

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

CAROLYN KREPPS, :
Complainant :
v. : DOCKET NO. E-6718
CONNELLSVILLE AREA SCHOOL :
DISTRICT, :
Respondent :

FINDINGS OF FACT, CONCLUSIONS OF LAW,
OPINION, RECOMMENDATION OF THE HEARING
COMMISSIONERS, AND FINAL ORDER

FINDINGS OF FACT

1. The Complainant herein is Carolyn Krepps, an adult female, who resides at 201 North First Street, Connellsville, Pennsylvania 15425. (Admissions #1).*

2. The Respondent herein is Connellsville Area School District, Connellsville, Pennsylvania 15425, an employer of four or more persons within the Commonwealth of Pennsylvania. (Admissions #2).

*
EXPLANATION OF ABBREVIATIONS

Admissions - Request for Admissions and Answer thereto as attached to the Pre-Hearing Order and made a part of the official docket in this case.

N.T. - Notes of Testimony
C.E. - Complainant's Exhibit
R.E. - Respondent's Exhibit

3. The Complainant, on June 3, 1974, filed a formal complaint with the Pennsylvania Human Relations Commission ("Commission") alleging that the Respondent had violated Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. 951 et seq., in that Respondent had removed the Complainant from Respondent's school as a substitute teacher because of her sex and replaced her with a male. (Admissions #3).

4. Subsequent to the filing of the complaint, Commission staff conducted an investigation. As a result of this initial investigation, the Commission closed the case because the facts secured failed to substantiate the allegations found in the complaint. (C.E. 15; N.T. 106).

5. The Complainant next petitioned the Commission and requested that it reconsider its decision to close her case. This petition was granted by the Commission and investigation was reopened. (R.E. 20, C.E. 16; N.T. 106).

6. After the case was reopened, Commission staff completed investigation in 1980 and a finding of probable cause was made to credit the allegations found in the complaint. (N.T. 106-107).

7. When attempts to conciliate the matter proved unsuccessful, a public hearing was approved by the Commission (N.T. 107).

8. The Complainant began working as a substitute teacher for the Respondent in September, 1970. At the time she began substitute teaching, she had graduated (May, 1970), with honors, from Seaton Hill College with a 3.25 grade point average. Her undergraduate major had been psychology with a history minor.

In 1972, the Complainant earned a Masters Degree in guidance counselling from West Virginia University with 3.80 grade point average. (N.T. 63-64, 410-411; C.E. 4; Admissions #25).

9. From September, 1970 through January, 1974, the Complainant taught as a substitute in various classes at various grade levels for more than three hundred days. (N.T. 65; Admissions #27).

10. On January 21, 1974, the Respondent received official notification that Suzanne Reed, a Social Studies teacher at the Connellsville Senior High School, would be absent for a period of time beginning on January 23, 1974. While the exact duration of Reed's absence was not known, it was initially thought to be for about seven days. (N.T. 25, 168, 184; C.E. 2, R.E. 1).

11. At the time of Reed's absence, there were twelve (12) Senior High School Social Studies teachers and Reed was the only female. (N.T. 310-311, 371).

12. Respondent was aware of the probability of Reed's absence prior to receiving official notification. Perry Culver, the Curriculum Coordinator for the Respondent had discussed the impending absence with Robert McLuckey, then the Principal at Connellsville Senior High School. Culver, who was responsible for the placement of substitute teachers, had recommended that Terry Boors be selected as the substitute for Reed. (N.T. 11, 25).

13. Boors, a male, began substitute teaching in the

Respondent School District in 1972. In the two year period between then and January, 1974, he had substituted for a total of 152 days. Boors, in May, 1971, had graduated from California State University with a 2.41 grade point average. During 1973 and early 1974, he matriculated in a post graduate program in elementary education at California State University (N.T. 241; Admissions #27).

14. Upon notification of Reed's impending absence, Genevieve Crum, Culver's secretary, acting in accord with Culver's instructions, contacted Boors about the available position. Boors, however, was not available because he was taking post graduate examinations. (N.T. 185, 244-245).

15. Crum's ordinary practice where the substitute selected was not available, given the duration of Reed's absence, was to discuss other possibilities with Culver in order to determine who to contact next. (N.T. 170-171, 187).

16. Crum was not able to discuss the matter with Culver because he was in Harrisburg. Instead, Crum discussed the situation with McLuckey who approved the use of the Complainant as Reed's substitute. (N.T. 27, 185-186).

17. Later, on the same day (January 21, 1974), Crum again contacted Boors. During this contact Boors was offered a two week substitute position in Special Education. Because the assignment did not begin until January 28, 1974, Boors was available to accept it. This assignment ended on February 8, 1974. (N.T. 244-245; Admissions #9).

18. The Complainant, who was certified to teach Social

Studies, assumed Reed's duties on January 23, 1974. (N.T. 28, 319; R.E. 18).

19. Prior to this assignment, Reed had routinely requested the Complainant as a substitute for her. (N.T. 157).

20. On February 4, 1974, Reed requested a sabbatical leave for the remainder of the 1973-74 school year. (Admissions #4).

21. On February 6, 1974, the Complainant became aware of Reed's request for a sabbatical. She discussed the situation with both McLuckey and Culver and was informed by Culver that he would not remove her from the position, even though she had not been his choice. (N.T. 67, 69).

22. The Complainant, subsequent to the above described conversations, filled out personnel documents to permit her to be paid as a long term substitute (every two weeks) rather than as a short term substitute (once a month). The Complainant also received a one hundred and fifty dollar (\$150.00) cash advance. (N.T. 69; C.E. 3).

23. On February 12, 1974, at a meeting of Respondent's School Board Committee, the Reed sabbatical was discussed. Culver, at that time, recommended that Boors be placed in the Reed position for the remainder of the term. (Admissions #17).

24. On February 13, 1974, the Reed sabbatical was officially approved by the Respondent School Board during its monthly meeting. (Admissions #18).

25. It was not Respondent's policy, at that time, for the School Board to officially approve the placement of substitute teachers for either short term or long term assignments. (C.E. 13).

26. No indication of official action by the School Board with respect to the replacement of the Complainant by Boors appears in the minutes of the Board meeting from February 13, 1974. (C.E. 12).

27. On February 14, 1974, Culver informed the Complainant that she was being replaced by Boors. No reason for the replacement was given to the Complainant. (Admissions #20; N.T. 71, 412).

28. Boors served as Reed's replacement for the remainder of the school term. Boors was never informed as to why the Complainant had been replaced nor was he informed of any particular problems. (N.T. 245-46, 264, 269-70).

29. Respondent's general policy was to use one substitute during the entire period of absence of the regular teacher. The only exceptions to this policy were unavailability of the substitute or compelling circumstances sufficient to warrant removal of the substitute. (N.T. 17-19, 45-46).

30. Removal of teachers from a classroom was extremely infrequent in the School District. The examples of situations requiring removal mentioned by Respondent involved, on one occasion, a teacher who exposed himself and on another occasion a teacher harassing someone at their home. (N.T. 45-46).

31. Respondent introduced no evidence to demonstrate that it had ever removed one substitute teacher because a second, more qualified substitute had become available.

32. Boors was selected to replace the Complainant despite the fact that the Complainant's academic record was superior

to that of Boors' and the fact that the Complainant had more experience as a substitute teacher than did Boors. At the time of the replacement, neither Boors nor the Complainant had been either observed in the classroom or evaluated regarding performance. (Admissions #25, 26 and 27; N.T. 41, 331; C.E. 1).

33. The Commission finds, as a matter of fact, that the Respondent's assertion that Boors was more qualified is not supported by the evidence of record and was not the basis for the Complainant's removal and replacement.

34. No issue of the Complainant's ability to exercise control in the classroom was raised by the Respondent in replying to the complaint in 1975. (C.E. 1, 2 and 5).

35. At hearing, Respondent raised the issue of control of the classroom and cited it as the reason for Complainant's removal. (N.T. 43, 357, 375).

36. Removal of a teacher from a classroom because of classroom problems was generally to be preceded by a classroom visit. (N.T. 13, 20, 31).

37. Respondent did not counsel the Complainant regarding her alleged lack of control, nor did anyone from Administration visit her classroom to observe her. No written report was ever prepared in this regard. (N.T. 32, 34, 60, 362; C.E. 1, C.E. 17).

38. The teacher who, during the relevant timeframe, taught in the classroom adjoining the Complainant's, was in a position to be aware of disruptions of the type described by Respondent, yet he was not aware of any such disruptions. (N.T. 400).

39. Several teachers for whom the Complainant had routinely substituted, found her to be an excellent substitute. (N.T. 84-87, 93-97).

40. Subsequent to the Complainant's removal from the Reed classroom, Respondent continued to routinely use the Complainant as a substitute teacher. During the remainder of the 1973-74 school year, the Complainant was utilized almost every other day including a substitution for an eight day period. (N.T. 38,336).

41. Respondent's contention that the Complainant could not control the classroom is at odds with its continued use of the Complainant as a substitute and inconsistent with its failure to counsel her regarding the alleged lack of control. As such, the Commission can not credit Respondent's assertion that the Complainant's lack of control of her classes led to her removal.

42. The Commission finds that the Respondent's reasons for removing Complainant from the classroom are pretextual and that the Complainant was removed to permit a male teacher to obtain the position.

43. In July, 1974, both the Complainant and Boors applied for a position as a full-time, permanent Senior High School Social Studies position. Both were interviewed and Boors was eventually selected for the position. (N.T. 74; C.E. 8d, R.E. 13, 14).

44. The evidence of record fails to demonstrate that the Complainant would have been hired for the full-time, permanent

position were it not for her removal as the substitute teacher
for Reed.

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the Complainant and the Respondent and the subject matter of the Complaint under the Pennsylvania Human Relations Act, pursuant to Section 9 of the Pennsylvania Human Relations Act ("Act"). 43 P.S. 959.

2. The parties and the Commission have fully complied with the procedural prerequisites to a Public Hearing in this matter, pursuant to Section 9 of the Act. 43 P.S. 959.

3. Respondent is an "employer" within the meaning of Section 4(b) and 5(a) of the Act. 43 P.S. 954(b) and 955(a).

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

5. The Respondent unlawfully discriminated against the Complainant because of her sex, female (gender), when it removed her from her position as a substitute teacher and replaced her with a male teacher.

6. The Respondent's defenses to the charge of gender based discrimination amount to a pretext and do not justify its disparate treatment of the Complainant.

7. The evidence of record does not support Respondent's defense that the removal of the Complainant and her replacement by a male teacher was for legitimate, non-discriminatory reasons.

8. The Respondent's act of discrimination against the Complainant is in violation of Section 5(a) of the Act. 43 P.S. 955(a).

9. Whenever the Commission concludes that the Respondent has engaged in an unlawful discriminatory practice, the Commission may order such affirmative action as in its judgment will effectuate the purposes of the Act. 43 P.S. 959.

10. The Complainant failed to establish that she would have been hired for the permanent, full-time position that was given to Boors had it not been for her removal as the substitute for Reed. Therefore, reinstatement into that position together with back pay is not an appropriate remedy and would not effectuate the purposes of the Act.

O P I N I O N

I. HISTORY OF THE CASE

On or about June 3, 1974, Carolyn Krepps, the Complainant herein, filed a notarized Complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission"). The Complainant alleged that her employer, the Connellsville Area School District, the Respondent herein, had discriminated against her because of her gender in violation of Section 5(a) of the Pennsylvania Human Relations Act.¹ More specifically, the Complainant alleged that Respondent, on or about February 15, 1974, terminated her from her position as a Social Studies teacher (for the second semester of the 1973-74 school year) and replaced her with a male teacher. (SEE: Pre-Hearing Order with attachments for a copy of the Complaint. The Order and attachments are a part of the docket in this case).

Commission staff investigated the allegations found in the Complaint and, initially, closed the case as lack of

¹Section 5(a) of the Act makes it an unlawful discriminatory practice:

- (a) For any employer because of the race... sex...of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual,...or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment... 43 P.S. 955(a).

probable cause (N.T. 106; C.E. 15). The Complainant subsequently filed a petition for reconsideration which was granted by the Commission (N.T. 106; C.E. 16, R.E. 20). Respondent was notified of the decision to reopen investigation (R.E. 16). Investigation of the case was completed in 1980 and a staff determination that probable cause existed to credit the Complainant's allegations was made (N.T. 106-107). After attempts to conciliate the case proved unsuccessful, a public hearing was approved by the Commission (N.T. 107).

The public hearing was convened on June 8, 1982 and continued through June 10, 1982. During the course of the hearing, both parties had the opportunity to present testimony and other evidence in support of their respective positions. Both parties also submitted post hearing briefs.

Commissioner John P. Wisniewski served as chairperson of a three member hearing panel that also included Commissioners M. Rita Clark and Mary Dennis Donovan, C.S.J. Ellen Doyle, Esquire, Assistant General Counsel, appeared for the Commission on behalf of the Complainant. Murray I. Horowitz, Esquire, appeared on behalf of the Respondent. Michael Hardiman, Esquire, Assistant General Counsel, served as Legal Advisor to the panel.

II. FACTUAL BACKGROUND

The Complainant began working as a substitute teacher

for the Respondent in September, 1970. (N.T. 65).² From that point in time until January 1, 1974, the Complainant had served as a substitute in various classes at various grade levels for more than 300 days (Admissions #27; N.T. 65).

On January 21, 1974, the Respondent received notification that Suzanne Reed, a Social Studies teacher at the Connellsville Senior High School, would be absent from work for a period of time beginning on January 23, 1974 (N.T. 168, 184; C.E. 2, R.E. 1). The exact duration of Reed's absence was not known at this time although it was initially thought to be for approximately seven days (N.T. 25, 168, 184).

The Respondent had been aware of the probability of Reed's absence before receiving official notification (N.T. 25). In fact, Perry Culver, Respondent's Curriculum Coordinator, had discussed the upcoming absence and possible replacement with Robert McLuckey who was then the Principal at Connellsville Senior High School (N.T. 25). Culver, who was responsible for placement of substitute teachers, recommended Terry Boors³ as the replacement for Reed (N.T. 11, 25). Accordingly, Culver

²In May, 1970, the Complainant had graduated, with honors, from Seaton Hill College with a 3.25 grade point average. She had majored in psychology with a history minor (N.T. 63-64; C.E. 4; Admissions #25). Subsequently, the Complainant earned a Masters Degree in guidance Counselling from West Virginia University (3.80 grade point average) (N.T. 410-411; C.E. 4).

³Boors, like the Complainant, had previously substituted in the School District. Prior to January, 1974, he had substituted for a total of 152 days during a two year period preceeding 1974. Boors had graduated from California State University with a 2.41 grade point average in May, 1971. He also obtained post graduate training in elementary education during 1973 and early 1974 (N.T. 241; Admissions #27).

directed his secretary, Genevieve Crum, to contact Boors when Reed actually notified Respondent of her absence (N.T. 317, 318).

Upon receipt of the aforementioned January 21, 1974 notification of Reed's absence, Crum contacted Boors about the opening (N.T. 185, 244). Boors, however, was not available because of post graduate examinations that he was taking (N.T. 245).⁴ Crum's ordinary practice in a situation of this type, given the expected duration of Reed's absence, would have been to discuss with Culver those teachers who were available and determine who to call next (N.T. 187). Culver, however, was in Harrisburg, at the time (N.T. 27). Crum, therefore, contacted McLuckey and he approved the placement of the Complainant (N.T. 185-186).

The Complainant assumed Reed's teaching duties on January 23, 1974 (N.T. 28, 319). On February 4, 1974, Reed requested a sabbatical leave for the remainder of the school year (Admissions #4). On February 12, 1974, at a meeting of Respondent's School Board Committee, Reed's sabbatical was discussed with Culver recommending that Boors be placed in Reed's position for the balance of the school year (Boors, by this time, had completed the Special Education substitution)

⁴ Later, on that same day (1/21/74), Crum contacted Boors about a two week substitution in Special Education. Boors was able to accept this position because it did not begin until January 28, 1974, which was after his exams had ended. This substitution ended on February 8, 1974 (N.T. 244-245; Admissions #9).

(Admissions #17). The next day, at the regularly scheduled School Board meeting, Reed's sabbatical was formally approved (Admissions #18). On February 14, 1974, the Complainant was informed by Culver that she was being replaced by Boors, effective February 19, 1974 (Admissions #20). No reason for the replacement was provided to the Complainant (N.T. 71). Boors served as Reed's replacement for the remainder of the school year (N.T. 245, 246).

Subsequent to her replacement by Boors, the Complainant routinely received substitute assignments for the balance of the school year (N.T. 38, 335).

Sometime prior to the commencement of the 1974-75 school year, a new, full-time position as a Social Studies teacher at the Senior High School was created (N.T. 38). Both the Complainant and Boors applied for the position and both were interviewed during the summer of 1974 (N.T. 39). Boors eventually was selected for the position (N.T. 39). He remained employed in that capacity at the time this public hearing was held (N.T. 241).

Subsequent to her rejection for the full-time position, the Complainant continued serving as a substitute teacher (N.T. 72). She remained as a substitute until 1978 (N.T. 72).

III. POSITIONS OF THE PARTIES

The Complainant argues that the Respondent removed her from her position as Reed's substitute because of her gender and because a male teacher, originally unavailable, had become available.

In support, the Complainant asserts that in replacing her, the Respondent violated its general practice of using only one substitute for the entire period of absence of the regular teacher. The Complainant also argues that, in the past, Respondent had not removed any teachers from the classroom, at least absent highly unusual circumstances.⁵

The Complainant also asserts that Respondent, following a discussion with her, informed her that she would remain in Reed's position. Complainant indicates that after this conversation, she completed various personnel documents which identified her as a long term substitute. The Complainant notes that she was paid every two weeks rather than once a month as were short term substitutes.

Regarding the allegations that the Complainant could not control the students in her classroom, she argues that this rationale for removal is purely pretextual. In support, the Complainant points to the fact that despite the alleged seriousness of the problem, no one ever visited her classroom to observe her. Moreover, the Complainant notes the Respondent never counselled her regarding her inability to control the classroom; never informed her of the reason she was being replaced; and continued to routinely utilize her as a substitute teacher, both for the remainder of the 1973-74 school year and subsequent to that time.

⁵ In this regard, Complainant asserts that Respondent has changed its position (SEE: N.T. 115 as compared with N.T. 16-19). Complainant argues, however, that even accepting Respondent's position that removals have occurred, such removals were highly infrequent and only occurred under unique circumstances (i.e., teacher exposing himself; teacher engaging in criminal harassment) (N.T. 45-46).

Respondent, on the other hand, argues that it decided to replace the Complainant with Boors both because he was better qualified and because of the control problems that the Complainant had been experiencing. The Respondent asserts that the Complainant had never been a particularly strong substitute and that a number of administrators did not want her at their schools. Respondent also asserts that despite not formally observing her, it had been able to determine that she was not in control of the classroom.⁶

Respondent further argues that it is not its policy to evaluate all substitute teachers. Lastly, the Respondent asserts that the Complainant's lack of control was discussed by the School Board and that the School Board itself approved the replacement of the Complainant by Boors.

IV. PRELIMINARY CONSIDERATION

The Respondent, prior to the convening of the public hearing, moved to dismiss the action alleging, inter alia, that the equitable doctrine of laches acted as a bar to prosecution. This motion was denied and Respondent petitioned for reconsideration regarding the laches issue. The petition for reconsideration was also denied by the Commission. At hearing, the Respondent reasserted its laches argument.

The basis for the assertion of laches by the Respondent is twofold: (1) the passage of some eight years between filing of the complaint and the convening of the hearing, and (2) the

⁶ A Respondent witness (Culver) testified that he had observed the Complainant's classroom for a brief period of time by looking through a window on her classroom door (N.T. 340, 358).

death of McLuckey prior to the hearing and the impact of his death on its ability to present a defense.

In Pennsylvania, it is clear that the mere passage of time is insufficient to permit the invocation of laches as a bar to the action. Prejudice to the party asserting it must be shown. Pennsylvania Company for Banking and Trusts v. City and County of Philadelphia, 167 Pa. Super. 637,76 A.2d 443, 444-45 (1950).

After a review of the record as a whole in this case, the Commission has concluded that Respondent has not demonstrated prejudice sufficient to require dismissal of the action. In this regard, the Commission notes that Respondent was given wide latitude with respect to the testimony of several witnesses, most notably Culver, regarding conversations that they had had with McLuckey. Moreover, McLuckey had been available to the Respondent when it formulated its response to the complaint. Respondent made no effort to demonstrate that McLuckey would have testified in a manner inconsistent with the adopted position. Also, Respondent had available all other persons involved, including: its "substitute telephone caller", its Curriculum Coordinator and his secretary, the assistant principal to McLuckey, the Director of Federal Programs (who had interviewed the Complainant), the President of the School Board and former students from the Reed classes in which the Complainant substituted (the superintendent was also at the hearing although he did not testify). Lastly, as was apparent at the hearing, Culver and not McLuckey, was the key figure with respect to the replacement of the Complainant by Boors.

Culver, of course, was available and did testify on Respondent's behalf.

In light of the above, the Commission is unwilling to dismiss this action because of laches. Respondent has failed to establish the requisite prejudice.

V. ISSUE FORMULATION

Did the Respondent discriminate against the Complainant because of her gender in violation of Section 5(a) of the Act when it removed her from her position as a substitute teacher of Social Studies at the Connellsville Senior High School and replaced her with a male substitute teacher?

VI. ISSUE DISCUSSION

As is apparent from the above, this case involves a claim of disparate treatment in employment. Disparate treatment, with respect to the Act, occurs where less favorable treatment is accorded to some individuals because of their race, sex, age, etc. SEE: 43 P.S. 955(a). SEE also: International Brotherhood of Teamsters v. United States, 431 U.S. 324, 97 S. Ct. 1843, 52 L. Ed.2d 396 (1977) (contains definition of disparate treatment as distinguished from disparate impact. At p. 335-336).

The analytical framework utilized with respect to disparate treatment/employment discrimination cases is well known. Initially announced in McDonnell Douglas v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed.2d 668 (1973), the framework incorporates a three part analytical format within which to test the allegations of disparate treatment. In General Electric Corp. v. Commonwealth, Human Relations Commission., 469 Pa. 202, 265 A.2d 649, 654 (1976), the Pennsylvania Supreme

Court adopted the McDonnell Douglas standard and applied it to a disparate treatment/employment discrimination case occurring under the Pennsylvania Human Relations Act.

Under McDonnell Douglas, the Complainant has the initial burden of proof. That burden requires the Complainant to establish a prima facie case of discrimination. If established, an inference of discrimination is justified and thus requires the Respondent to rebut by showing a legitimate, non-discriminatory reason for its action. Once Respondent shows a non-discriminatory reason, the burden returns to the Complainant to demonstrate pretext. McDonnell Douglas, at p. 802. At its core, the McDonnell Douglas formula requires a comparison of treatment received by the Complainant with that received by others not in the Complainant's class.

As stated, the Complainant must first demonstrate the existence of a prima facie case. McDonnell Douglas outlines a four part test that will satisfy this initial burden:

- (1) membership in a protected class;
- (2) applied for available position for which qualified;
- (3) rejected;
- (4) employer continued to seek applicants after rejection. McDonnell Douglas, at p. 800.

In fashioning the above test, the Supreme Court noted that differing factual situations would require variations in the four part test. Id., at p. 802, n. 13.

In cases such as the one at hand, the above test can be adapted to meet the particular facts involved by requiring the Complainant to prove the following:

- (1) membership in a protected class;
- (2) qualified for the available position;
- (3) removed from the position in question;
- (4) replaced by a male.

Certainly, the Complainant has satisfied her initial burden. There is no dispute with respect to item one. Regarding item two, Respondent contends that Complainant was not qualified for the position. In so doing, however, Respondent confuses initial burden and ultimate burden. The "qualification" that need be shown with respect to establishing a prima facie case is qualification to teach as a substitute. Respondent concedes that Complainant was properly certified to teach (N.T. 12, 24, 63, 64).

Respondent argues that the Complainant was not qualified because of her shortcomings as a substitute teacher. Clearly, however, this is not a part of the Complainant's initial burden. Forcing the Complainant to demonstrate that she had no shortcomings and was, therefore, "qualified" as a part of her prima facie case is to require the Complainant to demonstrate pretext prior to requiring Respondent to demonstrate the existence of legitimate, non-discriminatory reasons for its action. McDonnell Douglas did not impose such a requirement and this Commission will not do so. The Commission is satisfied that the Complainant was qualified

for the position of substitute teacher within the McDonnell Douglas, prima facie test framework.

Regarding items three and four of the test, the Complainant has again met her burden. While Respondent argues that the Complainant had merely completed a short term assignment while Boors had been selected for a long term assignment, the connection between the two events is unmistakable. The Complainant was removed from her position as the substitute teacher for Reed and Boors was inserted. This removal and substitution was contrary to the Respondent's general policy of retaining the same substitute for the duration of the regular teacher's absence (N.T. 17-18). Only under "trying circumstances" would a substitute be replaced (N.T. 19). Removal of teachers from the classroom was unusual in the School District with the two reported cases involving criminal harassment and a teacher who had exposed himself (N.T. 45-46).

In reviewing the evidence of record in light of the McDonnell Douglas standards, the Commission is convinced that the Complainant has established a prima facie case of discrimination.

Under McDonnell Douglas, the burden now shifts to Respondent to demonstrate the existence of legitimate, non-discriminatory reasons for its action. Respondent offers two reasons for its action: (1) Boors was more qualified and had been the original choice for the assignment, and (2) the Complainant could not control the classroom. Respon-

dent did introduce evidence, via witness testimony, in support of its defense. This evidence is sufficient to rebut the inference of discriminatory treatment that would otherwise attach. It requires the Complainant to prove that the purported defense is, in fact, pretextual.

In order to resolve the issue of pretext, it is necessary to examine the conflicting evidence found in the record (primarily contradictory testimony) and resolve it. This, of necessity, requires the hearing panel to judge the credibility of the various witnesses. SEE: Carr v. Commonwealth, State Board of Pharmacy, 48 Pa. Cmwlth. 330, 409 A.2d 941, (1980); Boughter v. Commonwealth, Department of Public Welfare, 55 Pa. Cmwlth. 521, 423 A.2d 806, 809 (1980); AND SEE: Pennsylvania Human Relations Commission v. Hemfield Township, 23 Pa. Cmwlth. 351, 352 A.2d 218, 220 (1976). Moreover, where the evidence is conflicting, as here, the hearing panel is responsible for resolving the conflict and for deciding the weight to be awarded to particular evidence. Hamilton v. Unemployment Compensation Board of Review, 181 Pa. Super. 113, 124 A.2d 681, 683 (1956); Unemployment Compensation Board of Review v. Wright, 21 Pa. Cmwlth. 637, 347 A.2d 328, 329 (1975); Palmer v. Celebrezze, 334 F.2d 306 (3rd Cir. 1964).

After a careful review of the record as a whole and at the totality of the circumstances involved, the Commission has decided to credit the testimony and other evidence offered by the Complainant. In so doing, it finds the Respondent's

evidence to be not creditable. No one single item has persuaded the Commission to reach this decision. Rather, as stated, it is upon hearing all of the testimony and reviewing all of the exhibits and other materials of record. Although no single item was dispositive, it is instructive to review a number of the conflicts and analyze them.

As was noted earlier, Respondent presented two defenses in support of its decision to replace the Complainant with Boors. The first was that Boors was more qualified than the Complainant. Accordingly, the Respondent asserts, when the absence of Reed changed from one of undetermined length to an absence for the entire semester, Boors was selected for the position. This rationale, of course, is at odds with the Respondent's announced policy of not replacing substitutes absent compelling circumstances (N.T. 17-19, 45-46). Respondent offered no evidence to show that it had, in the past, removed a substitute because a more qualified substitute was available. On the contrary, Respondent showed that the only substitutes removed were those who had encountered serious difficulties prior to their removal. Regarding qualifications, moreover, evidence revealed that the Complainant's academic background was superior to Boors' (Admission #25 and #26); that the Complainant had more experience substituting than did Boors (Admissions #27); that neither Boors nor the Complainant had been observed in the classroom while substituting (N.T. 331); and that neither Boors nor the Complainant had ever been evaluated as substitute teachers (N.T. 41).

Given the above and in light of Respondent's general policy of not removing substitute teachers, it is clear that Respondent must offer something more than "qualifications" as the reason for replacing the Complainant. To this end, Respondent has contended that the Complainant did not have control in the classroom. Interestingly, this defense was not considered important enough to mention when responding to the charge in 1975 (SEE: C.E. 1, 2 and 5).

In any event, at hearing, Respondent introduced evidence through the testimony of Culver and several students who had been in the classes taught by the Complainant, which, if believed, leads to a conclusion that chaos reigned. Culver spoke of the fact that the Complainant could not control the classroom, that students were not in their seats, that the room was in disarray and that the classroom was disorganized (N.T. 43, 357, 358, 359). Culver characterized the situation as "quite disruptive" and as a problem that, "needed attention" (N.T. 375). Culver also noted that that, "If you can't control a classroom, you have problems teaching..." (N.T. 46). The students, for their part, painted a picture even more grim. They spoke of students sleeping in class, of paper airplanes and spitballs being thrown, of students sneaking out of class, of no teaching taking place, and of students walking around and talking in class (N.T. 198, 209, 211, 220 and 233). According to their testimony, the Complainant's reaction to this was to read paperbacks, yell and scream and, sometimes, cry (N.T. 198, 211, 220 and 233).

Respondent insists that because of the above, the Complainant had to be replaced. Yet, at the same time that Respondent was removing the Complainant because of the "chaos", it apparently never counselled the Complainant regarding the problem (N.T. 32). Culver, in fact, never visited her classroom nor did he instruct anyone to visit it (N.T. 34, 60). Culver did not even inform the Complainant that her inability to control the classroom was the reason for her being replaced (N.T. 71, 340). Incredibly, Respondent offers the above portrait of the Complainant's performance and yet, matter of factly, informs the Commission that after this incident it continued to use her as a substitute during the remainder of that semester", approximately every other day" (N.T. 38). Culver, in fact, points out that some two months later, the Complainant substituted for an eight day consecutive period (N.T. 336). The Commission is hard pressed to believe that a teacher of the sort described would be utilized at all, to say nothing of "every other day".

There is other testimony which is also telling on this point. The Complainant presented testimony from a fellow teacher who taught in an adjoining classroom when the Complainant was substituting for Reed. He indicated that he was not aware of disruptions of the type described by Culver and the students (N.T. 400). He also indicated that if there were "continuing chaos" he would have been aware of it (N.T. 400). Yet, Culver had testified that the "classroom teacher adjoining" knows whether a good teaching job is being done (N.T. 19).

Apart from this, Respondent admits that Reed, the regular teacher, had specifically requested the Complainant on a number of occasions (N.T. 157). As the teachers testifying on the Complainant's behalf made clear, the regular teacher was in a position to be able to evaluate how the substitute had performed because they would return to the same classroom (N.T. 85-87, 94). Presumably, Reed would not continue to request a substitute teacher who was responsible for a classroom in "serious disarray".

Beyond this, Respondent has contradicted itself on a number of other issues. For example, at hearing, Respondent indicated that it was not informed of Reed's request for a sabbatical until shortly before the School Board meeting of February 12, 1974, yet in responding to a Request for Admissions, Respondent indicates that the sabbatical request occurred on February 4, 1974 (N.T. 319; Admission #14).

Also, at hearing, Respondent indicated that the Boors appointment had been approved by the School Board at the February 13, 1974 meeting (N.T. 320, 385). Yet, its Superintendent, in a letter to the Commission sent in 1975, stated that it was apparently this case that led to the policy of Board approval. The Superintendent could not document Board approval of any long term substitutes before September, 1974 (C.E. 13). The Board minutes from the February, 1974 meeting do not include Board approval of the Boors appointment (C.E. 12).

Another conflict regarding the Respondent's position

exists with respect to whether the Complainant was considered a long term or short term substitute and whether she was originally told that she would substitute for Reed during her sabbatical.

The Complainant testified that she spoke to McLuckey and Culver after the Respondent became aware of the sabbatical and that Culver informed her that although he did not want her in the position, he would not remove her (N.T. 69). The Complainant indicates that this conversation occurred on February 7, 1974 (N.T. 67). Culver, on the other hand, contends that he spoke to the Complainant before he was aware of the sabbatical and that the conversation about her remaining in the position involved only that initial period of time (N.T. 339, 354-56). Yet, the Complainant demonstrated that she was being treated, for payroll purposes at least, as a long term substitute. She was paid every two weeks rather than once a month as were day to day substitute teachers (N.T. 69; C.E. 3).

VII. CONCLUSION

As stated previously, the decision with respect to weighing credibility and resolving conflicting evidence came after the opportunity to fully examine the evidence presented. Having done so, the conflict is resolved in Complainant's favor. Accordingly, the Commission now concludes that the Complainant was the victim of unlawful discrimination in violation of Section 5(a) of the Act.

VIII. REMEDY

The Commission's authority to award relief where it finds a violation of the Act is unquestioned. The Act itself provides that upon a finding of unlawful 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... reinstatement or upgrading of employes, with or without back pay, ...as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. 43 P.S. 959.

The Complainant seeks relief of two types. First, Complainant seeks an award of back pay, for that period of the 1973-74 school year subsequent to her removal as a substitute for Reed, equal to that which she would have earned had she not been removed (minus what she actually earned as a substitute) plus interest. Second, the Complainant requests the Commission to order Respondent to hire her as a permanent Social Studies teacher with seniority retroactive to January 23, 1974, and to require Respondent to pay her back pay from that date less interim earnings.

The Commission has no difficulty in ordering Respondent to pay the Complainant the back wages sought for the 1973-74 school year, less actual earnings as a substitute, plus interest. However, the Commission is not inclined to extend the award in the manner sought by the Complainant with respect to hiring and additional back pay.

In declining to require Respondent to hire Complainant as a permanent teacher, the Commission notes that the complaint

filed, and hearing held, focused on her removal as a substitute teacher. No evidence was presented to demonstrate that Complainant had filed a sex discrimination charge with respect to her rejection for the full-time position that became available in the summer of 1974. Complainant, in this regard, argues that Respondent's discriminatory act of removing her as a substitute significantly impaired her ability to obtain full-time permanent employment. Complainant also argues that her removal and subsequent filing with the Commission "stigmatized" her (Complainant's Brief at p. 11).

After a careful review of the record in the case, the Commission concludes that the evidence is insufficient to support Complainant's assertion that, but for her removal as a substitute and her filing of a discrimination complaint, she would have obtained the permanent position. Accordingly, the Commission is of the opinion that the relief ordered adequately compensates her for the act of discrimination found to exist.

With respect to the back pay awarded to the Complainant, an award of interest is also appropriate. Thus, the Commission also awards her 6% interest per annum calculated from the 1974 date of pay entitlement period until actual payment by the Respondent. Goetz v. Norristown Area School District, 16 Pa. Cmwlth. 389, 328 A.2d 579 (1974).

RECOMMENDATION OF HEARING COMMISSIONERS

AND NOW, this 19th day of November, 1982, in consideration of the entire record in this matter, including the Complaint, Answer, Amended Answer, Admissions, Exhibits, Record of the Hearing, and Briefs filed on behalf of Complainant and Respondent, the Hearing Panel adopts the attached as their proposed 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.

BY: John P. Wisniewski
JOHN P. WISNIEWSKI
Chairperson

M. Rita Clark
M. RITA CLARK
Hearing Commissioner

Mary Dennis Donovan, C.S.J.
MARY DENNIS DONOVAN, C.S.J.
Hearing Commissioner

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

CAROLYN KREPPS,
Complainant

v.

CONNELLSVILLE AREA SCHOOL
DISTRICT,
Respondent

DOCKET NO. E-6718

ORDER

AND NOW, this 24th day of November, 1982, the Pennsylvania Human Relations Commission hereby adopts the foregoing Findings of Fact, Conclusions of Law, and Opinion in accordance with the recommendation of the hearing panel and therefore orders:

- 1) That the Respondent shall cease and desist from discriminating against the Complainant because of her gender in the terms and conditions of her prior employment as a Substitute Teacher.
- 2) That the Respondent shall pay the Complainant a sum of money equal to the wages that she would have earned, had she remained in the Reed position for the remainder of the second semester of the 1973-74 school year minus wages actually earned by her as a substitute teacher during that period of time, together with interest calculated at six percent per annum from 1974.

- 3) That the Respondent shall provide the Commission with satisfactory written proof of compliance with the terms of this Order within thirty days of the date found on the Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: *Joseph X. Yaffe*
JOSEPH X. YAFFE, Chairperson

ATTEST:

BY: *Elizabeth M. Scott*
ELIZABETH M. SCOTT, Secretary