COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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| ANTHONY W. FISHER,<br>COMPLAINANT | : | |
| v. | : | DOCKET NO. E-25322 |
| ABINGTON SCHOOL DISTRICT,<br>RESPONDENT | : | |

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING EXAMINER

FINAL ORDER

## FINDINGS OF FACT *

1. Complainant Anthony Fisher, a Black male, is an adult individual residing at 8621 Forrest Avenue, Philadelphia, PA. (S.A.F. 2)
2. Respondent Abington School District, a corporate body politic of the Commonwealth of Pennsylvania, created by and organized under the Public School Code, 24 P.S. §§1-101 et seq., has at all relevant times employed four or more persons within the Commonwealth. (S.A.F. 1; N.T. 27)
3. Complainant in November, 1982, applied to Respondent for the vacant position of head mechanic; he was qualified for the position. (N.T. 23-26, 66-74; J.E. 1)
4. Complainant's application was rejected in favor of a less-senior White male, Richard Stahl. (S.A.F. 13, 14, 15)
5. Respondent promoted Richard Stahl because it had determined that he was the best qualified for the position. (N.T. 239-254)

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*The foregoing Stipulated and Admitted Facts and the Stipulation as to the testimony of George Bethala were made part of the record in this case, N.T. 6-8, 368-369, and are incorporated herein as if fully set forth.

The Opinion which follows contains Findings of Fact in addition to those set out here: they are those recitations of factual matters followed by citations to pages of the record or specific exhibits.

The following abbreviations are utilized throughout:

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| N.T. | Notes of Testimony |
| S.A.F. | Stipulated and Admitted Facts |
| J.E. | Joint Exhibit |
| C.E. | Complainant's Exhibit |
| R.E. | Respondent's Exhibit |

## CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("Commission") has jurisdiction over the parties and the subject matter of this case.
2. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.
3. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act ("Act").
4. Respondent is an employer within the meaning of the Act.
5. Complainant here has met his burden of making out a prima facie case by proving that:

   a. He belongs to a protected class;
   b. He applied for an available position for which he was qualified;
   c. His application was rejected; and
   d. A candidate not of the protected class received the promotion.

6. Respondent has met its burden of establishing that the successful candidate was the "best able and most competent" within the meaning of the Act.

## O P I N I O N

This case arises on a complaint filed by Anthony W. Fisher ("Complainant") against the Abington School District ("Respondent" or "District") with the Pennsylvania Human Relations Commission ("Commission") on or about April 15, 1983, at Docket No. E-25322. Mr. Fisher alleged that the District had violated Section 5 (a) of the Pennsylvania Human Relations Act, 43 P.S. §§951 et seq. ("Act") by refusing to promote him to the position of head mechanic because of his race, Black. The District has consistently denied that its action was discriminatory.

Commission staff conducted an investigation and found probable cause to credit the allegations of discrimination. The parties and the Commission then attempted to resolve the situation through conference, concilation and persuasion. The case was approved for public hearing when these efforts were not successful. A public hearing was held in Abington, PA, on October 1 and 2, 1986, before Hearing Examiner Edith E. Cox.

Mr. Fisher was hired by the District in April, 1971, as a custodian. He worked in that position until July, 1973, when he was transferred to the position of mechanic which he continued to hold through the time of the hearing in this case. (N.T. 25; J.E. 4) Throughout this period he has been the District's only Black mechanic. (N.T. 28) Mechanics are responsible for repair of all of Respondent's vehicles, including the buses which transport students. (N.T. 25, 35)

In 1980 and again in 1982, Mr. Fisher applied for the position of head mechanic at the District. His complaint to the Commission relates only to his 1982 application: in 1980 the position was given to Donald Merkel, a decision which Mr. Fisher does not challenge here. (N.T. 66, 47) The job became vacant again in 1982 when Mr. Merkel was promoted to the position of

Supervisor of Transportation. (N.T. 288) It was the District's refusal to promote Complainant on that occasion which gave rise to this case.

The position of head mechanic is a bargaining unit job within the bargaining unit of the Abington School Service Personnel Association ("Association"). (N.T. 233) The collective bargaining agreement in effect between July 1, 1980, and June 30, 1983, provides at Article III, Section 3 (a) that "When ability among applicants is relatively equal, seniority shall control." (J.E. 7) The essence of Complainant's claim is that his qualifications were equal to those of the successful applicant, Richard Stahl, a White male, and that he should therefore have received the position because of his greater seniority. Respondent asserts that, on the contrary, Richard Stahl's superior qualifications permitted it to promote him without reference to seniority.

The respective burdens of proof of the parties in cases brought under the Act and alleging different treatment are in general well settled. Complainant bears the initial burden of making out a prima facie case. Should he do so, Respondent must rebut the inference of discrimination thus created by setting forth through the introduction of admissible evidence the legitimate, non-discriminatory reason(s) for its conduct. Complainant may then still prevail by proving that the proffered reasons were pretextual. Texas v. Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973); General Electric Corp. v. PHRC, 365 A.2d 649 (1976).

The prima facie case is based on evidence introduced by the Complainant. Should the Respondent remain silent in the face of that evidence, judgment must be entered for the Complainant. Where evidence of a Respondent's reason for its action is received, the Complainant's burden of establishing a prima facie case merges with his ultimate burden of persuading

the trier of fact that there was intentional discrimination. Burdine, supra. In that situation, where a Respondent has done all that would have been required of it had the Complainant properly made out a prima facie case, it is no longer relevant whether the Complainant did so; the trier of fact should then decide the ultimate question of whether or not discrimination has occurred. United States Postal Service Board of Governors v. Aikens, 460 U.S. 711 (1983).

McDonnell-Douglas, setting out the elements of a prima facie case of refusal to hire, noted that differing factual situations would call for variation in the elements. 411 U.S. at 802, n. 13. Pennsylvania courts have similarly recognized the need for flexibility. Reed v. Miller Printing Equipment Division, 75 Pa. Commonwealth 360, 462 A.2d 292 (1983). In this case Mr. Fisher has made out a prima facie case by proving that:

1. He belongs to a protected class;
2. He applied for an available position for which he was qualified;
3. His application was rejected; and
4. An applicant not of his protected class received the position.

The parties have stipulated that Mr. Fisher, a Black male, applied for the head mechanic's position but was rejected in favor of a White male, Richard Stahl.[1] (S.A.F. 12, 13, 14, 15; N.T. 7-8) It is therefore necessary to consider Respondent's explanation of events.

As noted, a Respondent's burden at this stage is in general the light one of introducing evidence of a legitimate, non-discriminatory reason for its conduct. Here Respondent asserts that it promoted Mr. Stahl because he was better qualified than Mr. Fisher, and was the "best able and most competent" applicant for the position within the meaning of Section 5 (a) of the Act. This assertion places on Respondent the burden of proving that Mr. Stahl's qualifications were superior. General Electric, supra, so holds and remains good law, and controlling, in spite of the Pennsylvania Supreme Court's

decision in Winn v. Trans World Airlines, 506 Pa. 138, 484 A.2d 392 (1984). For the reasons which follow, I find that Respondent has met this burden.

Daniel Greenfield, Director of Personnel at the District, testified credibly (and without contradiction) that he and Mr. Merkel interviewed all three candidates for the position and that he ultimately made a recommendation to the Superintendent of Schools. (N.T. 240) He recommended Mr. Stahl, relying heavily on Mr. Merkel's recommendation of Mr. Stahl, as well as on documents in Mr. Fisher's personnel file indicating a problem with coming to work on time; those documents were admitted to the record as R.E. 9, 10, 11 and 12. He considered the results of the interviews, testifying that Mr. Fisher and Mr. Stahl were "essentially equal" from that viewpoint. (N.T. 245) Finally, he relied on the results of tests administered by the National Institute for Automotive Service Excellence ("NIASE") and taken by both Mr. Stahl and Mr. Fisher. (N.T. 245) He testified credibly that ability as a mechanic was the "ultimate criterion." (N.T. 237)

The NIASE test was described by Dr. Greenfield as a "voluntary" test that any mechanic can take to demonstrate competence. (N.T. 249) The area of certification relevant to repair of vehicles such as school buses is the general truck mechanic certification: that test has six sections, addressing the areas of gasoline engines, diesel engines, drive trains, brake systems, suspension and steering systems, and electrical systems. (S.A.F. 31, 32) Mr. Stahl passed all six sections when he took the test; Mr. Fisher failed five sections, passing only electrical systems. (N.T. 123, 124, 250)

Dr. Greenfield testified credibly that Mr. Merkel, when pressed to back up his choice of Mr. Stahl as the superior mechanic, related a series of fairly basic errors which had been made by Mr. Fisher. Critically for this case, Dr. Greenfield testified credibly that the NIASE results provided him with what he felt was "objective corroboration of Merkel's subjective observa-

tions." (N.T. 250) Dr. Greenfield candidly testified that he expected Mr. Fisher to file a union grievance, a discrimination complaint, or both if he was passed over in favor of the less-senior Mr. Stahl. (N.T. 257-258) He was therefore searching for something more than Mr. Merkel's subjective assessment as a basis for the decision, and felt that the NIASE results furnished that.

Complainant vigorously argues that consideration of the NIASE results was a pretext for discrimination and was improper. In support of this he correctly observes that a passing score on the NIASE test was not a requirement for the position. Superior knowledge of the field was however a specific requirement of the job; J.E. 1, the posted description of the position, listed "Knowledge of the field" specifically. And Complainant conceded on cross-examination that the NIASE test provides an indication of a person's knowledge of the areas tested, see N.T. 119.

He similarly conceded on cross-examination that he had been late to work approximately 30 % of the time, though on direct he indicated that he had been late only "a few times" because of having to unlock the gate on his way in to work. See N.T. 25-26, 91.

Much of the Complainant's argument appears to be based on his perceptions that he was given the dirtiest jobs in the garage, and was the butt of racist comments, particularly from Mr. Merkel. As to the equality of assignments, the record is inconclusive; Complainant's own witness Benjamin Sobleski, a mechanic with the District until his transfer to shipping and receiving in 1981, testified when pressed that tasks had been evenly divided. (N.T. 154) Complainant's witness Alfred Bubnis, a bus driver, testified that Mr. Fisher got the dirtiest jobs; however when asked to explain this he described a repair on a bus which Complainant had not done correctly. (N.T. 159) Bus driver Thomas Pearce, similarly, testified that Mr. Fisher got the

dirtiest jobs but gave as an example only an incident which took place after Mr. Stahl's selection as head mechanic, and notattributable in any way to Mr. Merkel. (N.T. 184) And driver Ronald O'Brien gave no examples in support of his opinion that Complainant was given the dirtiest jobs. (N.T. 202) None of the drivers could claim to have observed the handing out of assignments to mechanics consistently; all were of course occupied in driving their buses for a fair portion of each day.

As to the question of racist comments, it is clear from the record that racial, ethnic, and other personal comments were freely exchanged among at least some mechanics and drivers at the District. Complainant himself conceded that this was the case. (N.T. 101-108) He also testified that he and Mr. Merkel for a time referred to each other as, respectively, "black boy" and "jew boy," and that at some point they ceased to do so, apparently by mutual agreement. (N.T. 44-45) While these comments were perhaps both ill-advised and less benign than at least some witnesses suggested, it cannot be concluded on this record that they were disproportionately directed at Mr. Fisher.

In summary, none of Complainant's attempts to show pretext are sufficient to overcome Respondent's showing that it promoted the candidate genuinely believed to be better qualified. As the procedural issues of which Respondent complains were clearly not such as to prejudice its defense against this complaint, it is not necessary to consider them further. An appropriate order follows.

FOOTNOTE

1. Proof that an applicant was selected who was not of the protected class is not a necessary element of the prima facie case; in McDonnell-Douglas the Supreme Court found it sufficient that the employer rejected a qualified applicant and continued to try to fill the position.

COMMONWEALTH OF PENNSYLVANIA

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| ABINGTON SCHOOL DISTRICT,<br>RESPONDENT | : | |

RECOMMENDATION OF HEARING EXAMINER

Upon consideration of the entire record in this case, the Hearing Examiner concludes that Respondent did not violate the Pennsylvania Human Relations Act, and therefore recommends that the foregoing Findings of Fact, Conclusions of Law, and Opinion be adopted by the full Pennsylvania Human Relations Commission, and that a Final Order of dismissal be entered, pursuant to Section 9 of the Act.

Edith E. Cox

Edith E. Cox
Hearing Examiner

FACT F DING CONFERENCE PURPOSE AND P EDURES

PLEASE READ CAREFULLY:

The scheduled fact finding conference is to be convened pursuant to to Section 9 of the Pennsylvania Human Relations Act, which mandates a prompt investigation of any complaint of discrimination, and to Sections 42.41 and following of the Special Rules and Administrative Practice and Procedure, which delineate the Commission's investigative measures. This conference will be conducted by staff of the Pennsylvania Human Relations Commission in an effort to achieve a prompt investigation or an early settlement of the dispute which gave rise to this complaint of discrimination.

The conference is not a formal hearing, and no determination concerning the merits of the charges will be made on the date of the conference. The statements made during the conference will not be made under oath. However, investigatory notes will be taken, and statements made that pertain to the merits of the allegations will be used by the Commission as evidence when and if a determination on the merits of the charge is made.

This conference is being called for the purpose of obtaining facts and information, and that will be our primary goal during the conference. Each party present at the conference will have a chance to be heard. All questions and statements are to be addressed to the Fact Finding Coordinator. There will be no cross conversation or cross examination. If anyone wishes to respond to what another has said, that persons should wait until the other has finished speaking. If anyone has a question to ask, he or she may tell the Fact Finding Coordinator, and if the question is appropriate, the Fact Finder will ask it.

A discussion of settlement is appropriate during the conference, and the Commission strongly urges both parties to consider a mutually agreeable settlement of the charge. Therefore, if at any time during the conference any party has a proposal to resolve the dispute, we will discuss the suggestion, if all parties agree, in the hope of settling the matter. In the event of a settlement the contents of the settlement discussion will not be made a part of the record of evidence to be used by the Commission in any formal determination on the merits of the charge.

Any attorney present will be required to respect the same guidelines set forth for the parties in the investigative conference. Attorneys will be free, of course, to counsel, assist and advise their clients. Furthermore, an attorney may suggest relevant questions to the Fact Finder. If the questions are appropriate, the Fact Finder will ask them. It must be understood, however, that the conference is not a hearing, but rather part of the Commission's investigative process. There is no right of cross examination by any attorney, nor is there any right to confront witnesses. An attorney may not give evidence unless he or she has first-hand direct knowledge of the events being discussed. The fact finding conference requires mutual good will. If non-cooperation makes it futile to continue, the conference will be concluded.

In no event will outbursts or rhetoric of any kind be tolerated. Both sides will have a full and adequate opportunity to clarify their respective positions at a given point in the conference. All parties are asked to await that opportunity.

With these understandings the conference will proceed as scheduled.

APPENDIX "A"

**CORRECTION FORM**

## AUTOMOTIVE MECHANIC CERTIFICATION TESTS

| SOCIAL SECURITY NUMBER | DATE OF BIRTH | SEX |
|---|---|---|
| 209-38-3917 | 02/05/50 | M |

| LAST NAME | FIRST NAME | MI |
|---|---|---|
| FISHER | ANTHONY | W |

| STREET ADDRESS |
|---|
| 8621 FORREST AVENUE |

| CITY | STATE | ZIP CODE |
|---|---|---|
| PHILA | PA | 19150 |

| CANDIDATE IDENTIFICATION NO |
|---|
| 209-38-3917-FISH |

**Please see instructions on the reverse side of this form before making any corrections.**

ANTHONY W FISHER
8621 FORREST AVENUE
PHILA PA 19150

Read the directions and information on the reverse side.

**ADMISSION TICKET and Request for Refund**

## AUTOMOTIVE MECHANIC CERTIFICATION TESTS

BRING THIS TICKET AND SOME POSITIVE MEANS OF IDENTIFICATION TO THE TEST CENTER

**This ticket is valid for admission to the following test sessions:**

| TEST CENTER NAME AND ADDRESS | SESSION | DATE | TIME | REGULAR TESTS | RECERTIFICATION TESTS |
|---|---|---|---|---|---|
| DREXEL UNIVERSITY<br>LOBBY - NESBITT HALL<br>33RD & MARKET STREETS<br>PHILADELPHIA - PA | A | MAY 07 | 07:00PM | T3 T4 | |
| | B | MAY 12 | 07:00PM | T1 T2 | |
| | D | MAY 16 | 08:45AM | T5 T6 | |

**NOTE:** The numbers followed by an asterisk (*) indicate that your certification in these areas is expiring this administration.

**See ticketing rules on the reverse side if you were not ticketed for all the tests you requested.**

| CENTER NO. | CANDIDATE IDENTIFICATION NO. | ADMINISTRATION DATE |
|---|---|---|
| 0819 | 209-38-3917-FISH | MAY 91 |

155.025M

I.N. 309482

**TEST CODE KEY**

| | | |
|---|---|---|
| A1 Engine Repair | A6 Electrical Systems | T1 Gasoline Engines |
| A2 Automatic Transmission | A7 Heating & Air Conditioning | T2 Diesel Engines |
| A3 Manual Transmission & Rear Axle | A8 Engine Tune up | T3 Drive Train |
| A4 Front End | B1 Body Repair | T4 Brakes |
| A5 Brakes | B2 Painting & Refinishing | T5 Suspension & Steering |
| | | T6 Electrical Systems |

EXHIBIT "B"

TELLERS USE ONLY

CUSTOMER'S RECORD OF PERSONAL MONEY ORDER
NOT TO EXCEED $500.00

7007696

PERSONAL MONEY ORDER

FORM NO. 1291-4

DATE April 3, 1981

PAYEE E.T.S. Auto Mechanic Test

SIGNATURE

ADDRESS 8621 Forrest Ave Phila. Pa. 19152

The Fidelity Bank
PHILADELPHIA, PENNSYLVANIA

NOT NEGOTIABLE

FOR

IMPORTANT: PLEASE RETAIN FOR YOUR RECORDS

EXHIBIT "C"

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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FINAL ORDER

AND NOW, this 4th day of August, 1987, following review of the entire record in this case, including the transcript of testimony, exhibits, briefs, and pleadings, the Pennsylvania Human Relations Commission hereby adopts the foregoing Findings of Fact, Conclusions of Law, and Opinion, in accordance with the Recommendation of the Hearing Examiner, pursuant to Section 9 of the Pennsylvania Human Relations Act, and therefore

O R D E R S

that the complaint in this case be, and the same hereby is, dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Thomas L. McGill, Jr.
Thomas L. McGill, Jr.
Chairperson

ATTEST:

John P. Wisniewski
John P. Wisniewski, Secretary

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

| | | |
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| | : | DOCKET NO. E-25322 |
| v. | : | |
| | : | |
| ABINGTON SCHOOL DISTRICT,<br>Respondent | : | |

STIPULATED AND ADMITTED FACTS

1. Abington School District (hereinafter "ASD") is a corporate body politic of the Commonwealth of Pennsylvania created by and organized under the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §1-101, et seq. (respondent's proposed stipulation of fact number 1, accepted by complainant as confirmed in letter dated January 30, 1986.)

2. Complainant is Anthony Fisher, a black male, who lives at 8621 Forrest Avenue, Philadelphia, Pennsylvania, 19150. (complainant's proposed stipulation of fact number 1.)

3. Among other things, ASD is responsible for the safe, school-related transportation of school children residing in ASD. (respondent's proposed stipulation of fact number 15, accepted by complainant as confirmed by letter dated February 10, 1986.)

4. ASD's school buses and other motor vehicles used for the transportation of school children are maintained by mechanics employed by ASD and assigned to its Transportation Department. (respondent's proposed stipulation of fact number 2, accepted by complainant as confirmed in letter dated January 30, 1986.)

5. The "head mechanic" a/k/a mechanic group leader, is the group leader for the Transportation Department mechanics. (respondent's proposed stipulation of fact number 3, as confirmed in letter dated January 30, 1986.)

6. In November, 1982, the head mechanic position was within the collective bargaining unit of ASD employees represented by the Abington School Service Personnel Association (ASSPA), a public employee organization within the meaning of the Pennsylvania Public Employee Relations Act, July 23, 1970, No. 195, 43 P.S. §1101.101 et seq. (respondent's proposed stipulation of fact number 4, accepted by complainant as confirmed in letter dated January 30, 1986.)

7. Under the terms of the Collective Bargaining Agreement then in effect between ASD and ASSPA, promotion to head mechanic was to be determined on the basis of ability and seniority; that is, "when ability among applicants is relatively equal, seniority shall control." Article III, §3A. (respondent's proposed stipulation of fact number 6, accepted by complainant as confirmed by letter dated January 30, 1986.)

8. From December 15, 1969 until his retirement in 1980, the head mechanic's position was held by one Cliff Edwards. (respondent's proposed stipulation of fact number 5, accepted by complainant as confirmed in letter dated February 10 and 12, 1986.)

9. Three ASD mechanics bid on the head mechanic vacancy created by the retirement of Mr. Edwards: George Bash (WM)(hired October 14, 1968), Anthony Fisher (BM)(hired April 26, 1971) and Donald Merkel (WM)(hired June 21, 1971). (respondent's proposed stipulation of fact number 7, accepted as confirmed by letters dated February 10 and 12, 1986.)

10. Though he was the lowest in seniority, Mr. Merkel received the promotion to head mechanic. (respondent's proposed stipulation of fact number 7, accepted by complainant as confirmed by letters dated February 10 and 12, 1986.)

11. In October 1982, Mr. Merkel was promoted out of the bargaining unit to the position of supervisor of transportation. Among other things, the supervisor of transportation is the management position to which the head mechanic reports. (respondent's proposed stipulation of fact number 11, accepted by complainant as confirmed by letter dated February 10, 1986.)

12. On November 1, 1982, by means of personnel memo #534, ASD posted notice of the vacancy in the head mechanic's position created by Merkel's promotion. (respondent's proposed stipulation of fact number 12, accepted by complainant as confirmed by letter dated January 30, 1986.)

13. In response to the posting, three mechanics bid for the job of head mechanic, Anthony Fisher, Richard Stahl (WM)(hired August, 1974) and Robert Kaufmann (WM)(hired October 13, 1980). (respondent's proposed stipulation of fact number 13, accepted by complainant as confirmed by letter dated January 30, 1986.)

14. Of the three candidates for the head mechanic's job created by Merkel's promotion, Fisher was most senior, Stahl was second in seniority and Kaufmann had the least seniority. (respondent's proposed stipulation of fact number 14, accepted by complainant as confirmed by letter dated January 30, 1986.)

15. Respondent promoted Stahl to the position of head mechanic, effective January 26, 1983. (respondent's proposed stipulation of fact number 30, accepted by complainant as confirmed in letter dated January 30, 1986.)

16. ASD has, and had in November, 1982, a legitimate interest in requiring its head mechanic to have a knowledge of the field of motor vehicle maintenance and repair superior to that of the mechanics he supervises. (respondent's proposed stipulation of fact number 16, accepted by complainant as confirmed by letter dated February 10, 1986.)

17. Among other things, the head mechanic is responsible for the supervision of the maintenance of ASD's motor vehicles, including school buses. (respondent's request for admission number 7, admitted by complainant.)

18. Among other things, the head mechanic is responsible for development and implementation of a program of preventive maintenance for ASD's motor vehicles, including buses. (respondent's request for admission number 8, admitted by complainant.)

19. Among other things, the head mechanic is required to have a superior knowledge of the field of motor vehicle maintenance and repair. (complainant's response to respondent's request for admission number 9.)

20. Among other things, the head mechanic is available to the mechanics he supervises for diagnosing vehicle malfunctions and repairing vehicle malfunctions. (complainant's response to respondent's request for admission number 10.)

21. The Pennsylvania Human Relations Commission ("Commission") does not contend that the head mechanic need not be knowledgeable in the field of motor vehicle maintenance and repair. (respondent's request for admission number 11, admitted by complainant.)

22. The Commission has no evidence that a person with inferior knowledge of the field of motor vehicle maintenance and repair would generally be equal or better as a supervisor of motor vehicle mechanics than a person with superior knowledge of the field of motor vehicle maintenance and repair. (respondent's request for admission number 16, admitted by complainant.)

23. Merkel had recommended to ASD administration that Stahl be promoted to head mechanic over Fisher and Kaufmann. (respondent's proposed stipulation of fact number 31, accepted by complainant as confirmed in letter dated January 30, 1986.)

24. By January, 1983, Merkel had worked with Fisher for over 9 years. (respondent's proposed stipulation of fact number 32, accepted by complainant as confirmed in letter dated January 30, 1986.)

25. By January, 1983, Merkel had worked with Stahl for over 8 years. (respondent's proposed stipulation of fact number 33, accepted by complainant as confirmed in letter dated January 30, 1986.)

26. When Merkel was head mechanic, he had no authority to discipline or reprimand any of the mechanics under his supervision. (respondent's proposed stipulation of fact number 36, accepted by complainant as confirmed in letter dated January 30, 1986.)

27. The Commission has no evidence that another management employee of ASD was in a better position than Merkel to evaluate Fisher and Stahl's relative knowledge, skills, and abilities. (respondent's request for admission number 48, admitted by complainant.)

28. The Commission has no evidence that Merkel was not familiar with Fisher and Stahl's relative knowledge, skills and abilities. (respondent's request for admission number 49, admitted by complainant.)

29. The Commission has no evidence that the National Institute for Automotive Service Excellence ("NIASE") is not a non-profit organization dedicated to improving the quality of automotive service and repair throughout the nation. (respondent's request for admission number 18, admitted by complainant.)

30. The Commission has no evidence that NIASE's primary function is not to test and certify automobile and truck technicians and body repairers and painters. (respondent's request for admission number 21, admitted by complainant.)

31. The NIASE certification pertinent to maintenance and repair of motor vehicles such as school buses is the general truck mechanic certification. (respondent's request for admission number 22, admitted by complainant.)

32. For a person to be certified by NIASE as a general truck mechanic, such person must pass tests of his/her knowledge of drive trains, brake systems, suspension and steering systems, electrical systems and gasoline or diesel engines. (respondent's request for admission number 24, admitted by complainant.)

33. Richard Stahl was certified by NIASE as a general truck mechanic on June 30, 1980 and was certified as competent in the following areas: gasoline engines, diesel engines, drive trains, brake systems, suspension and steering systems, electrical systems. (respondent's request for admission number 26, admitted by complainant.)

34. As of January 26, 1983, neither Fisher nor Kaufmann was certified as a general truck mechanic by NIASE. (respondent's request for admission number 30, admitted by complainant.)

35. In 1981, Anthony Fisher unsuccessfully sought to obtain certification as a general truck mechanic from NIASE. (complainant's response to respondent's request for admission number 32.)

36. When Fisher sought to obtain certification from NIASE as a general truck mechanic, he failed tests in the following knowledge areas: gasoline engines, diesel engines, drive trains, suspension and steering systems and brake systems. (complainant's response to respondent's request for admission number 34.)

37. When Fisher attempted to obtain NIASE certification as a general truck mechanic in 1981, he passed only the electrical systems test. (complainant's response to request for admission number 36.)

38. In or around January, 1982, Merkel, Stahl, Fisher and Kaufmann attended an emmission control inspection seminar, sponsored by the Pennsylvania Department of Transportation at the Montgomery County Vo-Tech School. (respondent's request for admission number 42, admitted by complainant.)

39. George V. Bethala was the Commission's fact finder who chaired the fact finding conference held in this matter. (respondent's request for admission number 57, admitted by complainant.)

40. Appendix A is a true and correct copy of the Commission's statement of Fact Finding Conference Purpose and Procedures served on ASD with the complaint

initiating this matter. (respondent's request for admission number 58, admitted by complainant.)

41. Bethala read the text of the "Fact Finding Conference Purpose and Procedures" (Appendix A) at the opening of the fact finding conference held in this matter on June 15, 1983. (respondent's request for admission number 59, admitted by complainant.)

42. During the fact finding conference held on June 15, 1983, Mr. Bethala took investigatory notes for the Commission. (respondent's request for admission number 60, admitted by complainant.)

43. The Commission, by or through its employees, rewrote the handwritten notes taken during the fact finding conference and discarded the investigatory notes taken by Mr. Bethala at the fact finding conference. The rewritten notes then became part of the case file. (complainant's response to respondent's request for admission number 61.)

44. The Commission had exclusive custody and control of Mr. Bethala's fact finding conference investigatory notes until they were discarded. (complainant's response to respondent's request for admission number 62.)

45. At the fact finding conference, Fisher admitted that since Merkel had become head mechanic, Merkel had not used any racial slurs. (complainant's response to respondent's request for admissionn number 65.)

46. Exhibit B is a true and correct copy of the automotive mechanics certification test admission ticket issued to Anthony W. Fisher. (respondent's request for admission number 71, admitted by complainant.)

47. Exhibit C is a true and correct copy of the receipt for Fidelity Bank personal money order number 7007696 purchased by complainant, Anthony W. Fisher, on April 3, 1981, and payable to ETS Automotive Mechanics Certification Test in the amount of $78.00. (respondent's request for admission number 72, admitted by complainant.)

48. Complainant sought and received from ASD reimbursement for the $78.00 fee for taking the automotive mechanics certification test sponsored by NIASE. (respondent's request for admission number 73, admitted by complainant).

OBERMAYER, REBMANN, MAXWELL & HIPPEL

BY: _____

JAMES M. PENNY, JR., ESQUIRE
JOSEPH P. KENNEDY, ESQUIRE
Attorneys for Respondent
Abington School District

14th Floor, Packard Building
Philadelphia, PA 19102
(215) 665-3000

COMMONWEALTH OF PENNYSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

| | | |
|---|---|---|
| ANTHONY W. FISHER, Complainant | : | |
| v. | : | DOCKET NO. E-25322 |
| ABINGTON SCHOOL DISTRICT, Respondent | : | |

STIPULATION AS TO THE TESTIMONY
OF GEORGE V. BETHALA

It is hereby stipulated by and between Cynthia M. Williams, Attorney for the Pennsylvania Human Relations Commission, and James M. Penny, Jr., Attorney for Abington School District that if George V. Bethala was called as a witness in this matter, his testimony would be as follows:

1. Mr. Bethala chaired the fact finding conference held in this matter on June 15, 1983;

2. At the opening of that fact finding conference, Mr. Bethala read the text of a Pennsylvania Human Relations Commission document entitled "Fact Finding Conference Purpose and Procedures";

3. Exhibit "A" to this Stipulation is a true and correct copy of the statement of "Fact Finding Conference Purpose and Procedures" served on Abington School District with the Complaint to this action and read by Mr. Bethala at the fact finding conference;

4. At the fact finding conference on June 15, 1983, Mr. Bethala took investigatory notes;

5. The Pennsylvania Human Relations Commission, by and through Mr. Bethala, rewrote the original investigatory notes taken during

the fact finding conference and discarded the original notes taken at the fact finding conference;

6. The rewritten summary of the fact finding conference was prepared for the purpose of aiding the next Commission investigator on the file and included the mental impressions and work product of Mr. Bethala;

7. The Commission had exclusive control over the original fact finding conference notes from the time those notes were taken until those notes were discarded;

8. The Commission has consistently objected to production of the rewritten summary of the fact finding conference;

9. Mr. Bethala has no present recollection of the fact finding conference or of the remarks and comments of those in attendance at the fact finding conference;

10. Prior to his deposition, Mr. Bethala was not given the opportunity to review his rewritten summary of the fact finding conference;

11. The only documents originally prepared by Mr. Bethala at the fact finding conference which remain in existence today are the list of persons in attendance at the conference (Exhibit "B" hereto) and a copy of the Complaint to this matter with marginal annotations of admission or denial made by Mr. Bethala (Exhibit "C" hereto).

DATED: 9/29/86

Cynthia M. Williams

Cynthia M. Williams, Esquire

DATED: 9/29/86

James M. Penny, Jr., Esquire

PENNSYLVANIA HUMAN RELATIONS COMMISSION

FACT FINDING CONFERENCE PURPOSE AND PROCEDURES

PLEASE READ CAREFULLY:

The scheduled fact finding conference is to be convened pursuant to to Section 9 of the Pennsylvania Human Relations Act, which mandates a prompt investigation of any complaint of discrimination, and to Sections 42.41 and following of the Special Rules and Administrative Practice and Procedure, which delineate the Commission's investigative measures. This conference will be conducted by staff of the Pennsylvania Human Relations Commission in an effort to achieve a prompt investigation or an early settlement of the dispute which gave rise to this complaint of discrimination.

The conference is not a formal hearing, and no determination concerning the merits of the charges will be made on the date of the conference. The statements made during the conference will not be made under oath. However, investigatory notes will be taken, and statements made that pertain to the merits of the allegations will be used by the Commission as evidence when and if a determination on the merits of the charge is made.

This conference is being called for the purpose of obtaining facts and information, and that will be our primary goal during the conference. Each party present at the conference will have a chance to be heard. All questions and statements are to be addressed to the Fact Finding Coordinator. There will be no cross conversation or cross examination. If anyone wishes to respond to what another has said, that persons should wait until the other has finished speaking. If anyone has a question to ask, he or she may tell the Fact Finding Coordinator, and if the question is appropriate, the Fact Finder will ask it.

A discussion of settlement is appropriate during the conference, and the Commission strongly urges both parties to consider a mutually agreeable settlement of the charge. Therefore, if at any time during the conference any party has a proposal to resolve the dispute, we will discuss the suggestion, if all parties agree, in the hope of settling the matter. In the event of a settlement the contents of the settlement discussion will not be made a part of the record of evidence to be used by the Commission in any formal determination on the merits of the charge.

Any attorney present will be required to respect the same guidelines set forth for the parties in the investigative conference. Attorneys will be free, of course, to counsel, assist and advise their clients. Furthermore, an attorney may suggest relevant questions to the Fact Finder. If the questions are appropriate, the Fact Finder will ask them. It must be understood, however, that the conference is not a hearing, but rather part of the Commission's investigative process. There is no right of cross examination by any attorney, nor is there any right to confront witnesses. An attorney may not give evidence unless he or she has first-hand direct knowledge of the events being discussed. The fact finding conference requires mutual good will. If non-cooperation makes it futile to continue, the conference will be concluded.

In no event will outbursts or rhetoric of any kind be tolerated. Both sides will have a full and adequate opportunity to clarify their respective positions at a given point in the conference. All parties are asked to await that opportunity.

With these understandings the conference will proceed as scheduled.

EXHIBIT
A
ALL-STATE LEGAL SUPPLY CO.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

FACT FINDING CONFERENCE

RECORD OF ATTENDANCE

E-25322

Charge Number ANTHONY W FISHER vs. ABINGTON

Complainant Respondent

Date of Conference June 15, 83

Commission Representatives George L Bethke

Fact Finder Note Taker

| Name | (Business) Address | Phone Number | Title | Appearing for Complain/Respond |
|---|---|---|---|---|
| [illegible] | [illegible] | [illegible] EXT 621 | [illegible] | [illegible] |
| TAMES M. PENNY, JR. | 14th Fl. Packard Bldg Phila. Pa. 19102 | 665-3130 | Atty | Respondent |
| [illegible]NALD MERKEL | 330 HUNTINGDON RD ABINGTON PA. | 884-4200 X 626 | TRANS SUPR. | RESPONDENT |
| Daniel Greenfield | Abington School Dist Abington Pa 19001 884-4200 | | Dir. Personnel | Respondent |

EXHIBIT
B
ALL-STATE LEGAL SUPPLY CO.

COMMONWEALTH OF PENNSYLVANIA

EXECUTIVE OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

COMPLAINT

COMPLAINANT(S):
ANTHONY W. FISHER

vs.

RESPONDENT(S):
ABINGTON SCHOOL DISTRICT

Docket No. E25322

1. The Complainant(s) herein (is) (are):

Name: ANTHONY W. FISHER

Address: 8621 FORREST AVENUE, PHILADELPHIA, PENNSYLVANIA 19150

Name:

Address:

Name:

Address:

2. The Respondent(s) herein (is) (are):

Name: ABINGTON SCHOOL DISTRICT

Address: 1841 SUSQUEHANNA ROAD, ABINGTON, PENNSYLVANIA 19001

Name:

Address:

Name:

Address:

EXHIBIT
C
ALL-STATE LEGAL SUPPLY CO.

3. The Complainant(s) allege(s) that on or about or until January 26, 1983 the Respondent(s) discriminated against me because of my Race, Black, by denying me a promotion to Head Mechanic, to wit:

A. I have been employed by the Respondent since April 22, 1971.

1) I have been a mechanic for the Respondent since June 26, 1973.

2) On November 2, 1982, I applied for the Head mechanic's position after it was posted by the Respondent.

3) In December 1982, I was interviewed by Donald Merkel, white, Supervisor of Transportation and Dr. Daniel Greenfield, white, Supervisor of Personnel.

4) On January 26, 1983, Don Merkel told me I did not get the Head Mechanic's position.

B. Don Merkel told me Richard Stahl was given the position and he also told me "Richard Stahl has a small edge on you in qualifications"

1) Dr. Greenfield told me later, at a grievance meeting, that there was five different jobs I did poorly as a mechanic in a two year period (1980-82).

2) He further stated I endangered the lives of students and drivers.

C. I allege the Respondent discriminated against me because of my Race, Black, in the following manner.

1) Richard Stahl is white.

2) I remember one of the incidents mentioned by Dr. Greenfield, the others I am not sure about. Respondent Denied

3) Don Merkel, when he was a mechanic, and Richard Stahl have made mistakes

4) Don Merkel told Richard Stahl in his office, "don't worry, you have the job".

5) Don Merkel, while a mechanic, said he would never work for a black man 1978

6) With Don Merkel's feeling towards blacks, he would not want me in the head mechanic position.

7) I am the only black mechanic.

8) If the mistakes were made they were not detrimental to the lives of the students and drivers.

(continued)

I possessed all the qualifications necessary for the head mechanic's position.

10) Prior to my interview the Respondent had nothing in my personnel file pertaining to my abilities, although I made copies of my certificates and gave them to the previous supervisors of Transportation.

4. The allegations in paragraph 3 hereof constitute(s) an unlawful discriminatory practice or unlawful practice and is in violation of:

/ X / Pennsylvania Human Relations Act (Act of October 27, 1955, P.L. 744, as amend
Section 5 Subsection(s) (a)

/ / Section 5.1 Subsection(s) _____

/ / Section 5.2 Subsection(s) _____

/ / Pennsylvania Fair Educational Opportunities Act (Act of July 17, 1961, P.L. 7
as amended). Section 4 Subsection(s) _____

5. The Complainant(s) allege(s) that the alleged unlawful discriminatory practice or unlawful discriminatory practices:

/ / is/are of a continuing nature which has/have persisted up to and including th
present time.

6. No other action based on the aforesaid allegations has been instituted by the Compla
ant in any Court or before any other Commission within the Commonwealth of Pennsylvania except as follows:

/ / None

/ / _____

/ X / This charge will be referred to EEOC for the purpose of dual filing.

/ / This charge will be referred to HUD for the purpose of dual filing.

7. The Complainant(s) pray that the Respondent(s) be required to:

(a) Make the Complainant(s) whole, including, but not limited to an award of back p
hiring, reinstatement, upgrading, and restoration of job benefits; or to provid
the housing sought or the loan sought in connection with housing.

(b) Eliminate all unlawful discriminatory practice(s) and procedure(s).

(c) Remedy the discriminatory effect of past practice(s) and procedure(s).

(d) Take further affirmative action necessary and appropriate to remedy the violation complained of herein.

(e) Provide such further relief as the Commission deems necessary and appropriate.

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

ANTHONY W. FISHER, of full age, being duly sworn according to law deposes says: that he is the Complainant herein; that he has read the foregoing complaint and k the content thereof; that to the best of his knowledge, information and belief the facts alleged therein are true.

Sworn to and subscribed :
before me this 15th day :
of April, 19__ :

Anthony W. Fisher
Signature of Complainant(s)

Notary Public Barbara H. Taylor

My Commission Expires: [illegible]