

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION
GOVERNOR'S OFFICE

LINDA JEAN RICHARDS,
Complainant

vs.

MILLCREEK SCHOOL DISTRICT
AND JOHN SANDEL, SUPERIN-
TENDENT,
Respondents

:
:
:
:
:
:
:
:
:
:
:

DOCKET NO. E-5611-P

HISTORY OF THE CASE, FINDINGS OF FACT,
CONCLUSIONS OF LAW, COMMISSION'S DECISION AND
FINAL ORDER

HISTORY OF THE CASE

On March 5, 1973, Linda Jean Richards filed a complaint with the Pennsylvania Human Relations Commission at Docket No. E-5611-P alleging that Millcreek School District and John Sandel, Superintendent, refused to compensate her with equal supplemental wages as coach of the Girls' Varsity Tennis Team while granting the male coach of the Boys' Varsity Tennis Team a supplemental wage \$300.00/\$310.00 higher than Complainant for performing a substantially same or similar job. Complainant further alleged that Respondents discriminate against women as a class in the payment of supplemental wages to female coaches and the amount of varsity sports offered female students, because of their sex, female. On September 5, 1973, the complaint was amended to allege a continuing violation. Complainant alleged that these actions violate Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section 951 et seq.

An investigation into the allegations contained in the complaint was made by representatives of the Commission and a determination was made that probable cause existed to credit the allegations of the complaint. Thereupon, the Commission endeavored to eliminate the unlawful practices complained of by conference, conciliation and persuasion. These endeavors were unsuccessful and, pursuant to Section 9 of the Pennsylvania Human Relations Act, on July 29, 1975, a hearing on the merits of the complaint was convened in Erie before Commissioners Wisniewski, Donovan and Scott.

The Hearing Panel upon consideration of all of the testimony presented before it by both parties recommended that the Commission find in favor of the Complainant.

FINDINGS OF FACT

1. The Complainant herein is Linda Jean Richards, a female teacher, who resides at 2659 West Sixth Street, Erie.

2. The Respondent herein is Millcreek School District, Complainant's employer. A second Respondent is John Sandel, Superintendent. No testimony was presented concerning Mr. Sandel. All references to the Respondent are to Millcreek School District.

3. Complainant has been employed as a teacher by the Respondent at McDowell High School since 1968 (T. 7). For three years, from the fall of 1968 through the spring of 1971, Complainant served as the Coach of the Girls' Tennis Team at McDowell High School when it was an extramural team (T. 7; 9, C-1; 10).

4. The Girls' Tennis Team became a varsity team as opposed to an extramural team in the 1971-72 school year (T. 29).

5. The Boys' Varsity Tennis Team has been in existence for ten to fifteen years (T. 47).

6. Kay Dennis was the first (Head) Coach of the Girls' Varsity Tennis Team in 1971-72 (T. 8, 29-30). She scheduled eleven matches during the fall and spring of that school year (T. 65, D-6).

7. Complainant applied for and received the position of Girls' Varsity Tennis (Head) Coach for the 1972-73 and 1973-74 school years (T. 10; 11, C-3; 17, C-5).

8. Complainant did not receive credit for her three years of coaching the extramural team (T. 10).

9. Complainant's salary as Girls' Varsity Tennis (Head) Coach was significantly less than the salary of the male head coach of the Boys' Varsity Tennis Team. Complainant received \$250 for her first year as opposed to \$550 for a first year male coach, a difference of \$300. Complainant received \$320 for her second year as opposed to \$630 for a second year male coach, a difference of \$310 (T. 11; 12, C-3; 25-6, D-2, 3).

10. Complainant objected to the salary difference to the School Board and was denied an equalization of salary (T. 10, 11, C-2).

11. Complainant indicated in writing her continued protest over the unequal salary when she signed her contract for the 1972-73 school year (T. 11, 12, C-3).

12. All of Complainant's coaching duties were listed in the Coaches' Handbook (T. 13, 14, C-4).

13. The duties of all of the Head Coaches, both male and female, were the same. All duties were listed on page two of the Coaches' Handbook (T. 43, 45, C-4). Ronald L. Manchester, Supervisor of Physical Education and Athletics, responding for Respondent, told the Commission's Investigator, Kathleen Guinn, that the Head Coach had no duties other than those set forth on page two of the Coaches' Handbook (T. 46).

14. Coaches had many other duties in addition to the actual playing of competitive matches (T. 70, C-4).

15. Complainant arranged the tennis matches for the 1972-73 school year (T. 15, 31).

16. In 1972-73 when Complainant scheduled the tennis matches, the Girls' Varsity Tennis Team played twenty-two matches (T. 14, 31). Six matches were played in the fall and sixteen matches were played in the spring (T. 33).

17. Of the eight teams with whom matches were scheduled in 1972-73, three were played twice, four were played three times and one was played four times (D-4).

18. Only three matches, those against Behrend College, would not have been sanctioned under P.I.A.A. rules (T. 32-3, D-4).

19. Ronald L. Manchester, Supervisor of Physical Education and Athletics, scheduled the tennis matches for the 1973-74 school year (T. 17, 18).

20. At Complainant's urging, Mr. Manchester contacted all of the [tennis] coaches in the area in the spring of 1973. As a result of this meeting, a five-school league was set up.

League play started in the fall of 1973 (T. 18).

21. In 1973-74 when Mr. Manchester scheduled the tennis matches, the Girls' Varsity Tennis Team played only ten matches. Eight matches, two with each league member, were played in the fall and two matches, the district and state championship competitions were played in the spring (T. 18, 34).

22. All matches played in the 1973-74 school year were authorized P.I.A.A. matches.

23. Other schools play girls' varsity tennis in both the fall and the spring; some play only in the spring (T. 15). The championship matches are held in the spring (T. 34).

24. In the 1972-73 school year, Complainant scheduled matches in both the fall and the spring (T. 14, 33).

25. Ronald L. Manchester scheduled all of the League matches for the Girls' Varsity Tennis Team in the fall (T. 18, 34).

26. Complainant agreed to go along with the season that Mr. Manchester, the Supervisor of Physical Education and Athletics, selected (T. 34-36).

27. Participation in varsity tennis by girls and boys was approximately the same. The estimated participation of students in varsity tennis for 1973-74 shows that there were sixteen girls and fifteen boys on the varsity tennis teams (C-6).

28. Both the Head Coach of the Boys' Varsity Basketball Team and the Head Coach of the Girls' Varsity Basketball Team had the same duties. The duties were described on page two of the Coaches' Handbook (T. 45, C-4).

29. The Boys' Varsity Basketball Team usually plays twenty-two games per season. The Girls' Varsity Basketball Team usually plays fifteen games per season (C-6).

30. Participation in varsity basketball by girls and boys was similar. The estimated participation of students in varsity basketball for 1973-74 shows that there were twelve girls

and sixteen boys on the Varsity Basketball Team (C-6).

31. The salary of the female Head Basketball Coach was significantly less than the salary of the male Head Basketball Coach. The female coach received from \$250 to \$400 as opposed to the male coach who received from \$1,300 to \$1,900, a difference of \$1,050 to \$1,500.

32. As a result of Respondent's unlawful sex discrimination, women coaches earned significantly less than their male counterparts (D-2, 3).

33. As a result of Respondent's unlawful sex discrimination, Complainant suffered a loss of earnings of \$610.00 which was determined as follows:

- a. 1972-73 - \$300.00, the difference between the salary of a first year head coach of the girls' tennis team and the salary of a first year head coach of the boys' tennis team (D-2).
- b. 1973-74 - \$310.00, the difference between the salary of a second year head coach of the girls' tennis team and the salary of a second year head coach of the boys' tennis team (D-3).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the Complainant, the Respondents and the subject matter of the complaint under the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section 951 et seq.

2. Respondent Millcreek School District's compensation of Complainant as coach of the Girls' Varsity Tennis Team by a supplemental wage that was substantially less than the compensation paid the male tennis coach for performing a substantially similar job because of her sex, female, constitutes a violation of Section 5(a) of the Pennsylvania Human Relations Act.

3. Respondent Millcreek School District's compensation of all female coaches by a supplemental wage that was substantially less than the compensation paid their male counterparts for performing a substantially same or similar job because of their sex, female, constitutes a violation of Section 5(a) of the Pennsylvania Human Relations Act.

4. The complaint does not cite the section of the Pennsylvania Human Relations Act that the Respondent allegedly violated by not offering female students the amount of varsity sports offered male students, because of their sex, female. Because of this deficiency, this final allegation must be dismissed.

5. No case was presented against Respondent John Sandel, Superintendent; therefore, the complaint against him must be dismissed.

RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, this _____ day of _____, 1976, upon consideration of all the evidence presented at the Public Hearing on the above matter, the arguments of Counsel and the proposed History of the Case, Findings of Fact and Conclusions of Law, the Hearing Commissioners recommend to the entire Commission that an Order be entered against the Respondent Millcreek School District holding it in violation of Section 5(a) of the Pennsylvania Human Relations Act and providing for appropriate relief. The Hearing Commissioners further recommend that the complaint against Respondent John Sandel be dismissed because no case was presented against him.

John P. Wisniewski
Presiding Commissioner

Sister Mary Dennis Donova
Hearing Commissioner

Elizabeth M. Scott
Hearing Commissioner

COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA HUMAN RELATIONS COMMISSION
 GOVERNOR'S OFFICE

LINDA JEAN RICHARDS,	:	
	:	
Complainant	:	
	:	
vs.	:	DOCKET NO. E-5611-P
	:	
MILLCREEK SCHOOL DISTRICT,	:	
AND JOHN SANDEL, SUPERIN-	:	
TENDENT,	:	
Respondents	:	

FINAL ORDER

AND NOW, this day of 1976, upon consideration of the foregoing History of the Case, Findings of Fact, Conclusions of Law, and the Commission's Decision and pursuant to Section 9 of the Pennsylvania Human Relations Act, as amended, the Pennsylvania Human Relations Commission hereby

O R D E R S:

1. Respondent Millcreek School District shall cease and desist from discriminating on the basis of sex in the amount of supplemental wages paid to Complainant, Linda Jean Richards, and to all other female coaches.
2. Respondent Millcreek School District shall adjust the supplemental wages paid to Complainant and to all other female coaches so that the supplemental wages paid to them are equal to the supplemental wages paid to their male counterparts.
3. Respondent Millcreek School District shall pay Complainant, Linda Jean Richards, \$610.00, the sum representing the supplemental wages lost by her in the 1972-73 and 1973-74 school years as a result of her not receiving supplemental wages equal to those received by the male coach of the Boys' Varsity Tennis Team, plus simple interest at the rate of six (6) per cent per year.

4. Respondent Millcreek School District shall, within thirty (30) days of the date of this Order, submit to the Pennsylvania Human Relations Commission notice and proof that the actions required by this Order have been performed.

5. The complaint shall be and is dismissed as to John Sandel.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

ATTEST:

Elizabeth M. Scott
Secretary

By: _____
Joseph X. Yaffe
Chairperson

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION
GOVERNOR'S OFFICE

LINDA JEAN RICHARDS, :
Complainant. :
v. : DOCKET NO. E-5611-P
MILLCREEK SCHOOL DISTRICT :
AND JOHN SANDEL, SUPERINTENDENT, :
Respondents :

COMMISSION'S DECISION

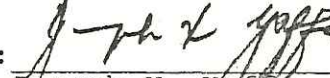
AND NOW, this 28th day of March, 1976, upon the recommendation of the Hearing Commissioners and upon all the evidence presented at the Public Hearing of this case, and in consideration of the History of the Case, the Findings of Fact and Conclusions of Law, the Human Relations Commission finds and determines that Respondent Millcreek School District engaged in unlawful discriminatory practices in violation of Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, in that Respondent Millcreek School District discriminated on the basis of sex in the amount of supplemental wages paid to Complainant, Linda Jean Richards, as Head Coach of the Girls' Varsity Team and the amount of supplemental wages paid to all female coaches, and further, that the complaint against Respondent John Sandel be dismissed because no case was presented against him.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

ATTEST:


Elizabeth M. Scott
Secretary

By:


Joseph X. Yaffe,
Chairperson

COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA HUMAN RELATIONS COMMISSION
 GOVERNOR'S OFFICE

LINDA JEAN RICHARDS,	:	
	:	
Complainant	:	
	:	
vs.	:	DOCKET NO. E-5611-P
	:	
MILLCREEK SCHOOL DISTRICT,	:	
AND JOHN SANDEL, SUPERIN-	:	
TENDENT,	:	
Respondents	:	

FINAL ORDER

AND NOW, this 28th day of March 1976, upon consideration of the foregoing History of the Case, Findings of Fact, Conclusions of Law, and the Commission's Decision and pursuant to Section 9 of the Pennsylvania Human Relations Act, as amended, the Pennsylvania Human Relations Commission hereby

O R D E R S:

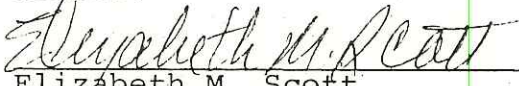
1. Respondent Millcreek School District shall cease and desist from discriminating on the basis of sex in the amount of supplemental wages paid to Complainant, Linda Jean Richards, and to all other female coaches.
2. Respondent Millcreek School District shall adjust the supplemental wages paid to Complainant and to all other female coaches so that the supplemental wages paid to them are equal to the supplemental wages paid to their male counterparts.
3. Respondent Millcreek School District shall pay Complainant, Linda Jean Richards, \$610.00, the sum representing the supplemental wages lost by her in the 1972-73 and 1973-74 school years as a result of her not receiving supplemental wages equal to those received by the male coach of the Boys' Varsity Tennis Team, plus simple interest at the rate of six (6) per cent per year.

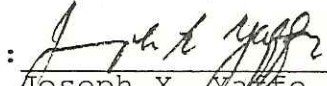
4. Respondent Millcreek School District shall, within thirty (30) days of the date of this Order, submit to the Pennsylvania Human Relations Commission notice and proof that the actions required by this Order have been performed.

5. The complaint shall be and is dismissed as to John Sandel.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

ATTEST:


Elizabeth M. Scott
Secretary

By: 
Joseph X. Yaffe
Chairperson

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION
GOVERNOR'S OFFICE

LINDA JEAN RICHARDS, :
Complainant :
vs. : DOCKET NO. E-5611-P
MILLCREEK SCHOOL DISTRICT :
AND JOHN SANDEL, SUPERIN- :
TENDENT, :
Respondents :

HISTORY OF THE CASE, FINDINGS OF FACT,
CONCLUSIONS OF LAW, COMMISSION'S DECISION AND
FINAL ORDER

HISTORY OF THE CASE

On March 5, 1973, Linda Jean Richards filed a complaint with the Pennsylvania Human Relations Commission at Docket No. E-5611-P alleging that Millcreek School District and John Sandel, Superintendent, refused to compensate her with equal supplemental wages as coach of the Girls' Varsity Tennis Team while granting the male coach of the Boys' Varsity Tennis Team a supplemental wage \$300.00/\$310.00 higher than Complainant for performing a substantially same or similar job. Complainant further alleged that Respondents discriminate against women as a class in the payment of supplemental wages to female coaches and the amount of varsity sports offered female students, because of their sex, female. On September 5, 1973, the complaint was amended to allege a continuing violation. Complainant alleged that these actions violate Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section 951 et seq.

An investigation into the allegations contained in the complaint was made by representatives of the Commission and a determination was made that probable cause existed to credit the allegations of the complaint. Thereupon, the Commission endeavored to eliminate the unlawful practices complained of by conference, conciliation and persuasion. These endeavors were unsuccessful and, pursuant to Section 9 of the Pennsylvania Human Relations Act, on July 29, 1975, a hearing on the merits of the complaint was convened in Erie before Commissioners Wisniewski, Donovan and Scott.

The Hearing Panel upon consideration of all of the testimony presented before it by both parties recommended that the Commission find in favor of the Complainant.

FINDINGS OF FACT

1. The Complainant herein is Linda Jean Richards, a female teacher, who resides at 2659 West Sixth Street, Erie.
2. The Respondent herein is Millcreek School District, Complainant's employer. A second Respondent is John Sandel, Superintendent. No testimony was presented concerning Mr. Sandel. All references to the Respondent are to Millcreek School District.
3. Complainant has been employed as a teacher by the Respondent at McDowell High School since 1968 (T. 7). For three years, from the fall of 1968 through the spring of 1971, Complainant served as the Coach of the Girls' Tennis Team at McDowell High School when it was an extramural team (T. 7; 9, C-1; 10).
4. The Girls' Tennis Team became a varsity team as opposed to an extramural team in the 1971-72 school year (T. 29).
5. The Boys' Varsity Tennis Team has been in existence for ten to fifteen years (T. 47).
6. Kay Dennis was the first (Head) Coach of the Girls' Varsity Tennis Team in 1971-72 (T. 8, 29-30). She scheduled eleven matches during the fall and spring of that school year (T. 65, D-6).
7. Complainant applied for and received the position of Girls' Varsity Tennis (Head) Coach for the 1972-73 and 1973-74 school years (T. 10; 11, C-3; 17, C-5).
8. Complainant did not receive credit for her three years of coaching the extramural team (T. 10).
9. Complainant's salary as Girls' Varsity Tennis (Head) Coach was significantly less than the salary of the male head coach of the Boys' Varsity Tennis Team. Complainant received \$250 for her first year as opposed to \$550 for a first year male coach, a difference of \$300. Complainant received \$320 for her second year as opposed to \$630 for a second year male coach, a difference of \$310 (T. 11; 12, C-3; 25-6, D-2, 3).

League play started in the fall of 1973 (T. 18).

21. In 1973-74 when Mr. Manchester scheduled the tennis matches, the Girls' Varsity Tennis Team played only ten matches. Eight matches, two with each league member, were played in the fall and two matches, the district and state championship competitions were played in the spring (T. 18, 34).

22. All matches played in the 1973-74 school year were authorized P.I.A.A. matches.

23. Other schools play girls' varsity tennis in both the fall and the spring; some play only in the spring (T. 15). The championship matches are held in the spring (T. 34).

24. In the 1972-73 school year, Complainant scheduled matches in both the fall and the spring (T. 14, 33).

25. Ronald L. Manchester scheduled all of the League matches for the Girls' Varsity Tennis Team in the fall (T. 18, 34).

26. Complainant agreed to go along with the season that Mr. Manchester, the Supervisor of Physical Education and Athletics, selected (T. 34-36).

27. Participation in varsity tennis by girls and boys was approximately the same. The estimated participation of students in varsity tennis for 1973-74 shows that there were sixteen girls and fifteen boys on the varsity tennis teams (C-6).

28. Both the Head Coach of the Boys' Varsity Basketball Team and the Head Coach of the Girls' Varsity Basketball Team had the same duties. The duties were described on page two of the Coaches' Handbook (T. 45, C-4).

29. The Boys' Varsity Basketball Team usually plays twenty-two games per season. The Girls' Varsity Basketball Team usually plays fifteen games per season (C-6).

30. Participation in varsity basketball by girls and boys was similar. The estimated participation of students in varsity basketball for 1973-74 shows that there were twelve girls

and sixteen boys on the Varsity Basketball Team (C-6).

31. The salary of the female Head Basketball Coach was significantly less than the salary of the male Head Basketball Coach. The female coach received from \$250 to \$400 as opposed to the male coach who received from \$1,300 to \$1,900, a difference of \$1,050 to \$1,500.

32. As a result of Respondent's unlawful sex discrimination, women coaches earned significantly less than their male counterparts (D-2, 3).

33. As a result of Respondent's unlawful sex discrimination, Complainant suffered a loss of earnings of \$610.00 which was determined as follows:

- a. 1972-73 - \$300.00, the difference between the salary of a first year head coach of the girls' tennis team and the salary of a first year head coach of the boys' tennis team (D-2).
- b. 1973-74 - \$310.00, the difference between the salary of a second year head coach of the girls' tennis team and the salary of a second year head coach of the boys' tennis team (D-3).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the Complainant, the Respondents and the subject matter of the complaint under the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section 951 et seq.

2. Respondent Millcreek School District's compensation of Complainant as coach of the Girls' Varsity Tennis Team by a supplemental wage that was substantially less than the compensation paid the male tennis coach for performing a substantially similar job because of her sex, female, constitutes a violation of Section 5(a) of the Pennsylvania Human Relations Act.

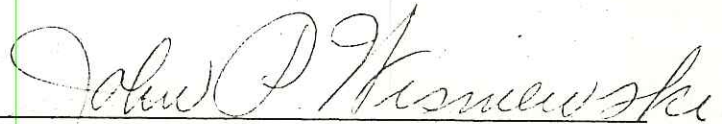
3. Respondent Millcreek School District's compensation of all female coaches by a supplemental wage that was substantially less than the compensation paid their male counterparts for performing a substantially same or similar job because of their sex, female, constitutes a violation of Section 5(a) of the Pennsylvania Human Relations Act.

4. The complaint does not cite the section of the Pennsylvania Human Relations Act that the Respondent allegedly violated by not offering female students the amount of varsity sports offered male students, because of their sex, female. Because of this deficiency, this final allegation must be dismissed.

5. No case was presented against Respondent John Sandel, Superintendent; therefore, the complaint against him must be dismissed.

RECOMMENDATION OF HEARING COMMISSIONERS

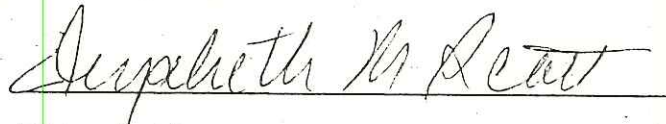
AND NOW, this 28th day of March, 1976, upon consideration of all the evidence presented at the Public Hearing on the above matter, the arguments of Counsel and the proposed History of the Case, Findings of Fact and Conclusions of Law, the Hearing Commissioners recommend to the entire Commission that an Order be entered against the Respondent Millcreek School District holding it in violation of Section 5(a) of the Pennsylvania Human Relations Act and providing for appropriate relief. The Hearing Commissioners further recommend that the complaint against Respondent John Sandel be dismissed because no case was presented against him.



John P. Wisniewski
Presiding Commissioner



Sister Mary Dennis Donova
Hearing Commissioner



Elizabeth M. Scott
Hearing Commissioner

*file - PARCE
opinion*

IN THE COMMONWEALTH COURT
OF
PENNSYLVANIA

THE SCHOOL DISTRICT OF THE
TOWNSHIP OF MILLCREEK,

Appellant

v.

COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA HUMAN RELATIONS
COMMISSION,

Appellee

:
:
:
: NO. 733 C.D. 1976

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

ARGUED: January 31, 1978

O P I N I O N

Opinion by Judge Crumlish, Jr.

Filed: June 2, 1978

The sole question before us is whether the Pennsylvania Human Relations Commission (Commission/Appellee) has the power to decide a case and issue a final order requiring affirmative action and the payment of monetary damages on a Sunday.

Appellant, The School District of the Township of Millcreek, was originally before us to appeal a decision of the Commission's finding that Appellant violated Section 5(a) of the Pennsylvania Human Relations Act¹ (Act), and ordering Appellant to (1) cease and desist from its discriminatory practices; (2) adjust its supplemental wage scales so as to equalize the wages paid to male and female athletic coaches; and (3) reimburse Complainant, Linda Jean Richards, for the loss in supplemental wages occasioned by its discriminatory acts. Appellant alleged that the Commission's findings were not supported by substantial evidence and that the Commission's order was null and void because it was issued on a Sunday in contravention of Section 4 of the Law of 1705 (Law), 1 Sm. L. 25, as amended, 44 P.S. §1. We decided in favor of Appellant by addressing the substantial evidence question only and determined that it was unnecessary to discuss the Sunday Law issue. Our decision was vacated by our Supreme Court which held that the Commission's decision was supported by substantial evidence. Appellant now returns to us requesting a disposition of the Sunday Law issue.

Appellant argues that, because the Commission made its decision and issued its order on a Sunday, its actions are null and void. ✓ In making this argument, Appellant relies on Section 4 of the Law of 1705, which states in relevant part:

"§1. Process not to be served on Sunday

"And be it further enacted, That no person or persons, upon the first day of the week, shall serve or execute, or cause to be served or executed, any writ, precept, warrant, order, judgment or decree, ...; but that the serving of any such writ, precept, warrant, order, judgment or decree, shall be void, to all intents and purposes whatsoever" (Emphasis added.)

The Commission responds by stating that the issuance of an order is not synonymous with its execution and that its actions of Sunday, March 28, 1976, therefore, do not fall within the proscriptions of the Law.

We agree with this technical distinction.²

The word "execute" is a term having different meanings in varying contexts. It is defined neither by the Act nor the Law. In the absence of definition, we are directed to ascribe to the word its peculiar and appropriate meaning or definition.³ Our task then is to determine the meaning of the term as employed in the Law, and as it relates to orders of the Commission.

In this context we believe the most exact definition of the term is the following definition offered by Black's Law Dictionary:⁴

"To fulfill the purpose of; to obey; to perform the commands of; as to execute a writ."

For the Commission's order to be executed, its mandates must be performed. There is no evidence that Appellant was required to comply with the Commission's order on Sunday, March 28, 1976, or any Sunday thereafter. Indeed, because of the appeals taken by Appellant, the Commission's order remains wholly executory. Our interpretation is further supported by Section 10 of the Act, 43 P.S. §960, which provides that the Commission must rely on the power and authority of the courts of this Commonwealth for enforcement of its orders. ⁵

Accordingly, we

ORDER

AND NOW, this 2nd day of June, 1978, the decision of the Pennsylvania Human Relations Commission is affirmed.


James C. Crumlish, Jr., Judge

Footnotes

¹ Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §955(a).

² Even though the Commission committed no legal error in meeting and issuing its orders on Sunday, we can discern no necessity for Sunday sessions and admonish the Commission to consider obvious problems this practice presents.

³ See Section 3(a) of the Statutory Construction Act of 1972, 1 Pa. C.S.A. §1903(a).

⁴ Black's Law Dictionary 676 (Revised 4th ed. 1968).

⁵ Section 10 of the Act, 43 P.S. §960, repealed in part by Section 508(a)(87) of the Appellate Court Jurisdiction Act of 1970, Act of July 31, 1970, P.L. 673, as amended, 17 P.S. §211.508(a), states in relevant part:

"§ 960. Enforcement and judicial review

"The complainant, the Attorney General or the Commission may secure enforcement of the order of the Commission or other appropriate relief by the [Commonwealth Court or by the] court of common pleas of the county within which the hearing was held."
(Emphasis added.)

IN THE COMMONWEALTH COURT
OF
PENNSYLVANIA

THE SCHOOL DISTRICT OF THE
TOWNSHIP OF MILLCREEK,

Appellant

v.


COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA HUMAN RELATIONS
COMMISSION,

Appellee

NO. 733 C.D. 1976

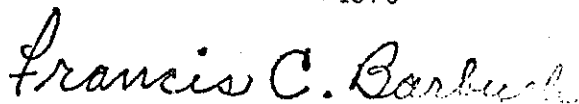
ORDER

AND NOW, this 2nd day of June, 1978, the decision of the Pennsylvania
Human Relations Commission is affirmed.


James C. Crumlish, Jr., Judge

CERTIFIED FROM THE RECORD

JUN 2 1978


Francis C. Barbuch
CHIEF CLERK

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 733 C.D. 1976

AUG 10 1 05 PM '76
RECEIVED BY
PA. HUMAN RELATIONS
COMMISSION
HEADQUARTERS

SCHOOL DISTRICT OF THE
TOWNSHIP OF MILLCREEK,

Appellant

vs.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION,

Appellee

BRIEF FOR APPELLEE

Appeal from the Final Order of the
Pennsylvania Human Relations Commission
at Docket No. E-5611-P

Katherine H. Fein
Assistant General Counsel
Attorney for Appellee

PENNSYLVANIA HUMAN RELATIONS COMMISSION
Room 810, 4 Smithfield Street
Pittsburgh, Pennsylvania 15222
(412) 565-7567

INDEX TO BRIEF

	<u>Page</u>
I. COUNTER-STATEMENT OF THE QUESTIONS INVOLVED	1
II. COUNTER-HISTORY OF THE CASE	2
III. ARGUMENT FOR APPELLEE	5
A. The Commission's Findings of Fact and Conclusions of Law are in accordance with law and are supported by substantial evidence	5
B. The Commission's Final Order is within its authority to remedy unlawful discrimination	10
C. The Millcreek Education Association is not an indispensable party to these proceedings and the Commission did not err in entering its Final Order against the School District of Millcreek only	12
D. The Commission did not err in entering its Final Order on a Sunday	14
IV. CONCLUSION	15

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<u>Columbia Gas Transmission Corp. v. Diamond Fuel Co.,</u> <u> Pa. , 347 A.2d 788 (1975)</u>	12
<u>Dougherty v. Continental Can Co.</u> <u>407 Pa. 264 (1962)</u>	13
<u>Dunlop v. Beloit College</u> <u> F. Supp. , (W.D.Wis. 1976); 11 EPD 10, 765</u>	12
<u>Hodgson v. Bd. of Ed., Parsippany-Troy Hills</u> <u>344 F. Supp. 79 (D.C.N.J. 1972)</u>	13
<u>Hodgson v. Corning Glass Works</u> <u>474 F.2d 490 (2d Cir. 1973); aff'd, 414 U.S. 1110 (1974)</u>	9
<u>Hodgson v. Fairmont Supply Co.,</u> <u>454 F.2d 490 (4th Cir. 1972)</u>	9
<u>Laffey, et al. v. Northwest Airline, Inc.</u> <u>366 F. Supp. 763 (D.D.C. 1973)</u>	9
<u>Midland Heights Homes v. Pennsylvania Human</u> <u>Relations Commission, 17 Pa.Cmwth. 563 (1975)</u>	11
<u>Olson v. Rembrandt Printing Co.,</u> <u>375 F. Supp. 413 (E.D.Mo. 1974)</u>	9
<u>Pennsylvania Human Relations Commission v.</u> <u>Alto-Reste Cemetary Park Ass'n.,</u> <u>435 Pa. 124, 306 A.2d 881 (1973)</u>	10
<u>Pennsylvania Human Relations Commission v.</u> <u>Chester School District,</u> <u>427 Pa. 157, 233 A.2d 290 (1967)</u>	5

Pennsylvania Human Relations Commission v.
Freeport Area School Dist., No. 24 March Term,
1976 (Opinion filed, July 6, 1976) 10

Pennsylvania Human Relations Commission v.
Hempfield Township,
Pa.Cmwith _____, 352 A.2d 218 (1976) 10, 13

Pennsylvania Human Relations Commission v.
Transit Casualty Insurance Co.,
20 Pa.Cmwith. 43, 340 A.2d 624 (1975) 10

Phillips v. Carborundum Co.,
_____ F. Supp. _____ (W.D.N.Y. 1973); 6 EPD 8814 12

Piva v. Xerox Corp.,
376 F. Supp. 242 (N.D.Cal. 1974) 9

Shultz v. American Can Co.,
424 F. 2d 356 (8th Cir. 1970) 9

Shultz v. Wheaton Glass Co.
421 F. 2d 259 (3d Cir. 1970) 9

Statutes

Administrative Agency Law, Act of June 4, 1945,
P.L. 1388, 71 P.S. 1710.44 5

Civil Rights Act of 1964, 78 Stat. 241, as amended,
Title VII, 42 U.S.C. 2000e et seq. 8, 9

Equal Pay Act of 1963, 77 Stat. 56, 29 U.S.C. 206(d) 8

Equal Pay Law, Act of December 17, 1959, P.L. 1913,
as amended, 43 P.S. 336.1 et seq. (1975 Supp.) 8

Pennsylvania Human Relations Act, Act of October 27,
1955, P.L. 744, as amended, 43 P.S. 951 et seq. 2, 9, 10

COUNTER-STATEMENT OF THE
QUESTIONS INVOLVED

1. Whether the Commission's Findings of Fact and Conclusions of Law are in accordance with Law and are supported by substantial evidence?
2. Whether the Commission's Final Order is within its authority to remedy unlawful discrimination?
3. Whether the Millcreek Education Association is an indispensable party to these proceedings and the Commission erred in entering its Final Order against the School District of Millcreek only?
4. Whether the Commission erred in entering its Final Order on a Sunday?

COUNTER-HISTORY OF THE CASE

This case arises on the Complaint of Linda Jean Richards (hereinafter "Complainant"), dated March 5, 1973, and amended September 5, 1973, alleging that the School District of the Township of Millcreek (hereinafter "Millcreek") 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 "the Act"), by refusing to pay her equal supplemental wages for coaching Girls' Varsity Tennis as paid to the male coach of Boys' Varsity Tennis, on account of her sex, female. The Complaint further alleged that Millcreek discriminated against all female athletic coaches in the payment of supplemental wages. Commission staff conducted an investigation into the allegations of the Complaint, found probable cause, and attempted to settle the matter by means of conference, conciliation and persuasion. Conciliation failing, a hearing on the merits of the complaint was conducted on July 29, 1975, before a panel of three Commissioners, and the following facts were established:

Complainant, a female physical education teacher at Millcreek's McDowell High School, was appointed to the position of Girls' Varsity Tennis Coach in September, 1972. (R. 21a, 23a, 1c) At the time of her application, she requested credit for her three years experience coaching Girls' Tennis when it was an extra-mural sport. (R. 22a, 23a, 1c) This request was denied and Complainant was appointed as first year Varsity Tennis Coach. (R. 23a) The supplemental wage

scale for all coaching positions in the school district was contained in the contract between Millcreek and the Millcreek Education Association, effective July 1, 1972 through June 30, 1974. Under the terms of that contract, Complainant received an annual supplemental wage of \$250.00, while the first year male coach of Boys' Varsity Tennis received an annual supplemental wage of \$550.00. (R. 27c) Complainant objected to the difference in compensation paid to male and female coaches and requested the Millcreek School Board to adjust her salary to an amount equal to the Boys' Varsity Tennis Coach. (R. 23a, 24a, 2c) This request was denied, and the Complainant signed a contract for the coaching position at \$250.00, "under protest." (R. 24a, 3c) In September, 1973, Complainant was again appointed to the position of Girls' Varsity Tennis Coach and received an annual supplemental wage of \$320.00. The second year male coach of Boys' Varsity Tennis received an annual supplemental wage of \$630.00. (R. 28c)

The duties and responsibilities of the male and female tennis coaches were the same. In addition to competitive play, both Complainant and the Boys' Varsity Tennis Coach performed the duties set forth in the "Coaches Handbook", which applied to all coaches regardless of sex. (R. 26a, 59a, 82a, 83a, 7c) During the 1972-1973 school year, the Girls' Varsity Tennis team played twenty-two (22) competitive matches. (R. 94a, 98a) In 1973-1974, the girls played eight (8) matches in the fall and participated in the (PIAA) District and State Championships in the spring, while the boys played fourteen (14) matches in the spring. (R. 31a, 32a, 74a, 95a, 99a) The student

participation in Boys' and Girls' Tennis was approximately equal. In 1973-1974, an estimated sixteen (16) girls and fifteen (15) boys participated in Varsity Tennis. (R. 24c)

The coaches of Girls' Varsity Basketball and Boys' Varsity Basketball also performed the same duties, as contained in the "Coaches Handbook". (R. 24c) However, under the terms of the contract, the supplemental wage rate for the female Head Basketball Coach was from \$250.00 to \$400.00, while the supplemental wage rate for the male Head Basketball Coach was from \$1,300 to \$1,900. (R. 27c, 28c)

The Commission concluded that the disparity in wages paid to male and female coaches for performing substantially similar work constituted unlawful discrimination on the basis of sex. The Commission awarded back pay to the Complainant in the amount of \$610.00, the difference between her supplemental wage and that paid to the male Tennis Coach, and ordered Millcreek to equalize the supplemental wage scales for male and female athletics coaches.

The case now comes before this Honorable Court on the appeal of Millcreek from the Final Order of the Commission, dated March 28, 1976.

ARGUMENT FOR APPELLEE

- A. The Commission's Findings of Fact and Conclusions of Law are in accordance with law and are supported by substantial evidence.

An adjudication of the Commission may be set aside or modified only where such adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or where the findings of fact necessary to support the adjudication are "not supported by substantial evidence." Administrative Agency Law, Act of June 4, 1975, P.L. 1388, 71 P.S. §1710.44; Pennsylvania Human Relations Commission v. Chester School District, 427 Pa. 157, 233 A.2d 290 (1967). The Commission's Findings of Fact in the instant case are well supported by competent evidence and must be sustained.

It is undisputed that the supplemental wage paid to the Complainant as coach of the Girls' Varsity Tennis Coach was \$300.00 and \$310.00 less per year than the supplemental wage paid to the male coach of Boys' Varsity Tennis. (R. 27c, 28c) In determining whether this disparity in compensation constituted unlawful discrimination on the basis of sex, the Commission considered evidence pertaining to the actual duties and responsibilities of the male and female Tennis Coaches. Complainant testified that her duties and responsibilities were set forth on page 2 of the "Coaches Handbook" which was distributed to all athletic coaches, male and female, in Millcreek. (R. 26a, 7c) Kathleen Guinn, the Commission's investigator,

testified that the "Coaches Handbook" was provided to her during the course of investigation as a job description for all coaching positions. (R. 59a) Ronald L. Manchester, Supervisor of Physical Education and Athletics, was called by Millcreek and testified that athletics coaches were required to take care of equipment, make sure members have proper physical examinations and parental permission, and other duties as set forth in the "Coaches Handbook." (R. 82a, 83a) Mr. Manchester also testified that there were no particular requirements as to practice time and that he kept no records of actual practice time. (R. 63a, 83a) No evidence was presented to indicate any difference in the actual job performance of male and female coaches, and the Commission correctly concluded that the duties and responsibilities of each were substantially equal.

The Commission also heard evidence pertaining to the actual competitive play of the Girls' and Boys' Varsity Tennis Teams. In 1972-1973, the Girls' Varsity Tennis Team played twenty-two (22) matches, as compared to the Boys' Varsity Tennis Team's sixteen (16) matches. (R. 94a, 98a) In 1973-1974, the Girls' Team played eight (8) matches during the season and two (2) championship matches, while the Boys' Team played fourteen (14) matches. (R. 31a, 32a, 47a, 95a, 99a) Estimated student participation for 1973-1974 showed sixteen (16) girls and fifteen (15) boys playing Varsity Tennis. (R. 24c) Student participation and competitive play in Girls' Varsity Basketball and Boys' Varsity Basketball was also substantially equal. (R. 24c) However, the supplemental wage paid to the female Head Basketball

Coach was from \$1,300 to \$1,900 less than the wage paid to the male Head Basketball Coach. (R. 27c, 28c) On this basis, the Commission concluded that the male and female coaches performed substantially the same or similar jobs. The evidence presented amply supports this finding.

Millcreek attempted to justify the disparity in supplemental wage paid to male and female coaches on the grounds that the girls' tennis program was a "new sport, a growing sport," whereas, the boys' program had been in existence for ten or fifteen years. (R. 60a) A similar justification was asserted for the difference in the supplemental wage paid the male and female basketball coaches. (R. 61a) Millcreek raises for the first time in its Brief the explanation that the disparity in wages was based upon differences in the "scope" of the male and female athletic programs, however, there is no evidence on the record to support such a finding. On the contrary, the Girls' Varsity Tennis Team played more competitive matches than the Boys' Team in 1972-1973, and qualified one of its members for the PIAA State Championships in 1973-1974. The only apparent difference between the boys' and girls' tennis programs was the sex of the participants.

Based upon these Findings of Fact, which are well supported by substantial evidence, the Commission entered the following Conclusions of Law:

Respondent Millcreek School District's compensation of Complainant as coach of the Girls' Varsity Tennis Team by a supplemental wage that was substantially less than the compensation paid the male Tennis Coach for performing a substantially similar job because of her sex, female, constitutes a violation of Section 5(a) of the Pennsylvania Human Relations Act.

Respondent Millcreek School District's compensation of all female coaches by a supplemental wage that was substantially less than the compensation paid their male counterparts for performing a substantially same or similar job because of their sex, female, constitutes a violation of Section 5(a) of the Pennsylvania Human Relations Act. (R. 9a) (Emphasis Supplied)

The Commission's interpretation and application of Section 5(a) of the Act is fully consistent with applicable statutory and case law. Discrimination in compensation on the basis of sex is prohibited by the Equal Pay Act of 1963, 29 U.S.C. 206(d) and by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., as well as by Section 5(a) of the Act. The principles of law governing so-called "equal pay" cases have been well established, and the Commission correctly relied upon this authority in determining that Millcreek violated Section 5(a) of the Act, under the facts of this case.

Under the Equal Pay Act of 1963, it is unlawful to pay different wages to males and females performing "substantially equal" work, unless such payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production or a differential based on any other factor other than sex. 29 U.S.C. 206(d)¹ It is not necessary that the jobs in question be

¹The Equal Pay Law, Act of December 17, 1959, P.L. 1913, as amended, 43 P.S. 336.1 et seq., (1975 Supp.), also prohibits discriminatory wages or compensation, however, there are few reported cases. The 1968 Amendment adopting the language of the Federal Equal Pay Act suggests an intention by the General Assembly to apply the federal standard.

identical in every respect. Incidental variation in tasks or responsibilities cannot defeat a claim for equal pay. What is required is that the jobs in question be shown to be "substantially equal" Shultz v. Wheaton Glass Co., 421 F.2d 259 (3d Cir. 1970); Shultz v. American Can Co., 424 F.2d 356 (8th Cir. 1970); Hodgson v. Fairmont Supply Co., 454 F.2d 490 (4th Cir. 1972); Hodgson v. Corning Glass Works, 474 F.2d 490 (2d Cir. 1973), aff'd, 414 U.S. 1110 (1974).

The principle of equal pay for "substantially equal" work has also been applied in cases brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., Laffey, et al. v. Northwest Airlines, Inc., 366 F. Supp. 763 (D.D.C. 1973) Federal courts have recognized that the Equal Pay Act and Title VII provide concurrent remedies, and an employee may elect to sue under either for conduct covered by both. Olson v. Rembrandt Printing Co., 375 F. Supp. 413 (E.D.Mo. 1974); Piva v. Xerox Corp., 376 F. Supp. 242 (N.D.Cal. 1974).

In the instant case, the Commission determined that Millcreek violated Section 5(a) of the Act by paying the female athletic coaches a lesser wage than the males for performing "substantially equal" work. This determination is fully in accordance with law and should be upheld.

B. The Commission's Final Order is within its authority to remedy unlawful discrimination.

After a finding of unlawful sex discrimination in this case, the Commission awarded back pay to the Complainant in the amount of \$610.00, the difference between her supplemental wage and that of the male Tennis Coach. An award of back pay is clearly authorized by Section 9 of the Act, which specifically provides that the Commission may issue orders requiring:

... affirmative action including but not limited to hiring, reinstatement or upgrading of employees, with or without back pay . . . as in the judgment of the Commission, will effectuate the purpose of this Act . . . 43 P.S. §959.

This Honorable Court has consistently upheld the validity of such awards Pennsylvania Human Relations Commission v. Hempfield Township, ___ Pa. Cmwlt. ___, 352 A.2d 218 (1976); Pennsylvania Human Relations Commission v. Transit Casualty Insurance Co., 20 Pa. Cmwlt. 43, 340 A.2d 624 (1975).

Paragraph 2 of the Commission's Final Order, requiring Millcreek to adjust the supplemental wages paid all female athletic coaches to equal the wages paid male coaches, is also well within the Commission's authority, as enunciated in Pennsylvania Human Relations Commission v. Alto-Reste Cemetary Park Ass'n., 435 Pa. 124, 306 A.2d 881 (1973), and most recently in Pennsylvania Human Relations Commission v. Freeport Area School District, No. 24 March Term, 1976 (Opinion filed, July 6, 1976.)

Midland Heights Homes v. Pennsylvania Human Relations Commission,
17 Pa.Cmwlth. 563 (1975), cited by Millcreek, involved an order for com-
pensatory damages for refusal to rent commercial housing under Section
5(h) of the Act, and is clearly not applicable to this case.

The Commission's Final Order is thus within its broad remedial
authority to remedy unlawful discrimination and fully in accord with
applicable law. This Honorable Court should affirm.

C. The Millcreek Education Association is not an indispensable party to these proceedings and the Commission did not err in entering its Final Order against the School District of Millcreek only.

An indispensable party is one whose rights are so directly connected with and affected by the litigation that he must be a party of record to protect his rights. Columbia Gas Transmission Corp v. Diamond Fuel Co., ____ Pa. ____, 347 A.2d 788 (1975) The Millcreek Education Association is not an indispensable party in the instant case, simply because the wage rates at issue were established by a collective bargaining agreement between the Association and Millcreek.

In Dunlop v. Beloit College, ____ F. Supp. ____ (W.D.Wis. 1976); 11 EPD 10, 765, the court refused to dismiss an equal pay suit for failure to join a union. The wage rates alleged to be discriminatory, were contained in a collective bargaining agreement and the defendant asserted that the union actively and knowingly participated in the negotiation of a discriminatory agreement. Nonetheless, the court held that the union was not an indispensable party.

In Phillips v. Carborundum Co., ____ F. Supp. ____ (W.D.N.Y. 1973); 6 EPD 5814, the company sought joinder of the union as an indispensable party in an equal pay case because the challenged rates were part of the union contract. The court held that relief could be granted in the union's absence and denied joinder. Similarly, in

Hodgson v. Bd. of Ed., Parsippany-Troy Hills, 344 F. Supp. 79

(D.C.N.J. 1972) joinder of the union in an equal pay case was denied. And, in one of the few cases under Pennsylvania's Equal Pay Law, preliminary objections for failure to join the union were dismissed.

Dougherty v. Continental Can Co., 407 Pa. 264 (1962)

This Honorable Court has also upheld Orders for back pay entered against an employer where the wage scales found to be discriminatory were part of a union contract. Pennsylvania Human Relations Commission v. Hempfield Township, supra. Clearly, the Commission did not err in the instant case in entering its Final Order against Millcreek only.

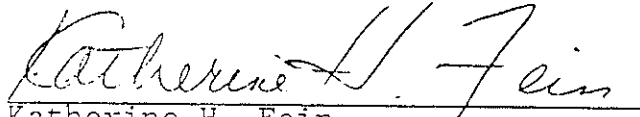
D. The Commission did not err in entering its Final Order on a Sunday.

Millcreek's spurious assertion that the Commission's determination is void because rendered on a Sunday requires little discussion. After a full evidentiary hearing on the merits of the instant Complaint, the Commission met at its regularly scheduled meeting, considered the recommendation of the Hearing Commissioners and voted to enter a finding of unlawful discrimination. The action of the Commission in this regard is not prohibited by 44 P.S. §1, and should not be overturned. The Commission has not executed upon such Final Order, nor issued any form of legal process in connection therewith. The mere entry of the Final Order on Sunday, March 28, 1976, under these circumstances was proper and valid.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests this Honorable Court to affirm the Final Order of the Commission, dated March 28, 1976.

Respectfully submitted:



Katherine H. Fein
Assistant General Counsel
PENNSYLVANIA HUMAN RELATIONS
COMMISSION
4 Smithfield Street - Room 810
Pittsburgh, Pennsylvania 15222
(412) 565-7567