

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

SAMUEL HOWARD,	:
Complainant	:
	:
v.	:
	:
	:
	:
PITTSBURGH BOARD OF PUBLIC	:
EDUCATION,	:
Respondent	:

Docket No. E-7914

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING PANEL

FINAL ORDER

cause of action, an employee of said Board and the Pittsburgh City Public School System.

4. The Complainant initially began employment as a substitute teacher for the Respondent from January through June, 1969.

5. On September 2, 1969, the Complainant began full time employment for the Respondent teaching Special Education at Manchester Elementary School.

6. When Complainant began his full time employment, he possessed a Bachelor of Science degree in Elementary Education with certification in the areas of Elementary Education and Mental Retardation.

7. The Complainant's starting salary was \$6,800 over a ten (10) month school year: \$6,500 for possessing a Bachelor of Science degree and \$300 for having certification for Mental Retardation. He was assigned to level I step 1 of the Respondent teacher's salary schedule.

8. From December 5, 1969 until June 19, 1970, the Complainant went a military leave of absence.

9. On May 1, 1970, the Complainant was reappointed as a special education teacher at Manchester Elementary School.

10. On June 19, 1970, the Complainant resigned his full time teaching position in order to return to school to pursue his masters degree.

11. On September 2, 1971, Complainant was reappointed full time

to teach educable mentally retarded students at Arsenal Middle School.

12. On April 17, 1972, Complainant was transferred to East Hills Elementary School to teach educable mentally retarded students.

13. In addition to Complainant's teaching duties at East Hills School, he served as a POD leader, planning and coordinating programs for four (4) teachers in the mental retarded area, dealing with mentally retarded, socially and emotionally disturbed, brain damaged, educable retarded and speech, hearing, visually handicapped children.

14. On March 8, 1973, the Complainant was promoted to the position of Instructional Leader for the Secondary Opportunity School. He received a pay increase to \$1,030 a month. His salary level advanced to level II, step 4 of the teachers salary scale.

15. Enoch Sisselsky administered the Elementary program as Coordinator.

16. On June 4, 1973, Complainant received a satisfactory rating from the Director for the Division of Exceptional Children, Ruth Scott. The evaluation identified the Complainant's title as Coordinator, and indicated that in the few months that Complainant had been assigned the responsibility of Coordinator, his performance was outstanding.

17. On November 1, 1972, George Hayward was promoted from a

teacher to Coordinator of the Secondary Opportunity School only. His salary increased to \$1,360 per month for 10 calendar months. His salary level advanced to level 9, step 4 of the administrator's salary schedule.

18. In January, 1974, Respondent underwent a reorganization of all administrative staff. The purpose of the reorganization was to condense administrative classifications to reduce what was then the number of salary levels and steps.

19. Prior to reorganization only two (2) other employees classified as Senior Coordinators besides the Complainant, Harry Segall (a white male) and Carmine Sebastian (a white male).

20. As a result of the reorganization, Harry Segall was reclassified from Senior Coordinator for Instructional Leadership and Paraprofessional programs to Staff Associate for Instructional Leadership and Paraprofessional programs with no apparent change in salary or duties.

21. Carmine Sebastian was reclassified from Senior Coordinator for ESEA to Program Specialist for ESEA with no apparent change in salary or duties.

22. Under Respondent's new salary structure for Administrators, Complainant was assigned to level VI which had a salary range of \$1,417 per month minimum to \$1,838 per month, maximum.

23. Under Respondent's new salary, both Harry Segall and Carmine Sebastian were assigned to level V which had a salary range of \$1,491 per month minimum to \$1,915 per month, maximum.

24. Mr. Segall's typical duties included:
- a. writing, reviewing and revamping job descriptions for Paraprofessionals and others
 - b. investigating conflict situations
 - c. supervising vandalism claims and funding
 - d. updating seniority lists
 - e. supervising compensation for loss and lack of preparation periods and extracurricular activities.

25. In February of 1974, Complainant requested a reclassification of his position and corresponding salary to more accurately reflect the job duties and responsibilities he was performing.

26. On March 13, 1974, Complainant received a letter from Respondent's personnel office indicating that his request for reclassification would be processed in the near future.

27. On September 2, 1969, Kenneth Krynski began full time employment for the Respondent as a teacher at Fulton School.

28. On September 3, 1970, Mr. Krynski was transferred to the position of the Iternerant Teacher in the section on Special Education.

29. On May 5, 1972, Mr. Krynski resigned his full time teaching position.

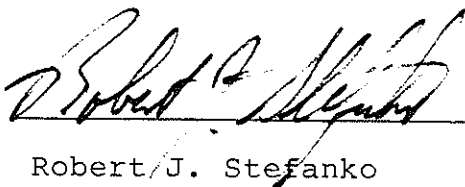
30. On August 15, 1973, Mr. Krynski was reappointed full time as

a Supervisor for brain injured in the Respondent's Division for Exception Children.

31. As of the date of Complainant's reappointment with Respondent, he was assigned to level II, step 3 of the Respondent's teacher's salary schedule, at a salary rate of \$9,500 per year (10 months) which included \$300 for the certification he possessed.

32. On March 1, 1976, Mr. Krynski was transferred to the position of Assistant Director for the Division of Exceptional Children. He received a salary increase to a monthly base pay of \$1,768 plus \$70 for advanced study. He was assigned to level IV, step 5 of the Respondent's administrative salary schedule.

33. When Mr. Krynski was reappointed a Supervisor of Brain Injured on August 15, 1973, and later reclassified to Supervisory, Instructional Specialist in January, 1974, both positions required a certificate in supervision. Mr. Krynski did not possess such certification when reappointed and reclassified and did not receive it until May, 1974.



Robert J. Stefanko
Solicitor
Pittsburgh Public School Systems
on behalf of Respondent



William R. Fewell, Jr.
Assistant Chief Counsel
Pa. Human Relations Comm.
on behalf of Complainant

FINDINGS OF FACT*

1. Samuel Howard, (hereinafter "Complainant"), is a black male.
2. The Pittsburgh Board of Public Education, (hereinafter "Respondent"), employed more than four employes at all times pertinent to this matter. (H.T. 330, 331).
3. At all times pertinent to this matter, the Respondent maintained "Salary and Wage Schedule[s] for all Employes." (C.E. 9-13)
4. Depending on the status of an employe, different salary schedules applied, ie, teachers were part of a collective bargaining unit and paid under a teacher salary schedule, while employes taken out of the collective bargaining unit and made management employes were paid from a different schedule. (H.T. 31, 320, 321, 341, 343, C.E. 9-13)
5. Basically, salary schedules had two components: Steps and Levels. Steps generally related to seniority and levels generally related to an employe's job duties and responsibilities. (H.T. 31, C.E. 9-13)

* The foregoing "Stipulations of Fact" are hereby incorporated herein as if fully set forth. To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

H.T. Hearing Transcript	S.F. Stipulations of Fact
R.E. Respondent's Exhibit	S.D. Scherrer Deposition
C.E. Complainant's Exhibit	

6. On March 8, 1973, Dr. Ruth Scott Scherrer, ("hereinafter Scherrer"), called the Complainant into her office and asked the Complainant if he would take a position in a program which had been in a state of chaos. The program was the Secondary Opportunity School Program. (H.T. 23, 24, S.D. 4)
7. Scherrer was then the Respondent's Director of Special Education. (H.T. 24)
8. The Respondent's Opportunity School Program began in 1969 and was initially designed to serve boys 13 to 17 who had a history of social maladjustment and who had been adjudicated as delinquent by the Juvenile Court. (H.T. 25, C.E. 1 at p. 71, S.D. 7)
9. Shortly after the Opportunity School Program's conception, an Elementary Opportunity School was also developed. (C.E. 1 at p. 71)
10. On November 1, 1972, Mr. George Hayward, (hereinafter "Hayward"), a white teacher was transferred from a teaching position to the temporary position of Coordinator of the Secondary Opportunity School. (H.T. 25, 31, C.E. 2 at p. 187, 191)
11. Hayward had been in the Respondent's employ since September 1971. (C.E. 2 at p. 187)
12. Hayward's unsatisfactory performance as Coordinator of the Secondary Opportunity School resulted in the chaotic conditions of the program and Hayward's transfer from the program on February 27, 1973. (H.T. 23, 24, C.E. 2 at p. 176, 187)

13. When appointed to the position of Coordinator of the Secondary Opportunity School, Hayward was placed at Level IX, Step 4 of the administrator's salary schedule, whereby he was paid \$1,360 per month for 10 calendar months. (S.F. #17, C.E. 10 at p. 9)

14. Effective August 31, 1972, Mr. Enoch Sisselsky, (hereinafter "Sisselsky"), a white teacher was paid at Level IX, Step 7 after his transfer from a teaching position to the temporary position as Coordinator in the Lawrenceville (Secondary) Opportunity School, where by he was paid \$1,570 per month. (C.E. 3 at p.222)

15. Effective November 1, 1972, Sisselsky was transferred to the temporary position of Coordinator, Elementary Opportunity School, salary unchanged. (H.T. 27, 28, C.E. 3 at p. 223)

16. Effective August 30, 1973, Sisselsky was again transferred from his position as Coordinator, Elementary Opportunity School to a regular position as teacher. (C.E. 3 at p. 226)

17. On March 8, 1973, the Complainant replaced Hayward and was given a position entitled Instructional Leader for the Secondary Opportunity School whereby he was placed at Level II, Step 4 of the teachers salary scale and paid \$1,030 per month. (S.F. 14, H.T. 25, 27)

18. Several months prior to Sisselsky's August 1973 transfer, the Complainant was asked to help Sisselsky's program. (H.T. 27, 28) When Sisselsky was transferred, the Complainant also

assumed Sisselsky's Elementary Opportunity School duties and responsibilities in addition to his assigned duties at the Secondary level. (H.T. 28, 31, 90, S.D. 18)

19. In June 1973, the Complainant went to Scherrer seeking a reclassification from Instructional Leader to Coordinator. (H.T. 29, 34, C.E. 1, at p. 77)

20. Effective August 1, 1973, the Complainant was made a Senior Coordinator. (H.T. 29, 34, C.E. 1, at p. 77)

21. The position of Coordinator is in the bargaining unit, however, the position of Senior Coordinator is not in the bargaining unit, thereby the pay scales are different. (H.T. 30, C.E. 9-13)

22. By being reclassified as a Senior Coordinator the Complainant's position switched to the administration pay schedule. (H.T. 30)

23. While assigned the position Instructional Leader, the Complainant held a Level II, Step 4 pay scale placement. When he was assigned the title Senior Coordinator, the Complainant was placed on the administration pay schedule at Level 10, Step 1, base salary \$1,317 per month. (H.T. 31, C.E. 1 at p. 85)

24. When an employe working at a position found on the teachers pay schedule comes over to administration, it is normal that such an employe starts at Step 1 on the administration pay schedule. (H. T. 320, 321, 341)

25. In January 1974, the Respondent reorganized. (H. T. 35)

26. Prior to the January 1974 reorganization, three Respondent employees held the position of Senior Coordinator: the Complainant, Carmine Sebastian, (hereinafter "Sebastian"), and Harry Segall, (hereinafter "Segall"). (H.T. 35, S.F. 19)
27. Sebastian and Segall are both white and each were veteran employees of the Respondent with over 20 years experience. (H.T. 35, C.E. 5 at p. 304, C.E. 6 at p. 390)
28. Following the reorganization, both Sebastian and Segall were placed at salary Level V, while the Complainant was assigned salary Level VI. (H.T. 35, 36, 77, 112, 343)
29. Salary Level VI is a lower salary level than Level V. (H.T. 35, C.E. 11 at p. 28)
30. The Complainant's Level VI position was designated Staff Assistant for the Opportunity School which paid a base salary of \$1,417 per month. (H.T. 39, 40, C.E. 1 at p. 90)
31. Sebastian's new Level V position was titled Program Review Specialist, a non-school based system wide position. (H.T. 38, 58, 324)
32. Segall's new Level V position was titled Staff Associate, Instructional Leadership and Paraprofessionals, also a non-school based system wide position. (H.T. 38, 324, C.E. 16)
33. Effective March 1, 1976, the Complainant's Staff Assistant Opportunity Schools position was reclassified to Administrator-In-Charge, Level IV, Step 1, salary \$1,620 per month. (H.T. 44, 59, C.E. 1 at p. 93)

34. Within the Respondent's organizational system, school principals were classified at Levels III, II and I. (H.T. 56)
35. A principal's level was dictated by the school's enrollment size and number of staff supervised. (H.T. 56)
36. In 1976, when the Complainant's level was upgraded from a VI to a IV, he was equalized with other special school heads who had been at Level IV since 1974. (H.T. 59)
37. The Complainant remained unsatisfied believing that the position he held at the Secondary Opportunity Schools had always been comparable to a principal's position. (H.T. 60)
38. During the Complainant's tenure with the Opportunity Schools, he continually applied for numerous Principalship openings. (H.T. 70, 71, C.E. 1)
39. In 1974, the Respondent, first offered the Complainant a Principalship, however, the Complainant opted not to accept the position. (H.T. 73, 74, C.E. 1 at p. 91, 92)
40. In July 1986, the Respondent again offered the Complainant a Principalship position which on this occasion the Complainant accepted. (H.T. 17)

CONCLUSIONS OF LAW

1. Samuel Howard, ("Complainant"), is an individual within the meaning of Section 5 (a) of the Pennsylvania Human Relations Act ("PHRA").

2. Pittsburgh Board of Public Education, ("Respondent"), is an employer within the meaning of the PHRA.

3. The Pennsylvania Human Relations Commission ("PHRC"), has jurisdiction over the parties and the subject matter of this case.

4. The parties have fully complied with the procedural and jurisdictional prerequisites to a public hearing.

5. The Complainant established that his duties and responsibilities as "Instructional Leader" were the same as or substantially similar to those performed by the person whom he replaced.

6. The Respondent met its burden of producing evidence of a legitimate, non-discriminatory reason for reclassifying the position of "Coordinator" to that of "Instructional Leader" upon the Complainant's assignment thereby causing disparate compensation.

7. The evidence produced by the Complainant and the record considered as a whole is sufficient to show by a preponderance that the Respondent's articulated reason for reclassifying a Level IX position to a Level II position was pretextual.

8. The Respondent's failure to pay the Complainant at a salary level equal to the Complainant's predecessor for performance of the same job was unlawful race discrimination in violation of Section 5 (a) of the PHRA.

9. The Respondent articulated a legitimate non-discriminatory reason for reclassifying two white Senior Coordinators to Level V under the Respondent's salary scale while reclassifying the Complainant's Senior Coordinator position to a Level VI.

10. The Complainant established by a preponderance that the Respondent's articulated reason for its 1974 reorganization reclassification of Senior Coordinators was pretextual.

11. The Complainant established that in 1974, his position was the same as or substantially similar to an Administrator-in-Charge Level IV Position.

12. The Complainant is entitled to recover the difference between the wages he did earn and the wages he should have earned but for the Respondent's discriminatory denial of equal pay and refusal to properly classify the Complainant's position between March 1973 and July 1986.

13. The Complainant is entitled to 6% per annum interest on all lost wages with such interest accruing from the date of such loss.

OPINION

This case arises on a Complaint filed by Samuel Howard, ("Complainant"), against the Pittsburgh Board of Public Education, ("Respondent"), with the Pennsylvania Human Relations Commission ("PHRC"). The Complainant also originally named Louis A. Cattley, Director of Personnel, as a Co-Respondent, however, during the Public Hearing it became quite clear that the Complainant intended the only Respondent to be the Pittsburgh Board of Public Education.

In his Complaint filed on or about October 10, 1974, the Complainant alleged race-based discrimination in the terms and conditions of his employment. The Complaint specifically reads as follows:

"The Complainant alleges that the Respondent has discriminated against the Complainant in the terms and conditions of employment. The Complainant further alleges that the Respondent denied him equal salary, job classification, promotional consideration and job duties and responsibilities as is granted to white males similiarly situated. The Complainant believes he has received unequal and discriminatory treatment by the Respondent because of the Complainant's race, Black."

The allegations raised by the Complainant's Complaint charge violations of Section 5 (a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section Section 951 et. seq. ("PHRC").

PHRC staff conducted an investigation of the allegations and determined that probable cause existed to credit the Complainant's allegations. Thereafter, the PHRC attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion but such efforts proved unsuccessful. Accordingly, this matter was approved for a Public Hearing.

The Public Hearing was held on March 9 and 10, 1987, in Pittsburgh, PA, before Hearing Panel Chairperson Carl E. Denson, and Hearing Panel member John P. Wisniewski. The parties waived the right to a hearing before three Commissioners. The case on behalf of the Complaint was presented by PHRC Pittsburgh Regional Office Attorney, William R. Fewell. Robert J. Stefanko, Esquire, appeared on behalf of the Respondent.

Post-hearing briefs and related documentation were submitted by the parties. Mr. Fewell's brief was received on March 15, 1988 and the Respondent's brief was received April 25, 1988.

At the Public Hearing and in the briefs of the parties, the focus appropriately was placed on a disparate treatment analysis of the allegations made and the evidence received. Accordingly, our examination of the facts of record is narrowed to the question of whether the Complainant was treated disparately and less favorably than similarly situated white employes by the Respondent because of the Complainant's race.

The order and allocation of proof in a disparate treatment case was first defined in the off repeated case of

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and was recently clarified by the PA Supreme Court in Allegheny Housing Rehabilitation Corp. v. PHRC, Pa. 2d , , 532 A.2d 315 (1987). The Pa. Supreme Court's guidance indicates that the Complainant must first establish a prima facie case of discrimination. If the Complainant establishes a prima facie case, the burden of production then shifts to the Respondent to "simply...produce evidence of a 'legitimate, non-discriminatory reason' for...[its action]." Id at 318. If the Respondent meets this production burden, in order to prevail, a Complainant must demonstrate that the entire body of evidence produced demonstrates by a preponderance of the evidence that the Complainant was the victim of intentional discrimination. Id at 318.

A Complainant may succeed in this ultimate burden of persuasion either by direct persuasion that a discriminatory reason more likely motivated a Respondent or indirectly by showing that a Respondent's proffered explanation is unworthy of credence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). In order to do so, the Complainant need not necessarily offer evidence beyond that offered to establish a prima facie case. Id. at 255 n.10. The trier of fact may consider the same evidence that a Complainant has introduced to establish a prima facie case in determining whether a Respondent's explanation for the employment decision is pretextual. Diaz v. American Telephone & Telegraph, 752 F.2d 1356, 1358-1359 (9th Cir. 1985).

In McDonnell Douglas the Court noted that a Complainant in a race-based refusal to hire case could establish a prima facie case by showing:

- (1) That the Complainant belongs to a racial minority;
- (2) That the Complainant applied for a job for which the Respondent was seeking applicants;
- (3) That, despite the Complainant's qualifications, he was rejected; and
- (4) That, after the rejection, the position remained open and the Respondent continued to seek applicants from persons of Complainant's qualifications.

This general four step process was later adopted for use by Pennsylvania Courts in General Electric Corp. v. PHRC, 469 Pa. 202, 265 A.2d 649 (1976).

The present matter differs significantly from the refusal to hire circumstances in McDonnell Douglas. In McDonnell Douglas, the Complainant's application was rejected and the Respondent continued to seek applicants of equal qualifications. In the present matter, the Complainant's allegations concern questions regarding equal salary, job classification, promotional considerations, and job duties and responsibilities.

The McDonnell Douglas Court wisely anticipated that facts of different cases will necessarily vary and that the four prong prima facie requirement articulated will not be applicable to differing factual situations. McDonnell Douglas at 802 n. 13. The Court made it clear that the general process

it was creating would appropriately need adaptations to adjust the process to the facts presented. Accordingly, given the considerably different nature and variety of the allegations made, adaptation of the required prima facie showing must be done in this instance.

At the outset, it should be noted that in Burdine at 250, the U.S. Supreme Court declared, "The burden of establishing a prima facie case of disparate treatment is not onerous." The Pa. Supreme Court has adopted this proviso in Allegheny Housing Rehab. Corp., Supra at 321.

Although varied, all of the Complainant's allegations come under Section 5 (a) of the PHRA which states in pertinent part:

"It shall be an unlawful discriminatory practice...[f]or any employer because of the race...of any individual to...discriminate against such individual with respect to compensation...terms conditions or privileges of employment..."

Of the four general allegations made, evidence was submitted on only two assertions: alleged denial of equal salary and job classification. The Complainant submitted no evidence regarding either an alleged failure to consider him for a promotion or a denial of job duties and responsibilities. Regarding the promotional consideration issue, the record indicates the Complainant did apply for a Principalship as early as January 1974, (H.T. 79), however, there was not even a hint of evidence submitted that he was not considered. The next

application for promotion appears to have been submitted by the Complainant in June 1975, (H.T. 79), a date after the filing of the present complaint. The issue of possible discriminatory misclassification having an effect on promotional opportunities is approximately left for discussion on the issue of damages should liability be assessed in an area which might have such an effect.

Regarding the Complainant's allegation that he was denied job duties and responsibilities, it is abundantly clear that this was not the Complainant's problem. In fact, the Complainant's testimony is replete with persuasive information which suggests the Complainant consistently absorbed greater duties and responsibilities in his position. Such evidence paints a portrait of a loyal employe dedicated to the fulfillment of a job beyond that which had been assigned, however, once again, no evidence of a denial of either duties or responsibilities can be found within this record.

It is clear that all of the Complainant's perceived problems stem from the remaining allegations. These allegations also stem from the same set of circumstances. On March 8, 1973, the Complainant was placed in the position of "Instructional Leader" for the Respondent's Secondary Opportunity School. The Complainant contends that upon the Complainant's assignment, the Respondent improperly classified this job and as a result denied him equal pay because of his race, black.

Clearly, the PHRC has jurisdiction over equal pay questions. County of Allegheny v. Wilcox et al, 465 A.2d 458

(Pa. Cmwlth. 1979). To make out a prima facie case of unequal pay, the Complainant must establish that his duties and responsibilities as "Instructional Leader" were the same as or substantially similar to those performed by the person whom he replaced.

See Bourgue v. Powell Electrical Mfg., Co., 22 FEP 1191 (5th Cir. 1980); See also Tell v. Pittsburgh Radiator Supply, 20 D&C 3d 59 (1981), citing, Brennan v. Corning Glass Works, 417 U.S. 188 (1974) and Wetzel v. Liberty Mutual Insurance Co., 449 F. Supp. 397 (1978).

Hayward, the white employe replaced by the Complainant, held the title "Coordinator" of the Secondary Opportunity School. Hayward was replaced because the program under Hayward's supervision was described as being in a state of chaos. The Complainant gave unrebutted testimony that when he assumed the duties of Instructional Leader of the Secondary Opportunity Schools, he performed the exact same duties as had been performed by his predecessor, Hayward.

Additionally, after a short period in the Instructional Leader position, the Complainant was asked to assist the white "Coordinator" of the Elementary Opportunity School, Sisselsky. The Complainant did assist Sisselsky for approximately four months after which Sisselsky was transferred and the Complainant assumed Sisselsky's duties over the Elementary Opportunity School in addition to his duties at the Secondary Opportunity School.

Both Hayward and Sisselsky were designated as "Coordinators". In 1973, under the provisions of the

Respondent's salary and wage schedule, the position of Coordinator was classified as a Level IX position. Each Respondent employe held a distinct level and step which dictated that employe's salary. Levels relate to the nature, duties, and responsibilities of a position while steps are simply prescribed by an employe's seniority.

Both Hayward and Sisselsky were paid at Level IX, only their relative seniority differed. Upon the Complainant's assignment as Instructional Leader, he was assigned salary Level II. As of March 1973, the comparative salaries of the Chief Administrators of Opportunity Schools was as follows:

Employee	Title	Salary Level	Salary Step	Monthly Salary
Complainant	Instructional Leader	II	4	\$1,060
Hayward	Coordinator	IX	4	1,360
Sisselsky	Coordinator	IX	7	1,570

In response to the Complainant's expressed concern over this disparity, some corrective action was taken. In August, 1973, the Complainant's title was changed to Senior Coordinator. However, even with this "promotion," the Complainant's salary remained less than the two white individuals he replaced.

This occurred because the position of Senior Coordinator came under the administrator's salary schedule. Coordinators fell under the collective bargaining unit portion of the Respondent's salary scale. When an employe is transferred from a position in the bargaining unit into an

administrative position, it is normal that the employe begins at Step 1. Accordingly, the Complainant jumped from Level II to Level X, however, his salary step fell back from 4 to 1. This resulted in the following comparison:

<u>Employee</u>	<u>Title</u>	<u>Salary Level</u>	<u>Salary Step</u>	<u>Monthly Salary</u>
Complainant	Senior Coordinator	X	1	\$1,317
Hayward	Coordinator	IX	4	\$1,360

It certainly appears appropriate that the Complainant's August, 1973, assumption of both Hayward's and Sisselsky's duties merited a promotion. However, the Complainant illustrated that the promotion to Senior Coordinator was in name only and only partially corrected the perceived pay disparity which had originally occurred in March, 1973.

The Respondent's present Director of Personnel Ms. Lee B. Nicklos, ("Nicklos") testified that although most employes who come over to administration begin at Step 1, there are circumstances which dictate that such an employe would more appropriately be assigned a higher step under the salary schedule matrix. For example, if the transfer from a bargaining unit level to an administration level at Step 1 resulted in a lower salary, the employe's step would be adjusted to a point so an employe did not loose money.

The Complainant argues that his step assignment was inappropriate. Going back to the March 8, 1973, assignment, had the Complainant been classified, as was his predecesor Hayward,

as Level IX, Step 4, when promoted to Senior Coordinator in August, 1973, he would of necessity be assigned a higher step than Step 1.

Both Hayward and Sisselsky when transferred from their positions as Coordinators were given pay raises of between \$50 to \$60 per month. Hayward, the employe replaced after an unsatisfactory evaluation as Coordinator, received \$60 more per month after his transfer. The Complainant, whose performance can be said to have been outstanding from the beginning, arguably should merit at least that amount after being promoted to the position of Senior Coordinator.

Accordingly, the Complainant's strongest position would be that had he been classified as Level IX Step 4 in March, 1973, his salary would have been \$1,360 per month in August, 1973, when promoted to Senior Coordinator. Thus, he would argue that he should have been placed at a step at Level X of the administration salary scale which corresponded to \$1,420 per month.

Before moving to the next point of change in the Complaint's continuing perceived classification problem, it would be helpful to address the full liability issue regarding the Complainant's chronicle up to and including his August, 1973 promotion to Senior Coordinator. Clearly, beginning on March 8, 1973, the Complainant's position was equivalent to that of his white predecessor, Hayward. Equally clear is the simple fact that in August, 1973, the Complainant assumed the duties and responsibilities of two previous white Coordinators and yet his

salary remained less than either Hayward or Sisselsky.

The only explanation which can be said that was offered by the Respondent for this blatant disparity was that "possibly" budget considerations may cause reclassification. (H.T. 357). In response to an inquiry regarding why the Coordinator Position was reclassified, Nicklos stated that "at times positions are reclassified due to the differences in duties. I also think it has something to do with the budget. I do not control the various budgets of the departments, the recommendations that generally come from a department."..."other than to say it's done for both reasons. Well, that's the easy way out."

Literally, this was the only testimony relating to why the Respondent reclassified a Level IX Coordinator Position to a Level II Instructional Leader title. Giving this articulated explanation a considerable degree of latitude and accepting it as a legitimate non-discriminatory explanation for the alleged discriminatory reason for the Respondent's action, we still find that this reason is pretextual.

As indicated, there was clearly no differences in duties which might cause a reclassification action. Regarding the budget issue, when Hayward transferred it was because the program was in disarray internally. Obviously, Hayward's position had already been budgeted for the school year. Also, Sisselsky's Coordinator Position was not changed to an Instructional Leader Position. There is not a shred of evidence that the Respondent's budget played any factor in the reclassification. On the contrary, the inference drawn from the

evidence as a whole is that budget concerns played no role whatsoever in the reclassification of which the Complainant complains. Accordingly, the Complainant has successfully shown by a preponderance of the evidence that when the Coordinator Position was reclassified to a lower level, he was denied equal compensation as that paid to comparably situated white employees.

The next event which the Complainant alleges adversely affected him was the January 1974 reorganization of the Respondent's job classifications. Only three Respondent employees held the title Senior Coordinator at the time of the Reorganization: The Complainant and two longstanding white employees, Segall and Sebastian. After the reorganization, both Segall and Sebastian were classified at Level V and the Complainant was placed one level lower at Level VI. The Complainant argues that once again he was the victim of disparate treatment because of his race.

The Respondent submits that this dispute amounts to nothing more than a simple disagreement over the relative worth of the positions in question. The Respondent articulated what must be accepted as a legitimate non-discriminatory reason for classifying the Complainant's position one level lower than Segall and Sebastian's new positions. The Respondent submits that both Segall and Sebastian's positions were highly responsible system-wide positions while the Complainant's position was not system-wide and not as responsible.

We find, however, that once again, the evidence considered as a whole preponderates that this reason is

pretextual. Of major significance in this regard is the Respondent's 1976 action of reclassifying the Complainant's assigned Level VI position to a Level IV Administrator-in-Charge Position.

The Complainant had always perceived his position as a Principal level position and submitted lengthy testimony regarding the similarities between his position and that of a Principal. Following the 1974 reorganization, Principals were classified in Levels III, II and I. The actual level assigned to a particular position was determined primarily from the enrollment size and number of staff supervised.

During his case-in-chief, the Complainant offered the testimony of 5 retired black administrators apparently in an effort to provide an overview of historical changes in the Respondent's school system with respect to improved administrative opportunities for blacks and other minorities within the system. In addition to this overview these witnesses each agreed that the Complainant had in fact been doing the same types of duties of a Principal. Throughout his tenure in the position, the Complainant had been considered an administrator of the Secondary Opportunity Schools by other administrators. The only difference appeared to be the size of enrollment and number of employes supervised.

Also testifying at the Public Hearing was Dr. Helen S. Faison, presently the Respondent's Deputy Superintendent for School Management. Dr. Faison's observations regarding the Complainant's pursuit of a Principal title was that within the

Respondent's large system, titles less than Principal were assigned to other programs comparable in size and staff to the Opportunity School Program. At the Public Hearing, this evidence was not sharply contested.

Accordingly, we find that, although the 1974 reorganization placement incorrectly classified the Complainant, the appropriate classification was subsequently made in 1976 to Level IV. Having assessed liability on the issues of unequal pay and disparate job classification, we turn our attention to an appropriate remedy.

The first period addressed is March 1973 through August 1973. During this period the Complainant was paid \$1,060 per month while a comparably situated white employe, Hayward had previously made \$1,360 a month for doing the same job. The difference in pay is \$300 per month. However, we must also take into account that these salaries were on a 10 month basis. Accordingly, the Complainant lost \$300 per month for the months of March, April, May, and June 1973, or \$1,200 total.

Beginning in September 1973, the Complainant's salary was increased to \$1,317 per month until January 1974 when the Respondent's reorganization occurred. As noted earlier, the Complainant was promoted into the position of Senior Coordinator after he took on Sisselsky's duties in addition to the duties he assumed from Hayward. Since the Complainant's salary properly should have been \$1,360 per month, if we add a reasonable sum for his promotion, the Complainant's salary beginning in September 1973 should have been at least what Hayward made upon

his transfer or \$1,420 per month. The difference in pay was therefore \$103 per month for September, October, November and December 1973 and January and February 1974, or \$618 total. For further calculations, we must also address the question of an appropriate step assignment upon the Complainant's transfer from the bargaining unit salary schedule to the administrative salary schedule. Mathematical precision is rarely possible when fixing damages. Thus, in our discretion, we determine that the Complainant's step placement would have been at least on Step 3 instead of Step 1 as assigned.

The next salary loss occurred following the January 1974 reorganization when the Complainant was improperly reclassified as Level VI when in fact his position was comparable to a Level IV Administrator-in-Charge. In the Complainant's brief, the Complainant argues the actual effects of the January 1974 reorganization did not begin until March 1974. At Level VI the pay range was designed to be between a minimum of \$1,417 per month to a maximum of \$1,838 per month. Level IV ranged from a minimum of \$1,565 per month to a maximum of \$1,993 per month. The Complainant's salary began as the minimum salary in Level VI, or \$1,417 per month. This is a \$148 per month difference between the minimum amount between a Level VI and Level IV assignment.

Since the Complainant's next salary change occurred February 28, 1976 the Complainant is entitled to lost wages of \$148 per months between March 1974 and March 1976. Since in

these levels, employes were on a 12 month basis, the Complainant lost \$148 for the entire 24 month period, or a total of \$3,552.

In the Complainant's brief, he argues that between March 1976 and July 1986 when he became a Principal, the Complainant lost between \$70 to \$218 per month. The Complainant's brief submits that during the bulk of this period, the difference between his actual salary and a Level IV Administrator-in-Charge at an appropriate step was \$111 per month.

This \$111 amount, although not mathematically precise, has in our discretion been determined as a median amount of loss per month during the entire period between March 1976-July 1986, (125 months) for a total loss of \$13,875.

Summary of Losses

March 1973--June 1973 4 months @\$300 per month	\$ 1,200
September 1973--February 1974 6 months @\$103 per month	618
March 1974--February 1976 24 months @\$148 per month	3,552
March 1976--July 1986 125 months @\$111 per month	<u>13,875</u>
	\$19,245

Interest at the rate of 6% per year is also permitted, thus an award of interest is also to be made.

Regarding the remaining damage issue of the alleged effect the improper classifications of both levels and steps has had on the Complainant's promotional potential, one simple

factor mitigates against addressing this issue. In 1974, the complainant was offered a Principalship but rejected it citing "personal reasons." The Complainant cannot therefore, be heard to argue that but for the Respondent's discrimination he would have been promoted sooner.

Relief is therefore ordered as described with specificity in the Final Order which follows.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

SAMUEL HOWARD, :
Complainant :
 :
v. : Docket No. 7914
 :
PITTSBURGH BOARD OF PUBLIC :
EDUCATION, :
Respondent :

RECOMMENDATION OF THE HEARING PANEL

Upon consideration of the entire record in the above-captioned matter, it is the view of the Hearing Panel that the Respondent denied the Complainant equal compensation and job classifications because of the Complainant's race in violation of Section 5 (a) of the Pennsylvania Human Relations Act. Accordingly, it is the Hearing Panel's recommendation that the attached Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion, and Order be adopted by the full Pennsylvania Human Relations Commission.

Carl E. Denson
Carl E. Denson, Hearing Panel
Chairperson

6-27-88
Date

John P. Wisniewski
John P. Wisniewski, Hearing
Panel Member

June 28, 1988
Date

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

SAMUEL HOWARD, :
Complainant :
v. : Docket No. 7914
PITTSBURGH BOARD OF PUBLIC :
EDUCATION, :
Respondent :

FINAL ORDER

AND NOW, this 4th day of August, 1988, the Pennsylvania Human Relations Commission hereby adopts the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion, in accordance with the Recommendation of the Hearing Panel, pursuant to Section 9 of the Pennsylvania Human Relations Act and therefore

O R D E R S

1. That the Respondent cease and desist from discriminating against the Complainant and all other similarly situated employes with respect to the terms and conditions of their employment.
2. That the Respondent shall pay to the Complainant the lump sum of \$19,245 which represents backpay lost for the period between March 1973 and July 1986. This amount shall be paid within 30 days of the effective date of this Order.
3. That the Respondent shall pay interest of 6% per annum calculated until payment is made. This amount shall also be paid within 30 days of the effective date of this Order.

4. That within 30 days of the effective date of this Order, the Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter, addressed to William R. Fewell, Jr., Esquire, in the PHRC Pittsburgh Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By Thomas L. McGill, Jr.
Thomas L. McGill, Jr., Chairperson

Attest:

Raquel O. de Yienst
Raquel O. de Yienst, Assistant Secretary