COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

VICKI VEE PETERSON,
Complainant :

vs. : Docket No. E-5642

WEST MIDDLESEX SCHOOL DISTRICT, :
Respondent :

HISTORY OF THE CASE
FINDINGS OF FACT
CONCLUSIONS OF LAW
RECOMMENDATIONS OF HEARING COMMISSIONERS
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-5642, charging that the Respondent, West Middlesex School District, (hereinafter referred to as the Respondent) refused to allow the Complainant, Ms. Vicki Vee Peterson (hereinafter referred to as the Complainant) to return from maternity leave to her high school teaching duties when the Complainant was physically able to do so based on a policy prohibiting teachers from returning from maternity leave less than one year after pregnancy and requiring teachers to

begin maternity leave at the fifth month of pregnancy. The Complainant further alleges that this policy discriminated against her and other female teachers because of their sex, female, in violation of Section 5(a) of the Pa. 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 conference, conciliation and persuasion. These endeavors were unsuccessful and a public hearing on the merits of the complaint was approved by the Commission. A pre-hearing conference was held on January 27, 1977 presided over by Commissioner Elizabeth M. Scott. At that time, the parties agreed that no factual matters remain in dispute and the case was put before the Commission on the basis of Stipulations of Fact, documents and briefs submitted by counsel for both parties. The Panel of Commissioners reviewing the stipulated facts, documents and legal briefs consisted of Commissioners Elizabeth M. Scott, John P. Wisniewski and Mary Dennis Donovan, C.S.J. James D. Pagliaro, Esquire, served as advisor to the Panel of Commissioners.

Katherine Fein, Esquire, Assistant General Counsel of the Pa. Human Relations Commission, presented the case on behalf of the

Complainant. P. Raymond Bartholomew, Esquire, of Cusick, Madden, Joyce and McKay, Sharon, Pennsylvania represented the Respondent.

The Hearing Panel upon consideration of the Stipulations and the briefs presented to it by both parties recommended that the Commission find in favor of the Complainant.

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VICKI VEE PETERSON, Complainant	:	
vs.	:	Docket No. E-5642
WEST MIDDLESEX SCHOOL DISTRICT, Respondent	:	

Findings of Fact

1. Complainant herein is Vicki Vee Peterson, an adult female residing at 62 Sharon Road, West Middlesex, Pennsylvania.

2. Respondent herein is a school district which employs more than four(4) individuals and is located in West Middlesex, Pennsylvania.

3. The Complainant was a professional employee of West Middlesex Area School District during the 1971-1972 school year and prior thereto. (St. 1)

4. By letter dated April 25, 1972, the Complainant advised the Respondent that she was expecting in mid-September and requested a maternity leave from the end of the spring semester, 1972 until the semester change in January, 1973. (St. 2)

5. At the meeting of the Respondent's Board of School Directors held on May 8, 1972, the Respondent partially granted the Complainant's request for maternity leave by approving it "in accordance with the

school policy on maternity leave". (St. 3)

6. The Respondent's maternity leave policy in effect from July 1, 1972 until February 10, 1975 and which was in effect at the May 8, 1972 meeting, provided, in pertinent part:

> The district will provide a female employee who becomes pregnant with a reasonable maternity leave...The leave must be requested after the third month and is to become effective no later than the sixth month of pregnancy... The maternity leave shall be for one calendar year beginning with the first day of the leave, except the employee may not begin her duties again until the first day of the semester or school year following the completion of the calendar year of maternity leave . . . In unusual cases the length of the maternity leave may be shortened at the discretion of the board. (St. Ex. "B")

7. At the Respondent's Board meeting held on July 10, 1972, Mrs. Barbara Roscoe was hired to assume the Complainant's teaching duties. (St. 4)

8. Under date of September 5, 1972, the Respondent entered into a temporary professional employment contract with Mrs. Roscoe to replace the Complainant for "one school term". (St. 4)

9. The Complainant was certified by her physician in a letter dated December 7, 1972, as physically able to return to work. (St. 5)

10. By letter dated December 14, 1972, the Complainant requested that the Respondent allow her to return to her former position after the Christmas vacation, since she was physically able and available to resume her employment (St. 5, 6)

11. At the Respondent's Board meeting held on January 8, 1973, the request set forth in the Complainant's letter of December 14, 1972, was refused. (St. 7)

12. In accordance with the maternity leave policy in effect at that time, the Respondent prohibited the Complainant from returning to her teaching duties until September, 1973, although she was physically able and available to return to work on December 7, 1972 and requested on December 14, 1972 that the Respondent allow her to return to work in January, 1973. (St. 5, 6, 7)

13. The Complainant's salary for the school year, 1972-1973 would have been $7900, plus $300 for working on the school yearbook and medical and hospital insurance benefits. (St. 8)

14. The Complainant expended $192.00 between January, 1973 and September, 1973 to obtain medical and hospital insurance coverage. (St. 9)

15. The Complainant returned to her teaching duties in September of 1973, and she taught the entire 1973-1974 term. The Complainant continues to serve as a member of the teaching staff as of the current school term. (St. 10)

16. On February 10, 1975, the Respondent adopted a revised maternity leave policy, providing for a leave of absence for professional employees from the date of actual disability due to pregnancy until the first full academic term after the employee's physician certifies in writing that she is physically capable of performing her duties and

further provides for monthly certification by the employee's physician that she is capable of performing her duties prior to commencing leave, and may require the employee to submit to a medical examination as a condition of continued employment or upon resumption of employment after leave. (St. 12, Ex. "C")

17. Leaves of absence for illness or temporary disability other than pregancy are governed by the Public School Code, 24 P.S. §11-115.4 providing for ten(10) days cumulative sick leave per year and, in cases of illness or temporary disability extending beyond the accrued sick leave available, by an unwritten policy requiring the employee to pay the premium for group insurance coverage during the period of leave. (St. 13, 15)

18. The Respondent has no policy specifying the time that an employee must return to work after an illness or temporary disability (other than pregnancy) extending beyond the accrued sick leave available. (St. 14)

19. The Respondent's current Maternity Leave policy imposes certification, examinations, requirements and other conditions solely upon pregnant females thus differentiating pregnancy-related disabilities from the Respondent's policy regarding other disabilities. (St. 12, Ex. "C", 14, 15)

COMMONWEALTH OF PENNSYLVANIA

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VICKI VEE PETERSON, Complainant	:	
vs.	:	Docket No. E-5642
WEST MIDDLESEX SCHOOL DISTRICT, Respondent	:	

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 of the Pennsylvania Human Relations Act, 43 P.S. §959.

2. Respondent received proper notice of this Complaint and proper notice and opportunity to present its case as required by Section 9 of the Pennsylvania Human Relations Act, 43 P.S. §959.

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

5. Pregnancy-related disability is a temporary disability which must be treated by an employer in the same manner as any other temporary disability. Since pregnancy-related disability is a disability common only to women, to treat it differently from other disabilities by imposing additional conditions, requirements and prohibitions on re-employment constitutes sex discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act.

6. The Respondent's maternity leave policy, requiring the Complainant to remain on leave for at least one year and prohibiting her from returning to work when she was physically able and available to do so, discriminated against the Complainant on the basis of her sex, female in violation of Section 5(a) of the Act.

7. The Respondent's revised maternity leave policy by imposing different conditions and requirements on pregnancy-related disabilities than on other disabilities discriminates against females in violation of Section 5(a) of the Act.

8. The Respondent is liable to Complainant for $4292.00 in back pay representing wages and benefits lost by the Complainant when she was prohibited from returning to work in January, 1973 when she was physically able and available to do so.

9. The Pennsylvania Human Relations Commission has the authority under Section 9 of the Pennsylvania Human Relations Act to order the Respondent to compensate the Complainant for the wages and benefits she lost due

to Respondent's unlawful discrimination in compensation, terms, conditions and privileges of employment, because of her sex, and to add simple interest at the rate of six(6) percent per year to the amount.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

VICKI VEE PETERSON, :
Complainant
:
vs. : Docket No. E-5642
:
WEST MIDDLESEX SCHOOL DISTRICT, :
Respondent

RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, to wit, this day of , 1977, upon consideration of all the evidence presented by the parties by Stipulations of Fact in the above-captioned matter, and pursuant to the History of the Case, Findings of Fact and Conclusions of Law, the Hearing Commissioners recommend to the Commissioner that an Order be entered against the Respondent holding that the Respondent violated §5(a) of the Pennsylvania Human Relations Act and providing for appropriate relief.

Elizabeth M. Scott, Presiding Commissioner

John P. Wisniewski, Commissioner

Sister Mary Dennis Donovan, C.S.J.
Commissioner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

VICKI VEE PETERSON, Complainant	:	
vs.	:	Docket No. E-5642
WEST MIDDLESEX SCHOOL DISTRICT, Respondent	:	

Commission's Decision

AND NOW, to wit, this day of , 1977, upon the recommendation of the Hearing Commissioners and upon all the evidence presented by the parties by Stipulations of Fact in this case, and upon consideration of the Findings of Fact and Conclusions of Law, the Pennsylvania Human Relations Commission finds and determines that the Respondent engaged in an unlawful discriminatory practice and maintains an unlawful discriminatory policy in violation of §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) in that the Respondent required the Complainant to remain on maternity leave for at least one year and prohibited her from returning to work when she was physically able and available to do so and

in that the Respondent's revised maternity leave policy discriminates against females by differentiating pregnancy-related disabilities from other disabilities.

Pennsylvania Human Relations Commission

By: _____
Joseph X. Yaffe
Chairperson

ATTEST:

_____
Elizabeth M. Scott
Secretary

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

VICKI VEE PETERSON, Complainant	:	
vs.	:	Docket No. E-5642
WEST MIDDLESEX SCHOOL DISTRICT, Respondent	:	

Final Order

AND NOW, to wit, this day of , 1977, upon consideration of the Findings of Fact, Conclusions of Law, and the Commission's Decision, and pursuant to the provisions of §9 of the Pennsylvania Human Relations Act, as amended, the Pennsylvania Human Relations Commission hereby

ORDERS:

1. The Respondent shall pay to the Complainant backpay in the amount of $4292.00 representing $4100.00 for lost wages for the period between January, 1973 and September, 1973, and lost benefits of $192.00 paid by the Complainant to retain her medical and hospital insurance coverage between January, 1973 and September, 1973 when the Complainant was physically able and available for work but prohibited from doing so. Interest from the date of the Order shall be payable at the rate of six(6) percent per annum.

2. Respondent is hereby enjoined from retaliating in any manner against the Complainant for having brought this action.

3. The Respondent shall adopt a non-discriminatory maternity leave policy which conforms to the Pennsylvania Human Relations Act and the Regulations of the Pennsylvania Human Relations Commission by treating pregnancy-related disabilities in the same manner as non-pregnancy related disabilities.

4. The Respondent shall within thirty (30) days of the effective date of this Order inform the Commission of the manner of compliance with this Order.

Pennsylvania Human Relations Commission

By: _____
Joseph X. Yaffe
Chairperson

ATTEST:

_____
Elizabeth M. Scott
Secretary

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

VICKI VEE PETERSON, Complainant	:	
vs.	:	Docket No. E-5642
WEST MIDDLESEX SCHOOL DISTRICT, Respondent	:	

Opinion

The issue involved in this case is whether the Respondent's maternity leave policy and the practice it engendered with regard to this Complainant violated Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §955(a) (hereinafter referred to as the "Act"). In the instant matter, the Commission reviewed two(2) policies, one of which was utilized by the Respondent West Middlesex School District to prohibit the Complainant from returning to work when she was physically able and available to do so and which contained mandatory leave requirements. The Complainant, in her original complaint, alleged that this policy was discriminatory. The Respondent, in effect recognizing that its original policy needed readjustment passed a

revised policy on February 10, 1975. (St. 12, Ex. "C"). The new policy, in our opinion does nothing to correct the unlawful practice complained of and in fact, imposes additional terms upon absences due to pregnancy.

The facts, as presented compel a conclusion that the Respondent's maternity leave policies violate Section 5(a) of the Act and thus, the Complainant's individual claim of discrimination and her right to equal treatment must be vindicated by our Order and the Respondent must submit a new policy complying in all respect with the requirements of the Act and the Commission's Regulations.

We begin our analysis by reviewing the law in this area. Mandatory leave policies which are applied only to pregnant women have consistently been held to violate the anti-discrimination provisions of state and federal law. Such employment policies, which treat pregnancy differently from other temporary disabilities and pregnant women differently from other employees, constitute unlawful discrimination on the basis of sex as proscribed by Section 5(a) of the Act which provides, in pertinent part:

> It shall be an unlawful discriminatory practice...
>
> (a) For any employer because of the ...sex...of any individual to...discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment. 43 P.S. §955(a)

Pursuant to Section 7(d) of the Act, the Commission has promulgated Regulations Governing Employment Policies Relating to

Pregnancy, Childbirth and Childbearing, which provide:

> §41.103. Employment benefits and security during disability.
> (c) Other
> Mandatory maternity leave policies which require a pregnant employee to take leave automatically at a specified time during pregnancy or to remain away from work after she has recovered from her disability are in violation of the Pa. Human Relations Act. 16 Pa. Code 41.103

The Respondent's maternity leave as applied to this Complainant, fall squarely within the prohibitions set forth in the Commission's regulations, and thus clearly constitute unlawful sex discrimination. However, our decision does not rest solely upon the Commission's Regulations. A review of the relevant case law already decided in Pennsylvania leads inescapably to the same decision.

Pennsylvania's Courts, in reviewing similar cases, have consistently held that mandatory maternity leave policies discriminate against females. Cerra v. East Stroudsburg Area School District, ____Pa. _____, 299 A.2d 277 (1973); Freeport Area School District v. Pa. Human Relations Commission, ____Pa.____, 335 A.2d 873 (1975); Leechburg Area School District v. Pa. Human Relations Commission, ____Pa. Cmnwlth.____, 339 A.2d 850 (1975); Unemployment Compensation Board of Review v. Perry, 22 Pa. Cmnwlth. 429, 349 A.2d 531 (1975). Our reading of these cases reveals the acceptance by the Courts of the general principle that mandatory leave policies applicable only to pregnancy-related disabilities constituted illegal sex discrimination on its face. The principles of these cases, when applied to the instant matter compel a similar result.

The Respondent cites Freeport, supra, in its brief as authority for the proposition that we should accept their resumption of employment policy as reasonable. We read this case differently. In Freeport, supra, the Court held that a requirement, similar to the Respondent's mandatory leave requirement in its original policy, that pregnant women suspend their employment without regard to their fitness to perform the work was violative of Section 5(a) of the Act. Furthermore, the Court accepted the employer's re-employment policy because it applied equally to all disabilities and was applicable to all employees regardless of sex. On the other hand, the Respondent's resumption of employment policy, applies only to pregnancy-related disabilities and thus is distinguishable from the Freeport rationale.

In the instant case, there is no policy or provision limiting the re-employment rights of persons suffering from disabilities other than pregnancy; only pregnant women are required by the Respondent to remain absent from work for one full year. Thus, a condition is placed on re-employment which, because it applies only to pregnancy acts to the disadvantage of females as a class because it applies to a condition peculiar to their sex. As the Supreme Court noted in Cerra, supra, "this is sex discrimination pure and simple." 277 A.2d at 280.

Applicable law allows States to set more vigorous standards than those which are imposed under federal law, specifically the

federal courts' interpretation of Title VII of the Civil Rights Act of 1964, Act of July 2, 1964, P.L. 88-352, 78 Stat. 253, as amended, 42 U.S.C. §2000e et seq. with regard to pregnancy-related disabilities and sex discrimination. Relying on the stance taken by the Pa. Courts in interpreting Section 5(a) of the Act and holding that pregnancy classifications are discriminatory on the basis of sex, we do not feel bound to construe the Act in the same way federal courts have interpreted the federal Civil Rights Act, most notably the U.S. Supreme Court's decision in General Electric Company v. Gilbert, ____U.S.____, 45 L.S. 4031 (Opinion filed December 7, 1976).

We are unpersuaded by the Respondent's argument that its maternity leave policy can be justified on the grounds that no male has taken an extended leave of absence for other illness or disability. (St. 13) We feel that this reasoning is inapposite. In the instant case the maternity leave policy at issue is discriminatory on its face since by its very terms, the one year's mandatory leave is applicable only to pregnancy, thus only to females. The Respondent has come forward with no policy specifying the time employees may return to work after an absence due to illness or non-pregnancy related disabilities. Thus, the Respondent's policy requiring one year's absence, regardless of actual disability based solely on pregnancy is overtly discriminatory, regardless of the actual incidence of other illness or disabilities.

The aforementioned principles of law can be applied to the Respondent's revised policy of February 10, 1975 which we feel does not correct the unlawful practices complained of and continue to impose on pregnant women provisions, requirements and prohibitions which apply solely to pregnancy-related disabilities, and thus solely to females. In the absence of similar provisions applied to disabilities, which are non-pregnancy related, we hold that the revised maternity leave policy violates Section 5(a) of the Act and have required the Respondent to adopt a non-discriminatory maternity leave policy conforming to the requirements of the Act, the principles of law discussed herein, and the Commission's regulations.

In addition, with respect to the remedy to be awarded the Complainant, we believe that an award of backpay is an appropriate remedy for the unlawful discrimination. Freeport, supra. Furthermore, we believe that backpay should be construed liberally to include the benefits lost as well as the salary under the rationale of Franks v. Bowman Transportation Company, ____U.S.____, 12 FEP cases 549 (1976).

WEST MIDDLESEX AREA SCHOOL DISTRICT, Petitioner	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA HUMAN RELATIONS COMMISSION	:	
and	:	
VICKIE VEE PETERSON, Respondents	:	NO. 1293 C.D. 1977

BEFORE: HONORABLE JAMES S. BOWMAN, President Judge
HONORABLE JAMES C. CRUMLISH, JR., Judge
HONORABLE GLENN E. MENCER, Judge
HONORABLE THEODORE O. ROGERS, Judge
HONORABLE GENEVIEVE BLATT, Judge
HONORABLE RICHARD DiSALLE, Judge
HONORABLE DAVID W. CRAIG, Judge

Argued: September 13, 1978

OPINION BY JUDGE CRAIG Filed December 6, 1978

Petitioner West Middlesex School District appeals from a final order of the Pennsylvania Human Relations Commission (Commission) (June 3, 1977 - Dkt. No. 3-5642). The Commission found that the school district engaged in discriminatory maternity leave practices 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) (the Act), and ordered the district to pay complainant Vicki Vee Peterson $4,100.00 in back wages and $192.00 for lost benefits.

The facts are not in dispute. Complainant was an English teacher in the West Middlesex School District during the 1971-1972 school term. The Board of School Directors (Board) approved her request for maternity leave, which began at the end of the 1972 Spring semester.

By letter dated December 14, 1972, complainant requested that the Board allow her to return to her former position on the first school day of the next semester, in January 1973. A physician certified that she was physically able to resume employment as of December 7, 1972. At the Board's meeting on January 8, 1973, her request to return to work for that semester was refused. She did return to her teaching position in September, 1973.

The maternity leave policy actually in effect at the time

of complainant's leave, adopted September 13, 1971, stated:

> "The maternity leave shall be for one calendar year beginning with the first day of the leave, except the employee may not begin her duties again until the first day of the semester or school year following the completion of the calendar year of the maternity leave. ... in unusual cases the length of the maternity leave may be shortened at the discretion of the Board." (Emphasis added).[1]

This policy was apparently applied to complainant according to its terms, requiring a minimum leave of twelve months for maternity. Resumption of work was deferred until the next school year, rather than the next semester.

The school district urges this court to reverse the Commission's finding that its maternity re-employment policy was discriminatory. The district contends that its maternity re-employment policy was consistent with complainant's rights under the Act and guidelines in effect on December 19, 1970, at 1 Pa. B. 707. Section 955(a) of the Act, 43 P.S. §955(a) provides:

> "It shall be an unlawful discriminatory practice ... (a) for any employer because of ... sex ... to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment...."

We note that the guidelines on which the school district relies, at 1 Pa.B. 707, were amended at 1 Pa.B. 2359 (December 25, 1971). Those amended guidelines provided that:

> "Women shall not be penalized in their terms or conditions of employment because they require time away from work on account of child-bearing.... The conditions applicable to

> childbirth leave and to return to employment may be in accordance with the employer's regular leave policy ... she shall not be required to leave at the expiration of any arbitrary time period during pregnancy and may continue to work as long as she is capable of performing the duties of her job." (Emphasis supplied).

Counsel agreed, at argument, that the further amended guidelines, at 5 Pa.B. 21, May 17, 1975, are not applicable.

Our scope of review in appeals from final orders of the Commission is governed by Section 44 of the Administrative Agency Law, Act of June 4, 1945, P.L. 1388, as amended, 71 P.S. §1710.44 which limits us to a determination of whether the necessary findings of fact are supported by substantial evidence and whether or not the order is in accordance with law.

This court has interpreted Section 955(a) of the Act's provision against sex discrimination to mean that policies or procedures which are based on the category of pregnancy are, in fact, sex-based classifications, holding:

> "We believe that since pregnancy is unique to women a disability plan which expressly denies benefits for disability arising out of pregnancy is one which discriminates against women employees because of their sex." Anderson v. Upper Bucks County Area Vocational Technical School, 30 Pa. Commonwealth Ct. 103, 110, 373 A.2d 126, 130 (1977).

Our Supreme Court, in Cerra v. East Stroudsburg Area School District, 450 Pa. 207, 299 A.2d 277 (1973), holding that

a school board policy requiring the resignation of a pregnant employee no later than the end of the fifth month of pregnancy was discriminatory, said:

> "Mrs. Cerra and other pregnant women are singled out and placed in a class to their disadvantage. They are discharged from their employment on the basis of a physical condition peculiar to their sex. This is sex discrimination pure and simple." Cerra, supra, at 213, 299 A.2d at 280.

We followed the principle of Cerra in Freeport Area School District v. Pennsylvania Human Relations Commission, 18 Pa. Commonwealth Ct. 400, 335 A.2d 873 (1975).

The work resumption procedures for maternity leaves embodied in the West Middlesex School District's policy involved the discrimination which Section 955(a) prohibits.

The stipulations of fact confirm that the school district had no leave policy for other kinds of disabilities. The only leave policy, where an employee went beyond accumulated sick leave, was that for maternity leave.

The school district asks this court to assume that all disability leaves taken without or beyond accumulated sick leave would have been treated (had any cases occurred) the same as maternity leaves, and thus, that any employee taking a leave beyond accumulated sick leave, regardless of the disability necessitating the leave, would have been subjected to the same restrictions.

We cannot make any such assumption. There is no basis in the evidence for it, only the district's claim, as to cases which never arose.

Hence the proof does not rest merely upon an absence of evidence from the complainant's side, a state of the record held insufficient to establish discrimination in J. Howard Brant, Inc. v. Pennsylvania Human Relations Commission, 15 Pa. Commonwealth Ct. 123, 324 A.2d 840 (1974). Here the affirmative proof is that the only adopted limitation on return to work after leave was in fact confined to maternity cases. The finding of discrimination was supported by substantial evidence.

The district further asks this court to find that the Commission exceeded its authority by including in the award the sum of $192.00, the amount complainant expended to maintain her medical and hospitalization insurance policies while she was on forced leave, an amount which would have been paid by the district had she been actively employed.

Section 9 of the Act, 43 P.S. §959, provides the Commission with broad remedial powers, which this court has held includes the authority to award back pay to a successful claimant. Freeport Area School District v. Pennsylvania Human Relations Commission, supra. That section, in pertinent part, states:

> "(T)he Commission ... shall issue ... an order requiring such respondent to cease and desist from

> such unlawful discriminatory practice and to take such affirmative action including but not limited to hiring, reinstatement or upgrading of employes, with or without back pay, ... as, in the judgment of the Commission, will effectuate the purposes of this act ...."

The school district contends that the issue of whether the Commission may award claimant the amounts she expended for insurance premiums is one of definition: i.e., insurance premiums as "fringe benefits" are simply not back pay, which term the school district claims has been limited to "lost earnings" or "wages lost". For this limited definition of back pay, the district relies on cases where the issue of insurance premiums was not before the court. School District of the Township of Millcreek v. Pennsylvania Human Relations Commission, 28 Pa. Commonwealth Ct. 255, 368 A.2d 901 (1977); Pennsylvania Human Relations Commission v. Transit Casualty Insurance Company, 20 Pa. Commonwealth Ct. 43, 340 A.2d 624 (1975).

Those cases do not hold that back pay must be limited to lost wages. They only hold that an award of lost earnings is within the concept of back pay.

There is nothing in the Act or in the case law which limits "back pay" to the narrow scope for which the district contends. It is clear that, but for the discriminatory practice of the school district, complainant would have been denied neither her salary nor her insurance premiums.

Of persuasive value, we note that the federal courts regard the similar back pay remedial provisions of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(g), as including more than straight salary. "Interest, overtime, shift differentials, and fringe benefits such as vacation and sick pay are among the items which should be included in back pay." Pettway v. American Cast Iron Pipe Company, 494 F.2d 211, 263 (5th Cir. 1974).[2]

Moreover, Section 9 of the Act, as above quoted, clearly allows remedial "affirmative action including but not limited to ... reinstatement ... with or without back pay ....", leaving to the judgment of the Commission the determination of what action will effectuate the purposes of the Act. Such broad terms support relief which gives the employee what she would have had if restored to work on a timely basis.

We therefore hold that the Commission did not exceed its authority by reimbursing claimant for the cost of insurance premiums, as well as awarding lost earnings.

We therefore affirm the Commission's final order, requiring the district to award claimant $4,292.00 and ordering the district to adopt a nondiscriminatory maternity leave policy.

DAVID W. CRAIG, Judge

Footnotes

1. The school district's maternity leave policy was revised February 10, 1975, pursuant to the Supreme Court's decision in Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1973), which outlined constitutional standards for maternity leave commencement policies. The revised policy, in pertinent part, reads:

> "A professional employee who has taken maternity leave shall be eligible to return to work no later than the beginning of the first full academic term commencing after her physician certifies in writing that she is physically capable of performing her duties."

Although this new version cannot be involved in the holding here, the Commission regarded it as discriminatory also. It seems to be afflicted with the same infirmity as its predecessor, in that it applies to maternity leave only.

2. See Bowe v. Colgate-Palmolive, 489 F.2d 896 (7th Cir. 1973) (vacation, sick pay and bonus); Schattman v. Texas Employment Commission, 330 F.Supp. 328 (W.D. Tex. 1971), Cert. denied, 409 U.S. 1107 (1973), (sick and vacation leave).

WEST MIDDLESEX AREA SCHOOL DISTRICT, Petitioner v. COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA HUMAN RELATIONS COMMISSION and VICKIE VEE PETERSON, Respondents	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA NO. 1293 C.D. 1977

ORDER

AND NOW, this 4th day of December, 1978, the final order of the Pennsylvania Human Relations Commission, dated June 3, 1977, is affirmed.

DAVID W. CRAIG, Judge

CERTIFIED FROM THE RECORD

DEC 6 1978

Francis C. Barbush
CHIEF CLERK