

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

**KATHERINE A. PARAS, Complainant**  
**v.**  
**DUQUESNE LIGHT COMPANY, Respondent**

**DOCKET NO. E58823D**

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

**FINDINGS OF FACT \***

1. The Respondent, Duquesne Light Company (hereinafter "Duquesne"), is an electric utility company which furnishes electrical energy to approximately one-half million customers in Allegheny and parts of Beaver Counties. (NT 174; SF 2.)
2. The Complainant, Katherine Paras (hereinafter "Paras"), a female, has been employed by Duquesne since October 1980. (NT 32; SF 1.)
3. Duquesne employs just under 4,000 employees. (NT 174.)
4. Prior to 1990, Duquesne's services were pretty much a monopoly, having a set service area and set customers. (NT 175.)
5. In 1990, Duquesne began to be concerned because it perceived that the electrical energy industry may become deregulated. (NT 175, 213.)

6. Duquesne's concern focused on the price they had been charging for electricity. (NT 175.)

7. In 1990, Duquesne's cost for electricity was the second-highest in the state, and Duquesne was located adjacent to West Penn Power which had the lowest rates for electricity in the state. (NT 175.)

\* 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:

CE	Complainant's Exhibit
RE	Respondent's Exhibit
NT	Notes of Testimony
SF	Stipulations of Fact

8. Duquesne's rates were nearly twice the rates of West Penn. (NT 176.)

9. Recognizing the need to address competitive economic pressures, one measure taken by Duquesne in September 1990 was to impose a hiring and promotion freeze. (NT 176.)

10. Duquesne is organized into operating departments, one of which is the Transportation Services Department, which is principally responsible for the maintenance of Duquesne's fleet of vehicles. (NT 32.)

11. In February 1991, John Rocco (hereinafter "Rocco") became the manager of the Transportation Services Department. (NT 34, 209, 212.)

12. Rocco's supervisor was Julian Chandler II (hereinafter "Chandler"), Duquesne's manager of the General Services Unit. (NT 171-172.)

13. As manager of the General Services Unit, Chandler was responsible for five departments, one of which was the Transportation Services Department.

14. In 1991, three supervisors reported directly to Rocco: Kenneth Kinross (hereinafter "Kinross"), supervisor, Fleet Repair; James Lewis (hereinafter "Lewis"), supervisor, Fleet Services; and Dale Peoples (hereinafter "Peoples"), principal engineer. (NT 189, 224, 227; CE 1.)

15. Paras began her employment with Duquesne in 1980 as an invoice clerk/typist in the Transportation Services Department. (NT 32.)

16. In December 1981, Paras was promoted to the position of auto stock control clerk where she remained until March 31, 1991, when she was bumped from the position by another employee. (NT 35.)

17. Duquesne's non-management employees are union members. (NT 43, 132.)

18. Beginning in April 1991, Paras took the position of shop records clerk. (NT 35.)

19. When she was the auto stock control clerk, Paras's immediate supervisor was Lewis. (NT 37.)
20. When Paras was bumped into the position of shop records clerk, Kinross became her supervisor. (NT 106.)
21. After the imposition of the hiring/promotion freeze, before there could be a hiring or promotion, a department manager had to initiate a request to hire/promote which required extensive justification. (NT 177.)
22. Such a request then required the review and approval at the unit manager level, then review and approval at the group vice president level, and finally, review and approval by either the assistant vice president or vice president of human resources. (NT 177-178.)
23. Another cost-cutting measure taken by Duquesne was to make bench-marking studies which compared the cost of Duquesne's operational processes with both other utility companies and other related activities.
24. As a result of extensive studies, each department had to submit both strategic operating goals and goals to reduce costs. (NT 180.)
25. A cost reduction goal of 15 percent was established for the operations and maintenance departments. (NT 180.)
26. Procedures were to be re-engineered to improve efficiency, reduce inventories, purchase cheaper parts, and vendors were to be asked to directly stock parts which would eliminate a considerable amount of Duquesne employee handling of parts in Duquesne's central stores. (NT 181-182.)
27. In early 1991, when Rocco replaced the prior Transportation Services Department manager, Rocco began with expressly identified goals and objectives:
  - a. manage and control the budget;
  - b. reduce the size of the fleet;
  - c. optimize the use of the existing fleet;
  - d. change parts and inventory procedures to save money; and
  - e. reduce the staffing levels by doing more with less. (NT 185.)
28. In 1990, just before Rocco was appointed the manager of Transportation Services, there was a total of 87 employees in the department. (NT 217-218.)
29. At the time of the public hearing, there were 72 employees. (NT 218.)
30. Days before Rocco took over as manager of the Transportation Services department, the Body Shop supervisor, Al Cole, retired. (NT 186, 222.)
31. The duties of the Body Shop supervisor were reallocated among other existing supervisors. (NT 187, 222.)

32. In early 1992, two additional management employees retired: Automotive Maintenance supervisor Jim Weider, and supervisor of Fleet Services Lewis. (NT 187, 222.)
33. Weider's duties were reassigned to existing supervisors. (NT 187, 222.)
34. Initially, a determination was made to assess which of Lewis's duties were critical, and which were non-critical and could therefore be eliminated. (NT 227.)
35. Vendor contracts were rewritten to provide that vendors would pick up some of Lewis's duties regarding inventory control and invoice reporting. (NT 192, 227.)
36. The remainder of Lewis's duties was divided between four existing supervisors. (NT 144, 227-229.)
37. Of the existing supervisors who assumed extra duties as a result of the retirement of Cole, Weider and Lewis, none received a raise, a promotion, or a title change. (NT 140, 144, 165, 223.)
38. Before Lewis retired, Paras had expressed an interest in Lewis's position to both Lewis and Kinross. (NT 49-50, 130.)
39. One option Rocco had considered was opening up Lewis's position to interested candidates, which would have included Paras. (NT 192, 249.)
40. After giving extensive consideration to an array of alternatives, Chandler decided not to fill Lewis's position, but to have some of Lewis's duties eliminated, some assumed by vendors, and others reassigned to existing supervisors. (NT 189, 192, 224.)
41. The process of reassigning the duties of retiring managers, rather than filling positions, was occurring in the other four departments Chandler managed. (NT 190.)
42. The four supervisors who absorbed some of Lewis's duties were Kinross, Peoples, Rocco, and Kenneth S. Grayber (hereinafter "Grayber"). (NT 144, 189, 224, 227.)
43. Kinross was assigned Lewis's duties with respect to scheduling vehicle maintenance at Duquesne's main garage. (NT 142, 227-228.)
44. Peoples was assigned Lewis's responsibility for Duquesne's pool car storage area, the Manor Lot. (NT 142, 228.)
45. After Lewis retired, Rocco involved himself in purchasing decisions, negotiated with vendors, and facilitated cost reduction efforts. (NT 223.)
46. Automotive Maintenance supervisor Grayber was assigned Lewis's duties as supervisor of the parts department. (NT 160, 230.)
47. Grayber had not requested to perform some of Lewis's duties; he was simply assigned them. (NT 159.)

48. Rocco selected Grayber to assume responsibility over parts and materials inventory because Rocco anticipated that Grayber's auto maintenance background would help Grayber in his assigned tasks of cutting Duquesne's parts inventory and making cost effective purchasing decisions. (NT 162, 230-231.)

49. Rocco anticipated correctly, as in approximately one and one-half years Grayber succeeded in dramatically reducing Duquesne's parts inventory by eliminating approximately \$1½ Million from the parts inventory. (NT 166-167, 232.)

50. When Grayber was assigned to perform some of Lewis's duties, some of Grayber's Automotive Maintenance supervisory duties were assumed by alternating temporary foremen who had been temporarily upgraded from their union positions. (NT 133.)

51. These alternating temporary foremen were not responsible for regular supervision, discipline or establishment of maintenance practices. (NT 133.)

52. The temporary foremen only handed out job assignments and insured safety. (NT 133.)

53. Grayber continued to perform some of his Automotive Maintenance supervisory duties. (NT 155.)

54. Paras was neither interested in nor applied to be one of the temporary foremen who performed portions of Grayber's Automotive Maintenance supervisory duties. (NT 93-94.)

55. Since the hiring freeze began in 1990, nine management employees have been hired: 44.44% have been women. (NT 199; RE 1.)

56. Since the hiring freeze, there have been 14 management promotions: 35.71% have been women. (NT 199; RE 2.)

57. In 1990, Duquesne had 1,604 management personnel; in 1995 there were 1,429. (NT 253; RE 4.)

58. While the number of managers has decreased, the percentage of women in management has increased. (NT 253; RE 4.)

59. Since the hiring freeze, 110 management vacancies have not been filled. (RE 5.)

## **CONCLUSIONS OF LAW**

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and subject matter of this case.

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

3. Katherine A. Paras (“Paras”) is an individual within the meaning of the Pennsylvania Human Relations Act (“PHRA”).
4. Duquesne Light Company is an employer within the meaning of the PHRA.
5. Paras has the initial burden to establish a *prima facie* case by a preponderance of the evidence.
6. To establish a *prima facie* case, Paras must show that:
  - a. she is a member of a protected class;
  - b. she was qualified for an available position;
  - c. she was not selected; and
  - d. the available position was filled by a male with equal or lesser qualifications.
7. Paras did not establish a *prima facie* case because she failed to prove there was an available position.

## OPINION

This case arises on a complaint filed on or about February 3, 1992 by Katherine A. Paras (hereinafter “Paras”) against Duquesne Light Company (hereinafter “Duquesne”) with the Pennsylvania Human Relations Commission (hereinafter “PHRC”).

Paras’s complaint alleges a sex-based denial of promotion in violation of Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, PL 744, as amended, 43 PS §951, *et seq.* (hereinafter “PHRA”).

PHRC staff investigated the allegation, and at the investigation’s conclusion informed Duquesne that probable cause existed to credit Paras’s allegation. Thereafter, the PHRC attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, the PHRC notified the parties that it had approved a public hearing.

The public hearing was held on November 2, 1995, in Pittsburgh, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The PHRC’s interest in the complaint was overseen by PHRC staff attorney Katherine H. Fein; Stephen M. Olsen, Esquire, appeared on behalf of Duquesne. The parties were afforded an opportunity to submit briefs. Both Attorney Fein’s post-hearing brief and Duquesne’s brief were received on January 23, 1996.

In this disparate treatment case, Paras alleges that Duquesne treated her less favorably than others because of her sex, female. To prevail, Paras is required to prove that Duquesne had a discriminatory intent or motive. *Allegheny Housing Rehabilitation v. PHRC*, 516 Pa. 124, 532 A.2d 315 (1987).

Since direct evidence is very seldom available, we consistently 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 US

248, 254 n.8 (1981). Paras must carry the initial burden of establishing a *prima facie* case of discrimination. *Allegheny Housing, supra*; *McDonnell Douglas Corp. v. Green*, 411 US 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 US 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 US 467, 577 (1978).

In *McDonnell Douglas*, the United States 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 801.

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 US 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, we adapt the *McDonnell Douglas* test because this case involves an alleged sex-based failure to promote. In promotion cases, the first three elements are generally handled by substituting “promotion” for “job” in the original formula. The fourth element can be satisfied by proof that the person actually promoted instead of the Complainant was either equally or lesser qualified and not within the Complainant’s protected group. Accordingly, to establish a *prima facie* case, Paras must show that:

1. she is a member of a protected class;
2. she was qualified for an available position;
3. she was not selected; and
4. the available position was filled by a male who had either equal or less qualifications.

On the initial question of whether Paras can establish a *prima facie* case, the parties’ dispute revolves around a portion of the second element listed above. There is no dispute in this case that Paras is a member of a protected group, that she was qualified for the supervisor of Fleet Services position, and that she was not selected. There is a question of whether the supervisor of Fleet Services position was available following Lewis’s retirement.

Like other management positions in both the Transportation Services Department and other Duquesne operational departments, when Lewis retired, the supervisor of Fleet Services position came under scrutiny regarding whether to fill the position or simply have existing management personnel absorb duties that Lewis had performed. Clearly, the position was not posted, and no

applications were solicited. Instead, a decision was made to eliminate several non-essential functions, have vendors do more, and reassign the remaining responsibilities Lewis had performed among four existing department managers.

Like two other management retirements in the Transportation Services Department, when Lewis retired Duquesne seized the opportunity to cost-effectively reduce the number of managers through attrition. Paras has not shown that this decision to distribute Lewis's duties among existing managers was anything other than motivated by legitimate financial reasons.

Duquesne presented un rebutted evidence that, throughout the 1990s, Duquesne faced an economic environment in which Duquesne needed to take cost saving measures to improve its ability to compete in a changing market. In 1990, Duquesne's reaction was to generally adopt a stringent hiring and promotion freeze and activate a wide variety of cost-cutting and cost-containment measures.

The reassignment of existing department managers to perform responsibilities Lewis had performed had the effect of making the position Lewis had held unavailable upon his retirement. Instead, the position of supervisor of Fleet Services was simply absorbed by existing managers.

In 1991, just before Lewis retired, management positions in the Transportation Services Department included five automotive maintenance supervisors and five other management positions (one of which was vacant). Currently, there are four auto maintenance supervisors and three other management positions.

That portion of Duquesne's 1990 reaction to economic pressures and plan to address cost savings as it related to reassigning duties among existing managers was shown to have been both successful and nondiscriminatory. Accordingly, Paras has failed to establish a *prima facie* case of discrimination.

An appropriate Order follows.



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**RECOMMENDATION OF THE PERMANENT HEARING EXAMINER**

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Complainant has 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 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.

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**FINAL ORDER**

**AND NOW**, this 23rd day of April, 1996, 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 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 complaint and hereby

**ORDERS**

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

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**