

Olivia Henry )  
New Hampshire Commission for )  
Human Rights )  
and )  
New Hampshire Hospital )  
New Hampshire Personnel )  
Commission )  
\_\_\_\_\_ )

10/4/79

ORDER

At Public Hearing August 17, 1979:

Sitting Commissioners: Acting Chair, Gail F. Paine; Romeo J. Rejimbai;  
Robert J. Normandeau.

Appearing for the Complainant: Robert E. Bowers, Jr., Esquire, McSwiney,  
Jones & Semple, Concord, NH.

Appearing for the Respondent: Steven J. McAuliffe, Esquire, Office of  
the New Hampshire Attorney General.

The Hearing was held pursuant to RS354-A:9.

Olivia Henry (Complainant) filed a charge, alleging discrimination  
in employment because of sex with the New Hampshire Commission for Human  
Rights on 23 January 1978. The charge was dually filed with the United  
States Equal Employment Opportunity Commission and deferred for action to  
the New Hampshire Commission for Human Rights.

In Complainant's charge, she alleged that she was denied promotion  
to a Psychiatric Social Worker I by the New Hampshire Hospital in accordance  
with the Rules established by the New Hampshire Personnel Commission. She  
also alleged that two males had been granted waivers by the Personnel  
Commission in that they did not meet the job specifications, which included  
"Master's degree with a major study in social work" and that she, as a

female, was denied promotion and/or waiver for the same position. The Complainant also states that a male, one Richard Friel, was considered for the position as Psychiatric Social Worker I and did not meet all the job requirements as set down in the job specifications.

The Commission denied the Motions to Dismiss as presented by attorney for the Respondents. The complaint was investigated and a determination of Probable Cause was made by Commissioner Walter E. Gibbs. All attempts at conciliation were fruitless, resulting in the current Public Hearing.

Evidence supplied by the Complainant was to the effect that a pervasive attitude existed at the New Hampshire Hospital and the New Hampshire Personnel Commission excluding females from the higher paying positions. Evidence supplied at the Hearing by Ms. Suzanne and Dr. Ruick Rolland was to the effect that after consultation with the Personnel Department of the New Hampshire Hospital, a position of Psychiatric Social Worker I would be offered to the Complainant, subsequent to her achieving a Master's degree. The Complainant achieved a Master's degree in Education, specializing in counselling; and therefore, in accordance to a deposition of Clarence Zundell, of the New Hampshire Department of Personnel, did not meet the requirements of a major in social work. The original requirements, as revised 7/20/77, make one of the minimum qualifications for the position "possession of a Master's degree from a recognized college or university with a major study in social work." As

revised 8/15/78, the minimum qualifications read in part, "possession of a Master's degree from a recognized college or university with a major in social work (MSW)." In testimony, Clarence Zundell stated that the earlier revision dated 7/20/77 meant an MSW.

The waivers given to the two males who had held Master's degrees but not MSW's, were according to evidence presented to fill positions in 1973-1974 that could not be filled because of lack of totally qualified applicants.

Additional evidence at the Hearing was that, with the appointment of Lawrence Dugan as Director, Department of Psychiatric Social Services in 1976, there were to be no exceptions to the requirement for an MSW in social work. Complainant applied for the position subsequent to the Dugan non-exemption and during his tenure and the clarification revision of the job specifications dated 8/15/78, no males or females have been employed as Psychiatric Social Worker I absent an MSW. In the same period equal consideration and hire have been given to both males and females, as witness the fact that three females were employed to the position subsequent to the denial of the Complainant's application.

It is the position of the Commissioners that, had the Complainant pursued and received an MSW degree and considering her work background, she would have been selected for the position. It is also noted that at the time of her application for the position of Psychiatric Social Worker I and subsequent to such application, neither the Complainant nor her immediate superiors asked for a waiver of the minimum qualifications for the position.

Therefore, it is the position of the New Hampshire Commission for Human Rights that there is No Probable Cause to credit the allegations made by the Complainant, and the Commission will conclude its activities in this matter and returns jurisdiction to the United States Equal Employment Opportunity Commission, 150 Causeway Street, Boston, Massachusetts, Docket #011780711.

So Ordered.

Gail F. Paine, Commissioner  
Acting Chair

Robert J. Normandeau, Commissioner

Romeo J. Rejimbai, Commissioner  
(absent)

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10/4/79

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Commission )  
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CONSIDERATION

The Sitting Commissioners, in a unanimous decision, Deny  
the Motion to Reconsider and reaffirm their original Order.

• /s/ Gail F. Paine, Commissioner  
Acting Chair

/s/ Robert J. Normandeau, Commissioner

/s/ Romeo J. Rejimbai, Commissioner

11/2/79

Public Hearing, August 17, 1979

In attendance: Commissioner Gail F. Paine, Chair; Romeo J. Rejimbai,  
Commissioner; Robert J. Normandeau, Commissioner.

Exhibits:

- C-1: Job specifications for Psychiatric Social Worker.
- C-2: Job specifications for Psychiatric Social Worker, revised.
- C-3: Memo from Department of Personnel relating to change from 1-1/2 to 1 year reflecting job experience.
- C-4: Department of Personnel register, including the name of Friel.
- C-5: Job specifications for Master of Social Work requirement dated 11/23/51, with final revision dated 11/2/70.
- C-6: Memo from Henry to Waite, dated 12/75.
- C-7: Memo from Roy Lang to Tom Manning, dated 12/76.
  
- R-1: Three motions by Attorney McAuliffe:
  - 1. To dismiss N.H. Hospital as respondent. Refused by Commission.
  - 2. To dismiss N.H. Department of Personnel as respondent. Refused by Commission.
  - 3. Answer to Charge.
- R-2: Revision dated 11/2/70 for Psychiatric Social Worker.
- R-3: Letter from Vogel to Henry.
- R-4: Job specifications for Social Worker III.
- R-5: Personnel Department list from N.H. Hospital of all Master Social Workers.
- R-6,a: Letter from Pollock to Vogel.
- R-6,b: Letter from Vogel to Pollock.
- R-7,a: Letter from Fazio.
- R-7,b: Letter from Fazio to Vogel.

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

N.H. COMMISSION FOR HUMAN RIGHTS

Olivia Henry

v.

New Hampshire Hospital

REQUEST FOR FINDINGS OF FACT  
AND RULINGS OF LAW

COMES NOW the Complainant, Olivia Henry, of 105 West Road, Canterbury, New Hampshire 03224, by and through her attorney, and respectfully requests that the Commission make the following Findings of Fact and Rulings of Law:

1. In the fall, 1973, Ruick Rolland was hired by New Hampshire Hospital to form, and serve as Director for, a new unit to be known as the "Forensic Unit" at New Hampshire Hospital.
2. Simultaneously with the hiring of Ruick Rolland, Susanne Rolland was hired to assist in the formation of said Forensic Unit, and served during the formative period as Assistant Director of the Forensic Unit.
3. In the summer, 1974, Ruick Rolland and Susanne Rolland were approached by Dr. Mark Peterson of Antioch Graduate Center, Keene, New Hampshire, regarding the placing of a student, Olivia Henry, at the Forensic Unit to satisfy the requirement for field experience in Social Work in order to obtain her Master's Degree from Antioch.
4. As part of Dr. Peterson's inquiry of Dr. and Mrs. Rolland, he requested assurances that Olivia Henry would be in a position to progress from the work she performed as a requirement for her Master's

degree into a full-time position at New Hampshire Hospital after obtaining her degree.

5. Ruick Rolland and Susanne Rolland both assured Dr. Peterson that, provided Olivia Henry's work was satisfactory, there was a substantial likelihood that she would be retained as a full-time employee, and that, depending upon her abilities, the positions in the Forensic Unit, including that of Psychiatric Social Worker, were open to her.

6. Based upon these assurances, Dr. Peterson had Olivia Henry placed with the New Hampshire Hospital Forensic Unit to fulfill her field study requirements for her Master's Degree.

7. Based, in turn, upon the assurances expressed by Dr. Peterson, and further assurances expressed by Ruick Rolland and Susanne Rolland directly to her, Olivia Henry accepted placement at New Hampshire Hospital.

8. At the time of her employment at New Hampshire Hospital, in the fall of 1974, Olivia Henry was hired as a Building Service Worker I, being in pay grade 2, which position was approved by Major Wheelock, then the Director of New Hampshire Hospital.

9. The position of Building Service Worker I is essentially that of maintenance or kitchen worker, a type of work which all parties agreed would not be the work performed by Olivia Henry, it being acknowledged by all such parties that the said Olivia Henry would be performing the services of a social worker, under supervision, in the Forensic Unit.

10. At the time of placement in the position of Building Service Worker I, Olivia Henry was assured that this would be only temporary, and that when she obtained her Master's Degree from Antioch, she would qualify for the position of Psychiatric Social Worker.

11. Olivia Henry received her M. Ed. in Counseling from Antioch in October, 1975.

12. Upon receiving her M. Ed., Olivia Henry immediately inquired regarding the upgrading of her position to that of Psychiatric Social Worker, based upon prior experience in excess of that required for that position, which experience was obtained in large measure in positions other than at New Hampshire Hospital.

13. After almost weekly conversations with Ralph Waite, then Assistant Superintendent of New Hampshire Hospital, regarding the upgrading of her position to that of Psychiatric Social Worker, but without meeting any success with respect to such upgrading, Olivia Henry forwarded a memo to Mr. Waite on December 17, 1975, outlining her low pay and need for upgrading to a higher paying position, being that of Psychiatric Social Worker.

14. Throughout the conversations with Ralph Waite, and within, and as a result of, her memo to Mr. Waite dated December 17, 1975, the only issue presented to her, and the only issue which was stated to be the basis for her not receiving upgrading to Psychiatric Social Worker, was whether or not her two years prior experience was sufficient to satisfy the requirement for the position of Psychiatric Social Worker.

15. Although her memo of December 17, 1975 refers to the position of Psychiatric Social Worker I, in fact, Olivia Henry's inquiry as understood by herself, Mr. Waite, and all others involved, related to the position of Psychiatric Social Worker.

16. As a result of her persistent inquiries, Olivia Henry was finally upgraded to the position of Social Worker I in January, 1976.

17. In September, 1976, Olivia Henry was upgraded to Social Worker II, the requisite experience for that position being based upon experience obtained at New Hampshire Hospital, a portion of which occurred prior to having obtained her M. Ed.

18. At the time of upgrading to Social Worker II, Olivia Henry was

informed that until she had two years experience subsequent to obtaining her M. Ed., she would not qualify for Psychiatric Social Worker.

19. At the date of Olivia Henry's original hire, that is October, 1974, she already had the requisite degree (B. A.) and experience (two years in social service work) to qualify for the position of Social Worker II; and even without credit for her experience, at that time (October, 1974) qualified for the position of Social Worker I.

20. On October 24, 1977, two years subsequent to obtaining her M. Ed. in Counseling from Antioch, Olivia Henry applied for the position of Psychiatric Social Worker which had just recently been vacated by Bruce Sloan, who had been promoted to the position of Director of Admissions at New Hampshire Hospital.

21. Bruce Sloan, during the course of his employment at New Hampshire Hospital as a Psychiatric Social Worker, and, subsequently, after his promotion to Director of Admissions at New Hampshire Hospital, did not, and does not now, have a Master's in Social Work (M.S.W.).

22. At the time of Olivia Henry's application for the position of Psychiatric Social Worker, another man, Jeffrey Souther, also held a position as Psychiatric Social Worker at New Hampshire Hospital.

23. Jeffrey Souther, at the time of his having been hired for the position of Psychiatric Social Worker, and during the course of his employment as such, and to the present time, does not have an M.S.W.

24. Olivia Henry has consistently received outstanding reports on her performance at the Forensic Unit, New Hampshire Hospital.

25. Olivia Henry currently, and as of October, 1975, has fulfilled all of the duties and functions, and has had the same responsibilities as a Psychiatric Social Worker at New Hampshire Hospital.

26. On occasion, in the absence of her Supervisor, Susanne Rolland, Olivia Henry has performed the duties and functions of a Senior Psychiatric

ocial Worker, and has borne the responsibilities of that position.

27. At such times as Olivia Henry has fulfilled the functions of Senior Psychiatric Social Worker, in Susanne Rolland's absence, she has informed the office of Lawrence Dugan of that fact.

28. At no time has Lawrence Dugan, or anyone from his office, informed Olivia Henry that she is incapable of performing the functions of Psychiatric Social Worker, or of Senior Psychiatric Social Worker, or that any danger or harm has come to the patients at the Forensic Unit, or that any adverse results have arisen from her actions in performing such duties and functions.

29. Lawrence Dugan was appointed temporary Director, Department of Psychiatric Social Work, New Hampshire Hospital, in February, 1976, and was thereafter made permanent Director in May, 1976.

30. On October 24, 1977, the job description for Psychiatric Social Worker required only a "Master's Degree with a major study in social work."

31. On October 24, 1977, Olivia Henry had a Master's Degree with a major study in social work, and, further, had two years experience at New Hampshire Hospital, an additional one year experience at New Hampshire Hospital while pursuing her Master's Degree from Antioch, and, more than one additional year of prior experience in the field of social work other than at New Hampshire Hospital.

32. During the entire course of her employment at New Hampshire Hospital, both as a student and subsequent thereto, Olivia Henry worked forty to sixty hours per week without any overtime pay.

33. Bruce Sloan, the person vacating the position of Psychiatric Social Worker for which Olivia Henry applied, and who was being promoted to the position of Director of Admissions, specifically advised Olivia

Henry to apply for his vacancy since he felt that she was well-qualified.

34. Olivia Henry also received continuing assurances from Dr. Ruick Rolland and Susanne Rolland, who at no time indicated to her that she was not qualified for the position of Psychiatric Social Worker.

35. On November 18, 1977, Olivia Henry was denied the position of Psychiatric Social Worker by letter from Virginia Vogel, Director of Administration, New Hampshire Hospital.

36. Upon receipt of notification of her failure to qualify, she immediately inquired of Virginia Vogel as to the reasons for that denial, and was then told that she did not qualify because she did not have an M.S.W.

37. At that time, Olivia Henry pointed out to Virginia Vogel that the job qualifications did not require an M.S.W. and that the description required only a Master's Degree with major study in social work.

38. Virginia Vogel acknowledged that there was not a specific requirement of M.S.W. set forth, and suggested that Olivia Henry should direct her inquiry to the State of New Hampshire Department of Personnel.

39. Olivia Henry also inquired of Lawrence Dugan, Director, Department of Psychiatric Social Work, regarding the requirements for the position of Psychiatric Social Worker, and he, also, stated to Olivia Henry that the job description did not contain a specific requirement for an M.S.W., and referred her to the New Hampshire Department of Personnel for a decision as to her qualifications.

40. Upon inquiry to the Department of Personnel, Olivia Henry was informed that there had not been an M.S.W. requirement for the position of Psychiatric Social Worker in prior years, but that whether an M.S.W. would now be required was a decision which had to be made by Lawrence Dugan.

41. Upon this re-referral from the Department of Personnel, Lawrence Dugan only then stated that he would require that Olivia Henry have an M.S.W. to fill the position of Psychiatric Social Worker.

42. As a result of the foregoing, it was not until the beginning of 1978 that Olivia Henry was actually aware that she would not be hired for the position of Psychiatric Social Worker, despite continued assurances that she did qualify for that position up until the beginning of 1978.

43. In reliance on assurances beginning in the fall, 1974, through the end of 1977, a period of almost three and one-half years duration, Olivia Henry accepted an underpaid position with, and continued to work at, New Hampshire Hospital.

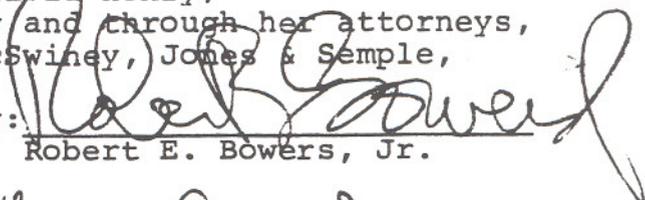
44. Olivia Henry has performed the same duties and functions, and had the same responsibilities, as those held by Bruce Sloan and Jeffrey Souther, and with the same degree qualifications, and, yet, was paid at a different scale and rate as that at which Bruce Sloan and Jeffrey Souther were paid.

45. There are no differences between the work performed and the qualifications held by men in the position of Psychiatric Social Worker and by Olivia Henry, and, therefore, there is no bona fide occupational qualification justifying the difference in pay for those men and that paid to Olivia Henry.

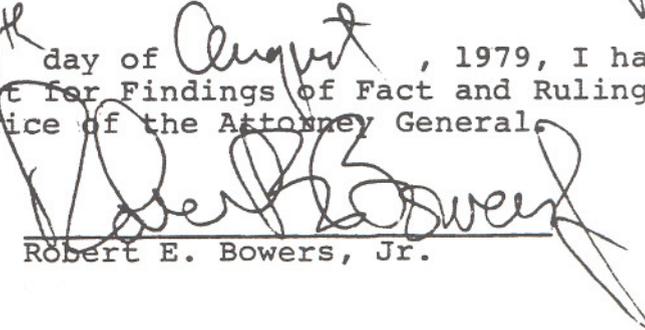
46. As late as February 23, 1976, a man, Richard V. Friel, was considered qualified for the position of Psychiatric Social Worker, although Mr. Friel had only an M.Ed. in Counseling, the same degree held by Olivia Henry, and did not have an M.S.W.

47. At all times relevant to this cause, Dr. Ruick Rolland was in an actual position of authority to represent to an employee that he or she qualified for specific positions under his direct authority.

Respectfully submitted,  
The Complainant,  
Clivia Henry,  
By and through her attorneys,  
McSwiney, Jones & Semple,

By:   
Robert E. Bowers, Jr.

I hereby certify that on this 17<sup>th</sup> day of August, 1979, I have  
mailed a copy of the foregoing Request for Findings of Fact and Rulings  
of Law to Steven McAuliffe, Esq., Office of the Attorney General.

  
Robert E. Bowers, Jr.

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

N.H. COMMISSION FOR HUMAN RIGHTS

Olivia Henry

v.

New Hampshire Personnel Commission  
And  
New Hampshire Hospital

COMPLAINANT'S SUMMARY OF ARGUMENT

The Defendants in this action, the New Hampshire Hospital and New Hampshire Personnel Commission, do not dispute the basic underlying facts which have brought this matter before the New Hampshire Commission for Human Rights. Pared to their essentials, the facts are as follows:

In the fall of 1973, Dr. Ruick Rolland was hired by the New Hampshire Hospital to form, and serve as Director for, a new unit to be known as the "Forensic Unit" at New Hampshire Hospital, and his wife, Susanne Rolland, was hired to assist in the formation of that Unit, and to serve as de facto Assistant Director. While serving in these capacities, they were approached, in the summer of 1974, by Dr. Mark Peterson, of Antioch Graduate Center, Keene, New Hampshire, regarding the placing of Complainant, Olivia Henry, at the Forensic Unit, to satisfy certain requirements for field experience in Social Work in order for her to obtain her Master's Degree from Antioch.

As a result of that initial meeting, Dr. Peterson, and later Olivia Henry, received assurances from Dr. and Mrs. Rolland, that upon obtaining her Master's Degree from Antioch she would fulfill the necessary requirements for the position of Psychiatric Social Worker at the Hospital, and that it would be expected that she would have the opportunity to

move up the career ladder at New Hampshire Hospital, based only on her performance. In turn, there was testimony by Dr. Rolland and Mrs. Rolland that they gave these assurances only after full and complete discussions with those in authority at New Hampshire Hospital, including the Hospital's Personnel Department, which was the direct conduit between the Hospital and the New Hampshire Personnel Department.

Olivia Henry received her M. Ed. in Counseling from Antioch in October, 1975, and immediately applied for upgrading of her position from that of Building Service Worker I. She had almost weekly conversations with Ralph Waite, the Assistant Superintendent of New Hampshire Hospital, and forwarded to him a Memo on December 17, 1975, outlining her position. At no time was it ever expressed to her that she did not qualify for the position of Psychiatric Social Worker because she lacked the specific degree "M.S.W.", and, instead, had an M. Ed. in Counseling. In fact, at the time, two men held the position of Psychiatric Social Worker who did not have an M.S.W. degree, one being Jeffrey Souther, who continues to hold the position, and the other being Bruce Sloan, who has been promoted to Director of Admissions at New Hampshire Hospital, and for whose position Olivia Henry specifically applied.

In addition, at the time, that is the fall of 1975, the New Hampshire Personnel Department approved and forwarded to New Hampshire Hospital for consideration for the position of Psychiatric Social Worker the name of Richard V. Friel, who was considered for the position as late as February 23, 1976. Although Mr. Friel was not hired, it was solely for the reason that he did not pursue his application, and was in no way based on the fact that he did not have an M.S.W., but, rather, had an M. Ed. in Counseling, the same degree held by Olivia Henry.

The Defendants would have us believe that the reason only men were

hired for this position, while Olivia Henry as a woman was specifically denied this position, was a curious mix of circumstances, most of which are contradictory.

First, they claim that a waiver was obtained with regard to Mr. Sloan and Mr. Souther due to the lack of qualified individuals with an M.S.W. degree. However, Mrs. Rolland testified that she was familiar with the hiring process at the time of Mr. Sloan's hire, and that there were applicants who were women and who had M.S.W. degrees who were rejected in favor of Bruce Sloan who was hired for the position of Psychiatric Social Worker. Moreover, the Deposition of Mr. Zundell, at the New Hampshire Personnel Department, unequivocally states that the lack of available candidates having an M.S.W. degree continues to this date, with the situation perhaps being even worse, at the present. In the midst of these conflicting statements, no one who testified on behalf of the Hospital or the Personnel Department was able to explain why Mr. Friel was found to be qualified while Olivia Henry was not.

Mr. Friel is important in this regard, because Mr. Dugan, Director, Department of Psychiatric Social Services, New Hampshire Hospital, testified that he felt no individuals should be hired for the position of Psychiatric Social Worker unless they had an M.S.W. degree, and that he adopted this position in February, 1976. Despite this, Mr. Lang, Director, New Hampshire Personnel Department, stated that only his Department made these decisions. This would seem to render "inoperative" any position taken by Mr. Dugan, with regard to this matter. However, no explanation was made for the fact that Mr. Dugan supposedly took this position prior to the last date of full consideration for Mr. Friel, and no action was taken to inform Mr. Friel that he was not qualified for the

position of Psychiatric Social Worker.

In fact, no specific statement setting forth the position was ever taken until Olivia Henry inquired as to the reasons she was denied promotion to the position of Psychiatric Social Worker. At the time of her application, on October 24, 1977, she had satisfied all requirements for the position of Psychiatric Social Worker, having performed all of the duties and been given all of the responsibilities of that position at least since October, 1975, when she obtained her M. Ed. in Counseling from Antioch.

Moreover, the testimony of Betty Michelboro from the New Hampshire Hospital Personnel Department specifically stated that it is the policy of the Hospital to discriminate against women in certain positions. The particular position to which she referred was that of Psychiatric Aide at the Hospital. This issue was first raised by counsel for the Hospital, and her answer was truthful and telling -- there is an underlying policy of discrimination on the basis of sex at New Hampshire Hospital.

It is clear in cases of this nature that the State will not step forward and admit to discrimination on the basis of sex. Thus, it is necessary to show by specific facts, and implications from those facts, that underlying discrimination exists. In this instance, discrimination is frankly admitted with regard to certain hiring practices at the Hospital. And, it is most certainly implied from the facts of the specific situation relating to Olivia Henry.

Much attention has been directed to the job description itself, in an attempt to detract from the fact of discrimination. The Hospital and Personnel Department claim that "Master's Degree with a major study in Social Work" does not mean that; but, rather, means "Master's Degree in Social Work (M.S.W.)." That this definition arose only after denial

of promotion of Olivia Henry to the position of Psychiatric Social Worker is clear from the facts. Two men have been hired for the position who do not have M.S.W. degrees, and one man was hired for the position with exactly the same qualifications as Olivia Henry. The State admits that other than the lack of the specific degree of M.S.W., Olivia Henry is an exemplary employee and qualifies in every way for the position of Psychiatric Social Worker ; and , it admits that she in fact fulfills the functions and duties, and maintains the responsibilities of a person filling that position. The thrust of the State's argument is that the job description means something other than what it says, a position that is no more than an attempt to construct an after-the-fact rationale for the sex discrimination which occurred in this case.

From the facts and the testimony, it is clear that discrimination on the basis of sex against Olivia Henry occurred, and the following can be cited in support of that finding of discrimination:

BASIC FINDINGS OF FACT IN SUPPORT OF  
FINDING OF DISCRIMINATION

1. The job description for Psychiatric Social Worker requires only a "Master's Degree with a major study in Social Work," and does not require an M.S.W. specifically.

2. It is admitted by all parties that Olivia Henry qualified in every manner for the position of Psychiatric Social Worker, with the alleged exception that she did not have an M.S.W. degree.

3. Despite the claim by the New Hampshire Personnel Department that it was that Department's interpretation that a "Master's Degree with a major study in Social Work," meant that an M.S.W. degree was required, this position is not substantiated by evidence and testimony to

the necessary degree to be believable.

4. Bruce Sloan was hired as a Psychiatric Social Worker despite his lack of an M.S.W. degree.

5. Jeffrey Souther was hired as a Psychiatric Social Worker despite his lack of an M.S.W. degree.

6. Richard V. Friel was offered the position of Psychiatric Social Worker despite his lack of an M.S.W. degree.

7. At the time Bruce Sloan was hired for the position of Psychiatric Social Worker, there were other applicants who were women and who had an M.S.W. degree, but who were rejected for the position.

8. Despite claims by the State that waivers were obtained in the hiring of Bruce Sloan and Jeffrey Souther, the testimony indicates that the witnesses only assume that this must have occurred since they hired these men for that position, but no witness has a specific recollection of having gone through the appropriate process to obtain a waiver.

9. There is no specific testimony or evidence that an M.S.W. degree was in fact required for the position of Psychiatric Social Worker up until the date of Olivia Henry's initial inquiry into promotion to that position.

10. The State attempted to introduce evidence that there were different qualifications for the position of Psychiatric Social Worker than as set forth above, which no party to the proceedings had ever before seen with the exception of Mr. McCann of the New Hampshire Personnel Department; this action at a minimum demonstrates the lack of specific standards and procedure in hiring, and at worst shows a concerted effort by the State to manufacture reasons for the failure to promote Olivia Henry to the position of Psychiatric Social Worker in an attempt to explain away the fact that discrimination occurred on the basis of sex.

11. The testimony of Betty Michelboro explicitly demonstrates an underlying policy of discrimination on the basis of sex at New Hampshire Hospital.

12. The claimed rationale for the alleged waivers relating to male applicants was that there were insufficient applicants holding an M.S.W. degree; while Mr. Zundell has testified that this dearth of applicants with such a degree has continued to the present, and is now at least as bad or worse, than at the time of hiring these men for the position of Psychiatric Social Worker; and, Mrs. Rolland testified that there were applicants who were women and who held M.S.W. degrees, who were rejected for the position of Psychiatric Social Worker, which position was then filled by a man who did not have an M.S.W. degree.

From these basic facts, the Commission should conclude that the following discrimination existed:

1. There was discrimination in applying a new standard, that of requiring an M.S.W. degree, to Olivia Henry, which was not applied to prior male applicants for the position of Psychiatric Social Worker.

2. Since the alleged lack of qualified applicants with M.S.W. degrees which existed at the time Bruce Sloan and Jeffrey Souther were hired, and the position of Psychiatric Social Worker was offered to Richard V. Friel, continues to the present time, there is discrimination in the failure to extend a similar waiver to Olivia Henry, without regard to the supposed requirement that an applicant have an M.S.W. degree, (a claim which this Commission should specifically reject as a finding).

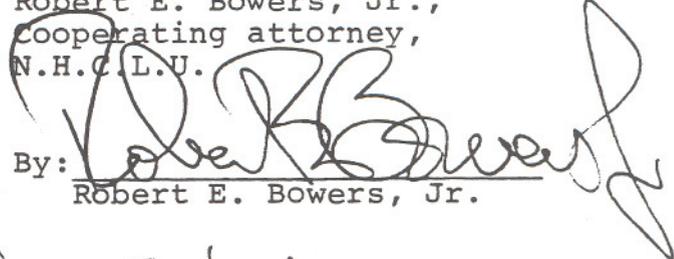
3. Discrimination occurred at least as early as October, 1975, when Olivia Henry obtained her M. Ed. in Counseling from Antioch College, and in addition had "two years' experience involving Psychiatric Social Work or Alcohol/Drug setting prior to or subsequent to obtaining the graduate degree;" and most certainly occurred as of October 24, 1977,

when she applied for the position of Psychiatric Social Worker, for which a vacancy existed due to the promotion of Bruce Sloan.

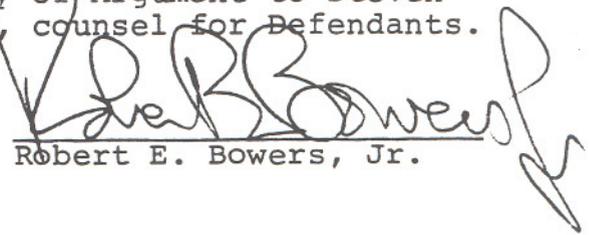
4. The discrimination against Olivia Henry continues as of this date, and as such, Olivia Henry is entitled to back pay equivalent to the difference between the actual pay she has received since October, 1975, or at the latest, October 24, 1977, and that which she would have received as a Psychiatric Social Worker from that date forward.

5. Due to the nature of the claim, Olivia Henry is entitled to attorney's fees in the amount of \$1,000.

Respectfully submitted,  
The Complainant,  
Olivia Henry,  
By and through her attorney,  
Robert E. Bowers, Jr.,  
Cooperating attorney,  
N.H.C.L.U.

By:   
Robert E. Bowers, Jr.

I hereby certify that on this <sup>25th</sup> day of September, 1979, I have mailed a copy of the foregoing Summary of Argument to Steven McAuliffe, Esq., Attorney General's Office, counsel for Defendants.

  
Robert E. Bowers, Jr.

THE STATE OF NEW HAMPSHIRE  
HUMAN RIGHTS COMMISSION

Olivia Henry

v.

New Hampshire Personnel Commission  
and New Hampshire Hospital

MOTION TO DISMISS THE NEW HAMPSHIRE  
PERSONNEL COMMISSION AS A  
PARTY-RESPONDENT

NOW COMES the New Hampshire Personnel Commission, by and through its undersigned counsel, and hereby moves the Commission for Human Rights to dismiss the complaint lodged against it insofar as it names the New Hampshire Personnel Commission as a party-respondent, and in support hereof represents as follows:

1. The essence of the complaint is that a particular job specification pertaining to the classified position of Psychiatric Social Worker I was erroneously interpreted to require an applicant to hold a Master-level degree in social work (MSW), and that said interpretation was given the specification for the deliberate purpose of discriminating against this particular applicant because of her sex.

2. Whether or not the job specification as phrased requires an MSW degree as a minimum qualification for the position of psychiatric social worker is a personnel management issue whose resolution is properly, and indeed solely, within the purview and expertise of the New Hampshire Department of Personnel, with appellate review available to the New Hampshire Personnel Commission, and, ultimately, to the New Hampshire Supreme Court on petition for writ of certiorari. See Tasker v. N.H. Personnel Comm'n, 115 N.H. 204 (1975); Wilson v. Personnel Comm'n, 117 N.H. 783, 378 A.2d 1375 (1975).

3. That issue has already been resolved by the Department of Personnel: an MSW degree is required. No timely appeal was taken to the Personnel Commission by this complainant, which circumstance renders the decision final. Therefore, it is con-

clusively established that the complainant was and is simply unqualified to occupy the classified position she seeks, and she suffered no discrimination because of her sex.

WHEREFORE, respondent Personnel Commission respectfully prays that the Commission for Human Rights dismiss the complaint against it with prejudice.

Dated: Concord, New Hampshire  
August 17, 1979

Respectfully submitted,

NEW HAMPSHIRE PERSONNEL COMMISSION

By its Attorneys,

Thomas D. Rath  
Attorney General

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Steven J. McAuliffe  
Assistant Attorney General

I hereby certify that on this 17th day of August, 1979 a copy of the foregoing Motion to Dismiss was hand-delivered to Robert Bowers, Esquire, counsel for complainant.

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Steven J. McAuliffe

THE STATE OF NEW HAMPSHIRE

HUMAN RIGHTS COMMISSION

Olivia Henry

v.

New Hampshire Personnel Commission  
and New Hampshire Hospital

RESPONDENTS' MEMORANDUM IN LIEU OF  
ORAL ARGUMENT

INTRODUCTION

Olivia Henry registered a sex discrimination complaint against the New Hampshire Hospital and the New Hampshire Personnel Commission following her failure in October of 1977 to receive a promotion to the state classified service position of psychiatric social worker. Respondents have filed motions to dismiss the complaint upon the following grounds: (1) it is obvious from the pleadings themselves (and certainly the evidence of record) that the complainant is not minimally qualified to hold the position she seeks because she does not possess the required academic degree; and (2) the New Hampshire Hospital absolutely could not have discriminated against the complainant in a job promotion context even had it wanted to, because under applicable state law (RSA Ch. 98) the New Hampshire Hospital simply does not possess any authority to make final hiring or promotional decisions; that responsibility belongs solely to the Personnel Commission with respect to classified state positions. RSA Ch. 98. The facts, but certainly not the characterization, set forth in complainant's memorandum are essentially undisputed. Such other facts that Respondents might deem relevant are set forth infra in their argument.

THE EVIDENCE OF RECORD DOES NOT, AND AS A MATTER OF LAW CANNOT,  
SUPPORT OLIVIA HENRY'S SEX DISCRIMINATION COMPLAINT

Olivia Henry is an intelligent, competent, industrious and well-respected social worker employed on the forensic unit at the New Hampshire Hospital. In October of 1977 she sought a promotion

to fill a vacant psychiatric social worker position, also on the forensic unit. Ms. Henry was denied that promotion by the state Personnel Department because she did not meet the minimum academic requirements. Specifically, one of the job prerequisites consisted of a master's degree in social work (MSW), and Ms. Henry did not have such a degree. (Exhibit C-1; testimony of Mr. Lang, Mr. McCann, Mr. Zundell and Mr. Dugan.)

Without question, Ms. Henry was disappointed by her failure of promotion, as she no doubt had "expected" to be promoted. But, her present competence and her disappointment and the biological accident of her sex hardly combine to form a justifiable complaint of sex discrimination under RSA Ch. 354-A. Ms. Henry may have a legal cause of action for breach of implied contract, she may have a claim appropriate for presentation to the New Hampshire Board of Claims, and she may have a basis for appealing her failure of promotion to the New Hampshire Personnel Commission and then to the state Supreme Court, but she does not have any basis whatsoever upon which to complain of illegal discrimination because of her sex.

Olivia Henry's sex discrimination complaint amounts to little more than an effort to exhaust every possible means of obtaining equitable relief from what in the final analysis is entirely an adverse personnel management decision. It certainly bears little relationship to reality. She has produced not one scintilla of evidence that would rationally suggest, must less prove, that the Personnel Department's interpretation and consistent application of its own job specification was somehow motivated by an intent to discriminate based upon sex, and the hiring record at the Hospital with respect to psychiatric social workers indicates, to the contrary, that males rather than females are at a disadvantage.

Ms. Henry supports her claim with little more than vague mumblings of some unspecified "undercurrent of sex discrimination." Her evidence, such as it is, amounts to nothing more than two instances occurring four years before her application in which candidates who happened to be men were granted waivers of the occu-

pational prerequisite of a master in social work degree (MSW), and one instance two years earlier in which another male candidate might have been authorized a waiver of that requirement. That simply is not persuasive. Ms. Henry bears the burden of proving that in this case, she was actually denied a promotion for no reason other than that she is a woman. She has not even approached meeting that burden.

On the contrary, Ms. Henry's own witness, Suzanne Rolland, testified under oath that she played a substantial role in the preliminary interviewing and recommendation of Bruce Sloane (one of the men Ms. Henry referred to) to fill a Psychiatric Social Worker position on the forensic unit, and that his hiring in 1973, with a waiver of the MSW degree requirement, had absolutely nothing to do with the fact that he was a man. Indeed Ms. Rolland said that had Mr. Sloane been a woman the same result would have obtained -- sex simply played no role in the decision. Mr. Sloane himself testified that he was granted an academic waiver in 1973 and that his sex had nothing to do with his hiring. Suzanne Rolland further testified that in all her years on the forensic unit she had never been aware of any hiring or promotional discrimination based upon sex, and that she certainly had not participated in any such practices. The testimony of Ms. Henry's own witness that Mr. Sloane was granted an academic waiver and hired because he was the best available candidate, and not because he was a man, logically emasculates Complainant's argument that somehow sex discrimination must have been involved in her own failure of promotion, simply because at some earlier time, under different circumstances, and under an entirely different hospital administration, a Man was granted a waiver while five years later she, a Woman, was not. Two or three academic waivers granted to men years before Ms. Henry's application for promotion do not a "statistical pattern" make, and it is ludicrous for the Complainant to suggest otherwise, despite her understandable disappointment. All of life's inequities, real or imagined, do not necessarily befall women just because they are women.

In addition to Ms. Rolland's testimony the following affirmative, un rebutted, and conclusive evidence was presented, completely dispelling any notion that sex discrimination occurred in or had anything to do with this case:

1. The occupational prerequisites for state classified positions are established pursuant to law by the state Personnel Department. (RSA Ch. 98.) With regard to the position of psychiatric social worker the Department of Personnel has established the minimum academic requirement of a "master's degree from a recognized college or university with a major study in social work." (Exhibit C-1.) That phrase has been consistently and authoritatively construed to mean, and it in fact does mean, an MSW degree. (Testimony of Mr. Dugan, Mr. Lang, Mr. McCann, Mr. Zundell.) (If Ms. Henry believed that interpretation or construction to be erroneous, she should have appealed the question to the Personnel Commission. She cannot now ask this Commission to reinterpret personnel regulations in her favor, for this Commission has no such authority.)

2. Ms. Henry does not possess an MSW degree, although she could certainly obtain one if she desired. (Testimony of Ms. Henry and Mr. Dugan.)

3. Under cross-examination Ms. Henry, to her credit, clearly conceded that if the state could show that men who applied for psychiatric social worker positions also had been rejected for want of an MSW degree, then her sex discrimination complaint would be rendered meritless, although she still might have some other claim (breach of contract, etc.). The State did show that during the same time period that Ms. Henry applied for promotion, men also were rejected for psychiatric social worker positions because they did not possess an MSW degree. (Exhibits R-6 a and b; R-7 a and b.) Therefore, by her own admission, Ms. Henry's sex discrimination complaint is clearly without any merit.

5. The State also proved the absence of any sex dis-

crimination in hiring psychiatric social workers by conclusively demonstrating that in the past several years (beginning before Olivia Henry filed her application) 15 persons were hired or promoted to fill Social Worker III and above positions (i.e., positions requiring an MSW degree) and that of those 15 persons 9 were women! It is absolutely preposterous for Olivia Henry to suggest that she was denied a promotion because she is a woman, when more women than men have been hired for the position.

6. Ms. Henry can hardly believe that the total of three waivers granted two and five years earlier were occasioned by a sex-discriminatory motive when her own witness and supervisor, Ms. Rolland, testified that she did the initial recommending for Mr. Sloane and no sex consideration entered into the decision. But, in addition, such a claim is refuted by the testimony of Mr. Zundell, Mr. Lang, Mr. McCann, Mr. Dugan and Ms. Mickelborough, that consideration of sex simply did not enter into the social worker hiring process. Their testimony is entirely un rebutted, they have no reason to fabricate, and they should not be presumed to be lying under oath in the absence of any contradictory evidence.

7. Ms. Henry admitted (we believe) that she never even asked for a waiver of the academic degree requirement, and, in any event, Mr. Zundell clearly testified that she never asked for a waiver.

8. The three men referred to by Ms. Henry were granted waivers years before she applied for promotion; they were granted at a time when there was a dearth of MSW qualified applicants (testimony of Mr. Dugan, Mr. McCann, Mr. Zundell); they were granted under an entirely different hospital administration. Since well before Ms. Henry applied, no one, male or female, has been hired to fill a social worker III or above position who did not possess an MSW degree. The requirement has obviously been applied with an even hand to men and women alike -- and that even-handed application is the

antithesis of sex discrimination.

CONCLUSION

Ms. Henry's complaint is both preposterous and entirely unsubstantiated. She may have suffered some iniquity -- she may have been unfairly led to believe that her degree was adequate to allow her to advance to the position she now seeks; an implied contract might have been made and breached (and that is her real claim) -- but she definitely has not been denied promotion because she is a woman, not when 9 of the last 15 persons hired to fill such positions have been women. In short, her proper remedy lies, if anywhere, with the Superior Court or the Personnel Commission, and then the Supreme Court. She does not have any complaint that is justiciable by the Human Rights Commission.

Dated: Concord, New Hampshire  
September 28, 1979

Respectfully submitted,

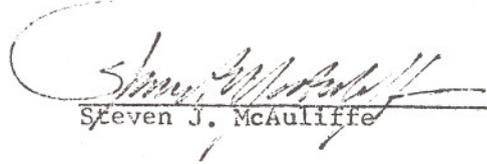
NEW HAMPSHIRE HOSPITAL  
NEW HAMPSHIRE PERSONNEL COMMISSION

By Their Attorneys,

Thomas D. Rath  
Attorney General

  
Steven J. McAuliffe  
Assistant Attorney General

I hereby certify that on this 28th day of September, 1979 a copy of the foregoing was mailed, postage prepaid, to Robert E. Bowers, Esquire, counsel for Olivia Henry.

  
Steven J. McAuliffe

THE STATE OF NEW HAMPSHIRE  
COMMISSION FOR HUMAN RIGHTS

Olivia Henry

v.

New Hampshire Personnel Commission  
and New Hampshire Hospital

OBJECTION TO COMPLAINANT'S  
MOTION TO RECONSIDER

NOW COME the Respondents by and through their undersigned counsel and hereby object to the Complainant's Motion for Reconsideration in the above-captioned case on the following grounds:

1. The Commission fully considered all of the evidence presented upon the hearing of this matter, as well as the argument of counsel, and its decision is both supported by the record and correct as a matter of law.

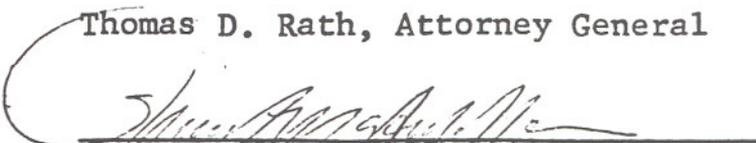
WHEREFORE, Respondents respectfully pray that the Commission deny the Complainant's motion.

Dated: November 1, 1979

Respectfully submitted,

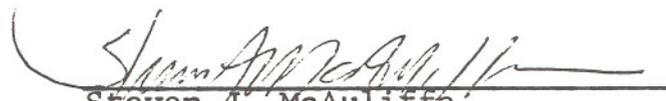
NEW HAMPSHIRE PERSONNEL COMMISSION  
and NEW HAMPSHIRE HOSPITAL

Thomas D. Rath, Attorney General

  
Steven J. McAuliffe  
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 1979 a copy of the foregoing Objection was mailed, postage prepaid, to Robert E. Bowers, Jr., Esquire, counsel for Complainant.

  
Steven J. McAuliffe

THE STATE OF NEW HAMPSHIRE  
COMMISSION FOR HUMAN RIGHTS

Olivia Henry

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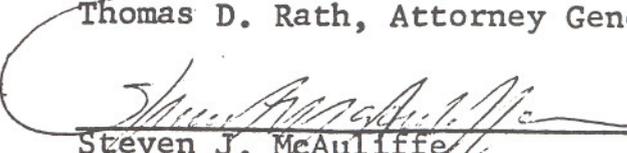
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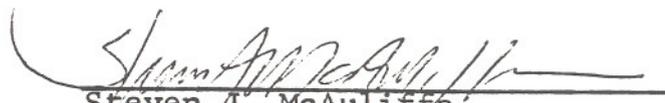
NEW HAMPSHIRE PERSONNEL COMMISSION  
and NEW HAMPSHIRE HOSPITAL

Thomas D. Rath, Attorney General

  
Steven J. McAuliffe  
Assistant Attorney General

CERTIFICATE OF SERVICE

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Steven J. McAuliffe