COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

CYNTHIA ERICKSON, Complainant	:	
v.	:	DOCKET Nos. E-82330-DH and E-95705-D
UNITED STATES STEEL CORP., 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

CYNTHIA L. RAMSEY, Complainant,	:	
v.	:	Docket Numbers E-82330DH E-95705D
United States Steel Corporation, ~~USX, Irvin Works~~,	:	
Respondent.	:	

STIPULATIONS

1. Complainant, Cynthia L. Ramsey (hereinafter ``Ramsey'') is of female gender.

2. Respondent, USX, is an employer in the Commonwealth of Pennsylvania having four or more employees.

3. Ramsey filed a timely complaint of discrimination at PHRC Docket Number E-82330DH.

4. Findings of probable cause were made in both complaints.

5. Conciliation was attempted and failed for both complaints.

6. Public hearing was approved by the PHRC for both complaints.

Michael P. Duff
Counsel for Respondent

Lorraine S. Caplan
Assistant Chief Counsel

FINDINGS OF FACT*

1. The Complainant, Cynthia Erickson, (formerly Cynthia Ramsey), (hereinafter "Erickson"), is a female. (S.F. 1)
2. The Respondent, United States Steel Corporation, (hereinafter USS), owns and operates a steel finishing mill in Irvin, Pennsylvania, where steel is rolled into coil forms for eventual use in automotive parts, appliances, or galvanized-coated materials. (N.T. 90, 91, 278)
3. In the Western Pennsylvania Area, USS owns and operates three major facilities: Irvin, Clairton and ET. (N.T. 91)
4. In 1996, once hired at the USS Irvin plant, an employee is covered by provisions of a 1994 collective bargaining agreement between USS and the union. (N.T. 48, 128; C.E. 5).
5. In 1996, the Irvin plant had between 900 and 1,300 employees. (N.T. 294)
6. The number of employees working for USS in the 1990's was substantially less than in the 1970's and 1980's. (N.T. 81, 344)
7. Coils of steel at the Irvin plant weigh approximately 17 to 19 tons. (N.T. 278)
8. Principally, steel coils are moved by two mobile equipment methods: overhead cranes and tractors. (N.T. 278)

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

N.T.	Notes of Testimony
C.E.	Complainant's Exhibit
R.E.	Respondent's Exhibit

9. The Irvin plant has approximately 330 overhead cranes of varying heights. (N.T. 79, 93, 150, 278, 291, 293)

10. Approximately 80% of the cranes are 2-3 stories high and of the remaining 20%, a few are 45' to 48' high, a few up to 60' high, and a few are lower than 2 stories. (N.T. 293)

11. Most cranes are accessed by climbing stairs and operated from an overhead cab above the floor of the various departments at Irvin. (N.T. 93, 303)

12. On a given day, approximately, 60% of the cranes at the Irvin plant are in operation. (N.T. 294)

13. Prior to running a crane, a crane operator must make a pre-operation visual inspection of a crane by walking on girders around and over the top of a crane. (N.T. 115, 287)

14. In approximately May 1977, a year after graduating high school, Erickson was hired as a laborer at USS's Irvin plant. (N.T. 21, 24)

15. After a few months as a laborer, Erickson was trained on and was certified to operate a ram tractor. (N.T. 25)

16. Erickson operated a ram tractor in the Irvin plant annealing department until 1986 at which time Erickson quit to care for her son whose health was bad. (N.T. 19, 25, 36, 37)

17. As a ram tractor operator, Erickson hauled coils between departments, supplied the feeder line, cut coil ends, banded coils, and re-located coils to a coil field. (N.T. 25-26)

18. In 1979, Erickson received one weeks training as a burner/feeder helper and in the repair of damaged coils. (N.T. 26, 28)

19. Training as a burner/feeder helper was supposed to be two weeks or until a trainee became comfortable. (N.T. 27-28)

20. On one occasion, Erickson's supervisor had assigned Erickson to the feeder helper job but when the department foreman saw Erickson acting as a feeder helper, Erickson's supervisor was instructed to take Erickson off the feeder helper job and put her back on tractor operation. (N.T. 33)

21. Approximately three weeks after this incident, Erickson's supervisor called Erickson to come in from home to work the feeder line because two employees had called off and the feeder line would otherwise have to shut down. N.T. 34-35.

22. Erickson's supervisor told her that he hoped the foreman would not find out. (N.T. 35)

23. During her employment at USS's Irvin plant from 1977 to 1986, Erickson operated ram tractors, fork tractors, hand shears, electric shears, banding tools, and a remote controlled crane. (N.T. 37)

24. Erickson also gained experience in the position of hooker during her earlier employment at the Irvin plant. (N.T. 37)

25. By 1996, Erickson's son had out-grown his earlier health problems and Erickson decided it was time to once again work outside of the home. (N.T. 39)

26. In 1996, one of USS's main resources for employment candidates was the McKeesport Job Service Center, (hereinafter the "Job Center"). (N.T. 217, 325)

27. While not the exclusive method to obtain employment with USS, USS preferred that the Job Center handled USS applications. (N.T. 217, 221, 325)

28. An individual interested in working for USS could express their interest to Job Center staff and a 2 1/2 hour aptitude test would be given, a resume taken, and the interested person would be screened to determine whether they meet USS's minimum qualifications. (N.T. 217, 223)

29. The Job Center both maintained a file on eligible candidates and sent to USS resumes of qualified candidates. (N.T. 217, 223, 224)

30. USS also extended job offers to individuals outside the Job Center process and then sent such persons through the Job Center process. (N.T. 221)

31. By contract USS had to first post an opening and only if there was no internal bid on an opening could USS hire from the outside. (N.T. 319)

32. Initially, Erickson called the personnel office at USS's Irvin plant and was told by Charlene O'Kelly that she had to go to the Job Center to apply. (N.T. 40)

33. Erickson followed O'Kelly's instruction and on March 27, 1996, she applied at the Job Center specifically for USS's Irvin Works location. (N.T. 40, 228)

34. After registering with the Job Center, Erickson received a call from Irvin Works telling her to be tested at the Job Center. (N.T. 40-41)

35. Erickson took the requisite test and scored an 87 out of a possible 94. (N.T. 40-41)

36. A few weeks after being tested, Erickson received another call from the Irvin Works inviting her to interview for a tractor operator position. (N.T. 41)

37. Erickson was interviewed by Keith Lowery, (hereinafter "Lowery"), manager of USS's Irvin Work's APEX program–"All people excellence, all process excellence." (N.T. 42, 277)

38. Erickson remembered Lowery from her earlier employment as Lowery had worked in the tin ambry department near her, however, Lowery did not remember Erickson. (N.T. 27, 42)

39. Although Lowery told Erickson that she was being highly recommended for the tractor operator position, and that she would be hearing from USS, after not hearing, Erickson eventually called O'Kelly who offered no explanation why Erickson had not been contacted. (N.T. 43, 44)

40. Erickson did not complain about not being hired as a tractor/operator. (N.T. 82)

41. In late1994 to early 1995, the Irvin plant began a continuous improvement program which would entail employee training. (N.T. 124, 145, 279-280)

42. Realizing that training would necessitate temporary replacements, together USS and the union developed a unique arrangement whereby a group of twelve employees would be hired for use throughout the Irvin plant as temporary relief for employees being trained or otherwise out. (N.T. 124, 145, 279-280, 281, 315, 336)

43. John Skube, Employee Relations Manager/Department Manager of Labor Relations, (hereinafter "Skube"), drafted the agreement between USS and the union. (N.T. 336)

44. Part of the plan for the twelve, commonly and collectively known at Irvin Works as the "Dirty Dozen", was to have all twelve employees assigned to a department until the entire department received training. (N.T. 125, 341, 342)

45. Additionally, Senior Process Leaders from individual departments could request one or more of the twelve to fill-in for a vacancy in their department. (N.T. 281)

46. USS anticipated the plant's training need to last approximately 6 to 8 months with a possible one year extension. (N.T. 337).

47. The position title of the temporary labor pool was Material Handler, which entailed potential operation of the plants 400 to 500 pieces of mobile equipment. (N.T. 146, 279, 301)

48. The 12 to be hired were to be unique with varied abilities and when hired, were considered more skilled than the typical hiree. (N.T. 280, 315, 339-340)

49. On August 20, 1996 Erickson was interviewed for one of the 12 newly created positions. (N.T. 45; R.E. 1)

50. Erickson was interviewed by Jim Marshall, a long term union employee, (hereinafter "Marshall"); John Guy, (hereinafter "Guy"); Lowery; and a union representative. (N.T. 44, 281)

51. Erickson was informed that USS was hiring for tractor/crane operators and that 12 were to be hired as part of a new Program USS was trying as a temporary labor pool. (N.T. 44-45, 79, 282)

52. During the interview, Lowery neither looked at Erickson nor spoke to her. (N.T. 45)

53. On an interview record, Lowery noted Erickson's weaknesses as "fear of height? C.A. Crane – highest in mill." (R.E. 1)

54. At the bottom of Lowery's interview record of Erickson, Lowery noted, "understands must run crane and tractors – train on all jobs." (R.E. 1)

55. Although provided an opportunity to check either "Hire" or "Do Not Hire", Lowery checked neither as a recommendation. (R.E. 1)

56. Marshall knew Erickson from when she previously worked at the Irvin plant and without reservation recommended that she be hired. (N.T. 126,157)

57. Lowery expressed to Marshall that Erickson was not a good candidate, that she had quit before, and how did they know she would not quit again. (N.T. 157)

58. After Marshall and Lowery discussed Erickson, Lowery finally said, "I guess you've got to hire her." (N.T. 158)

59. Erickson and eleven others were hired and after physicals and drug tests, began employment at the Irvin plant on September 3, 1996. (N.T. 47-48)

60. Of the 12 hired, 10 were male and two were female. (Stipulation at N.T. 153)

61. At the time of her hire, Erickson had a general fear of heights but the exact extent of her fear was unknown to her. (N.T. 46)

62. Erickson's principal fear was that of going up open backed stairs. (N.T. 46, 84)

63. Erickson did not experience fear of height problems working on her father's roof approximately 30' to 40' off the ground. (N.T. 46)

64. Initially a new hire is a probationary employee for their first 1000 hours. (N.T. 48, 313, 314)

65. USS has the exclusive right to terminate a probationary period, but after a probationary period USS required just cause to terminate an employee. (N.T. 127, 142-143, 314)

66. The training program for the newly hired 12 Material Handlers began with structured safety training. (N.T. 48)

67. Subsequently, the 12 were divided up, some beginning tractor operation training, others beginning crane operation training. (N.T. 49)

68. After safety training, Erickson's group was initially given tractor operation training. (N.T. 49)

69. Passing tractor operation training required 40 hours of instruction and the passing of a test. (N.T. 49)

70. To be certified as a crane operator, trainees receive 80 hours of training and then take a test. (N.T. 49, 103)

71. Charlie Chasco was USS's tractor instructor. (N.T. 49)

72. After initial book work, Chasco took his group to Erickson's old department where some of her previous co-workers still worked. (N.T. 49)

73. One of the individuals with whom Erickson had previously worked told Chasco about Erickson, so Chasco challenged Erickson that if she could get on the tractor, pick up a coil, take it to a specified location and return and park the tractor he would pass her. (N.T. 49)

74. Erickson met Chasco's challenge. (N.T. 49)

75. On the second day on the floor, Chasco used Erickson to help train the others in her group. (N.T. 50)

76. Erickson was almost immediately able to function as a tractor operator. (N.T. 52)

77. After approximately a week on tractor training Erickson's group shifted to crane operation training. (N.T. 52)

78 The crane operation trainer was Bill Piper, (hereinafter "Piper"). (N.T. 52, 103)

79. Once again, first the groups went through classroom work on OSHA regulations, USS policies, and safety rules. (N.T. 52, 102)

80. Piper, a 30 year USS union employee, had been a crane operator trainer for 10 years. (N.T. 80, 102)

81. Piper's actual position was as a Millwright, however, for the majority of his time, he was Irvin Works' crane instructor. (N.T. 79, 101)

82. After the classroom training, Piper took the group to the floor to look at the plant's cranes. (N.T. 52)

83. Erickson's and Piper's versions differ regarding what occurred next. (N.T. 52-54,94-98, 104-105, 112-113)

84. Erickson testified that Piper first took the three member training group to a 30' to 45' overhead crane and each of the group, including Erickson, took turns running the crane, working the hoist, and levers, and going back and forth attempting to drop a chain in a bracket. (N.T. 52)

85. Erickson offered that the next crane the group was taken to was in the coal reduction department and was approximately 65' high. (N.T. 53)

86. Erickson indicated that when she became shaky going up the stairs because the stairs had no backs, she informed Piper who assisted her up the stairs until she was able to get into the crane. (N.T. 53, 96)

87. Erickson testified that once in the crane she looked over and was not panicked, however, the whole time she was thinking about what it would be like going back down the open backed stairs. (N.T. 53, 96)

88. Erickson offered that Piper ran the crane and when asked if she wanted to try, she declined telling Piper her concentration was on descending the stairs. (N.T. 54, 97, 98)

89. Erickson further offered that she did experience difficulty going down the stairs and at the bottom Piper told her there was no sense putting her through that. (N.T. 54)

90. Piper testified that Erickson did not run a crane but had difficulty with the catwalk leading to the crane. (N.T. 104, 111)

91. Piper offered that while he and three trainees inspected the crane and entered the crane, Erickson practiced going up and down the stairs. (N.T. 104-105)

92. Piper indicated that when he came down from the first crane, Erickson indicated she did not want to give up so he suggested another side-mounted crane in the galvanized department. (N.T. 105)

93. Piper offered that Erickson did get in this crane but stayed against the wall not wanting to look out or touch the controls. (N.T. 105)

94. Piper testified that Erickson's fear was one of the worst cases he could recall. (N.T. 112-113)

95. Erickson told Piper she did not want to get fired or to get in trouble and asked Piper not to do anything. (N.T. 55)

96. Piper had formed the impression that those of the newly hired 12 that were good on tractors would be assigned to run tractors while those good on the cranes would be assigned that task. (N.T. 105, 119)

97. Acting on that understanding, Piper told Erickson that he could call and recommend that Erickson run tractors. (N.T. 105)

98. Erickson gave her OK to Piper. (N.T. 105)

99. Piper called Mark Lesnick, the group coordinator of the 12 newly hired trainees, (hereinafter "Lesnick"), and first conveyed his understanding that those good on tractors

would be assigned tractor duties and those good on cranes would be assigned crane duty. (N.T. 105, 281)

100. Lesnick responded, "yes, that's what we're planning." (N.T. 105)

101. Piper then told Lesnick, "okay, well then, I would make a recommendation that Cindy run tractor because I don't think she's going to make it as a crane . . ." (N.T. 105, 113, 114)

102. For the next two days, Erickson was assigned tractor operation duties. (N.T. 56)

103. Lowery and Skube got together and discussed Erickson and after speaking with Skube, Lowery decided to terminate Erickson. (N.T. 286, 311-312)

104. On Friday, September 20, 1996, Erickson's team leader, Moe Trump, told Erickson she had a meeting in Skube's office that afternoon. (N.T. 56)

105. Erickson was not informed of the nature of the meeting, only that Skube, Lesnick, Erickson's supervisor, and Ron Frum, a union representative would be there. (N.T. 57, 288)

106. Although probationary employees have a right to union representation, only Skube and Lowery were at the meeting. (N.T. 57, 299-300)

107. Had Erickson know what the meeting was to be about, she would have asked for union representation. (N.T. 57)

108. The meeting began with Skube telling Erickson that he heard she had a problem with heights. (N.T. 57, 317)

109. Erickson then confirmed that she had been shaky going in the 65' crane. (N.T. 58)

110. Skube then informed Erickson that she was being terminated for fear of heights. (N.T. 58)

111. Stunned, Erickson responded, wait a minute, she had operated the lower cranes, couldn't she be given more time to get used to going up and down from the 65 crane, and that she was in training and isn't that what training is about? (N.T. 58, 77, 99, 329)

112. Erickson was told no and that there was a fear for both her safety and the safety of others below the crane. (N.T. 58)

113. Skube told Erickson being terminated would get her out of having to go into the cranes and that as soon as another position opens for which she is eligible, Erickson would be rehired, the only restriction was that openings had to first be posted internally. (N.T. 58, 80, 329)

114. Lowery then stood and stated, "yes, definitely you will be rehired." (N.T. 58)

115. Erickson became disoriented and was crying. (N.T. 58, 317)

116. Generally, probationary employees who are terminated have a notation of "would not rehire" put on their termination slips. (N.T. 317, 342)

117. The notation "would not rehire" effectively disqualifies that person from future employment with USS. (N.T. 318)

118. Skube arranged to have the phrase, "Eligible for rehire", typed on Erickson's termination notice. (N.T. 317, C.E 1)

119. Although Skube told Erickson she would be considered for rehire, Skube did not advise his staff to keep an eye out for Erickson's application. (N.T. 320, 329)

120. Erickson was not recalled. (N.T. 60)

121. The week following Erickson's termination, Piper learned from his co-trainer that Erickson had been fired. (N.T. 105)

122. Piper went to Lesnick to find out what happened and was told that there had been a meeting and that Lesnick had been asked to leave the meeting and that the decision to fire Erickson had been made outside of Lesnick's presence. (N.T. 106)

123. After learning that Erickson had been fired, Piper stopped training. (N.T. 107)

124. Subsequently, Piper spoke with union representative Frum who informed Piper that Erickson would be brought back and because of that would Piper train. (N.T. 107-108, 110, 114, 119)

125. Piper did return to training. (N.T. 108)

126. Piper testified that in his opinion, Erickson could have acclimated to the higher crane. (N.T. 112)

127. Of the 100's of employees trained by Piper, like Erickson, some male employees had initially demonstrated a fear of heights. (N.T. 107, 110, 116)

128. Prior to Erickson, other employees who initially demonstrated a fear of operating a crane were not fired but were either given the opportunity to gradually overcome their fear or were simply reassigned. (N.T. 107, 136)

129. After Erickson was terminated, other probationary employees were terminated when they were unable to work at heights. (N.T. 383.384-375)

130. After Erickson's termination, the remaining 11 Material Handlers had not been scheduled to work on cranes. (C.E. 10)

131. When Marshall did not see Erickson's name on the schedule, he called management and was told that Erickson had quit. (N.T. 135)

132. At first, Erickson did not think there was anything she needed to do to be rehired. (N.T. 60)

133. Erickson called USS personnel to find out if there was anything she needed to do and if USS was hiring. (N.T. 60)

134. Approximately two months after being informed that Erickson had quit, Marshall learned directly from Erickson that she had not quit. (N.T. 136)

135. Concerned that he had been deceived, Marshall spoke with the Union Chairman and President about the situation. (N.T. 136)

136. Erickson also called the union to ascertain whether USS was hiring. (N.T. 60)

137. Once Erickson learned that USS was hiring, she called the union and spoke with both Marshall and Guy. (N.T. 60)

138. After speaking with Marshall, Erickson consulted with an attorney and on February 10, 1997, filed a PHRC complaint. (N.T. 60)

139. A line of progression (hereinafter "LOP") is a group of vertically aligned jobs that range from low classification jobs that pay less to higher classification jobs that pay more. (N.T. 323, 383)

140. Each department at USS's Irvin Works has a LOP with the lowest job in the LOP usually being a laborer. (N.T. 323, 324)

141. USS has the option of assigning employees within a LOP to higher jobs in the LOP when temporary vacancies exist. (N.T. 148, 357)

142. Performance in the Laborer positions at USS's Irvin Works does not itself require crane operation. (N.T. 346, 348, 366-367)

143. Some laborers simply remain at the entry level position for long periods of time without bidding on higher jobs in a department's LOP. (N.T. 330)

144. An incumbent position within a LOP is a position held permanently by an employee either hired directly into that position or secured by the employee through a bidding process. (N.T. 356-357)

145. Prior to 1998, Skube was responsible for hiring employees at USS's Irvin Works. (N.T. 310)

146. On or about September 1, 1998, Ed McGough, (hereinafter "McGough") became the Staff Supervisor of Personnel at USS's Irvin plant thereby taking over from Skube the primary hiring responsibility. (N.T. 384)

147. Erickson's first PHRC complaint was served on USS on March 19,1997. (PHRC Complaint at Docket No. E-82330-DH).

148. The PHRC Pittsburgh Regional Office conducted a fact finding conference regarding Erickson's first PHRC complaint. (N.T. 168)

149. Skube attended the fact finding conference and indicated to the PHRC investigator that the union contract prohibited USS from simply bringing someone back to work without that person going through the Job Center process. (N.T. 62-63, 185, 208-210)

150. Skube informed the PHRC investigator that the only route to rehire was through the McKeesport job service and that Erickson had not gone back to the McKeesport job service and renewed her application. (N.T. 62-63, 189)

151. The day after the fact finding conference, Erickson visited the McKeesport job service center to renew her application, at which time, Erickson was informed that her application was still active. (N.T. 63)

152. Yearly, Erickson visited the McKeesport Job Service Center to renew her application. (N.T. 63-64; 249)

153. Once Erickson had been hired by USS on September 3, 1996, her Job Service Center record automatically went inactive. (N.T. 229; C.E. 11)

154. Erickson also faxed another resume to the Job Service Center. (N.T. 63)

155. Subsequently, Erickson changed her application at the Job Service Center to reflect that she was also interested in working at USS plants in Clairton and ET. (N.T. 64)

156. In 1998, Erickson faxed a resume directly to Irvin Works. (N.T. 65)

157. Understanding that USS maintained resumes for a period of two years, Erickson again faxed a second resume to Irvin Works on February 4, 2000. (N.T. 64, 65)

158 After neither being referred by the Job Service Center nor recalled by Irvin Works, on June 19, 2000, Erickson filed a second PHRC complaint at Docket No. E-95705-D. (N.T. 67; PHRC Complaint at Docket No. E-95705-D)

159. On her resume, Erickson did not list the short period of employment with USS in 1996. (N.T. 68)

160 Joint Exhibit 1 is a list of 213 individuals USS Irvin Works has hired from the street since September 1996. (N.T. 360; J.E. 1)

161. All but 15 of the 213 new hires were hired into laborer positions. (N.T. 360; J.E. 1)

162. Of the 15 not hired as laborers, 6 were hired as janitors. (J.E. 1)

163. Virtually all of the women that applied for the 213 positions listed on Joint Exhibit 1 were hired if they were qualified. (N.T. 395)

164. Of the 213 new hires, 12 were women. (N.T. 386; J.E. 1)

165. The column titled "Initial Position Code" on Joint Exhibit 1 cross references the position with the department to which a listed individual was initially assigned. (N.T. 360-361; J.E. 1)

166. Beginning with the earliest hire on October 21, 1996 and going forward chronologically the following is a listing of laborer "Initial Position Codes" on Joint Exhibit 1:

a. 4104 - Laborer in the Galvanized Department
b. 2404 - Laborer in the Annealing Department
c. 2218 - Laborer in the Cold Strip Finish Department
d. 1852 - Laborer in the Hot Mill
e. 3112 - Laborer in either the Sheet Finishing or Tempering Mill
f. 2122 - Laborer in the Pickle Line (N.T. 361-363; J.E. 1)

167. Initial Position Code 4100 is a Utilityman A position in the Galvanized Department. (N.T. 362-362, 396; J.E. 1)

168. Initial Position Code 3311 is a Burner (Hooker) position in the Hot Strip Finish Department. (N.T. 363; J.E. 1)

169. Initial Position Code 9177 is the Janitor position. (J.E. 1)

170. The Janitor position does not require crane work. (N.T. 369-370)

171. The permanent position of crane operator is a position for which employees bid. (N.T. 350)

172. Complainant Exhibit 4 is a compilation of resumes, applications, and various interview sheets for 66 of the 213 individuals hired since September 1996. (N.T. 73-75; C.E. 4)

173. Erickson was at least as qualified if not better qualified than the 66 individuals represented in Complainant Exhibit 4. (N.T. 72, 75, 138-138-139, 345)

174. Some of the 213 new hires were not referred to Irwin Works by the Job Service Center and were not even in the Job Service Center's data base. (N.T. 234)

175. Since Erickson's termination, USS and the union have entered into a new Collective Bargaining Agreement, a portion of which provides for the consolidation of 10 to 20 different LOP's into 4 to 5 jobs with multi-job assignments. (N.T. 392)

176. Of the newly created 4 or 5 consolidated positions, there is still an entry level position. (N.T. 397)

177. Not all of the newly created positions encompass crane operation. (N.T. 402)

178. Following being terminated, Erickson initially did not seek alternate employment because she relied on being told she would be called back. (N.T. 267)

179. Beginning in 1997, and continuing to date, Erickson has actively sought to find alternate work. (N.T. 21-22, 266-269)

180. From January 1997 until mid-1999, Erickson has had to pay a monthly premium of $350.05 for health care. (N.T. 270)

181. Had Erickson not been terminated, she would have received yearly bonuses in the following amounts:

a. 1997 - $1,000. cash and $1,000. stock

b. 1998 - $1,000. cash and $1,000. stock

c. 1999 - $ 500. cash and $ 500. stock

d. 2000 - $1,000. cash and $1,000. stock

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 have fully complied with the procedural prerequisites to a public hearing in this case.
3. Erickson is an individual within the meaning of the Pennsylvania Human Relations Act (hereinafter "PHRA").
4. USS is an employer within the meaning of the PHRA.
5. Erickson has met her initial burden of establishing a *prima facie* case of sex based termination by proving that:
   a. she is a member of a protected class;
   b. that she suffered an adverse action;
   c. that she was qualified for the position; and
   d. that she was treated differently from others not of her protected class.
6. USS articulated legitimate nondiscriminatory reasons for terminating Erickson.
7. Erickson has shown USS's reasons to be pretextual and that the reason Erickson was terminated was because of her sex, female.
8. Erickson has met her burden of establishing a *prima facie* case of a retaliatory failure to hire by proving that:
   a. that she engaged in a protected activity;
   b. that USS took an adverse employment action, and
   c. that there was a casual connection between the protected activity and USS's adverse action.
9. USS articulated a legitimate nondiscriminatory reason for not hiring Erickson.

10. Erickson has proven that USS's reason is pretextual and that the reason she was not hired was because she had filed a PHRC complaint against USS.

11. Erickson has established a *prima facie* case of a sex-based failure to hire by proving:

    a. that she is a member of a protected class;

    b. that USS knew Erickson wanted a job, that she was qualified, and that there were available jobs;

    c. that despite her qualifications she was not hired; and

    d. that positions were awarded to applicants with equal or less qualifications than Erickson's.

12. USS articulated a legitimate nondiscriminatory reason for not hiring Erickson.

13. Erickson has demonstrated by a preponderance of the evidence that she was not hired because she is a female.

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

15. Erickson is entitled to lost wages, plus nine percent interest.

16. Erickson is entitled to instatement and retroactive seniority.

OPINION

These consolidated cases arise on two Pennsylvania Human Relations Commission, (hereinafter "PHRC), complaints filed by Cynthia L. Ramsey, now Cynthia L. Erickson (hereinafter "Erickson") against United States Steel Corporation. (hereinafter "USS"). Erickson's initial claim at PHRC Docket No. E-82330-DH filed on February 21, 1997, alleged that her termination was because of a disability, because of race (Erickson is White and her husband is Black), and because of her sex, female. This initial complaint also alleged that USS refused to reinstate her for the same reasons. Erickson's second claim, at PHRC Docket No. E-95705-D alleged a refusal to hire because of Erickson's sex, female, and in retaliation for filing a PHRC claim.

Collectively, Erickson's allegations allege violations of Sections 5(a) and 5(d) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951, et seq. (hereinafter "PHRA").

PHRC staff investigated the allegations, and at the investigation's conclusion informed USS that probable cause existed to credit Erickson's allegations. Thereafter, the PHRC attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, the PHRC notified the parties that it had approved a public hearing in both cases.

At a consolidated pre-hearing conference, Erickson's race and disability-based claims were abandoned. Accordingly, Erickson's PHRC case at Docket No. E-82330 proceeded as a sex-based claim only.

The public hearing was held on August 12 and 13, 2003, in Pittsburgh, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The PHRC's interest in the complaint was overseen by PHRC staff attorney Lorraine Caplan. Michael P. Duff, Esquire, appeared on

behalf of USS. The parties were afforded an opportunity to submit post-hearing briefs. Both Attorney Caplan's post-hearing brief and USS's post-hearing brief were received on February 14, 2004. Since Erickson's allegations consist of three separate components, each aspect of her case will be analyzed separately.

First, in her termination disparate treatment case, Erickson generally advances the theory that USS treated her less favorably than others because of her sex, female. To prevail, Erickson is required to prove that USS had a discriminatory intent or motive. Allegheny Housing Rehabilitation Corp., v. PHRC, 517 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 U.S. 248, 254 n.8 (1981). Erickson 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. 467, 477 (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, 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).

On the question of Erickson's termination, we adapt the McDonnell Douglas test because this component of her case involves an alleged sex-based termination. Erickson attempts to show that comparable persons not in her protected class were treated better. Accordingly, to establish a *prima facie* case, Erickson must show:

1. that she is a member of a protected class;
2. that she suffered an adverse action;
3. that she was qualified for the position;
4. that she was treated differently from others not of her protected class.

Warfield v. Lebanon Correctional Institute., 80 FEP 597 (6th Cir. 1999), citing Mitchell v. Toledo Hospital, 964 F.2d 577 (6th Cir. 1992). See also, Drago v. Aetna Plywood, 82 FEP 1187 (N.D. Ill 1997).

USS's post-hearing brief advances the argument that the third element of the requisite *prima facie* showing should be that Erickson performed her job satisfactorily. The PHRC

regional office's post-hearing brief suggests that the fourth element should be that others not of Erickson's protected class were kept as employees.

The elements of a *prima facie* case will vary depending on the circumstances of a case. See Collier v. Budd Co., 66 F.3d 866 (7th Cir. 1995). In some cases, the fourth element in a termination case is simply that the circumstances surrounding the termination give raise to an inference of discrimination. See Cole v. Conrail 87 FEP 1281, (W.D.N.Y. 2001); Whitley v. Peer Review Systems, Inc., 85 FEP 1577 (8th Cir. 2000); Diddle v. Unified School District No. 207, 83 FEP 1801 (D.C. Kan 1998).

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 Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 716, 31 FEP 609 (1983). We must recognize that "[d]iscrimination victims often come to the legal process without witnesses and with little direct evidence indicating the precise nature of the wrongs they have suffered." Jackson v. University of Pittsburgh, 826 F.2d 23. 236, 44 FEP 977 (3d Cir. 1987), *cert. denied.* 484 U.S. 1020 (1988). Allegations of discrimination are uniquely difficult to prove and often depend upon circumstantial evidence. *See. e.g.*. Aman v. Cort Furniture Rental Corp., 85 F.3d Cir. 1996); Lockhart v. Westinghouse Credit Corp., 879 F.2d 43, 48, 50 FEP 216 (3d Cir. 1989; and Chipollini v. Spencer Gifts, Inc., 814 F.2d 893, 897, 43 FEP 681 (3d Cir.) (en banc) *cert. denied*, 483 U.S. 1052 (1987) "This is true in part because. . .discrimination . . . is often subtle." Chipollini, 814 F.2d at 899. "[A]n employer who knowingly discriminates . . . may leave no written records revealing the forbidden motive and may communicate it orally to no one." Id. (quoting LaMontagne v. American Convenience Prods., 750 F.2d 1405, 1410, 36 FEP 913 (7th Cir. 1984)).

The distinct method of proof in employment discrimination cases, relying on presumptions and shifting burdens of articulation and production, arose out of the U.S. Supreme Court's recognition that direct evidence of an employer's motivation will often be unavailable or

difficult to acquire. See Price Waterhouse v. Hopkins, 490 U.S. 228, 271, 49 FEP Case 954 (1989) (O'Connor, J., concurring) ("[T]he entire purpose of the McDonnell Douglas *prima facie* case is to compensate for the fact that direct evidence of intentional discrimination is hard to come by."); Trans World Airlines, Inc., v. Thurston, 469 U.S. 111, 121, 36 FEP 977 (1985) ("The shifting burdens of proof set forth in McDonnell Douglas are designed to assure that the plaintiff has his day in court despite the unavailability of direct evidence." (internal quotation marks omitted)); see also International Bhd. Of Teamsters v. United States, 431 U.S. 324, 359 n.45 (1997) (recognizing that burden-shifting rules "are often created . . . to conform with a party's superior access to the proof"); Chipollini, 814 F.2d at 897.

In this instance, the elements of the requisite *prima facie* case best reflect the employment practice involved and circumstances present.

If Erickson can establish a *prima facie* case, the burden would shift to USS to "articulate some legitimate, nondiscriminatory reason" for its actions. McDonnell Douglas, 411 U.S. at 802. USS would be required to 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 285, and "legally sufficient to justify a judgment" for USS. Id. at 255. However, USS would not have the burden of "proving the absence of discriminatory motive." Board of Trustees v. Sweeney, 439 U.S. 24, 25, 18 FEP 520 (1982).

If USS carries this burden of production, Erickson must then satisfy a burden of persuasion and show that the legitimate reasons offered by USS are a pretext for discrimination. McDonnell Douglas, 411 at 804. To establish that a proffered reason is pretextual, Erickson must prove both that the reason offered was false, and that discrimination was the real reason for the challenged termination. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993). This burden merges with Erickson's burden of persuading us that she has been the victim of intentional discrimination. Burdine, 450 U.S. at 256. The ultimate burden of persuading the trier

of fact that USS intentionally discriminated against Erickson remains at all times with Erickson. Id. at 253.

On the initial question of whether Erickson can establish a *prima facie* case of a sex-based termination, there is no controversy over two of the four elements. Clearly, Erickson is a member of a protected class. She is a female. Equally clear is the fact that Erickson was terminated. The remaining two elements have been challenged by USS.

As to whether Erickson was qualified, USS urges a finding that Erickson could not perform the job she was hired to do. USS submits that the greatest need in the Irvin Works plant was for crane and tractor operators to provide temporary relief to operators so a plant wide training program could occur. USS argues that USS both expected and required all twelve of those hired as temporary relief to be capable of operating any crane in the Irvin Works plant.

In effect, USS submits that Erickson can not establish that she was "qualified" because it had become obvious that Erickson had a severe fear of heights that prevented her from operating cranes. In summary, USS argues that Erickson's performance was unsatisfactory.

In the case of Johnson v. Trump Plaza Hotel & Casino, 81 FEP 219 (D.C.N.J. 1999), the court rejected a similar argument. The thrust of the argument made by the Respondent in Johnson was that Johnson's poor performance shows that Johnson was not qualified for the position from which he was fired. That argument was found to be insufficient to defeat Johnson's claim at the *prima facie* stage. The court noted that if complaints about an employee's performance are sufficient to defeat a claim at the *prima facie* state, any employer could defeat a claim by simply alleging it was dissatisfied with an employee's performance. The court went on to say it does not question an employer's prerogative to set standards nor does the court want to substitute its view of what constitutes adequate performance. The court simply declined to treat a subjective assessment of performance as evidence that Johnson failed to establish a *prima facie* case. To do so would collapse the entire analysis into a single initial step

at which all issues are resolved. Citing Weldon v. Kraft, Inc., 896 F2d 793 (3rd Cir. 1990). In Johnson, the court found that the employer's decision to employ Johnson established that he was objectively qualified for the position in question. Therefore, the qualified element was met. The question of whether poor performance was the real reason for Johnson's discharge was best left to the pretext stage of the proof analysis.

We agree with the liberal principles used in the Johnson case. Section 12(a) of the PHRA requires that the provisions of the PHRA be construed literally for the accomplishment of the purposes of the PHRA. In accordance with this mandate, we find that Erickson has established that she was qualified for the position from which she was terminated based on USS's decision to employ her.

Thus, we turn to the fourth element in the requisite *prima facie* showing. Once again USS urges a finding that Erickson can not show that similarly situated employees had been treated more favorably than her. USS submits that Erickson did not establish that all relevant aspects surrounding other employees were "nearly identical" to hers. Indeed, USS contends that Erickson failed to specifically identify a single similarly situated male employee who received more favorable treatment. USS suggests that Erickson can not show that a fear of heights resulted in a male being unable to perform this job. Finally, USS offered evidence of several males who were also terminated when their fear of heights resulted in their inability to run overhead cranes.

The evidence presented reveals that William Piper (hereinafter "Piper"), had been a crane operation trainer for 10 years at USS's Irvin Works Plant. (N.T. 102). Piper was a 30 year employee at the Irvin Works plant. Piper testified that in 30 years, there had been a lot of others who were afraid of heights and that some were allowed just to overcome their fears and those that could not, USS found other jobs for them. (N.T. 106-107).

James J. Marshall, (hereinafter "Marshall"), another 30 plus years employee at the USS Irvin Works plant testified that, before Erickson, he was unaware of anyone who was terminated for a fear of heights. (N.T. 137).

The combined testimony of Piper and Marshall present sufficient evidence that before Erickson, USS allowed employees who exhibited a fear of heights to either attempt to acclimate to heights or other jobs were found for them. USS's evidence that males who could not run a crane and were terminated after Erickson is far less probative than the evidence regarding what occurred before Erickson. Once a complaint has been filed, future changes in behavior and similar treatment do not negate evidence of disparate treatment prior to the filing of a complaint.

Keeping in mind that establishing a *prima facie* case should not be onerous, we find that Erickson has sufficiently presented a *prima facie* case. Accordingly, we turn to the question of whether USS articulated a legitimate non-discriminatory reason for terminating Erickson. Said differently, the burden of production now shifts to USS to articulate a legitimate non-discriminatory reason for Erickson's termination.

Fundamentally, USS satisfies it's production burden by articulating that Erickson was terminated because she was unable to perform a major component of her job. USS submits that Erickson's fear of heights prevented her from operating overhead cranes and that crane operation was a requirement of the position for which Erickson had been hired.

Because USS has successfully articulated a legitimate nondiscriminatory reason, Erickson has the task of proving that the reasons proffered are not worthy of belief and that the true reason for her termination was sex-based discrimination. Erickson must:

> demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them "unworthy of credence" and hence infer "that the employer did not act for [the asserted] non-discriminatory reasons.

Fuentes v. Perskie, 32 F.3d 759 (3rd Cir. 1999), quoting McDonnell Douglas Corp., 911 U.S. at

802.

The Pennsylvania Supreme Court also articulated principles which are useful in the ultimate resolution of this case. 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 discriminatorily 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, supra at 319.

On the question of pretext, USS's post-hearing brief begins by suggesting the testimony of Piper and Marshall about others before Erickson either being allowed to acclimate to heights or being reassigned rather than terminated should be seen as unsubstantiated assertions. If anyone in the Irvin plant was in a position to know of others who were allowed to either acclimate or be reassigned it would be Piper. To expect Piper to instantly come up with specifics in this regard is not reasonable. Instead, his version that "lots" of others were either allowed to acclimate to heights or be reassigned is accepted.

USS's post-hearing brief also suggests there may be a difference between Erickson and the others about whom Piper testified. USS submits that while Erickson was a probationary employee, the others may have been permanent employees. In the case of Derasmo v. City of Gainesville, 78 FEP 384, (N.D. Fla. 1998), the court rejected an argument that a probationary employee may not be compared to a permanent employee. We adopt the Desasmo reasoning

that holds that the different status of employees compared is simply taken into account in determining if, in fact, a Complainant was treated differently.

Later in USS's post hearing brief, USS observes that Erickson might argue that she should have been given an opportunity to acclimate to working in cranes. USS argues that USS was not obligated to provide such an opportunity. Piper's testimony in this regard adds to the spectre of pretext. Piper was clear that others had been afforded an opportunity to acclimate to their fear of heights.

A review of the totality of the circumstances reveals that the evidence collectively demonstrates the pretextual nature of USS's articulated reason. This review begins with Erickson's interview. Interviewing Erickson were three USS employees: Keith Lowery, (hereinafter "Lowery"), Manager of USS's APEX Program; Marshall, and Union Representative John Guy, (hereinafter "Guy"). Lowery can be found with his head down and asking Erickson no questions. Later, he expressed a concern to Marshall that perhaps Erickson should not be hired because she had quit before. We note that his expressed concern and hesitancy about hiring Erickson was not about Erickson's revelation that she had been afraid of heights and believed she had overcome it, but that she had quit. Of course, Erickson had quit earlier to care for her seriously ill son. Quite clearly, Lowery had no concern for the reason Erickson had quit, instead we are left with the idea that he was either simply uninterested or satisfied that he had an unexplored reason to recommend that Erickson not be hired.

Quite often, unasked questions speak as loud as questions that are asked. One must look carefully when a manager has a concern in an interview and after failing to explore it, uses incomplete information as the basis of a negative decision. Such a puzzling scenario is the beginning of Erickson's experience with USS in 1996.

Next, while USS's argument is well taken that the job for which Erickson was hired consisted of more than operating a tractor, it is clear that Erickson had years of experience on

tractors very similar to those to which the temporary fill-ins would be assigned. The evidence reveals that soon after demonstrating her skills on a tractor to her trainer, Erickson was utilized to help train others hired along with her. The reason this is important goes to the fact that, despite a specific request to be allowed to attempt to acclimate to her fears, Erickson was literally given no opportunity to demonstrate whether she might sufficiently overcome any fears she was having.

This brings us to the nature of Erickson's fear. A close review of the evidence reveals that Erickson's fear primarily was associated with climbing stairs that had open backs. Height, per se, was not the problem.

Clearly, there is inconsistency in the record between Erickson's version of events surrounding her first day of actual crane operation training and the version Piper gave. USS assumes Piper's version is correct and the PHRC regional office post-hearing brief suggests Erickson's version should be accepted.

Whichever version one believes, there is total consistency in the thought that Piper labored under the understanding that of the 12 hired, those who did the best on tractors would be assigned to operate tractors and those doing the best on cranes would be assigned these duties. The evidence is clear that Piper's motivation was an effort to facilitate Erickson's assignment to tractor operation.

When Erickson told Piper she was concerned that she might get in trouble or be fired, Piper assured Erickson that she would be assigned where she performed the best - tractor operation. At that point, Erickson wanted to make an effort to overcome any fears she was experiencing.

Added to Piper's understanding is evidence that Senior Process Leader/Group Coordinator Mark Lesnick, (hereinafter "Lesnick"), agreed with Piper's understanding about who was to be assigned where. Because of Lesnick's agreement, Piper recommended that Erickson

be assigned tractor duties. Had Piper been advised that the expectation was that all 12 newly hired employees had to be certified to run cranes, Piper would likely have assisted Erickson differently.

Normally, employees were given 80 hours of instruction and on-the-job training before a decision is made if the trainee qualifies for crane certification. Because of Piper's understanding, Erickson was afforded crane operation training for only one day. While others were given a fair chance to become certified, Erickson was not. Instead, John Skube, (hereinafter "Skube"), USS's Irvin plant Relations Manager, and Lowery met together and without even speaking to either Erickson or Piper, summarily decide to terminate Erickson.

Next, we find Erickson being instructed to go to a meeting in Skube's office. She had been told she would be meeting with a union representative, Lesnick and Skube. When Erickson arrived at the designated time, only Skube and Lowery were present. Although Erickson had a right to union representation, she was neither informed of this nor was a union representative present.

In effect, the meeting began with Skube telling Erickson she had to be terminated because of her fear of heights. Erickson responded that she had gone into a 45' crane and had operated it. Indeed, 80% of overhead cranes at the Irvin Works plant are 45' and lower. Erickson also asked for additional time to get over going up and down the open backed stairs as that was primarily her problem, not heights per se. Erickson added that she was in training and asked, isn't that what training is about? (N.T. 99). Skube declined to extend Erickson an opportunity to acclimate to ascending and descending the open stairways. Clearly, Skube had neither an interest in seeing first hand the degree of fear Erickson was having nor in seeing if Erickson could work through any difficulty she was experiencing.

Skube knew Erickson had positive potential to make substantial contributions as an employee because he noted that Erickson was "eligible for rehire", and informed Erickson that she would be brought back.

Interestingly, when told that Erickson was terminated, Piper ceased training on the cranes in protest. Piper only began to train again after he was told that Erickson would be brought back. Clearly, Piper had formed the impression that Erickson had been treated unfairly.

Yet another component of the collective evidence that together amounts to a showing of pretext is the fact that after Erickson's termination, a management level employee informed Marshall, a union representative, that Erickson had quit. This blatant misrepresentation worked to Erickson's detriment because, had the union known Erickson had been terminated, it is likely a grievance would have been filed on Erickson's behalf. Instead, too much time passed before the union learned that Erickson had been terminated.

Finally, it is worthy of mention that of the 11 remaining temporary fill-ins, their schedules between December 1996 and April 27, 1997 shows that none of the remaining 11 had been formally assigned to operate a crane.

This collection of evidence leads to the inescapable conclusion that Erickson has demonstrated by a preponderance of evidence, that the prominent motivation for the decision to terminate Erickson was because of her sex, female. The crux of Erickson's claim is that she was not given an equal opportunity to attempt to acclimate to climbing the stairs to the overhead cranes, but instead her training opportunity was cut extremely short without any chance to eventually demonstrate her qualifications and to sufficiently perform so as to become certified as a crane operator.

Next we turn to Erickson's second complaint in which she alleges a refusal to rehire because of her sex, female, and in retaliation for her filing of a PHRC complaint regarding her termination.

First USS's post-hearing brief asserts that Erickson should be limited to an inquiry of a failure to hire her on April 17, 2000 only. USS submits that Erickson's complaint at Docket No. E-95705-D does not allege that USS failed to hire her on any other date. Additionally, USS argues that since Erickson never amended her complaint to allege acts after April 17, 2000, the present inquiry should not encompass a period after April 17, 2000 either.

A review of Erickson's complaint at Docket No. E-95705-D reveals that paragraph 3 a(4) states, "On many prior occasions and on April 17, 2000, I applied for the position of laborer and/or tractor operator." Inferred in this allegation is the idea that USS did not just fail to hire Erickson on April 17, 2000 but previous to April 17, 2000 as well.

With respect to USS's argument about any hires after April 17, 2000, Erickson's failure to amend her complaint now bars consideration of any hires after April 17, 2000. Accordingly, the following analysis with regard to Erickson's retaliation claim will be confined to the period after USS was served with Erickson's first complaint until April 17, 2000. Erickson's sex-based failure to hire claim will encompass the period from Erickson's termination on September 20, 1996 until April 17, 2000.

We begin with an analysis of Erickson's retaliation claim. To establish a *prima facie* case of retaliation, Erickson must prove by a preponderance of evidence:

1. that she engaged in a protected activity;
2. that USS took some adverse employment action; and
3. there was a casual connection between the protected activity and adverse action.

See Griffiths v. Bethlehem Steel Corp., 988 F.2d 457 (3rd Cir), cert denied 114 S. Ct. 186 (1993).

Both USS and the PHRC regional office post-hearing briefs agree that Erickson meets the first two requisite elements of a *prima facie* showing. However, USS asserts that Erickson presented no evidence of a casual connection between the protected activity and not being hired.

Once again we are mindful that the burden to establish a *prima facie* case is not onerous. Burdine, 450 U.S. at 253. Typically, to satisfy the causation element two factors are useful: (1) evidence that the protected activity preceded the adverse action, see Grant v. Bethlehem Steel Corp., 22 FEP 1596 (2nd Cir. 1980); and (2) evidence that the employer had knowledge of the protected activity before the taking of adverse action. See Thompson v. Price Broadcasting Co., 817 F. Supp. 1538 (D. Utah 1993).

At the *prima facie* stage, the strength of an employer's articulated non-retaliatory reasons do not matter. See Aguirre v. Chula Vista Sanitary Service., 542 F. 2d 779 (9th Cir. 1976). However, temporal proximity is an important factor in determining whether a casual link has been established. See Jalil v. Avdel Corp., 873 F.2d 701 (3rd Cir. 1989), and Krouse v. American Sterilizer, Co., 126 F.3rd 494 (3rd Cir. 1997). Also, whether a decision maker knows of the protected activity is an ingredient in the requisite casual connection showing. See Preston v. Bell Atlantic., 1997 U.S. Dist. LEXIS 358 (E.D. Pa. 1997).

When evaluating whether the casual connection element of the requisite *prima facie* showing has been met, each case must be examined with a careful eye to the specific facts and circumstances present. Farrell v. Planters Lifesavers Co., 2000 LEXIS 3243 (3rd Cir. March 3, 2000). A variety of factors can satisfy the requirement and the available evidence should be viewed broadly.

Here, USS's post-hearing brief primarily focuses on the question of timing. USS asserts that the earliest anyone was hired after Erickson filed a PHRC claim was September 8, 1997,

almost 8 months later. USS submits that an 8 month period is not "unusually suggestive" of a retaliatory motive and does not support a casual link.

Erickson's first complaint, although filed on February 10, 1997, was not served on USS until March 19, 1997, less than seven months before September 8, 1997. At a minimum, service of Erickson's first complaint on March 19, 1997 provides USS with constructive knowledge of Erickson's complaint.

Added to USS having knowledge of Erickson's complaint, there is another circumstance that provides sufficient evidence of a casual connection. When Erickson was terminated, Skube told her that as soon as another position came open for which Erickson was eligible, she would be rehired, and that the only restriction was that the position had to first be opened for internal bidding. Lowery then added that definitely Erickson would be rehired. This circumstance satisfies the requisite casual connection element.

Accordingly, the burden of production shifts to USS to produce evidence that it had a non-retaliatory reason for not rehiring Erickson. Here, USS argues that Erickson was not qualified for any positions it filled after it was served with Erickson's first complaint. USS submits that Erickson was unqualified for the majority of positions filled because in the line of progression (hereinafter "LOP") of most jobs filled, there is an overhead crane operation component. USS submits that laborer jobs entail the possibility of assignment to crane work, thus Erickson was not qualified for any laborer positions.

USS makes reference to several inventory jobs, suggesting Erickson was unqualified because of an educational requirement that she lacked. However, these positions will not be considered since they were filled after April 17, 2000.

The other non-laborer jobs filled by USS before April 17, 2000 were for janitor positions. (J.E.1). USS conceded that the position of janitor does not require crane work, but suggests that USS still looks for the qualification of the ability to work at heights because, ultimately, an

employee should not stay a janitor, but move into a position where crane operation is in the LOP.

This articulated reason sufficiently meets USS's light production burden that rebuts the *prima facie* inference. Accordingly, the ultimate burden of proof shifts back to Erickson to show by a preponderance of the evidence that USS's articulated reason is pretextual and that retaliatory animus had a determinative effect on USS's decision not to rehire her. See Woodson v. Scott Paper, 109 F. 3d 913 (3rd Cir. 1997).

Once again, several factors combine to sufficiently show that USS's articulated reason is pretextual and that USS had a retaliatory motive. The principal evidence reflecting pretext is found in the testimony offered by Ed McGough, the Staff Supervisor of Personnel at USS's Irvin Works plant. McGough spoke of the changing dynamics in the steel industry necessitating USS's need to hire people that are more flexible. Specially, McGough testified that USS sought employees who are capable of doing two or three different things. (N.T. 366-367). McGough also offered that overhead crane work is the life blood of the Irvin Works facility. He also revealed that there are really two key jobs: tractor operator and crane operator. (N.T. 366).

It is abundantly clear that the life-blood of the plant is the ability to operate mobile equipment: tractors or cranes but not necessarily both. The evidence shows that Erickson had demonstrated the capacity of doing more than two or three different things. Clearly, with seven years experience, Erickson was extremely proficient in the operation of tractors. Erickson also had demonstrated her ability in the positions of hooker, and burner/feeder helper. In addition, she had operated hand shears, electric shears, banding tools, and remote controlled cranes. Erickson clearly met USS's stated need for flexibility. As to Erickson's qualification, it must be remembered that when she was hired in September 1996, she and the 11 others hired with her were considered by USS to be far more skilled than other applicants. (N.T. 339-340).

During the period between March 19, 1997 and April 19, 2000, USS's Irwin plant hired 72 individuals: 51 were hired as Mill Laborers; 12 as General Laborers; 5 as Janitors; 3 as Utilityman As; and 1 Burner (Hooker). But for the stated crane operation, there is no question that Erickson was qualified for all of the Mill Laborer, General Laborers, and Janitors positions. Skube testified that there is no doubt Erickson could have done a Laborer job. Skube said he simply wanted everyone to be able to operate a crane. (N.T. 345-346).

Quite clearly, between 1977 and 1986, Erickson had worked at the Irwin plant and had never had to attempt to operate an overhead crane. Further, Marshall testified that there are USS employees who never had to run a crane. (N.T. 156). In the Irwin Works plant there are approximately 340 overhead cranes and at any given time approximately 60% of them are in operation. (N.T. 294). This means that after 1996, of the approximately 900 to 1,300 employees in the plant, just over 200 of them would have been operating an overhead crane at any given time. USS asks us to believe that its operation would be jeopardized if every one of the remaining 700 to 1,100 employees was not able to instantly be ready for temporary assignment to crane operation. Even if only half of the number of employees at the Irvin plant were directly involved in production jobs, there were still 250 to 450 employees to chose from for temporary crane assignment. It is far more plausible that McGough's stated need for flexibility was accomplished by hiring employees who could indeed be flexible in two or three capacities. Quite clearly, USS did not need every single employee to be capable of operating a crane.

Furthermore, the position of Crane Operator was a job for which employees bid that paid more than other jobs. While the specific details of the bidding process and selection of temporary fill-ins was not fully developed by the evidence presented, there was enough evidence presented to reveal that seniority was a factor in the issue of to whom an offer is made to temporarily fill the higher paying position of crane operator. USS maintained that it had the right to assign employees at its discretion. However, voluntary bidding and seniority seemed to

be the general rule with regard to selection of temporary assignment to crane operation. It was evident that a laborer could easily remain in that position without ever operating an overhead crane for as long as they wanted and that only if an employee voluntarily bid on a crane position would they then permanently fill that position. As far as temporary fill-in's, it appears there were more than a sufficient number of volunteers asking to work at the higher rate so that anyone not interested in crane operation would never be required to be so assigned.

Another factor with respect to the question of pretext is Skube's prior statements at a PHRC fact finding conference held on April 24, 1997. At that conference, Skube told a PHRC investigator that the union contract prohibited USS from bringing someone back without that person first going through the Job Center. (N.T. 185, 189, 208-210). Indeed, Skube told the PHRC investigator that the only route to being hired was through the Job Center. (N.T. 189). At the public hearing, Skube, in effect, admitted that the union contract did not prevent USS from rehiring Erickson without her first going back through the Job Center.

Clearly, USS was hiring people directly, outside the Job Center process. At times, USS would also call the Job Center and ask the Job Center to send over certain individuals. (N.T. 220, 225). At other times, USS would hire someone on their own, and only then send that person through the Job Center process. (N.T. 221).

Quite clearly, USS could have directly rehired Erickson and neither violated the union contract nor, in some way, breached the arrangement it had with the Job Center. The evidence, considered as a whole, reveals that, at the time of her termination, USS had planned to bring Erickson back in a laborer position. Indeed, Erickson would have been rehired had she not filed a PHRC claim.

Based on this combination of considerations, Erickson has successfully met her burden to establish by a preponderance of the evidence that between the time USS was served with her first PHRC complaint and the filing of her second complaint, USS retaliated against Erickson by

not hiring her into one of the 51 Mill Laborer positions, or the 12 General Laborers positions, or the 5 Janitor positions that were filled in that period.

Next, we turn to Erickson's sex-based allegation that she was not rehired because she is a woman.

To establish a *prima facie* case of sex-based refusal to hire, a Complainant must normally show:

1. that she is a member of a protected class;
2. that she applied and was qualified for a position for which USS was seeking applicants;
3. that, despite her qualifications the Complainant was denied a position; and
4. that the position was awarded to an applicant with either equal or less qualifications than the Complainant's, PHRC v. Johnstown Redevelopment Authority, 527 Pa. 71, 588 A.2d 497 (1991).

USS first submits that USS did not receive a resume from Erickson until February 9, 2000. As noted earlier, Erickson's sex-based failure to hire claim encompasses the period from September 20, 1996 until April 17, 2000.

Given the circumstances that on September 20, 1996, Skube and Lowery led Erickson to believe that she would be rehired as soon as a position came open, reasonably, Erickson would not have actively applied. Accordingly, this component of the normal *prima facie* showing should become, "USS knew that Erickson wanted a job at the Irvin Works plant, that she was qualified, and that there were available openings."

We also note that as soon as Erickson learned that USS was hiring, she did all she could seeking to be hired. In April 1997, when Skube suggested that Erickson had to go through the Job Center to be hired, Erickson went right to the Job Center to facilitate whatever was necessary to maximize her chance of being rehired.

USS also argues that Erickson can not establish that she was qualified for any job filled by USS. The analysis of Erickson's retaliation claim discussed the question of qualification in the context of a showing that USS's articulated reason for not hiring Erickson was pretextual.

There we found that Erickson was qualified for at least 68 positions filled between March 19, 1997 and April 17, 2000. As early as October 21, 1996, USS hired a Mill Laborer and hired another Mill Laborer on January 6, 1997. We find that Erickson was qualified for all 70 of these positions.

Finally, USS argues that USS was seeking applicants that had greater qualifications than Erickson's qualifications. As noted earlier, the evidence in this matter reveals that USS was seeking applicants with a range of abilities. We simply do not believe USS had a disqualifying standard that all applicants must be able to work at heights. Despite USS's arguments, quite simply, job descriptions for the positions of Janitor, General Laborer, and Mill Laborer, make no specific mention of crane operation. (C.E.3). We find that USS awarded numerous jobs to applicants with less qualifications than Erickson's multi-dimensional qualifications. Accordingly, Erickson has established the requisite *prima facie* case of a sex-based failure to hire.

Once again, USS's articulated reason for not hiring Erickson is its perception that Erickson was unable to work at heights. USS declares that cranes are the life blood of the Irvin plant and since every LOP entails crane operation, Erickson was not hired. USS submits that they only hired individuals who are capable of being fully utilized.

This articulated reason sufficiently meets USS's production burden. According we turn to the ultimate question, whether Erickson can show USS's articulated reason is pretextual and, that the true motive for not hiring her was based on her sex. See Thomas v. Eastman Kodak, 183 F.3d 38 (1st Cir. 1999), *cert denied* 120 S.Ct. 1174 (2000).

Since this component of Erickson's claim is that she was not hired because she is a woman, we note USS's argument that suggests USS did hire women after September 20, 1996. In USS's post-hearing brief, USS lists the names of 12 women hired after September 20, 1996. Also, USS references McGough's testimony that suggests virtually all of the qualified women that applied for positions listed on Joint Exhibit 1 were hired. (N.T. 395). Of the 12 women

listed in USS's post-hearing brief only 8 names could be cross referenced with any degree of precision. Absolute certainty in the cross referencing was not possible since Joint Exhibit 1 lists names by the first and middle initials and last names of the individuals listed. USS's post-hearing brief lists 12 women by first and last name. The 12 listed by USS's post-hearing brief are: Sharon Amati; Robin Castor; Carla Christian; Cheryl Christian; Deanette Cogley; Elaine Greer; Collen McLay; Denise Moore; Terri Shuffer; Carol Shields; Cathy Sauers; and no Dawn Hedges. Joint Exhibit 1 includes only 1 "C" Christian; no "D" Moore; no "C" Sauers; and no "D" Hedges. Of the nine possible listings that remain, only "S' Amati, "E". Greer, and "T". Schuffer were hired before April 2000. "S" Amati was hired on March 20, 2000 as a General Laborer; "E" Greer was hired on February 7, 2000 as a Janitor; and "T" Schuffer was hired on December 13, 1999 as a Mill Laborer.

Of the 70 positions being reviewed only three appear to have been awarded to women. Standing alone, this simplistic demographic statistical evidence helps neither Erickson nor USS. The issue here is not simply whether any employment opportunity existed for women at USS's Irvin plant. The critical question is whether women have equal opportunities available to them. More specifically, the issue is whether Erickson had an equal opportunity.

In this case we are presented with a situation where Erickson had already claimed a sex-based termination long before USS hired T. Schuffer, the first of the three women hired among the 70 hired between September 1996 and April 2000 and on whom we focus our attention. Practices utilized after a discrimination claim has already been filed are of little help in determining the motivation for an act claimed to be discriminatory that occurred earlier. Likewise, a company that already has an outstanding discrimination claim may attempt to cover its actions by making employment decisions that are designed to counter an earlier claim.

Here, the evidence of pretext is not lessened because USS hired three women. The basis for the existence of pretext found in Erickson's retaliation claim applies equally to Erickson's sex-based claim.

In summary, because the issues are intertwined and overlapping, we find that either Erickson's sex, or retaliation for having filed a PHRC claim or a combination of both substantially caused Erickson to not be rehired after her termination in September 1996. Accordingly, we turn to the issue of an appropriate remedy in these consolidated cases. Section 9(f)(1) of the PHRA generally outlines the remedies the PHRC is authorized to order. This section provides 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 . . . hiring . . . with or without back pay . . . 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.

The function of the remedy in employment discrimination cases is not to punish the Respondent, but simply to make a Complainant whole by returning the Complainant to the position in which she would have been, absent the discriminatory practice. See Albermarle Paper Co. v. Moody, 422 U.S. 405, 10FEP 1181 (1975); PHRC v. Alto-Reste Park Cemetery Assoc., 306 A.2d 881 (Pa. S.Ct. 1973).

The first aspect we must consider regarding making Erickson whole is the issue of the extent of financial losses suffered. When complainants prove an economic loss, back pay should be awarded absent special circumstances. See Walker v. Ford Motor Co. Inc., 684 F2d 1355, 29 FEP 1259 (11th Cir. 1982). A proper basis for calculating lost earnings need not be mathematically precise but must simply be a "reasonable means to determine the amount [the

complainant] would probably have earned . . ." PHRC v. Transit Casualty Insurance Co., 340 A.2d 624 (Pa. Commonwealth Ct. 1975), aff'd 387 A.2d 58 (1978). Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim, since the wrongdoer caused the damages. See Green v. USX Corp., 46 FEP 720 (3rd Cir. Mar 29, 1988).

In these consolidated cases Erickson submits that she should be completely reimbursed for lost wages based upon established wage rates through the date of Public Hearing, adjusted by subtracting her interim earnings.

Erickson asserts that she made reasonable attempts at mitigation. Courts consistently hold that it is a respondent's burden to produce evidence of a lack of diligence in pursuing other employment in mitigation. See Jackson v. Wakulla Springs & Lodge, 33 FEP 1301, 1314 (N.D. Fla. 1983); Sellers v. Delgado Community College., 839 F2d 1132 (5th Cir. 1988); Syvock v. Milw. Boiler Mfg. Co., 27 FEP 610, 619 (7th Cir. 1981); Maine Human Rights Comm. v. City of Auburn, 31 FEP 1014, 1020 (Maine Supreme Judicial Ct. 1981); and Michigan Dept. of Civil Rights v. Horizon Tub Fabricating, Inc., 42 EDP ¶36,968 (Michigan Court of Appeals 1986). Diligence in mitigating damages within the employment discrimination context does not require every effort, but only a reasonable effort. It is a Respondent, not a Complainant, who has the burden of establishing that the Complainant failed to make an honest, good faith effort to secure employment. Id. at 46,704.

Regarding whether Erickson mitigated her damages, the evidence shows that once she realized USS was hiring after her termination, she began to seek employment. Erickson applied for employment at Wal-Mart, Hills, K-Mart, Co-Go's, Kaufman's, and UPS. In addition to checking newspapers for jobs, Erickson also applied for a job making boxes through the Charleroi Employment Job Center.

Erickson first obtained employment for approximately two weeks at the Belle Vernon Shop-n-Save where she earned the minimum wage. Erickson also worked part-time at a

Perkins Restaurant until securing a job in 1999 with Sony in New Stanton. At Sony, Erickson earned $7.00 per hour. In 2000, Erickson changed jobs and began working as an associate for Dick's Distribution Center in Smithton where she earned $8.00 per hour. Currently Erickson is a group leader with Dick's Distribution Center.

Erickson's post-hearing brief outlines her interim wages as follows:

1999	-	$ 2,723.24
2000	-	$ 16,486.96
2001	-	$ 24,239.37
2002	-	$ 24,258.67
2003	-	$ 31,131.18
2004	-	$ 5,188.53
TOTAL Interim earnings:		**$101,577.95**

For reasons unknown, Erickson's post-hearing brief lists lost wages beginning the last three months of 1997. Having found that Erickson's termination on September 20, 1996 was discriminatory, lost wages should begin there, not in 1997. From 1998 to the date of the submission of Erickson's post-hearing brief, Erickson's calculations appear reasonable and will be used. The lost wages for 1997 and the last three months in 1996 are calculated by noting that each year since 1998, annual wages at USS increased between approximately $500.00 and $1,500. On average, a yearly increase was approximately $1,000. Using this figure we calculate the 1997 annual wage lost as approximately $44,500 and the three months of wages lost in 1996 as approximately $10,875.00. Accordingly, Erickson's approximate wages lost are as follows:

1996	-	$ 10,875.00
1997	-	$ 44,500.00
1998	-	$ 45,524.00
1999	-	$ 46,004.00
2000	-	$ 47,374.00
2001	-	$ 48,853.00
2002	-	$ 52,818.00
2003	-	$ 52,642.00
2004	-	$ 8,772.00
Total wages lost:		$357,362.00
Minus Interim Earnings:		$101,577.95
Net wages lost:		$255,784.05

Erickson's testimony indicates that each year she also lost bonuses. Between 1997 and 2000, Erickson's evidence reveals she lost a total of $7,000 in cash and stock bonuses. Erickson should also be awarded this amount.

Erickson's Post-hearing brief also seeks reimbursement for health-case costs that would have been paid by USS after a 90 day waiting period. Erickson testified that until she began with Sony in July/August, 1999, she had to pay $350.05 per month for health care. (C.E.18). If Erickson began with Sony in July 1999, she can now be reimbursed her payments of $350.05 per month from December 3, 1996 until July 1999: 31 months. Accordingly, Erickson is also entitled to an award of $10,851.55 for health case costs she expended.

The next issue raised by Erickson's post-hearing brief is the question of reinstatement. The PHRC regional office post-hearing brief submits that because Erickson was the victim of discrimination she should automatically be instated into a position at USS's Irvin Works plant.

The evidence reveals that since Erickson's termination USS and the union entered into a new collective bargaining agreement which consolidated all jobs into 4 or 5 jobs. (N.T. 392). These new jobs were described as multi-job assignment positions where an employee is required to learn all jobs within a job description. McGrough testified that of these 4 or 5 newly consolidated jobs, there is still an entry level position, (N.T. 397), and of the new positions not all of them encompass crane operations. (N.T. 402).

Erickson should be reinstated into an entry level position and be given seniority back to her date of hire in September 1996. Erickson's post-hearing brief does not seek front-pay until USS extends an offer of employment to Erickson.

Finally, the PHRC is authorized to award interest on the back pay award. Goetz v. Norristown Area School District., 16 Pa. Cmwlth Ct. 389,328 A.2d 579 (1975).

Accordingly, relief is ordered as described with specificity in the Final Order which follows.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

CYNTHIA ERICKSON, **Complainant**	:	
v.	:	**DOCKET Nos. E-82330-DH and E-95705-D**
UNITED STATES STEEL CORP., **Respondent**	:	

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Erickson has proven discrimination in violation of Sections 5(a) and (d) of the PHRA. 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.

July 1, 2004
Date

Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

CYNTHIA ERICKSON, **Complainant**	:	
v.	:	**DOCKET Nos. E-82330-DH and E-95705-D**
UNITED STATES STEEL CORP., **Respondent**	:	

FINAL ORDER

AND NOW, this 27th day of July, 2004, 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 as its own findings in this matter and incorporates the 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

ORDERS

1. That USS shall cease and desist from sex-based discrimination.
2. That USS shall cease and desist from retaliating against any individual who has made a charge under the PHRA.
3. That USS shall pay to Erickson within 30 days of the effective date of this Order the lump sum of $255,784.05, which amount represents back pay lost beginning September 20, 1996.

4. That USS shall pay to Erickson within 30 days of the effective date of this order the lump sum of $7,000.00, which amount represents lost bonuses as a result of Erickson's termination.

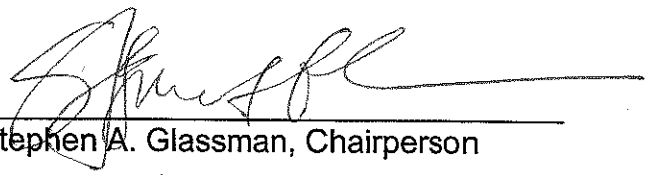
5. That USS shall pay to Erickson within 30 days of the effective date of this order the lump sum of $10,851.55, which amount represents health care costs Erickson expended as a result of being terminated from USS.

6. That USS shall pay additional interest of nine percent per annum on the back pay award, calculated from September 20, 1996 until payment is made.

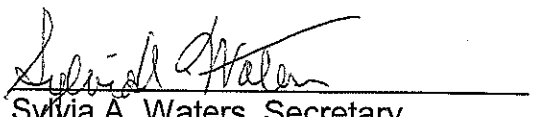
7. That USS shall offer Erickson instatement into the next available entry level position, the general duties of which do not involve crane operations and be given seniority back to September 3, 1996.

8. That within 30 days of the effective date of this Order, USS shall report to the Commission on the manner of its compliance with the terms of this Order by letter addressed to Kathleen Fein, Esquire, in the Commission's Pittsburgh regional office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
Stephen A. Glassman, Chairperson

ATTEST:


Sylvia A. Waters, Secretary