

1/30/1990

Helen Burns)
New Hampshire Commission for)
Human Rights)
and)
Town of Gorham)

ORDER

Sitting Commissioners: Commissioner Ivorey Cobb
Commissioner Robert Normandeau
Commissioner Nancy Richards-Stower

For the Complaint: Berel Firestone, Executive Director,
N.H. Commission for Human Rights
Steven J. McAuliffe, Esquire

For the Complainant: Robert A. Wells, Esquire

For the Respondent: Laurence F. Gardner, Esquire

On 6 September 1978 an advertisement from the Town of Gorham was placed in the Berlin newspaper (Exhibit C-3) reading in toto, "Help wanted. Applications being considered for the Highway Department, commercial truck license required. Applications can be picked up at Town Hall, Park Street, Gorham, NH." Although the Selectmen, Messrs. David Murphy, Oscar Dupont, and Fred Twitchell, did not directly place the ad, they assume, through evidence presented before the Commission, full responsibility for both it and its wording. As a result of the advertisement the Complainant, Helen Burns, a white female inquired

about the position and was informed that because she had filed a previous application, a new application was unnecessary; however, she did file a second application for the position dated 5 September 1978 (Exhibit C-4), detailing her background and qualifications for the position advertised.

A total of 21 applications were filed of which the Complainant was the only female. Mr. William Marcou, former Highway Department Foreman, urged the Selectmen to adopt a high school diploma requirement for positions within the department. As seen in Exhibit C-3, this requirement was not included in the advertisement for the position(s) in question. Two males, Mr. Robert Cote and Mr. Russell Gray, were employed in October 1978 for the positions in the Highway Department. A third male was employed in the Highway Department in November 1978 even though the position was not advertised.

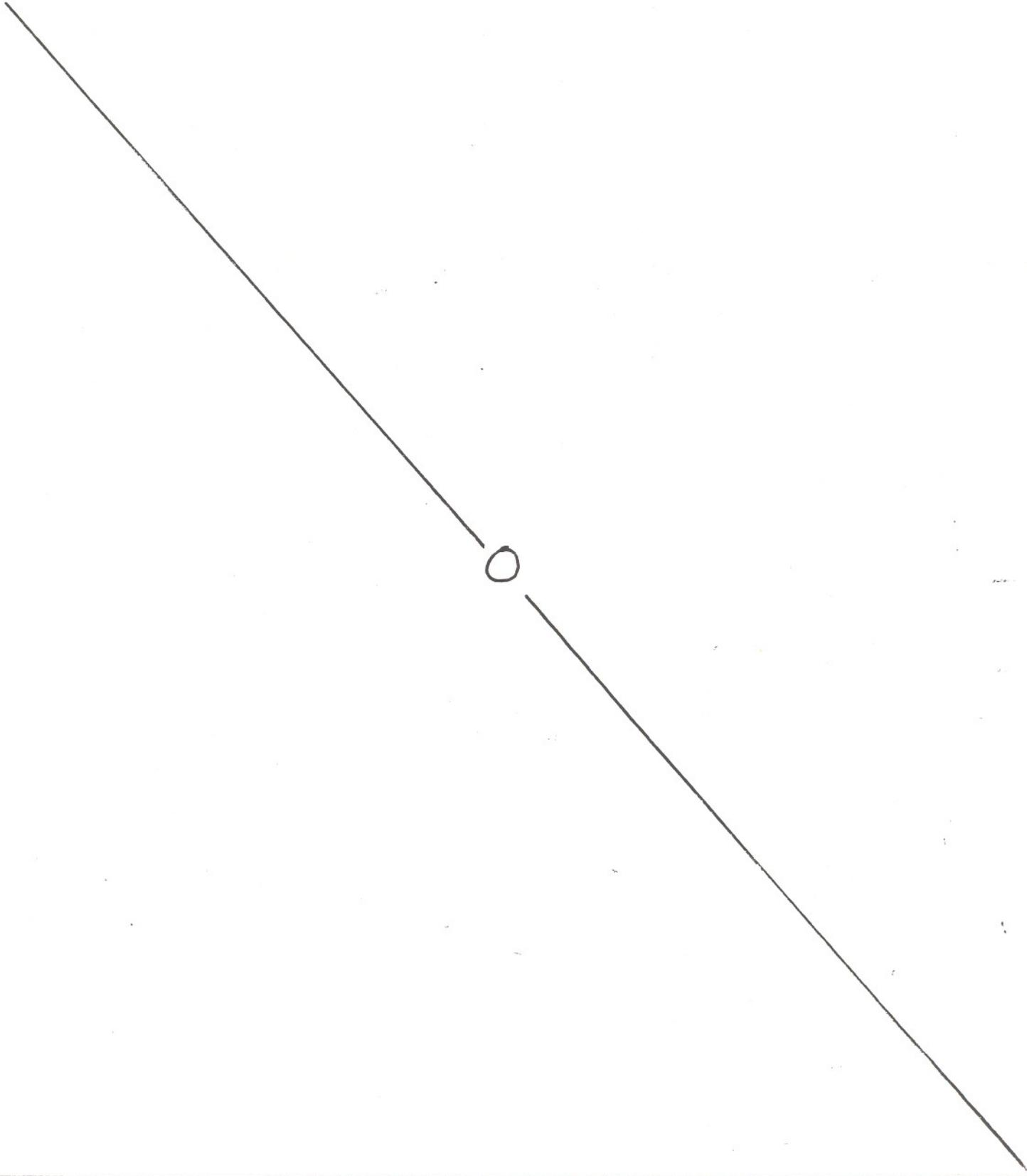
In testimony before the Commission, Mr. William Marcou and Mr. David Murphy stated that aside from the unadvertised qualification of a high school diploma, the Complainant was fully qualified for the position and could have carried out its duties. The Commission found no convincing evidence presented to it that either a high school diploma or high school equivalency was officially adopted by the Selectmen of the Town of Gorham as a requirement for positions in the Highway Department. As noted in Exhibit C-3, the advertisement, a "commercial truck license" was an advertised prerequisite and the Complainant met

that requirement, even though one of the male hires did not at the time of hire meet such a requirement. All positions were filled as a result of applications made based on the requirements of the advertisement.

The Commission finds it compelling that the Complainant was not even considered for an interview for the advertised position(s) whereas male applicants, one of whom as noted did not meet the written specifications, were hired. Some time in 1978 the Selectmen of the Town of Gorham offered the Complainant an unadvertised position as the result of her application for the Highway Department position (Exhibit C-4), doing temporary work resulting from fire damage to the town barn. The Commission finds it compelling that the Complainant was passed over for employment in the Highway Department for the truck driving position but was selected for a female stereotyped job, involving sweeping and cleaning.

The Commission finds that the Town of Gorham's requirement for a high school diploma or equivalency was in this instance pretextual in light of its employment of a male who did not meet the full advertised requirements; that the Town of Gorham deliberately passed over a female for a position in the Highway Department; that the Town of Gorham did not consider the Complainant's application for the advertised position; and therefore the Commission finds that the Town of Gorham is in violation of RS354-A:8,I, ("It shall be an unlawful discriminatory

practice) for an employer because of --- sex --- to refuse to hire or employ or to bar or discharge from employment --- or to discriminate against such individual --- unless based upon a bona fide occupational qualification."



Helen Burns)
New Hampshire Commission for)
Human Rights)
)
and)
)
Town of Gorham)
_____)

AWARD

1. The Town of Gorham is Ordered to pay the Complainant the sum of \$5,498.72 (back pay through March 21, 1980).
2. The Attorney for the Complainant will supply the Commission and Respondent's Attorney with an itemized bill representing his attorney's fees and legitimate expenses in representing the Complainant to date. Upon approval by the Commission, Respondent will issue a check in like amount payable to the Attorney for the Complainant.
3. All awards contained in paragraphs 1 and 2 shall be forwarded to the Commission, 61 South Spring Street, Concord, New Hampshire, certified, return receipt requested.
4. Respondent will offer to the Complainant the next available position in Gorham comparable in type, salary, and benefits to that for which Messrs. Cote and Gray were selected, and her seniority shall accrue as of 2 October 1978, the date she was not selected for the position.

SO ORDERED.


Ivory Cobb, Commissioner


Robert L. Normandeau, Commissioner


Nancy Richards-Stower, Commissioner

PROFESSIONAL ASSOCIATION

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 JAMES F. RAYMOND

ARTHUR A. GREENE
 OF COUNSEL

February 22, 1983

Ms. Merryl Gibbs
 New Hampshire Commission for Human Rights
 61 South Spring Street
 Concord, New Hampshire 03301

Dear Merryl:

I am enclosing a copy of the Release which Helen Burns signed on Friday, February 18, 1983, indicating her total payment as a result of the settlement of her discrimination case was \$81,984.46. That figure breaks down as follows: \$20,000 cash for Helen as of Friday, February 18; \$21,984.46 for legal fees; \$40,000 to be paid over 40 months to Helen.

I think we all agree that this is an excellent result for Helen. I know that she is very pleased with this result. She, in particular, wanted me to thank the New Hampshire Commission for Human Rights for its excellent work. I wanted her to have the opportunity to say that to you herself and that is why I called you on Friday.

Sincerely,



Robert A. Wells

Enclosure

RAW:b

cc: Mrs. Helen Burns

RECEIVED

FEB 23 1983

N. H. COMMISSION
 FOR HUMAN RIGHTS

RELEASE

BEFORE ALL MEN THAT I, HELEN L. BURNS, of Gorham in the County of Coos, State of New Hampshire, being of full age, in consideration of the sum of EIGHTY-ONE THOUSAND NINE HUNDRED EIGHTY-FOUR AND 46/100 DOLLARS (\$81,984.46) paid in accordance with the terms set forth in the paragraph below by the Town of Gorham and its Selectmen, DAVID MURPHY, OSCAR DUPONT and FRED TWITCHELL, hereinafter called the PAYORS, do hereby release and discharge said PAYORS, their executors, administrators, successors and assigns from any and all actions, causes of action, deaths, dues, claims and demands of every name and nature both at law and in equity, which against said PAYORS I ever had, now have or may have for or by reason of any matter or thing from the beginning of the world to the day of the date of these presents arising out of the matter of Helen L. Burns v. Town of Gorham and David Murphy, Oscar Dupont and Fred Twitchell, Selectmen of the Town of Gorham, Docket #E-80-74 and #E-80-76 in the Coos County Superior Court.

Payment of Consideration: I hereby acknowledge receipt of the sum of FORTY-ONE THOUSAND NINE HUNDRED EIGHTY-FOUR AND 46/100 DOLLARS (\$41,984.46) of the total consideration set forth above. The remaining FORTY THOUSAND DOLLARS (\$40,000.00) is to be paid to me in forty (40) monthly installments of ONE THOUSAND DOLLARS (\$1,000.00) each month beginning March 1, 1983, and continuing on the first day of each month thereafter until and including June 1, 1986.

Scope of Release: The within Release shall include, but not be limited to any claims or demands, including but not limited to employment which I may have arising out of the matter of Helen L. Burns v. Town of Gorham and David Murphy, Oscar Dupont and Fred Twitchell, Selectmen of the Town of Gorham, Docket #E-80-74 and #E-80-76 in the Coos County Superior Court.

WITNESS my hand this 18th day of February, 1983.

Witness

Helen L. Burns