

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**STERLING FEESER and LEROY JONES AS EXECUTOR
OF THE ESTATE OF VILMA GARCIA-JONES, Complainants**

v.

**SPANISH COUNCIL OF YORK, INC.,
d/b/a YORK SPANISH AMERICAN CENTER., Respondent**

DOCKET Nos. E-78888-AD and E-81636-DH

STIPULATIONS OF THE PARTIES

Complainant Vilma Garcia-Jones and Respondent Spanish Council of York, Inc., do hereby stipulate that the following facts are true and that no proof thereof shall be required:

1. Complainant Vilma Garcia-Jones is an adult who, at all times relevant, resided at 101 Merion Street in York, PA.
2. Respondent Spanish Council of York, Inc., is a not for profit corporation located at 200 East Princess Avenue in York, PA, and, at all times relevant, employed four or more persons in the Commonwealth of Pennsylvania.
3. The employment action challenged in the complaint occurred in York County.
4. Complainant filed her complaint (PHRC Docket No. E-81636-DH) with the Pennsylvania Human Relations Commission on or about January 9, 1997.
5. PHRC served Respondent with a copy of the complaint on or about January 28, 1997.
6. Respondent filed an answer to the complaint, which was received by the PHRC on February 25, 1997.
7. the complaint was subsequently amended and served on March 5, 1997.
8. The complaint was amended a second time and served on August 14, 1998.
9. PHRC served Respondent with a finding of probable cause on or about January 10, 2000.
10. A conciliation conference was scheduled for February 16, 2000, but it was not successful.
11. On April 25, 2000, PHRC notified the parties that the case was approved for public hearing and placed on the public hearing docket.
12. all jurisdictional prerequisites for the public hearing have been satisfied.

Joseph T. Bednarik, Esquire
Counsel for the Complainant
September 12, 2000

Joseph C. Korsak, Esquire
Counsel for the Respondent
September 12, 2000

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

STERLING FEESER, Complainant

v.

SPANISH COUNCIL OF YORK, INC., Respondent

DOCKET No. E-78888

STIPULATIONS OF THE PARTIES

Complainant Sterling Feeser and Respondent Spanish Council of York, Inc., do hereby stipulate that the following facts are true and that no proof thereof shall be required:

1. Complainant Sterling Feeser is an adult who, at all times relevant, resided at 822 Virginia Avenue in York, Pa.
2. Respondent Spanish Council of York, Inc., is a not for profit corporation located at 200 East Princess Avenue in York, PA, and, at all times relevant, employed four or more persons in the Commonwealth of Pennsylvania.
3. The employment action challenged in the complaint occurred in York County.
4. Complainant filed his complaint (PHRC Docket No. E-78888) with the Pennsylvania Human Relations Commission on August 8, 1996.
5. PHRC served Respondent with a copy of the complaint on or about September 10, 1996.
6. Respondent filed an answer to the complaint, which was received by the PHRC on October 18, 1996.
7. PHRC served Respondent with a finding of probable cause on or about January 10, 2000.
9. A conciliation conference was scheduled for February 16, 2000, but it was not successful.
10. On April 25, 2000, PHRC notified the parties that the case was approved for public hearing and placed on the public hearing docket.
11. All jurisdictional prerequisites for the public hearing have been satisfied.

Joseph T. Bednarik, Esquire
Counsel for the Complainant
September 12, 2000

Joseph C. Korsak, Esquire
Counsel for the Respondent
September 12, 2000

FINDINGS OF FACT

1. Vilma Garcia-Jones (hereinafter “Complainant Garcia-Jones”), was appointed Executive Director of the York Spanish American Center in 1992. (N.T. I, 101)
2. Complainant Garcia-Jones was previously employed at the Center as Employment Program Coordinator and as Program Supervisor/Assistant Director. (N.T. I, 101)
3. At all times relevant to the complaint, Complainant Garcia-Jones worked sixty to seventy hours per week in her capacity as Executive Director.
4. Sterling Feeser (hereinafter “Complainant Feeser”) was the Program Supervisor/Assistant Director during the time that Complainant Garcia-Jones was Executive Director. (N.T. I 100-101)
5. The duties of Executive Director included overseeing the maintenance of the physical plant, carrying out the business and operational transactions, serving as the Center’s representative in the community, assessing the community needs, searching for available funding, evaluating and supervising staff, and preparing plans and advice in the area of personnel, finances, and relations with fund sources and the general public. (RX-33).
6. The duties of the Assistant Director/Program Supervisor included supervising the delivery of program services by monitoring staff, supervising and case records, assisting the development of programs, assisting the implementation of policies and programs, identifying possible funding sources, and preparing grants and proposals. (CX-31).
7. At all times relevant to the instant complaints, Complainant Garcia-Jones worked sixty-seventy hours per week. (N.T. 504)
8. At all times relevant to the instant complaints, Complainant Feeser provided forty hours of service per month in the case management program. (N.T. 134)
9. Complainant Feeser also taught at least one life skills program per month. (N.T. at 135)
10. More than one-half of Complainant Feeser’s time was spent monitoring the Center’s programs including the Pennsylvania Council of the Arts, the after, school program, The Spanish GED program, the social work program, the Even Start program, the FEMA program and the Youth at risk program. (N.T. I at 135-136)
11. Complainant Feeser did spend some time, from January to June, preparing grant requests for the various programs. (N.T. I 138-139)
12. Before his employment at the Center, Complainant Feeser worked for ten (10) years at Rural Opportunities as an ESL instructor, generalist, and regional administrator. (N.T. I 97-98)
13. The clientele of Rural Opportunities was 98 per cent Latino. (N.T. I 99)
14. Complainant Feeser, a white male is fluent in Spanish and is married to a woman of Mexican origin. (N.T. I 95-96)
15. At the time relevant to the instant complaints, Complainant Feeser and Fiscal Specialist Walter Erneuy were the only employees of the Center who were not Latino. (N.T. 106-107)
16. During the tenure of the Complainants the Center increased its operating budget from \$150,000 to \$350,000 and paid off its mortgage. (N.T. I 139-140)
17. In February 1996, the United Way issued an evaluation of the Center. (CX 17).
18. The report found that the Center was viewed as a “well-run agency, which exists to fill a specific market niche. Programs offered by the agency are effective in addressing the needs of the Latino community, with no evidence that modifications or outright elimination of any line of services is in order. (CX 17).

19. Complainant Feeser directly supervised most of the staff at the Center. (N.T. 52, 56)
20. Judy Diaz and Yvette Izzarry worked for the Center. (N.T. 52, 56)
21. In December of 1995, Complainant Feeser identified some work performance issues with Izzarry who, at the time, was coordinator of the Life Skills Program. (N.T. I 108)
22. Complainant Feeser also identified work performance issues with Judy Diaz. (N.T. I 112)
23. On January 23, 1996, Complainant forwarded a letter to all staff outlining deficiencies in job performance and unprofessional attitudes of unnamed staff members. (CX 5, N.T. I 120-121)
24. In order to satisfy its contract with York County, the Center was required to provide 180 hours of service in the case management program. (N.T. I 117, 124)
25. Ms. Diaz was to provide 120 of those hours of service in the case management program. (N.T. I 117, 124)
26. Whenever Ms. Diaz did not make her goal, other Center employees, including Complainant Feeser, made up the difference. (N.T. I 117-118)
27. On February 16, 1996 Complainant Feeser issued Ms. Diaz a “first warning letter” for disregarding a directive to service a client, displaying a reluctance to serve customers, and failing to meet contract goals. (CX 1; N.T. I 58-59)
28. Complainant Feeser had previously counseled Diaz but she continued to fail in her responsibilities and failed to meet her monthly program goals. (N.T. I 123-124)
29. Ms. Diaz was upset when she received the disciplinary letter from Complainant Feeser. (N.T. I 73).
30. Ms. Diaz discussed the letter with her brother-in-law, Anibal Santiago, a member of the board of directors, and with Complainant Garcia-Jones. (N.T. I 67, 68)
31. Ms. Diaz met with Complainant Feeser and Complainant Garcia-Jones to discuss the letter. (N.T. I 68)
32. As a result of the meeting, the disciplinary letter was removed from Ms. Diaz personnel file. (N.T. I 68, 125)
33. Flora Brands was employed by the Center as Director of the outpatient drug and alcohol program. (N.T. I 33)
34. Brands regularly visited the Center once or twice weekly to copy material and attend meetings. (N.T. I 34)
35. Brands creditably testified that she heard staff members use the term “gringo” in referring to Complainant Feeser. (N.T. I 37-38)
36. The staff members were: Jorge Lopez, “marina”, Julia Santiago-Simon, Judy Diaz and Alma DeJesus. (N.T. I 37-38)
37. On another occasion, Yvette Izzarry referred to Complainant Feeser as a “pinche gringo”. (N.T. I 129-130)
38. Complainant Feeser personally heard the term “Gringo” used by Izzarry, Santiago-Simon and Diaz. (N.T. I 128)
39. In 1996, Complainant Garcia-Jones received complaints regarding Complainant Feeser from staff members. (N.T. 547)
40. Complainant Garcia-Jones met with Complainant Feeser concerning the staff members’ complaints. (N.T. 548)
41. Complainant Garcia-Jones did not believe that the complaints had any merit whatsoever. (N.T. 358)

42. On March 26, 1996, Charles Hoffman, chair of the Board, convened a meeting with several of the staff members of the Center. (N.T. I 79)
43. At this meeting, the staff members voiced their dissatisfaction with Complainant Feeser. (N.T. I 80, 88)
44. The Center's personal policies provided for the participation by the board in the grievance process only after the employee submitted a written grievance to the administration and the administration responded. (CX-4)
45. Complainant Garcia-Jones informed the board that its meeting with employees violated the Center's policies. (N.T. 514)
46. There were no notes or minutes of this meeting. (N.T. IV 75-76)
47. None of the board member ever spoke with Complainant Feeser regarding the complaints made at the meeting. (N.T. I 141-147)
48. On April 2, 1996, Hoffman and Lepper; chair and vice chair, met with Complainant Garcia-Jones. (N.T. 382)
49. At the meeting, Hoffman suggested to Complainant Garcia-Jones that Complainant Feeser be relieved of his supervisory duties and be given ninety days to find new employment. (N.T. 382)
50. Also, at the same meeting, it was decided that it would be "impossible" for Complainant Feeser to continue to work at the Center in a non-supervisory role if he were removed as Assistant Director. (N.T. IV 51)
51. At a board meeting on April 16, 1996, the board passed a motion directing Complainant Garcia-Jones to initiate a search for a new Assistant Director within ninety days. (RX-24)
52. Complainant Garcia-Jones stated that she felt Complainant Feeser could do the job. (N.T. 411)
53. Board Members Amoros and Lepper, during the discussion on the motion, expressed the opinion that the Center needed a Latino as Assistant Director. (N.T. 417)
54. Board members Santiago and Graulau stated that they wanted to replace Complainant Feeser because he is white. (N.T. 552)
55. Subsequent to the meeting, board member Gerri Zimmerman suggested to Complainant Feeser that he should seek legal help because the board was going to fire him because he was white. (N.T. I 144).
56. By letter dated April 22, 1996, Complainant Garcia-Jones not only criticized the board for not following the written procedures, she praised the performance of Complainant Feeser. (CX-6)
57. Furthermore, Complainant Garcia-Jones advised the board that it did not have good cause to demote Complainant Feeser. (CX-6)
58. Complainant Garcia-Jones also advised the board that its actions left the Center open to "legal contention". (CX-6)
59. The personnel policy for the Center provided that employment could not be terminated without good cause and, in cases involving a failure to perform to standard, prior written warning. (CX-4)
60. One day after Complainant Garcia-Jones' letter of April 22, 1996, a special meeting of the board was held. (CX-6, CX-8)
61. At the special meeting, the board hired Dr. Jake Keller, a consultant to interview the staff and the administrators. (CX-8)

62. Dr. Keller did not investigate in order to determine whether any specific staff member's complaint was valid. (N.T. I 235)
63. Dr. Keller presented his report at the May 1996 meeting of the board of directors. (N.T. I 237)
64. Dr. Keller made several recommendations to the board of directors. (CX-7)
65. These recommendations included; the establishment of a "La Causa" team, consisting of board, administration, and staff to redefine the Center's mission, update the three-year business plan, and review procedures and operational strategies. (CX-7)
66. None of the recommendations made by Dr. Keller were implemented by the board of directors. (N.T. IV 38)
67. During the discussion at the May, 1996 meeting, Dr. Keller made the observation that Anglo board members wondered where local Latino leadership was and that this may be a "good time to determine if Latino leadership is available in the community". (CX-7)
68. After some debate at the May 1996, the board eliminated Complainant Feeser's position and created the position of grant writer. (N.T. I 190).
69. Board member Hal Harper developed the job description for the position of grant writer. N.T. I 190, 199)
70. The grant writer was to write grant application from federal, state and local governments, interact with those agencies and report to the Executive Director. (N.T. 10, 62)
71. The job description for the grant writer included a requirement that the person be bilingual. (RX-55)
72. The grant writer position was never advertised but only made known by word of mouth in the community. (N.T. IV 37)
73. Complainant Feeser was never offered the position of grant writer. (N.T. IV 12)
74. Dr. Keller did not recommend the creation of the grant writer position. (N.T. I 245)
75. Hal Harper wished to have an all-Latino Board of Directors, an all-Latino administration, and an all-Latino staff at the Center. (N.T. I 171-172)
76. Complainant Feeser earned a salary of twenty five thousand dollars (\$25,000.00 from the Center. (N.T. V 27-28)
77. In 1996, the Center paid Complainant Feeser through the end of May 1996 plus accrued vacation. (N.T. V 21)
78. Complainant Feeser was hired by Fypon, Inc in August 1997 at a higher salary than he earned at the Center. (N.T. V 19)
79. Between the end of May 1996 and August 1997, Complainant Feeser was employed as a home educator through Three Rivers Interim. (N.T. V 22)
80. Complainant Feeser earned \$4,965.76 as a home educator in 1996. (N.T. V 22, CX-39)
81. Complainant Feeser earned \$11,178.00 as a home educator in 1997 with Three Rivers interim and IBAT. (N.T. V 23, CX-40)
82. Complainant Feeser earned \$100.00 per week as a home educator from August 1997 Through December 1997 at the same time he worked at Fypon, Inc. (N.T. V 24)
83. Before working for Fypon, Inc., Complainant Feeser earned \$30.00 in 1997 from United Health and Human Services. (N.T. V 26)
84. Complainant Feeser also in 1997 earned \$2,000.00 from York College for teaching at the York County Day School. (N.T. V 25)
85. In Complainant Garcia-Jones' initial complaint, she alleged that she refused the requests of board members to demote Complainant Feeser and hire someone else. (CX-19)

86. In its Answer, the Center, generally denied the allegations but further considered that Complainant Garcia-Jones “was instructed to demote Feeser due to his inability to perform to the satisfaction of the Board”. (CX-18)
87. The Center then admitted that Garcia-Jones stated she would not demote Feeser due to his excellent performance and added: “It was for this and other non-health reasons that the Complainant was discharged, that is, for refusing to honor the Board’s wishes.” (CX-18)
88. At the public hearing, board members Lepper, Ambros, Learned, and Hoffman all denied that Garcia-Jones support of Feeser was a factor in its decision to discharge her. (N.T. 338, 623. N.T. IV 44)
89. During the tenure of Complainant Garcia-Jones as Executive Director, the financial position of the Center improved and the Center was able to satisfy its mortgage. (CX-17)
90. During the tenure of Complainant Garcia-Jones, the number of programs offered by the Center increased. (CX-6 CX-17)
91. There was a specific need for the Center to expand its funding by receiving additional support from the community. (N.T. 10, 110)
92. Complainant Garcia-Jones believed that the Board should take a more active role in fund raising. (N.T. 676)
93. Hal Harper, board member, thought that fundraising was an administrator’s responsibility, not the board’s responsibility. (CX-16)
94. Robert Woods, Executive Director of the United Way of York County, credibly testified that, in a non-profit agency, responsibility for fund raising rests with both the Board of Directors and the Executive Director. (N.T. IV 110)
95. According Mr. Woods’ testimony, the Board lacked sufficient involvement in fund raising activities. (N.T. IV 117)
96. Complainant Garcia-Jones earned \$35,071.00 in salary from the Center in 1996. (CX-41)
97. Complainant Garcia-Jones was paid through the month of October 1996. (CX-16)
98. After she was terminated, Complainant Garcia-Jones had no other income in 1996. (N.T. V 57)
99. In 1997, Complainant Garcia-Jones earned \$5,000.00 in income as a consultant. (N.T. V 64)
100. In 1998, Complainant Garcia-Jones earned \$23,609.00 from the York Housing Authority. (N.T. V 66, CX-43)
101. In 1999, Complainant Garcia-Jones earned \$34,268.00 from the York Housing Authority and the Census Bureau. (N.T. V 67, CX-44)
102. In 2000, Complainant Garcia-Jones earned \$25,152.00 in income from the United Department of Commerce. (CX-45)
103. Due to illness, Complainant Garcia-Jones became unable to work after the last week of April 2000. (N.T. V 54-55)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (“PHRC”) has jurisdiction over the parties and the subject matter of this case.
2. The parties have fully complied with procedural prerequisites to a public hearing in this case.
3. The Complainants are individuals within the meaning of the Pennsylvania Human Relations Act. (“PHRA”).
4. The Spanish Council of York, Inc., d/b/a The York Spanish American Center, is an employer within the meaning of the PHRA.
5. Complainant Feeser, in alleging race-based discrimination, must establish a *prima facie* case showing that:
 - a. he is a member of a protected class;
 - b. he was qualified for the position of Assistant Director;
 - c. he was discharged and the position was subsequently eliminated; and
 - d. he was discharged under circumstances that give rise to an inference of discrimination.
6. Complainant Feeser met his *prima facie* showing.
7. The Respondent articulated legitimate reasons for terminating Complainant Feeser and eliminating the position of Assistant Director/Program Supervisor.
8. Complainant Feeser established, by a preponderance of the evidence, that the reasons offered were pretextual, and that race was the motivating factor in the decision to eliminate his position.
9. In order to establish a retaliation *prima facie* case, Complainant Garcia-Jones must establish:
 - a. She was engaged in activity protected by the Pennsylvania Human Relations Act;
 - b. She was qualified for the position of Executive Director;
 - c. She was discharged from her position; and
 - d. Her protected activity was a motivating factor in the employment decision.
10. The Respondent articulated legitimate non-discriminatory reasons for discharging Complainant Garcia-Jones.
11. Complainant Garcia-Jones has established by a preponderance of the evidence that the proffered reasons are pretextual.
12. Whenever the Commission concludes that a Respondent has engaged in an unlawful practice, the Commission shall issue a cease and desist order and it may order such affirmative action as in its judgment will effectuate the purposes of the Act.
13. The Commission has broad discretion in fashioning a remedy.

OPINION

The instant cases arose from complaints filed by Sterling Feeser and Vilma Garcia-Jones (hereinafter “Complainant Jones and Complainant Feeser”). Complainant Feeser original complaint raised allegations of race and age discrimination relating to his employment with the York Spanish American Center (hereinafter “Center”). The Respondent, at various times, has been referred to as the Spanish Council of York, Inc., the York Spanish American Council and the York Spanish American Center. Complainant Garcia-Jones’ complaint raised disability discrimination allegations. Complainant Garcia-Jones subsequently amended her complaint alleging that she was retaliated against for opposing Complainant Feeser’s termination. After the filing of the instant Complaints, Vilma Garcia-Jones passed away. Her claim continues on behalf of her estate.

After investigation of the instant complaints, Commission staff notified that probable cause existed to credit the allegations raised by the complaints. Thereafter, the PHRC attempted to resolve the issues through conciliation and persuasion. Such efforts were unsuccessful and the matters were scheduled for public hearing before a three Commissioner panel. The public hearing on the instant cases was held on five different dates: July 16 and 17, 2002; September 5 and 6, 2002; and March 28, 2003. The hearings were presided over by Commissioner Russell S. Howell, Commissioner Sylvia a. Waters and Commissioner Raquel Otero de Yiengst. During the course of the proceedings, Commissioner Stephen A. Glassman and Commissioner Toni M. Gilhooley also participated as panel members. Joseph Bednarik, Assistant Chief Counsel and Stephanie Chapman, Assistant Chief Counsel represented the state’s interest in the complaints. During the course of the hearings, the Respondent was represented by Joseph Korsak, Esquire. Subsequent to the conclusion of the public hearing, Attorney Korsak withdrew from the case. The Respondent is currently represented by Dale E. Anstine, Esquire. Also, at the initial day of public hearing, July 16, 2002, Commission counsel waived Complainant Feeser’s claim of age discrimination and Complainant Garcia-Jones’ claim of disability discrimination. Consequently, the cases proceeded on Complainant Feeser’s race based allegation and Complainant Garcia-Jones’ retaliation based allegation.

Since the instant complaint deals with two different Complainants, we will first review Complainant Feeser’s allegations. We will set forth the standard of proof as enunciated in the landmark case of McDonnell Douglas Corp., v. Green, 411 U.S. 792. (1973). Briefly, utilizing this model, the Complainant has the burden of establishing a *prima facie* case. Once the Complainant meets the *prima facie* showing, the burden of production shifts to the Respondent. The Respondent must articulate a legitimate non discriminatory reason for its action. If the Respondent meets its burden of production, the Complainant, in order to prevail, must show that the proffered reason was pretextual and the Respondent intentionally discriminated against the Complainant.

In the instant case, Complainant Feeser, in order to establish a *prima facie* case, must show:

- 1) he is in a protected class;
- 2) he is qualified for the position;
- 3) he suffered an adverse employment action when his position was eliminated; and
- 4) he was discharged under circumstances that give rise to an inference of discrimination.

Clearly, Complainant Feeser easily meets the first three steps of the *prima facie* showing. He is a member of a protected class (white male), he was certainly qualified for the position and he suffered an adverse employment when the Center eliminated his position.

We now move to the fourth prong of the *prima facie* case - "discharged under circumstances that gives rise to an inference of discrimination." A review of the extensive record in this matter shows that Complainant Feeser's discharge was under circumstances that would give rise to an inference of discrimination. The Center offered a legitimate non-discriminatory reason in that the Center (and its board) had manifest problems with Complainant Feeser's relationship with the staff. The Center emphasized that both Complainants were at-will employees who could be terminated at any time.

Under the McDonnell Douglas model, since the Center has articulated a legitimate non-discriminatory reason, Complainant Feeser must show that the proffered reason is pretextual. As always, Complainant Feeser retains the ultimate burden of persuasion in this matter,

The record before the Commission clearly shows that the reasons are not only pretextual, but a mixed motive analysis is also appropriate in this matter. A mixed motive case arises where a complainant demonstrates evidence that a discriminating factor played a motivating part of the respondent's decision in a case. The first major case in this area is Price Waterhouse v. Hookins 490 U.S. 228 (1989). The Price Waterhouse case stood for the proposition that if there is evidence that a discriminatory motive partially influenced a decision, then the burden shifted to the respondent to establish that it would have made the same decision in the absence of the discriminatory reason. However, a more recent case, Desert Palace, Inc. v. Costa 91 FEP CASES 1569 (U.S. 2003), bears on this issue. Desert Palace provides that a complainant needs only produce sufficient evidence, for a reasonable jury to conclude, that race was a motivating factor.

A review of the evidence presented at public hearing clearly shows that Board members believed that the Administrators should be Latino. Hal Harper, board member, testified that it was his personal goal that all of the board members, administrators and staff be Latino. Mr. Harper was not only a board member, but he also was chair of its Personnel Committee. It is patently obvious that Complainant Feeser did not fit within the framework of Mr. Harper's vision. Gerri Zimmerman, board member credibly testified that after the April meeting, she advised Complainant Feeser to seek legal help because he was going to get fired because of his race. The evidence is overwhelming that race was a motivating factor in the decision to eliminate Complainant Feeser.

The reason that the Center presented, difficulties in his relationship with staff, is clearly not supported by the record. It is clear that Complainant Feeser was the direct supervisor of several staff members. The individual who brought complaints to the board was the same individual who referred to Complainant Feeser by causing a racial epithet. The board did not investigate the veracity of the complaints against Feeser. In fact, none of the board members even spoke to members of staff in regard to complaints nor did any board member see a written complaint regarding Complainant Feeser.

It is also interesting to note the report of Dr. Keller, a consultant hired by the board. Dr. Keller later included his observation that "Anglo board members wonder where the local Latino leadership is, want to be supportive, and don't want to alienate." He goes on to say, "this may also be a good time to determine if Latino Leadership is available in the community, or if it's necessary to develop a Leadership program. CX- 7. Given the fact that several board members could not give any rationale for their decision to eliminate Complainant Feeser's position, it is not unrealistic that board member would see their action as being "supportive" of the community. The record is clear that Complainant Feeser's position was eliminated because of his race.

We now move to the issue of remedy for Complainant Feeser. When the Commission fashions an award after a finding of discrimination, the Commission has broad discretion. An award in the instant case involving Complainant Feeser will include a cease and desist order and a back pay award. Certainly the Respondent shall cease and desist from discriminating against persons on the basis of race.

Any back pay award should serve not only to restore an injured party to pre-injury status and make the individual whole, but also serve to discourage future discrimination. Consolidated Rail Corp., v. PA Human Relations Commission, 582 A.2d 702, (Pa. Cmwlth. 1990). The records produced at public hearing provide a very clear picture of complainant Feeser's back pay. As Commission counsel notes, the back pay is computed by calculating the amount of back wages that Feeser would have earned from the time of his dismissal until he was hired by Fypon, Inc., at a higher salary than he earned with the Respondent. Complainant Feeser's dismissal was at the end of May, 1996 and he was hired at Fypon in August of 1997. Complainant Feeser's final salary with the Respondent was twenty-five thousand dollars per year. HTV 27. Complainant Feeser's potential loss of wages during the relevant time period was \$29,166.00. A review of his earnings during the relevant time period, when combined with 1996 earnings, was \$14,173.76. His make whole remedy is therefore \$14,933.76.

We next move to the complaint filed by Vilma Garcia-Jones alleging that the Respondent retaliated against her. (As aforementioned, Vilma Garcia-Jones passed away and her husband, Leroy Jones, is pursuing her claim on behalf of her estate). Complainant Garcia-Jones, in order to establish a *prima facie* case of retaliation, must show:

- 1) she was engaged in a protected activity;
- 2) adverse action by the Respondent either after or contemporaneous with her protected activity; and
- 3) a casual connection between her protected activity and the adverse action.

At the public hearing, the testimony presented on behalf of Complainant Garcia-Jones established that she clearly opposed the Center's decision to discharge Complainant Feeser because he was not a Latino. In addition to the testimony, the Center, in its answer, admitted that Complainant Garcia-Jones was discharged, in part, because she refused to fire Complainant Feeser.

After her refusal to fire Complainant Feeser, the Center eliminated his position as Assistant Director and Program Supervisor, and created the position of grant writer. Soon thereafter, the board terminated Complainant Garcia-Jones. Where there is a such proximity in time between

the protected activity and the adverse employment action, causation is inferred. Robert Wholey Co. v. Pennsylvania Human Relations Commission, 606 A.2d 982 (Pa Cmwlth. 1992). Appeal denied 615 A.2d 1514 (Pa 1993), Brown Transport Corp. v. Pennsylvania Human Relations Commission, 133 PA Cmwlth 545, 578 A.2d 555 (1990). In the instant case, within several days of service of the complaint, the board discharged Complainant Garcia-Jones. Upon review of the evidence, Complainant Garcia-Jones has met her *prima facie* burden. The Respondent must now articulate a legitimate non-discriminatory reason for its action. McDonnell Douglas, *supra*. In the instant case, the Center proffered that it was having financial difficulties and the creation of the grant writer position would help alleviate those problems. These reasons satisfy the Center's burden of articulating legitimate non-discriminatory reasons.

We now move to determine whether the proffered reasons are pretextual. Once again, Complainant Garcia-Jones has the ultimate burden of establishing that she is a victim of discrimination. Firstly, the Center, in its answer to the complaint filed by Vilma Garcia-Jones, admitted that she was fired, in part because of her refusal to discharge Complainant Feeser. A review of the testimony of Board members shows contradictions and inconsistencies with the answer filed by the Center. Each board member who testified (Lepper, Amoros, Learned, and Hoffman) denied that Garcia-Jones support of Complainant Feeser was a factor in their decision. As Commission counsel notes given the answer filed by the Center, the testimony of the board members is simply not credible. Furthermore, the testimony of board members indicated a clear frustration with Complainant Garcia-Jones opposition to discharging Feeser. The decision of the board to eliminate her Assistant's position and not replace him, certainly effectively retaliated against Garcia-Jones for not firing Feeser.

Next, the Center asserts that there was a financial crisis at the Center and that a grant writer was needed to help remedy the situation. The record is devoid of any evidence indicating financial distress. On the contrary, it appears that the Center was operating at a profit (for four of the five years of Garcia-Jones tenure) and the mortgage had been paid off. Furthermore, the grant writer position was not only unnecessary, but the Board did not actively pursue anyone for the position. The grant writer position was not advertised, but rather, was only made known by "word of mouth in the community." There was no evidence presented that a grant writer was needed. Even the consultant hired by the board, Dr. Keller, denied that anything in his report could be construed as recommending the creation of a grant writer position. HT, 1.245. Given the lack of evidence on this issue, we are left with only one logical conclusion. There was no need for a grant writer. The full record reflects that Garcia-Jones' position was made more difficult for her after her support of Complainant Feeser and her termination was in retaliation of said support. Having found that Complainant Garcia-Jones has shown by a preponderance of evidence that she was a victim of retaliation, we now move to the issue of remedy. As aforementioned, the Commission, when fashioning an award, has broad discretion. Murphy v. PHRC, 486 A.2d 388 (Pa. 1985). First, the Center shall cease and desist from retaliating against persons who engage in activities protected by the PHRA. Williamsburg Community School District, *supra*. Secondly, a remedy is to restore the injury party to their pre-injury state and make them whole. In the instant case, the injured party is the Estate of Vilma Garcia- Jones. The record before the Commission reflects that Complainant Garcia-Jones earned \$42,184.00 per year or \$3,507.00 per month at the relevant time period. It is undisputed that Complainant Garcia-Jones made the following amount

in subsequent years: \$5,000.00 (1997); \$23,609.00 (1998); and \$34,268.00 (1999). The total remedy for back pay for Vilma Garcia-Jones is \$70,689.00.

The Center attempted to establish, as a defense to damages, that it would have discharged Complainant Garcia-Jones anyway when it learned of alleged misconduct. It cannot be stated strongly enough that the "evidence" produced amounted to unproven, spurious allegations. Board members repeatedly asked for some proof of these allegations, and they did not receive any proof. The testimony, particularly Flora Brands' testimony, consisted of unsubstantiated accusations and innuendos. In fact, the evidence on this point shall be wholly disregarded because there was no substantive proof provided at the public hearing.

Having found that Complainant Feeser and Complainant Garcia-Jones have met their ultimate burden of persuasion, an appropriate Order follows:

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**STERLING FEESER and LEROY JONES AS EXECUTOR
OF THE ESTATE OF VILMA GARCIA-JONES, Complainants**

v.

**SPANISH COUNCIL OF YORK, INC.,
d/b/a YORK SPANISH AMERICAN CENTER., Respondent**

DOCKET Nos. E-78888-AD and E-81636-DH

RECOMMENDATION OF HEARING PANEL MEMBER

Upon review of the entire record in the above captioned matter, this Hearing Panel finds that Complainant Feeser has proven by a preponderance of the evidence that he was discriminated against on the basis of his race. This Hearing Panel also finds that Complainant Garcia-Jones has proven by preponderance of the evidence that she was being retaliated against when she was terminated from her position.

It is, therefore, the Hearing Panel's recommendation that the attached Stipulations of Fact, Findings of Fact, Conclusions of Law and Opinion be approved and adopted by the full Commission. If so approved and adopted, the Hearing Panel recommends issuance of the attached Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION
Commissioner Sylvia A. Waters

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**STERLING FEESER and LEROY JONES AS EXECUTOR
OF THE ESTATE OF VILMA GARCIA-JONES, Complainants**

v.

**SPANISH COUNCIL OF YORK, INC.,
d/b/a YORK SPANISH AMERICAN CENTER., Respondent**

DOCKET Nos. E-78888-AD and E-81636-DH

FINAL ORDER

AND NOW, this 26th day of July 2004, upon consideration 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, Recommendation and Opinion of the Hearing Panel in the instant case. Further the full Commission adopts said Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion, as its own and hereby

ORDERS

1. That the Respondent shall cease and desist from discriminating on the basis of race.
2. That this Respondent shall cease and desist from retaliating against persons who engage in activity protected by the PHRA.
3. That the Respondent shall pay Complainant Feeser, within thirty days of the effective date of this Order, the lump sum of \$14,993.76 representing back pay for the year 1996 and 1997.
4. That the Respondent shall pay Complainant Leroy Jones, executor of the estate of Vilma Garcia-Jones, within thirty days of the effective date of this Order, the lump sum of \$70,689.00 representing back pay for the years 1996, 1997, 1998 and 1999.
5. That within thirty days of the effective date of this Order, the Respondent shall report the Commission on the manner of its compliance with the terms of this Order by letter addressed to Joseph T. Bednarik, Assistant Chief Counsel, at PHRC's Harrisburg Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION
Stephen A. Glassman, Chairperson
Attest: Sylvia A. Waters, Secretary

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**STERLING FEESER and LEROY JONES AS EXECUTOR
OF THE ESTATE OF VILMA GARCIA-JONES, Complainants**

v.

**SPANISH COUNCIL OF YORK, INC.,
d/b/a YORK SPANISH AMERICAN CENTER., Respondent**

DOCKET Nos. E-78888-AD and E-81636-DH

DISSENTING STIPULATIONS OF FACT

DISSENTING FINDINGS OF FACT

DISSENTING CONCLUSIONS OF LAW

DISSENTING OPINION

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

VILMA GARCIA-JONES, Complainant

v.

SPANISH COUNCIL OF YORK, INC., Respondent

DOCKET No. E-81636-DH

STIPULATIONS OF THE PARTIES

Complainant Vilma Garcia-Jones and Respondent Spanish Council of York, Inc., do hereby stipulate that the following facts are true and that no proof thereof shall be required.

1. Complainant Vilma Garcia-Jones is an adult who, at all times relevant, resided at 101 Merion Street in York, Pa.
2. Respondent Spanish Council of York, Inc., is a not for profit corporation located at 200 East Princess Avenue in York, PA, and, at all times relevant, employed four or more persons in the Commonwealth of Pennsylvania.
3. The employment action challenged in the complaint occurred in York County.
4. Complainant filed her complaint (PHRC Docket No. E-81636-DH) with the Pennsylvania Human Relations Commission on or about January 9, 1997.
5. PHRC served Respondent with a copy of the complaint on or about January 28, 1997.
6. Respondent filed an answer to the complaint, which was received by the PHRC on February 25, 1997.
7. The complaint was subsequently amended and served on March 5, 1997.
8. The complaint was amended a second time and served on August 14, 1998.
9. PHRC served Respondent with a finding of probable cause on or about January 10, 2000.
10. A conciliation conference was scheduled for February 16, 2000, but it was not successful.
11. On April 25, 2000, PHRC notified the parties that the case was approved for public hearing and placed on the public hearing docket.
12. All jurisdictional prerequisites for the public hearing have been satisfied.

Joseph T. Bednarik, Esquire
Counsel for the Complainant
September 12, 2000

Joseph C. Korsak, Esquire
Counsel for the Respondent
September 12, 2000

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

STERLING FEESER, Complainants

v.

SPANISH COUNCIL OF YORK, INC., Respondent

DOCKET Nos. E-78888

STIPULATIONS OF THE PARTIES

Complainant Sterling Feeser and Respondent Spanish Council of York, Inc., do hereby stipulate that the following facts are true and that no proof hereof shall be required:

1. Complainant Sterling Feeser is an adult who, at all times relevant, resided at 822 Virginia Avenue in York, PA.
2. Respondent Spanish Council of York, Inc., is a not for profit corporation located at 200 East Princess Avenue in York, PA, and, at all times relevant, employed four or more persons in the Commonwealth of Pennsylvania.
3. The employment action challenged in the complaint occurred in York County.
4. Complainant filed his complaint (PHRC Docket No. E-78888) with the Pennsylvania Human Relations Commission on August 8, 1996.
5. PHRC served Respondent with a copy of the complaint on or about September 10, 1996.
6. Respondent filed an answer to the complaint, which was received by the PHRC on October 18, 1996.
7. PHRC served Respondent with a finding of probable cause on or about January 10, 2000.
8. A conciliation conference was scheduled for February 16, 2000, but it was not successful.
9. On April 25, 2000, PHRC notified the parties that the case was approved for public hearing and placed on the public hearing docket.
10. All jurisdictional prerequisites for the public hearing have been satisfied.

Joseph T. Bednarik, Esquire
Counsel for the Complainant
September 12, 2000

Joseph C. Korsak, Esquire
Counsel for the Respondent
September 12, 2000

FINDINGS OF FACT

1. Vilma Garcia-Jones (hereinafter “Complainant Garcia-Jones”), was appointed Executive Director of the York Spanish American Center in 1992. (N.T. I, 101)
2. Complainant Garcia-Jones was previously employed at the Center as Employment Program Coordinator and as Program Supervisor/Assistant Director. (N.T. I, 101)
3. At all times relevant to the complaint, Complainant Garcia-Jones worked sixty to seventy hours per week in her capacity as Executive Director.
4. Sterling Feeser (hereinafter “Complainant Feeser”) was the Program Supervisor/Assistant Director during the time that Complainant Garcia-Jones was Executive Director. (N.T. I 100-101)
5. The duties of Executive Director included overseeing the maintenance of the physical plant, carrying out the business and operational transactions, serving as the Center’s representative in the community, assessing the community needs, searching for available funding, evaluating and supervising staff, and preparing plans and advice in the area of personnel, finances, and relations with fund sources and the general public. (RX-33).
6. The duties of the Assistant Director/Program Supervisor included supervising the delivery of program services by monitoring staff, supervising and case records, assisting the development of programs, assisting the implementation of policies and programs, identifying possible funding sources, and preparing grants and proposals. (CX-31).
7. At all times relevant to the instant complaints, Complainant Garcia-Jones worked sixty-seventy hours per week. (N.T. 504)
8. At all times relevant to the instant complaints, Complainant Feeser provided forty hours of service per month in the case management program. (N.T. 134)
9. Complainant Feeser also taught at least one life skills program per month. (N.T. at 135)
10. More than one-half of Complainant Feeser's time was spent monitoring the Center's programs including the Pennsylvania Council of the Arts, the after, school program, The Spanish GED program, the social work program, the Even Start program, the FEMA program and the Youth at risk program. (N.T. I at 135-136)
11. Complainant Feeser did spend some time, from January to June, preparing grant requests for the various programs. (N.T. 1138-139)
12. Before his employment at the Center, Complainant Feeser worked for ten (10) years at Rural Opportunities as an ESL instructor, generalist, and regional administrator. (N.T. I 97-98)
13. The clientele of Rural Opportunities was 98 per cent Latino. (N. T. I 99)
14. Complainant Feeser, a white male is fluent in Spanish and is married to a woman of Mexican origin. (N.T. 195-96)
15. Complainant Feeser testified that there were staff complaints. (N. T. I, 120)
16. Complainant Feeser directly supervised most of the staff at the Center. (N.T. I, 56)
17. Flora Brands was employed as a project director at the Spanish American Center in 1996 and was eventually named the acting director.
18. Brands regularly visited the Center once or twice weekly to copy material and attend meetings. (N.T. 134)
19. Brands testified that she heard staff members use the term "gringo" in referring to Complainant Feeser. (N.T. 137-38)
20. In 1996, Complainant Garcia-Jones received complaints regarding Complainant Feeser from staff members. (N.T.547)

21. Complainant Garcia-Jones met with Complainant Feeser concerning the staff members' complaints. (N.T.548)
22. Complainant Garcia-Jones did not believe that the complaints had any merit whatsoever. (N.T.358)
23. On March 26, 1996, Charles Hoffman, chair of the Board, convened a meeting with several of the staff members of the Center. N. T. I 79)
24. At this meeting, the staff members voiced their dissatisfaction with Complainant Feeser. (N.T. 180,88)
25. Complainant Feeser testified that Jerri Zimmerman, board member, told him that the Board was going to get rid of him because he was White. (N.T.1, 144)
26. Jerri Zimmerman testified that she could not remember who made the comment to her. (N.T. II, 417)
27. Jerri Zimmerman testified that there were staff complaints made to the Board concerning Complainant Feeser's treatment of staff. (N.T. 11,439)
28. Ms. Zimmerman testified that the other Board members had lost faith in the ability of Feeser and Garcia-Jones. (N.T. 11,460)
29. Ms. Zimmerman did not know if any of the Board members were motivated by race in deciding to eliminate Feeser's position. (N. T. 11,461)
30. Complainant Feeser testified that the minutes of the April 1996 Board meeting did not contain any reference from Board members regarding his race or ethnicity. N. T. I, 146 - 149)
31. At a special meeting, the Board hired Dr. Jake Keller, a consultant, to interview staff and administrators at the Center. (N.T. 1,175, CX-8)
32. Dr. Keller stated at the public hearing that he felt there was a "schism" between staff and administration at the Center. (N.T. I, 249)
33. Dr. Keller testified that both Complainants told him that they felt the Board had lost confidence in them. (N.T. 1,252)
34. Dr. Keller further testified that it was his conclusion that most of the staff at the Center felt the crisis could not be resolved. (N.I. 1,260)
35. Nan Flesher, board members, testified that she had concerns about the Center's operations. (N.T. II, 321)
36. These concerns included: the Center was not open during times it was supposed to be open and that Complainant Garcia-Jones did not always return phone calls. (N.T. II, 321)
37. Ms. Flesher testified that she voted in favor of eliminating the position of assistant director without any consideration of Complainant Feeser's race. (N.T. 11,325)
38. Ms. Flesher further testified that she did not hear any board member make a reference to Complainant Feeser's race. (N.T. 11,325)
39. Milagros Lepper, board member, testified she was aware of staff complaints in 1996. (N.T. 11,347)
40. Staff members had indicated to Ms. Lepper that they had tried to go to Complainant Garcia-Jones with their problems, and she did not address their concerns. (N.T. II, 347)
41. Ms. Lepper testified that the Board felt there was no alternative to resolving the issues at the Center because Garcia-Jones would not acknowledge that any problems existed. (N.T. 11,358)
42. Ms. Lepper stated the Board created the position of grant writer in an effort to keep Feeser employed at the Center. (N.T.II, 361)

43. Ms. Lepper testified she did not feel Complainant Garcia-Jones was doing a good job because she had no respect for the Board and refused to admit there were problems. (N.T. 11,378)
44. Ms. Lepper, in voting in favor of eliminating the position of Assistant Director, gave no consideration to race of Complainant Feeser. (N.T. 11,381)
45. Complainant Garcia-Jones through deposition testimony, testified she was aware of the Board's concerns about staff complaints regarding Complainant Feeser.
46. Complainant Garcia-Jones admitted that she and Complainant Feeser were at-will employees and could be terminated at any time for any reason. (N.T. II, 513)
47. Complainant Garcia-Jones admitted that her initial complaint did not make reference to Complainant Feeser's race. (N.T. II, 550)
48. Complainant Garcia-Jones did not mention Complainant Feeser's race when she filled out a PHRC questionnaire. (N.T. 11,498)
49. Harold Harper, board member, testified that he made his decision to eliminate Feeser's position and terminate Garcia-Jones solely because he felt Feeser was not capably performing his job duties. (N.T. 111,666)
50. Harper also made the decision because Complainant Garcia-Jones refused to make any changes or acknowledge any problems. (N.T. III, 666)
51. Cecilia Wampler, board member, testified she voted in favor of eliminating the position of assistant director without regard to Feeser's race. (N.T. 111,679)
52. Anibal Santiago, board member, testified that he voted to eliminate Complainant Feeser's position without regard to Feeser's race. (N.T.III, 718)
53. Santiago further testified that he voted in favor terminating Complainant Garcia-Jones' employment simply because she was not doing her job. (N.T. 111,720)
54. Patricia Learned, board member, testified that she voted to terminate Complainant Garcia-Jones' employment solely on job performance. (N.T. III, 777)
55. Learned testified that she also voted in favor of the termination based on her opinion that there was no improvement in the operation of the Center. (N.T. III, 777)
56. At no time did Complainant Garcia-Jones admit or accept any responsibility for the problems at the Center. (N.T. IV, 28)
57. Charles Hoffman, board member, voted to terminate Garcia-Jones' employment strictly on the basis of job performance. (N.T. IV, 45)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The parties have fully complied with procedural prerequisites to a public hearing in this case.
3. Both Complainants are individuals within the meaning of the Pennsylvania Human Relations Act. ("PHRA").
4. The Spanish Council of York, Inc., d/b/a The York Spanish American Center, is an employer within the meaning of the PHRA.
5. Both Complainants have the initial burden of establishing a *prima facie* case of discrimination.
6. In order to establish a *prima facie* case of race-based discrimination, Complainant Feeser must show:
 - a) he is a member of a protected class;
 - b) he was qualified for the position he held; c) he was disciplined, not terminated; and
 - c) he was treated less favorably than similarly situated employees not in his protected class.
7. Complainant Feeser failed to meet his *prima facie* showing.
8. Assuming *arguendo* that Complainant Feeser met his *prima facie* showing, the Respondent articulated legitimate non-discriminatory reasons for its action.
9. Complainant Feeser did not show that the explanations offered by Respondent were a pretext for discrimination.
10. In order to establish a *prima facie* case of retaliation, Complainant Garcia-Jones must show:
 - i. she is a member of a protected class;
 - ii. ii. she was qualified for the position she held; and
 - iii. iii. she was terminated because she opposed a practice forbidden by the PHRA.
11. Complainant Garcia-Jones has met her *prima facie* showing.
12. The Respondent produced evidence of legitimate non-discriminatory reasons for its action.
13. Complainant Garcia-Jones did not show the reasons offered by Respondent were a pretext for discrimination.

DISSENTING OPINION

The instant cases arose from complaints filed by Sterling Feeser and Vilma Garcia-Jones (hereinafter "Complainant Jones and Complainant Feeser"). Complainant Feeser original complaint raised allegations of race and age discrimination relating to his employment with the York Spanish American Center (hereinafter "Center"). The Respondent, at various times, has been referred to as the Spanish Council of York, Inc., the York Spanish American Council and the York Spanish American Center. Complainant Garcia-Jones' complaint raised disability discrimination allegations. Complainant Garcia-Jones subsequently amended her complaint alleging that she was retaliated against for opposing Complainant Feeser's termination. After the filing of the instant Complaints, Vilma Garcia-Jones passed away. Her claim continues on behalf of her estate.

After investigation of the instant complaints, Commission staff notified that probable cause existed to credit the allegations raised by the complaints. Thereafter, the PHRC attempted to resolve the issues through conciliation and persuasion. Such efforts were unsuccessful and the matters were scheduled for public hearing before a three Commissioner panel. The public hearing on the instant cases was held on five different dates: July 16 and 17, 2002; September 5 and 6, 2002; and March 28, 2003. The hearings were presided over by Commissioner Russell S. Howell, Commissioner Sylvia a. Waters and Commissioner Raquel Otero de Yiengst. During the course of the proceedings, Commissioner Stephen A. Glassman and Commissioner Toni M. Gilhooley also participated as panel members. Joseph Bednarik, Assistant Chief Counsel and Stephanie Chapman, Assistant Chief Counsel represented the state's interest in the complaints. During the course of the hearings, the Respondent was represented by Joseph Korsak, Esquire. Subsequent to the conclusion of the public hearing, Attorney Korsak withdrew from the case. The Respondent is currently represented by Dale E. Anstine, Esquire. Also, at the initial day of public hearing, July 16, 2002, Commission counsel waived Complainant Feeser's claim of age discrimination and Complainant Garcia-Jones' claim of disability discrimination. Consequently, the cases proceeded on Complainant Feeser's race based allegation and Complainant Garcia-Jones' retaliation based allegation.

Since the instant complaint deals with two different Complainants, we will first review Complainant Feeser's allegations. We will set forth the standard of proof as enunciated in the landmark case of McDonnell Douglas Corp. v. Green, 411 U.S. 792. (1973). Briefly, utilizing this model, the Complainant has the burden of establishing a *prima facie case*. Once the Complainant meets the *prima facie* showing, the burden of production shifts to the Respondent. The Respondent must articulate a legitimate non discriminatory reason for its action. If the Respondent meets its burden of production, the Complainant, in order to prevail, must show that the proffered reason was pretextual and the Respondent intentionally discriminated against the Complainant.

In the instant case, Complainant Feeser, in order to establish a *prima facie* case, must show:

- 1) he is in a protected class;
 - 2) he is qualified for the position;
 - 3) he suffered an adverse employment I- action when his position was eliminated;
- and

- 4) he was discharged under circumstances that give rise to an inference of discrimination.

A review of the record in this matter shows that Complainant Feeser has failed to establish a *prima facie* case. The Respondent produced numerous witnesses who testified to Complainant Feeser's lack of interpersonal skills needed for this position. These skills were clearly necessary to supervise and manage the staff at the Center. Not one of the Board members who testified at the public hearing said that their decision to eliminate Complainant Feeser's position had anything to do with his race or his ethnicity. The Board members all stated that the decision was based on Complainant Feeser's job performance.

Secondly, the Board members testified that the position of grant writer was created with the intent to offer it to Complainant Feeser. The position was to be offered to him with no loss in benefits or income. Finally, Complainant Feeser has not shown that the decision was made with any consideration of race. There is evidence in the record that a particular staff member used a racial epithet, "gringo". It is unclear from the record whether any Board member used the term or whether any Board member was aware of the staff member's use of the term. As Respondent counsel notes, it is abundantly clear that the morale at the Center was not good. There were concerns at the staff level that complaints were not being addressed by either Complainant Feeser or Complainant Garcia-Jones. Accordingly, Complainant Feeser has not established a *prima facie* case.

Assuming *arguendo* that the Complainant has met his *prima facie* showing, the Respondent, in the shifting of burdens analysis, must then articulate a legitimate non-discriminatory reason for its action in eliminating the position. The Respondent proffered that they took the action because there were problems at the workplace with morale and, significantly, with the relationship between staff and management. These articulated reasons satisfy the Respondent's burden of production. As aforementioned, the burden now shifts back to Complainant Feeser to meet his ultimate burden of persuasion. He may do so by showing that the reasons produced by the Respondent are merely a pretext for discrimination. A review of the record indicates that Complainant Feeser is unable to do so. The record reflects that the Board hired a consultant to talk with the administration and staff at the Center. This action was taken before the position was eliminated. Dr. Keller's report indicated several problems with management and staff, which was brought to the attention of Feeser and Garcia-Jones. It appears from the record that the Board created a new position of grant writer with the intent to offer it to Respondent so he could continue his employment. This action on the Board's part indicates a lack of discriminatory motive in eliminating the position of Complainant Feeser. Upon review of the entire record in this matter, Complainant Feeser has not been able to show that the Respondent's explanations are pretextual.

Next we move to Complainant Garcia-Jones' retaliation claim. In order to establish a *prima facie* showing of a retaliation claim, Complainant Garcia-Jones must show:

- a) she opposed a practice that is unlawful under the PHRA;
- b) that the Respondent knew of this opposition;
- c) an adverse action was taken against the Complainant; and

- d) that there was a causal relationship between Complainant's opposition and the Respondent's action.

A review of the record in this matter reveals that Complainant Garcia-Jones has set forth a *prima facie* showing. She clearly opposed an action she felt was unlawful under the PHRA and the Respondent was aware of her opposition. The Board terminated her employment and there appears to be a causal relationship between Complainant's opposition and the Respondent's action. The burden of establishing a *prima facie* case should not be onerous. Texas Department of Community Affairs v. Burdine, 450 U. S. 248,(1981) Accordingly, the Complainant has met her *prima facie* showing.

Next, the Respondent must articulate a legitimate non-discriminatory reason for its action. In this matter, the Respondent meets its burden of production. There is evidence in the record that the Board took the action because it felt Complainant Garcia-Jones' job performance was unsatisfactory. Once again, when the Respondent carries its burden of production, the burden shifts back to Complainant Garcia-Jones to show that the reasons offered by the Respondent are merely a pretext for discrimination. McDonnell Douglas. supra.

The record in this matter reflects that the Board had numerous concerns about the Center in 1996. The Board met with Complainant Garcia-Jones on several occasions to discuss these concerns. One of the more salient points in the record is Complainant Garcia-Jones' utter refusal to admit that there was ever a problem at the Center. If she cannot see the existence of the problems, then she was not willing to consider any resolutions to rectify any of the concerns of the board. Certainly, both Complainants are at-will employees and could be terminated at any time absent any discrimination. Clearly the Board became frustrated with the attempts to work through staff concerns with an Executive Director who didn't see a problem. She was not responsive to any of the issues raised by the Board that she reported to. Even after an outside consultant was hired to help resolve conflicts, Complainant Garcia-Jones did not see a morale problem at the Center, even though there were staff members threatening to quit because of their concerns. Lastly, each of the Board members who testified said they voted to terminate Complainant Garcia-Jones' contract solely on her job performance. They also testified that their decision had nothing to do with anything involving Complainant Feeser. Based on the foregoing, Complainant Garcia-Jones has not proven by a preponderance of the evidence that she was retaliated against when the Board terminated her position.

Having found that both Complainants herein have not proven by a preponderance of the evidence that they are victims of discrimination, we hereby submit this Dissenting Opinion.