



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301**

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.
Governor

November 13, 1985

Barbara Freedy, Esquire
Assistant Attorney General
Room E-26, State Capitol
Charleston, WV 25305

Kurt Entsminger, Esquire
Love, Wise, & Woodroe
P.O. Box 951
Charleston, WV 25323

RE: Syble Anderson V. Kanawha County Board of Education
Docket No.: ES-148-80

Dear Ms. Freedy and Mr. Entsminger:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Syble Anderson V. Kanawha County Board of Education/Docket No.: ES-148-80.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,

A handwritten signature in cursive script that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SYBLE ANDERSON,
COMPLAINANT,

V

DOCKET NO.: ES-148-80

KANAWHA COUNTY BOARD OF EDUCATION,
RESPONDENT.

ORDER

Pursuant to notice duly-issued to the respondent, this matter came on for hearing on the 12th day of June, 1985, beginning at 9:00 a.m., in Building 7 of the State Capitol Complex, in Charleston, West Virginia. David G. Hanlon, Hearing Examiner, presided, both parties having waived the presence of a member of the Human Rights Commission.

The Complainant, Syble Anderson, appeared in person and by her counsel, Barbara L. Freedy, Assistant Attorney General, and the respondent appeared in person by George Beckett, Director of Pupil Transportation for Kanawha County, and by its counsel, Kurt E. Entsminger and Howard Salisbury, Jr. Appearing and testifying on behalf of the complainant were the complainant, John Eagle, James Childress, and Gordon Roberts, Sr., South Charleston Bus Terminal bus drivers, John Lyons, Assistant Superintendent for Facilities and Maintenance, Dr. Daniel Krider, expert witness in the field of statistics, Bob Mullins, head mechanic at the South Charleston Bus Terminal thru 1979 to 1985, and Jennings Stewart, former mechanic at the South Charleston Bus Terminal in 1979. Appearing and testifying on behalf of the respondent were George Beckett, Cy Faris, Associate

Superintendent of Personnel, Marsha Carey, former Principal for the Kanawha County School System, Catherine Chandler, expert witness in the field of statistics, Bob Mullins, head mechanic at the South Charleston Bus Terminal thru 1979 to 1985, and Jennings Stewart, former mechanic at the South Charleston Bus Terminal in 1979. Appearing and testifying on behalf of the respondent were George Beckett, Cy Faris, Associate Superintendent of Personnel, Marsha Carey, former Principal for the Kanawha County School System, Catherine Chandler, expert witness in the field of statistics, and Scott Beane, South Charleston Bus Terminal Supervisor from 1979 to the present.

It appearing that notice as required by law, setting forth the time and place of the hearing and the matters to be heard, had been duly-served upon the respondent and respondent appearing by its representatives, the hearing was convened at the aforesaid time and place, the same being completed on the 13th day of June 1985.

Upon due consideration of the transcript and of the pleadings the parties of counsel, the West Virginia Human Rights Commission hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The complainant, Syble L. Anderson, a white female, is employed by the respondent, the Kanawha County Board of Education, as a bus driver for the South Charleston Bus Terminal. The complainant has been a bus driver for the Kanawha County school system for the following periods: 1949-1951 at the respondent's East Bank Bus Terminal and 1963-present at the respondent's South Charleston Bus Terminal.

2. The respondent, Kanawha County Board of Education, is a political subdivision of the State of West Virginia. At the time of the events giving rise to this complaint, Mr. George Beckett was respondent's Director of Pupil Transportation, Mr. Cy Faris was respondent's Associate Superintendent of Personnel, and Mr. John Lyons was respondent's Executive Assistant to the Superintendent, and then respondent's Associate Superintendent in charge of food service, maintenance, transportation, and custodial services.

Presently and at the time of the events giving rise to this complaint, respondent has had seven school bus terminals within Kanawha County: Charleston, Dickinson, East Bank, Elkview, St. Albans, Sissonville, and South Charleston.

3. During the period of April to June, 1979, the complainant served as Acting Terminal Supervisor at the South Charleston Bus Terminal upon the death of that terminal's supervisor, Mr. Herman Legg. Ms. Anderson was appointed Acting Terminal Supervisor in writing by Mr. George Beckett, respondent's Director of Pupil Transportation and received supervisor's pay during those three months. Ms. Anderson's duties as Acting Terminal Supervisor were the same as those of a permanent terminal supervisor and included supervising 25 to 27 bus drivers, three bus aides and four mechanics, scheduling bus runs, handling parents' and principals' complaints, compiling and completing the required reports (such as gasoline reports, extracurricular run reports, loaded and empty mileage reports, etc.) and working on administrative problems with the Director of Pupil Transportation. South Charleston bus drivers Gordon Roberts, Sr., John Eagle, and James Childress, who worked under Ms. Anderson

while she was South Charleston Acting Terminal Supervisor, all testified that the terminal ran well and smoothly under the complainant's supervision and that they were not aware of any problems that arose which she could not handle. Mr. Eagle also testified that Ms. Anderson was trusted and well respected by the South Charleston bus drivers.

4. The job description for Kanawha County Schools School Bus Supervisor in effect in 1979 lists the duties of a school bus supervisor as:

"1. To plan and initiate the most efficient, economical, time-saving and safe transportation plans for the students of the division area.

"2. Responsible for the proper training of new drivers.

"3. Act as a resource person for problems dealing with pupil transportation for parent, driver and school personnel.

"4. Maintains accurate records dealing with bus schedules, time sheets, number of pupils transported each day, miles traveled by each bus, gasoline consumption, sick leave, maintenance of buses, discipline reports, extracurricular runs and other reports necessary to the efficient operation of the bus division.

"5. Checks school buses to insure that each is in clean and safe operating order.

"6. Evaluates personnel under his supervision.

"7. Schedules bus routes with Director of the Transportation Department. Directs and maintains up-dated routes and communications.

"8. When bus driving duties may be assumed (very infrequently), the supervisor is paid on an hourly non-exempt basis at the bus rate.

"9. Performs other related tasks as assigned by supervisor."

W. Va. Code Section 18A-4-8, in effect in 1979, and the above job description defined "school bus supervisor" as:

"qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees."

Neither the above definition nor the above-listed job duties contain any specific requirement with respect to mechanical ability or depth of mechanical knowledge. Complainant testified that it was her understanding that mechanical ability and extensive mechanical knowledge were not necessary to be a successful "school bus supervisor." Bob Mullins and Jennings Stewart, both head mechanics for the Kanawha County Schools transportation system, testified that because their jobs required them to have both mechanical ability and extensive mechanical knowledge, they believed it was not necessary for a successful "school bus supervisor" to be a qualified mechanic as well.

5. Ms. Anderson had served as Acting Terminal Supervisor at the South Charleston Bus Terminal on several occasions prior to 1979, for periods of one to two weeks, when Mr. Herman Legg, then South Charleston Bus Terminal Supervisor, was absent. Many of these supervisory appointments were not made in writing; however, Ms. Anderson did receive supervisor's pay for those periods and it was understood by all the South Charleston Bus Terminal personnel that she was in charge of that terminal in Mr. Legg's absence. In addition, during the period prior to 1979, Ms. Anderson regularly worked in the

South Charleston Bus Terminal office on supervisory tasks which Mr. Legg had delegated to her. These tasks included compiling and completing the required reports, calling out substitute bus drivers as needed, and handling complaints from parents and principals.

6. After Mr. Herman Legg's death in the spring of 1979, a vacancy existed in the South Charleston Terminal Supervisor's position. A vacancy also existed in the Charleston Terminal Supervisor's position at that time.

According to respondent's job description for School Bus Supervisor which was in effect at the time of this vacancy, the qualifications for these vacancies included:

- *ability to perform the duties listed in Paragraph No. 4:

- *a high school education;

- *some supervisory skills, with previous lead or supervisory experience preferred;

- *experience as a school bus driver or experience in a related field;

- *knowledge of planning and riding carrier traffic.

7. The candidates selected to fill the vacancies at the first set of interviews in the spring of 1979 were not approved by the Kanawha County Board of Education. A second set of interviews for those two terminal supervisor's vacancies was conducted in the fall of 1979.

8. Ms. Anderson applied for only the South Charleston Terminal Supervisor vacancy by letter dated August 2, 1979.

Ms. Anderson was the only female applicant for either 1979 vacancy.

At the time of her application, Ms. Anderson's qualifications included: an eighth-grade education, previous supervisory experience as South Charleston Bus Terminal Acting Supervisor, familiarity with the duties of a terminal supervisor, and 17 years experience as a bus driver employed by respondent. In addition, Ms. Anderson's personnel file contained a 1974 evaluation of her as a bus driver in which all her ratings, except one, were excellent and above average.

9. Mr. Scott Beane was also among the applicants for both of the 1979 Charleston and South Charleston Terminal Supervisor vacancies.

At the time of his application, Mr. Beane's qualifications included: a high school education, previous supervisory experience with employers other than the Kanawha County Board of Education, awards for his bus driving ability, and seven years' experience as a bus driver employed by respondent.

In addition, Mr. Beane's personnel file contained a 1977 evaluation of his performance as a bus driver in which all his ratings were 3 or above on a scale of 1 to 5. When asked why he, Mr. Beane, has given himself a 2 ("poor") rating in the evaluation categories "Assumes Additional Responsibilities" and "Expresses Complaints Constructively." Mr. Beane testified that he didn't know. Mr. Beane had applied for the Dickinson Terminal Supervisor vacancy in 1977, but had not been selected to fill that vacancy.

10. The interviews of the candidates for the 1979 Charleston and South Charleston Bus Terminal Supervisor vacancies were conducted on September 19, 1985, by a committee of eleven of respondent's employees. The committee included three women and eight men:

1. Mr. George Beckett, Director of Pupil Transportation
2. Mr. Cy Faris, Associate Superintendent of Personnel
3. Mr. Paul Boggess, Coordinator of Service Personnel
4. Mr. Harry Brenneman, Charleston, Terminal Bus Driver
5. Mr. George Rader, South Charleston Terminal Bus Driver
6. Ms. Marsha Carey, Secondary School Principal
7. Ms. Mary Pullen, Coordinator of Food Services
8. Ms. Jorea Marple, Director of Federal Programs.
9. Mr. John Lyons, Assistant Superintendent for Facilities and
Maintenance
10. Mr. Andrew Stemple, Elementary School Principal
11. Mr. Ken Russell, Coordinator of Pupil Transportation

Committee members, prior to the commencement of the interviews, received a package of materials which included a March 1975 Board of Education Administrative Regulation on Equal Opportunity and a Notice indicating that the West Virginia Human Rights Act prohibits employment discrimination based on race, religion, color, national origin, age, blindness, and sex.

Each candidate, including Ms. Anderson and Mr. Beane, was interviewed for approximately 20 minutes by the committee. They also testified that they believed each candidate was asked the following 12 questions at the interview:

"I. Please review with us your background administrative experience and why you desire the position of terminal supervisor?

"II. A part of a supervisor's responsibility is the handling of

parent complaints. As terminal supervisor, explain how you would handle phone calls demanding a bus be extended up their road.

"III. Part of the responsibility of a supervisor is to be in charge of the maintenance of the buses--what experience do you have in the mechanic's area?

"IV. As you are aware there are several special programs for exceptional children. Share with us your feeling on providing door-to-door bus service for exceptional children.

"V. If you were asked by the Director of Transportation, who would be your immediate supervisor, to do something that you totally did not believe in or agree with, what would be your reaction? Please elaborate.

"VI. During the winter months we have several snowy mornings. As terminal supervisor, what responsibilities would you have in dealing with snowy situations?

"VII. What general preventive maintenance should be done in order to improve the efficiency of our school bus operation?

"VIII. If a principal of one of our schools desires a bus schedule change or wants to change his/her starting and ending times, how would you respond to that request?

"IX. A major part of a terminal supervisor's responsibility is to operate the most efficient, economical, time-saving and safest transportation possible. What things would you try to do as terminal supervisor to improve the efficiency of a terminal operation?

"X. What would you do if a driver reported to you shortly before time to leave the garage on his morning run that his bus was unsafe to operate because for the past few days the bus was vibrating excessively? Please elaborate.

"XI. What types of record keeping should be maintained by a terminal supervisor? Please elaborate.

"XII. What are your feelings about bus operators being classified as multi-classed and being assigned to work in schools as or custodians to put in their time?"

Mr. Faris testified that he instructed the committee members to review their packages of materials, not to leave the room while the interviews were being conducted, and not to discuss the candidates until the interviews of candidates were completed.

11. Committee members went through a two-step voting process to select the top two candidates. First, each committee member was told by Mr. Faris to select his/her top four choices; then, another vote was taken to determine the committee's top two candidates.

Mr. Scott Beane and Mr. Jennings Stewart were then committee's first two choices to fill the 1979 Charleston and South Charleston Terminal Manager vacancies.

No instructions were given to committee members on the weight to be accorded interview performance. The job description did not list interview performance as a qualification for School Bus Supervisor.

12. Mr. Scott Bean ultimately became South Charleston Terminal Supervisor on October 1, 1979. Syble Anderson, the Complainant, was rejected by letter dated October 1, 1979.

13. Ms. Anderson felt distressed and humiliated when she learned that Mr. Beane had been selected. After Mr. Beane's appointment, Ms. Anderson no longer spent her spare time between runs at the South Charleston Terminal, but went home instead.

14. Ms. Anderson was still willing and able to assume the position of Terminal Supervisor for respondent's South Charleston Terminal, although after the 1985-1986 school year she will be eligible for retirement.

15. Mr. Beckett and Mr. Beane testified that they believed mechanical aptitude and ability were desirable and necessary qualifications for South Charleston Terminal Supervisor. As South Charleston Terminal Supervisor, Mr. Beane spent time in the terminal repair garage and has on occasion been called upon to actually repair a bus. Mr. Bob Mullins, mechanic at the South Charleston Bus Terminal from 1979 to 1985, testified that he does not recall Mr. Beane performing repairs on any buses during Mr. Mullins' tenure at the South Charleston Bus Terminal garage. The working relationship between the terminal supervisor and the mechanic(s) was such that mechanics' duties are to perform the actual repair work, the results of which may be reported to the terminal supervisor.

The Kanawha County Schools' job description for School Bus Supervisor in effect in 1979 contains the following statements with respect to mechanical knowledge and/or ability:

- * Head Mechanic and other bus maintenance personnel report directly to Terminal Supervisor;
- * Supervisor maintains accurate records dealing with maintenance on buses;
- * plan, initiate, and supervise the most effective and safest transportation system for the students; and

- * evaluation and checking of both the personnel and equipment under his supervision.
- * checks buses to insure each is in clean and safe operating order;
- * works with State Police during inspection of buses.

Ms. Anderson knew enough about mechanics to recognize a mechanical problem and send a bus to the mechanics at the bus terminal to repair. Ms. Anderson, as a bus driver, was required to and did "pre-trip" her bus, which means checking it for mechanical problems that might create safety hazards.

Mr. Jennings Stewart was the head mechanic at the South Charleston Terminal while Syble Anderson was Acting South Charleston Terminal Supervisor from April to June 1979. Ms. Anderson's decisions regarding mechanical matters during her tenure as South Charleston's Terminal Acting Supervisor were proper, and no mechanical problems arose which she could not handle. Syble Anderson was as qualified a supervisor as any of the other four Kanawha County Terminal Supervisors.

Although the head mechanic and other mechanics report to the terminal supervisor, the actual bus repairs are supervised by the head mechanic and performed by the head mechanic or mechanics, and the mechanics are responsible for selecting and placing orders for the necessary bus parts.

Mr. Stewart had interviewed for the 1979 South Charleston Terminal Supervisor's vacancy and felt his depth of mechanical knowledge was an asset. Mr. Stewart indicated that, although he had

been chosen to fill the Terminal Supervisor's vacancy, he turned down the offer.

16. Ms. Anderson has only an eighth-grade education and the Kanawha County Schools School Bus Supervisor job description states that applicants for that position "should have a high school education."

However, Mr. Beckett testified that Harry Brenneman, Charleston Bus Terminal Supervisor prior to 1979, Marvin Coleman, currently the Sissonville Bus Terminal Supervisor, and Herman Legg, South Charleston Terminal Supervisor until 1979, did not have high school educations. Their lack of a high school education in any way adversely affected their capacity to fulfill the job duties of a terminal supervisor for the Kanawha County School System. Bus terminal supervisors for all seven terminals in the Kanawha County School system report to Mr. Beckett.

No screening process was used to narrow the applicant pool for the 1979 South Charelston Bus Terminal Supervisor vacancy. Lack of a high school education was not used to disqualify any applicant from consideration for that position.

17. Mr. Beckett, Mr. Faris, and Ms. Carey testified that they were not aware of any programs by the Kanawha County Board of Education designed to implement the mandates of the Wet Virginia Human Rights Act that prohibit sex discrimination in employment.

18. The Kanawha County Board of Education has never employed a woman as a Bus Terminal Supervisor. However, at least three women have been among the applicants for the seven Kanawha County Bus Terminal Supervisor vacancies that have occurred during the period of 1975 to 1985.

19. Dr. Daniel J. Krider concluded that the Kanawha County Board of Education had given preferential treatment to males in the selection process for filling the seven terminal supervisor vacancies that occurred during the period of 1975-1985. All of the seven terminal supervisor vacancies that had occurred during the period of 1975 to 1985 had been filled by individuals who had previous experience as bus drivers for the Kanawha County Board of Education.

CONCLUSIONS OF LAW

1. The complaint in this matter was properly and regularly filed by Syble L. Anderson, in accordance with the procedure required by the West Virginia Human Rights Act, W. Va. Code Section 5-11-10.

2. The respondent, the Kanawha County Board of Education, is and has been an employer within the meaning of Code 5-11-3(d) and Code 5-11-9(a).

3. At all times referred to herein, the complainant, Syble Anderson, is and has been a citizen and resident of the State of West Virginia. WV Code 5-11-2 and WV Code 5-11-3(a). Complainant is an employee within the meaning of WV Code 5-11-3(e).

4. At all times referred to herein, the West Virginia Human Rights Commission has had, and still has, jurisdiction over the parties.

5. It is an unlawful discriminatory practice for an employer to discriminate, because of sex, against any individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the

(a) Ms. Anderson was a white female at the time she was rejected for the position of South Charleston Bus Terminal Supervisor. Thus, she was within the class of protected persons.

(b) Ms. Anderson applied and was qualified for the position of South Charleston Bus Terminal Supervisor, a position which became vacant in June, 1979.

(c) Ms. Anderson was rejected for the position of South Charleston Bus Terminal Supervisor, despite her qualifications.

(c) Ms. Anderson was rejected for the position of South Charleston Bus Terminal Supervisor, despite her qualifications.

(d) Mr. Scott Beane, a white male, was appointed as South Charleston Bus Terminal Supervisor effective October 1, 1979, in spite of the fact that Ms. Anderson was more qualified by virtue of her greater years of experience with the Kanawha County School System and her supervisory experience as Acting Terminal Supervisor.

RELIEF

Therefore, pursuant to the above findings of fact and conclusions of law, it is hereby ORDERED as follows:

1. The respondent, the Kanawha County Board of Education, is hereby ORDERED to CEASE AND DESIST from engaging in any actions which discriminate against females who seek to become Terminal Supervisors at any of respondent's seven Kanawha County School Bus locations.

2. It is further ORDERED that respondent shall forthwith adopt and implement within 30 days of the effective date of this ORDER, a written program, policy, or set of guidelines which outlines the measures the Kanawha County Board of Education will take to recruit

services required, unless the practice is based on a bona fide occupational qualification. Code 5-11-9(a).

6. The West Virginia Human Rights Act shall be liberally construed to accomplish its objectives and purposes. Code 5-11-15. Shepherdstown Volunteer Fire Dept. V. W. Va Human Rights Commission, ___ W. Va. ___; 309 S.E.2d 342, 348 (1983).

7. The complaint against respondent was timely filed within the meaning of WV Code 5-11-10, in that the alleged violation occurred on October 1, 1979, and the complaint was filed on October 10, 1979, well within the 90 days following the alleged act of discrimination.

8. The complaint states sufficient facts upon which the charge of a violation of the West Virginia Human Rights Act, WV Code 5-11-9(I), can be issued.

9. The sex discrimination provisions of Title VII of the Civil Rights Act are substantially identical. Thus, the federal decisions regarding sex discrimination in employment, while not controlling, are relevant and are cited as helpful precedents.

10. To prevail, it is necessary that the complainant prove by a preponderance of the evidence that sex was a determining factor in respondent's decision not to promote her or hire her to fill the 1979 South Charleston Terminal Supervisor vacancy. Sex need not be the only motivating factor in the respondent's decision.

11. The complainant, Syble Anderson, has established a prima facie case of sex discrimination in employment. Her case involves both McDonnell Douglas Corp V Green 411 U.S. 791 (1973) elements and statistical evidence from which discriminatory intent can be inferred. The finding of a prima facie case is based on the following reasoning:

and promote qualified females to the position of Kanawha County Terminal Supervisors.

3. It is further ORDERED that respondent promote complainant to a Terminal Supervisor or Co-Terminal Supervisor position, at the South Charleston Bus Terminal, at the first time there is an opening in that position or at such time as such a position is created for the complainant.

4. Respondent is ORDERED to pay complainant damages in the form of front pay for the period beginning the date this order and ending at such time as the complainant's promotion becomes effective. The front pay is to be calculated based on the difference between the Kanawha County Board of Education's pay scale for a Terminal Supervisor with 17 years' previous experience with the Board and the complainant's present rate of pay as a bus driver.

5. Respondent is ORDERED to pay damages in the form of back pay for the period October 1, 1979, to the date of this order with interest at 10% per annum in the amount of Twenty-Three Thousand Thirty-Seven 03/100 (\$23,037.03).

6. Respondent is ORDERED TO pay complainant a sum in the amount of \$2,500.00 for her pain, suffering, humiliation, and embarrassment caused by respondent's unlawful discriminatory act.

7. The Respondent is ORDERED to pay the complainant expenses incurred of Seven Hundred Dollars (\$700.00).

Entered this 8th of November, 1985.

Nathaniel G. Jackson

CHAIR/VICE CHAIR
WEST VIRGINIA HUMAN RIGHTS COMMISSION