

COMMONWEALTH OF PENNSYLVANIA

EXECUTIVE OFFICES

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PENNSYLVANIA HUMAN RELATIONS :  
COMMISSION, :  
Complainant :  
v. : DOCKET NO. P-1617  
VALLEY VIEW SCHOOL DISTRICT :  
and VALLEY VIEW SCHOOL :  
DISTRICT BOARD OF DIRECTORS, :  
Respondents :

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 the Pennsylvania Human Relations Commission (the "Commission"), 101 South Second Street, Harrisburg, PA. A copy of the complaint is attached hereto as Appendix A and incorporated by reference as if fully set forth herein.

2. The Respondent herein is the Valley View School District ("Valley View") and the Valley View School District Board of Directors. Both Respondents have their principal offices on Columbus Drive, Archbald, PA.

3. Valley View is a place of public accommodations within the meaning of Section 5(i) of the Pennsylvania

Human Relations Act (the "Act").

4. The interscholastic athletics program offered by Respondent and the facilities connected therewith are accommodations, advantages, facilities and privileges of Valley View.

5. At all relevant times since 1977 Valley View has maintained an interscholastic basketball program for girls and a separate interscholastic basketball program for boys.

6. Valley View hires coaches for both of the varsity basketball teams.

7. Different persons are hired as the coach of the boys' varsity basketball team and the girls' varsity basketball team.

8. Respondent determines the salaries of its coaches by a system based on five criteria: 1) Hours, 2) Responsibility, 3) Number of players, 4) Pressure, and 5) Experience.

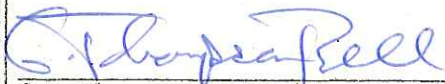
9. At all relevant times since 1977 Respondent has paid the coach of the boys' varsity basketball team less than the coach of the girls' varsity basketball team. The respective salaries since the 1979-80 school year and the point values for each criterion used to compute each salary are attached as Appendix B and incorporated by reference as if fully set forth herein.

*Since school year 1981-82,*  
10. The duties of the coach of the girls' varsity *have been* basketball team ~~are~~ substantially the same as the duties

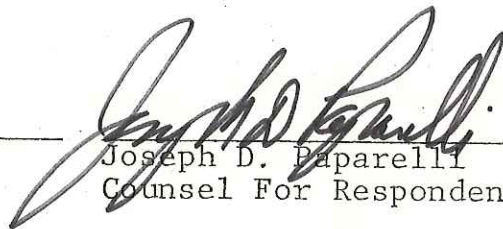
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of the boys' varsity basketball team, in terms of number of games played, practice hours, and number of players coached.

11. All procedural prerequisites to holding a Public Hearing under the Act have been met.



G. Thompson Bell  
Counsel For Complainant



Joseph D. Paparelli  
Counsel For Respondent

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	:	

FINDINGS OF FACT\*

1. At all times relevant to this action, the salary disparity described in Stipulation of Fact No. 9 was caused by application of the pressure criterion. (S.F. 9, Appendix B).

2. Frank Nicholosi coached Respondents' interscholastic girls' basketball team for the 1977, 1978, and 1979 seasons. (N.T. 36).

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\*The foregoing Stipulations of Fact are incorporated herein as if fully set forth.

The following abbreviations are utilized throughout for citation purposes:

S.F. - Stipulation of Fact  
N.T. - Notes of Testimony

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission is empowered by Section 9 of the Act to initiate complaints alleging violations of the Act.

2. Respondents are a place of public accommodation within the meaning of the Act.

3. The Commission has jurisdiction over the parties and subject matter of this case.

4. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.

5. Facially neutral policies or practices of places of public accommodation, which have a disproportionately negative impact upon groups protected by the Act, violate Section 5(i)(1) of the Act.

6. Complainant in this case may meet its prima facie burden by proving that Respondents' neutral point system for determining coaching salaries had a disproportionately negative impact upon female Valley View students.

7. Complainant has not established a prima facie case.

8. Decisions of the Commission must be supported by substantial evidence.

OPINION

This case arises on a complaint filed both by and with the Pennsylvania Human Relations Commission ("Complainant" or "Commission", respectively), against the Valley View School District and Valley View School District Board of Directors ("Respondents") at Docket No. P-1617, on or about April 8, 1980. The complaint alleged that Respondents violated Section 5(i)(1) of the Pennsylvania Human Relations Act, 43 P.S. §§951 et seq. ("Act"), by paying less to the coach of the girls varsity basketball team than to the coach of the boys basketball team; it was alleged that this practice discriminated against the female students on the basis of their sex. Section 5(i)(1) provides:

It shall be an unlawful discriminatory practice . . .:

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any place of public accommodation, resort or amusement to:

(1) refuse, withhold from, or deny to any person because of his race, color, sex, religious creed, ancestry, national origin, or handicap or disability, or to any person due to use of a guide dog because of the blindness or deafness of the user, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement.  
43 P.S. §955(i)(1).

Commission staff investigated the complaint and found probable cause to credit the allegations of discrimination. Efforts to resolve the situation through conciliation were unsuccessful and the case was approved for public hearing. The hearing was held on September 22, 1983, before Commissioner Doris M. Leader, the parties having waived their rights under Section 9 of the Act to a hearing before a panel of three Commissioners.

Respondents employ a point system for determination of the salaries of all coaches, whether they are male or female, and whether they coach girls teams or boys teams. Five criteria are used. Only one, pressure, is at issue. At all relevant times, use of the pressure criterion has caused the coach of the girls' interscholastic basketball team to be paid less than the coach of the boys' team. Complainant alleges that this practice discriminates against Respondents' female students; the sex of the coaches themselves is not relevant. (For most or all of the time at issue, a male coached the girls' team.) The complaint thus alleges the use of a facially neutral system whose operation has a disparate impact on female students.

Preliminarily, we decide that disparate impact analysis may be used in cases alleging discrimination by places of public accommodation, as well as in employment situations. Pennsylvania courts have long recognized that the Act is violated by facially neutral employment practices which have a disproportionately harsh impact on members of

a protected class. General Electric Corp v. Pennsylvania Human Relations Commission, 469 Pa. 292 , 365 A.2d 649 (1976). Effectuation of the intent of the Act requires that the same principles apply to places of public accomodation.

We therefore agree with Complainant's contention that it can meet its prima facie burden in this case by proving that Respondents' facially neutral practice has a disproportionately negative impact on female students. Should this be established, Respondents must prove that the challenged practice has a manifest relation to operation of the place of public accommodation. See General Electric, supra, and Griggs v. Duke Power, 401 U.S. 424 (1971).

Complainant claims that the coaches' salary disparity negatively impacts female students in each of two possible ways. First, female students are distinctly signalled that they are less valued by Respondents than are males. Second, the inequity serves to attract more coaching talent to the boys' program than to the girls'.

Emphasizing that this case involves injury to female students and not to their coaches, we find after careful review that the record does not contain sufficient evidence to support either of the above assertions. Decisions of this Commission must be supported by evidence which is not only uncontroverted, but also substantial. Pennsylvania Human Relations Commission v. Hempfield Township, 23 Pa. Cmwlth. 351.



352 A.2d 218 (1976). The Court in Hempfield Township, supra, reiterated its definition of substantial evidence as set forth in St. Andrews Development Co., Inc. v. Pennsylvania Human Relations Commission, 10 Pa. Comwlth. 123, 217-28, 308 A.2d 623, 625 (1973), quoting from a University of Pennsylvania Law Review Article:

[S]ubstantial evidence should be construed to confer finality on an administrative decision on the facts when, upon an examination of the entire record, the evidence, including the inferences therefrom, is found to be such that a reasonable man, acting reasonably, might have reached the decision; but, on the other hand, if a reasonable man, acting reasonably, could not have reached the decision from the evidence and its inferences then the decision is not supported by substantial evidence and it should be set aside.

89 U. Pa. L. Rev. 1026, 1038 (1941), emphasis in original.

Applying this standard, we find that the Complainant must prove that the negative consequences described above actually did occur at Valley View, not simply that they would necessarily result from the admitted pay disparity. The record supports only the latter proposition. SEE: Philadelphia Electric Co. v Pennsylvania Human Relations Commission, 68 Pa. Commw. 212 A.2d 448 (1982), dismissing a claim of handicap discrimination where the record amply demonstrated that Complainant might have been disabled at the time of her unsuccessful application but

did not show that she in fact was so disabled.

Dr. Norma Raffel, Complainant's expert, testified at length about the value of high school athletics, and the harms which she believed would flow from sex-based inequalities in athletic programs. Her experience in the area, while impressive, included no direct knowledge of conditions at Valley View.

The most concrete evidence offered in support of the claim of harm to Valley View's female students was the following testimony of Frank Nicholosi, who coached the girls basketball team for the 1977, 1978 and 1979 seasons:

Q: Now, what effect does the salary of a coach's position have on the way that you would see that position?

A: Well, monetarily, as far as performance personally, it didn't make any difference to me. I can't say that it did because I think no matter what the pay is you're up to do your best job.

Underlying, I think moral (sic), the -- I'm looking for the right word -- the overall feeling of the program. You know, if salaries are made public, and I know of several times the girls would see a salary, for instance I was being paid \$650, and the boys' coach would be paid \$1550, which is more than double, and yet the girls would have the better record the previous year than the boys have. You know, the girls would take that into consideration because they feel that they're playing to win.

Q: Would you explain that a little bit more? How would they take that into consideration or what do you mean by that phrase?

A. Okay. During practice sessions and things when the salary scale is made public, you know, it is a matter of public record, so when girls see the scale they feel that their program doesn't have the support of interest from the school as the boys' program does, and I guess it's a little de-meaning to them to have to have that. (N.T. 38-9)

This exchange does not establish to a reasonable degree of certainty that the alleged harm actually occurred. While Respondents' policy may well have transmitted negative signals, Complainant has not established that those signals were received by Valley View's female students or interpreted in the manner which is alleged.

Likewise, the record does not demonstrate that the pay disparity has in fact at any time attracted more coaching talent to the boys' team than to the girls'. Both Mr. Nicholosi and Daniel Corazzi, Valley View's principal, testified unequivocally that financial gain is not a particularly motivating factor for high school athletic coaches. In Mr. Nicholosi's words, " ... I think anybody that says they are coaching for the money is a liar. Because if you figure all the hours you put in, you're probably making twelve (12) cents an hour ...". (N.T. 39) Mr. Nicholosi also testified emphatically that he had done his best as coach of the girls' team, notwithstanding the salary disparity. Nor does the record reveal any instance of a Valley View coach, who was superior by any criterion whatsoever, taking a position as boys' coach rather than girls'

coach because of the challenged pay differential.

Our decision in no way endorses the challenged pay disparity, or dismisses the possibility that the harms complained of may actually be occurring. On this record, however, we cannot conclude with the necessary certainty that they have occurred. Complainant's case must therefore be dismissed.

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RECOMMENDATION OF HEARING COMMISSIONER

Upon consideration of the entire record in this matter, the Hearing Commission concludes that it has not been shown that Respondent has committed a violation of the Human Relations Act, and therefore recommends pursuant to Section 9 of the Act that the attached Findings of Fact, Conclusions of Law, Opinion and Final Order be adopted and entered by the full Pennsylvania Human Relations Commission.

Doris M. Leader  
DORIS M. LEADER  
Hearing Commissioner

Jan. 30, 1984  
DATE

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FINAL ORDER

AND NOW, this 14th day of March, 1984,  
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  
Commissioner, pursuant to Section 9 of the Pennsylvania Human  
Relations Act, and therefore

O R D E R S

that the complaint in this matter be, and the same hereby is,  
dismissed with prejudice.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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

ATTEST:

Elizabeth M. Scott  
ELIZABETH M. SCOTT, Secretary