a certain kind of reasoning is important for work at a particular level, but also assumes that a certain level of sophistication in French history and French language has a similar utility. No evidence was presented to support these presumptions. (T. 334-37, 631-32; C-13).

f. Another selection of Test 7050 contained two types of questions, one of which required the examinee to select from four sentences the one which expressed a thought most clearly. No evidence was offered to support the assumption that this type of item is a good indicator of how well a person writes. (T. 632; C-13).

g. Another section of Test 7050 required the examinee to fill in blank spaces in an outline. No evidence was presented to show that the job content includes filling in blank spaces in outlines, nor that this type of item demonstrates the psychological construct of "ability to organize the type of reports which must be written by a PLCB EOT." (T. 632-33; C-13).

h. Another section of Test 7050 purported to measure reading comprehension; the examinee was expected to pick out one out of five alternatives which best expressed something that was stated in a paragraph appearing above. PCSC personnel testified that this portion of the test was intended to measure ability to read at a high school level. The Respondents presented no competent evidence that this portion of the test does, in fact, measure that level or any other particular level; nor did they present any evidence tending to show that this portion of the test serves any purpose in light of the fact that all persons taking the test were required to have a high school diploma. (T. 633; C-13).

i. The final portion of Test 7050 involved arithmetical computations. This portion of the test was relevant, if at all, to the auditing duties of a PLCB EO. The evidence presented with respect to these duties established only that they involved something

less complicated than what a certified public accountant does, and possibly more complicated than balancing one's checkbook. In the absence of a more detailed description and analysis of the actual job duties, it is impossible to decide whether ability to solve simple arithmetical problems without a calculator is helpful in predicting whether a person can do the job duties. Moreover, since some PLCB EOs do auditing work almost exclusively and others do very little, this section would be of limited value as an undifferentiated selection technique even if it had been shown to be related to auditing duties. (T. 348-49, 633-34; C-13).

22. Roland A. Ramsey, Ph.D.,[4] was originally retained by Respondent PCSC to evaluate Test 7050. He was asked to evaluate and critique the test and the PCSC examination plan summary, and then wrote a report in which he itemized fourteen specific faults related to the job analysis alone and made numerous additional specific criticisms. He then examined Richard Barrett's report (C-16) and concluded: "My opinion is that Richard Barrett's report is accurate. In any event, the Civil Service Commission appears not to have established job relatedness in the face of substantial adverse impact," (Ramsey Deposition 16; C-17; R-14).

[4]Dr. Ramsey is a consultant in the field of Personnel Psychology, has conducted validation studies of employment selection procedures for various organizations and has testified as an expert witness in a number of lawsuits involving employee selection. (Ramsey Deposition 3).

23. The PCSC failed to adequately demonstrate the standard and reasoning underlying its final choice of 60 as the passing point.

a. Subsequent to administration of the test, the PCSC initially established the passing point of 80 correct responses and at the urging of PLCB, reduced the passing point to 60. PLCB requested lowering the passing score because of the exclusionary effect on provisional employees of the original passing score of 80. (T. 50-52, 414, 542-43; Stip. ¶8, 9).

b. Normal PCSC procedure allows the passing point to be set on a subjective basis within the general range of one standard deviation above or below the mean score achieved by those persons taking the examination. In this case, the score was ultimately set at approximately two-thirds of one standard deviation below the mean. The passing point could have been set at 55 pursuant to ordinary procedures thereby allowing both Complainants Weldon and Kelly to achieve passing scores. The PCSC could provide no explanation for choosing 60 rather than 55, except subjective judgment. (T. 50-51, 455-57, 414, 528).

c. After having urged the PCSC to lower the passing point to 60, the PCLB again requested that the passing point be lowered and informed the PCSC

at that time that failure to lower the passing point from 60 would require the termination of two provisional employees, both black, who were satisfactorily performing their duties. (T. 50-55).

III. REMEDY

A. PCSC Procedure

24. Test 7050 was created as a joint effort by the PCSC and the PLCB under the direction and control of the PCSC. Some of the specific questions on the test were selected by PCSC personnel and others were selected by PLCB personnel, with each reviewing the work of the other. Similarly, the job analysis upon which the test was based was done by the PCSC with assistance from the PLCB. (T. 77-78, 86, 288-89, 291, 293-94, 423).

25. The procedure followed by the PCSC in constructing Test 7050 was substantially the same as the procedure the PCSC presently follows in constructing other tests. The only significant change in the procedure since Test 7050 was constructed is that a somewhat greater degree of documentation is now required. (T. 419-20, 531-33).

26. The PCSC presently has no written procedure for determining whether its test had an adverse impact on blacks or other minority groups. To the extent that any procedure exists, it is unwritten and the Deputy Director of the PCSC could not describe it at the Public Hearing. (T. 463-68, 718-21, 771-72).

B. The Complainants

27. At the time of his discharge, Michael A. Weldon was able and available to continue his employment with the PLCB and to become a regular probationary employee and was intending to make a career of his employment with the PLCB. (T. 689).

28. Subsequent to being discharged, Complainant Weldon made reasonable efforts to mitigate his loss of pay by seeking alternative employment through the Bureau of Employment Security, by taking night classes while working during the day as a custodian; and subsequent to his graduation from night school, by seeking employment in Pennsylvania and working at Manpower, the State Law Library and the Bureau of Employment Security. (T. 682-87).

29. At the time of her termination by the PLCB, Complainant Carolyn Kelly had no intention of leaving her employment with the PLCB, and intended to make a career of that employment. (T. 704).

30. Complainant Kelly made reasonable efforts to mitigate her damages and loss of pay by seeking employment through the Bureau of Employment Security and elsewhere until she became ill in

June, 1976, and was hospitalized. She returned to the job market in August of 1976 and as soon as her recuperation was completed, she made reasonable efforts to mitigate her back pay by again seeking and eventually obtaining employment beginning October 12, 1976. Kelly was continuously employed from that time through the date of the hearing of this matter. (T. 698-703).

31. Except for possible efforts to settle their cases, neither Complainant Weldon nor Kelly has at any time been offered reinstatement subsequent to being terminated by the PLCB. (T. 689, 704).

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

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA, COMMUNTIY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

HISTORY OF THE CASE
FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
RECOMMENDATION OF HEARING COMMISSIONERS
COMMISSION'S DECISION
FINAL ORDER

HISTORY OF THE CASE

This case involves a Complaint filed with the Pennsylvania Human Relations Commission ("Commission") on January 6, 1977, as amended June 17, 1977 by Mariana Ortiz ("Complainant") against Hahnemann Medical College and Hospital of Philadelphia, Community Mental Health/Mental Retardation Center ("Respondent"). The Complainant alleged that Respondent denied her disability benefits in connection with her pregnancy and childbirth because of her sex.

An investigation into the allegations of the Complaint was made by representatives of the Commission, and a determination

was made that probable cause existed to credit the allegations. Thereupon, the Commission endeavored to eliminate the unlawful practice complained of by conference, conciliation, and persuasion. These endeavors were unsuccessful and the Commission approved the case for a public hearing on September 25, 1977.

The panel named to hear the case included Benjamin S. Loewenstein, Chairperson of the Panel, Robert Johnson Smith, Commissioner, E. E. Smith, Commissioner, and John E. Benjes, Esquire, Legal Advisor to the Panel.

The right to a public hearing was waived in all parties and the case was submitted to the Panel on the basis of stipulations of facts and exhibits. After submission of the stipulations of facts and exhibits to the Panel, both parties provided briefs on the legal issues involved in this case.

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

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA, COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

FINDINGS OF FACT

1. The Complainant herein is Ms. Mariana Ortiz, an adult female residing at 178 West Lehigh Avenue, Philadelphia, Pennsylvania, who has been an employee of the Hahnemann Medical College and Hospital of Philadelphia, Community Mental Health/ Mental Retardation Center as a secretary from December 2, 1974 to the present time. (Stipulation ¶1).

2. The Respondent in this case is Hahnemann Medical College and Hospital of Philadelphia, Community Mental Health/ Mental Retardation Center, a Pennsylvania employer located at 314 North Broad Street, Philadelphia, Pennsylvania. (Stipulation ¶2).

3. By letter dated December 30, 1976, the Complainant requested of her employer, in writing, whether she would be eligible for disability benefits during her maternity leave. (Stipulation ¶3, Exhibit A).

4. By letter dated January 5, 1977, the Complainant was informed by Mr. Thomas K. Kaney, the Assistant Hospital Administrator, that her employer made no provision for disability benefits during maternity leave. (Stipulation ¶4; Exhibit B).

5. By letter dated March 14, 1977, Mr. Ascher S. Barmish, Associate Vice President, Employee and Labor Relations for Respondent employer, enclosed a copy of the Respondent's long and short term disability plans and indicated that the exclusion of pregnancy from the long term disability coverage was also followed for the short term disability plan which is self-insured. (Stipulation ¶5; Exhibits C, D and E).

6. The aforementioned plans in Exhibits D and E are the disability plans which were in effect at all times at issue in this complaint. Both plans exclude disability benefits if that disability is the result of pregnancy, childbirth, or complications of pregnancy. (Stipulation ¶6; Exhibits D and E).

7. The Respondent's short term disability program for its employees provides that the first five (5) consecutive days of work missed because of illness or disability are charged to the employee's unused sick leave allowance or unused personal holidays or vacation time. On the sixth day, the employee goes on the Respondent's self-insured Short Term Disability Program and receives 100% of his/her salary for a number of days determined by the employee's length of service. If the disability continues beyond four (4) consecutive weeks, the first five (5)

days of absence are paid retroactively under the program and any sick leave, personal holiday or vacation time that had been charged for any portion of those first five days is restored to the employee's record. (Stipulation ¶7).

8. The Complainant worked up to January 14, 1977, the last work day before her due date of January 16, 1977. (Stipulation ¶8).

9. By letter dated February 21, 1977, the Complainant's attending obstetrician, Dr. Homi B. Kotwal, M.D., indicated that the Complainant delivered her child on February 4, 1977 and would receive post-partum care for a period of six (6) weeks following that date. There was no disability prior to the date of delivery. (Stipulation ¶9; Exhibit F).

10. During the time of her maternity leave, the Complainant used five (5) sick days (January 17, 1977 thru January 21, 1977), four (4) personal holidays (January 24, 1977 thru January 27, 1977), and twelve (12) vacation days (January 28, 1977 thru February 14, 1977). The Complainant used a total of twenty-one (21) accrued benefit days. (Stipulation ¶10).

11. The Complainant began her non-paid maternity leave of absence on February 15, 1977, and returned to work on March 21, 1977. She remained in her non-paid status during her period of actual disability up until she returned to her job. Her total non-paid time was twenty-four (24) days. (Stipulation ¶11).

12. By letter dated March 31, 1977, Mr. Ray M. Vento,

the Respondent Manager of Employment & Affirmative Action sent copies of the Respondent's Short Term Disability Chart and the Respondent's Leave of Absence Policy to the Commission. (Stipulation ¶12; Exhibits G, H and I).

13. In accordance with the Respondent's Short Term Disability Chart, the Complainant's date of hire being December 2, 1974, she would have been entitled to twenty (20) days of 100% of her salary under the Respondent's Short Term Disability Plan had her disability not been pregnancy or childbirth related. In addition, five (5) of the accrued benefit days she had to use would have been returned to her. (Stipulation ¶13, Exhibit H).

14. The Complainant's actual salary loss for the twenty (20) days amounted to Six Hundred Twenty-Nine Dollars and Sixteen Cents ($629.16). (Stipulation ¶14).

15. Respondent's disability benefit plans exclude disabilities: resulting from suicide or intentionally self-inflicted injuries; resulting from commission or attempted commission of assault, battery or felony; resulting from an act of war; resulting from pregnancy, childbirth or complications or pregnancy. (Exhibit D).

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over both 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, Hahnemann Medical College and Hospital of Philadelphia Community Mental Health/Mental Retardation Center, 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, Mariana Ortiz, is an "individual" within the meaning of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §955(a).

5. The Respondent's failure to provide coverage for the pregnancy related disability of the complainant constitutes

discrimination in the terms, conditions and privileges of her employment, because of her sex, in violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §955(a).

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA, COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

OPINION

This matter arises on the complaint of Mariana Ortiz filed with the Commission January 6, 1977, as amended June 17, 1977, alleging that her employer, Hahnemann Medical College and Hospital of Philadelphia, Community Mental Health/Mental Retardation Center, discriminated against her because of her sex, in violation of Section 5(a) of the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. §955(a).[1]

The Complainant asked the Respondent Hospital to inform her if she would be eligible to claim disability benefits during a portion of her maternity leave. The Short Term Disability Plan ("STD") of Respondent provides in pertinent part:

> 1. Commencing January 1, 1973 S.T.D. provides benefits equal to 100% current base salary for a confirmed illness or injury of six

---

1. Act of October 27, 1955, P.L. 744, as amended.

(6) or more consecutive scheduled work days up to the time limitations set forth in the chart below.[2]

3. If the disability continues beyond four (4) consecutive weeks, the first five (5) days of absence are paid retroactively under the Short Term Disability Program. Any sick leave, personal holiday or vacation time that has been charged for any portion of those first five (5) days is restored to the employee's record.

While not explicitly precluding coverage of pregnancy related disabilities, the STD was operated in conformity with the exclusions specified in Respondent Hospital's Long Term Disability Income Insurance Policy. The pertinent part of said policy is:

Exclusions: Monthly Income Benefits will not be paid for any disability or loss:

(c) resulting from pregnancy, childbirth or complications of pregnancy.

Thus, Ms. Ortiz was informed by the Respondent that there were no provisions for disability benefits during maternity leaves. The Complainant went on a maternity leave January 14, 1977 (last work day before her due date), utilized 21 accrued benefit days, and was then placed on non-paid status during the rest of her period of disability until her return to work March 21, 1977.

The disability program of Respondent hospital is in

---

2. On the date of the disability suffered by Complainant in this case, she was entitled to 20 days of benefits at 100% of salary; Stipulation ¶14, Exhibit H.

violation of Section 5(a) of the PHRA, 43 P.S. §955(a) which declares that:

> It shall be an unlawful discriminatory practice unless based upon a bona fide occupational qualification . . . .
>
> (a) For any employer because of the . . . sex . . . of any individual to . . . discriminate against such individual with respect to . . . terms, conditions or privileges of employment . . . .

The obligations of employers in this area are spelled out in this Commission's regulations which provide:

> Temporary disability due to pregnancy or childbirth. Written and unwritten employment practices and policies regarding job benefits and job security including, but not limited to, commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities. 16 Pa. Code §41.103(a).

The holding of the Commonwealth Court in Anderson v. Upper Bucks Area Vocational-Technical School, 30 Pa. Cmwlth. Ct. 103, 373 A.2d 126 (1977), involving essentially similar facts, is dispositive of this matter. The Court in Anderson, basing its decision on well established Pennsylvania case law[3] ruled that:

---

3. Cerra v. East Stroudsburg Area School District, 450 Pa. 207, 299 A.2d 277 (1973); Leechburg Area School District v. Human Relations Commission, 19 Pa. Cmwlth. Ct. 614, 339 A.2d 850 (1975); Freeport Area School District v. Pennsylvania Human Relations Commission, 18 Pa. Cmwlth. Ct. 400, 335 A.2d 873 (1973).

> . . . the appellant's practice of excluding from disability coverage, a disability unique to women, violates Section 5(a) of the PHRA.
>
> 30 Pa. Cmwlth. Ct. at 113, 373 A.2d at 130.

The Court also held that the cases of Geduldig v. Aiello, 417 U.S. 484 (1974) and General Electric v. Gilbert, 429 U.S. 125 (1976) were not binding on its construction of the PHRA, in that Title VII expressly provides for more comprehensive civil rights statutes.[4] Courts in other jurisdictions have also held that the decisions of the U.S. Supreme Court are not binding on the statutory construction of a state civil rights statute by a state tribunal.[5]

The Respondent Hospital seeks to have this Commission carve out an exception to the holding of the Anderson case for those employers in the Commonwealth which receive significant amounts of federal funding. It is argued that because this Respondent receives federal appropriations (with the corresponding commitment to follow federal laws, regulations and guidelines) state law is inapplicable. While it cannot be denied that this Respondent must follow all federal laws, regulations and guidelines, it is the holding of this Commission, consistent with the Anderson case, that these

---

4. U.S.C. §2000e-7; 42 U.S.C. 2000h-4.

5. Ray-O-Vac v. ILHR Department, 70 Wis.2d 919, 236 N.W.2d 909 (Sup. Ct. 1975); Goodyear Tire and Rubber Company v. ILHR Department, ___ Wis.2d ___, ___ N.W.2d ___ (Wis. Cir. Ct., Feb. 7, 1978); Brooklyn Union Gas Co. v. N.Y. Human Rights Appeal Board, 41 N.Y.2d 84, 359 N.E.2d 393 (Ct. App. 1976).

federal laws, regulations and guidelines do not set legally protected boundaries within which an employer may operate without regard to more comprehensive state law.

The Respondent also seeks to exempt itself from the operation of state law because the labor contracts negotiated with its employees are subject to the National Taft Hartley Act. NLRA[6] does not address the question of its preemptive effect on state regulations and this Commission refuses to infer a preemptive effect of a federal statutory scheme in a related area of law when Congress has expressly provided for more comprehensive state protection in the area of civil rights in Title VII.[7]

Respondent's last defense to the application of the Human Relations Act to their disability plan is that the Anderson case did not take cost considerations into account as mandated by General Electric Corp. v. Pa. Human Relations Commission, 365 A.2d 649 (1976). However, General Electric Corp. v. Pa. Human Relations Commission dealt with the issue of cost consideration in the context of construing the "best able" proviso of Section 5(a) of the Pennsylvania Human Relations Act; indicating that because of the need for efficiency, an employer would always be allowed to choose the most qualified applicant. Thus, the

---

6. 29 U.S.C. §151 (1970), et seq.
7. See, Goodyear Tire and Rubber Company v. ILHR Dept., supra.

cost considerations in question in the General Electric Corp. v. Pa. Human Relations Commission case are inapplicable to both the holding of the Anderson case and the facts in this matter. Presumably, the cost considerations urged upon this Commission are those associated with including coverage for pregnancy related disability within its disability plan. It is this Commission's view that the Respondent Hospital cannot avoid the Human Relations Act and regulations and the holding of Anderson by asserting that to do so would involve added cost.

Accordingly, the Commission enters the attached Final Order.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA, COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

COMMISSION'S DECISION

AND NOW, this 1st day of May, 1978, upon consideration of the full Record in this case, and upon consideration of the foregoing Recommendation of the Hearing Commissioners, the Pennsylvania Human Relations Commission hereby adopts the foregoing History of the Case, Findings of Fact, Conclusions of Law and Opinion.

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

MARIANA ORTIZ, Complainant	:	
v.	:	Docket No. E-11584
HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA COMMUNITY MENTAL HEALTH/ MENTAL RETARDATION CENTER, Respondent	:	

FINAL ORDER

AND NOW, this 1st day of May, 1978, the Pennsylvania Human Relations Commission hereby:

ORDERS

1. Respondent shall cease and desist from refusing to provide coverage for pregnancy related disabilities under its disability benefit plans.

2. Respondent shall adopt disability benefit plans in conformity with the Pennsylvania Human Relations Commission's regulations, 16 Pa. Code §41.101, et seq.

3. Respondent shall immediately inform all present and future employees of its new policy regarding pregnancy related

disabilities. In this regard, Respondent shall incorporate its new policy regarding pregnancy related disabilities in all written policies regarding job benefits.

4. Respondent shall pay Complainant Six Hundred Twenty-Nine Dollars and Sixteen Cents ($629.16) plus six percent interest per annum (from March 21, 1977 to date of payment) which represents payment for her actual salary loss for twenty (20) days of her disability.

5. Respondent shall restore to Complainant five (5) of the twelve (12) vacation days used during her pregnancy related disability.

6. Respondent shall report the manner of compliance with this order within thirty (30) days of its issuance.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Joseph X. Yaffe, Chairperson

ATTEST:

By: Elizabeth M. Scott, Secretary