

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

ANGELINE D. MACKAREY,

Complainant

vs.

DOCKET NO. E-15352

SCRANTON SCHOOL DISTRICT,

Respondent

FINDINGS OF FACT, CONCLUSIONS OF LAW,
HISTORY OF THE CASE, OPINION,
RECOMMENDATION OF THE HEARING COMMISSIONER,
AND FINAL ORDER

FINDINGS OF FACT *

1. The Complainant routinely performs the duties and responsibilities outlined in the job description that was posted for the position of Pupil Personnel Services Office Manager ("PPSOM") on May 26, 1977. (Exh. C-1, 3; N.T. 43-79)

2. The Complainant's immediate supervisor is the Coordinator of Pupil Personnel Services. (Exh. C-3; N.T. 21)

3. The Complainant routinely supervises six full time employees and a varying number of part-time employees. (N.T. 23-34; Exh. C-7, 8, 8a, 8b, 9, 10, 11, 12, 13; N.T. 333)

4. The Complainant's position requires a knowledge of state and federal laws and regulations including child labor laws, the Privacy Act, compulsory attendance laws and the School Code as it pertains to school age children. (N.T. 35-37)

5. The Complainant's position involves contact with public and private agencies and officials outside of the School District as well as direct contact with School District officials including the Superintendent, School Principals, Vice-Principals, and Guidance Counselors. (N.T. 35-41; Exh. C-3 at 18)

6. The Complainant's position does not routinely involve typing, operating office machines or equipment and has never included taking transcription. The clerks and secretaries

* The list of facts to which complainant and respondent stipulated prior to commencement of Public Hearing is attached at the end of these Findings of Fact and is incorporated herein. These stipulations are erroneously captioned "Proposed".

supervised by the Complainant perform the typing and copying under her direction. (N.T. 80-81)

7. The position of PPSOM, as posted, was to be a management position. (N.T. 14, 166, 324; Exh. C-17, 37)

8. There are two types of clerical employees employed by the Respondent in its Administration Building: clerks and secretaries. (N.T. 468, 648; Exh. C-5, 6, 26)

9. The duties and responsibilities of clerks and secretaries are outlined in job descriptions for their position and include typing, filing, copying, scheduling appointments and answering the telephones. (Exh. C-14, R-16, 17, 18, 19)

10. Robert Hoban, currently the Purchasing Manager is considered by the Respondent as a Management employee and performs the duties and responsibilities outlined in his job description. (N.T. 188, 192-208, 301; Exh. C-18)

11. The duties performed by Mr. Hoban include supervision of employees; require a knowledge of School Code and state law and regulations regarding purchasing; involve contact with School District officials and private vendors but do not include routine typing. (N.T. 190, 192-198, 301)

12. John Vail, currently Manager of Personnel Services, is considered by the Respondent as a management employee and performs the duties and responsibilities outlined in his job description. (N.T. 216, 219, 301; Exh. C-19)

13. The duties performed by Mr. Vail include supervision of employees; require a knowledge of federal and state law; involve contact with School District officials and State Government officials but do not include routine typing. (N.T. 219-233)

14. Jerome Kudajeski, described on the Fall 1979 organizational chart as the YETP Program Manager, is considered by the Respondent to be a management employee. His salary in 1978 was \$12,000.00 and in 1979 was \$13,000. (N.T. 302; Exh. C-33, 34)

15. James McDonough, described on the Fall 1979 organizational chart as the Director of Facilities and Grounds, is considered by the Respondent to be a management employee. His salary in 1978 was \$13,000.00 and in 1979 was \$14,250.00.

16. On an organizational level, Hoban, Kudajeski and McDonough are at the same functional level as the complainant. Each reports to a supervisor who has responsibility to the superintendent. Vail is one level above all of these individuals on the organizational chart. (Exh. C-32, 33)

17. The typical and routine duties performed by the Complainant are consistent with the typical and routine duties performed by other managers whom the respondent considers to be management and are not consistent with the typical duties and responsibilities of clerical employees. (Exh. C-3, 14, 18, 19, R-16, 17, 18, 19 and N.T. related to these exhibits.)

18. During an August 21, 1978 School Board meeting a resolution was introduced to affirm the Board's previous action of designating the Complainant as a manager by upgrading her salary to a level consistent with other management employees. The effective date of the salary adjustment was to be August 21, 1978. (Exh. C-15, 17; N.T. 167-169)

19. The resolution introduced at the August 21, 1978 meeting was eventually tabled and the superintendent was requested to make a recommendation regarding the appropriate level of management that the Complainant fit within. (Exh. C-15, 17; N.T. 167-169)

20. The superintendent ultimately concluded that the Complainant was a clerical employee. This determination precluded any salary adjustment.

21. Had the Complainant been properly classified as a management employee, her salary would have been adjusted to at least \$12,500.00 (the salary received by another first level management employee -- Robert Hoban), effective as of August 21, 1978. The Complainant's 7% raises in 1979 and 1980 would then have been based upon this amount rather than the \$9,250.00 and \$10,000.00 that they were based upon. (C-15; 34; N.T. 18, 20)

22. Management employees routinely receive four weeks vacation per year plus one personal day. The Complainant's employment agreement called for her to receive three weeks vacation in 1977 and she did not press for an increase in 1978. However, in both 1977 and 1978, at the request of her supervisor, she had only actually taken two weeks vacation. For the years 1979 and 1980, as a consequence of the superintendent's decision to classify the Complainant as a clerical employee, she has only been entitled to two weeks vacation per year. (Exh. C-20, 20(a), 50, R-23; N.T. 87; S.F. #14, #29)

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Angeline D. Mackarey, :
Complainant :
 :
vs : Docket No. E-15352
 :
Scranton School District, :
Respondent :

PROPOSED STIPULATIONS OF FACT

The following facts are admitted by all parties to the above captioned-case and no further proof thereof shall be required:

1. The Complainant herein is Angeline D. Mackarey, an adult female, who resides at 610 Court Street, Scranton, Pennsylvania, 18508.

2. The Respondent herein is Scranton School District with headquarters located at 425 North Washington Avenue, Scranton, Pennsylvania, 18503.

3. The Complainant, on or about January 24, 1979, filed a notarized complaint with the Pennsylvania Human Relations Commission (Commission) at docket number E-15352. A copy of the formal complaint is attached hereto as Appendix "A" and is incorporated by reference herein as if fully set forth.

4. On February 15, 1979, Commission staff duly served all parties to this action with a copy of the Complaint

described in item #3 above in a manner which satisfies the requisites of 1 Pa. Code 33.32. A copy of the certification of service is attached hereto as Appendix "B" and is incorporated by reference herein as if fully set forth.

5. On February 20, 1979, the Respondent acknowledged receipt of the above captioned complaint. A copy of this receipt is attached hereto as Appendix "C" and is incorporated by reference herein as if fully set forth.

6. In correspondence, dated August 21, 1979, the Commission notified the Respondent that Probable Cause existed to credit the allegations contained in the above captioned complaint. A copy of this correspondence is attached hereto as Appendix "D" and is incorporated by reference herein as if fully set forth.

7. Subsequent to the determination of probable cause, the Commission and the Respondent attempted to eliminate the alleged unlawful discriminatory practice through conference, conciliation and persuasion but were unable to do so.

8. On May 26, 1977, Respondent posted the position of Pupil Personnel Services Office Manager (hereinafter referred to as PPSOM) with a deadline for submission of applications listed as June 3, 1977.

9. The salary posted for the PPSOM position was \$9,250.00 per annum.

10. The Complainant was appointed to the PPSOM position with an effective date of June 28, 1977, at an annual salary of \$9,250.00.

11. A written job description for the PPSOM position which outlines the Functions, Scope, Duties and Responsibilities for the position was included with the position posting that was posted in all school buildings on or about May 26, 1977.

12. The Respondent classifies the PPSOM position as a clerical position and considers the Complainant as a clerical employee.

13. The Complainant, at all times subsequent to her assuming the duties of PPSOM, has received benefits consistent with those received by clerical employees.

14. The Complainant, at all times subsequent to assuming the duties of PPSOM, has received two weeks vacation based solely upon her number of years of service.

15. The position of PPSOM is not a position covered by the collective bargaining agreement.

16. In 1978, the Complainant's salary was \$9,250.00 per annum.

17. In 1979 the Complainant's salary was \$10,000.00 per annum.

18. Joseph Farrell, who resigned from his employment with the Respondent on June 30, 1977, was the last employee to hold the position of Chief Attendance Officer.

19. Mr. Farrell's annual salary for 1977 was \$9,250.00.

20. Helen Manley, who retired from her employment with the Respondent on September 30, 1977, was the last employee to hold the position of Medical Secretary.

21. Mrs. Manley's annual salary for 1977 was \$8,625.78 and she was entitled to three weeks vacation owing to her total years of service (40.10).

22. Mrs. Manley was considered by the Respondent to be a clerical employee.

23. The position of Purchasing Manager is held by Robert Hoban who was appointed to the position on September 5, 1978.

24. Mr. Hoban was paid at an annual salary rate of \$12,500.00 both in 1978 and in 1979.

25. The Respondent maintains a written job description for the position of Purchasing Manager which outlines the typical duties and responsibilities required for the job.

26. The position of Manager of Personnel Services is held by John Vail who was appointed to the position on March 28, 1978.

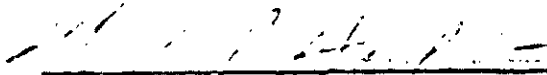
27. Mr. Vail was paid at an annual salary rate of \$15,000.00 both in 1978 and 1979.

28. The Respondent maintains a written job description for the position of Manager of Personnel Services which outlines the typical duties and responsibilities required for the job.

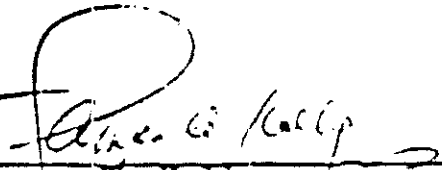
29. Clerical employees receive their vacation entitlement based solely upon the number of years of service in accordance with the following schedule: (a) two weeks per year for years of service one through nine; (b) three weeks per year for years ten through nineteen; and (c) four weeks per year for twenty or more years of service.

30. The Public Hearing to be held in this case will be presided over by Commissioner Doris M. Leader in lieu of the three member hearing panel consisting of Ms. Leader, Evert Smith and Raquel Otero de Yiengst that was previously appointed to hear the case.

31. The Public Hearing to be held in this case will take place in the City of Scranton at a site to be agreed upon by Counsel for the parties involved in the action.



Michael Hardiman
Assistant General Counsel
Pennsylvania Human
Relations Commission on
behalf of the Complainant



James A. Kelly
Solicitor for Scranton School
District, on behalf of the
Respondent



Date



Date

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("Commission") has jurisdiction over the parties and subject matter of this action pursuant to the provisions of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744 as amended, 43 P.S. §951 et seq.

2. Complainant and Respondent have waived their rights established in Section 9 of the Act to a Public Hearing before a panel of three Commissioners, and agreed to proceed to Public Hearing before Commissioner Doris M. Leader. The hearing was duly conducted at all times before Commissioner Leader.

3. The Commission and the parties have fully complied with all procedural pre-requisites to a Public Hearing, in accordance with Section 9 of the Act.

4. 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))

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

6. Discriminatory refusal to correctly classify complainant as a management employee is a continuing violation within the purview of 16 Pa. Code §42.11(a).

7. The Respondent's refusal to classify the Complainant a management employee was based upon her sex, female, and constitutes an unlawful discriminatory practice in the compensation terms, conditions and privileges of her employment in violation of Section 5(a) of the Act. (43 P.S. 955(a))

8. A complainant who prevails in an action alleging discrimination in the compensation, terms, conditions and privilege of employment is entitled to an award of back pay plus interest together with all appropriate benefits and the appropriate reclassification. (43 P.S. 959)

HISTORY OF THE CASE

On or about January 24, 1979, Angeline D. Mackarey ("Complainant") filed a complaint with the Pennsylvania Human Relations Commission ("PHRC" or "Commission"), against the Scranton School District ("Respondent"), alleging discrimination in her employment on the basis of sex and age, in violation of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq. ("Act").

Commission staff conducted an investigation into the allegations of the complaint. It was determined that probable cause existed to credit the allegations. Thereupon staff attempted to eliminate the practices complained of by conference, conciliation and persuasion. These efforts were unsuccessful, and the Commission approved the case for public hearing.

A pre-hearing conference was held on March 25, 1980. At that time Complainant and Respondent agreed to waive their statutory right to a public hearing before three Commissioners and to proceed to public hearing before Commissioner Doris Leader, Chairperson of the Hearing Panel, sitting as Hearing Commissioner.

A public hearing was held on May 6 and 7, 1980, and June 2 and 3, 1980, in Scranton, Pennsylvania, before Commissioner Leader. The case on behalf of the Complainant was presented

by Michael Hardiman, Assistant General Counsel to the Commission. Respondent was represented during the hearing by James A. Kelly, Esq., Solicitor of the School District.* Edith E. Cox, Assistant General Counsel to the Commission served as Advisor to the Hearing Commissioner.

* On July 30, 1980, Robert P. Casey advised that he had been appointed Solicitor. Mr. Kelly has had no further involvement with this case.

OPINION

A. BACKGROUND OF THE CASE

Ms. Angeline Mackarey commenced employment with the Scranton School District in September of 1973 as a confidential secretary. In May of 1977, while holding this position, she became aware of a new position being developed by the district that of Pupil Personnel Services Officer Manager ("PPSOM").

On May 27, 1980, the PPSOM position was posted and Ms. Mackarey applied for it. She was interviewed by a committee composed of three School Board members, one of whom was Board President. At the School Board meeting of June 27, 1977, a resolution was adopted appointing her to the PPSOM position. She accepted the appointment and continues to hold the position at the present time.

After she accepted the PPSOM position, disagreement arose as to the proper terms and conditions of Ms. Mackarey's employment. At a meeting of the School Board on August 21, 1978, a resolution was introduced by Director Searfoss. The resolution affirmed the appointment of Ms. Mackarey as PPSOM, with the further condition that "... salary for this position to be commensurate with Manager level salary."

The Board went into caucus for discussion. Following the caucus, the resolution was tabled. By unanimous vote, the question was referred to Superintendent Flynn for his recommendation. By memorandum dated September 20, 1978, Mr. Flynn advised that in his opinion, Ms. Mackarey was a clerical employee.

and thus not entitled to a salary adjustment. Following this memorandum, further disagreement arose as to the amount of vacation time to which Ms. Mackarey was entitled. When none of these matters was resolved to her satisfaction, Ms. Mackarey instituted the present action.

B. TIMELINESS OF THE COMPLAINT

Section 9 of the Act specifies that complaints of discrimination filed with the Commission must be filed "within ninety days after the alleged act of discrimination" (43 P.S. §959). Respondent in its post-hearing brief urges for the

first time that Ms. Mackarey's complaint was not filed within this statutory time period.

Respondent correctly notes that Superintendent Flynn's memorandum classifying complainant as a clerical worker was dated September 20, 1978. This complaint was filed on January 24, 1979, more than ninety days later. It does not, however, follow from these facts that the complaint was untimely filed.

Section 7 of the Act grants to the Commission various powers and duties, rule-making power among them (43 P.S. §95). Pursuant to this power the Commission has promulgated at 16 Pa. Code §42.1 et seq. its Special Rules of Administrative Practice and Procedure. Section 42.11(a) of the Special Rules provides:

The complaint shall be filed within 90 days from the date of the occurrence of the alleged unlawful discriminatory practice. If the alleged practice is of a continuing nature, the date of the occurrence of such practice shall be deemed to be any date subsequent to the occurrence of such practice up to and including the date upon which the unlawful discriminatory practice shall have ceased.

While no Pennsylvania case has to date construed this provision, numerous federal courts have ruled on questions of

continuing violations. As Title VII has been held to be the federal analogue to the Act*, we may properly consider these cases in determining whether complainant here has alleged a continuing violation.

The federal cases, while not entirely free from ambiguity, do suggest a number of general principles governing application of the "continuing violation" categorization.

One such general principle is that violations will not be deemed continuing when only a completed act is alleged as discriminatory; a discharge thus does not generally constitute a continuing violation even though its effects (such as continuing loss of wages, stigma, etc.) continue to operate. Olson vs. Rembrandt Printing Co., 511 F.2d 1288 (8th Cir. 1975); Terry vs. Bridgeport Brass Co., 519 F.2d 806 (7th Cir. 1975).

Continuing violations have been found where ongoing practices such as unequal wage payments are alleged as discriminatory. EEOC vs. Hickey-Mitchell Co., 372 F.Supp. 1117 (D.C. Mo. 1973); Corbin vs. Pan American World Airways, Inc., 432 F. Supp. 939 (N.D. Cal. 1977). It is just such a claim which complainant here makes. Examination of her allegations reveals that she complains of unequal pay and discriminatory classification of her position, practices which were occurring in January of 1979 and which indeed continue to the present.

Further, several of the discrete acts complained of by Ms. Mackarey took place in December of 1978 (rescission of one week of her vacation) and in January of 1979 (denial of her

* General Electric Corporation vs. Com., Penna. Human Relations Commission, 365 A.2d 649, 654 (Pa. Sup. 1976).

request for a meeting with the School Board Personnel Committ

It is thus doubly inaccurate to characterize this actio
as one protesting acts which had been completed by September
of 1978. First, Respondent's classification of Ms. Mackarey
as clerical is a continuing process. Second, the discrete
acts complained of occurred as late as January of 1979. We
therefore find that complainant has timely filed this action,
and that we may proceed to consideration of its substantive
claims.

C. LIABILITY

Section 5 of the Act provides in pertinent part:

It shall be an unlawful discriminatory practice ... for any employer because of the ... sex ... of any individual to ... discriminate against such individual with respect to compensation ... terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required.

(43 P.S. §955(a))

The essence of Ms. Mackarey's complaint is that Respondent discriminates against her on the basis of her sex by classifying her position as clerical, when she is, and should be classified as, a management employee. This classification, she alleges, results in lower salary and decreased benefits.

In support of her claim she asserts that her duties and responsibilities are comparable to those of male employees whom respondent classifies as managers. For the reasons which follow, we agree that this classification violates the above cited portion of Section 5 of the Act.

At threshold, a brief explanation must be given of the concept of "comparable worth." This is necessary because complainant has expressly avoided claiming that her position is equal to that of any male employed by respondent; she asserts only that her duties and responsibilities are comparable to those of male managers. The significance of this distinction can be appreciated only in the context of an analysis of parallel federal and state statutory schemes, and review of recent

cases interpreting them.

Federal law since 1963 has prohibited unequal pay for equal work if the disparity in wages is based on sex. The Equal Pay Act of 1963 specifically provides that:

No employer ... shall discriminate ... on the basis of sex by paying wages ... at a rate less than the rate at which he pays wages to employees of the opposite sex ... for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

29 U.S.C. §206(d)(1)

The Equal Pay Act further provides that wage disparity may lawfully be based on: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) any factor other than sex. (29 U.S.C. §206(d)(1)).

When Title VII of the Civil Rights Act of 1964 was passed prohibiting discrimination in employment on the basis of, inter alia, sex, Congress included a section, the so-called Bennett Amendment, which referred specifically to the Equal Pay Act. The Bennett Amendment was codified as Section 703(h) of Title VII; it provides;

It shall not be an unlawful employment practice under this subchapter for an employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of Section 206(d) of Title 29.

42 U.S.C. §2000e-2(h)

Serious disagreement has subsequently arisen over proper interpretation of this section. One theory holds that the section limits the scope of Title VII coverage to equal pay cases when the issue is wage disparity and the claimed basis of discrimination is sex; this version finds that the Equal Pay Act "authorizes" unequal pay for comparable jobs.

The better-reasoned interpretation of the Bennett Amendment holds that the Section serves only to preserve the defenses to claimed equal pay violations set out in the Equal Pay Act. This interpretation of course does not find that the Equal Pay Act "authorizes" unequal pay for comparable jobs. It therefore follows that a claim of unequal pay for comparable work, when the disparity is based on sex, states a violation of Title VII just as it would if the disparity were based for example on race or national origin.

The latter is the view adopted by the United States Court of Appeals for the Third Circuit in International Union of Electrical, Radio and Machine Workers (IUE) et al. vs. Westinghouse Electric Corp., Nos. 79-1893 and 79-1894, 23 EPD ¶31,10 A (August 1, 1980). The Court states:

The problem here is that Westinghouse allegedly used a system which set the wage rates lower for any classification if the group covered within that category was predominantly female. Under the applicable law, it is clear that Westinghouse could not create job classifications whereby different wages were paid to one group solely because of considerations of religion, race or national origin.

The Court goes on to hold that the classification under consideration is also impermissible if the disparity is determined by sex. As the cited passage reveals, the limitation of Title VII unsuccessfully urged by Westinghouse would have resulted, if at all, only from the suggested operation of the Bennett Amendment. Absent the Bennett Amendment the issue of equal pay for jobs of comparable worth becomes as straightforward in sex discrimination cases as it is in cases claiming a basis of e.g. religion: if the disparity in pay is based on sex, Title VII has been violated.

A helpful example is given by the Court in Westinghouse. The Court finds that, clearly, Title VII forbids an employer from paying higher wages to welders than to plumbers if the reason for the disparity is that most welders are Protestants and most plumbers are Catholics. The Court then finds that this disparity would also be illegal if the reason for the disparity were that welders were male and plumbers were female. (23 EPD 31 106 A at 16, 682).

The situation under state law is that there is no analog to the Bennett Amendment. Pennsylvania's Equal Pay Law, P.L. 1961 as amended 1968, P.L. 869, 43 P.S. 336.3(a), passed prior to the inclusion of sex as a proscribed basis of discrimination under the Human Relations Act, forbids unequal pay for equal work; as amended, the same defenses exist as are set out in

the Federal Equal Pay Act.

At this point the parallel with federal law becomes less close. Unlike Title VII, the Human Relations Act does not contain language referring specifically to the state's Equal Pay Act, and preserving Equal Pay claim defenses. There is thus no basis at all for claiming that the Human Relations Act permits discrimination on the basis of sex in cases of wage disparity involving comparable (but not equal) positions. The question presented to us therefore is in fact the simple one of whether Respondent's classification of Ms. Mackarey as a clerical employee is discrimination on the basis of sex, and a violation of the Human Relations Act. Our affirmative response has previously been noted.

As Complainant's brief urges, the controlling issue in this case is the factual one of whether Ms. Mackarey's position has been inappropriately classified as clerical. Only if she should properly be classified as management need we proceed to considerations of discriminatory reasons for the mischaracterization and of relief. Resolution of this issue requires sifting and analysis of the many facts adduced at public hearing. For convenience, we shall loosely organize these facts under three headings: those evolving as the history of the position; the complainant's job description and actual duties, and comparison of these with those of other employees of

Respondent; and secondary aspects of Respondent's classification of Complainant.

Our decision does not depend upon any absolute, binding definitions of the terms "clerical" and "management". As the testimony of Superintendent Flynn in particular revealed, these terms may be defined in a wide variety of ways. We note simply that all parties to this dispute agree that the terms clerical and management are labels for classifications of school district employees, and that Ms. Mackarey's position is either clerical or management. While efforts to elicit definitions of the terms from various witnesses were not always rewarding, we nevertheless gained the impression that the terms have meanings which are to a large extent commonly understood within the district.

History of this Position

The first set of data underlying our decision that Complainant is properly a management employee surrounds the creation of the PPSOM position.

The PPSOM position was created in 1977 when a number of employees in the Pupil Personnel Services department retired. Ms. Tinnina Ross, at that time Coordinator of Pupil Personnel Services, testified persuasively that she was able to convince Dr. Stephans (Superintendent at that time) to use the occasion

of these retirements to reorganize her department, in a way that would alleviate her own very heavy work load, by assigning day to day management of child accounting to the PPSOM. The new position was intended at its inception to be a management job. An applicant was therefore sought who could develop a child accounting system, assign clerical work, and in general take charge of the day to day operation of the office.

The selection process was consequently designed to discover a candidate who had the necessary qualities of maturity, initiative, and ability to accept responsibility. No special attention was devoted to the question of applicant's clerical skills. In particular, no typing test was given; nor was any other objective measurement of applicants' clerical skills attempted. It is highly significant that typing tests were a normal part of the selection process for clerical employees of the district.

Uncontroverted testimony established that Ms. Ross, who had already recommended Ms. Mackarey for the position, did not participate in the interview process. Instead, at the request of then Superintendent Stephens, she briefly explained to the interview committee her understanding of the nature of the position and the job requirements. Interviews were then conducted by the committee, whose members were three School Board members, Directors Price, Kairis, and McGurkin. No witness could point to any situation in which a committee of three School Board members was convened for the purpose of selecting a clerical employee.

It is significant that Ms. Mackarey was also recommended for the new position by the Director of Secondary Education, Mr. Gerard Joyce, for whom she had been working as confidential secretary. He, along with Ms. Ross, was co-author of the PPSOM job description. His letter of recommendation, which praised Ms. Mackarey's desire to advance herself, stated that she possessed "... the capacity to manage and supervise other employees, which is an integral part of the position as posted." While his testimony at public hearing indicated his belief that the position was only "... a step above the secretarial or clerical...", we find more convincing the plain import of the language in his letter of recommendation.

The PPSOM Position

Next, and of course most significant, we turn to analysis of the PPSOM position itself. Our attention must focus on, first, the PPSOM job description; second, the duties actually performed by Ms. Mackarey; and last, comparison of these with the duties of other employees in the district.

The PPSOM job description, admitted as Exhibit C-3, is notable first of all for its length. Under the heading "Duties and Responsibilities" are listed eighteen separate items, not one of which involves performance of typing, filing,

taking telephone calls, or other duties generally understood to be clerical. While "Secretarial Skills to include transcription" is listed as a requirement for the position, no indication exists that secretarial skills will be directly used. Items 13-16 do involve duties such as maintaining files and daily schedules; however, item 17, "Assigns and Supervises clerical duties to other pupil services office personnel," indicates that actual filing was intended to be delegated. The number and complexity of other duties compels this reading.

While the enumerated duties do not include clerical work, they do include numerous tasks requiring the exercise of initiative and independent judgment, and responsibility for overseeing the work of others. Preparing cases for hearings, conducting exit interviews, and supervising the conducting of the annual school census are only a few examples. This aspect of the position is perhaps best summarized by the portion of the job description captioned "Function": "The (PPSOM), under the direction of the Coordinator, directs all non-professional and technical services ..." (Emphasis added).

Ms. Mackarey's testimony established that, in performing her duties, she supervises six full-time employees; has a working knowledge of state and federal law bearing on the issue of school attendance; prepares reports having great significance to the district, such as the annual census report; and routinely works with district officials and outside agencies.

To the extent that this testimony indicated performance of duties beyond the scope of the job description, we reject respondent's unsubstantiated assertion that the job description must control. To the contrary, federal Equal Pay cases indicate that in the event of conflict, the duties actually performed are determinative. (See e.g. Brennan v. Victoria Bank & Trust Co., 493 F.2d 896 (5th Cir. 1974)).

Comparison of Ms. Mackarey's duties with those of a clerk as listed in Exhibit C-14 (a position posting for a clerk in the administration building), provides sharp contrast. The clerk's duties, six in number, are limited to typing, filing, maintaining appointment schedules, and other routine office tasks. Relatively little independent judgment is required. No supervisory authority is listed. Unquestionably Ms. Mackarey's position is of a different order.

Comparison of Ms. Mackarey's duties with those of a (confidential) secretary to a district principal, as listed in Exhibit R-19, provides less dramatic but equally meaningful contrast. The duties of this high level secretary, while greater in number and responsibility than those of a clerk, are still largely confined to office practice: typing, filing and record-keeping. Supervision of non-professionals, listed under "Functions", does not appear as a separate duty. In the absence of testimony to the contrary, we conclude that supervision is a minimal part of this job.

Finally, we compare Ms. Mackarey's position with those of the employees whose jobs she claims are properly comparable

to her own. The first of these is the Purchasing Manager, undisputably a management level position within the district. It is this position, we find, that complainant's job most closely resembles.

The job description and testimony of Robert Hoban, presently Purchasing Manager of the district, reveal several areas of similarity. Mr. Hoban, like the complainant, supervises several employees without directly involving his own supervisor. Most significant, he is responsible for implementing district policy within his prescribed area, in this case purchasing, with a substantial degree of independence. Familiarity with state law is required, along with district policy. Contact with many persons in the district is necessary, as well as with many outside vendors and organizations. All non-extraordinary matters are handled by Mr. Hoban without consultation with his supervisor.

Ms. Mackarey also urges that her position should be compared with that of the Manager of Personnel Services. At all times relevant to this action Mr. John Vail has served in this capacity. It is not disputed that the district classifies Mr. Vail as a management level employee.

While there are areas of comparability, we find overall that Mr. Vail's responsibilities are materially greater than the complainant's. His uncontradicted testimony established that he serves as a negotiator with all bargaining units; hears and resolves first level grievances; enforces all collective bargaining agreements; has regular contact with the Pennsylvania Labor Relations Board, Department of Education,

Workman's Compensation and Unemployment Compensation Bureau, Auditor General and agencies enforcing federal EEO requirements. This finding in no way negates our finding that complainant should be classified as a management employee; we find only that Mr. Vail may properly be classified at a higher level of management.

To summarize, we find that the PPSOM position involves different and greater responsibilities than clerical or secretarial jobs, and is materially similar to that of the Purchasing Manager. Lesser responsibilities are involved than those of the Manager of Personnel Services.

Miscellaneous Aspects

Finally our inquiry must focus on various secondary aspects of respondent's classifications.

Testimony adduced at Public Hearing established that school district clerical employees are, with few exceptions, entitled to organize for collective bargaining purposes. All clerical employees, even those (such as confidential secretaries who are not members of the collective bargaining unit), share certain characteristics which distinguish them from management employees. In each instance, throughout her tenure as PPSOM, complainant has shared the characteristics of management employees:

Complainant, like management employees such as Hoban and Vail, is not entitled to earn overtime pay. All clerical employees are so entitled.

Complainant's salary has at no time been determined by reference to a collective bargaining agreement. Her pay increases instead have resulted from Board action, and have followed the same pattern of increases as other management employees. On the other hand, the salaries of all clerical workers, whether or not they are unit members, have been determined by reference to the union contract at all times relevant to this case.

Comparison of the various job descriptions admitted into evidence reveals another area of distinction. The PPSOM job description, like those of the Purchasing Manager and the Manager of Personnel Services, states only that employment shall be for a full year or twelve months. Job descriptions for clerical positions, however, specify either a 230 day or a 261 day schedule.

Finally, testimony established that Ms. Mackarey receives certain benefits, such as increased insurance, hospitalization and dental protection, which are not given to the district's clerical employees.

Having for all of these reasons decided that Ms. Mackarey should be characterized as a management employee, we must proceed to consideration of respondent's reasons for the mischaracterization and a determination as to whether unlawful discrimination on the basis of sex has occurred.

Pennsylvania law (General Electric Corp. vs. PHRC, 365 A.2d 649 (1976)) as applied to the facts of this case requires complainant to establish that she is a member of a protected class who has been subject to different treatment than persons who are in ways other than class membership materially similar to her. Having established different treatment, an inference of discrimination on the basis of membership in the protected class arises, an inference which respondent may rebut by establishing job related, non-discriminatory reasons for the treatment. We must therefore examine Respondent's explanation for the classification of Ms. Mackarey as clerical.

Initially, it is clear that Superintendent Flynn, who characterized complainant as clerical in response to the Board instruction to ascertain her correct level of management, could not articulate a meaningful standard by which he had made this decision. His testimony that "managerial" employees are those with "responsibility of a broad nature" such as "responsibility for managing important aspects of the School District" (N.T. 265) shed little light on his thought processes in determining complainant's status.

Respondent's repeated assertions that the PPSOM position was created only to funnel clerical work to clerks in the Pupil Personnel Services office are not persuasive. The PPSOM job description itself indicates otherwise, as did the testimony of Tinnina Ross and the complainant herself about her actual duties. The fact that Ms. Ross and her successors were ultimately responsible for operation of the department, much

emphasized by respondent, establishes only that the district contains various levels of management responsibility, with each level reporting to a higher level.

In short, respondent has failed to offer persuasive proof of job-related reasons for classifying complainant as clerical. Nor have the discrepancies reviewed at length above been adequately explained. The inference of discrimination raised by complainant's proof of different treatment may therefore stand.

We note parenthetically that Pennsylvania cases have long recognized the difficulty of establishing by direct proof that discrimination has occurred. (Slippery Rock State College vs. Pennsylvania Human Relations Commission, 11 Pa. Cmwlth. 501, 314 A.2d 344 (1974); St. Andrews Development Corp. vs. Pennsylvania Human Relations Commission, 10 Cmwlth. 123, 308 A.2d 623 (1973)). It is thus entirely permissible to base our finding of discrimination on the facts proven and the inferences that may reasonably be made from those facts. Thus we turn to consideration of appropriate relief.

D. REMEDY

Section 9 of the Act provides that, upon a finding of discrimination,

... the 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 ... upgrading of employees, with or without backpay ... as, in the judgment of the Commission, will effectuate the purposes of this Act ...

43 P.S. §959

The purpose of the relief is to restore the complainant to the economic position in which she would have been had it not been for the discrimination. Calculations need be only reasonable and realistic, not mathematically precise. PHRC vs. Transit Casualty Insurance Co., 340 A.2d 624 (Pa. Cmwlth., 1977). Pettway vs. American Cast Iron Pipe Co., 494 F.2d 211 (5th Cir., 1974).

We therefore find that, based on our determination of comparability of the PPSOM position and that of Purchasing Manager, Ms. Mackarey is entitled to an award of backpay and benefits that will equalize her position to that of the Purchasing Manager, retroactive to August 21, 1978 with a 7% increase for 1979. This award includes an adjustment of vacation time necessary to equalize her to other management employees, corrected for the fact that in 1977 and 1978 she was content with an entitlement of three weeks vacation.

Pennsylvania law also permits an assessment of interest

on the backpay award, at the rate of 6%, compounded annually.
Goetz vs. Norristown Area School District, 328 A.2d 579 (Pa.
Cmwlth, 1975).

Wherefore, having concluded that Respondent discriminated against Ms. Mackarey on the basis of her sex by classifying her as a clerical employee, we find that she is entitled to backpay and benefits, plus interest, as described above, along with reclassification of her position.

RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, this 2nd day of December, 1980, in consideration of the entire record in this matter, including the Complaints, Stipulations of Fact, Exhibits, Record of the Hearing, and Briefs filed on behalf of Complainant and Respondents, the Hearing Commissioner hereby adopts the attached as her proposed History of the Case, Findings of Fact, Conclusions of Law, Opinion and Final Order, and recommends that the same be finally adopted and issued by the Pennsylvania Human Relations Commission.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Doris M Leader

DORIS M. LEADER
Presiding Commissioner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ANGELINE D. MACKAREY,
Complainant

vs.

SCRANTON SCHOOL DISTRICT,
Respondent

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DOCKET NO. E-15352

FINAL ORDER

AND NOW, this 13th day of January, 1981, upon consideration of the Findings of Fact, Conclusions of Law, Opinion, and Recommendation of the Hearing Commissioner, and pursuant to the provisions of Section 9 of the Pennsylvania Human Relations Commission hereby

O R D E R S :

1. The Respondent shall cease and desist from any act of discrimination against the Complainant regarding the compensation, terms, conditions and privileges of her employment.

2. The Respondent shall immediately reclassify the Complainant as a management employee and provide her with salary and associated fringe benefits consistent with other management employees.

3. The Respondent shall compensate the Complainant for her economic loss by paying her back wages calculated as follows:

- (a) 1978 - the Complainant shall receive the difference between \$12,500 and \$9,250.00, prorated from August 21, 1978 to the end of the calendar year.
- (b) 1979 - the Complainant shall be paid the difference between \$13,375.00 (\$12,500.00 plus her 7% increment), and the \$10,000.00 actually earned.
- (c) 1980 - the Complainant shall be paid the difference between \$14,300.00 (\$13,375.00 plus her 7% increment) and the \$10,700.00 actually earned.
- (d) the Complainant shall also receive 6% interest on the above computed annually from August 21, 1978.

4. The Respondent shall provide the Complainant with the following vacation entitlement:

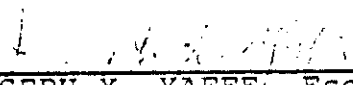
- (a) 1977 - one additional week
- (b) 1978 - one additional week
- (c) 1979 - two additional weeks
- (d) 1980 - two additional weeks

5. Satisfactory written proof of compliance with the terms of this Order shall be furnished to the Commission within thirty days of the date of the Order. The check shall be made payable to Angeline D. Mackarey and delivered in care of Michael Hardiman, Pennsylvania Human Relations Commission, 30 Muench Street, Harrisburg, Pennsylvania 17102.

6. The Respondent shall refrain from retaliating in any manner against the Complainant for having brought this action and also shall refrain from retaliating in any manner against any individual who may have testified and/or assisted the Complainant in this matter.

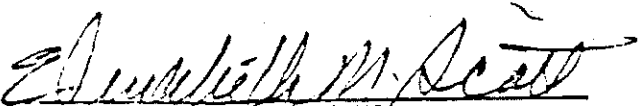
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY:



JOSEPH X. YAFFE, Esq.
Chairperson

ATTEST:



ELIZABETH M. SCOTT,
Secretary

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

ANGELINE D. MACKAREY,
Complainant

vs.

SCRANTON SCHOOL DISTRICT,
Respondent

DOCKET NO. E-15352

FINDINGS OF FACT, CONCLUSIONS OF LAW,
HISTORY OF THE CASE, OPINION,
RECOMMENDATION OF THE HEARING COMMISSIONER,
AND FINAL ORDER

FINDINGS OF FACT *

1. The Complainant routinely performs the duties and responsibilities outlined in the job description that was posted for the position of Pupil Personnel Services Office Manager ("PPSOM") on May 26, 1977. (Exh. C-1, 3; N.T. 43-79)

2. The Complainant's immediate supervisor is the Coordinator of Pupil Personnel Services. (Exh. C-3; N.T. 21)

3. The Complainant routinely supervises six full time employees and a varying number of part-time employees. (N.T. 23-34; Exh. C-7, 8, 8a, 8b, 9, 10, 11, 12, 13; N.T. 333)

4. The Complainant's position requires a knowledge of state and federal laws and regulations including child labor laws, the Privacy Act, compulsory attendance laws and the School Code as it pertains to school age children. (N.T. 35-37)

5. The Complainant's position involves contact with public and private agencies and officials outside of the School District as well as direct contact with School District officials including the Superintendent, School Principals, Vice-Principals, and Guidance Counselors. (N.T. 35-41; Exh. C-3 at 18)

6. The Complainant's position does not routinely involve typing, operating office machines or equipment and has never included taking transcription. The clerks and secretaries

* The list of facts to which complainant and respondent stipulated prior to commencement of Public Hearing is attached at the end of these Findings of Fact and is incorporated herein. These stipulations are erroneously captioned "Proposed".

supervised by the Complainant perform the typing and copying under her direction. (N.T. 80-81)

7. The position of PPSOM, as posted, was to be a management position. (N.T. 14, 166, 324; Exh. C-17, 37)

8. There are two types of clerical employees employed by the Respondent in its Administration Building: clerks and secretaries. (N.T. 468, 648; Exh. C-5, 6, 26)

9. The duties and responsibilities of clerks and secretaries are outlined in job descriptions for their position and include typing, filing, copying, scheduling appointments and answering the telephones. (Exh. C-14, R-16, 17, 18, 19)

10. Robert Hoban, currently the Purchasing Manager is considered by the Respondent as a Management employee and performs the duties and responsibilities outlined in his job description. (N.T. 188, 192-208, 301; Exh. C-18)

11. The duties performed by Mr. Hoban include supervision of employees; require a knowledge of School Code and state law and regulations regarding purchasing; involve contact with School District officials and private vendors but do not include routine typing. (N.T. 190, 192-198, 301)

12. John Vail, currently Manager of Personnel Services, is considered by the Respondent as a management employee and performs the duties and responsibilities outlined in his job description. (N.T. 216, 219, 301; Exh. C-19)

13. The duties performed by Mr. Vail include supervision of employees; require a knowledge of federal and state law; involve contact with School District officials and State Government officials but do not include routine typing. (N.T. 219-233)

14. Jerome Kudajeski, described on the Fall 1979 organizational chart as the YETP Program Manager, is considered by the Respondent to be a management employee. His salary in 1978 was \$12,000.00 and in 1979 was \$13,000. (N.T. 302; Exh. C-33, 34)

15. James McDonough, described on the Fall 1979 organizational chart as the Director of Facilities and Grounds, is considered by the Respondent to be a management employee. His salary in 1978 was \$13,000.00 and in 1979 was \$14,250.00.

16. On an organizational level, Hoban, Kudajeski and McDonough are at the same functional level as the complainant. Each reports to a supervisor who has responsibility to the superintendent. Vail is one level above all of these individuals on the organizational chart. (Exh. C-32, 33)

17. The typical and routine duties performed by the Complainant are consistent with the typical and routine duties performed by other managers whom the respondent considers to be management and are not consistent with the typical duties and responsibilities of clerical employees. (Exh. C-3, 14, 18, 19, R-16, 17, 18, 19 and N.T. related to these exhibits.)

18. During an August 21, 1978 School Board meeting a resolution was introduced to affirm the Board's previous action of designating the Complainant as a manager by upgrading her salary to a level consistent with other management employees. The effective date of the salary adjustment was to be August 21 1978. (Exh. C-15, 17; N.T. 167-169)

19. The resolution introduced at the August 21, 1978 meeting was eventually tabled and the superintendent was requested to make a recommendation regarding the appropriate level of management that the Complainant fit within. (Exh. C-15, 17; N.T. 167-169)

20. The superintendent ultimately concluded that the Complainant was a clerical employee. This determination precluded any salary adjustment.

21. Had the Complainant been properly classified as a management employee, her salary would have been adjusted to at least \$12,500.00 (the salary received by another first level management employee -- Robert Hoban), effective as of August 21, 1978. The Complainant's 7% raises in 1979 and 1980 would then have been based upon this amount rather than the \$9,250.00 and \$10,000.00 that they were based upon. (C-15; 34; N.T. 18, 20)

22. Management employees routinely receive four weeks vacation per year plus one personal day. The Complainant's employment agreement called for her to receive three weeks vacation in 1977 and she did not press for an increase in 1978. However, in both 1977 and 1978, at the request of her supervisor, she had only actually taken two weeks vacation. For the years 1979 and 1980, as a consequence of the superintendent's decision to classify the Complainant as a clerical employee, she has only been entitled to two weeks vacation per year. (Exh. C-20, 20(a), 50, R-28; N.T. 87; S.F. #14, #29)

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Angeline D. Mackarey,
Complainant

vs

Scranton School District,
Respondent

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Docket No. E-15352

PROPOSED STIPULATIONS OF FACT

The following facts are admitted by all parties to the above captioned-case and no further proof thereof shall be required:

1. The Complainant herein is Angeline D. Mackarey, an adult female, who resides at 610 Court Street, Scranton, Pennsylvania, 18508.

2. The Respondent herein is Scranton School District with headquarters located at 425 North Washington Avenue, Scranton, Pennsylvania, 18503.

3. The Complainant, on or about January 24, 1979, filed a notarized complaint with the Pennsylvania Human Relations Commission (Commission) at docket number E-15352. A copy of the formal complaint is attached hereto as Appendix "A" and is incorporated by reference herein as if fully set forth.

4. On February 15, 1979, Commission staff duly served all parties to this action with a copy of the Complaint

described in item #3 above in a manner which satisfies the requisites of 1 Pa. Code 33.32. A copy of the certification of service is attached hereto as Appendix "B" and is incorporated by reference herein as if fully set forth.

5. On February 20, 1979, the Respondent acknowledged receipt of the above captioned complaint. A copy of this receipt is attached hereto as Appendix "C" and is incorporated by reference herein as if fully set forth.

6. In correspondence, dated August 21, 1979, the Commission notified the Respondent that Probable Cause existed to credit the allegations contained in the above captioned complaint. A copy of this correspondence is attached hereto as Appendix "D" and is incorporated by reference herein as if fully set forth.

7. Subsequent to the determination of probable cause, the Commission and the Respondent attempted to eliminate the alleged unlawful discriminatory practice through conference, conciliation and persuasion but were unable to do so.

8. On May 26, 1977, Respondent posted the position of Pupil Personnel Services Office Manager (hereinafter referred to as PPSOM) with a deadline for submission of applications listed as June 3, 1977.

9. The salary posted for the PPSOM position was \$9,250.00 per annum.

10. The Complainant was appointed to the PPSOM position with an effective date of June 28, 1977, at an annual salary of \$9,250.00.

11. A written job description for the PPSOM position which outlines the Functions, Scope, Duties and Responsibilities for the position was included with the position posting that was posted in all school buildings on or about May 26, 1977.

12. The Respondent classifies the PPSOM position as a clerical position and considers the Complainant as a clerical employee.

13. The Complainant, at all times subsequent to her assuming the duties of PPSOM, has received benefits consistent with those received by clerical employees.

14. The Complainant, at all times subsequent to assuming the duties of PPSOM, has received two weeks vacation based solely upon her number of years of service.

15. The position of PPSOM is not a position covered by the collective bargaining agreement.

16. In 1978, the Complainant's salary was \$9,250.00 per annum.

17. In 1979 the Complainant's salary was \$10,000.00 per annum.

18. Joseph Farrell, who resigned from his employment with the Respondent on June 30, 1977, was the last employee to hold the position of Chief Attendance Officer.

19. Mr. Farrell's annual salary for 1977 was \$9,250.00.

20. Helen Manley, who retired from her employment with the Respondent on September 30, 1977, was the last employee to hold the position of Medical Secretary.

21. Mrs. Manley's annual salary for 1977 was \$8,625.78 and she was entitled to three weeks vacation owing to her total years of service (40.10).

22. Mrs. Manley was considered by the Respondent to be a clerical employee.

23. The position of Purchasing Manager is held by Robert Hoban who was appointed to the position on September 5, 1978.

24. Mr. Hoban was paid at an annual salary rate of \$12,500.00 both in 1978 and in 1979.

25. The Respondent maintains a written job description for the position of Purchasing Manager which outlines the typical duties and responsibilities required for the job.

26. The position of Manager of Personnel Services is held by John Vail who was appointed to the position on March 28, 1978.

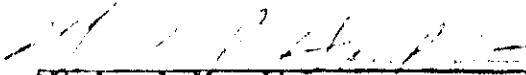
27. Mr. Vail was paid at an annual salary rate of \$15,000.00 both in 1978 and 1979.

28. The Respondent maintains a written job description for the position of Manager of Personnel Services which outlines the typical duties and responsibilities required for the job.

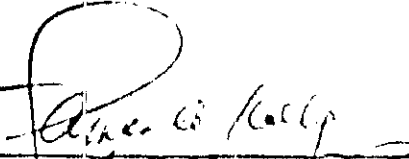
29. Clerical employees receive their vacation entitlement based solely upon the number of years of service in accordance with the following schedule: (a) two weeks per year for years of service one through nine; (b) three weeks per year for years ten through nineteen; and (c) four weeks per year for twenty or more years of service.

30. The Public Hearing to be held in this case will be presided over by Commissioner Doris M. Leader in lieu of the three member hearing panel consisting of Ms. Leader, Evert Smith and Raquel Otero de Yiengst that was previously appointed to hear the case.

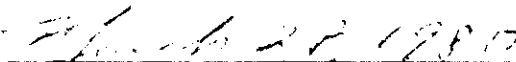
31. The Public Hearing to be held in this case will take place in the City of Scranton at a site to be agreed upon by Counsel for the parties involved in the action.



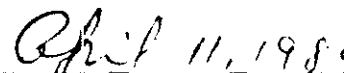
Michael Hardiman
Assistant General Counsel
Pennsylvania Human
Relations Commission on
behalf of the Complainant



James A. Kelly
Solicitor for Scranton School
District, on behalf of the
Respondent



Date



Date

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("Commission") has jurisdiction over the parties and subject matter of this action pursuant to the provisions of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744 as amended, 43 P.S. §951 et seq.
2. Complainant and Respondent have waived their rights established in Section 9 of the Act to a Public Hearing before a panel of three Commissioners, and agreed to proceed to Public Hearing before Commissioner Doris M. Leader. The hearing was duly conducted at all times before Commissioner Leader.
3. The Commission and the parties have fully complied with all procedural pre-requisites to a Public Hearing, in accordance with Section 9 of the Act.
4. 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))
5. Complainant is an "individual" within the meaning of Section 5(a) of the Pennsylvania Human Relations Act. (43 P.S. 955(a))
6. Discriminatory refusal to correctly classify complainant as a management employee is a continuing violation within the purview of 16 Pa. Code §42.11(a).

7. The Respondent's refusal to classify the Complainant a management employee was based upon her sex, female, and constitutes an unlawful discriminatory practice in the compensation terms, conditions and privileges of her employment in violation of Section 5(a) of the Act. (43 P.S. 955(a))

8. A complainant who prevails in an action alleging discrimination in the compensation, terms, conditions and privilege of employment is entitled to an award of back pay plus interest together with all appropriate benefits and the appropriate reclassification. (43 P.S. 959)

HISTORY OF THE CASE

On or about January 24, 1979, Angeline D. Mackarey ("Complainant") filed a complaint with the Pennsylvania Human Relations Commission ("PHRC" or "Commission"), against the Scranton School District ("Respondent"), alleging discrimination in her employment on the basis of sex and age, in violation of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq. ("Act").

Commission staff conducted an investigation into the allegations of the complaint. It was determined that probable cause existed to credit the allegations. Thereupon staff attempted to eliminate the practices complained of by conference, conciliation and persuasion. These efforts were unsuccessful, and the Commission approved the case for public hearing.

A pre-hearing conference was held on March 25, 1980. At that time Complainant and Respondent agreed to waive their statutory right to a public hearing before three Commissioners and to proceed to public hearing before Commissioner Doris Leader, Chairperson of the Hearing Panel, sitting as Hearing Commissioner.

A public hearing was held on May 6 and 7, 1980, and June 2 and 3, 1980, in Scranton, Pennsylvania, before Commissioner Leader. The case on behalf of the Complainant was presented

by Michael Hardiman, Assistant General Counsel to the Commission. Respondent was represented during the hearing by James A. Kelly Esq., Solicitor of the School District.* Edith E. Cox, Assistant General Counsel to the Commission served as Advisor to the Hearing Commissioner.

* On July 30, 1980, Robert P. Casey advised that he had been appointed Solicitor. Mr. Kelly has had no further involvement with this case.

OPINION

A. BACKGROUND OF THE CASE

Ms. Angeline Mackarey commenced employment with the Scranton School District in September of 1973 as a confidential secretary. In May of 1977, while holding this position, she became aware of a new position being developed by the district that of Pupil Personnel Services Officer Manager ("PPSOM").

On May 27, 1980, the PPSOM position was posted and Ms. Mackarey applied for it. She was interviewed by a committee composed of three School Board members, one of whom was Board President. At the School Board meeting of June 27, 1977, a resolution was adopted appointing her to the PPSOM position. She accepted the appointment and continues to hold the position at the present time.

After she accepted the PPSOM position, disagreement arose as to the proper terms and conditions of Ms. Mackarey's employment. At a meeting of the School Board on August 21, 1978, a resolution was introduced by Director Searfoss. The resolution affirmed the appointment of Ms. Mackarey as PPSOM, with the further condition that "... salary for this position to be commensurate with Manager level salary."

The Board went into caucus for discussion. Following the caucus, the resolution was tabled. By unanimous vote, the question was referred to Superintendent Flynn for his recommendation. By memorandum dated September 20, 1978, Mr. Flynn advised that in his opinion, Ms. Mackarey was a clerical employee.

and thus not entitled to a salary adjustment. Following this memorandum, further disagreement arose as to the amount of vacation time to which Ms. Mackarey was entitled. When none of these matters was resolved to her satisfaction, Ms. Mackarey instituted the present action.

B. TIMELINESS OF THE COMPLAINT

Section 9 of the Act specifies that complaints of discrimination filed with the Commission must be filed "within ninety days after the alleged act of discrimination" (43 P.S. §959). Respondent in its post-hearing brief urges for the first time that Ms. Mackarey's complaint was not filed within this statutory time period.

Respondent correctly notes that Superintendent Flynn's memorandum classifying complainant as a clerical worker was dated September 20, 1978. This complaint was filed on January 24, 1979, more than ninety days later. It does not, however, follow from these facts that the complaint was untimely filed.

Section 7 of the Act grants to the Commission various powers and duties, rule-making power among them (43 P.S. §95). Pursuant to this power the Commission has promulgated at 16 Pa. Code §42.1 et seq. its Special Rules of Administrative Practice and Procedure. Section 42.11(a) of the Special Rules provides:

The complaint shall be filed within 90 days from the date of the occurrence of the alleged unlawful discriminatory practice. If the alleged practice is of a continuing nature, the date of the occurrence of such practice shall be deemed to be any date subsequent to the occurrence of such practice up to and including the date upon which the unlawful discriminatory practice shall have ceased.

While no Pennsylvania case has to date construed this provision, numerous federal courts have ruled on questions of

continuing violations. As Title VII has been held to be the federal analogue to the Act*, we may properly consider these cases in determining whether complainant here has alleged a continuing violation.

The federal cases, while not entirely free from ambiguity, do suggest a number of general principles governing application of the "continuing violation" categorization.

One such general principle is that violations will not be deemed continuing when only a completed act is alleged as discriminatory; a discharge thus does not generally constitute a continuing violation even though its effects (such as continuing loss of wages, stigma, etc.) continue to operate. Olson vs. Rembrandt Printing Co., 511 F.2d 1288 (8th Cir. 1975); Terry vs. Bridgeport Brass Co., 519 F.2d 806 (7th Cir. 1975).

Continuing violations have been found where ongoing practices such as unequal wage payments are alleged as discriminatory. EEOC vs. Hickey-Mitchell Co., 372 F.Supp. 1117 (D.C. Mo. 1973); Corbin vs. Pan American World Airways, Inc., 432 F. Supp. 939 (N.D. Cal. 1977). It is just such a claim which complainant here makes. Examination of her allegations reveals that she complains of unequal pay and discriminatory classification of her position, practices which were occurring in January of 1979 and which indeed continue to the present.

Further, several of the discrete acts complained of by Ms. Mackarey took place in December of 1978 (rescission of one week of her vacation) and in January of 1979 (denial of her

* General Electric Corporation vs. Com., Penna. Human Relations Commission, 365 A.2d 649, 654 (Pa. Sup. 1976).

request for a meeting with the School Board Personnel Committ

It is thus doubly inaccurate to characterize this actio
as one protesting acts which had been completed by September
of 1978. First, Respondent's classification of Ms. Mackarey
as clerical is a continuing process. Second, the discrete
acts complained of occurred as late as January of 1979. We
therefore find that complainant has timely filed this action,
and that we may proceed to consideration of its substantive
claims.

C. LIABILITY

Section 5 of the Act provides in pertinent part:

It shall be an unlawful discriminatory practice ... for any employer because of the ... sex ... of any individual to ... discriminate against such individual with respect to compensation ... terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required.

(43 P.S. §955(a))

The essence of Ms. Mackarey's complaint is that Respondent discriminates against her on the basis of her sex by classifying her position as clerical, when she is, and should be classified as, a management employee. This classification, she alleges, results in lower salary and decreased benefits.

In support of her claim she asserts that her duties and responsibilities are comparable to those of male employees whom respondent classifies as managers. For the reasons which follow, we agree that this classification violates the above cited portion of Section 5 of the Act.

At threshold, a brief explanation must be given of the concept of "comparable worth." This is necessary because complainant has expressly avoided claiming that her position is equal to that of any male employed by respondent; she asserts only that her duties and responsibilities are comparable to those of male managers. The significance of this distinction can be appreciated only in the context of an analysis of parallel federal and state statutory schemes, and review of recent

cases interpreting them.

Federal law since 1963 has prohibited unequal pay for equal work if the disparity in wages is based on sex. The Equal Pay Act of 1963 specifically provides that:

No employer ... shall discriminate ... on the basis of sex by paying wages ... at a rate less than the rate at which he pays wages to employees of the opposite sex ... for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

29 U.S.C. §206(d)(1)

The Equal Pay Act further provides that wage disparity may lawfully be based on: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) any factor other than sex. (29 U.S.C. §206(d)(1)).

When Title VII of the Civil Rights Act of 1964 was passed prohibiting discrimination in employment on the basis of, inter alia, sex, Congress included a section, the so-called Bennett Amendment, which referred specifically to the Equal Pay Act. The Bennett Amendment was codified as Section 703(h) of Title VII; it provides;

It shall not be an unlawful employment practice under this subchapter for an employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of Section 206(d) of Title 29.

42 U.S.C. §2000e-2(h)

Serious disagreement has subsequently arisen over proper interpretation of this section. One theory holds that the section limits the scope of Title VII coverage to equal pay cases when the issue is wage disparity and the claimed basis of discrimination is sex; this version finds that the Equal Pay Act "authorizes" unequal pay for comparable jobs.

The better-reasoned interpretation of the Bennett Amendment holds that the Section serves only to preserve the defenses to claimed equal pay violations set out in the Equal Pay Act. This interpretation of course does not find that the Equal Pay Act "authorizes" unequal pay for comparable jobs. It therefore follows that a claim of unequal pay for comparable work, when the disparity is based on sex, states a violation of Title VII just as it would if the disparity were based for example on race or national origin.

The latter is the view adopted by the United States Court of Appeals for the Third Circuit in International Union of Electrical, Radio and Machine Workers (IUE) et al. vs. Westinghouse Electric Corp., Nos. 79-1893 and 79-1894, 23 EPD ¶31,106 A (August 1, 1980). The Court states:

The problem here is that Westinghouse allegedly used a system which set the wage rates lower for any classification if the group covered within that category was predominantly female. Under the applicable law, it is clear that Westinghouse could not create job classifications whereby different wages were paid to one group solely because of considerations of religion, race or national origin.

The Court goes on to hold that the classification under consideration is also impermissible if the disparity is determined by sex. As the cited passage reveals, the limitation of Title VII unsuccessfully urged by Westinghouse would have resulted, if at all, only from the suggested operation of the Bennett Amendment. Absent the Bennett Amendment the issue of equal pay for jobs of comparable worth becomes as straightforward in sex discrimination cases as it is in cases claiming a basis of e.g. religion: if the disparity in pay is based on sex, Title VII has been violated.

A helpful example is given by the Court in Westinghouse. The Court finds that, clearly, Title VII forbids an employer from paying higher wages to welders than to plumbers if the reason for the disparity is that most welders are Protestants and most plumbers are Catholics. The Court then finds that this disparity would also be illegal if the reason for the disparity were that welders were male and plumbers were female. (23 EPD 31 106 A at 16, 682).

The situation under state law is that there is no analogue to the Bennett Amendment. Pennsylvania's Equal Pay Law, P.L. 191 as amended 1968, P.L. 869, 43 P.S. 336.3(a), passed prior to the inclusion of sex as a proscribed basis of discrimination under the Human Relations Act, forbids unequal pay for equal work; as amended, the same defenses exist as are set out in

the Federal Equal Pay Act.

At this point the parallel with federal law becomes less close. Unlike Title VII, the Human Relations Act does not contain language referring specifically to the state's Equal Pay Act, and preserving Equal Pay claim defenses. There is thus no basis at all for claiming that the Human Relations Act permits discrimination on the basis of sex in cases of wage disparity involving comparable (but not equal) positions. The question presented to us therefore is in fact the simple one of whether Respondent's classification of Ms. Mackarey as a clerical employee is discrimination on the basis of sex, and a violation of the Human Relations Act. Our affirmative response has previously been noted.

As Complainant's brief urges, the controlling issue in this case is the factual one of whether Ms. Mackarey's position has been inappropriately classified as clerical. Only if she should properly be classified as management need we proceed to considerations of discriminatory reasons for the mischaracterization and of relief. Resolution of this issue requires sifting and analysis of the many facts adduced at public hearing. For convenience, we shall loosely organize these facts under three headings: those evolving as the history of the position; the complainant's job description and actual duties, and comparison of these with those of other employees of

Respondent; and secondary aspects of Respondent's classification of Complainant.

Our decision does not depend upon any absolute, binding definitions of the terms "clerical" and "management". As the testimony of Superintendent Flynn in particular revealed, these terms may be defined in a wide variety of ways. We note simply that all parties to this dispute agree that the terms clerical and management are labels for classifications of school district employees, and that Ms. Mackarey's position is either clerical or management. While efforts to elicit definitions of the terms from various witnesses were not always rewarding, we nevertheless gained the impression that the terms have meanings which are to a large extent commonly understood within the district.

History of this Position

The first set of data underlying our decision that Complainant is properly a management employee surrounds the creation of the PPSOM position.

The PPSOM position was created in 1977 when a number of employees in the Pupil Personnel Services department retired. Ms. Tinnina Ross, at that time Coordinator of Pupil Personnel Services, testified persuasively that she was able to convince Dr. Stephans (Superintendent at that time) to use the occasion

of these retirements to reorganize her department, in a way that would alleviate her own very heavy work load, by assigning day to day management of child accounting to the PPSOM. The new position was intended at its inception to be a management job. An applicant was therefore sought who could develop a child accounting system, assign clerical work, and in general take charge of the day to day operation of the office.

The selection process was consequently designed to discover a candidate who had the necessary qualities of maturity, initiative, and ability to accept responsibility. No special attention was devoted to the question of applicant's clerical skills. In particular, no typing test was given; nor was any other objective measurement of applicants' clerical skills attempted. It is highly significant that typing tests were a normal part of the selection process for clerical employees of the district.

Uncontroverted testimony established that Ms. Ross, who had already recommended Ms. Mackarey for the position, did not participate in the interview process. Instead, at the request of then Superintendent Stephens, she briefly explained to the interview committee her understanding of the nature of the position and the job requirements. Interviews were then conducted by the committee, whose members were three School Board members, Directors Price, Kairis, and McGurrian. No witness could point to any situation in which a committee of three School Board members was convened for the purpose of selecting a clerical employee.

It is significant that Ms. Mackarey was also recommended for the new position by the Director of Secondary Education, Mr. Gerard Joyce, for whom she had been working as confidential secretary. He, along with Ms. Ross, was co-author of the PPSOM job description. His letter of recommendation, which praised Ms. Mackarey's desire to advance herself, stated that she possessed "... the capacity to manage and supervise other employees, which is an integral part of the position as posted." While his testimony at public hearing indicated his belief that the position was only "... a step above the secretarial or clerical...", we find more convincing the plain import of the language in his letter of recommendation.

The PPSOM Position

Next, and of course most significant, we turn to analysis of the PPSOM position itself. Our attention must focus on, first, the PPSOM job description; second, the duties actually performed by Ms. Mackarey; and last, comparison of these with the duties of other employees in the district.

The PPSOM job description, admitted as Exhibit C-3, is notable first of all for its length. Under the heading "Duties and Responsibilities" are listed eighteen separate items, not one of which involves performance of typing, filing,

taking telephone calls, or other duties generally understood to be clerical. While "Secretarial Skills to include transcription" is listed as a requirement for the position, no indication exists that secretarial skills will be directly used. Items 13-16 do involve duties such as maintaining files and daily schedules; however, item 17, "Assigns and Supervises clerical duties to other pupil services office personnel," indicates that actual filing was intended to be delegated. The number and complexity of other duties compels this reading.

While the enumerated duties do not include clerical work, they do include numerous tasks requiring the exercise of initiative and independent judgment, and responsibility for overseeing the work of others. Preparing cases for hearings, conducting exit interviews, and supervising the conducting of the annual school census are only a few examples. This aspect of the position is perhaps best summarized by the portion of the job description captioned "Function": "The (PPSOM), under the direction of the Coordinator, directs all non-professional and technical services ..." (Emphasis added).

Ms. Mackarey's testimony established that, in performing her duties, she supervises six full-time employees; has a working knowledge of state and federal law bearing on the issue of school attendance; prepares reports having great significance to the district, such as the annual census report; and routinely works with district officials and outside agencies

To the extent that this testimony indicated performance of duties beyond the scope of the job description, we reject respondent's unsubstantiated assertion that the job description must control. To the contrary, federal Equal Pay cases indicate that in the event of conflict, the duties actually performed are determinative. (See e.g. Brennan v. Victoria Bank & Trust Co., 493 F.2d 896 (5th Cir. 1974)).

Comparison of Ms. Mackarey's duties with those of a clerk as listed in Exhibit C-14 (a position posting for a clerk in the administration building), provides sharp contrast. The clerk's duties, six in number, are limited to typing, filing, maintaining appointment schedules, and other routine office tasks. Relatively little independent judgment is required. No supervisory authority is listed. Unquestionably Ms. Mackarey's position is of a different order.

Comparison of Ms. Mackarey's duties with those of a (confidential) secretary to a district principal, as listed in Exhibit R-19, provides less dramatic but equally meaningful contrast. The duties of this high level secretary, while greater in number and responsibility than those of a clerk, are still largely confined to office practice: typing, filing and record-keeping. Supervision of non-professionals, listed under "Functions", does not appear as a separate duty. In the absence of testimony to the contrary, we conclude that supervision is a minimal part of this job.

Finally, we compare Ms. Mackarey's position with those of the employees whose jobs she claims are properly comparable

to her own. The first of these is the Purchasing Manager, undisputably a management level position within the district. It is this position, we find, that complainant's job most closely resembles.

The job description and testimony of Robert Hoban, presently Purchasing Manager of the district, reveal several areas of similarity. Mr. Hoban, like the complainant, supervises several employees without directly involving his own supervisor. Most significant, he is responsible for implementing district policy within his prescribed area, in this case purchasing, with a substantial degree of independence. Familiarity with state law is required, along with district policy. Contact with many persons in the district is necessary, as well as with many outside vendors and organizations. All non-extraordinary matters are handled by Mr. Hoban without consultation with his supervisor.

Ms. Mackarey also urges that her position should be compared with that of the Manager of Personnel Services. At all times relevant to this action Mr. John Vail has served in this capacity. It is not disputed that the district classifies Mr. Vail as a management level employee.

While there are areas of comparability, we find overall that Mr. Vail's responsibilities are materially greater than the complainant's. His uncontradicted testimony established that he serves as a negotiator with all bargaining units; hears and resolves first level grievances; enforces all collective bargaining agreements; has regular contact with the Pennsylvania Labor Relations Board, Department of Education,

Workman's Compensation and Unemployment Compensation Bureau, Auditor General and agencies enforcing federal EEO requirements. This finding in no way negates our finding that complainant should be classified as a management employee; we find only that Mr. Vail may properly be classified at a higher level of management.

To summarize, we find that the PPSOM position involves different and greater responsibilities than clerical or secretarial jobs, and is materially similar to that of the Purchasing Manager. Lesser responsibilities are involved than those of the Manager of Personnel Services.

Miscellaneous Aspects

Finally our inquiry must focus on various secondary aspects of respondent's classifications.

Testimony adduced at Public Hearing established that school district clerical employees are, with few exceptions, entitled to organize for collective bargaining purposes. All clerical employees, even those (such as confidential secretaries who are not members of the collective bargaining unit), share certain characteristics which distinguish them from management employees. In each instance, throughout her tenure as PPSOM, complainant has shared the characteristics of management employees:

Complainant, like management employees such as Hoban and Vail, is not entitled to earn overtime pay. All clerical employees are so entitled.

Complainant's salary has at no time been determined by reference to a collective bargaining agreement. Her pay increases instead have resulted from Board action, and have followed the same pattern of increases as other management employees. On the other hand, the salaries of all clerical workers, whether or not they are unit members, have been determined by reference to the union contract at all times relevant to this case.

Comparison of the various job descriptions admitted into evidence reveals another area of distinction. The PPSOM job description, like those of the Purchasing Manager and the Manager of Personnel Services, states only that employment shall be for a full year or twelve months. Job descriptions for clerical positions, however, specify either a 230 day or a 261 day schedule.

Finally, testimony established that Ms. Mackarey receives certain benefits, such as increased insurance, hospitalization and dental protection, which are not given to the district's clerical employees.

Having for all of these reasons decided that Ms. Mackarey should be characterized as a management employee, we must proceed to consideration of respondent's reasons for the mischaracterization and a determination as to whether unlawful discrimination on the basis of sex has occurred.

Pennsylvania law (General Electric Corp. vs. PHRC, 365 A.2d 649 (1976)) as applied to the facts of this case requires complainant to establish that she is a member of a protected class who has been subject to different treatment than persons who are in ways other than class membership materially similar to her. Having established different treatment, an inference of discrimination on the basis of membership in the protected class arises, an inference which respondent may rebut by establishing job related, non-discriminatory reasons for the treatment. We must therefore examine Respondent's explanations for the classification of Ms. Mackarey as clerical.

Initially, it is clear that Superintendent Flynn, who characterized complainant as clerical in response to the Board's instruction to ascertain her correct level of management, could not articulate a meaningful standard by which he had made this decision. His testimony that "managerial" employees are those with "responsibility of a broad nature" such as "responsibility for managing important aspects of the School District" (N.T. 265) shed little light on his thought processes in determining complainant's status.

Respondent's repeated assertions that the PPSOM position was created only to funnel clerical work to clerks in the Pupil Personnel Services office are not persuasive. The PPSOM job description itself indicates otherwise, as did the testimony of Tinnina Ross and the complainant herself about her actual duties. The fact that Ms. Ross and her successors were ultimately responsible for operation of the department, much

emphasized by respondent, establishes only that the district contains various levels of management responsibility, with each level reporting to a higher level.

In short, respondent has failed to offer persuasive proof of job-related reasons for classifying complainant as clerical. Nor have the discrepancies reviewed at length above been adequately explained. The inference of discrimination raised by complainant's proof of different treatment may therefore stand.

We note parenthetically that Pennsylvania cases have long recognized the difficulty of establishing by direct proof that discrimination has occurred. (Slippery Rock State College vs. Pennsylvania Human Relations Commission, 11 Pa. Cmwlth. 501, 314 A.2d 344 (1974); St. Andrews Development Corp. vs. Pennsylvania Human Relations Commission, 10 Cmwlth. 123, 308 A.2d 623 (1973)). It is thus entirely permissible to base our finding of discrimination on the facts proven and the inferences that may reasonably be made from those facts. Thus we turn to consideration of appropriate relief.

D. REMEDY

Section 9 of the Act provides that, upon a finding of discrimination,

... the 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 ... upgrading of employees, with or without backpay ... as, in the judgment of the Commission, will effectuate the purposes of this Act ...

43 P.S. §959

The purpose of the relief is to restore the complainant to the economic position in which she would have been had it not been for the discrimination. Calculations need be only reasonable and realistic, not mathematically precise. PHRC vs. Transit Casualty Insurance Co., 340 A.2d 624 (Pa. Cmwlth., 1975); Pettway vs. American Cast Iron Pipe Co., 494 F.2d 211 (5th Cir., 1974).

We therefore find that, based on our determination of comparability of the PPSOM position and that of Purchasing Manager, Ms. Mackarey is entitled to an award of backpay and benefits that will equalize her position to that of the Purchasing Manager, retroactive to August 21, 1978 with a 7% increase for 1979. This award includes an adjustment of vacation time necessary to equalize her to other management employees, corrected for the fact that in 1977 and 1978 she was content with an entitlement of three weeks vacation.

Pennsylvania law also permits an assessment of interest

on the backpay award, at the rate of 6%, compounded annually.
Goetz vs. Norristown Area School District, 328 A.2d 579 (Pa.
Cmwlth, 1975).

Wherefore, having concluded that Respondent discriminated against Ms. Mackarey on the basis of her sex by classifying her as a clerical employee, we find that she is entitled to backpay and benefits, plus interest, as described above, along with reclassification of her position.

RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, this 2nd day of December, 1980, in consideration of the entire record in this matter, including the Complaints, Stipulations of Fact, Exhibits, Record of the Hearing, and Briefs filed on behalf of Complainant and Respondents, the Hearing Commissioner hereby adopts the attached as her proposed History of the Case, Findings of Fact, Conclusions of Law, Opinion and Final Order, and recommends that the same be finally adopted and issued by the Pennsylvania Human Relations Commission.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Doris M. Leader
DORIS M. LEADER
Presiding Commissioner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ANGELINE D. MACKAREY,
Complainant

vs.

SCRANTON SCHOOL DISTRICT,
Respondent

:
:
:
:
:
:
:

DOCKET NO. E-15352

FINAL ORDER

AND NOW, this 13th day of January, 1981, upon consideration of the Findings of Fact, Conclusions of Law, Opinion, and Recommendation of the Hearing Commissioner, and pursuant to the provisions of Section 9 of the Pennsylvania Human Relations Commission hereby

O R D E R S :

1. The Respondent shall cease and desist from any act of discrimination against the Complainant regarding the compensation, terms, conditions and privileges of her employment.

2. The Respondent shall immediately reclassify the Complainant as a management employee and provide her with salary and associated fringe benefits consistent with other management employees.

3. The Respondent shall compensate the Complainant for her economic loss by paying her back wages calculated as follows:

- (a) 1978 - the Complainant shall receive the difference between \$12,500 and \$9,250.00, prorated from August 21, 1978 to the end of the calendar year.
- (b) 1979 - the Complainant shall be paid the difference between \$13,375.00 (\$12,500.00 plus her 7% increment), and the \$10,000.00 actually earned.
- (c) 1980 - the Complainant shall be paid the difference between \$14,300.00 (\$13,375.00 plus her 7% increment) and the \$10,700.00 actually earned.
- (d) the Complainant shall also receive 6% interest on the above computed annually from August 21, 1978.

4. The Respondent shall provide the Complainant with the following vacation entitlement:

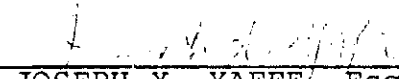
- (a) 1977 - one additional week
- (b) 1978 - one additional week
- (c) 1979 - two additional weeks
- (d) 1980 - two additional weeks

5. Satisfactory written proof of compliance with the terms of this Order shall be furnished to the Commission within thirty days of the date of the Order. The check shall be made payable to Angeline D. Mackarey and delivered in care of Michael Hardiman, Pennsylvania Human Relations Commission, 300 Muench Street, Harrisburg, Pennsylvania 17102.

6. The Respondent shall refrain from retaliating in any manner against the Complainant for having brought this action and also shall refrain from retaliating in any manner against any individual who may have testified and/or assisted the Complainant in this matter.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY:



JOSEPH X. YAFFE, Esq.
Chairperson

ATTEST:



ELIZABETH M. SCOTT,
Secretary

Chairperson
JOSEPH X. YAFFE
Vice-Chairperson
DORIS M. LEADER
Secretary
ELIZABETH M. SCOTT
Executive Director
HOMER C. FLOYD



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
HUMAN RELATIONS COMMISSION
100 N. Cameron Street - 2nd Floor
Harrisburg, PA 17101
Telephone: (717) 787-4410
January 13, 1981

Commissioners
MARY DENNIS DOMINICK, C. S. J.
A. VINCE B. ... JR.
BENJAMIN S. ...
DORIS M. LEADER
...
ROBERT JOHNSON SMITH
JOHN P. ...
RAQUEL OTEN ...

...
P. O. Box 17105
Harrisburg, PA 17105

Angeline D. Mackarey
610 Court Street
Scranton, Pennsylvania 18508

Re: Docket No. E-15352D, Mackarey
Vs. Scranton School District
EEOC File #031-790761

Dear Ms. Mackarey:

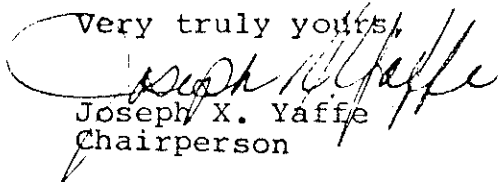
Enclosed is a copy of the Findings of Fact, Conclusions of Law, Commission's Decision, and Final Order issued by the Commission. As of the date of the Final Order, please be advised that the respondent has thirty (30) days from the date of the Order to appeal from the Commission's Final Order.

You also have the right to appeal from the Commission's Final Order. Your appeal must be made by requesting review of the Commission's Final Order by the Commonwealth Court under the Rules of Appellate Procedure, Chapter 15. This appeal must be made within thirty (30) days of the issuance of this Order. You may wish to consult private counsel regarding this matter.

The investigating Field Representative, Thomas Myers, will be in touch with you during this period regarding the respondent's complying with those terms outlined in the Final Order. Should the respondent not appeal this Final Order nor comply with the terms outlined in the Final Order, the Commission will petition Commonwealth Court for enforcement of the Order.

You will be kept informed as to what is occurring as far as your case is concerned. Thank you for your patience in this matter.

Very truly yours,


Joseph X. Yaffe
Chairperson

JXY:jpw:F3

Enclosure

cc: Michael Hardiman, Esq. - Hbg. Regional Office
Thomas Myers, Intake Supervisor - Hbg. Regional Office

Chairperson
JOSEPH X. YAFFE
Vice-Chairperson
DORIS M. LEADER
Secretary
ELIZABETH M. SCOTT
Executive Director
HOMER C. FLOYD



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
HUMAN RELATIONS COMMISSION
100 N. Cameron Street - 2nd Floor
Harrisburg, PA 17101
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Commissioners
MARY DENNIS DONOVAN, C. S. J.
ALVIN E. EDWARDS, JR.
BENJAMIN S. LOEBLSTEIN
DORIS A. SMITH
E. E. SMITH
ROBERT JOHNSON SMITH
JOHN P. WISNIEWSKI
RAQUEL OTERO de YIENGST

Reply to:
P. O. Box 3145
Harrisburg, PA 17105

January 19, 1981

James A. Kelly, Esquire
Scranton National Bank Building
Ninth Floor
Scranton, Pennsylvania 18503

Re: Docket No. E-15352D, Angeline D. Mackarey
Vs. Scranton School District

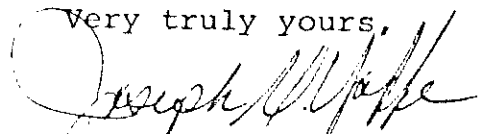
Dear Mr. Kelly:

Enclosed is a copy of the Commission's Findings of Fact, Conclusions of Law, Commission's Decision, and the Final Order dated January 9, 1981.

Your client has thirty (30) days from the date of this Final Order to notify the Commission, in writing, as to your compliance with the terms of this Order or to appeal same in the Court.

Please be advised that your client has the right to appeal from the Commission's Final Order. That appeal must be made by requesting a review of the Commission's Final Order by the Commonwealth Court under the Rules of Appellate Procedure, Chapter 15. This appeal must be made within thirty (30) days of the issuance of this Order.

Very truly yours,


Joseph X. Yaffe
Chairperson

JXY:jpw:F4B

Enclosure

cc: Michael Hardiman, Esquire - Hbg. Regional Office