COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

THERESE M. McCAA, Complainant	:	
v.	:	Docket No. P-2293 Docket No. E-34750-D
GALLITZIN VOLUNTEER FIRE COMPANY, Respondent	:	
ROBERT T. McCAA, Complainant	:	
v.	:	Docket No. E-35601
GALLITZIN VOLUNTEER FIRE COMPANY, Respondent	:	

STIPULATIONS

FINDINGS OF FACTS

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

THERESE M. McCAA, Complainant	:	
v.	:	Docket Nos. P-2293 E-34750-D
GALLITZIN VOLUNTEER FIRE CO., Respondent	:	
and	:	
ROBERT T. McCAA, Complainant	:	
v.	:	Docket No. E-35601
GALLITZIN VOLUNTEER FIRE CO., Respondent	:	

STIPULATIONS

1. Complainant, Therese M. McCaa, is an adult female individual, who currently resides at 801 Riverside Avenue, Lewistown, PA 17044.

2. Complainant, Robert T. McCaa, is and was the husband of Therese M. McCaa at the time of the events at issue and now resides at 801 Riverside Avenue, Lewistown, PA 17044.

3. Respondent is Gallitzin Fire Company, No. 1/aka Gallitzin Volunteer Fire Company and has its principal place of business at 209-220 St. Thomas Street, P.O. Box 41, Gallitzin, PA 16641.

4. Respondent is an employer of four or more persons within the Commonwealth of Pennsylvania for purposes of Section 4(b) of the Pennsylvania Human Relations Act ("Act") as interpreted by the decision of the Commonwealth Court in Harmony Volunteer Fire Co. v. PHRC, 73 Pa. Cmwlth. 596, 459 A.2d 439 (1983).

5. Respondent and the Commonwealth of Pa. acting through the Pa. Emergency Management Agency ("PEMA") executed an Agreement for Act 208 Loan Assistance on or about February 16, 1984.

6. Article III of the Gallitzen Fire Company (February 1, 1979) provides, in part, that membership "shall be open to all qualified persons over 17 years of age, who are residents of the Fire Protection Area of the Gallitzin Fire Company at the time of application."

7. On or about September 5, 1984, Complainant, Therese M. McCaa, who at the time was older than 17 and resided in Gallitzin, applied for membership as a fire fighter. Complainant was the first female to apply as a fire fighter. She then served a one-year probationary period in which she satisfied the requirements of Article III, Section 2.D.

8. The final authority on matters concerning membership is Respondent's Board of Trustees which consists of ten individuals.

9. On October 2, 1985, the Board of Trustees held a meeting at which eight of the ten trustees were present during the voting on memberships. In attendance during the voting were: Chairman Clifford Cherico, President Robert J. Maloskey, Secretary Howard E. Bosworth, Father John Palko, Robert E. Reagan, Edward R. Moyer, Robert C. Nagle, and Chief Robert T. McCaa.

10. Complainant, Therese M. McCaa was rejected for active status by secret ballot.

11. The Articles of the Gallitzin Fire Company (February, 1979) do not require a secret ballot when voting on prospective members.

12. On October 7, 1985, the Board notified Complainant, Therese M. McCaa, in writing that it had voted not to accept her as an active member. The Board provided no reason for the decision.

13. On or about October 10, 1985, Complainant filed a verified complaint with the Pennsylvania Human Relations Commission ("Commission") docketed at P-2293 and E-34750-D in which she alleged that Respondent denied her active membership in its fire division because of her sex in violation of Section 5(a) and (i)(1) of the Pennsylvania Human Relations Act ("Act"). The Commission served the complaint upon Respondent on or about October 24, 1985.

14. On or about October 31, 1985, Respondent answered the complaint and denied the allegation of sex discrimination.

15. On or about October 27, 1985, Respondent's Board of Trustees held a special meeting with all members in attendance except Robert T. McCaa.

16. The special meeting on October 27, 1985 was called to inform members of the Board of Therese McCaa's filing with the Commission. At the meeting, the Board voted to hire a solicitor, to change the lock on the office door, and to issue keys only to the President, the Board Chairman, the Treasurer, the Secretary, and the Ambulance Captain.

17. At the November 1985 meeting, Complainant, Robert T. McCaa's name was not placed in nomination for the position of fire chief.

18. Complainant, Robert T. McCaa, had held the position of fire chief since 1978.

19. On or about December 9, 1985, Robert T. McCaa filed a verified complaint with the Commission docketed at E-35601 in which he alleged that Respondent retaliated against him in violation of Section 5(d) of the Act because of his opposition to a discriminatory practice.

20. On or about October 26, 1987, the Commission notified Respondent that it had found probable cause in both complaints.

21. Conciliation attempts of both complaints have failed.

Francine Ostrovsky
Assistant Chief Counsel
(Counsel in support of complaints)

Dated: 8-7-89

Ferdinand F. Bionaz, Esquire
(Counsel for Respondent)

Dated: August 7, 1989

Richard J. Green, Jr., Esquire
(Counsel for Complainants)

Dated: 11-8-89

FINDINGS OF FACT*

1. Complainant, Robert McCaa joined the Gallitzin Volunteer Fire Company, (hereinafter either the "Fire Company" or "Respondent"), in 1960. (N.T. 79)

2. After joining the Fire Company, Robert McCaa held the positions of Captain from 1966 through 1971, Assistant Chief 1971-1978, and Fire Chief 1978-1985. (N.T. 79)

3. Robert McCaa also served on the Fire Company's Board of Trustees for approximately 15 years. (N.T. 79)

4. Complainant Therese McCaa became associated with the Fire Company in 1976. (N.T. 32; C.E. 9)

5. On Therese McCaa's application dated November 3, 1976, Therese applied for membership in the Fire Company. (C.E. 9)

6. At the Fire Company's November 1976 Board of Trustee meeting, the Board unanimously approved Therese McCaa but "for ambulance purposes only." (C.E. 9)

7. Article III, Section 1 of the Fire Company's 1979 bylaws declares that memberships are classified as follows: Probationary; Active; Provisional Active; Ambulance Division; Associate; and Life. (C.E. 10)

* The foregoing "Stipulations" 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 Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony (Volume II designated by "II" preceeding a page number.
C.E. Complainant's Exhibit
R.E. Respondent's Exhibit
S.F. Stipulation of Fact

8. A membership classified as Ambulance Division carries certain restrictions which include: Not being able to respond to emergencies by riding on fire apparatus; and not being allowed to either vote for or hold a firefighting line position. (N.T. 33; C.E. 10)

9. The active membership classification does not have those restrictions. (N.T. C.E. 10)

10. In 1976, when Therese McCaa was given a membership for ambulance purposes only, no men had memberships limited to ambulance purposes only. (T.T. 32)

11. Between February and April 1984, Therese McCaa took a 45 hour fundamentals of firefighting course. (N.T. 34; C.E. 2)

12. Upon Therese McCaa's completion of this course, she informed her husband, Robert McCaa of her desire to be put on the fire roster and in effect to be reclassified to active membership. (N.T. 34, 35)

13. Being the Fire Chief and a member of the Board of Trustees, Robert McCaa, told Therese McCaa he would take care of it. (N.T. 34; 81)

14. In June 1984, Robert McCaa communicated Therese McCaa's interest in being reclassified to the Fire Company's Board of Trustees. (N.T. 81; C.E. 15)

15. Robert McCaa testified that when he communicated Therese McCaa's request, "no one quite knew what to do with it." (N.T. 81)

16. During the July 1984 Board of Trustees' meeting, the Board again tabled action on Therese McCaa's request. (N.T. 81, 82; C.E. 16)

17. At the August 1, 1984, Board of Trustees' meeting, Board Chairman Cherico suggested that Therese McCaa's request to change membership classifications be by written application. (C.E. 17)

18. At the August 1, 1984 meeting, the Board also discussed requirements and procedures for a transfer of membership. (N.T. 82; C.E. 17)

19. The Board again delayed action on Therese McCaa's request citing a lack of bylaw direction regarding a transfer of membership classification. (C.E. 17)

20. The Board also asked Robert McCaa to draft a proposed Bylaw provision regarding a change of membership. (N.T. 83)

21. At the September 5, 1984 Board of Trustees' meeting, Robert McCaa submitted for consideration the following bylaw amendment:

> ARTICLE III, Section 8. Change of Membership Category.
>
> Any member holding a valid membership in the Active Fire Division or Active Ambulance Division may acquire membership in the opposite division. Such application shall be in writing and shall be submitted to the Board of Trustees.
>
> Upon approval by the Board of Trustees, the member will be granted Probationary Membership status in the desired classification, subject to all requirements thereof.
>
> The original membership classification shall not be affected by the change, and shall remain in effect so long as applicable standards continue to be met. (N.T. 83; C.E. 18)

22. Article XIX, Section 1 of the Fire Company's bylaws provides that the bylaws may not be amended unless proposed in writing, signed by at least 7 members and approved by at least 2/3rds of members present at a subsequent meeting. (C.E. 10)

23. At the September 5, 1984, regular meeting of the Fire Company, seven members signed Robert McCaa's amendment, however, at the Fire Company's

October 4, 1984, regular meeting, the proposed amendment failed to pass by the requisite 2/3rds vote. (N.T. 84, 86; C.E. 21)

24. On September 5, 1984, the Board of Trustees also met and by a 5 to 3 vote, accepted Therese McCaa as a probationary firefighter with the condition that she submit a doctor's statement that she was capable of firefighting. (C.E. 19)

25. At the September 5, 1984, Board of Trustees' meeting, Board member Palko asked Robert McCaa if there was a standard by which Therese McCaa could be prevented from riding fire apparatus. (N.T. 85)

26. By letter dated September 24, 1984, the Board notified Therese McCaa of her provisional acceptance as a probationary firefighter. (N.T. 39, 40; C.E. 13)

27. Therese McCaa submitted a statement from Dr. Shaheen stating: "[Therese McCaa] has been under my care. She was recently examined and has no physical limitations for employment." (C.E. 13)

28. At the October 3, 1984, board meeting, board member Robert Nagle objected to Therese McCaa's doctor's note in effect stating it made no mention of firefighting thus it failed to fulfill the previously set condition to accepting Therese McCaa as a probationary firefighter. (C.E. 20)

29. Each November the Board of Trustees would meet to review the membership status of each member of the Fire Company. (N.T. 90)

30. During the November 1984, membership status review, Therese McCaa was listed as active ambulance but this was corrected by then Fire Company president, Robert Malosky, to read probationary fire. (N.T. 90)

31. During the 1984-1985 period, the Board of Trustees waived the Fire

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

RANDI B. McCULLOUGH, Complainant	:	
vs.	:	DOCKET NO. E-15236
DALLASTOWN AREA SCHOOL DISTRICT, Respondent	:	

FINDINGS OF FACT

1. The Complainant herein Randi B. McCullough is an adult female residing at 2668 Vireo Road, York, Pennsylvania 17403. (Stipulations of Fact #1 hereafter S.F.).

2. The Respondent herein is the Dallastown Area School District, located at R.D. #1, Dallastown, Pennsylvania 17313. (S.F. #2)

3. The Complainant, on January 8, 1979, filed a verified complaint with the Pennsylvania Human Relations Commission (hereafter "Commission") at Docket No. E-15236. (S.F. #3)

4. On January 29, 1978, Commission staff duly served all parties to this action with a copy of the Complaint described in Finding #3 above in a manner which satisfies the requisites of 1 Pa. Code 33.32. (S.F. #4)

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

RANDI B. McCULLOUGH, Complainant	:	
	:	DOCKET NO. E-15236
vs.	:	
DALLASTOWN AREA SCHOOL DISTRICT, Respondent	:	
	:	

RECOMMENDATION OF HEARING PANEL

Upon consideration of the entire record in the above-captioned matter, it is the view of the hearing panel that Respondent refused to grant Complainant sick leave in conjunction with unpaid maternity leave of absence in violation of §5(a) of the Pennsylvania Human Relations Act. Accordingly, it is the Panel's recommendation that the attached Findings of Fact, Conclusions of Law, Opinion, and Order be adopted by the full Pennsylvania Human Relations Commission.

BENJAMIN S. LOEWENSTEIN
Panel Chairperson

DATE: September 28, 1982

5. The Respondent acknowledged receipt of the complaint by virtue of its execution on January 30, 1979 of certified mail receipt #668432. (S.F. #5)

6. In correspondence, dated October 7, 1980, the Commission notified the Respondent that Probable Cause existed to credit the allegations contained in the above captioned complaint. (S.F. #6)

7. Subsequent to the determination of probable cause, the Commission and the Respondent attempted to eliminate the alleged unlawful discriminatory practice through conference, conciliation and persuasion but were unsuccessful. (S.F. #7)

8. In correspondence, dated January 5, 1981, the Commission notified the Respondent that it had approved a Public Hearing in this matter. (S.F. #8)

9. The Complainant was initially hired by the Respondent on or about July 20, 1972 as a Teacher. During the 1978-79 school year, her annual salary was $13,289.00. (S.F. #9)

10. In July 1978, the Complainant learned from her physician that she was pregnant. (Notes of testimony 11, 12; hereafter N.T.)

11. On or about September 18, 1978, the Complainant notified the Respondent that she was pregnant with an expected delivery date of March 14, 1979. She requested use of 30 days accumulated sick leave beginning March 1, 1979 and ending

April 17, 1979, and that she be granted a maternity leave of absence to begin April 18, 1979. (S.F. #10; Complainant's Exhibit #1; hereafter C.E.)

12. The September 18, 1978 notification was forwarded to the Respondent at that time in order to comply with the requirements of the applicable collective bargaining agreement regarding requests for maternity leaves of absence. The collective bargaining agreement provides in part:

> An employe of the school district of Dallastown wishing to apply for a leave of absence because of expected maternity shall file a written application requesting same with the District Superintendent or Business Manager as soon as pregnancy is determined but no later than the end of the fourth month of pregnancy. Accompanying said application shall be a written statement by the employe's personal physician indicating on what date the employe should begin such leave so that the Superintendent or Business Manager shall be assured that said employe's health will not be adversely affected by employment during her pregnancy. Notice must be 30 calendar days in advance of the effective date. If semester ending activities are involved, the administration may extend the employment not to exceed 30 calendar days. This extension shall not be contrary to the statement of her personal physician. (C.E. #10, Article 8-1).

13. On or about September 25, 1978, the Respondent informed the Complainant that Article 8 of the collective bargaining agreement required a statement from her physician which would indicate the date on which she should stop working because of her pregnancy. (N.T. 18; C.E. #2)

14. The Complainant provided the Respondent with a physician's statement, dated October 5, 1978, which indicated

that the Complainant was able to work until February 28, 1979. (C.E. #3; N.T. 18)

15. On or about October 12, 1978, the Complainant made a second request for use of her accumulated sick leave time; requesting to be placed on sick leave as of March 1, 1979. She asked to use 26 rather than 30 work days which would end on Friday, April 6, 1979. (S.F. #11; C.E. #4; N.T. 21)

16. On or about October 20, 1978, the Respondent informed the Complainant that her request for a maternity leave of absence had been granted. The Respondent set the effective date of the leave as March 1, 1979 and not Monday, April 9, 1979 as requested by the Complainant. (C.E. #4, #5; N.T. 23)

17. On or about February 24, 1979, the Complainant made a third request to use her accumulated sick leave before beginning her maternity leave of absence. (C.E. #6; N.T. 24)

18. The Complainant's third request for use of accumulated sick leave was accompanied by a physician's statement which indicated that her expected delivery date of March 14, 1979 and the burden of the late stages of pregnancy necessitated she discontinue work on March 1, 1979 and not return to work until four weeks after her delivery. (C.E. #7)

19. The Complainant delivered a male infant by low cesarean section on March 10, 1979. (S.F. #12)

20. Under the terms of the Respondent's 1978-79 collective bargaining agreement as it relates to illness and disability, teachers were entitled to receive a full day's pay for each day ill or disabled until they had exhausted their accumulated sick leave. Illness of two days or less required no verification. If the illness was more than two days a physician's statement is necessary. (S.F. #15; C.E. #10; N.T. 56)

21. Under the terms of the Respondent's 1978-79 collective bargaining agreement, all maternity leaves of absence are unpaid. (C.E. #10, Article 8)

22. The Complainant discontinued work on February 28, 1979. At that time she had accumulated a total of 30 sick days for use at a per diem rate, based upon her yearly salary, of $71.06. The Complainant returned to work in September 1979. (S.F. #16; N.T. 37)

23. The Complainant was not permitted by the Respondent to use any of her accumulated sick leave in connection with her pregnancy subsequent to February 28, 1979. (N.T. 27, 35; C.E. #8)

24. The Complainant was disabled due to her pregnancy, childbirth and recovery from the surgery associated with childbirth from March 1, 1979 through April 21, 1979. (C.E. #7, C.E. #9; N.T. 31-35)

25. Given the nature and duration of the Complainant's pregnancy related disability she was entitled to use the 30 days of sick leave that she had accrued. (C.E. #7, C.E. #9; N.T. 31-35)

26. The Respondent does not contest the fact that the Complainant was disabled due to her pregnancy for the time period her physician indicated. The Respondent generally accepts the treating physician's opinion regarding ability to return to work. (N.T. 66, 67)

27. The collective bargaining agreement in effect in 1978-79 treats unpaid maternity leaves of absence differently than other unpaid leaves of absence. It requires employes requesting a maternity leave of absence to give at least thirty days notice and in most cases five months notice of the intent to use maternity leave of absence. This same requirement of thirty days to five months notice is not imposed on teachers requesting non-maternity unpaid leaves of absence. (C.E. #10, Articles 7 and 8)

28. The Respondent requires that all requests for use of a maternity leave of absence include a physician's statement which sets forth the last day that the pregnant teacher is physically able to work. (C.E. #10, Article 8; N.T. 65)

29. The Respondent considers the pregnant teacher to be physically unable to work as of the date indicated on the physician's statement even though the statement may be provided five months before the maternity leave is to begin. (N.T. 65)

30. The Respondent begins maternity leaves of absences on the day following the date listed by the physician as the last day that the pregnant teacher is physically able to work. (N.T. 63, 65, 68)

31. The Respondent does not permit pregnant teachers to request use of accumulated sick leave in advance where such use is related to pregnancy, anticipated childbirth, and recovery, claiming that future disability cannot be anticipated. However, the Respondent, for purposes of a maternity leave of absence, does accept statements submitted by treating physicians five months in advance that the pregnant teacher will be physically unable to work on a particular date in the future. (N.T. 63, 64, 68)

32. It is accepted medical practice for treating physicians to recommend that pregnant individuals working in positions similar to the Complainant's stop working at least two weeks before delivery. (Deposition Transcript 16-17, 22-23; herafter D.T.)

33. It is accepted medical practice to allow a four to six week recovery period following childbirth before permitting an individual to return to work. (D.T. 30, 32; C.E. #7)

34. In the medical opinion of the Complainant's treating physicians, she was physically unable to work due to her pregnancy, childbirth and recovery from March 1, 1979 through April 21, 1979. (D.T. 16-17, 22-23, 30-32; C.E. #3, C.E. #7, C.E. #9)

35. The effect of the Respondent's customary five month notice requirement, the need for a physician's statement to accompany the notice, reliance on the physician's statement to start the maternity leave of absence and the refusal to permit the pregnant teacher to request use of accumulated sick leave in advance is to preclude the use of accumulated sick leave in conjunction with and to be followed by a maternity leave of absence. (N.T. 67-68)

36. The Respondent requires pregnant teachers to choose between use of accumulated sick leave and use of a maternity leave of absence. (N.T. 67-68)

37. Respondent does permit teachers with non-pregnancy related illnesses or disabilities to use accumulated sick leave in conjunction with unpaid leaves of absence. Only pregnancy related illness or disability is singled out for different treatment. (N.T. 69)

38. The Respondent permits teachers to request use of accumulated sick leave for non-pregnancy related illness or disability in advance. (N.T. 59, 69-70)

39. The Respondent's policy regarding disabilities arising during the course of pregnancy differs from its policy with respect to disabilities not related to pregnancy in that only complications apart from the normal development of the pregnancy are considered as disabilities while the same restrictions do not apply with respect to non-pregnancy related disabilities. (C.E. #7; N.T. 57, 70)

40. Pregnancy, without more, can be a disabling condition. (D.T. 48)

41. The Respondent treats use of accumulated sick leave with respect to pregnancy related illness or disability differently than it treats use of accumulated sick leave with respect to non-pregnancy related illness or disability.

42. The Respondent introduced no evidence to demonstrate that its current collective bargaining agreement differs in any respect from the 1978-79 agreement regarding maternity leaves, unpaid leaves of absence and sick leave. The testimony of the current Superintendent supports a determination that the present agreement is the same with regard to those provisions.

43. The Respondent treats pregnant teachers who wish to use accumulated sick leave in conjunction with a maternity leave of absence differently than it treats non-pregnant teachers who wish to use accumulated sick leave in conjunction with an unpaid leave of absence because of the sex of the pregnant teachers.

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. Pregnancy itself is a physical disability and failure by an employer to treat it in the same fashion as any other physical infirmity amounts to sex discrimination in violation of §5(a) of the Act, 43 P.S. 955(a); Leechburg Area School District v. Commonwealth, H.R. Com'n., 19 Pa. Cmwlth. 614, 339 A.2d 850 (1975). Anderson v. Upper Bucks County Area V.T. School, 30 Pa. Cmwlth. 103, 373 A.2d 126 (1977).

6. The Respondent, in refusing to permit the Complainant's use of her accumulated sick leave in connection with a disability occasioned by her pregnancy and childbirth, has discriminated against the Complainant because of her sex,

female, in violation of §5(a) of the Act, 43 P.S. 955(a).

7. The Respondent, in requiring the existence of some complication apart from the normal development of pregnancy before permitting use of accumulated sick leave while not imposing a similar restriction on illness or disability not related to pregnancy, has discriminated on the basis of sex in violation of §5(a) of the Act, 43 P.S. 955 (a).

8. A prevailing Complainant in an action involving discrimination in the terms, conditions or privileges of employment is entitled to an award of the benefits previously denied together with appropriate interest, 43 P.S. 959.

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.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

RANDI B. McCULLOUGH, Complainant	:	
vs.	:	DOCKET NO. E-15236
DALLASTOWN AREA SCHOOL DISTRICT, Respondent	:	

O R D E R

AND NOW, to wit, this 29th day of September , 1981, upon consideration of the Findings of Fact, Conclusions of Law, and Commission's Decision, and pursuant to the provisions of Section 9 of the Pennsylvania Human Relations Act, as amended, the Pennsylvania Human Relations Commission hereby

O R D E R S:

1. That the Respondent shall cease and desist from discriminating against female teachers because of their sex in the terms and conditions of their employment.

2. That the Respondent shall discontinue its policy of effectively requiring pregnant teachers to choose between

use of accumulated sick leave and a maternity leave of absence by eliminating/revising those portions of the collective bargaining agreement which interfere with the statutory right of female teachers to be free from sex discrimination in the terms and conditions of employment.

3. That the Respondent shall permit the use of accumulated sick leave in conjunction with pregnancy, childbirth, and recovery for periods of actual disability notwithstanding the fact that a maternity leave of absence may be used subsequent to the end of the disability period.

4. That the Respondent shall pay the Complainant the sum of $71.06 for each work day that she was disabled and had accrued sick leave time available for use as of February 28, 1979. Total payment should equal $2,131.80 ($71.06 x 30) plus 6% simple interest computed annually from April 21, 1979 to the date of payment. The check should be made payable to Randi B. McCullough and forwarded to Michael Hardiman at the appropriate Commission address.

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

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: _____
JOSEPH X. YAFFE, Chairperson

ATTEST:

_____
ELIZABETH M. SCOTT, Secretary

I. STATEMENT OF THE CASE

On January 8, 1979, Randi B. McCullough (hereafter "Complainant") filed a complaint with the Pennsylvania Human Relations Commission alleging, inter alia, that she had been discriminated against because of her sex, female, in that the Dallastown Area School District (hereafter "Respondent"), refused to permit her to use accumulated sick leave days during a disability caused by her pregnancy and childbirth.

The Complainant notified Respondent that she was pregnant; that the delivery date was estimated to be March 14, 1979; that she was requesting maternity leave of absence effective April 18, 1979; and that she wished to utilize 30 days of accumulated sick leave (S.F. #10, #16; C.E. #1).

The Respondent replied that the collective bargaining agreement required a physician's statement. The Complainant complied and submitted a medical report on October 5, 1978, ten days after Respondent's request, which indicated she would have to cease performing her job February 28, 1978. (C.E. #2, #3). Complainant again requested use of accumulated sick leave on October 12, 1978; this time seeking the use of 26 days. Respondent refused these requests, instead granting her maternity leave beginning March 1, 1979. (C.E. #5). Sick leave would have paid the Complainant $71.06 per diem, based on her salary, while, under the collective bargaining agreement, maternity leave is unpaid. (C.E. #10; S.F. #16).

A third time Complainant sought to use sick leave before maternity leave, she was again turned down. (C.E. #6, #8)

II. ISSUE

IS IT A VIOLATION OF SECTION 5(a) OF THE PENNSYLVANIA HUMAN RELATIONS ACT FOR RESPONDENT TO REFUSE TO GRANT COMPLAINANT USE OF ACCUMULATED SICK LEAVE PRIOR TO USE OF MATERNITY LEAVE OF ABSENCE?

A. ANSWER

Yes. The Complainant was entitled to 30 days of accumulated sick leave as of February 28, 1979 at the rate of $71.06 per diem if she presented a treating physician's statement for an illness of over two days duration as per the applicable collective bargaining agreement. (N.T. 56-57)

The Complainant was also entitled to obtain unpaid maternity leave of absence under the same agreement (C.E. #10). However, it is necessary to notify the Respondent no later than the end of the fourth month of the intent to exercise this leave; while it is not necessary to give advance notice for other forms of unpaid leave.

The Respondent views the pregnant teacher as physically unable to work when the physician so states, but Respondent requires that unpaid maternity leave begin on that date, thus precluding use of accumulated sick leave. (N.T. 63-68). The only exception Respondent carves out of its requirement is when a form of illness occurs prior to the start of maternity leave, which illness would be comparable to a com-

plication apart from normal pregnancy and delivery. (N.T. 57, C.E. #57). This is simply not the only time pregnancy is a disability or sickness!

B. APPLICABLE LAW

Pennsylvania law in this area is quite clear and direct. Pregnancy itself is a disability. Employers may not treat it differently from other long term disabilities suffered by other employes. Leechburg Area School District v. Commonwealth Human Relations Commission, 19 Pa. Cmwlth. 614, 339 A.2d 850, 853 (1975) citing: Cerra v. East Stroudsburg Area School District, 450 Pa. 207, 299 A.2d 277 (1973). Pregnancy based discrimination is a violation of Section 5(a) of the Pennsylvania Human Relations Act. Anderson v. Upper Bucks County Area V.T. School, 30 Pa. Cmwlth. 103, 373 A.2d 126, 130 (1977).

Respondent's policy of refusing consecutive sick leave and maternity leave where there are no abnormal complications also violates Pennsylvania Human Relations regulations:

> (a) Temporary disability due to pregnancy or childbirth. Written and unwritten employment practices and policies regarding job benefits and job security, including, but not limited to, commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other disabilities. 16 Pa. Code 41.103.

The key phrase of Section 41.103, above, is "... on the same terms and conditions as they are applied to other temporary disabilities." Because pregnancy is a condition peculiar to women, Respondent's differentiation is sex discrimination, plain and simple.

While Respondent contends that it does not refuse totally to allow sick leave for all pregnancy related disabilities, the Respondent's collective bargaining agreement effectively precludes utilization of sick leave in tandem with maternity leave of absence. The collective bargaining agreement does not place the same restrictions on those persons taking other forms of accumulated sick leave in conjunction with non-maternity leaves of absence.

Respondent's adherence to its discriminatory collective bargaining agreement cannot be permitted. Where the collective bargaining agreement is inconsistent with the rights afforded the Complainant under the Pennsylvania Human Relations Act, that agreement is without force and effect. Freeport Area School District v. Commonwealth Human Relations Commission, 18 Pa. Cmwlth. 400, 335 A.2d 873 (1975), citing Stollar v. Continental Can Company, 407 Pa. 264, 180 A.2d 71 (1962).

It clearly has been shown that the Complainant suffered a pregnancy related disability, and that Respondent denied her use of accumulated sick leave in connection with that pregnancy.

III. REMEDY

The Complainant's physician's statement regarding pregnancy related disabilities is sufficient proof of disability. 16 Pa. Code 41.103(c). The Complainant's physician submitted a statement that the Complainant was required to discontinue work two weeks before the expected delivery date because the Complainant was not physically able to work any longer. (N.T. 32). Also, the Complainant submitted a physician's statement that she would be disabled for four weeks post-partum. (C.E. #7). Finally, the Complainant delivered by Caesarean section which her physician stated would require a six week recovery period. (D.T. 11).

The Complainant had a total of thirty (30) sick days accumulated (S.F. #16). She is entitled to payment for all thirty days that she accumulated (the eight weeks her physician declared her disabled equals forty (40) work days).

The Respondent shall pay to the Complainant thirty days sick leave at a per diem rate of $71.06 (seventy one dollar) and six cents). (S.F. #16). Interest from April 21, 1979, computed at the rate of 6%, shall be included. Fringe benefits are a cognizable remedy affordable as a form of wages. Gilbert v. General Electric, 10 EPD 10, 269 (4th Cir. 1975)

The Respondent shall discontinue forthwith its policy of denying consecutive utilization of sick leave and maternity leaves of absence where the Complainant provides a physician's statement that she is or will be disabled at a particular date.

The Respondent shall treat illness and disability related to pregnancy in the same manner as all other disabilities. The Commission derives its power to take such affirmative action as it deems appropriate from Section 9 of the Pennsylvania Human Relations Act, 43 P.S. 959.

IV. CONCLUSION

The Complainant has proved to this Commission that she has suffered sex discrimination by virtue of Respondent's refusal to provide sick leave sequentially with maternity leave of absence. Lost wages shall be restored to the Complainant, and the Respondent is ordered to cease and desist from further implementing these requirements.