COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ESTATE OF SALVATORE SYLVESTER, Complainant
v.
ARLINGTON INDUSTRIES, INC., Respondent

DOCKET NO. E55702A

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT *

1. On March 14, 1991, Salvatore N. Sylvester (hereinafter "Sylvester") was seventy-one years of age. (SF 2.)

2. Arlington Industries, Inc. (hereinafter "Arlington"), is a manufacturer of electrical fittings which, in or about February - March 1991, had approximately 180 employees. (NT 11, 50-51.)

3. The decision to layoff Sylvester on March 14, 1991 was made by Thomas Gretz (hereinafter "Gretz"), Arlington's vice president and general manager. (NT 12.)

4. Arlington's sales had dramatically dropped between 30 to 35 percent just before the layoffs of March 1991. (NT 12.)

5. The decision to layoff was made within twenty-four hours of the actual layoffs. (NT 13.)

6. On or about March 14, 1991, Bradley Davis (hereinafter "Davis"), Arlington's plant production manager, instructed John Gowarty (hereinafter "Gowarty"), Sylvester's immediate supervisor, to bring Sylvester to Davis's office. (NT 70, 79-80, 101.)

***** 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:

JE	Joint Exhibit
NT	Notes of Testimony
SF	Stipulations of Fact

7. Davis instructed Sylvester that he had to let him go, whereupon Sylvester offered to resume working forty hours per week. (NT 80.)

8. Gretz was aware that Sylvester had offered to resume a forty-hour work week. (NT 15.)

9. Arlington production employees were aware of Sylvester's extensive seniority, and that Sylvester's hourly wages were less than other employees'. (NT 18, 92.)

10. Sylvester was regularly assigned to one of approximately 15 machines in Arlington's die casting department. (NT 72.)

11. Sylvester did a good job running the die cast machine to which he had been regularly assigned. (NT 72.)

12. Sylvester was capable of operating most of the machines in the die casting department. (NT 95.)

13. When the machine to which Sylvester had been assigned was either being changed over or repaired, Sylvester would temporarily perform a variety of other functions: tumbling; breakoff; fitting. (NT 84.)

14. Sylvester performed these temporary functions approximately one-half of one percent of the time. (NT 99.)

15. In deciding to layoff Sylvester, Gretz did not know that Sylvester had performed the tumbling and breakoff functions. (NT 53.)

16. Neither Sylvester nor other die cast operators could operate Arlington's computerized dynacast machines. (NT 86.)

17. Most die cast department employees were assigned to a single unit which provided little opportunity for die casters to perform other functions. (NT 51.)

18. Sylvester worked in Arlington's die casting department as either a die caster or a caster mechanic since his hire on February 20, 1974. (SF 9, 24.)

19. In effect, Gretz testified that an employee showed versatility by being with Arlington for several years, thereby showing their abilities to do various jobs by working in various departments. (NT 51.)

20. Casters retained in the die casting department after Sylvester's layoff include the following by date of hire and age:

Date of Hire	Age	
4/08/84	33	
8/13/87	51	
9/28/87	50	
1/17/88	33	
5/23/88	52	
7/11/88	31	
7/22/88	33	
9/14/88	22	
9/15/88	35	
10/05/88	31	
8/27/89	43	
10/24/89	30	
3/12/90	23	
5/14/90	28	
6/18/90	42	
7/02/90	25	(SF 26.)

21. The final three casters on the above list had worked for Arlington less than one year prior to the layoff of March 1991. (SF 26.)

22. The next youngest caster, seniority-wise, had worked for Arlington only two days over one year prior to the lay-off. (SF 26.)

23. Caster mechanics retained in the die casting department after Sylvester's layoff included the following, by date of hire and age:

Date of Hire	Age	
9/02/80	42	
5/21/84	33	
12/10/84	37	
1/02/85	43	
8/18/86	41	(SF 26.)

24. Arlington did not give consideration to shift differentials when deciding which employees to layoff in March 1991. (NT 52.)

25. When advised he was being laidoff, Sylvester was not asked if he would be willing to work a different shift. (NT 89.)

26. Prior to his agreement with Arlington to work reduced hours at a reduced rate of pay, Sylvester regularly worked forty hours per week and was very cooperative whenever Arlington requested that Sylvester work overtime. (NT 92-93, 102.)

27. Although working a thirty-hour work week, Sylvester retained all full-time employee benefits described in Arlington's employee handbook. (NT 21; SF 16, 17.)

28. Had Sylvester not been laidoff, he would have been able to work until June 1, 1995. (NT 64; SF 54.)

CONCLUSIONS OF LAW

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

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

3. Salvatore Sylvester (hereinafter "Sylvester") was an "individual" within the meaning of the Pennsylvania Human Relations Act (hereinafter "PHRA").

4. Upon his death on October 20, 1995, Sylvester's estate fell heir to any and all claims Sylvester possessed pursuant to his PHRA claim. *See* Section 8302 of the Judicial Code, 42 Pa. C.S. §8302.

5. Arlington Industries, Inc. (hereinafter "Arlington") is an "employer" within the meaning of the PHRA.

6. By stipulation, the parties agreed that Sylvester's estate has met its initial burden of establishing a *prima facie* case.

7. By stipulation, the parties also agreed that Arlington articulated non-discriminatory reasons for laying off Sylvester.

8. It was established that Arlington's articulated reasons for laying off Sylvester were pretexts for age discrimination.

9. Arlington's motivation for laying off Sylvester was intentional age-based discrimination.

10. The PHRC has broad discretion in fashioning a remedy.

OPINION

This case arises on a complaint filed by Salvatore N. Sylvester (hereinafter "Sylvester") against Arlington Industries, Inc. (hereinafter "Arlington"), at Docket No. E55702. In his complaint Sylvester generally alleged he was laid off on March 14, 1991. Sylvester alleged that his layoff was age-based discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act (hereinafter "PHRA"). At the pre-hearing conference, a motion to amend the complaint was granted. The amendment merely reflects that the Complainant is now the Estate of Sylvester, since Sylvester died on October 20, 1995.

The Pennsylvania Human Relations Commission (hereinafter "PHRC") investigated Sylvester's allegation, and at the conclusion of the investigation concluded that probable cause existed. Thereafter, the PHRC attempted to eliminate the alleged unlawful age-based discrimination through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently the PHRC notified all parties that it had approved a public hearing of Sylvester's allegation.

The public hearing was held on May 8, 1996, in Scranton, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The case on behalf of the complaint was presented by PHRC staff attorney Ronald W. Chadwell. Michael R. Mey, Esquire, appeared on behalf of Arlington. At the public hearing, Arlington submitted a hearing brief and a Motion for Compulsory Non-Suit. Additionally, following the public hearing, the parties were afforded an opportunity to submit briefs. A post-hearing brief on behalf of the complaint was received on November 12, 1996. To date, Arlington has not submitted a post-hearing brief. However, on October 11, 1996, extensive joint stipulations were submitted.

In this disparate treatment case, Sylvester alleges that Arlington treated him less favorably than others because of his age. To prevail, Sylvester is required to prove that Arlington had a discriminatory intent or motive in laying him off on March 14, 1991. *Allegheny Housing Rehabilitation Corp. v. PHRC*, 516 Pa. 124, 532 A.2d 315 (1987).

As the U.S. Supreme Court has noted, "[t]here will seldom be 'eyewitness' testimony as to the employer's mental processes." *United States Postal Service Bd. of Governors v. Aikens*, 406 U.S. 711, 716 (1983). We have also frequently recognized that direct evidence is seldom available, and have therefore consistently applied a method of proof which relies upon presumptions and shifting burdens of production and articulation. Of course, the analytical mode of evidence assessment which we so often apply is the three-stage allocation of burdens of proof and production first laid down by the U.S. Supreme Court in the well known case of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). In this process, a complainant normally has the burden of establishing a *prima facie* case of discrimination. Once this has been accomplished, a respondent then has the production burden to articulate a legitimate, nondiscriminatory reason for the respondent's actions. The third stage is once again a proof burden placed upon a complainant. That burden is one of proving that the reason articulated by a respondent was not legitimate, but was pretextual, which then permits an inference to be drawn that the respondent intentionally discriminated against the complainant. See, *Sheridan v. E. I. Dupont de Nemours*, 72 FEP 518, 522 (3rd Cir. 1996).

Here, we are able to begin on the third level of the three-stage evidence assessment process. At the commencement of the public hearing, a stipulation was offered and accepted which concluded that Sylvester established a *prima facie* case, and that Arlington articulated legitimate, nondiscriminatory reasons for Sylvester's lay-off on March 14, 1991. Accordingly, the remaining evidence assessment and analysis in this case is whether there has been a sufficient showing that the reasons offered by Arlington are pretextual and Arlington discriminated against Sylvester because of his age.

Following instruction on the effect of a *prima facie* showing and a successful rebuttal thereof, the Pennsylvania Supreme Court articulated principles which are useful in the ultimate resolution of some aspects of this matter. The court stated that:

> [A]s in any other civil litigation, the issue is joined, and the entire body of evidence produced by each side stands before the tribunal to be evaluated according to the preponderance standard: Has the plaintiff proven discrimination by a preponderance of the evidence? Stated otherwise, once the defendant offers evidence from which the trier of fact could rationally conclude that the decision was not discrimi-natorily motivated, the trier of fact must then "decide which party's explanation of the employer's motivation it believes." *Aikens*, 460 U.S. at 716, 103 S.Ct. at 1482. The plaintiff is, of course, free to present evidence and argument that the explanation offered by the employer is not worthy of belief or is otherwise inadequate in order to persuade the tribunal that her evidence does preponderate to prove discrimination. She is not, however, entitled to be aided by a presumption of discrimination against which the employer's proof must "measure up." *Allegheny Housing Authority*, *supra* at 319.

Although we can begin at the third stage, to do so we must first review the reasons offered by Arlington for why Sylvester was laidoff. We do this because it is these very reasons which Sylvester must show were pretextual. First, in its initial answer to Sylvester's complaint and throughout the public hearing, Arlington generally asserted that Sylvester was selected for layoff because he was a part-time employee. Arlington's initial answer also contended that "any worker who worked less than forty (40) hours per week was by company policy a part time worker." (Paragraph 3.A.2(c) of Arlington's answer.) The answer also stated, "It is admitted that certain less senior and younger employees were retained by the Respondent after the Complainant was laidoff. For further answer, it is averred that these employees were full time when the Complainant was part time and that their duties and responsibilities were greatly different than those of the Complainant." (Paragraph 3.C.3 of Arlington's answer.)

At the public hearing, Arlington also offered that a part of Arlington's reason why Sylvester was not kept on was the issue of "versatility." By "versatility," Arlington asserted that an employee's ability to handle more areas of its operation than other employees was a factor in its determination of which employees would be selected for layoff. In effect, Arlington argues that Sylvester had less versatility than other employees who were not laid off.

In the U.S. Supreme Court case of *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 at 256 (1981), the Court indicated that a complainant can show pretext "either directly by persuading the Court that a discriminatory reason more likely motivated the employer, or indirectly by showing that the employer's proffered explanation is unworthy of credence." Here, a conglomeration of factors detailed below amount to convincing evidence that the reasons advanced by Arlington are unworthy of credence, and that age discrimination more likely prompted Sylvester's layoff.

First, we assess the stated reason that Sylvester was laidoff because he was a part-time employee. On this point we note that, contrary to Arlington's assertion in its answer that it was company policy that any employee who worked less than forty hours was part-time, there was no evidence to support that assertion. On the contrary, the weight of the evidence overwhelmingly shows that, by policy, Sylvester was considered a full-time employee. While there had been an agreement in 1985 between Sylvester and Arlington to reduce his hours from forty to thirty per week, Sylvester maintained a full-time status so as to retain all of Arlington's employee benefits. Pursuant to Arlington's employee handbook, full-time employees were given paid vacations, medi-

cal benefits, and 401(K) retirement benefits. Sylvester received these benefits until his lay-off on March 14, 1991.

If the thrust of Arlington's assertion regarding part-time versus full-time status was simply that Sylvester worked only thirty hours per week while all other employees worked forty hours per week, it has been shown that this, too, is a rationale unworthy of credence. Simply put, at the moment Sylvester was advised that he was to be laidoff, Sylvester offered to go to forty hours per week. Inexplicably, Sylvester's offer was not given consideration.

Any difficulties Arlington had experienced on Thursdays when Sylvester left two hours early would have been moot by Sylvester's offer to go back to forty hours per week. Furthermore, Arlington made adjustments for nearly six years with Sylvester leaving two hours early each Thursday. This long-standing arrangement makes it likely that Sylvester's work schedule was advantageous to both Arlington and Sylvester during that period. After all, in the initial exchange for the thirty hour work week arrangement, Sylvester had agreed to a significant reduction in his hourly rate: from $9 per hour to $5 per hour. Throughout the period 1985 through March 14, 1991, Sylvester's hourly rate remained significantly lower than that of his coworkers.

This brings us to another factor which, in a practical sense, cuts into the credibility of Arlington's articulated reasons for laying off Sylvester. There is no question that in the period of February/March 1991, Arlington was experiencing a rather dramatic drop in the sale of the products it manufactured. The sales drop did necessitate the layoff of numerous temporary employees and a total of 33 Arlington employees. Seven of the laidoff Arlington employees were from Arlington's casting department. This number included Sylvester.

Looking at the situation strictly from a need to save money, one must ask why Arlington would not retain an employee who performed his assigned job well when that employee earned significantly less per hour than others who were retained who performed the same job. Despite the suggestion in Arlington's answer that the retained employees' "duties and responsibilities were greatly different than. . . [Sylvester's]," the evidence reveals that, with the exception of employees who ran computerized dynacasts, all other employees in the casting department did essentially the same things. The fact that all employees assigned to non-computerized casting equipment did essentially the same jobs adds a critical dimension to Sylvester's evidence. It appears that Arlington's initial answer to Sylvester's complaint was less than candid on this point and, as such, indicates a conscious realization that a rationale offered otherwise would be weak and unfounded.

This factor is important when we view one particularly relevant provision of Arlington's employee handbook which relates to layoffs. That provision states, "If layoffs occur, and ability, skills, and experience on a job are, in the opinion of the company, relatively equal, your seniority prevails." As Sylvester had been the most senior employee in the casting department, the only way Arlington could have laid Sylvester off in a manner consistent with its own employee handbook was if Sylvester's abilities, skills, and experience were unequal. Here, the evidence shows that the abilities, skills, and experience between Sylvester and others in the casting department were likely to have been unequal all right. However, the inequality could be attributed to the fact that Sylvester's abilities, skills and, certainly, experience was greater than others in the department.

This brings us to Arlington's assertion that Sylvester had less versatility than others. Although Arlington would have us believe Sylvester lacked versatility, the undisputed evidence shows

the contrary. Furthermore, the mere assertion of this defense for the first time at the public hearing casts a degree of doubt on the authenticity of the assertion, and suggests the reason offered is merely an after-the-fact rationalization to justify the decision. See, *Gallo v. John Powell Chevrolet, Inc.*, 765 F.Supp. 198, 57 EPD ¶41,017 (M.D. Pa. 1991); *Johnson v. University of Pittsburgh*, 359 F.Supp. 1002, 5 FEP 1182 (W.D. Pa. 1973); and *Foster v. Simon*, 467 F.Supp. 533, 19 FEP 1648 (W.D. N.C. 1979).

In this case, the evidence is undisputed that Sylvester was a versatile employee. Not only did Sylvester do a good job on the die cast machine to which he was normally assigned, Sylvester was also capable of running larger equipment. Sylvester knew how to run nearly all of the 15 casting machines in the department. Furthermore, Sylvester had performed caster mechanic duties.

In addition to Sylvester's skills in the casting department, the evidence reveals that Sylvester also operated automatic assembly equipment and performed tumbling and breakoff work. As job performance was not a factor in the layoff decisions, it is not relevant to evaluate just how well Sylvester performed tumbling and breakoff duties. There was a suggestion that Sylvester was less than productive doing these operations, however, we note that only one-half of one percent of the time was this function done by Sylvester. Furthermore, the parties have stipulated that job performance had not been a factor in the decision regarding layoffs.

We also take note of an additional factor regarding the issue of versatility. Gretz, the one who actually decided to lay off Sylvester, was not even familiar with whether Sylvester performed other jobs besides his normal casting machine assignment. Yet, Gretz asserted that versatility was a factor. To assert for the first time at public hearing the versatility factor, Arlington's credibility crumbles in yet another respect. Three casters who were retained by Arlington had less than one year's experience and a fourth had worked only days more than a year. Arlington's own witness indicated that most of Arlington's employees were principally assigned to a single function, and thus had no real opportunity to display any versatility.

In this case we find Sylvester, a seventeen year veteran, was laidoff, while others with less than a year of seniority and who had virtually no time to show their degree of versatility were retained. It is simply not rational for Arlington to have asserted versatility was the reason Sylvester's seniority was ignored.

Here, a sufficient showing has been made that the reasons proffered by Arlington are both unworthy of credence and that discrimination more likely motivated Arlington's decision to layoff Sylvester. Having rejected Arlington's asserted reasons as pretextual, we draw the inference that Sylvester's lay-off was, in fact, motivated by intentional age-based discrimination. We thus deny Arlington's Motion for Compulsory Non-Suit and instead, turn to the issue of appropriate damages. Under Section 9(f)(1) of the PHRA, the PHRC is empowered to award backpay and "any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice. . ."

Courts have recognized that one purpose of an award of back pay is to restore an injured party to his pre-injury status, making him whole. *Consolidated Rail Corp. v. PHRC*, 136 Pa. Commonwealth Ct. 147, 582 A.2d 702 at 709 (1990), citing, *Williamsburg Community School District v. PHRC*, 99 Pa. Commonwealth Ct. 206, 512 A.2d 1339 (1986). Here, Sylvester's "pre-injury status" was that he worked thirty hours per week at a rate of $6.36 per hour. Accordingly, the calculation of a back-pay award will begin there.

Stipulations 50 through 53 are useful when calculating the lost back pay because these stipulations clarify the wage increases between March 14, 1991 and June 1, 1995. The award of back pay appropriately ceases on June 1, 1995, because the state of Sylvester's health prevented him from being able to work after June 1, 1995. Accordingly, the following calculations are made:

Lost Wages.

March 14, 1991 - January 31, 1992:	
30 hours per week for 46 weeks @ $6.36 per hour	$8,776.80
February 1, 1992 - January 31, 1993:	
30 hours per week for 52 weeks @ $6.55 per hour	10,218.00
February 1, 1993 - January 31, 1994:	
30 hours per week for 52 weeks @ $6.75 per hour	10,530.00
February 1, 1994 - January 31, 1995:	
30 hours per week for 52 weeks @ $6.95 per hour	10,842.00
February 1, 1995 - June 1, 1995:	
30 hours per week for 17 weeks @ $7.22 per hour	3,682.20
Total Wages Lost	$44,049.00

The term "backpay" has been given a broad interpretation so as to include a variety of lost compensation besides wages. A backpay award should properly include other compensation benefit components which would have been received, absent unlawful discrimination. Here, there are several additional compensation benefits sought. These include: lost 401(K) plan contributions; medical insurance premium reimbursements; insurance benefits reimbursements; lost disability payments; and insurance benefits.

Backpay awards have included contributions that an employer would have made to a retirement plan. See *Danner v. Phillips Petroleum Co.*, 447 F.2d 159 (5th Cir. 1971); and *Pree v. Stone & Webster Engineering Corp.*, 607 F.Supp. 945 (D.C. Nev. 1985). Here, had Sylvester not been laidoff on March 14, 1991, he would have been entitled to a contribution of five percent of his gross pay into a 401(K) retirement plan. This calculation is as follows:

$$\$44,049.00 \times 0.05 = \$2,202.45$$

Regarding medical insurance premiums, Arlington had provided medical insurance coverage for its employees and their families. When laidoff, Sylvester paid $4,912.05 to Blue Cross of Northeastern Pennsylvania for the period between April 1, 1991 and June 1, 1995 to maintain medical insurance for himself and his wife. This amount is also an appropriate component of the "backpay" award.

Next we turn to the claim for reimbursement for payments made for a home health care nurse for Sylvester's wife for the period April 10, 1992 through December 10, 1992. At the time Sylvester was laidoff, his wife had brain cancer. Her physician had prescribed round-the-clock nursing care which would have been covered under Arlington's insurance plan through March 31, 1992. When Sylvester was laid off, the substitute insurance he purchased covered round-the-clock nursing care for only ten days. Here, Sylvester incurred a total of $15,265.00 in round-the-clock nursing care for his wife between April 10, 1992 and December 31, 1992. These costs are also an appropriate component of the back-pay award.

Regarding the claim for reimbursement of lost disability payments, Arlington provided medical disability coverage at the rate of $80 per week for up to six months for Arlington employees. Here, Sylvester's deteriorating health left him unable to work as of June 1, 1995, until his death on October 20, 1995. Absent his layoff, Sylvester would have received $80 per week for the period June 1, 1995 to October 20, 1995. This calculation is as follows:

$80.00 per week X 17 weeks = $1,360.00

Next, we turn to the issue of the claim for the proceeds of a life insurance policy which would have been in effect at the time of Sylvester's death. Had Sylvester not been laidoff, he would have been entitled to take a medical leave of absence beginning on June 1, 1995. Further, since an employee was entitled to six months of medical leave, Sylvester would have still been an employee on the date of his death, October 20, 1995. Thus, his estate would have received the proceeds of the $25,000 life insurance policy which had been provided as a benefit by Arlington.

There has been a split of authority on the issue of what is the proper measure of value of an insurance policy benefit provided by an employer. In *Farris v. Lynchburg Foundry*, 769 F.2d 958 (4th Cir. 1985), the holding was that a com-plainant was entitled to recover only the amount an employer would have paid in insurance premiums, had a complainant not been terminated. Conversely, in the case of *Foster v. Excelsior Springs City Hospital*, 631 F.Supp. 174, 40 FEP 1616 (W.D. Mo. 1986), the only way to make a complainant whole was determined to be to award the value of the proceeds of a life insurance policy.

Here, we chose to adopt the reasoning of *Foster* and award the value of the proceeds of the lost life insurance policy: $25,000.00.

Finally, an award of interest in the amount of six percent per year on the full scope of the backpay awarded is appropriate. See *Brown Transport Corp. v. PHRC,* 133 Pa. Commonwealth Ct. 545, 578 A.2d 555 (1990). With the exception of the interest calculations on the wages lost, the calculations in the post-hearing brief on behalf of the complaint are accepted. That figure is, therefore, $7,209.78. With respect to interest on lost wages, those calculations are as follows:

Interest on Lost Wages.

February 14, 1991 - January 31, 1992:	
$8,776.80 X 0.06 X 4.79 years	$2,522.46
February 1, 1992 - January 31, 1993:	
$10,218.00 X 0.06 X 3.78 years	2,317.44
February 1, 1993 - January 31, 1994:	
$10,530.00 X 0.06 X 2.78 years	1,756.40
February 1, 1994 - January 31, 1995:	
$10,842.00 X 0.06 X 1.78 years	1,157.93
February 1, 1995 - June 1, 1995:	
$3,682.20 X 0.06 X 1.45 years	320.35
Total Interest on Lost Wages	$8,074.58

An appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ESTATE OF SALVATORE SYLVESTER, Complainant
v.
ARLINGTON INDUSTRIES, INC., Respondent

DOCKET NO. E55702A

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Arlington laid off Sylvester because of his age. Accordingly, the Complainant has proven discrimination in violation of §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.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ESTATE OF SALVATORE SYLVESTER, Complainant
v.
ARLINGTON INDUSTRIES, INC., Respondent

DOCKET NO. E55702A

FINAL ORDER

AND NOW, this 25th day of March, 1997, 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 of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion as its own finding in this matter, 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 complaint, and hereby

O R D E R S

1. That Arlington cease and desist from discriminating on the basis of age.

2. That Arlington shall pay the Estate of Salvatore Sylvester, within thirty days of the effective date of this order, $92,788.50**,** which sum includes the following backpay factors:

Lost wages from 3/14/91 to 6/1/95	$44,049.00
401(K) retirement plan contributions	2,202.45
Medical insurance premiums reimbursement	4,912.05
Home care nurse reimbursement	15,265.00
Lost disability payments	1,360.00
Lost life insurance proceeds	25,000.00

3. That Arlington shall pay the Estate of Salvatore Sylvester, within thirty days of the effective date of this order, the sum of $15,284.36, which amount represents interest on the backpay award at the rate of six percent per annum, calculated from March 14, 1991 until November 12, 1996.

4. That Arlington shall pay the Estate of Salvatore Sylvester, within thirty days of the effective date of this order, an additional amount of interest on the backpay award, at the rate of six percent per annum calculated from November 12, 1996, until such time as payment of the backpay award has been made.

5. That the payment of all amounts due under this order shall be by check payable to the "Estate of Salvatore Sylvester," delivered in care of Ronald W. Chadwell, Esquire, at the Commission's Harrisburg Regional Office.

6. That, within thirty days of the effective date of this order, Arlington shall report to the Commission on the manner of its compliance with the terms of this order by letter addressed to Assistant Chief Counsel in the Commission's Harrisburg Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION