

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

DOLORES E. NESTER, Complainant

v.

LITTLESTOWN AREA SCHOOL DISTRICT, Respondent

DOCKET NO. E-34373-D

STIPULATIONS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

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STIPULATIONS OF FACT

The following facts are admitted by all parties to the above-captioned case and no further proof thereof shall be required.

1. The Complainant herein is Dolores E. Nester (hereinafter "Nester"), an adult female, who resides at 807 Barts Church Road, Hanover, Pennsylvania 17331.
2. The Respondent herein is the Littlestown Area School District, Littlestown, Pennsylvania, 17340 (hereinafter the "School District").
3. The School District is an agency of the Commonwealth of Pennsylvania, organized under the laws of the Commonwealth, and is responsible for administering the Commonwealth's system of public education in the Littlestown, Pennsylvania, area.
4. Nester received a B.S. degree in Health/Physical Education in June 1972.
5. Nester was employed by Baltimore County, Maryland, as a substitute teacher from 1972 through 1980.
6. The School District listed Nester as a "Substitute Teacher" in 1982.
7. Substitute Teachers in the School District are called in by the School District to substitute teach on a day-to-day basis.
8. In the fall of 1983, the School District hired Nester as its Head Junior High School Field Hockey Coach and as its Assistant Girls Junior High School Basketball Coach. Nester served in such capacities and also served as a day-to-day substitute teacher from September 1983 through January 1984.
9. The School District hired Nester as a "Long-Term Substitute Teacher" in Health and Physical Education from January 1984 through June 1984. In addition, Nester continued to serve as the Assistant Girls Junior High School Basketball Coach and was hired in January 1984 to also serve as the Junior Varsity Volleyball Head Coach.
10. Long-Term Substitute Teachers are substitute teachers in the School District who are called in to teach for a period of ninety (90) days or more.

11. Nester served as a day-to-day substitute and as the School District's Head Junior High School Field Hockey Coach and as its Assistant Girls Junior High School Basketball Coach from September 1984 through January 1985.
12. The School District again hired Nester as a Long-Term Substitute teacher in Health and Physical Education from January 1985 through June 1985. In addition, Nester continued to serve as the Assistant Girls Junior High School Basketball Coach.
13. In May, 1985, the School District posted vacancy notices in all its faculty rooms announcing that it had a vacancy for a "High School Physical Education Teacher" position (the "Position"). (See Stipulated Exhibit 2.)
14. The only prerequisite listed for the Position was "Pennsylvania Certification" in the "area designated."
15. The Position was announced in another vacancy notice dated June 17, 1985, which was sent to the placement offices of approximately twenty (20) colleges and universities. (See Stipulated Exhibit 4.)
16. The Position was one of three Health and Physical Education teaching positions at the Littlestown Area High School.
17. One of the other two Health and Physical Education positions at the Littlestown Area High School was held by a male and the other by a female. The Position, the one which the vacancy notice pertained to, could have been filled by either a male or a female.
18. The Position was created by the retirement of Ms. Kay Sentz, a female who had been serving as the third Health and Physical Education teacher at the Littlestown Area High School.
19. In January through June of 1984 and 1985, Nester substituted for Kay Sentz as a Long-Term Substitute while Ms. Sentz was on sabbatical. The duties Nester performed during her two stints as a Long-Term Substitute from January 1984 to June 1984 and from January 1985 to June 1985 were identical to the duties of the position which forms the basis of Nester's Complaint in this matter.
20. At the time the School District was searching for an individual to fill the Position, it also was searching for an individual to fill a "Junior High School Assistant Football Coach" position.
21. The School District posted a vacancy notice for the following coaching positions for the 1985-86 school year sometime prior to June 5, 1985:
 - a. Head Basketball Coach - High School;
 - b. Assistant Wrestling Coach - High School;
 - c. Assistant Baseball Coach - High School;
 - d. Head Volleyball Coach - High School;
 - e. Assistant Junior High Football Coach.

(See Stipulated Exhibit 3.)

22. The vacancy notice for the Position and the vacancy notice for the coaching positions both listed application deadlines of June 5, 1985.
23. The School District had not filled the position of Assistant Junior High Football Coach at the time the interviews for the Position took place.

24. On June 5, 1985, Nester gave notice to the School District that she wished to be considered for the Position. (See Stipulated Exhibit 5.)
25. At the time of such application, the School District had Nester's original application, dated October 18, 1983, in its file. (See Stipulated Exhibit 6.)
26. The School District also had in its file at such time a "Classroom Observation Form" for Nester signed by John Manley on April 15, 1985. The Classroom Observation Form describes the class as a "Discussion of Death and Dying." (See Stipulated Exhibit 1.)
27. The Classroom Observation form rated Nester in twenty-two (22) categories. The ratings in each category could either be "Satisfactory" or "Needs Improvement." Mr. Manley rated Nester as "Satisfactory" in all twenty-two (22) categories.
28. Mr. Manley made the following comments on the Classroom Observation form: (a) "[t]he instructor's plans are complete and up-to-date"; (b) "[t]he instructor referred to a prepared outline"; and (c) "[s]tudents took notes, asked questions and responded to the questions of the instructor."
29. William R. Shirk, Jr., submitted his application to the School District for the Position on July 9, 1985. (See Stipulated Exhibit 7.)
30. In Mr. Shirk's cover letter to his application he stated that he had "just finished a two year program as a graduate assistant for the Temple Football Team", that he had recently received a Master's Degree "in the field of Sports Administration", that he "also received...[his] undergraduate degree at Temple in the Health and Physical Education curriculum" and that "[a]t Temple.. .[h]e was a 4 year varsity letterman." (See Stipulated Exhibit 7.)
31. Mr. Shirk also noted in his cover letter that as a coach he "was in charge of film breakdown, scouting reports, sub- varsity units on both sides of the ball, off-season conditioning program, and assisted with the defensive backfield." (See Stipulated Exhibit 7.)
32. In the resume Mr. Shirk submitted as part of his application he stated the following under the heading "Job Objective": "To become a Head Coach or Coordinator of any level of competitive play that would afford me the opportunity to construct a sound athletic program." (See Stipulated Exhibit 7.)
33. Mr. Shirk submitted along with his application what appears to be a press release from the Temple University Department of Intercollegiate Athletics. The press release states the following:

"Bill Shirk is in his second year as a graduate assistant at Temple University under head coach Bruce Arians. Bill has assisted Nick Rapone in the defensive backfield for the last two years, where he helped coach All-American Anthony Young and Kevin Ross a starter for the Kansas City Chiefs. At Temple he was in charge of film breakdown, scouting reports, the sub-varsity units on both sides of the ball, and the off-season conditioning program.

"A 1983 graduate of Temple in Health and Physical Education, Bill will receive his masters in Sports Administration from Temple in December of 1984. In the fall of 1983 and the spring of 1984 Bill did an internship for the League Champion Philadelphia Stars of the USFL. He worked in the front office under Carl Peterson.

"Bill received the George M. Illman award for outstanding athletic ability, leadership, and academic qualities at the 1982 Football Banquet.

"Bill a native of Shippensburg, Pennsylvania lives in Norristown Pennsylvania, and is married to the former Susan Chillano of Norristown.

(See Stipulated Exhibit 7.)

34. A "Selection Committee" was responsible for choosing a candidate to fill the Position. Such Selection Committee was composed of the following individuals:

- a. John D. Smarsh, the School District's Superintendent;
- b. John Manley, Principal of the Littlestown Area High School;
- c. Ronald O'Connor, Assistant Principal and Athletic Director of the Littlestown Area High School during the time relevant to the facts recited herein; and
- d. John Bream, Principal of the School District's Maple Avenue Middle School during the time relevant to the facts recited herein and a specialist in the area of Health and Physical Education.

35. The Selection Committee chose fifteen (15) individuals to interview from the approximately fifty-three (53) of whom had submitted applications. The fifteen (15) individuals were so notified.

36. Two of the candidates chosen to be interviewed notified the Selection Committee that they did not wish to be considered further for the Position.

37. On July 18, 1985, three members of the Selection Committee, John Manley, Ronald O'Connor and John Bream, interviewed the remaining thirteen candidates for the Position.

38. The thirteen candidates who were interviewed by the Selection Committee were:

- a. Kristen M. Carroll;
- b. Edward G. Wantz;
- c. Howard G. Grumbach;
- d. Dolores E. Nester;
- e. William R. Shirk, Jr.;
- f. J. David Hinkel;
- g. Darryl L. Wentz;
- h. Mark K. Everett;
- i. Vicki L. Heyser;
- j. Todd Boller;
- k. Joy R. Boden;
- l. Hollis Waltersdorf; and
- m. Tom Flaherty.

(See Stipulated Exhibit 19.)

39. Mr. Manley, Mr. O'Connor and Mr. Bream of the Selection Committee interviewed each of the thirteen (13) candidates for approximately one-half hour.
40. The School District typically asks candidates for teaching positions about their ability and availability to coach athletic teams.
41. Mr. Manley, Mr. O'Connor and Mr. Bream of the Selection Committee completed interview reports and took notes during such committee's interviews of the thirteen (13) interviewed candidates.
42. The School District has a policy of destroying all interview reports and interview notes when a successful candidate is chosen.
43. The School District so destroyed the notes the Selection Committee kept when interviewing candidates for the Position.
44. Following the interviews on July 18, 1985, Mr. Manley, Mr. O'Connor and Mr. Bream met to discuss the various candidates and to review their notes of the interviews.
45. Mr. Manley, Mr. O'Connor and Mr. Bream of the Selection Committee recommended that Mr. Smarsh give final consideration to the following five candidates:
 - a. Kristen M. Carroll;
 - b. Edward G. Wantz;
 - c. Howard G. Grumbach;
 - d. William R. Shirk, Jr.; and e. Dolores E. Nester.

(See Stipulated Exhibit 20.)

46. On July 31, 1985, the School District's Superintendent John D. Smarsh interviewed the five finalists for the Position.
47. Mr. Smarsh kept notes of the interviews he conducted.
48. Mr. Smarsh destroyed these notes per School District procedure.
49. Following Mr. Smarsh's interviews, all four members of the Selection Committee, including Mr. Smarsh, met to make a final decision on whom to recommend to the School District's Board be hired.
50. In the early stages of the meeting, the Selection Committee narrowed the field of candidates down to two front-runners: Nester and Mr. Shirk.
51. The Selection Committee ultimately decided to recommend to the School District's Board that it hire Mr. Shirk to fill the Position.
52. By letters dated August 14, 1985, the School District notified the unsuccessful candidates that the Selection Committee was going to recommend to the School District's Board that it hire Mr. Shirk to fill the Position.
53. Mr. Shirk reported to the School District's football camp by the second or third day of such camp to begin assisting with coaching duties.
54. Mr. Shirk's picture was taken as a coach with the Littlestown High School Football Team on the Friday of the first week of football camp.
55. The following appeared in The Gettvsburg Times newspaper in its edition of August 13, 1985, in a story concerning the Littlestown Area High School "Bolt" football team: "The Bolt brain trust also returns, as coach [George] Shue's staff includes Bill Shirk, former Temple University coach, Bob Bream, Bob Wagner and Dave Bowersox." (See Stipulated Exhibit 21.)

56. On August 19, 1985, the School District accepted the Selection Committee's recommendation and voted to hire Mr. Shirk to fill the Position. (See Stipulated Exhibit 23.)
57. The following appeared in The Hanover Sun newspaper in its edition of August 30, 1985, in a story concerning the Littlestown Area High School "Bolt" football team: "Helping [Head Football Coach George] Shue make those adjustments are coaches Bob Bream, Bob Wagner, Bill Shirk, Randy Wantz, Bob Lyter, Andy Wertz and Dave Bowersox." (See Stipulated Exhibit 24.)
58. On September 16, 1985, the School District's Board voted to hire Mr. Shirk for a "Supplemental Position." Such position was an Assistant Coach of the Junior High Football Team. (See Stipulated Exhibit 25.)
59. At its meeting on September 16, 1985, the School District's Board considered but did not accept the resignation of David Bowersox from the position of "Varsity Assistant Football Coach." (See Stipulated Exhibit 25.)
60. On September 20, 1985, Mr. Shirk signed a "Limited Contract for Personal Services" which provided that he would serve as a "JH Football Assistant Coach" "for a term beginning September 1985 and terminating December 1985 for a stated compensation of \$528.00." (See Stipulated Exhibit 26.)
61. Mr. Shirk never entered into a contract to serve as a Varsity Assistant Football coach for any period of 1985.
62. No certification is required to coach football or any other sport in Pennsylvania schools.
63. The School District gave Mr. Shirk the highest possible ratings on its employee rating forms for the 1985-1986 and 1986-1987 school years.
64. On May 26, 1987, Mr. Shirk submitted to the School District his resignation from the Position.
65. The School District hired Nester to fill the position of "In School Suspension Teacher" on October 20, 1986.
66. The Littlestown Area School District Board noted on the personnel report it approved in hiring Nester for the In School Suspension Teacher position that Nester as of October 20, 1986, had thirteen (13) years of experience as a substitute teacher.
67. The School District transferred Nester from the In School Suspension Teacher position to the position of Physical Education Teacher at its Maple Avenue Middle School on September 1, 1987.
68. Nester currently continues to fill the position of Physical Education Teacher at the School District's Maple Avenue Middle School.
69. Except for the fact that Nester teaches a younger age group in the position she now fills at the School District's Maple Avenue Middle School, the duties of such position are substantially identical to the duties of the Position which forms the basis of Nester's Complaint in this matter.
70. The School District granted Nester tenure on June 19, 1989.
71. The School District gave Nester the highest possible rating on its employee rating form for the 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991, and 1991-1992 school years.
72. Had Nester been hired for the Position for the 1985-86 school year, under the applicable collective bargaining agreement she would have earned an annual salary of \$13,675 and would have been at "Degree B, Step 1" on the salary schedule. Instead, she earned

\$3,357.50 from substitute teaching in the Littlestown Area School District, the Gettysburg Area School District and the Hanover Public School District.

73. When the School District hired Nester as an In School Suspension Teacher for the 1986-87 school year, Nester earned \$14,750.00 pursuant to the collective bargaining agreement and was at Degree B, Step 1 on the salary schedule.

74. Nester was at the following Degree and Step on the salary scale and earned the following annual salaries for the years indicated:

<u>Year</u>	<u>Degree</u>	<u>Step</u>	<u>Salary</u>
85-86	Substitute Teacher		\$ 3,357.50
86-87	B	1	\$14,750.00
87-88	B	2	\$16,350.00
88-89	B	1*	\$18,005.00
89-90	B+15	1	\$20,717.00
90-91	B+15	3**	\$24,033.00
91-92	B+15	4	\$26,196.00
92-93	B+15	5	<u>\$28,869.00</u>

TOTAL: \$152,277.50

* Steps were changed under compaction.

** Grievance on Long-Term Substitutes advanced Nester one step.

75. Had Nester been hired for the Position, she would have been at the following Degree and Step on the salary scale and would have earned the following annual salaries for the years indicated:

<u>Year</u>	<u>Degree</u>	<u>Step</u>	<u>Salary</u>
85-86	B	1	\$13,675.00
86-87	B	2	\$15,175.00
87-88	B	3	\$16,775.00
88-89	B	2*	\$18,815.00
89-90	B+15	2	\$21,584.00
90-91	B+15	4**	\$24,961.00
91-92	B+15	5	\$27,222.00
92-93	B+15	6	<u>\$29,958.00</u>

TOTAL: \$168,165.00

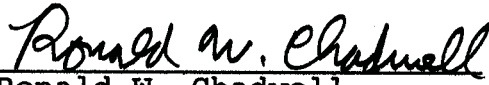
* Steps were changed under compaction.

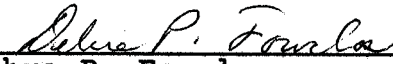
** Grievance on Long-Term Substitutes advanced Nester one step.

76. The difference between what Nester would have earned for the 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91, 1991-92 and 1992-93 school years (\$168,165.00) and what she actually earned during those same years (\$152,277.50) is \$15,887.50.
77. For the 1992-93 school year, Nester is at Degree B+15, Step 6, on the School District's salary schedule as provided by the applicable collective bargaining agreement. Had Nester been hired for the Position for the 1985-86 school year, she would be at Degree B+15, Step 7, for the 1992-93 school year on the School District's salary schedule as provided by the applicable collective bargaining agreement.
78. The collective bargaining agreement currently in effect between the Board of Education of the Littlestown Area School District and the Littlestown Area Education Association provides the following at Article x, Subpart K regarding "Retirement Termination pay":

A professional employee who accepts an annuity from the Public School Employees' Retirement Board and who has a minimum of twenty (20) years service in the Littlestown School District will be paid 0.0075 times his/her highest year's earnings times the number of years experience he/she has acquired in the Littlestown School District."

79. Nester filed the Complaint in the above-referenced matter with the Pennsylvania Human Relations Commission (the "Commission") fifteen (15) days after receiving notification that the School District was not hiring her for the Position.
80. The School District is an employer subject to the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, No. 222, as amended, 43 P.S. §§ 951 -963.
81. After conducting an investigation, the Commission notified the School District that it had determined that probable cause existed to credit the allegations of the complaint.
82. Conciliation has been attempted and the School District declined to participate.
83. By letter dated January 7, 1993, the Commission's Executive Director notified the parties that the case had been approved for public Hearing.
84. All jurisdictional prerequisites for this case to proceed to public hearing have been met.


 Ronald W. Chadwell
 Counsel for the Commission
 in Support of the Complaint


 Debra P. Fourlas
 Counsel for Respondent

Dated: 6/17/93

Dated: 6/17/93

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter the "PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The parties have fully complied with the procedural prerequisites to a public hearing.
3. Nester is an "individual" within the meaning of the Pennsylvania Human Relations Act (hereinafter the "PHRA").
4. Littlestown Area School District is an "employer" within the meaning of the PHRA.

5. Nester has met her initial burden of establishing a prima facie case of disparate treatment by proving that:
 - a. she belongs to a protected class;
 - b. she applied for an open position for which she was qualified;
 - c. her application was rejected; and
 - d. the position was awarded to an applicant with either equal or less qualifications than Nester's, and who is a male.
6. Littlestown Area School District articulated legitimate, nondiscriminatory reasons for refusing to hire Nester.
7. Nester has proven that the reasons offered by the School District are pretextual and that she was not hired because of her gender.
8. Nester has also established liability under the theory of disparate impact.
9. The PHRC has broad discretion in fashioning a remedy.
10. Nester is entitled to lost wages. plus six percent interest.

OPINION *

This case arises on a complaint filed on or about September 4, 1985, by Dolores E. Nester (hereinafter "Nester") against Littlestown Area School District (hereinafter "LASD") with the Pennsylvania Human Relations Commission (hereinafter "PHRC"). Nester's complaint alleges that she was not selected for a teaching position because of her sex, female. This sex-based allegation alleges a violation of Section 5(a) 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 allegation, and at the investigation's conclusion informed LASD that probable cause existed to credit Nester's allegation. Thereafter, the PHRC attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, the PHRC notified the parties that it had approved a public hearing.

* The factual basis giving rise to the claim is essentially uncontroverted. The foregoing "Stipulations of Fact" are hereby incorporated herein as if fully set forth. To the extent that this Opinion recites facts in addition to those listed in the Stipulations, such facts shall be considered to be additional findings of fact. The following abbreviations will be utilized throughout this Opinion for reference purposes.

NT	Notes of Testimony
JE	Joint Exhibit
SF	Stipulations of Fact
CE	Complainant Exhibit

The public hearing was held on June 21 and 22, 1993 in Gettysburg, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The PHRC's interest in the complaint was overseen by PHRC staff attorney Ronald W. Chadwell, and Debra P. Furlas, Esquire, appeared on behalf of the LASD. The parties were afforded an opportunity to submit briefs, and on August 11, 1993, post-hearing briefs were received. Initial supplemental briefs were received on August

24, 1993, and a final submission was received on September 3, 1993 from the PHRC regional attorney, Ronald Chadwell.

In this case, Nester attempts to establish discrimination under two general theories: disparate treatment and disparate impact. Fundamentally, the U.S. Supreme Court differentiated the two separate theories by stating:

"Disparate treatment"...is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex or national origin. Proof of discriminatory motive is critical, although it can in some situations be inferred from the mere fact of differences in treatment...Claims of disparate treatment may be distinguished from claims that stress "disparate impact." The latter involve employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity...Proof of discriminatory motive, we have held, is not required under a disparate impact theory.

International Brotherhood of Teamsters v. U.S., 431 U.S. 324 at 335 n. 15 (1977).

Since the proof required for these two separate theories is quite different, this opinion both evaluates the evidence and discusses the two theories separately. We begin by reviewing the disparate treatment claim.

Generally, there are two analytical approaches which govern methods of proof in disparate treatment actions. See Holmes v. Bevilacqua, 794 F.2d 142, 41 FEP 43 (4th Cir. 1986).

These two approaches are commonly referred to as the direct evidence model and the McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973) shifting burden model. Here, Nester asserts that she can establish disparate treatment under either method of proof.

When these alternative theories are advanced, a case is normally examined separately under the rubric of both theories. However, in this case, the operation of the two theories dictates a flexible approach which combines qualities of each theory. Analysis of the asserted direct evidence in this case will be plugged into both the first level prima facie showing and the third level of the McDonnell-Douglas approach to a disparate treatment claim.

Under the oft-cited McDonnell-Douglas analytical approach, a complainant must initially rely on a judicially created inference to support a claim of intentional discrimination. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1980); McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973). This inference is created if a complainant is able to establish a prima facie case. If a prima facie case can be established, a rebuttable presumption is created, and the burden of production is shifted to a respondent to articulate a legitimate, nondiscriminatory reason for its action. If a respondent carries this production burden, the third level of the inquiry becomes whether a complainant can prove that the respondent's articulated reason is a mere pretext for discrimination. As noted, it will be during the pretext inquiry that portions of Nester's asserted direct evidence of a discriminatory motive will be reviewed.

In a refusal to hire case, the Pa. Supreme Court has announced the requisite showing a complainant must make to establish a prima facie case. PHRC v. Johnstown Redevelopment Authority, 527 Pa. 71, 588 A.2d 497 (1991). In effect the Pa. Supreme Court announced the following elements of a prima facie case:

- a. that a complainant be a member of a protected category;
- b. that she applied for and was qualified for a job for which the respondent was seeking applicants;
- c. she was rejected; and
- d. she was at least as well qualified as the candidate selected.

Id at 500-501.

In considering whether Nester met her burden of establishing a prima facie case, we are mindful of the Pa. Supreme Court's guiding principle that the burden of establishing a prima facie case should not be onerous. Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987). With this proviso in mind, the record reveals that Nester has established a prima facie case.

First, Nester is a female. Second, she applied for the open position of health and physical education teacher (hereinafter "the position") and had met the minimum qualification which simply required proper certification. Third, Nester was clearly rejected for the teaching position. Fourth, the evidence presented supports the conclusion that Nester was at least as equally qualified as William Shirk (hereinafter "Shirk"), the successful candidate.

Indirectly, LASD's initial and supplemental briefs allude to a question of whether Nester established that she was at least as equally qualified as Shirk. Much of LASD's arguments focus on this issue in the context of the articulated rationale offered regarding why Shirk was selected over Nester, however, some general qualification evidence serves to confirm the prima facie level premise that Nester was at least as equally qualified as Shirk.

On the question of comparative qualifications, there are several factors which lead to the conclusion that Nester's qualifications were at least equal to, if not greater than, Shirk's. Of the original 53 applicants, both Nester and Shirk were among the 15 candidates initially chosen for an interview, 13 of whom were eventually interviewed. Further, since a two-stage interview process occurred here, both Nester and Shirk were among the five chosen by three of the four selection committee members to be interviewed by the final selection committee member.

As if this was not enough to establish that even LASD considered Nester at least equally qualified as Shirk, the final interviewer, Superintendent John Smarsh (hereinafter "Smarsh"), testified that in his opinion the choice between Nester and Shirk was a toss-up (NT 238), and that both were equally qualified (NT 239).

To explore any further the question of qualification comparison at this stage would normally be unnecessary. The very process by which five of 53 candidates were referred for a final interview

establishes that Nester was at least equally qualified for the position as Shirk. In this case two additional factors are useful in the determination that Nester was at least as qualified as Shirk. First, Nester had significant teaching experience while Shirk had only student taught. Second, there was evidence of sex-based discriminatory animus presented. Prior to the selection, John Manley (hereinafter "Manley"), the principal of Littlestown Area High School, had on one occasion stated that he preferred a man for the position. (NT 44-45, 71, 93.) Earlier, after first becoming high school principal, Manley stated to a group of male teachers that the school would be better off with an all-male faculty. (NT 79-80, 88.) Also, in May 1985, Manley told Nester that although he preferred a man for the position, Nester's superior qualifications kept her in the running as a finalist to be interviewed by Smarsh.

Accordingly, Nester has sufficiently established that her qualifications were at least equal to Shirk's. By doing so, Nester fulfills her burden of proof in establishing a prima facie case.

Moving to the second step in the three-step allocation of burdens, we next look at whether LASD can meet its burden of production by articulating a legitimate, nondiscriminatory reason for failing to hire Nester. Although the school board actually hires a candidate, the recommendation of the selection committee is invariably approved. Accordingly, LASD called the selection committee members to testify as to the motivating factors behind their individual decisions.

Manley's response to the general inquiry of why he selected Shirk over Nester offered a number of rationales for his choice. Manley testified that in order to provide the best education for students, he looked for a candidate with a "curriculum background and the extent to which that preparation was going to be brought to bear..." (NT 167.) Manley also indicated he looked at what other activities a candidate could be involved with. Another aspect Manley submitted impressed him with Shirk was the fact that Shirk had used a fifth year of eligibility to play football in college to pursue his education and obtain a master's degree. Manley indicated he believed this showed initiative, motivation, drive, academic intent, and the pursuit of academic excellence. (NT 172-173, 175.) Manley also alluded to the thought that Shirk's master's degree in Sports Administration may have been useful to LASD. Manley indicated LASD would be needing department chairmen and staff members who could become certified to do classroom observations and evaluations of teachers. Manley suggested that an employee who already had a master's degree could probably obtain this certification more easily (NT 195). Finally, Manley submits that Shirk's interview was excellent (NT 169).

O'Connor's responses to why he selected Shirk over Nester suggest O'Connor was impressed with Shirk's interview and that Shirk had been one of the two most outstanding candidates he had ever interviewed (NT 145). O'Connor offered that he was impressed with Shirk's answers, the way he carried himself, his preparation for the interview, and his background (NT 145-146). O'Connor also indicated he considered it a plus that a candidate would give LASD more than teaching. On cross examination, O'Connor further indicated he found Shirk a well prepared person, very knowledgeable, and on the same wavelength as himself in regard to discipline, an issue important to O'Connor. (NT 146, 155.)

Bream's testimony indicates he liked Shirk's demeanor and his answers. Bream indicated he felt comfortable with Shirk's "interview process" and that Shirk "would do a good job as a teacher."

(NT 125-126.) Bream also testified that he always looked for someone to help out in extra-curricular activities (NT 128). In effect, Bream's choice of Shirk was principally based on his opinion that Shirk's interview was stronger than Nester's (NT 129).

In effect, Smarsh, who conducted the final interviews, indicated that although Shirk and Nester were very close to being equally qualified (NT 212), Shirk's master's degree was a plus (NT 215). Smarsh testified that the reason he selected Shirk over Nester was "the potential feel that he would be an excellent teacher." (NT 216.)

Although much of the evidence adduced focused on why selection committee members liked Shirk, there was really very little actual comparison made to Nester in the articulation of reasons why Shirk was selected. Normally, this might pose a problem regarding providing a complainant with a fair opportunity to respond. Nevertheless, we find that LASD has met the minimal production burden of having articulated legitimate, nondiscriminatory reasons for not hiring Nester.

Nester contends that the reasons given are not the real reasons she was not hired and are merely pretextual. This she may prove either directly, by persuading us that a discriminatory reason more likely motivated the selection committee, or indirectly by showing that the proffered explanations are unworthy of belief. Burdine, Supra at 256.

A conglomeration of factors which are hereafter detailed convince us that the reasons advanced by LASD are both unworthy of credence and pretextual, and that sex discrimination prompted the selection of Shirk over Nester. We begin this analysis with the recognition of two reasons to subject LASD's articulated reasons to heightened scrutiny. First, while no law requires any particular gender composition of a selection committee, courts have considered as suspect selection committees made up entirely of members not in the protected class of a complainant. See, Love v. Ala. Institute for Deaf and Blind, 41 FEP 1655 (N.D. Ala. 1984); Page v. Bolger, 25 FEP 593 (4th Cir. 1981); and EEOC v. American National Bank, 26 FEP 472 (4th Cir. 1981), reversing in part 21 FEP 1532 (E.D. Va. 1979). Being suspect, use of an all male selection panel by LASD creates a condition which prompts greater scrutiny.

Another factor which increases the level of scrutiny in this case is the lack of specifics with respect to selection criteria used by the selection committee. Once again, while there is nothing per se unlawful about the use of subjective criteria (see McDonnell-Douglas, Supra), subjective qualifications, by their nature, are inherently less credible and demand a more searching exploration. Newport Township v. PHRC, 551 A.2d 1142 (Pa. Commonwealth Ct. 1988); Board of Education, Downers Grove v. EEOC, 37 FEP 1042 (Ill. App. Ct. 1978)

On the other side of the coin are several equally important general principles which have been applied to the analysis to follow. With respect to subjective criteria, it is recognized that a decision regarding who to hire as a teacher cannot realistically be made by using objective standards alone. See, e.g., Rogers v. International Paper, 510 F.2d 1340 (8th Cir. 1975). Regarding the selection process itself, we realize we are not in the personnel business and are not at liberty to attempt to impose selection standards. See Cline v. Roadway Express, 29 FEP 1365 at 1370 n. 7 (4th Cir. 1982). Instead, we fully appreciate that our inquiry must be limited to

indicators which either directly or by inference point to the conclusion that Nester's non-selection was based on the fact that she is a female.

With these factors in mind, we turn to numerous patterns which do show gender not only disadvantaged Nester's bid for the position, but because she was a female she was not hired.

Returning to the selection committee composition, we find several additional factors which are important to note. First, the chairperson of the high school's health and physical education department at the time was a woman. Despite her availability, and despite the fact that numerous applicants were female, an all-male panel was selected. Of even greater significance in this regard is the simple fact that although Manley had expressed an asserted sentiment against a woman for the position, Manley was allowed to be on the selection committee. Furthermore, there is evidence that Manley was not just on the committee, but there is testimony that he is the individual who selects committee members other than the superintendent. When you combine the fact that there was an all-male committee with the idea that Manley chose two of the other three members, this sets the stage for a further unraveling of the articulated reasons why Shirk was chosen over Nester.

Two asides are appropriate with respect to Manley's biased comments. First, we scrutinize LASD's argument that Smarsh neutralized the stated animus by going directly to Manley and giving him a verbal reprimand.

The very nature of the reprimand was questionable. Smarsh testified that prior to the interview process beginning, he asked Manley if he had stated he preferred a man for the position. (NT 217.) Since Manley had said it, Smarsh indicates he told Manley, "That's not the type of statement that you want to make to any candidate or persons in a school district ..." When asked why such a statement should not be made, Smarsh replied, "It's just not the statement to make. You don't want to make any kind of statement like that because of legal implications." (NT 218.)

Smarsh really said nothing about the attitude being flatly wrong and to correct it. Smarsh was apparently only worried about the legal implications of verbalizing such a blatantly sexist attitude. Manley's "verbal reprimand" was followed shortly by his participation on the selection committee for the very position about which Manley had expressed a sex-based preference.

Regarding who was also selected for the selection committee, it is interesting that O'Connor and Bream were chosen. The interest is heightened by LASD's assertion that they were not specifically combining an open junior high football coaching position with the position in question. Bream, of course, was the junior high principal of the school where the coaching position was open. Although Bream was said to be an expert in the field of health and physical education, since the position was in the high school one can only wonder why the high school health and physical education chairperson was not selected for the committee. This is especially true since the chairperson was a woman and quite a few of the 53 applicants were women.

O'Connor testified that as the high school's assistant principal and athletic director, either or both of these capacities put him on the selection committee (NT 145). Smarsh, on the other hand, testified that O'Connor was on the committee in his capacity as an assistant principal, not as an

athletic director (NT 209). Clearly, these two men saw O'Connor's roles on the committee differently.

Since it appears that O'Connor believed that his participation on the selection committee came about, at least in part, from his role as athletic director, O'Connor's testimony should be scrutinized closely. In this regard, O'Connor too gave testimony which clearly demonstrates a sex-based stereotyped presumption. When asked if he would have had any opposition to hiring a woman as a football coach, O'Connor answered, "Probably." (NT 152.)

Turning to another aspect of the selection process, when Manley, O'Connor, and Bream interviewed the 13 candidates, they utilized a form with approximately eight categories. (NT 133-134.) Each candidate was separately given a numerical score by a selection committee member, and at the conclusion of the interviews, the candidates were put into numerical order depending on their scores. (NT 134.) Manley, O'Connor, and Bream each submitted that Shirk was his first choice after interviews of the 13 candidates. However, when asked who was first numerically, Bream could not recall. One thing is certain, an analysis cannot be made for the simple reason that these forms, along with personal notes taken by selection committee members, were destroyed shortly after Shirk's selection. This is very troubling. Even though PHRC regulations do not specifically require the retention of such documents, EEOC regulations appear to have had such a record retention requirement. 29 CFR Ch. XIV, Subpart L, §1602.40 states in pertinent part:

Subpart L -Elementary and Secondary School Systems, Districts, and Individual Schools Recordkeeping.

§1602.40 Preservation of records made or kept.

- (a) Any personnel or employment record made or kept by a school system, district, or individual school (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff, or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by such school system, district, or school, as the case may be, for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later.

At the public hearing very little detail was offered with regard to the types of criteria on the form. LASD submits that after so long, memories fade. However, there was testimony that service on a selection committee was common, so the forms were used frequently. Clearly, such extensive use of a form would tend to make the information contained on that form subject to a greater memory than was displayed.

Even though the foremost articulated difference between Shirk and Nester was said to be Shirk's interview performance, it is interesting to scrutinize what selection committee members actually said about the differences.

Manley described his view of the interview with Nester as an interview that "went well." Manley declared, "I felt we had a good interview." Finally, Manley answered "yes" when asked if he would say Nester's interview was generally a good one. (NT 169.) When discussing Shirk's interview at one point, Manley used the very same term as he had regarding Nester. Manley stated, "We felt we had a good interview with Mr. Shirk." While true, Manley earlier described Shirk's interview as "excellent;" the phrase "good interview" was used in the same response. From Manley's overall testimony, one is hard pressed to distinguish Nester from Shirk based on just the interview. Once again, this is especially true since little was done by way of a detailed comparison.

O'Connor's testimony did not provide any more specific details than Manley's regarding specific interview differences. On the whole, O'Connor merely suggested he liked everything about Shirk, while his recollection of Nester's interview was simply that he "was impressed with what she did in the interview process." (NT 146.) Once again, very hard to distinguish the two.

Bream's testimony provided possibly even less distinction between Nester and Shirk's interviews. Bream answered "yes" to the inquiry, "Would it be fair to say you were impressed with both Bill Shirk and Dee Nester?" Like Bream, Smarsh's testimony suggests that Smarsh too considered Nester's and Shirk's interview performances to have both been impressive. (NT 235-236.)

Considered as a whole, the record suggests that Nester's and Shirk's interviews were considered almost the same. Of course, LASD submits that Shirk's was to a degree better, thereby providing him with an edge. However, once again, close scrutiny leads to some rather peculiar revelations. For example, when the applications of both Nester and Shirk are compared, there are some fundamental differences. Not only was Shirk's application received late, it failed to follow posted instructions and contained either a typographical error or misspelled word, and the spelling of another word was uncertain, given the lack of legible handwriting (JE 7).

The vacancy notice (JE 4) instructed applicants to apply by July 1, 1985 to Smarsh. Shirk's application was received after July 1, and was addressed to "Dear Director of Personnel." Shirk's cover letter, while typed, misused the words "a part" by combining the words into one word, "apart." Shirk submitted this was a typographical error. On the first page of Shirk's handwritten application, an attempt to write the words "school bulletin" was made. However, it is uncertain just how the word "bulletin" was spelled. One thing is clear, it was not written correctly.

Of much greater import regarding the applications of Nester and Shirk are two objective factors: teaching experience and educational level. With respect to teaching experience, Shirk had only been a student teacher, while Nester had been a substitute teacher since 1972. Of major significance is the fact that Nester not only was a substitute for LASD since 1982, but Nester specifically had served as a long-term substitute teacher for half of each of the prior two years for the exact teacher whose retirement created the open position. Furthermore, Nester had been observed teaching the position and was rated in 22 categories with a possible rating of either "satisfactory" or "needs improvement" for each. Nester's rating was "satisfactory" in all categories (JE 1).

Regarding educational levels, Shirk had 33 credits beyond his B.S. in Health and Physical Education. These credits were sufficient for Shirk to have a master's degree in Sports Administration (JE 7). Nester too had a B.S. in Health and Physical Education, and although she did not have a master's degree, Nester did have 24 extra credits past her B.S. (NT 21).

We again point out the fundamental recognition that we do not have the expertise to appraise the qualifications of teachers. However, when, as here, superior qualifications of another candidate are set forth as rationale for a refusal to hire, we do have the obligation to insist that fair consideration be given to a female candidate. Clearly, Nester's experience was far superior to Shirk's. Conversely, Shirk's master's degree was a mere nine credits more than Nester's post-graduate credits. Considering a similar fact pattern, a federal district court found the contention that a male had superior qualifications to be pre textual. See U.S. v. Wattsburg Area School District, 15 FEP 731 (W.D. Pa. 1977).

Here, one is left with the distinct impression that LASD failed to give Nester's application fair consideration. Smarsh specifically noted that he had a number of concerns with Shirk's application. Smarsh testified that he asked Shirk why his application was late (NT 205). More significantly, Smarsh had an understandable concern that Shirk's application gave off every appearance that Shirk was more interested in coaching than teaching (NT 213-214). In fact, anyone who reads Shirk's application would certainly form the opinion that Shirk's predominant interest was to coach. Finally, Smarsh said he was also concerned with Shirk's lack of teaching experience (NT 215).

To reduce his concerns, Smarsh indicates he called several of Shirk's references to make sure Shirk was interested in teaching. Smarsh's testimony specifically states, "...I did call references and got references on Mr. Shirk, which kind of dispelled that whole theory that he was only looking for a position as a coach and not as a teacher. 'I (NT 214.) What is most noteworthy about this statement is, first, that Smarsh's concerns appear to have not been totally alleviated; Smarsh says his concerns were "kind of" dispelled. Second, if Smarsh was so impressed with Shirk's interview, why did he have to dispel so many concerns later by calling references?

The references appear to have been called after the interviews and after the four selection committee members met to discuss the five finalist candidates (NT 222). It would appear extra things were done on Shirk's behalf that were not done for Nester.

Another entire area of consideration on the question of pretext is whether the open football coaching position played any role in the selection of Shirk over Nester. Several obvious factors strongly suggest the football coaching opening had a great deal to do with Shirk's selection over Nester.

Each member of the selection committee generally indicated that ability to do extracurricular tasks was a plus for an applicant. On this note, the evidence suggests that LASD was in need of numerous extracurricular advisors for the 1985-86 school year. An internal posting listed seven openings (JE 3). Of the seven openings listed, one was an assistant junior high football coach.

Interestingly, when LASD sent the listing of vacancies to colleges and universities, the only one of the seven extracurricular positions listed was the head varsity basketball coach position. The football position was not mentioned (JE 4). It was unclear why only the basketball coaching position was mentioned, but one thing is quite clear. That is, what helped Shirk's chances the most to get the position was his football experiences.

LASD submits that in 1984, when Smarsh became superintendent, he introduced a policy which in effect declared that LASD was going to hire the best teaching applicants available and that other talents they happened to bring with them would be a plus (NT 166, 314). The head football coach, George Shue (hereinafter "Shue"), indicated that before Smarsh became superintendent, Shue would be called in when candidates were being interviewed (NT 314). This, of course, is said to have changed the year prior to the position opening.

What this appears to mean is that prior to Smarsh becoming superintendent, teaching positions had been overtly linked to coaching openings. Here, there is strong support that coach/teacher linking, while not as overt, remained a practice at LASD.

Nester testified that Manley, in effect, had told her the position was tied to the football coaching position at the time Manley told her he preferred a man for the position (NT 46). Shue testified that after Smarsh became superintendent, Shue no longer expressed any preference. However, Robert Bream, a teacher at the LASD high school, testified that after it was definite the position would be open that Shue and other coaches had on occasion casually expressed their preference that a man be hired for the position because it would help football (NT 73). Robert Bream mentioned O'Connor as having most likely been a participant in a hallway conversation where coaches had expressed this preference (NT 73). Robert Bream also directly implicated Manley in discussions with other men at LASD where the idea of preferring a man had been expressed (NT 72). In fact, Robert Bream indicated that Manley had even in effect said Manley preferred to hire a male so he could fill two jobs with one hiring. The two jobs were the football coaching opening and the position Nester was denied (NT 72-73).

Another telling sign that Shirk's stature was elevated because of football was the simple fact that although LASD interviewed for teaching and coaching positions separately, there never was an interview process set up for the open football coaching position. Instead, Shirk automatically moved into a football coaching slot almost immediately upon being informed he was selected to be recommended to the school board for the position.

LASD's brief submits the case of Carlisle v. South Routt School District, RE-3J, 739 F.2d 1496 (10th Cir. 1984), as a case where the facts are similar to this matter. In Carlisle, a female teacher was denied tenure to enable the school district to hire a male teacher who could also coach boys' basketball. In Carlisle, the court generally held that since the male had different qualifications which more closely met the district's changing needs, the female in Carlisle could not establish she had equal qualifications and thus had not even made out a prima facie case. Here, the facts are quite different. LASD was not only seeking a football coach; there were six other openings. Also, Nester herself had been filling several coaching positions which LASD could find vacant if Nester went elsewhere after her rejection. Nester had been junior varsity volleyball head coach and an assistant coach for girls' junior high basketball. Nester had also coached field hockey.

Here, a vacant junior high assistant football coaching job was not the district's number one priority. Clearly, there is evidence that only the basketball coaching job was included on the vacancy notice sent to Pennsylvania colleges. Also, as Bream testified, LASD always had difficulty getting women coaches (NT 142).

Here, the facts are vastly different than those of the Carlisle case. One could even say with confidence that Nester appears to have been much more in a position to help LASD's extracurricular sports program as a whole. Perhaps, had LASD had a woman on the selection committee, this observation could have been considered.

Another very important difference between this case and Carlisle is that the complainant in the Carlisle case did not pursue her case on a disparate impact theory; here, of course, Nester did. Before turning to the disparate impact inquiry, however, one final observation regarding the showing of pretext is in order under the disparate treatment theory.

There is a credibility issue presented whereby Smarsh, Manley, and O'Connor, in an affidavit dated November 12, 1985, stated several things which are not totally accurate (CE 2). First, the joint affidavit states that the three of them comprised the selection committee. Of course, Bream was also on the committee. More troubling is the second discrepancy. The affidavit declares that "Mr. Shirk was the only candidate who presented a master's degree..." (CE 2). In fact, three of the 13 interviewed had master's degrees: Shirk, Hinkel (JE 13), and Waltersdorf (JE 16). On this factor alone, LASD fails the credibility test, specifically regarding the offering that Shirk had the only master's degree, and generally with regard to the other criteria offered.

Thus, on the disparate treatment theory, Nester has both shown that LASD's proffered explanation is unworthy of credence and established by a preponderance of evidence that a discriminatory motive more likely motivated LASD. Further, Nester meets her ultimate burden of demonstrating discriminatory intent in that LASD's failure to hire her was due to her female gender.

Turning to Nester's disparate impact claim, Nester principally relies on legal principles set forth in Civil Rights Div. v. Amphitheater Dist., 140 Ariz. 83, 680 P.2d 517, 33 FEP 1135 (Ariz. Ct. of App. 1983). In Amphitheater, the court looked at whether a school district had engaged in unlawful sex discrimination when it required applicants for a high school biology teaching position to also be able to coach varsity football. The court's analysis focused on the theory of disparate impact. The court explained that a disparate impact case involves employment practices which are facially neutral in their treatment of different groups. A complainant need not show any intentional discrimination but must show merely the fact that the employment practice itself has the effect of excluding a protected group. Amphitheater, citing Griggs v. Duke Power Co., 401 U.S. 424 (1971).

Under the disparate impact theory, to establish a prima facie case, a complainant must show only that a business practice exists and that it has the effect of discriminating against a protected group. Griggs,

Supra. Once a prima facie case is shown, the burden of proof shifts to the respondent. The respondent must prove that the practice which has a discriminatory effect is a business necessity. Citing Dothard v. Rawlinson, 433 U.S. 321 (1977).

Here, the position was indirectly coupled with an open assistant junior high football coaching position. Furthermore, there is sufficient evidence that this had a disparate impact on female applicants. As the Amphitheater court noted, women traditionally are unable to coach football, thus preventing women from being able to qualify for a teaching opening which has been coupled with a football coaching job. Since this pattern is present here, we find Nester has established her prima facie case of sex-based disparate impact. Both Nester's and LASD's briefs focus on the first phase of a disparate impact case. Neither brief addressed in any meaningful way the burden which shifts to LASD once a prima facie case has been established.

Perhaps this was not done because LASD made no asserted effort to establish a defense of business necessity. Accordingly, we hold that LASD has failed to establish there was a business necessity which required them to couple the open football coaching position with the open position in this case.

Having determined liability under both a disparate treatment and a disparate impact theory, we turn to the issue of appropriate damages. Here, the appropriate remedy appears fairly clear, as the parties have stipulated to much of the factual matters.

Stipulation number 76 indicates that Nester's lost wages total \$15,887.50. Stipulation 77 further indicates that had Nester been hired for the position, she would now be at Degree B+15, Step 7, on LASD's salary schedule. Additionally, Stipulation 78 addresses a retirement benefit issue.

In a letter dated August 24, 1993, Nester suggests that the final order should also award her twenty-five cents per mile for 282 miles, which represents three trips between Littlestown and Harrisburg. (25 X 282 = \$70.50.) Finally, Nester seeks credit of one vacation day she lost in pursuit of her claim.

In consideration of these items, the following final order covers the damage issues presented.

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

DOLORES E. NESTER, Complainant

v.

LITTLESTOWN AREA SCHOOL DISTRICT, Respondent

DOCKET NO. E-34373-D

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Nester has proven discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulations of Fact, 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.



Carl H. Summerson
Permanent Hearing Examiner

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

DOLORES E. NESTER, Complainant

v.

LITTLESTOWN AREA SCHOOL DISTRICT, Respondent

DOCKET NO. E-34373-D

FINAL ORDER

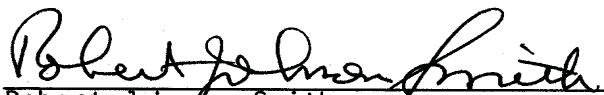
AND NOW, this 29th day of September, 1993, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Stipulations of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Stipulations of Fact, Conclusions of Law, and Opinion as its own findings in this matter and incorporates the Stipulations 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. LASD shall cease and desist from sex-based discrimination with regard to hiring.
2. LASD shall pay to Nester, within thirty days of the effective date of this order, the lump sum of \$15,887.50, which amount represents back pay lost for the school years 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91, 1991-92, and 1992-93.
3. LASD shall pay additional interest of six percent per annum on the back pay award, calculated from August 1985 until payment is made.
4. LASD shall move Nester ahead one step on LASD's salary scale, and Nester shall enjoy all benefits of such increased seniority.
5. Nester shall receive all retirement benefits as if she had been hired for the position in August 1985.
6. LASD shall pay Nester \$70.50, which amount represents recoverable travel expenses incurred by Nester.
7. LASD shall credit Nester with one vacation day Nester lost in pursuit of this matter.
8. Payment of all amounts due under this order shall be by check payable to Dolores E. Nester, delivered in care of Ronald W. Chadwell, Esquire, at the PHRC's Harrisburg Regional Office.
9. Within thirty days of the effective date of this order, LASD shall report to the Commission on the manner of its compliance with the terms of this order by letter addressed to Ronald W. Chadwell, Esquire, in the PHRC's Harrisburg Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By:


Robert Johnson Smith
Chairperson

ATTEST: