

STATE OF
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Irene
Gomez-Bethke, Commissioner
Department of Human Rights

Complainant,

V.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Cencor, Inc., dba Minnesota
Institute of Medical and Dental
Assistants,

Respondent.

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on August 10, 1983, and September 20, 1983, in Courtroom No. 12, Third Floor, Summit Bank Building, 310 Fourth Avenue South in the City of Minneapolis, Minnesota. The parties submitted sequential written Briefs, the last of which was filed on December 13, 1983.

Thomas J. Barrett, Special Assistant Attorney General, 1100 Bremer tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared for the Complainant, the Commissioner of the Minnesota Department of Human Rights. Robert J. Foster, Esq., of the firm of Foster, Jensen and Cade, 754 Midland Bank Building, Minneapolis, Minnesota 55401, represented the Respondent Cencor, Inc., dba Minnesota Institute of Medical and Dental Assistants.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2 (1982), as amended by Minn. Laws 1983, Ch. 301, 201, this Order is the final decision in this case and under Minn. Stat. 363.072 (1982), as amended by Minn. laws 1983, Ch. 247,

SS 144-145, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn.

Stat. SS 14.63 through 14.69 (1982), as amended by Minn. Laws 1983, Ch. 247, SS 9-14.

STATEMENT OF ISSUES

The issues to be determined in this contested case proceeding are whether or not the Respondent discriminated against the Charging Party by failing to treat her the same as other persons when she was affected by pregnancy and child birth in violation of Minn. Stat. 363.03, subd. 1(5), and if so, what damages should properly be awarded.

Based upon all of the proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Charging Party, Patricia L. Williams, is a 36-year old woman who was first employed by the Minnesota Institute of Medical and Dental Assistants, Inc. ("MIMDA") as a dental assisting instructor in October of 1978. MIMDA is located at 2915 Wayzata Boulevard in Minneapolis, and is a school which trains assistants for dentists and physicians. It has been open since 1971. MIMDA is wholly owned by Cencor, Inc., which maintains its home office in Kansas City. Cencor, Inc., operates approximately ten schools similar to MIMDA in several states, including California, Florida, Colorado and Missouri.

2. Patricia Williams graduated from the University of Minnesota Dental Assisting Program in 1968. She was certified as an expanded duties assistant. From June of 1968 through February of 1972, she was employed as a chairside dental assistant by an Edina dentist, Dr. James Mitchell. In her last year with Dr. Mitchell, Ms. Williams ran his front office. From March of 1972 through September of 1978, Ms. Williams was employed by another dentist, Dr. Jerome Dulac. In this position, she ran the dentist's front office and occasionally served as a chairside assistant.

3. In September of 1978, Ms. Williams saw an ad in the newspaper advertising a teaching position at MIMDA. She called for an interview and was interviewed by the school's administrator, Barbara Hedbloom, who also showed her around the school. She also met Bonita Bush, who supervised the

instructors. Ms. Bush explained the job duties to Ms. Williams. Ms. Williams, as asked about her education and job experience. Ms. Williams was offered the job the day of the interview and she accepted the position at a monthly salary of \$925. The position which Ms. Williams assumed was a full-time position teaching dental assisting. She taught several classes each quarter. Ms. Williams enjoyed the work and received favorable student evaluations. She also participated in the student externship program.

4. At the time Ms. Williams joined MIMDA, Diana M. Macalus was already employed there as a dental assisting instructor. Ms. Macalus had been hired in July of 1978, approximately nine weeks before Ms. Williams was hired. Ms. Macalus began her dental career as a dental assistant for Dr. Mark Holmes in October 1968. While employed by Dr. Holmes, she obtained schooling at the University of Minnesota to become an expanded duties assistant. In 1971, she became office manager and expanded duties assistant for Dr. Holmes. From 1973 to 1974, she was out of the field of dental assisting for approximately one year while working as manager of a restaurant owned by her father. From 1974 to 1976, Ms. Macalus was employed by dentist Dr. Gus Zeharides as an office manager and an occasional chairside assistant. From 1976 to 1978, she was employed as an orthodontic expanded duties assistant and office manager for Dr. Jerry Barnes. In July of 1978, she was hired by MIMDA as a dental assisting instructor at a salary of \$875 per month. Ms. Macalus also had duties involving MIMDA's externship program for which she kept the paperwork in a notebook and was assigned by Ms. Bush to be primarily in charge of graduation for the students.

5. Bonita Bush, was first employed by MIMDA in November 1975. She was first hired as director of the dental assisting program at the school, but in 1979 became director of education with responsibilities for the medical program also. Ms. Bush supervised both Ms. Williams and Ms. Macalus. Ms. Bush had a personality conflict with the director of the school, Barbara Hedbloom, who was her supervisor. Ms. Bush had been looking for other employment during 1979 and into 1980. In the spring of 1979, at a time when Ms. Bush had stated that she might leave, Barbara Hedbloom offered Ms. Bush's job to Diana Macalus, but Ms. Macalus advised Ms. Hedbloom to wait since she believed Ms.

Bush would not leave. In June or July of 1979, Hedbloom again offered to make Ms. Macalus the director of education but Ms. Macalus again declined.

6. Emoloyees at MIMDA were evaluated annually and given a raise at that time, if appropriate. In October of 1979, on her first anniversary, Patricia Williams was evaluated by Barbara Bedbloom and given a raise to \$1,010 per month. Ms. Beabloom gave Ms. Williams a favorable evaluation and had no criticism of her performance at that time.

7. In early June of 1980, Ms. Williams learned that she was very likely pregnant. Most of her co-workers knew of her condition by the middle of June, 1980. At the end of June, the pregnancy was confirmed by a physician. During June, Barbara Hedbloom left her position at the school and was replaced as director by Dean Norton. In August of 1980, Mr. Norton had a conversation with Ms. Macalus in his office in which he said he intended to terminate Ms. Bush and suggested that Ms. Macalus might replace her. Ms. Macalus told Norton that she believed that Bush would be leaving and that he need not fire her. In September of 1980, Ms. Bush received another job offer for a position in Switzerland and she gave notice to Dean Norton that she would be leaving on November 15, 1980.

8. After Bush announced that she would be leaving, Ms. Williams told her that she would be interested in applying for her position. Ms. Bush told her that Mr. Norton would make the decision but that she didn't know how the selection would be handled. In September or October of 1980, Ms. Williams advised Mr. Norton that she was interested in Ms. Bush's position. Mr. Norton said that he was in no hurry to fill the position and that he wasn't interested in the subject at that time. Ms. Bush recommended to Mr. Norton that Patricia Williams replace her as director of education. Before she could explain why she was recommending Williams, Norton interrupted her and stated that he preferred Diana Macalus for the position. Bush believed that Williams should have the position because her work was of a higher quality, she had developed learning instruments for use at the school, she had leadership potential and assumed a good deal of responsibility, was more objective than Ms. Macalus, and was a better disciplinarian. Bush had earlier recommended to Ms. Hedbloom that Ms. Williams be director if she (Bush) left. Bush was friendly with both Macalus and Williams.

9. On approximately October 9, 1980, Ms. Williams was evaluated by Mr. Norton for her performance as an instructor and received a raise to \$1,125 per

month. Salary increases are based upon length of service, ability, competence as judged by the director. The increases must be approved by the Kansas City office.

10. In a letter dated October 16, 1980 and addressed to Cencor, Inc., Patricia Williams stated as follows:

"To Whom It May Concern:

'This is to inform you of my intent to take a Maternity leave at MIMDA from January 16, 1981 - May 1, 1981.

'At this point in time, I am unaware of what arrangements will be made to cover my classes in Dental Assisting. This will be dependent on class enrollment for the February 1981 start. Should my Maternity Leave be shorter or longer, I will notify you and CenCor immediately.' (Ex. 1.).

The maternity leave was approved by Mr. Norton and the Kansas City home office.

11. mls. Williams was not formally interviewed for Ms. Bush's position but she did tell Mr. Norton about her job history in a casual conversation. No criteria for job selection was announced and no application were distributed.

No schedule for making the decision was announced. The direction of the medical and dental programs was to be split into two positions. At the end of

October, 1980, Mr. Norton announced that Diana Macalus would be the new director of dental education. When she learned of the decision, Ms. Williams

went to Mr. Norton's office and asked him if there was any reason why she was

not considered. Norton replied, "You are pregnant and leaving, and I don't know if you're returning." Williams also talked to Bonita Bush about the

hiring decision and Bush told her that she understood that she had not been considered because of her pregnancy. Diana Macalus had told Bonita Bush that

Norton had told her (Macalus) that he had not considered Patricia Williams because she was pregnant and Norton couldn't be sure that she would be returning to work. Bush left on approximately November 10, 1980. Ms. Macalus had no doubt that Ms. Williams intended to return to her job with MIMDA after her child was born.

12. Three factors are currently considered in choosing a director of medical or dental education, namely, seniority, availability, and competence,

including background. MIMDA has customarily promoted the most senior instructor to the position of medical or dental education director. The most senior instructor replaced Ms. Macalus when she left MIMDA in August of 1983.

A vacancy in the position has usually not been advertised in the newspaper.

13. At the time of her appointment as director of dental education, Ms. Macalus' salary remained the same as it was before, namely \$1,125 per month, or the same as that paid to Ms. Williams. On January 27, 1981, Patricia Williams started her maternity leave. Her child was born on February 4, 1981. She returned to work at MIMDA on April 13, 1981. She started work again earlier than stated in her request since a new term was starting at the school, and Ms. Macalus had asked that she return. Ms. Williams' duties upon her return were similar to those before she left, except that she taught a new class in psychology. Ms. Macalus asked her to revise the lecture notes, text

and examination for the psychology class. Ms. Williams objected to this because she felt it was an inopportune time to do so. Generally, Ms.

Macalus and Ms. Williams did not get along well after her return from maternity leave. Early in May, Macalus advised Patricia Williams that if her attitude didn't improve, she would be fired. Williams replied that Macalus couldn't terminate her and that she didn't have to listen to Macalus. Ms. Williams was fired on May 15, 1981.

14. At the time of her termination, Ms. Williams was earning \$1,125 per month. She applied for and received unemployment compensation on June 20, 1981, which she received at the rate of \$117 per week through November of 1981. Ms. Williams continued to seek employment during the time that she received unemployment compensation. Ms. Williams did receive several full-time job offers in the dental assisting field at up to \$875 per month but because of her experience, she was seeking a full-time job paying \$1,050 to \$1,075 per month. In December of 1981, Ms. Williams accepted a part-time position with Group Health in Bloomington. She worked 16 to 20 hours per week at \$6.50 per hour. She was employed at Group Health from the week before Christmas of 1981 through March 15, 1982. At that time, she began working three or four days a week for Dr. Dilac, a former employer, at the rate of \$60 per day. She remained employed on that basis from March 17, 1982 through August 10, 1982, after which time she did not seek full-time work because her second child was born on August 26, 1982.

15. The Charging Party, Patricia Williams, filed an amended charge of discrimination against the Respondent and that charge was served upon the Respondent on August 26, 1981. On or about March 3, 1982, the City of Minneapolis, Department of Human Rights recommended to the Commissioner of the Minnesota Department of Human Rights that she make a determination of probable cause in this case. On December 7, 1982, the Commissioner of Human Rights found probable cause to believe that the Respondent had committed unfair discriminatory practices. The Department attempted, unsuccessfully, to conciliate the matters involved in this case. A Notice and Order for Hearing and Complaint was served upon the Respondent on April 1, 1983. The Respondent served an Answer on April 5, 1983. At the hearing the Complainant abandoned its claim of discriminatory discharge. (Complaint, I No. 10).

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. That the Hearing Examiner has jurisdiction over this matter pursuant to Minn. Stat. SS 14.50 and 363.071, (1982).

2. That the Department of Human Rights gave proper notice of the hearing in this matter and that it has fulfilled all relevant substantive and procedural requirements of law or rule.

3. Minn. Stat. S 363.03, subd. 1(5) (1980), provides as follows:

Subd. 1. Employment. Except when based on a bona.fide occupational qualification, it is an unfair employment practice: . . . (5) for an employer. . . . not to treat women affected by pregnancy, child birth, or disabilities related to pregnancy or child birth, the same as other persons who are not so affected, but who are similar in their ability or inability to work.

4. that the Respondent, Cencor, Inc., and the Minnesota Institute of Medical and Dental Assistants, Inc., are employers within the meaning of Minn.

Stat. S 363.01, subd. 5 (1980).

5. That Cencor, Inc., and the Minnesota Institute of Medical and Dental Assistants, Inc., did treat Charging Party, Patricia Williams, differently from other persons who were not affected by pregnancy, but who were similar in their ability to work and that, therefore, the Respondent has violated Minn. Stat: S 363.03, subd. "I (5) (1980) .

6. That Cencor, Inc. and the Minnesota Institute of Medical and Dental Assistants, Inc. have proved by clear and convincing evidence that they would have promoted Diana Macalus over the charging party, Patricia Williams, even in the absence of the discriminatory conduct.

7. Minn. Stat. S 363.071 subd. 2 (1980) provides in part as follows:

Subd. 2. Determination of discriminatory practice. The hearing examiner shall make findings of fact and conclusions of law, and if the hearing examiner finds that the respondent has engaged in an unfair discriminatory practice, the hearing examiner shall issue an order directing the respondent to cease and desist from the unfair discriminatory practice found to exist and to take such affirmative action as in the judgment of the examiner will effectuate the purposes of this chapter. Such order shall be a final decision of the department. In all cases the examiner may order the respondent to pay an aggrieved party, who has suffered discrimination, compensatory damages, except damages for mental anguish or suffering, and, in all cases, may also order the respondent to pay an aggrieved party, who has suffered discrimination, punitive damages in an amount not more than \$1,000. . . .

8. The reasons for the above Conclusions of Law are set out in the Memorandum which follows in which is incorporated into these Conclusions of Law by reference.

9. That any Finding of Fact which is more properly classified as a Conclusions of Law is hereby adopted as such.

Pursuant to the foregoing Conclusions of law, the Hearing Examiner makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. Cencor, Inc. and the Minnesota Institute of Medical and Dental Assistants, Inc. shall cease and desist from treating its women employees affected by pregnancy differently from persons not so affected, in violation of Minn. Stat. S 363.03 subd. 1(5).

2. Cencor, Inc. and the Minnesota Institute of Medical and Dental Assistants, Inc. shall pay to the Charging Party, Patricia Williams, punitive damages in the amount of \$1,000.

3. That no other damages shall be awarded.

Dated: January 11, 1984.

GEORGE A. BECK
State Hearing Examiner

Reported: Taped
No Transcript Prepared
tapes Nos. 3410, 3414, 3520

MEMORANDUM

In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) the United States Supreme Court set out a 3-part procedure for analyzing evidence in federal civil rights cases. This 3-part procedure of shifting burdens of production has been adopted by the Minnesota Supreme Court for use in human rights cases in Minnesota. *Hubbard v. UPI, Inc.*, 330 N.W. 2d 428, 442 (Minn. 1983). As applied to a case of failure to promote, the Complainant must show that the Charging Party belonged to a protected class; that she was qualified for the position; that she was rejected and that another employee with equal or lesser qualifications who was not a member of the protected class was then promoted. *Kaster v. Ind. School Dist. No. 625*, 284 N.W. 2d 362, 365 (Minn. 1979). Once a prima facie case is established the burden shifts to the employer to show a legitimate, non-discriminatory reason for his action. If this is shown, the burden returns to the Complainant to show that the reason is merely a pretext for discrimination. The overall burden of persuasion remains with the Complainant. *Hubbard, supra*, 330 N.W. 2d at 443.

The 'McDonnell-Douglas analysis is not the exclusive means of proving or analyzing the evidence in a case of alleged discrimination, however. The ultimate issue to be determined in all cases is whether or not there was discriminatory intent upon the part of the employer. The McDonnell-Douglas formula is merely a framework designed to permit a determination on that issue

where there is little or no direct evidence of discriminatory intent. Where

there is direct evidence of discriminatory intent the McDonnell-Douglas analysis is unnecessary. When discriminatory intent is proved by direct testimony, which is accepted by the trier of fact, then the discrimination is

proved and cannot be refuted by a mere articulation of non-discriminatory reasons as contemplated in McDonnell-Douglas. Ramirez v. Sloss, 615 F. 2d,

163, 168 (5th Cir. 1980). Bell v. Birmingham Linen Service, 715 F. 2nd 1552,

1557 (11th Cir. 1983). The Complainant must also show that the direct evidence of discriminatory intent was a significant or substantial factor in

the action by the employer. Perryman v. Johnson Products Company, Inc., 698

F. 2d 1138, 1143 (11th Cir. 1983). Lee v. Russell County Board of Education,

684 F. 2d 769, 774 (11th Cir. 1982). Once the Complainant has established discrimination by direct evidence, the employer can avoid liability only by proving by a preponderance of the evidence that the discharge would have occurred even absent the illegal motive. Bell, supra, 715 F. 2d at 1557. Mt.

Healthy City School District v. Doyle 429 U.S. 274, 287 (1977). Lee, supra, 684 F. 2d at 774.

In Bell, supra, the direct evidence was a statement by the supervisor, who

promoted a man over a more senior woman, that if he let one woman into a particular work area, then all women employees would want to get into that work area. In Perryman, supra, the direct evidence consisted of a statement

by a district sales manager responsible for promotions, that women had been "rotten eggs" as sales reps and that the company was seeking men. In this case the Complainant has shown direct evidence of discriminatory intent by proving that Dean Norton, the schools administrator who awarded promotions,

told the Charging Party that she was not promoted because she was pregnant and

he was uncertain-when she would return to work. Although Mr. Norton did not

testify at the hearing, his statement was corroborated by Bonita Bush who was

told by Diana Macalus that Norton had not considered the Charging Party

because she was pregnant. As in the Bell and Perryman cases the context of

the statement and the position of the person making it, establish that it was a significant or substantial factor in the failure to promote the Charging Party. Although Ms. Macalus denied at the hearing that she made such a statement to Ms. Dish, the Hearing Examiner specifically credits the testimony

of the Charging Party and Bush on this specific point. The Charging Party had

specifically advised Mr. Norton in her written notice that she intended to return after her maternity leave and she did so. Macalus had no doubt that

Williams would return. The Respondent offered no credible evidence to directly rebut that Mr. Norton made the statement in question or that it was a

factor in the promotion.

The Respondent's obligation, then, is to prove that it would have promoted Ms. Macalus over Ms. Williams, even in the absence of Mr. Norton's discriminatory conduct. The employer has a heavy burden in this regard, however. It must prove by clear and convincing evidence that the rejected applicant would not have been promoted even in the absence of discrimination. *League of United Latin American Citizens v. City of Salinas Fire Dept*, 654 F. 2d 557, 558-559 (9th Cir. 1981); *Day v. Matthews* 530 F. 2d 1083, 1085 (D.C. Cir. 1976); *Marotta v. Usery* 629 F. 2d 615, 618 (9th Cir. 1980). Such a heavy burden is appropriate since once discrimination is shown, relief should not be narrowly denied. It is impossible for the charging party to recreate what exactly happened, so it is equitable that the employer's burden be increased since it created the problem of discrimination. *Day*, supra at 1086.

The Respondent argues that three factors show that it would have reached the same decision even in the absence of the discriminatory conduct. These three factors are seniority, work performance, and the prior offer of the position to Ms. Macalus. The Complainant argues that Ms. Williams had superior qualifications in work performance. The Respondent contends that Ms.

Macalus had at least superior work performance. It is clear from the record that each possessed similar qualifications. Each was certified as an expanded duties assistant and graduated from the University of Minnesota Dental Assistant Program. Etch had practical experience as a dental assistant and as

an expanded duties assistant. Each also had experience as an office manager

for a dentist. Although Ms. Macalus was out of the dental field for approximately one year, her qualifications before coming to MIMDA were very similar to those of Ms. Williams. The record also establishes that there is no significant difference in the work performance of the two individuals at MIMDA. It is clear that Bonita Bush believed that Ms. Williams' work was of a higher quality. Ms. Hedbloom and Mr. Norton apparently believed otherwise. A

consideration of the testimony of Ms. Williams, Ms. Macalus and Ms. Bush cannot support a conclusion that Ms. Williams' job performance was clearly superior to that of Ms. Macalus. It appears that Ms. Macalus had some responsibilities which Ms. Williams did not, such as being in charge of graduation for the students and working with Ms. Bush in regard to an accrediting agency visit to the school. It appears that both Ms. Macalus and Ms. Williams were good employees with substantially similar qualifications, work performance and competence.

The employer also argues that Ms. Macalus would have been promoted over Ms. Williams despite any discriminatory factor on the basis of seniority. Ms.

Macalus was hired as a dental assisting instructor at the school approximately nine weeks before Ms. Williams was hired for the same position. The current director of MIMDA testified that three factors are considered in promotion to the dental coordinator position, namely: seniority, willingness or availability, and competence. She also testified that seniority was the primary factor. She testified that where two employees were close on qualifications she would hire the more senior person. Two appointments to the medical or dental coordinator positions subsequent to Ms. Macalus went to the most senior instructor in each area. One of them, Susan Perry, had been on a maternity leave the year prior to her promotion. None of the witnesses in this case could recall any promotion to the positions in question which had not gone to the most senior person. Given this clear history, it appears that seniority was a very important factor in promotions. It seems clear that a less senior person would only have been promoted where there was a discernable difference in qualifications or competence. This is not such a case.

The importance of the seniority rule in promotions is emphasized by the fact that Ms. Macalus had been offered the dental coordinator position

informally prior to October of 1981. In the Spring of 1979, Barbara Hedbloom had offered Bonita Bush's job to Diana Macalus in the event that Ms. Bush left. This occurred again in June or July of 1979. In August of 1980, Mr. Norton indicated to Ms. Macalus that he was thinking of firing Ms. Bush and suggested that Ms. Macalus might replace her. At the time these suggestions or offers were made, Ms. Williams was employed as an instructor and was not pregnant. Additionally, it appears that Mr. Norton had focused on Ms. Macalus for the coordinator vacancy before Ms. Bush attempted to speak to him on her behalf. Even if Ms. Williams' pregnancy was a substantial reason for this, seniority and his August 1980 conversation with Macalus likely played a part. It must be concluded that Ms. Macalus was considered to be 'next in line' for the coordinator position. These prior offers of promotion were testified to only by Ms. Macalus. They were, however, unrebutted by the Complainant.

The Complainant urges that an important factor to be considered in this case is the lack of an adequate selection process. The record demonstrates that there was no job description for this position. There was no notice of job availability published, nor were any standards or objective criteria for hiring ever stated or written down. Our Supreme Court has noted that this type of selection procedure maximizes the possibility of discriminatory decisions. *Faster v. Ind. School Dist.* No. 625, 284 N.W. 2d 362, 366 (Minn. 1979). Subjective or partially subjective evaluation criteria are not per se unlawful but may be evidence in support of a finding of discrimination. 3 *Larson*, *Employment Discrimination* S 76.37. It should be noted, however, that the seniority factor is an objective criterion. It appears that Mr. Norton's decision was otherwise unguided, however. Nonetheless, the presence of a subjective evaluation by a supervisor, combined with other factors, may provide a valid reason for choosing someone outside of a protected group. *Pierce v. Owens-Corning Fiberglas Corp.*, 30 F.E.P. 53 (D. Kan. 1982). In this case additional factors included seniority and the prior job offers.

The foregoing analysis indicates that the Respondent has sustained its burden of proof and has demonstrated, clearly and convincingly, that Ms. Williams would not have been hired even though the pregnancy factor was not present in the promotion decision. What the employer avoids, however, is only

liability for compensatory damages. Since the Charging Party would not have obtained the job in any event, she is not entitled to be compensated for its loss by backpay or a retroactive promotion. The general purpose of the Human Rights Act is to put people in the same position they would have been in if the discrimination had not occurred. *Brotherhood of Ry. and S.S. Clerks v. State* 229 N.W. 2d 3 (Vann. 1975). In this case Ms. Williams would not have been promoted anyway and is not therefore entitled to be compensated as though she would have been.

the Respondent does not avoid, however, the cease and desist authority set out in Minn. Stat. 363.071 subd. 2, since a violation of the Act did occur.

As the Day court observed, discrimination is a serious matter wherever it appears, and action should be taken to root it out, whether or not a Charging Party would have been promoted. *Day, supra*, at 1084. This is also consistent with the directive of Minn. Stat. S 363.11 that Chapter 363 be construed liberally to accomplish its purposes and with the remedial nature of Chapter 363.

Neither does the respondent avoid an award of punitive damages if otherwise appropriate. Although punitive damages are awarded to the charging party, it is not intended as compensation. In *City of Minneapolis v. Richardson* 239 N.W. 2d 197, 204 (Minn. 1976) the court observed that the intent of punitive damages is 'to apply the sting of punitive damages to prevent discrimination in all cases regardless of the character of the respondent or the amount of traditional pecuniary damage suffered by the aggrieved party.' Punitive damages may therefore be awarded since discrimination has been proved.

Under the law in effect at the time of the discriminatory act (Minn. Stat.

S 363.071 subd. 2 (1980)) the maximum award of punitive damages was \$1,000.

The 1980 statute did not contain its present reference to Vann. Stat.

S 549.20. In considering whether punitive damages are appropriate, it must be

concluded that the misconduct was of a serious nature. Mr. Norton failed to

consider Ms. Williams for a blatantly illegal reason. He expressed this reason to Ms. Williams and to others at the school. He was acting in a

managerial capacity for the Respondent. His conduct constitutes wilful indifference to the rights of the Charging Party. The message to Ms. Williams

and other women employees was clear: if you are affected by pregnancy you will be passed over for promotion. It is precisely this conduct which the statute prohibits and from which the respondent must be deterred. An award of

\$1,000 is appropriate considering all of the circumstances.

G.A.B.

