

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BETTY M. CORCORAN,
Complainant

v.

HAZLETON AREA SCHOOL DISTRICT,
Respondent

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Docket No. E-26655-D

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BETTY M. CORCORAN, :
 :
 Complainant :
 :
 v. : DOCKET NO. E-26655-D
 :
 HAZLETON AREA SCHOOL DISTRICT :
 :
 Respondent :

STIPULATIONS

It is hereby stipulated that:

1. The Complainant, Betty M. Corcoran, an adult female, has been employed as a professional employee by the Respondent, Hazleton Area School District and its predecessor, Hazleton Area Joint School System, since 1964.
2. Respondent is an entity employing four or more persons within the Commonwealth.
3. On July 29, 1983, the Respondent posted an opening for a Secondary Vice-Principal at Hazleton High School.
4. Complainant, who holds a Secondary School Principal's Certificate, applied for said position. The position would have constituted a promotion for the Complainant.
5. The Respondent interviewed the Complainant and Clarence John, a male, for the position.
6. At a meeting on August 18, 1983, Respondent's school board elected Clarence John to the position. Mr. John also held a Secondary Principal's Certificate.

7. Respondent did not give Complainant any explanation for why she was not selected.


8. On or about September 22, 1983, the Complainant made, signed, and filed a verified complaint with the Pennsylvania Human Relations Commission (the Commission).

9. The complaint was served upon Respondent on September 29, 1983.


10. The Respondent timely filed an answer with the Pennsylvania Human Relations Commission.

11. After investigation, the Commission determined that probable cause existed to credit the allegations made in the complaint and attempted, unsuccessfully, to conciliate the complaint.

12. The Commission notified the parties that a public hearing had been approved.


Margaret D. Blough, Esq.
Attorney for the Commission in
support of the complaint

Dated May 17, 1989


James P. Ferry, Esq.
Attorney for the Respondent

Dated May 9, 1989

COMMONWEALTH OF PENNSYLVANIA

HUMAN RELATIONS COMMISSION

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HAZLETON AREA SCHOOL DISTRICT, :
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STIPULATION

It is so stipulated, with the caveat that, by stipulating that the statements in Stipulations 3 and 4 were made and were made by the individuals identified, Respondent does not stipulate as to the context of the remark in Stipulation 3 and the context and relevancy of Stipulation 4:

1. The Board hired (9) nine of the candidates unanimously.
2. Negative votes were recorded against only four of the 14 (fourteen) candidates.
3. During the Complainant's interview for the position of vice-principal at Hazleton Senior High School, Daniel Parrell followed up Complainant's description of her qualifications with the question, "When do you cook?"
4. During the vote for vice-principal, School Board member Neil Craig was recorded in the minutes as stating on the record, "...that he has nothing against Clarence John, but he will 'not vote for him because of the manner in which this was done.' He explained that two months ago it was known that Clarence John would be appointed and they made a fool out of the other people by interviewing them for this job."
5. As of January 31, 1983, Respondent listed only one (1) female, a principal, on its EEOC Form EEO-5 (Elementary-Secondary Staff Information) among the following categories: (1) Officials, Administrators, Managers; (2) Principals; (3) Assistant Principals, Teaching; and (4) Assistant Principals, Non-teaching. It listed (32) thirty-two males in categories (1), (2), and (4).

6. In its 1982-83 workforce utilization analysis, Respondent stated that three (3) women were employed in administrative staff positions, constituting 7.14% of the employees in this category. It further stated that 20.03% constituted the percentage of the women available with the requisite skills in the relevant labor market. Although the discrepancy between women employed and women available was 12.89%, the Respondent listed its employment goal as 0.

Margaret D. Blough

Margaret D. Blough, Esq.
Assistant Chief Counsel
Pennsylvania Human Relations
Commission

J. P. Ferry

James P. Ferry, Esq.
Co-Solicitor
Hazleton Area School District

Date: 12/1/89

Date: 12/15/89

FINDINGS OF FACT

1. During the time period 1982-1983, the Hazleton Area School District (hereinafter referred to as "Respondent") had twenty (20) schools and over five hundred thirty-five (535) professional employees, including elementary and secondary teachers, elementary and secondary principals and vice-principals, and central administration employees. (C.E. 11 and 12)
2. In July 1983, the Respondent posted an opening for the position of Secondary Vice-Principal at Hazleton High School. (S.F. 3)
3. Four individuals, including the Complainant and Clarence Johns, applied for the position of vice-principal. (J.E. c)
4. The only objective criteria for the position of vice-principal was that the candidate hold a secondary school principal's certificate. (J.E. b)
5. The Respondent interviewed the Complainant and Clarence Johns for the position of vice-principal. (S.F. 5)
6. The committee that interviewed the two candidates consisted of: John Gallagher, Director of Secondary Education, Daniel Parrell, Superintendent, and four or five school board members. (N.T. 62)
7. Interviewers for all professional positions were arranged and conducted by the pupil/teacher committee of the board. (J.E. 7)

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

C.E. Complainant's Exhibits
S.F. Stipulations of Fact
J.E. Joint Exhibit
N.T. Notes of Testimony

8. During the interviewing process, each of the two candidates were asked a series of questions, with both candidates being asked the same questions. (N.T. 187-188)
9. Each candidate was rated pursuant to a numbered rating system by each member of the committee who was a board member. (N.T. 187-188)
10. Board members on the committee would rate the candidates on a scale of one (1) through ten (10) with the highest score receiving the recommendation to the Board. (N.T. 187-189)
11. The questioning of the candidates was done by John Gallagher, Director of Secondary Education. (N.T. 62)
12. In response to a question from Mr. Gallagher, the Complainant listed her community and school activities which she believed qualified her for the position. (N.T. 62-63)
13. After Complainant listed these activities, Mr. Gallagher responded, "That's quite an impressive list." (N.T. 63)
14. After Mr. Gallagher responded, Superintendent Parrell asked, "When do you cook?" (N.T. 63, 126)
15. After the interview, Superintendent Parrell recommended to the Board that Clarence Johns be appointed vice-principal. (J.E. 6)
16. Clarence Johns was appointed to the position of Vice-Principal at Hazleton High School. (J.E. 6)
17. Clarence Johns, the successful candidate, was the recipient of the highest cumulative score during the interviewing process. (N.T. 189)
18. Clarence Johns also received the recommendation of Rocco Mussoline, then principal at Hazleton High School. (C.E. 32)
19. Another factor in hiring Mr. Johns instead of Complainant was the desire of the board to continue the process of hiring disciplinarians. (J.E. 7)

20. In 1986, the Complainant was offered a vice-principal position at D. A. Harman Junior High School. (N.T. 68)

21. The Complainant refused the position at D. A. Harman Junior High School. (N.T. 71)

22. In 1989, the Complainant applied for and was hired as the head teacher at Freeland High School. (N.T. 73)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and subject matter of this case.
2. All procedural prerequisites to a Public Hearing have been met.
3. The Complainant is an individual within the meaning of the Pennsylvania Human Relations Act. ("PHRA")
4. The Respondent is an employer within the meaning of the PHRA.
5. The Complainant has met her burden of proof in establishing a prima facie case by showing:
 - a. she is a female;
 - b. she applied for a job for which Respondent was seeking applicants and for which she was qualified;
 - c. Respondent rejected her.
 - d. the Respondent continued to seek applicants of equal qualifications after rejecting her.
6. The Respondent has met its burden of producing evidence of legitimate non-discriminatory reasons for its failure to hire Complainant.
7. The Complainant has not satisfied her ultimate and overall burden of persuasion of proving that she was not hired for the position of vice-principal due to her sex, female.

OPINION

This case arises on a complaint filed by Betty M. Corcoran (hereinafter "Complainant") against Hazleton Area School District, (hereinafter "Respondent") on or about September 22, 1983, at Docket No. E-26655. The Complainant alleged that the Respondent did not hire her for the position of Vice-Principal at Hazleton Area School District because of her sex, female. The Complainant claimed that Respondent's failure to hire her violated Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended 43 P.S. §§951 et seq. (hereinafter the "PHRA").

PHRC staff conducted an investigation and found probable cause to credit the allegation of discrimination. The PHRA and the parties then attempted to eliminate the alleged unlawful practice through conference, conciliation, and persuasion. The efforts were unsuccessful, and this case was approved for Public Hearing. The hearing was held on December 5 and 6, 1989 in Hazleton, Pennsylvania before Phillip A. Ayers, Permanent Hearing Examiner. Both parties submitted post-hearing briefs.

The instant case is clearly an allegation of disparate treatment based on sex. In such a disparate treatment case, the order and allocation of proof shall follow the oft repeated general pattern first defined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and clarified by the Pa. Supreme Court in Allegheny Housing Rehabilitation Corp. v. P.H.R.C., 516 Pa. 124, 532 A.2d 315 (1987). The PA Supreme Court's guidance indicates that a Complainant must first establish a prima facie case of discrimination. If a Complainant establishes a prima facie case, the burden

of production then shifts to the Respondent to "simply...produce evidence of a legitimate, non-discriminatory reason for...[its action]." If the Respondent meets this production burden, in order to prevail, a Complainant must demonstrate that the entire body of evidence produced demonstrates by a preponderance of the evidence that the Complainant was the victim of intentional discrimination. A Complainant may succeed in this ultimate burden of persuasion either by direct persuasion that a discriminatory reason more likely motivated a Respondent or indirectly by showing that a Respondent's proffered explanation is unworthy of credence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981).

In reference to sex-based disparate treatment cases involving a failure to hire, the elements of the prima facie showing were recently enumerated in the case of PHRC v. Johnstown Redevelopment Authority, _____ Pa. _____, _____ A.2d _____ (No. 79 W.D. Appeal Docket, 1989, filed March 25, 1991:

1. that the Complainant is a female;
2. that Complainant applied for a job for which Respondent was seeking applicants;
3. that despite Complainant's qualifications, she was rejected;
4. the Respondent continued to seek applicants of equal qualifications after rejecting her.

In the instant case, there is no dispute that the Complainant has met the first three requirements of the prima facie showing. The Complainant is a female, who applied for the position in question. The Complainant was rejected when the vice-principal position went to a male candidate, Clarence Johns.

In reviewing the fourth element of the prima facie, we must look at the qualifications of the Complainant. In the instant case the only objective qualification for the position is that the candidate possess a secondary principal certification. The Complainant and the successful male candidate both held this certification. Therefore it is clear that the Complainant was as well qualified as any other candidate who was interviewed for the position and the Respondent continued to seek other applicants of equal qualifications after rejecting her. Accordingly the Complainant has established a prima facie showing and met her initial burden.

Now that the Complainant has established a prima facie case, the Respondent must meet its burden of producing evidence of a legitimate non-discriminatory reason for its failure to hire the Complainant for the position in question. The Respondent has met its burden of production by stating that its decision was based upon the following:

1. the Respondent felt that the successful candidate was more qualified than the other candidates.
2. Superintendent Parrell and Rocco Mussoline, then principal at Hazleton High School both recommended Mr. Johns.
3. the fact that Clarence Johns had the highest cumulative score pursuant to the scoring procedure engaged in by the pupil-teacher committee; and
4. the feeling that Mr. Johns would be more of a disciplinarian and the Respondent was seeking a disciplinarian for this position.

Clearly the Respondent has met its burden of producing evidence of legitimate, non-discriminatory reasons for its action.

In continuing with the allocation of proof analysis in this case, the next step is whether the Complainant has met her ultimate and overall burden of establishing that she is a victim of discrimination. This can be done by showing that the proffered explanations of the Respondent are pretextual.

Firstly, we must review the scoring procedure utilized by the pupil-teacher committee. This procedure has not been challenged by the Complainant. The process was as follows: Each candidate was given a cumulative score based upon their responses to a series of questions, with the same questions being asked of each candidate. The questions were provided by John Gallagher, Director of Secondary Education, at the interview. The record indicates that normally the person receiving the highest cumulative score would be recommended to the full school board. Clarence Johns, the successful candidate for the position, had the highest cumulative score pursuant to the scoring process of the pupil/teacher committee. This committee was comprised of three members who interact with the administration in making the recommendation to the full board. The Superintendent, Daniel Parrell, would then carry the name of the individual with the highest score to the board as the recommendation.

Now we turn to an incident which the Complainant points to and submits supports her allegations in this matter. It was during the interview process that Superintendent Parrell made a statement that is essentially the basis of the Complainant's case. Upon questioning by John Gallagher, Director of Secondary Education, the Complainant had just set forth information regarding her community involvement and educational background. Superintendent Parrell, after hearing about all of the Complainant's activities commented. "When do you cook?" (N.T. 63) There

is some dispute in the record concerning this statement. While the Superintendent admits making the statement, he alleged that he only remembered making the statement at the fact finding conference subsequent to the filing of the complaint. Several things in the record indicate that the statement was made at the time of the employment interview. Firstly, the Complainant alleged in her complaint that the precise language was used at the interview. Since the interview was held many months before the fact finding conference, it is much more credible that the statement was made at the interview, not the fact finding conference. Secondly, the Respondent did not deny that the remark was made at the interview in its formal answer. (C.E. 34) This answer was verified by Superintendent Parrell. Lastly, and very persuasive, another Board Member, Neil Craig, Jr., upon questioning by Respondent counsel, stated that he was present at the interview when the statement was made. Clearly, the record supports the conclusion that the statement "When do you cook?" was made at the interview.

The Complainant alleges that this statement by Superintendent Parrell shows an "impermissible consideration of gender" in this case. Superintendent Parrell testified that the statement was only a joke to lessen the tension of the interview process. (N.T. 253) In addition a Board Member, Neil Craig, Jr., stated that the statement was viewed as a joke, not a serious statement. (N.T. 126) Furthermore, this same Board Member, Neil Craig, Jr., indicated that the Superintendent Parrell spoke very highly of the Complainant and her capabilities.

There are cases that have addressed similar issues. In the case of City of Pittsburgh v. Human Relations Commission of the City of Pittsburgh, 65 Pa. Cmwlth. 610, 444 A.2d 182 (1982), a female seeking a

position of assistant plant supervisor, based her allegation on the fact that she was asked questions that male applicants were not asked. In that case, the court stated:

"The substantial evidence required to support a finding of an administrative agency might be such relevant evidence as a reasonable mind might accept as adequate to support the conclusion." Gallagher v. Civil Service Commission of the City of Pittsburgh, 16 Pa. Cmwlth. 279, 330 A.2d 287 (1974).

Upon review of the circumstances surrounding the statement made by Superintendent Parrell, the Complainant has not provided sufficient evidence to support her allegations based on Parrell's statement.

The Complainant, in her brief, places a great deal of emphasis on the role of Superintendent Parrell in hiring administrators in the School District. However, the record shows that the full board voted on the appointment of Clarence Johns, with a 7-2 majority. The board members clearly had the discretion not to accept the recommendation of the Superintendent and are free to vote any way they wish.

A review of the record indicates that the Complainant has not shown that the proffered explanations of Respondent are pretextual. As aforementioned, the successful candidate had the highest score of the pupil-teacher committee and the recommendation of the superintendent and the principal at the high school, who had knowledge of his capabilities. The Principal, Rocco Mussoline, had specific knowledge of Mr. Johns' capabilities as a disciplinarian.

There is testimony in the record concerning the small number of females holding principal and vice-principal positions in the district. This particular point is not really probative in this case, since the issue is whether Respondent discriminated against the Complainant, not whether the Respondent discriminated against all members of the protected group. Thornbrough v. Columbus & G.R.R. Co., 760 F.2d 633 (5th Circuit 1985). It is interesting that there were two females (including Complainant) who applied for principal and vice-principal positions during the relevant time period. The other individual was successful on two (2) occasions.

In conclusion, the Complainant has not met her ultimate and overall burden of persuasion of proving that she was a victim of sexual discrimination when she was not hired for the position of Vice-Principal at Hazleton Area School District. Accordingly, an appropriate Order follows:

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Docket No. E-26655

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned case, the Permanent Hearing Examiner finds that the Complainant failed to prove discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulations, 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.

By: Phillip A. Ayers
Phillip A. Ayers
Permanent Hearing Examiner

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Docket No. E-26655

FINAL ORDER

AND NOW, this 26th day of July 1991, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Stipulations, Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulations, Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

O R D E R S

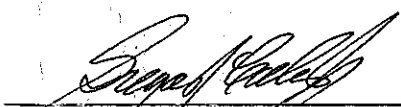
that the complaint in this case be, and the same hereby is Dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY:


Robert Johnson Smith, Chairperson

ATTEST:


Gregory J. Celia, Secretary