

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

CAROL BRIGANDI,	:	Docket Nos. E-50698-D
MARTHA KENNA,	:	E-50699-D
JACQUELINE CARRACAPPA,	:	E-50700-D
MARIANNE HANNA,	:	E-50701-D
Complainants	:	
v.	:	
GEORGE CLAY STEAM FIRE ENGINE	:	
AND HOSE COMPANY, NO. 1,	:	
Respondent	:	

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

CAROL BRIGANDI, MARTHA KENNA, : DOCKET NOS. E-50698
JACQUELINE CARRACAPPA, MARIANNE : E-50699
HANNA, : E-50700
 : E-50701

Complainants :

v. :

GEORGE CLAY STEAM FIRE ENGINE :
AND HOSE COMPANY, :

Respondent

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 Carol Brigandi, is an adult female individual, who currently resides at 104-2 Willow Trace Apartments, 2061 Lewisville - Clemmons Road, Clemmons, N.C. 27012.

2. Complainant Brigandi previously resided at 315 Church Street, West Conshohocken, PA 19428, and resided at this address at the time of the events at issue.

3. The Complainant, Martha Kenna, is an adult female individual, who resides at 511 Ford Street, West Conshohocken, PA 19428.

4. The Complainant, Marianne Hanna, is an adult female individual who resides at 139 E. 9th Avenue, Conshohocken, PA 19428.

5. The Complainant, Jacqueline Carracappa, is an adult female individual, who resides at 6 Cedar Avenue, 2nd Floor, West Conshohocken, PA 19428.

6. The Respondent is the George Clay Steam Fire Engine and Hose Company. Respondent's address is 426 Ford Street, West Conshohocken, PA

19428.

7. The George Clay Steam Fire Engine and Hose Company is a corporation whose object and purpose is the support and maintenance of a steam fire engine and hook and ladder company for the additional purpose of the extinguishment of fires and protection from loss, injury or destruction by fire.

8. Respondent's business is transacted in the Borough of West Conshohocken, County of Montgomery and State of Pennsylvania.

9. Respondent receives a yearly appropriation of monies from the Borough of West Conshohocken. Such appropriation provides for the payment of Respondent's driver's salary, medicare and social security and to buy the equipment which is necessary for Respondent to carry out its functions. The Borough of West Conshohocken also carries a 2 mil fire tax and allocates real estate fire tax money to the Respondent.

10. The Respondent is an employer for purposes of Section 4(b) of the Pennsylvania Human Relations Act.

11. Article X, Section I of Respondent's By-Laws provides that "Any person of good moral character, 18 years of age or over, shall be eligible to active, life or contributing membership, also honorary membership."

12. On or about October 4, 1988, the Complainants, who at the time were older than 18, were proposed for membership by Joseph Costello, Jr.

13. On or about November 1, 1988, the applications of Complainants Kenna and Carracappa were voted on and rejected by Respondent's membership.

14. On or about December 6, 1988, the applications of Complainants Brigandi and Hanna were voted on and rejected by Respondent's membership.

15. On January 12, 1989 Complainant Brigandi filed a notarized complaint with the Pennsylvania Human Relations Commission (hereinafter

"Commission") on behalf of herself and all similarly situated female ambulance crew volunteers.

16. Respondent submitted an Answer to the Complaint on February 13, 1989.

17. On June 6, 1989, Respondent voted to delete Article III of their constitution and Article X, Section 4 of their By-Laws that provided for "blackball" elections of applicants for memberships.

18. The Respondent subsequently amended its Constitution and By-Laws to provide that election to membership would be by ballot and majority vote.

19. On or about July 11, 1989, the Complainants reapplied for membership with Respondent. The investigation committee rejected the Complainants' applications on August 1, 1989.

20. On or about November 7, 1989, the Complainants reapplied for membership with Respondent. On December 5, 1989, a vote was taken at Respondent's general fire house meeting and Complainants were denied membership by standing majority vote.

21. On March 27, 1990, the Complainants filed a notarized complaint with the Commission at Commission docket numbers E-50698, E-50699, E-50700, and E-50701.

22. On or about April 30, 1990, Respondent submitted an Answer to the Complaint.

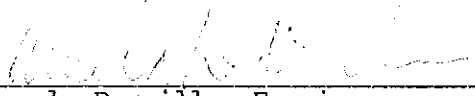
23. On September 12, 1990, the Complainants filed an amended complaint with the Commission.

24. On or about October 11, 1990, Respondent submitted an Answer to the amended complaint.

25. In correspondence dated December 7, 1990, the Commission notified the Respondent that probable cause existed to credit the allegations contained in the above referenced complaint.

26. Subsequent to the determination of probable cause, the Commission and the Respondent attempted to resolve the matter in dispute between Complainants and the Respondent through conference, conciliation and persuasion, but were unable to do so.

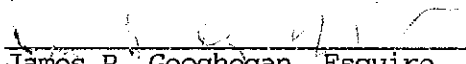
27. In correspondence dated May 1, 1991, the Commission notified the Respondent that a public hearing had been approved in this matter.



Pamela Darville, Esquire
Assistant Chief Counsel
(Counsel for the Commission
on behalf of the Complaint)



Date:



James P. Geoghegan, Esquire
(Counsel for Respondent)



Date:

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AND HOSE COMPANY, NO. 1,	:	
Respondent	:	

FINDINGS OF FACT*

1. The George Clay Steam Fire Engine and Hose Company (hereinafter the "Fire Company"), operates under a Constitution and By-Laws which are separate and distinct from documents which both create and dictate the operation of a variety of interrelated associations which include (a) Active Association; (b) George Clay Ladies Auxiliary; (c) George Clay Ambulance Corps (hereinafter "Ambulance Association"); and (d) George Clay Fireman's Relief Association. (N.T.3 120, 143-146, 158; C.E. 5; R.E. 3 & 4.)

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

N.T.1 Notes of Testimony, September 30, 1991
N.T.2 Notes of Testimony, October 1, 1991
N.T.3 Notes of Testimony, October 2, 1991
N.T.4 Notes of Testimony, August 31, 1992
C.E. Complainants' Exhibit
R.E. Respondent's Exhibit
S.F. Stipulations of Fact

2. In approximately 1979, a member of the Fire Company approached Martha Kenna (hereinafter "Kenna"), and asked if she wanted to run the ambulance on days she could, but that she had to stay in the Ladies Auxiliary and not attempt to join the Fire Company. (N.T.1 34, 109.)

3. Kenna was allowed to run the ambulance without joining the Fire Company. (N.T.3 108.)

4. Membership in the Ambulance Association varied between 20 to 30 persons, all of whom were men except the four Complainants. (N.T.1 37, 149, 195.)

5. When a person seeks membership into the Fire Company, an investigation committee is formed. (N.T.3 168.)

6. Investigation committees are appointed at general meetings by the Fire Company president. (N.T.1 395; N.T.3 168-169.)

7. The president first asks for volunteers and if there are none, he appoints the committee. (N.T.1 395.)

8. In approximately 1986, Marianne Hanna (hereinafter "Hanna"), became concerned that there may be an inequity in insurance benefits depending on one's membership status. (N.T.1 196.)

9. Kenna received information from the borough council president, Joseph Costello, Sr., that certain benefits are different depending on whether a person killed or injured on an ambulance run was a member of the Fire Company or not. (N.T.1 43, 44.)

10. Kenna decided that the easiest way to resolve the benefits question would be to join the Fire Company. (N.T.1 48.)

11. Kenna and Hanna first wanted to join the Fire Company because of their perception that they would otherwise have dissimilar insurance

benefits, but later decided they would want to be members of the Fire Company even if all benefits were the same. (N.T.1 108, 214, 384, 385.)

12. Thomas Charles Frederick, chairperson of the Ambulance Association, and Fire Company secretary, also perceived there was a difference in insurance coverages. (N.T.1 297, 298, 325.)

13. Robert Bruceleister, a member of the Fire Company's insurance committee, at one point believed there was a difference in the provision of insurance coverage. (N.T.1 275, 277.)

14. Once Kenna formed the impression that benefits may be different depending on one's status, she brought the question up at an Ambulance Association meeting. (N.T.1 48, 114; N.T.2 164.)

15. Hanna and Kenna were informed by the Ambulance Association president that the matter would be looked into. (N.T.1 48, 108, 198, 216.)

16. For the next three - four months, Kenna was told the matter was being looked into. (N.T.1 48, 108, 113; N.T.3 102, 230.)

17. Jacqueline Carracappa Waddell (hereinafter "Carracappa-Waddell") had always wanted to be a member of the Fire Company to be a firefighter. (N.T.1 150, 152.)

18. In October 1988, the Complainants first applied to become contributing members of the Fire Company. (N.T.1 48, 152, 199.)

19. In October 1988, investigative committees were appointed, the Complainants were investigated, and the Complainants' applications were approved and signed. (N.T.1 48.)

20. The Complainants were the first women to apply for membership in the Fire Company. (N.T.2 42.)

21. Hanna's training and experience included: registered nurse, EMT technician, member of the Ambulance Association since 1979, and twice served as recording secretary of the Ambulance Association. (N.T.1 191-194.)

22. Kenna's training and experience included: service with the Respondent's Ambulance Association and Ladies Auxiliary since 1979, EMT and CPR instructor, basic and special vehicle rescue certification, Rescue I and II training, and for one year served as vice president and nine years as financial secretary of the Ambulance Association. (N.T.1 34, 71, 112; C.E. 1, 2, 3, 27, 28.)

23. Kenna was first woman to be on the ambulance crew. (N.T.1 312.)

24. Carracappa-Waddell's training and experience included: ambulance driver from approximately 1986-87, courses in CPR and advanced first aid, and member of the Ladies Auxiliary. (N.T.1 144, 148, 149.)

25. The Ambulance Association president testified that several of the Complainants' performances on ambulance calls were better than his. (N.T.1 323.)

26. Leo J. Holmes, Jr., a Fire Company member who ran the ambulance with the Complainants, described their performance as excellent. (N.T.1 335.)

27. Another member, Joseph Costello, Jr., indicated the Complainants performed exceptionally well and that they were real professionals. (N.T.1 353.)

28. The Fire Company's vice president, James T. Smith, Sr., described Kenna and Hanna's work on the ambulance as "good." (N.T.2 132.)

29. Other members who had been on ambulance calls with the Complainants indicated they "performed well" (N.T.2 157), "performed good" (N.T.2 332), "I guess okay" (N.T.2 349), "okay" (N.T.3 59), "performed like professionals" (N.T.3 71), and "performed fine" (N.T.3 82).

30. By mutual agreement, shortly before the November 1, 1988 vote, the Complainants met at Kenna's house with a newspaper reporter from the Norristown Times Herald regarding their first applications. (N.T.1 116, 117, 121, 133, 160, 214.)

31. At the conference with the newspaper reporter, Carracappa-Waddell said nothing and generally, whenever she was approached by the press always stated, "No comment." (N.T.1 160; N.T.3 231.)

32. After meeting with the press, and prior to the November 1, 1988 vote, an article appeared in the Norristown Times Herald entitled "Firehouse Tradition Could End." (C.E. 10A.)

33. The newspaper article stated that Carol Brigandi (hereinafter "Brigandi") said that the main difference between the men and women who worked together on ambulance crews is that the women's insurance coverage was only 10 percent of the men's. (C.E. 10A.)

34. The newspaper article reported that, "While some of the women said they did not want to be firefighters, they said they do believe they are entitled to equal protection. That equal protection can only occur when the women become members of the fire company." (C.E. 10A.)

35. Kenna was quoted in the article as saying, "My job wouldn't change just because I become a member of the firehouse. . . I wouldn't want to go downstairs and be around the men smelling of beer." (C.E. 10A.)

36. Kenna attempted to have the newspaper retract the comment attributed to her about "men smelling of beer." (N.T.3 214.)

37. Kenna informed the Fire Company president, Patrick Getzfread, that she had attempted to have a retraction printed because it was not what she had said. (N.T.3 217.)

38. On November 1, 1988, Kenna and Carracappa-Waddell were "blackballed" by the membership of the Fire Company. (N.T.1 49; C.E. 4.)

39. On December 6, 1988, Hanna and Brigandi were also "blackballed." (N.T.1 49, 201; C.E. 4.)

40. On January 12, 1989, Brigandi filed a PHRC complaint on behalf of herself and all similarly situated female ambulance crew volunteers. (S.F. 15; C.E. 4.)

41. The PHRC complaint filed on January 12, 1989 was subsequently settled. (N.T.1 56.)

42. The Fire Company membership was aware that the January 12, 1989 PHRC complaint had been filed. (N.T.1 179, 265, 308-309, 339-340; N.T.2 24, 141, 142, 160, 181, 220, 246, 279, 306, 339, 352, 384, 407, 435, 439; N.T.3 26, 27, 38, 55, 73, 90, 173.)

43. On June 6, 1989, the Fire Company voted to delete Article X, Section 4, from its bylaws, thereby removing the "blackball" election procedure. (S.F. 17.)

44. Article X, Section 4, was amended to read: "Election for members shall be by ballot, and if the majority of those voting approve the application the candidate shall be declared elected. If rejected no valid reason shall be given." (S.F. 18; C.E. 5.)

45. In July 1989, the Complainants reapplied for membership to the Fire Company. (S.F. 19; N.T.1 56, 153.)

46. The Complanants' second applications for membership sought active membership. (N.T.1 50, 152, 204.)

47. Four investigating committees were appointed, and Fire Company member John Campbell was appointed a member of each of the four committees. (N.T.1 58, 131-132.)

48. Although not really questioned by her investigation committee about why she wanted to join the Fire Company, Carracappa-Waddell informed her investigation committee that she had always wanted to be a firefighter. (N.T.1 153.)

49. Investigation Committee member John Campbell rejected the applications of all four female applicants. (N.T.1 69, 154, 360; N.T.2 47.)

50. The result of John Campbell's rejection was that the Complainants' July 1989 applications were not voted on by the membership. (N.T.1 69, 154.)

51. In November 1989, the Complainants reapplied for membership. (N.T.1 70, 154.)

52. The Complainants' third applications for membership sought active membership. (N.T.1 50.)

53. The Complainants' November 1989 investigation committees recommended the Complainants for membership. (N.T.1 155.)

54. On December 5, 1989, 35 members voted. (C.E. 16.)

55. On December 5, 1989, the Complainants did not receive the requisite majority vote of the membership voting. (S.F. 20; N.T.1 201, 206.)

56. Specifically, Brigandi's application received 9 yes, 26 no votes; Kenna, Carracappa-Waddell, and Hanna each received 10 yes, 25 no votes. (C.E. 16.)

57. Of the 26 members voting against Brigandi, 23 testified at the Public Hearing; and of the 25 voting against Kenna, Hanna, and Carracappa-Waddell, 22 testified. (N.T.1 175 through N.T.3 93.)

ERNEST GRUBER.

58. Gruber voted for Kenna, Hanna, and Carracappa-Waddell, and he voted against Brigandi. (N.T.2 271.)

59. Gruber testified that he had heard negative things about Brigandi and generally considered her a troublemaker. (N.T.2 271-272.)

THOMAS ROCKETT.

60. After first claiming ignorance of the Complainants' applications for membership, he conceded he was aware they had applied. (N.T.1 175-176.)

61. Rockett then testified at first that he could not recall if he voted on the Complainants' applications, and a short time later directly contradicted his testimony by conceding he did vote against the Complainants' applications. (N.T.1 176-177.)

62. Rockett stated: "If they're going to join the Fire Company, if they're going to fight fires like I did years ago and all that kind, pull hose and everything, that's what I want to know." (N.T.1 177.)

63. At a prior deposition, Rockett responded to the question, "Why did you vote against them?" by stating: "Well, after all, we never had women in here before." (N.T.1 178.)

RAYMOND R. REED.

64. Reed testified candidly that he thinks women are not capable of handling the job because there is too much stress. (N.T.2 105.)

65. Reed also offered that he "didn't think the women had any business in the Fire Company," the Fire Company had enough men. (N.T.2 106.)

JAMES T. SMITH, SR.

66. In effect, Smith, Sr., voted against the Complainants because he did not like reading newspaper articles which alleged the Fire Company was discriminating. Additionally, Smith, Sr., indicated that the way he was brought up, women are not members of a fire company." (N.T.2 137, 138.)

DAVID MARKLAND.

67. Although he was aware the women were recommended by investigation committees, Markland voted no because he felt the women had blasted him in the newspapers, and he did not think the women were serious about being members. (N.T.2 150-151, 154.)

DONALD TARR, SR.

68. Tarr, Sr., testified that he did not know how he was going to vote up to the day of voting. (N.T.2 180.)

69. Tarr, Sr., then indicated that a newspaper article appeared which turned him off. (N.T.2 180.)

70. The article to which Tarr, Sr., was referring was the November 1, 1988 article. (C.E. 10A.)

71. In effect, Tarr, Sr., also indicated that to tell the newspaper that insurance was unequal was false and was talking against the organization; thus, although aware investigation committees had recommended the Complainants, he voted against them. (N.T.2 180, 184-185, 199, 212.)

ROBERT ROCKETT.

72. In effect, Robert Rockett testified that, although investigation committees had recommended the Complainants, he voted against them because he formed the impression from the November 1, 1988 newspaper article that the Complainants did not want to be firefighters. (N.T.2 220, 222, 223, 227, 231-232.)

73. Acknowledging that the newspaper article said, "Some of the women said they did not want to be firefighters," Robert Rockett indicated, "I don't know which ones did not want to be, so I voted no for all four of them." (N.T.2 235-236.)

74. Between November of 1988 and December 1989, Robert Rockett never asked the Complainants if they wanted to be firefighters. (N.T.2 239.)

JOSEPH GETZFREAD, JR.

75. Although he never asked the Complainants if they wanted to be firefighters, and he was aware investigation committees had recommended the Complainants, Joseph Getzfread, Jr., testified that he voted against the Complainants because of the November 1, 1988 newspaper article. (N.T.2 245, 249, 250, 252, 266.)

76. Joseph Getzfread, Jr., is a Fire Company member who does not fight fires. (N.T.2 250.)

77. Joseph Getzfread, Jr., considered the fact that the insurance issue was brought out as a negative. (N.T.2 264.)

JOHN CAMPBELL.

78. Campbell testified that he voted against the Complainants, "mainly because of one of the articles that were in the paper, and one that they didn't believe us when we told them they had equal insurance. They didn't want to be firefighters, and more or less, they told us we stunk, a couple of them, not all of them. . . and I just figured it was bad for the Company. . ." (N.T.2 280.)

79. Campbell's testimony was inconsistent regarding whether the Complainants told him they didn't want to be firefighters. At first, Campbell said they told him that (N.T.2 282), then he asserted only one told him (N.T.2 283), and finally, he returned to saying all of the Complainants told him (N.T.2 283).

80. Campbell was aware that the Fire Company had members who were not firefighters. (N.T.2 293.)

81. Campbell testified that in July 1989, he refused to sign the Complainants' applications because of the insurance issue. (N.T.2 299.)

MICHAEL GETZFREAD.

82. In effect, Michael Getzfread testified that to some degree his negative vote was influenced by the fact that the Complainants had filed a PHRC complaint. (N.T.2 306, 312.)

83. Michael Getzfread never asked the Complainants for their side of the insurance benefit issue. (N.T.2 324.)

IRVIN R. STITELER.

84. Stiteler testified that part of the reason he voted against the Complainants was because they had filed a PHRC complaint. (N.T.2 329.)

MARK STREEPER.

85. Although he knew investigation committees had recommended the Complainants for membership and he never spoke to the Complainants, he voted against them. (N.T.2 338, 342, 343.)

86. Streeper's testimony first asserted he was not familiar with the Complainants' PHRC complaint (N.T.2 338); his testimony changed to indicate he knew about the complaints (N.T.2 339-340).

JIM SMITH, JR.

87. Jim Smith, Jr., testified that his vote too was affected "a little bit" by the fact that the Complainants had filed a PHRC complaint. (N.T.2 347.)

DAVID MARCHESE.

88. Marchese initially testified that he voted against the Complainants because he had read a newspaper article the night before the vote. (N.T.2 357.)

89. In response to being asked if he believed the Complainants were qualified to be firefighters, Marchese responded, "What can they do? I mean, you don't know until they can show you what they can do. . ." (N.T.2 360.)

90. In a prior deposition, Marchese answered yes to a question whether the only reason he voted against the Complainants was that the Complainants wanted to break tradition. (N.T.2 363.)

91. Marchese then testified that he had the same reason today for voting no as in December 1989. (N.T.2 364.)

92. Marchese agreed that a person can be a member of the Fire Company and not a firefighter. (N.T.2 366.)

MICHAEL J. ZADROGA.

93. Although Zadroga knew only three of the four Complainants, he voted no on all of them. (N.T.2 375.)

94. Zadroga testified that he voted no because a newspaper article "badmouthed" the firehouse and gave false information regarding insurance benefits, and because the Complainants could not work with the Fire Company to resolve their problems without going to the PHRC. (N.T.2 376.)

95. Zadroga initially testified that he did not go to the Complainants to get their positions because they were unavailable; he indicated he had only learned of the article the night of the meeting. (N.T.2 379.)

96. When confronted with the fact that the article had been published over a year earlier, Zadroga indicated he really could not give an answer why he never spoke with the Complainants about their positions. (N.T.2 381, 383.)

97. Zadroga also initially testified that he was unaware that the Complainants had filed a PHRC complaint (N.T.2 376); however, he later indicated that the fact the Complainants had filed a PHRC complaint was brought up at Fire Company meetings. (N.T.2 384.)

JOE McTAMNEY.

98. Although aware that a person can be a member of the Fire Company and not be a firefighter, one reason McTamney gave for voting against the Complainants was that he felt they did not want to be firefighters. (N.T.2 408.)

99. McTamney also indicated, "I didn't feel they'd be an asset to the Fire Company. I thought it would cause more problems." (N.T.2 408.)

100. McTamney also expressed concern that, in his opinion, the Complainants already had equal insurance and that this too contributed to his voting no. (N.T.2 415.)

MICHAEL CAMPBELL.

101. Although he realized a newspaper article had said "some of the women stated they didn't want to be firefighters," Michael Campbell just automatically applied this statement to all four applicants and voted no. (N.T.2 435, 438.)

102. Michael Campbell was aware a person can be a member of the Fire Company and not be a firefighter. (N.T.2 439.)

R. ROBERT REED, JR.

103. Reed testified that the main reason for voting against the Complainants was that, in his opinion, they had lied about the insurance issue. (N.T.3 17.)

104. Reed never asked the Complainants for their position. (N.T.3 19, 27.)

105. Reed was also aware that investigation committees had favorably recommended the Complainants. (N.T.3 22.)

DONALD A. TARR, JR.

106. Donald Tarr, Jr., testified that although the newspaper had said some of the women did not want to be firefighters, the paper did not state which ones, so "all for one, one for all." (N.T.3 39.)

107. Donald Tarr, Jr., was aware there were members of the Fire Company who did not fight fires. (N.T.3 41.)

108. Donald Tarr, Jr., indicated that it was his opinion that asking the Complainants why they wanted to join the Fire Company was for investigation committees, not him. (N.T.3 42.)

MICHAEL BEAN.

109. Bean testified that he voted against the Complainants because, "They stated that they didn't want to be firefighters," and a newspaper article said "some of them," and he wasn't sure which ones, so he voted no on all of them. (N.T.3 55.)

110. Although Bean knew the Complainants, he never asked them their positions. (N.T.3 58.)

111. Bean was aware a person did not have to fight fires to be a member of the Fire Company. (N.T.3 60.)

JOHN BRY.

112. Although a news article indicated some of the women did not want to be firefighters, one of Bry's stated reasons for not voting for any of the Complainants was that they did not want to be firefighters. (N.T.3 78, 81.)

113. Bry also testified that he was influenced by the insurance issue appearing in the newspaper. (N.T.3 78.)

DONALD WELSH.

114. Although he knew a person could join the Fire Company and not be a firefighter, and that a newspaper article had indicated only some of the women said they did not want to be firefighters, one of Welsh's stated reasons for voting against the Complainants was that "They did not want to be firefighters." (N.T.3 68, 69, 72.)

MIKE BOYLE.

115. Although he knew a person could join the Fire Company and not be a firefighter, and that a newspaper article had indicated only some of the women said they did not want to be firefighters, Boyle's stated reason for voting against the Complainants was that "They did not want to be firefighters." (N.T.3 91.)

116. Boyle knew Kenna but never asked her what her position was. (N.T.3 93.)

117. The Fire Company decided that Patrick Getzfread would be the representative to handle the Complainants' complaints, and only he was authorized to speak to the Complainants regarding the issues raised by their complaints. (N.T.3 107.)

118. Between 1960 and December 1989, approximately 435 men were voted into membership of the Fire Company, and only two were rejected. (N.T.1 245-247.)

119. One of the two had been rejected because he was believed to be an arsonist. (N.T.1 285, 307; N.T.2 58.)

120. Between October 1988 and the present, the Fire Company has admitted approximately 30 new members. (N.T.3 163-164.)

121. Men had joined the Fire Company to specifically run the ambulance only. (N.T.1 43, 224, 227, 329, 342, 366-367; N.T.2 86, 163, 293, 366, 412, 439; N.T.3 41, 60, 72, 93.)

122. Specifically, Charles John Kelley, a member of the Fire Company for approximately 10 years, joined the Fire Company with the intention just to run on the ambulance, not to fight fires. (N.T.1 224.)

123. Kelley let his intentions be known. (N.T.1 224.)

124. Getzfread, the Fire Company president, went to the Ladies Auxiliary and, for the first time, asked them if anyone wanted to apply for Fire Company membership. (N.T.1 398-399; N.T.3 125, 162.)

125. On June 5, 1990, Marie Leonard was admitted as a member of the Fire Company. (N.T.1 85, 180; N.T.2 123; N.T.3 126.)

126. Leonard's age was perceived to be between fifty-five and seventy. (N.T.1 85, 181; N.T.2 152, 256, 295, 443; N.T.3 64.)

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

CAROL BRIGANDI,	:	Docket No. E-50698-D
MARTHA KENNA,	:	E-50699-D
JACQUELINE CARRACAPPA,	:	E-50700-D
MARIANNE HANNA,	:	E-50701-D
Complainants	:	
	:	
v.	:	
	:	
GEORGE CLAY STEAM FIRE ENGINE	:	
AND HOSE COMPANY, NO. 1,	:	
Respondent	:	

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and the subject matter of these consolidated cases.
2. The parties and the PHRC have fully complied with the procedural prerequisites to a public hearing in these consolidated cases.
3. The Complainants are individuals within the meaning of the Pennsylvania Human Relations Act ("PHRA").
4. The Fire Company is an employer within the meaning of the PHRA.
5. The Complainants here have met their burden of making out prima facie cases of sex-based discrimination by proving that:
 - a. they are females;
 - b. they applied for and were qualified for firefighter positions;

- c. they were rejected; and
- d. men with similar qualifications were accepted for membership.

6. The Complainants have established a prima facie case of retaliation by showing that:

- a. they were engaged in a protected activity;
- b. the Fire Company was aware of it;
- c. their applications were rejected; and
- d. there was a causal link between their protected activity and their rejections.

7. The Fire Company failed to meet its burden of producing a legitimate non-discriminatory reason for the Complainants' rejections.

8. Assuming arguendo that the Fire Company met their production burden, the Complainants have shown that the reasons offered for their rejections were pretextual.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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OPINION

These consolidated cases arise on complaints filed by Carol Brigandi, Martha Kenna, Marianne Hanna, and Jacqueline Carracappa-Waddell against George Clay Steam Fire Engine and Hose Co., No. 1 (hereinafter the "Fire Company"), with the Pennsylvania Human Relations Commission ("PHRC"). In the consolidated complaint filed on or about March 27, 1990, and amended on or about September 12, 1990, the Complainants alleged that the Fire Company repeatedly rejected the Complainants' membership applications because of their sex, female. The Complainants' complaint also alleged that the Fire Company retaliated against Brigandi for having previously filed a PHRC class action complaint, and against Kenna, Hanna, and Carracappa-Waddell for having assisted with Brigandi's previously-filed complaint. In effect, the complaint also alleges retaliation against Kenna, Hanna, and Carracappa-Waddell for having been a part of the group of individuals which made up the class of individuals allegedly discriminated against because of

their sex. The Complainants' complaints collectively allege violations of Sections 5(a), (d) and (i)(1) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. ("PHRA").

Following an investigation of the allegations, PHRC regional office staff informed the Fire Company that probable cause existed to credit the Complainants' allegations. Thereafter, PHRC regional office staff attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, PHRC regional office staff notified the Fire Company that a Public Hearing had been approved by the PHRC's Executive Director.

Initially, the Public Hearing was held on September 30 and October 1 and 2, 1991, in West Conshohocken, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The case on behalf of the complaint was presented by PHRC staff attorney Pamela Darville. James P. Geoghegan, Esquire, appeared on behalf of the Fire Company.

The Fire Company submitted both their post-hearing brief and supplemental brief in March 1992. The PHRC regional staff attorney submitted a post-hearing brief on behalf of the consolidated complaints in April 1992.

A due process issue raised by the Fire Company's briefs necessitated the reconvening of this Public Hearing to receive further evidence. The Public Hearing was reconvened on August 31, 1992, to provide the parties with an opportunity to first clarify the record with regard to the precise structure of the PHRC as it relates to a variety of functions. Second, the Public Hearing was reconvened to again afford the Fire Company an opportunity to offer evidence of either bias or prejudice resulting from the

PHRC's procedures and policies as applied to the investigation, finding of probable cause, conciliation efforts, approval of a Public Hearing, Public Hearing, and adjudication of this case. Supplemental briefs on the due process issue were submitted in October 1992.

Regarding the due process issue, the Fire Company generally argues that it violates due process to have had PHRC employees involved in all stages of this case. From evidence submitted, it is clear that the PHRC's investigatory and prosecutorial functions are separate and distinct from its adjudicatory functions. As the Pa. Supreme Court indicated in Lyness v. Pa. State Board of Medicine, Pa. , A.2d (No. 174 E.D. 1990, filed March 18, 1992), "it would be both unrealistic and counterproductive to insist that administrative agencies be forbidden from handling both prosecutorial and adjudicatory functions, where such roles are parcelled out and divided among distinct departments or boards. Efficiency and cost-effectiveness are certainly desirable ends. . . What our Constitution requires, however, is that if more than one function is reposed in a single administrative entity, walls of division be constructed. . ."

Here there has been absolutely no evidence presented that any function other than the adjudicatory function has been performed by either PHRC Commissioners or the Permanent Hearing Examiner assigned to these consolidated cases. There has been no evidence of even a hint of involvement by the adjudicatory function in either the investigation or prosecution of these cases.

The policies and procedures followed by the PHRC have been shown to create a clear, constitutionally permissible barrier between the PHRC as

adjudicator and the PHRC as investigator and prosecutor. Accordingly, the Fire Company's right to due process has not been violated.

We now turn to another general evidentiary argument raised by the Fire Company. The Fire Company argues that it is an error of law to provisionally admit hearsay testimony over an objection.

Generally, the Pa. Commonwealth Court recently addressed the issue of hearsay testimony in an administrative context. See Fairfield Township Volunteer Fire Company No. 1 v. PHRC, 575 A.2d 152 (1990) aff'd Pa. (No. 0007 W.D., filed June 11, 1992). In the Fairfield Township case, the court generally held that the rule in Walker v. UEC Board of Review, 27 Pa. Commonwealth Ct. 522, 367 A.2d 366 (1976) applies to proceedings before the PHRC. Under the Walker rule, unobjected to hearsay may be relied upon to support a finding if corroborated by other competent evidence. Objected to hearsay evidence can never be relied upon to support a finding.

During the Public Hearing, the parties were instructed that testimony objected to on hearsay grounds would be admitted provisionally first for an assessment of whether the evidence was hearsay, and second, if found to be hearsay and later corroborated, it may be utilized. Of course, this instruction was inconsistent with the rule set forth in Fairfield Township. Accordingly, any objected to evidence found to be hearsay has not been utilized in this case.

Hearsay evidence would include any testimony or evidence offered at the Public Hearing with respect to an out-of-hearing statement made by a person other than the witness giving testimony which is offered to prove the truth of the matter asserted therein. In other words, if an out-of-hearing

assertion is offered as the equivalent of testimony to the facts so asserted, the assertion is inadmissible hearsay.

Fundamentally, testimony of out-of-hearing utterances can be offered when the purpose for the offering is not to prove the facts asserted in the utterance. Here, when out-of-hearing utterances have been admitted and utilized, the purpose for the offerings has been found to be for reasons other than an attempt to prove the truth of the matter asserted. For instance, all evidence offered of out-of-hearing utterances which dealt with a Complainant being told that they had less insurance coverage were accepted for the effect such utterances had on the hearers. Such utterances were deemed not to have been offered as an attempt to prove the outstanding question of whether insurance protection was equal. The variety of purposes other than to prove the matter asserted are plentiful, and where such alternate purposes have been found, evidence of out-of-hearing utterances have been deemed to fall outside of the hearsay classification.

Turning to the substantive issues presented in these consolidated cases of alleged disparate treatment, the Complainants argue that they were treated less favorably because they are women, and in retaliation for either having filed a prior PHRC complaint, or having participated in a PHRC investigation. To prevail, the Complainants are required to prove that the Fire Company had a discriminatory intent or motive for rejecting the Complainants' attempts to gain membership. Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987). Since direct evidence is only partially available in these cases, we will also apply a system of shifting burdens of proof, which is "intended progressively to sharpen the inquiry into the elusive factual question of intentional discrimination."

Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254 n.8 (1981).

The Complainants must carry the initial burden of establishing a prima facie case of discrimination. Allegheny Housing, supra; McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). The phrase "prima facie case" denotes the establishment of a legally mandatory, rebuttable presumption, which is inferred from the evidence. Burdine, 450 U.S. at 254, n.7. Establishment of the prima facie case creates the presumption that the employer unlawfully discriminated against the employee. Id. at 254. The prima facie case serves to eliminate the most common nondiscriminatory reasons for the employer's actions. Id. It raises an inference of discrimination "only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors." Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978).

In McDonnell Douglas, the U.S. Supreme Court held that a plaintiff may prove a prima facie case of discrimination in a failure-to-hire case, by demonstrating

- (i) that he belongs to a racial minority;
- (ii) that he applied and was qualified for a job for which the employer was seeking applicants;
- (iii) that, despite his qualifications, he was rejected; and
- (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

Id. at 802. Although the McDonnell Douglas test and its derivatives are helpful, they are not to be rigidly, mechanically, or ritualistically applied. The elements of the prima facie case will vary substantially according to the differing factual situations of each case. McDonnell Douglas, 411 U.S. at 802, n.13. They simply represent a "sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." Shah v. General Electric Co., 816 F.2d 264, 268, 43 FEP 1018 (6th Cir. 1987).

Here some minor modification is necessary regarding the alleged sex-based membership rejection. Additionally, for the retaliation portions of the Complainants' complaints, the McDonnell Douglas test will be significantly adapted.

To establish a prima facie case of sex-based membership refusal, the Complainants must show:

1. that they are members of a protected class;
2. that they were both qualified for and applied for membership when the Fire Company was seeking new members;
3. that, despite their qualifications, the Complainants were denied membership, and
4. that men with similar qualifications were accepted as members of the Fire Company.

To establish a prima facie case of retaliation, the Complainants must show:

1. that they engaged in a protected activity;
2. that the Fire Company was aware of it;

3. that subsequent to engaging in protected activity, their membership applications were rejected; and
4. that the rejections followed the protected activity so closely that an inference is created that there is a retaliatory motivation.

See Grant v. Bethlehem Steel Corp., 622 F.2d 43, 22 FEP 1596 (2nd Cir. 1980); Consumers Motor Mart v. PHRC, 108 Pa. Commonwealth Ct. 59, 529 A.2d 571 (1987).

Once the Complainants have established a prima facie case, the burden of production shifts to the Fire Company to "articulate some legitimate, nondiscriminatory reason" for its actions. McDonnell Douglas, 411 U.S. at 802. The Fire Company must rebut the presumption of discrimination by producing evidence of an explanation, Burdine, 450 U.S. at 254, which must be "clear and reasonably specific," Id. at 258, and "legally sufficient to justify a judgment" for the Fire Company. Id. at 255. However, the Fire Company does not have the burden of "proving the absence of discriminatory motive." Bd. of Trustees v. Sweeney, 439 U.S. 24, 25, 18 FEP 520 (1982).

If the Fire Company carries this burden of production, the Complainants must then satisfy a burden of persuasion and show that the legitimate reasons offered by the Fire Company were not its true reasons, but were a pretext for discrimination. McDonnell Douglas, 411 U.S. at 804. This burden now merges with the burden of persuading that they have been the victims of intentional discrimination. Burdine, 450 U.S. at 256. The ultimate burden of persuading the trier of fact that the Fire Company intentionally discriminated against the Complainants remains at all times with the Complainants. Id. at 253.

To show pretext, the Complainants may directly persuade us that a discriminatory reason more likely motivated the Fire Company, or indirectly show that the Fire Company's proffered explanation is unworthy of credence. Id.

In these consolidated cases, all four Complainants have established prima facie cases of both sex-based refusal of membership and retaliation. Clearly, the Complainants are women who were both qualified for and applied for membership in the Fire Company at a time when the Fire Company was seeking members. Equally clear is the fact that they were rejected while men were accepted into membership.

Regarding the retaliation allegations, the Complainants have shown they were engaged in protected activity of which the Fire Company was aware. The Complainants have also shown that subsequent to their engaging in a protected activity, their membership applications were rejected. Finally, the record reveals that only a short time period elapsed between January 1989, when the prior complaint was filed, and the Complainants' rejections in July and December 1989.

The resolution of these consolidated cases rests in an analysis of the articulated reasons why the Complainants were rejected. Even the Fire Company's brief focused almost entirely on this issue with regard to the ultimate question of whether the Complainants have proven unlawful discrimination. As noted, the Fire Company's burden is simply one of production. The Fire Company must articulate a legitimate, nondiscriminatory reason for rejecting the Complainants.

Before we review the reasons given, it is important to note several fundamental points. First, in December 1989, the Fire Company's by-

laws provided that an applicant would be elected to membership if the applicant received a yes vote by a majority of those voting. On December 5, 1989, 35 members voted. Accordingly, to have been elected to membership, the Complainants needed a yes vote from 18 of the members voting: Brigandi received 9 yes votes and 26 no votes; Kenna, Hanna, and Carracappa-Waddell each received 10 yes votes and 25 no votes. In other words, Brigandi was nine votes short, while Kenna, Hanna, and Carracappa-Waddell were each eight votes short.

At the Public Hearing, testimony was offered by only 22 of the members who voted against Kenna, Hanna, and Carracappa-Waddell, and by 23 of the members who voted against Brigandi. Effectively, three members who voted against each of the Complainants did not testify.

Because the burden of production passed to the Fire Company upon the prima facie showing by the Complainants, it would seem natural that witnesses who voted against the Complainants would have been called to testify. Since these three members who also cast no votes did not testify, it is appropriate to invoke an adverse inference from their failure to have been called. No attempt was ever offered at the Public Hearing or in the post-hearing brief regarding an explanation of why these witnesses were not called.

This adverse inference is created even though the three extra members who voted no were available in discovery to both sides; the distinction being that here, as far as appears, the three members not called would have been favorable to the Fire Company but not to the Complainants. No inference would be taken if the expected testimony would have been as

likely to be favorable to one party as the other. However, one would expect the testimony of the absent members to have favored the Fire Company.

The effect of the application of this discretionary adverse inference is to conclude that at least three no votes were for reasons which were not legitimate, nondiscriminatory reasons.

The collective testimony of the members who voted no was varied and generally asserted four distinct reasons why a member had voted no. First, two members were candid and effectively stated that the fact that the Complainants were women affected their votes. Second, four members' votes were admittedly affected by the fact that a prior PHRC complaint had been filed. Third, most of the members testified regarding their adverse reactions to a November 1, 1988 newspaper article which appeared in the Norristown Times Herald. Several principal aspects of this article were said to have affected the members. Finally, one member, Ernest Gruber, indicated that he had heard negative things about Brigandi, so he voted against her.

One witness, Raymond R. Reed, candidly stated that he "didn't think the women had any business in the Fire Company." Clearly this is an impermissible, discriminatory attitude which affected his no vote. When asked why he voted against the women, Thomas Rocket stated, "Well, after all, we never had women in here before." Once again, lurking behind this comment appears to be an attitude that women did not belong as members of the Fire Company.

Four members, Michael Getzfread, Michael J. Zadroga, Jim Smith, Jr., and Irvin R. Stiteler, offered testimony from which a conclusion is appropriate that their votes were affected by the fact that a complaint had

been filed. This, of course, is direct evidence of retaliation. In effect, Stiteler, Smith, and Getzfread each came right out and stated that part of the reason they voted against the Complainants was because they had filed a PHRC complaint. Zadroga's testimony was not as direct. Zadroga's testimony was not credible because he first indicated he was not even aware the Complainants had filed a PHRC complaint. Later, he testified that the fact that a complaint had been filed was brought up at Fire Company meetings. Furthermore, Zadroga did state that a reason he voted against the Complainants was that "they couldn't work with the Fire Company to resolve the problems besides going through Human Relations. . ."

So far, the total members to whom an impermissible reason is attributed is nine. As indicated earlier, Kenna, Hanna, and Carracappa-Waddell needed only eight votes, and Brigandi needed nine. The case could end at this point, as the evidence already depicts that inappropriate reasons affected nine deciding votes.

However, some comment will be made regarding the effect of the testimony regarding the November 1, 1988 newspaper article. Testimony suggests that the article raised several concerns. Foremost was a stated concern that the women had taken their concern about equality of insurance benefits to the newspaper. Secondly, many members suggest they were disturbed that the article had stated, "Some of the women said they did not want to be firefighters. . ." And, finally, Kenna was quoted in the article as having said, "My job wouldn't change just because I become a member of the firehouse. . . I wouldn't want to go downstairs and be around the men smelling of beer."

Most of the members who voted no said the November 1, 1988 article affected their vote. Most of those who indicated they were affected by the article in some way were affected by the portion of the article which dealt with the insurance issue. Some members stated they didn't like this issue in the newspaper, and others added they felt the Complainants had been told that insurance benefits were equal and just did not believe it.

A very important aspect of the insurance question is the simple fact that when the women grew concerned about the insurance issue, the expression of their concerns was under the protection of Section 5(d) of the PHRA. Section 5(d) states in pertinent part:

"It shall be an unlawful discriminatory practice. . . for any person. . . to discriminate in any manner against any individual because such individual has opposed any practice forbidden by [the PHRA]. . ."

Clearly, the women were opposing what they perceived to have been unequal benefits. Whether the opposition was raised in the papers, in a complaint, or in any manner, the women had a right to express their opposition. To state that a vote was affected by the expression of opposition to perceived unequal benefits is to state a reason which is neither legitimate nor nondiscriminatory. Since this portion of the article was stated to be a reason to have affected votes, it no longer matters if there was also a justifiable reason which may have contributed to a no vote. All such votes were tainted by an impermissible factor.

The PHRC is well aware that firefighters must function in the closest of coordination. Of course, fires place lives at stake, and an esprit de corps is essential to the success of operations. Certainly,

carping criticism and abrasive conduct have no place in a fire department that must depend a great deal on common loyalty and harmony among members.

In this instance, the reporting of the insurance issue was neither provocative nor divisive. The airing of the perceptions about insurance differences was in no way directed towards any particular person, thus maintenance of harmony and discipline should not have been affected. The women's expressions simply raised a legitimate concern fundamentally important to them.

The apparent depth of resentment and intensity of expressed bitterness were both misplaced and unrealistic under the circumstances here. This is true even with the reported comment about men smelling like beer. Kenna testified that not only did she attempt to have a retraction printed because she never made the comment attributed to her, but she also advised the Fire Company president of this fact. It would appear the Fire Company president failed to advise the membership of Kenna's information, leaving the article to create hard feelings without the benefit of Kenna's denial.

One can only hope that lingering resentment will dissipate and that an atmosphere of comradeship will grow instead, which will add to the continued success of the Fire Company here.

Those members who expressed concern that they were troubled by their belief that the insurance is equal and the women should have believed it are advised that an assertion such as the one regarding the insurance need not be valid to be afforded protection. Assertion of rights generally, and rights under the PHRA specifically, must be protected even if the allegations raised are false. To preserve the rights of individuals to be free from discrimination, and to insure that the exercise of those rights

not be chilled by fear of retaliation, individuals must be precluded from weighing the correctness or consequences of a charge.

Turning to the portion of the article which suggested some of the women did not want to be firefighters, once again, disparate treatment clearly surfaced. Several specific problems grow from testimony that someone voted no either wholly or partly because someone did not think the women wanted to be firefighters. First, and foremost, members were well aware that men had joined the Fire Company just to run the ambulance and not fight fires. Apparently this was alright for men but not for women.

Very troubling was testimony by several members that, despite the fact that they knew the article only referred to "some" of the women, they voted against all of them. The cavalier attitude regarding to whom the statement may have referred was startling. Furthermore, the article appeared in the newspaper on November 1, 1988, and the fateful vote occurred on December 5, 1989, a year and one month later. In that lengthy period, not one member ever attempted to approach a Complainant to inquire what her interest level was. Instead, only an investigation committee offered a positive recommendation to the membership. However, this too was ignored.

It is simply unbelievable that members would be bold enough to say things like "all for one, one for all," and "I wasn't sure who it was, so I couldn't just vote on all four of them. . ."

The only member to testify whose reasons for voting no were not directly tainted was Gruber: he indicated that he had heard negative things about Brigandi's performance. Gruber voted in favor of Kenna, Hanna, and Carracappa-Waddell. Many members who voted no also sang the praises of the performance of the women applicants. Yet, they voted against them. The entire situation is most regrettable and, indeed, unfortunate.

The Fire Company's attempts to produce evidence of legitimate, nondiscriminatory reasons for the Complainants' rejections fails. Had the reasons offered been sufficient, the record considered as a whole supports the final conclusion that the reasons offered are a pretext. The record taken as a whole reflects that the main reason the Complainants were continually rejected was because they are women, and the secondary reason was that they had filed a PHRC complaint.

Having found the Fire Company liable in this case, we move to the issue of a remedy. The PHRC has broad discretion in determining appropriate relief. Murphy v. PHRC, 506 Pa. 549, 486 A.2d 388 (1985).

Section 9(f)(1) of the PHRA states in pertinent part:

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent 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, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint, hiring. . . 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.

First, each of the four Complainants is entitled to reinstatement as members of the Fire Company, with an effective date of December 5, 1989. Regarding travel expenses and lost wages, the record was not developed with the requisite detail to distinguish between travel expenses and lost wages incurred due to the January 1989 complaint and the March 1990 complaint. Only those expenses incurred as a result of the March 1990 complaint are recoverable because the January 1989 complaint was settled.

Testimony by both Kenna and Hanna speak of six and seven trips to the PHRC, however, the record is unclear for which complaint the trips were made. The record is silent regarding Brigandi on the issue of travel expenses and lost wages. Carracappa-Waddell's testimony is clear that she traveled twice with regard to her March 1990 complaint.

Under Section 9(f)(1) of the PHRA, reimbursement of expenses must be "certifiable." Accordingly, the following are expenses awarded to Kenna, Hanna, and Carracappa-Waddell:

KENNA:

Travel Expense - 2 train trips @ \$9.00 per trip	\$ 18.00
Lost Wages - 5 days total: 3 for public hearing attendance, plus 2 additional days (exact wages lost were undisclosed, so minimum wage rate has been used) 40 hours @ \$4.25	<u>90.00</u>
Total Expenses, Kenna	\$108.00

HANNA:

Travel Expense - 1 train trip (Hanna used her car on one trip; however, there was no evidence submitted regarding the amount of any expenses associated with this trip.)	\$ 9.00
Lost Wages - 2 days (16 hours @ \$15.35 per hr.) (Hanna did not indicate she lost time from work to attend the public hearing)	<u>245.60</u>
Total Expenses, Hanna	\$254.60

CARRACAPPA-WADDELL:

Travel Expense - 1 train trip (on a second trip, she traveled in Hanna's car)	\$ 9.00
Lost Wages - 2 days (16 hours @ \$5.60 per hr.)	<u>176.00</u>
Total Expenses, Carracappa-Waddell	\$185.00

BRIGANDI: No evidence submitted.

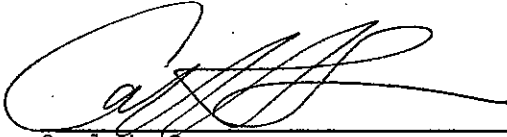
An appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA
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RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned consolidated matters, the Permanent Hearing Examiner finds that the Complainants have proven discrimination in violation of §§5(a) and (d) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.


Carl H. Summerson
Permanent Hearing Examiner

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FINAL ORDER

AND NOW, this 1st day of ~~December~~ 1992, after a review of the entire record in these consolidated matters, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion as its own findings in these consolidated matters, and incorporates the Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaints and hereby

O R D E R S

1. That the Fire Company shall cease and desist from sex-based discrimination with regard to its application process.

2. That the Fire Company shall cease and desist from retaliation against any individual who either opposes a practice forbidden by the PHRA or has made a charge under the PHRA.

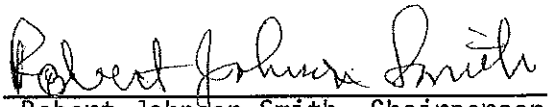
3. That within 30 days of the effective date of this Order, the Fire Company shall pay to Kenna the lump sum of \$108.00, to Hanna the lump sum of \$254.60, and to Carracappa-Waddell the lump sum of \$185.00, which amounts represent certifiable travel expenses and lost wages incurred as a result of these complaints.

4. That the Fire Company shall offer the Complainants immediate instatement as members of the Fire Company with all rights and privileges thereof, and with an effective date of December 5, 1989.

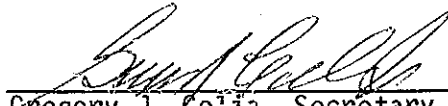
5. That the Fire Company shall take affirmative measures to recruit women as firefighters.

6. That within 30 days of the effective date of this Order, the Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter, addressed to Pamela Darville, Esquire, in the PHRC Philadelphia Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: 
Robert Johnson Smith, Chairperson

ATTEST:


Gregory J. Ceia, Secretary