

00-501

00-501-CD
JOSEPH M. BOWMAN - vs. -
DEPARTMENT OF TRANSPORTATION, COMMONWEALTH
OF PENNSYLVANIA

Civil Other

Date		Judge
12/12/2000	Transferred from the docket.	No Judge
	Withdrawal/Entry of Appearance. s/Michael A. Farnan, Esq. (With.) s/Gwendolyn Mosley, Esq. (Enter) filed. 2 cc atty Mosley, Atty Gen. Office, w/M.K. Letter	No Judge
12/20/2000	Opinion and Order, re: Objections be and are hereby dismissed in accordance with the foregoing Opinion. By the Court, s/JRK,JR. PJ 1 cc atty Van Allen, atty Farnan, & Dep. Atty General	No Judge
01/17/2001	✓ Answer and New Matter of Defendant Department of Transportation. filed by s/Gwendolyn T. Mosley, Esq. Verification. Cert. of Service. no cc	No Judge
02/05/2001	✓ Answer to New Matter, Filed by s/Edward J. Van Allen, Esq. Verification, s/Joseph M. Buynak. Certificate of Service. no cc	No Judge
02/13/2001	✓ Petition For Enlargement Of Time, Filed by s/Gwendolyn T. Mosley, Esq. 2 cert to Atty	No Judge
	Rule to Show Cause, NOW, this 13th day of February, 2001, Rule issued upon the Plaintiff, returnable the 5th day of March, 2001, for filing written response. By the Court, s/JKR,JR.,PJ. 2 cert to Atty	No Judge
02/15/2001	✓ Verification. s/Denis A. Gross. No cc	John K. Reilly Jr.
02/16/2001	✓ Defendant's Motion to Quash Subpoena, filed by s/Gwendolyn T. Mosley One Certified Copy to Attorney General Office Certificate of Service, filed. s/Gwendolyn Mosley	John K. Reilly Jr.
	✓ Rule to Show Cause, NOW, this 16th day of Feb., 2001, issued upon the Plaintiff, returnable Feb. 20, 2001. By the Court, s/JKR,JR.,PJ	John K. Reilly Jr.
02/23/2001	✓ Certificate of Service, Defendant's Rule to Show Cause and Petition for Enlargement of Time, upon Edward J. VanAllen, Esq. Filed by s/Gwendolyn Mosley, Esq. no cc	John K. Reilly Jr.
10/30/2001	✓ Motion to Compel Answers to Plaintiff's First Set of Interrogatories to Defendant. s/Edward J. Van Allen, Esq. Certificate of Service no cc	John K. Reilly Jr.
	✓ Motion to Compel Defendant to Produce Documents. Filed by s/Edward J. Van Allen Certificate of Service	John K. Reilly Jr.
11/05/2001	✓ ORDER, AND NOW, this 5th day of Nov. 2001, re: Motion to Compel Answers to Plaintiff's First Set of Interrogatories, Rule issued on Defendant to appear and show cause. Rule Returnable the 18th day of Dec. 2001, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 2 cc Atty Van Allen	John K. Reilly Jr.
	✓ Order, AND NOW, this 5th day of November, 2001, Re: Motion to Compel Defendant to Produce Documents, rule issued to show cause, Rule Returnable the 18th day of December, 2001, at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Atty Allen	John K. Reilly Jr.
12/21/2001	✓ Affidavit of Service, Rules to Show Cause upon Atty Mosley. Filed by s/Edward J. Van Allen, Esq. no cc	John K. Reilly Jr.
12/24/2001	✓ ORDER, NOW, this 21st day of December, 2001, re: Argument into Plaintiff's Motions to Compel Answers to Interrogatories and for Production of Documents. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Van Allen, Mosley	John K. Reilly Jr.
12/31/2001	✓ Defendant's Motion for Enlargement of Time Within Which to Respond to Interrogatory No. 1. Filed by s/Gwendolyn T. Mosley, Esq. Cert of Svc no cc	John K. Reilly Jr.

Civil Other

Date		Judge
01/17/2002	✓ Motion For Sanctions Pursuant to Pa. R.C.P. 4019(c)(2) Filed by s/Edward J. Van Allen, Esq. 4 cc	John K. Reilly Jr.
01/21/2002	✓ ORDER, AND NOW, this 21st day of Jan. 2002, Rule issued upon Defendant, returnable the 27th day of February, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Van Allen	John K. Reilly Jr.
01/24/2002	✓ Plaintiff's Motion for an Extension of Time. Filed by s/Edward J. VanAllen, Esq. Cert of Svc 4 cc to Atty	John K. Reilly Jr.
01/25/2002	✓ ORDER, AND NOW, this 25th day of Jan. 2002, re: Extension of Time of 30 days is GRANTED. by the Court, s/JKR,JR.,P.J. 4 cc Atty Van Allen	John K. Reilly Jr.
02/27/2002	✓ Defendant's Answer to Plaintiff's Motion for Sanctions. Filed by s/Gwendolyn T. Mosley, Esq. Verification s/Gwendolyn T. Mosley, Esq. Certificate of Service 1 cc to Atty	John K. Reilly Jr.
	✓ ORDER, NOW, this 27th day of Feb. 2002, re: Motion for Sanctions. by the Court, s/JKR,JR.,P.J. 1 cc Van Allen, Mosley	John K. Reilly Jr.
03/26/2002	✓ Motion for Extension of Time, filed by s/Edward J. Van Allen, Esq. Three CC Attorney Van Allen	John K. Reilly Jr.
03/27/2002	✓ ORDER, NOW, this 27th day of March, 2002, re: Plaintiff is GRANTED an Extension of Time to file a Motion for Class Certification until June 4, 2002 or until 7 days after such time as he completes inspection of personnel files, whichever first occurs. by the Court, s/JKR, JR. P.J. 3 cc Atty Van Allen	John K. Reilly Jr.
04/04/2002	✓ Motion For Amendment of Order. s/Edward J. Van Allen, Esq. Filed by s/William A. Shaw, Jr., Esq. 3 cc Atty Shaw	John K. Reilly Jr.
05/08/2002	✓ ORDER, re: Motion For Amendment of Order. by the Court, s/JKR,JR.,P.J. 3 cc Atty Shaw	John K. Reilly Jr.
05/22/2002	✓ Motion for Order Directing Immediate Compliance with prior Order and for Extension of Time to File Motion for Class Certification, filed by Atty. Van Allen. 1 Cert. to Atty.	John K. Reilly Jr.
	✓ Motion of Defendant Department of Transportation for Reconsideration, filed by A.G. Sr. Deputy Mosley 1 Cert. to AG	John K. Reilly Jr.
05/23/2002	✓ Plaintiff's Answer to Defendant's Motion for Reconsideration, filed by s/Edward Van Allen Two CC Attorney Van Allen	John K. Reilly Jr.
	✓ ORDER, AND NOW, this 23rd day of May, 2002, re: Rule issued upon DEFENDANT. Rule Returnable the 14th day of June, 2002, at 9:30 a.m. Also, June 4, 2002, deadline for filing for Class Action is extended pending ruling on outstanding motions. by the Court, s/JKR,JR.,P.J. 2 cc to Atty	John K. Reilly Jr.
	✓ ORDER, AND NOW, this 23rd day of May, 2002, Rule issued upon DEFENDANT. Rule Returnable the 14th day of June, 2002, at 9:30 a.m. by the Court, s/JKR,JR.,P.J. 2 cc to Atty	John K. Reilly Jr.
	✓ ORDER, AND NOW, this 23rd day of May, 2002, Rule is issued upon PLAINTIFF. Rule Returnable the 14th day of June, 2002, at 9:30 a.m. by the Court, s/JKR,JR.,P.J. 2 cc to Atty	John K. Reilly Jr.
06/14/2002	✓ Defendant's Answer to Plaintiff's Motion for Order and for Extension of Time to File Motion for Class Certification, filed by s/Gwendolyn T. Mosley Four CC Attorney Mosley	John K. Reilly Jr.

Civil Other

Date		Judge
06/17/2002	ORDER, NOW, this 14th day of June, 2002, re: Plaintiff's Motion for Directing Immediate Compliance w/Prior Order and for Extension of Time to File Motion for Class Certification is hereby DISMISSED at the present stage of the proceeding and Plaintiff granted 20 days from date hereof to file his Motion for Class Certification. Defendant's Motion for Reconsideration shall be and is hereby dismissed w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Edward Van Allen and Atty Gwendolyn Mosley	John K. Reilly Jr.
07/03/2002	Plaintiff's Motion For Class Certification. Filed by s/Edward J. Van Allen, Esq. Verification s/Joseph M. Buynak Certificate of Service no cc	John K. Reilly Jr.
07/26/2002	Defendant's Motion For Enlargement Of Time Within Which to Respond To Plaintiff's Motion For Class Certification. Filed by s/Gwendolyn T. Mosley, Esq. Certificate of Service 2 cc to Atty	John K. Reilly Jr.
07/29/2002	ORDER, AND NOW, this 29th day of July, 2002, re: Defendant's Motion for Enlargement of Time is GRANTED. by the Court, s/JKR,JR.,P.J. 2 cc Atty General	John K. Reilly Jr.
07/31/2002	Defendant's Answer To Plaintiff's Motion For Class Certification. Filed by s/Gwendolyn T. Mosley, Esq. Verification s/Denise A. Gross Certificate of Service 1 cc Attorney General	John K. Reilly Jr.
	Certificate of Service, Defendant's Brief In Opposition to Plaintiff's Motion for Class Certification upon EDWARD J. VAN ALLEN, ESQ. filed by s/Gwendolyn T. Mosley, Esq. no cc	John K. Reilly Jr.
11/14/2002	Petition To Set Hearing Date For Motion For Class Certification. s/Edward J. Van Allen, Esq. Certificate of Service no cc	John K. Reilly Jr.
11/15/2002	ORDER, AND NOW, this 14th day of November, 2002, Hearing on the Plaintiff's Motion for Class Certification is hereby scheduled for the 30th day of December, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Van Allen	John K. Reilly Jr.
12/31/2002	ORDER: NOW, this 30th day of December, 2002 it is the order of this Court that the Commonwealth have no more than five days to file a reply. s/JKR 2 CC to Atty. Van Allen. 2 CC to Atty. Mosley.	John K. Reilly Jr.
01/08/2003	Filing: Defendant's Motion for Enlargement of Time within which to file its reply brief in opposition to Plaintiff's Motion for Class Certification. Filed by D. Michael Fisher, Attorney General. No cc.	John K. Reilly Jr.
01/21/2003	Verification of Plaintiff's Motion for Class Certification s/Mr. Buynak	John K. Reilly Jr.
	Filing: Plaintiff's answer to Defendant's Motion for Enlargement of Time filed by Plaintiff. no cc	John K. Reilly Jr.
02/04/2003	Transcript of Testimony of Dianne VanAllen, December 30, 2002. filed.	John K. Reilly Jr.
	Transcript of Testimony of Gail Francisko, December, 30, 2002. filed.	John K. Reilly Jr.
	Transcript of Testimony of Thomas F. McCracken, December 30, 2002. filed.	John K. Reilly Jr.
02/07/2003	Opinion and Order, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Mosley, Atty Van Allen, D. Mikesell	John K. Reilly Jr.
02/19/2003	Motion To Approve Notice To Class. filed by s/Edward J. VanAllen, Esq. Certificate of Service no cc	John K. Reilly Jr.
	Praeipce To Set Hearing Date. filed by s/Edward J. VanAllen, Esquire Certificate of Service no cc	John K. Reilly Jr.

Civil Other

Date		Judge
02/25/2003	✓ ORDER, AND NOW, this 25th day of February, 2003, re: Hearing on Plaintiffs' Motion to Approve Notice is hereby set for the 4th day of April, 2003, at 2:30 p.m. by the Court, s/JKR,JR., P.J. 2 cc Atty Van Allen	John K. Reilly Jr.
03/10/2003	✓ Defendant's Application for Amendment of Interlocutory Order, filed by Atty. Mosley No Cert. Copies.	John K. Reilly Jr.
03/21/2003	✓ Plaintiff's Response To Defendant's Application For Amendment of Interlocutory Order. filed by s/Edward J. Van Allen, Esq. Certificate of Service 1 cc Atty Van Allen	John K. Reilly Jr.
04/09/2003	✓ ORDER, NOW, this 9th day of April, 2003, upon consideration of Defendants Application for Amendment of Interlocutory Order it is the ORDER of this Court that said Application shall be and is hereby GRANTED and the Order of this Court dated February 6, 2003, shall be and is hereby amended to include the following language: The Court finds that the Order sub judice involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal by permission from this Order may materially advance the ultimate termination of the matter per 42 Pa. C.S.A. 702(b) and Pa. R.A.P. 1311. by the Court, s/JKR,JR.,P.J. 1 cc Atty Van Allen, Mosley	John K. Reilly Jr.
04/23/2003	✓ ORDER, NOW, April 17, 2003, upon consideration of Petitioner's Motion to Withdraw Petition For Permission To Appeal, the Motion is GRANTED. (by Commonwealth Court) no cc	John K. Reilly Jr.
06/02/2003	✓ ORDER, NOW, May 28, 2003, re: Appellant's Petition For Permission To Appeal is GRANTED, etc. s/Warren G. Morgan, S.J. no cc (ORDER FROM COMMONWEALTH COURT)	John K. Reilly Jr.
06/09/2003	Filing: Appeal to High Court Paid by: Dept. of Transp./Comm. of Penna. (defendant) Receipt number: 1861361 Dated: 06/09/2003 Amount: \$45.00 (Check)	John K. Reilly Jr.
	USPS Certiified Mail Receipt #7002 2030 0000 6877 0800, Sent to Commonwealth Court.	John K. Reilly Jr.
06/12/2003	✓ Domestic Return Receipt, from Commonwealth Court of Penna. #7002 2030 000 6877 0800 filed.	John K. Reilly Jr.
10/17/2003	✓ ORDER, AND NOW, this 15th day of October, 2003 the Order of the Court of Common Pleas of Clearfield County is REVERSED. by the Court, s/DAN PELLEGRINI, JUDGE COMMONWEALTH COURT OF PENNSYLVANIA	John K. Reilly Jr.
11/19/2003	Transcript of Deposition of JOSEPH M. BUYNAC, taken December 30, 2002, before The Honorable John K. Reilly, Jr., P.J.	John K. Reilly Jr.
12/01/2003	✓ No. 607 WAL 2003, Appeal Docket No., Date Petition for Allowance of Appeal Filed: November 14, 2003. filed.	John K. Reilly Jr.
12/03/2003	✓ Petition To Intervene. filed by, s/Edward J. Van Allen, Esquire Verification s/Edward J. Van Allen, Esquire 1 cc to Atty w/o Order	John K. Reilly Jr.
12/29/2003	✓ Defendant's Response To Petition To Intervene. filed by, s/Gwendolyn T. Mosley, Esquire Certificate of Service no cc	John K. Reilly Jr.
10/25/2004	✓ Order AND NOW, this 29th day of Sept. 2004 the Petition for Allowance of Appeal is hereby DENIED filed by Supreme Court of PA Western District. No CC.	John K. Reilly Jr.

Civil Other

Date		Judge
11/02/2004	Opinion and Order, filed. ✓ Opinion and Order from Commonwealth Court filed October 15, 2004. ORDER, AND NOW, this 15th day of October, 2003, the order of the Court of Common Pleas of Clearfield County is reversed. s/ Dan Pellegrini, Judge. Certificate of Contents of Remanded Record and Notice of Remand, filed No. 1046 CD 2003 Court Records received from Commonwealth Court. copy to Commonwealth Court.	No Judge
11/08/2004	Order, AND NOW, this 8th day of November, 2004, it is the ORDER of the Court that a status conference has been scheduled for Wednesday, December 15, 2004 at 1:30 P.m. in Courtroom No. 1, Clfd. Co. Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty. Van Allen, 1CC Atty Mosley.	Fredric Joseph Ammerman
12/14/2004	✓ Petition for continuance filed by Atty. Hendrix. 2 CC to Atty.	Fredric Joseph Ammerman
12/16/2004	✓ Order, AND NOW, this 14th day of Dec., 2004, it is hereby ORDERED that Plaintiffs' Petition for a 60 Day Continuance of the Dec. 15, 2004 Status Conference is GRANTED. The status conference is rescheduled for 1:30, March 2, 2005, in Courtroom No. 1, Clfd. Co. Courthouse. /s/ Fredric J. Ammerman, President Judge. 2CC Atty Van Allen	Fredric Joseph Ammerman
03/03/2005	✓ Order, AND NOW, this 3rd day of March, 2005, it is the ORDER of the Court that an Evidentiary Hearing on the Petition to Intervene has been scheduled for Friday, April 15, 2005 at 9:00 a.m. in Courtroom no. 1. 1 Day has been allotted. 1CC to Attys: Mosley, VanAllen	Fredric Joseph Ammerman
04/15/2005	Order, NOW, this 15th day of April, 2005, following testimony relative the Petition to Intervene filed on behalf of a number of individuals, it is the ORDER of this Court that counsel for Plaintiff and Defense have no more than 30 days from this date in which to submit appropriate brief to the Court. BY THE COURT, /s/ Fredric J. Ammerman, President judge. 2CC Atty Van Allen Mosley	Fredric Joseph Ammerman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph M. Buynak

v.

Department of Transportation,
Commonwealth of Pennsylvania,
Appellant

:
:
: No. 1046 C.D. 2003
: Argued: September 11, 2003
:
:
:

FILED

NOV 02 2004

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE L. COHN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

11/11/04
William A. Shaw
Prothonotary

OPINION BY JUDGE PELLEGRINI

FILED: October 15, 2003

The Commonwealth of Pennsylvania, Department of Transportation (Department) appeals from an order of the Court of Common Pleas of Clearfield County (trial court) granting Joseph M. Buynak's (Buynak) certification of a class consisting of "all persons, residents of the Commonwealth of Pennsylvania, and who since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age."

Buynak has been employed by the Department as a Transportation Construction Inspector (TCI) since April of 1996 at the Department's Clearfield County office. In May of 1998, he experienced health problems which forced him to miss work for a time. Early in 1999, Buynak filed a complaint of age discrimination with the Pennsylvania Human Relations Commission (Commission)

seeking to proceed on behalf of a class of past and present employees of the Department, alleging that upon his return to work, he was denied the same reasonable accommodations he had been afforded previously following a heart attack. Specifically, Buynak alleged that he was forced to take an office position temporarily during which time his duties as a TCI were performed by a younger employee; that he was pressured to take disability retirement; and that he was otherwise subjected to harassment. He also alleged that he was denied promotions to supervisory positions on several occasions. Because the Commission did not act on his complaints within one year, Buynak obtained a dismissal of his administrative complaint.

In May of 2000, he commenced this action alleging the same instances of age discrimination, harassment and denial of reasonable accommodations for his disability in the Court of Common Pleas of Clearfield County in his own right and on behalf of "all persons who are residents of the Commonwealth of Pennsylvania and who since April 27, 1996 have been or were formerly employed by the Department, were 40 years of age or older and who were subject to actual or threatened adverse employment decisions made by the Department." After a dismissal of the Department's preliminary objections challenging the jurisdiction and venue of the trial court, Buynak compelled the Department to respond to disputed discovery. After the trial court was made aware that Buynak had never moved to certify the class and directed him do so, Buynak moved to certify the class.

At the hearing on class action certification, Buynak testified that he applied for a specialist position within the Department but did not receive the position. He further testified that he felt he had been harassed by the Department. Thomas F. McCracken (McCracken) and Gail Francisko (Francisko), two employees of the Department, also testified that they applied for promotions, were turned down and believed that age discrimination was part of the reason. McCracken testified that each time he was not promoted, the position was filled by someone younger than him. However, when asked about each individual situation, he testified as follows to the ages of the employees who did receive the positions: one was six months younger than him; one was five to seven years younger; one was a little over a year younger than him; one was 38; one was 23; and one was in his early forties. Francisko testified that the person who received the administrative assistant position she applied for had a computer degree and that Francisko did not.

Diane Van Allen, an office manager at Buynak's counsel's office, also testified that after carrying out research, there were "Probably 65, 68 ...," employees of the Department who were over 40, held non-managerial positions, had applied for positions, but someone younger and unqualified was hired instead. Additionally, Buynak introduced affidavits from 11 other individuals testifying that they were employees of the Department who had applied for promotional positions, that they did not receive the positions, and that the successful candidate was several years younger with less experience.

Concluding that Buynak had satisfied the prerequisites for class action under Rules 1702, 1708 and 1709 of the Pennsylvania Rules of Civil Procedure (Pa. R.C.P.), the trial court certified a statewide class consisting of "all persons, residents of the Commonwealth of Pennsylvania, and who since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age."¹

The Department contends that the trial court failed to consider the requirements of the Pennsylvania Rules of Civil Procedure and abused its discretion in applying them when it granted the above certification to Buynak because it did not meet the criteria for certification of a class. Under Pennsylvania Rule of Civil Procedure 1702, one or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are questions of law or fact common to the class;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

¹ An order permitting a suit to proceed as a class action is an interlocutory order and also is a type of interlocutory order which is not usually appealable. *Pincus v. Mutual Assurance Co.*, 457 Pa. 94, 321 A.2d 906 (1974). The trial court certified its class certification order for appeal which we accepted. See: 42 Pa. C.S. §702; Pa. R.A.P. No. 1311.

(4) The representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709; and

(5) A class action provided a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

The Department contends that the trial court failed to properly consider the requirements of commonality under Pa. R.C.P. No. 1702(2), typicality under Pa. R.C.P. No. 1702(3), and adequacy of class counsel under Pa. R.C.P. 1702(4), when it certified as a class “all persons, residents of the Commonwealth of Pennsylvania and who since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age.”²

Initially, we point out that a petitioner for class certification has the burden of proving the prerequisites of Pa. R.C.P. No. 1702 by presenting facts from which the trial court can conclude that each of the prerequisites is met before a class can be certified. *Janicik v. Prudential Insurance Co. of America*, 451 A.2d 451 (Pa. Super. 1992); *Klusman v. Bucks County Court of Common Pleas*, 564 A.2d 526 (Pa. Cmwlth. 1989), *aff.*, 524 Pa. 593, 574 A.2d 604 (1990). Although this burden is not heavy, more than a mere conjecture or conclusory allegations are required, particularly if other facts of record tend to contradict the propriety of the class action. *Cook v. Highland Water and Sewer Authority*, 530 A.2d 499 (Pa.

² Only Pa. R.C.P. No. 1702(2) (Commonality), Pa. R.C.P. No. 1702(3) (Typicality), and Pa. R.C.P. No. 1702(4) Adequacy of Class Counsel, are raised on appeal.

Cmwlth. 1987), *petition for allowance of appeal denied*, 518 Pa. 628, 541 A.2d 1139 (1988). The trial court has broad discretion in determining whether a class should be certified, and we will not disturb its certification on appeal unless we find the trial court failed to consider the requirements of the rules or abused its discretion in applying them. *Cook*.

Common Questions of Law or Fact (Commonality)

To be certified, Rule 1702(2) requires a class proponent to establish "questions of law or fact common to the class." *See* Pa. R.C.P. No. 1702(2). "The common question of fact means precisely that the facts must be substantially the same so that proof as to one claimant could be proof as to all." *Allegheny County Housing Authority v. Berry*, 487 A.2d 995, 997 (Pa Super. 1985). Common questions will generally exist if the class members' legal grievances arise out of the same practice or course of conduct on the part of the class opponent. *Janicik*. However, while the existence of individual questions essential to a class member's recovery is not necessarily fatal to class certification, common questions of law or fact must predominate over individual questions. *Cook*.

Buynak failed to meet the commonality requirement because he failed to present evidence to prove that the alleged age discrimination was a Department-wide policy practiced against each member of the class so that proof as to one claim would be proof as to all. Rather, the record reveals that numerous individual questions of law and fact predominate over the common claim of age discrimination. The evidence proffered in support of certification showed that each employee's position, work locations, terms and conditions and circumstances

surrounding promotion were not the same or the person making the employment decisions in each of these instances was not the same.

Buynak was a Transportation Construction Inspector applying for a specialist position. In his claim, he alleged age discrimination along with harassment claims and disability discrimination. Robert Miller and Joe Filippino, the Bureau Director, were responsible for not promoting Buynak. McCracken, on the other hand, was an equipment operator and foreman who had applied for Foreman II positions and was turned down. He was interviewed and the decision not to promote him was made by Kim Reese, Clearfield County Maintenance Manager, Dan Wright and Robert Hensal, both Assistant County Managers. His allegations of age discrimination were based on the Department hiring seven other individuals with ages ranging from 23 to six months younger than him. Francisko was a clerk typist III. She applied for an administrative assistant position and was turned down. The Department hired a younger girl with a computer degree; Francisko did not have a college degree. Further, the purported class members introduced in the affidavits had different positions and claimed different types of discrimination. One employee, Charlie Savage, claimed discrimination because of "long hair and tattoos." (Reproduced Record at 79b.)

Also, there was no evidence that a statewide class should be certified. No testimony was offered from any employee outside Clearfield County, and no evidence was presented from which the claims of the Clearfield County witnesses could be generalized to employees of the Department working in any other County. Although Diane Van Allen, the office manager at Buynak's counsel's office,

testified that there were, "Probably 65, 68 ...," employees of the Department who were over 40, held non-managerial positions, had applied for positions, but someone younger and unqualified was hired instead, she also stated that this was only from two counties. She presumed that if she had identified around 65 people at the Clearfield Office, that there could be maybe 500 to 1,000 or more in the class. (Reproduced Record at 43b.) The trial court certified a statewide class based solely on this presumption. No evidence was presented showing how common questions of law and fact existed between the claims of these witnesses and all Department employees, statewide, in non-managerial capacities who were 40 years of age or older and who suffered one or more adverse employment decisions based on their age. More than a mere conjecture or conclusory allegations were required to establish commonality, particularly if other facts of record tend to contradict the propriety of the class action. *Cook*.

Because of the predominance of substantial individual questions of fact and law and the lack of evidence proving a common course of discrimination, we find that Buynak did not meet his burden of proving the existence of commonality. The trial court failed to properly consider the requirements of commonality found in Rule 1702(2).

Typicality

Proponents of a class must also show that their claims and/or defenses are typical of those of the proposed class according to Pa. R.C.P. No. 1702(3). This requires that the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that pursuit

of their interests will advance those of the proposed class members. *Cook*. Typicality entails an inquiry into whether the named plaintiff's individual circumstances are markedly different or the legal theory upon which the claims are based differs from that upon which the claims of other class members will be based. *Hassine v. Jeffes*, 846 F.2d 169 (3rd Cir. 1988). While commonality tests the sufficiency of the class itself by focusing on the class claims, typicality tests the sufficiency of the named plaintiff by focusing on the relationship between the named plaintiff and the class as a whole.

Buynak is not sufficiently aligned with the other class members because of the circumstances surrounding his claim of age discrimination and the legal theories upon which he relies. First, his age discrimination claim is blended because in addition to that claim, he also alleges harassment and discrimination based on disability because he was denied a reasonable accommodation for medical problems. This blended claim is not typical of a claimed class of all past and present employees of the Department who are 40 years of age or older who "suffered one or more adverse employment decisions based on their age." Because Buynak is also pursuing his case on the theory that the Department failed to accommodate his disability and harassed him, his ability to proceed on these additional claims rather than on age discrimination only does not ensure that pursuit of his interests will advance those of the proposed class members.

In addition, the class was certified as to those who suffered "adverse employment decisions;" however, this phrase is not defined or identified in the order or elsewhere. Consequently, the class could encompass not only employees

alleging denials of promotions, accommodations and harassment based upon age, but also those alleging suspensions, reprimands, terminations and all other employment decisions considered by someone to be "adverse." This class could also include those past and present employees whose claims were previously adjudicated. Buynak cannot adequately represent the interests of these additional employees.

Further, as previously addressed, of those class members who did allege denials of promotions and accommodations based on age discrimination, many held different positions, different persons made the employment decisions on behalf of the Department, and the circumstances surrounding their denials varied. Buynak did not produce evidence to show that the circumstances surrounding his own claim of age discrimination so closely aligned with those of his class members' claims that in proving his own case of age discrimination, he would show a Department policy and course of conduct of discrimination that affected each of the members of the certified class. As such, nothing ensures that the pursuit of Buynak's interests will advance the interests of the proposed class members.

In granting Buynak's class certification motion as to the typicality element solely upon the finding that Buynak and the other witnesses at the hearing all alleged injuries resulting from age discrimination, the trial court neglected to consider the requirements of Rule 1702(3) and abused its discretion by certifying the class.

Adequacy of Representation

Rule 1702(4) requires a demonstration that the class representative and his counsel will “fairly and adequately assert and [protect the interests of the class.]” Pa. R.C.P. No. 1702(4). In determining the adequacy of representation, the three factors contained in Pa. R.C.P. No. 1709 must be considered.³ *Cook*. With regard to these factors, courts will assume that members of the bar are skilled in their profession until the contrary is demonstrated. *Janicik*. Courts may infer the attorney’s adequacy from pleadings, briefs and other materials presented to the court. *Klusman*. In this case, the trial court showed concern over Buynak’s counsel representing the entire class. It wrote in its opinion:

The Court’s greatest concern is in this requirement for class certification and notes that while the attorney for [Buynak’s] brief set forth his background and experience, this Court does have some reservations as to his ability to fairly and adequately represent the class. Nevertheless, the Court notes that unless the contrary is demonstrated, the court will assume that members of the bar are skilled

³ Pa. R.C.P. No. 1709 states:

In determining whether the representative parties will fairly and adequately assert and protect the interests of the class, the court shall consider among other matters

(1) whether the attorney for the representative parties will adequately represent the interests of the class.

(2) whether the representative parties have a conflict of interest in the maintenance of the class action, and

(3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

in this area and that they will fairly represent the class. While counsel for the [Department] raises issues thereto which cause this Court some hesitation, nevertheless, the questions are not sufficient to deny class certification.

Trial court opinion at 3. Buynak had not met his burden as to this prerequisite because counsel's actions up to the certification proceedings already evidenced inadequate and inefficient representation.

To begin, Buynak's counsel failed to move promptly for class certification. Pa. R.C.P. No. 1707 requires a person seeking to commence a class action to move to certify the class within 30 days after the close of the pleadings or within 30 days after the last required pleading was due. In this case, the Department filed its answer to the complaint and new matter on January 17, 2001; Buynak answered the new matter on February 4, 2001. Under Rule 1707, Buynak's motion for class certification should have been filed within 30 days or no later than March 6, 2001. However, counsel for Buynak did not file the motion to certify the class on March 6, 2001, or seek an extension of time within which to do so. Likewise, counsel for Buynak did not inform the Court of any reason he was unable to comply with Rule 1707. The failure to move promptly for class certification or a motion for an extension filed after the expiration of the 30 day period in Rule 1707 is a factor to be considered in determining whether to certify a class. *Klusman*.

More importantly, though, at the class certification hearing, counsel for Buynak admitted that he might need to obtain assistance from unidentified attorneys outside his firm to prosecute this class action. However, he failed to

disclose to the trial court any facts about this outside assistance which would permit it to assess their qualifications or the existence of any conflicts of interest. Adequacy of representation is determined by the adequacy of counsel before the court, not some unknown attorney who may be called in later to assist in the class action. Given that Buynak's counsel admitted that he would need additional assistance but did not introduce any details about the qualifications of the unknown counsel, a showing that class counsel was adequate was not made out.

Because Buynak did not meet his burden of proving the prerequisites of Pa. R.C.P. No. 1702, specifically, the requirements of commonality 1702(2), typicality 1702(3) and adequacy of class counsel 1702(4), the decision of the trial court is reversed.



DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph M. Buynak

v.

Department of Transportation,
Commonwealth of Pennsylvania,
Appellant

:
:
: No. 1046 C.D. 2003
:
:
:

ORDER

AND NOW, this 15th day of October, 2003, the order of the Court of
Common Pleas of Clearfield County is reversed.



DAN PELLEGRINI, JUDGE

FILED

NOV 02 2004

William A. Shaw
Prothonotary

FILED

0/ JUN 09 2003

William A. Shaw
Prothonotary/Clerk of Courts

00-501-CD 6/12/03

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FILED

OCT 17 2003

William A. Shaw
Prothonotary/Clerk of Courts

Joseph M. Buynak

v.

: No. 1046 C.D. 2003
: Argued: September 11, 2003

Department of Transportation,
Commonwealth of Pennsylvania,
Appellant

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE L. COHN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION BY JUDGE PELLEGRINI

FILED: October 15, 2003

The Commonwealth of Pennsylvania, Department of Transportation (Department) appeals from an order of the Court of Common Pleas of Clearfield County (trial court) granting Joseph M. Buynak's (Buynak) certification of a class consisting of "all persons, residents of the Commonwealth of Pennsylvania, and who since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age."

Buynak has been employed by the Department as a Transportation Construction Inspector (TCI) since April of 1996 at the Department's Clearfield County office. In May of 1998, he experienced health problems which forced him to miss work for a time. Early in 1999, Buynak filed a complaint of age discrimination with the Pennsylvania Human Relations Commission (Commission)

seeking to proceed on behalf of a class of past and present employees of the Department, alleging that upon his return to work, he was denied the same reasonable accommodations he had been afforded previously following a heart attack. Specifically, Buynak alleged that he was forced to take an office position temporarily during which time his duties as a TCI were performed by a younger employee; that he was pressured to take disability retirement; and that he was otherwise subjected to harassment. He also alleged that he was denied promotions to supervisory positions on several occasions. Because the Commission did not act on his complaints within one year, Buynak obtained a dismissal of his administrative complaint.

In May of 2000, he commenced this action alleging the same instances of age discrimination, harassment and denial of reasonable accommodations for his disability in the Court of Common Pleas of Clearfield County in his own right and on behalf of "all persons who are residents of the Commonwealth of Pennsylvania and who since April 27, 1996 have been or were formerly employed by the Department, were 40 years of age or older and who were subject to actual or threatened adverse employment decisions made by the Department." After a dismissal of the Department's preliminary objections challenging the jurisdiction and venue of the trial court, Buynak compelled the Department to respond to disputed discovery. After the trial court was made aware that Buynak had never moved to certify the class and directed him to do so, Buynak moved to certify the class.

At the hearing on class action certification, Buynak testified that he applied for a specialist position within the Department but did not receive the position. He further testified that he felt he had been harassed by the Department. Thomas F. McCracken (McCracken) and Gail Francisko (Francisko), two employees of the Department, also testified that they applied for promotions, were turned down and believed that age discrimination was part of the reason. McCracken testified that each time he was not promoted, the position was filled by someone younger than him. However, when asked about each individual situation, he testified as follows to the ages of the employees who did receive the positions: one was six months younger than him; one was five to seven years younger; one was a little over a year younger than him; one was 38; one was 23; and one was in his early forties. Francisko testified that the person who received the administrative assistant position she applied for had a computer degree and that Francisko did not.

Diane Van Allen, an office manager at Buynak's counsel's office, also testified that after carrying out research, there were "Probably 65, 68 ...," employees of the Department who were over 40, held non-managerial positions, had applied for positions, but someone younger and unqualified was hired instead. Additionally, Buynak introduced affidavits from 11 other individuals testifying that they were employees of the Department who had applied for promotional positions, that they did not receive the positions, and that the successful candidate was several years younger with less experience.

Concluding that Buynak had satisfied the prerequisites for class action under Rules 1702, 1708 and 1709 of the Pennsylvania Rules of Civil Procedure (Pa. R.C.P.), the trial court certified a statewide class consisting of "all persons, residents of the Commonwealth of Pennsylvania, and who since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age."¹

The Department contends that the trial court failed to consider the requirements of the Pennsylvania Rules of Civil Procedure and abused its discretion in applying them when it granted the above certification to Buynak because it did not meet the criteria for certification of a class. Under Pennsylvania Rule of Civil Procedure 1702, one or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are questions of law or fact common to the class;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

¹ An order permitting a suit to proceed as a class action is an interlocutory order and also is a type of interlocutory order which is not usually appealable. *Pincus v. Mutual Assurance Co.*, 457 Pa. 94, 321 A.2d 906 (1974). The trial court certified its class certification order for appeal which we accepted. See: 42 Pa. C.S. §702; Pa. R.A.P. No. 1311.

(4) The representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709; and

(5) A class action provided a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

The Department contends that the trial court failed to properly consider the requirements of commonality under Pa. R.C.P. No. 1702(2), typicality under Pa. R.C.P. No. 1702(3), and adequacy of class counsel under Pa. R.C.P. 1702(4), when it certified as a class "all persons, residents of the Commonwealth of Pennsylvania and who since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age."²

Initially, we point out that a petitioner for class certification has the burden of proving the prerequisites of Pa. R.C.P. No. 1702 by presenting facts from which the trial court can conclude that each of the prerequisites is met before a class can be certified. *Janicik v. Prudential Insurance Co. of America*, 451 A.2d 451 (Pa. Super. 1992); *Klusman v. Bucks County Court of Common Pleas*, 564 A.2d 526 (Pa. Cmwlth. 1989), *aff.*, 524 Pa. 593, 574 A.2d 604 (1990). Although this burden is not heavy, more than a mere conjecture or conclusory allegations are required, particularly if other facts of record tend to contradict the propriety of the class action. *Cook v. Highland Water and Sewer Authority*, 530 A.2d 499 (Pa.

² Only Pa. R.C.P. No. 1702(2) (Commonality), Pa. R.C.P. No. 1702(3) (Typicality), and Pa. R.C.P. No. 1702(4) Adequacy of Class Counsel, are raised on appeal.

Cmwlth. 1987), *petition for allowance of appeal denied*, 518 Pa. 628, 541 A.2d 1139 (1988). The trial court has broad discretion in determining whether a class should be certified, and we will not disturb its certification on appeal unless we find the trial court failed to consider the requirements of the rules or abused its discretion in applying them. *Cook*.

Common Questions of Law or Fact (Commonality)

To be certified, Rule 1702(2) requires a class proponent to establish "questions of law or fact common to the class." *See* Pa. R.C.P. No. 1702(2). "The common question of fact means precisely that the facts must be substantially the same so that proof as to one claimant could be proof as to all." *Allegheny County Housing Authority v. Berry*, 487 A.2d 995, 997 (Pa Super. 1985). Common questions will generally exist if the class members' legal grievances arise out of the same practice or course of conduct on the part of the class opponent. *Janicik*. However, while the existence of individual questions essential to a class member's recovery is not necessarily fatal to class certification, common questions of law or fact must predominate over individual questions. *Cook*.

Buynak failed to meet the commonality requirement because he failed to present evidence to prove that the alleged age discrimination was a Department-wide policy practiced against each member of the class so that proof as to one claim would be proof as to all. Rather, the record reveals that numerous individual questions of law and fact predominate over the common claim of age discrimination. The evidence proffered in support of certification showed that each employee's position, work locations, terms and conditions and circumstances

surrounding promotion were not the same or the person making the employment decisions in each of these instances was not the same.

Buynak was a Transportation Construction Inspector applying for a specialist position. In his claim, he alleged age discrimination along with harassment claims and disability discrimination. Robert Miller and Joe Filippino, the Bureau Director, were responsible for not promoting Buynak. McCracken, on the other hand, was an equipment operator and foreman who had applied for Foreman II positions and was turned down. He was interviewed and the decision not to promote him was made by Kim Reese, Clearfield County Maintenance Manager, Dan Wright and Robert Hensal, both Assistant County Managers. His allegations of age discrimination were based on the Department hiring seven other individuals with ages ranging from 23 to six months younger than him. Francisko was a clerk typist III. She applied for an administrative assistant position and was turned down. The Department hired a younger girl with a computer degree; Francisko did not have a college degree. Further, the purported class members introduced in the affidavits had different positions and claimed different types of discrimination. One employee, Charlie Savage, claimed discrimination because of "long hair and tattoos." (Reproduced Record at 79b.)

Also, there was no evidence that a statewide class should be certified. No testimony was offered from any employee outside Clearfield County, and no evidence was presented from which the claims of the Clearfield County witnesses could be generalized to employees of the Department working in any other County. Although Diane Van Allen, the office manager at Buynak's counsel's office,

testified that there were, "Probably 65, 68 ...," employees of the Department who were over 40, held non-managerial positions, had applied for positions, but someone younger and unqualified was hired instead, she also stated that this was only from two counties. She presumed that if she had identified around 65 people at the Clearfield Office, that there could be maybe 500 to 1,000 or more in the class. (Reproduced Record at 43b.) The trial court certified a statewide class based solely on this presumption. No evidence was presented showing how common questions of law and fact existed between the claims of these witnesses and all Department employees, statewide, in non-managerial capacities who were 40 years of age or older and who suffered one or more adverse employment decisions based on their age. More than a mere conjecture or conclusory allegations were required to establish commonality, particularly if other facts of record tend to contradict the propriety of the class action. *Cook*.

Because of the predominance of substantial individual questions of fact and law and the lack of evidence proving a common course of discrimination, we find that Buynak did not meet his burden of proving the existence of commonality. The trial court failed to properly consider the requirements of commonality found in Rule 1702(2).

Typicality

Proponents of a class must also show that their claims and/or defenses are typical of those of the proposed class according to Pa. R.C.P. No. 1702(3). This requires that the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that pursuit

of their interests will advance those of the proposed class members. *Cook*. Typicality entails an inquiry into whether the named plaintiff's individual circumstances are markedly different or the legal theory upon which the claims are based differs from that upon which the claims of other class members will be based. *Hassine v. Jeffes*, 846 F.2d 169 (3rd Cir. 1988). While commonality tests the sufficiency of the class itself by focusing on the class claims, typicality tests the sufficiency of the named plaintiff by focusing on the relationship between the named plaintiff and the class as a whole.

Buynak is not sufficiently aligned with the other class members because of the circumstances surrounding his claim of age discrimination and the legal theories upon which he relies. First, his age discrimination claim is blended because in addition to that claim, he also alleges harassment and discrimination based on disability because he was denied a reasonable accommodation for medical problems. This blended claim is not typical of a claimed class of all past and present employees of the Department who are 40 years of age or older who "suffered one or more adverse employment decisions based on their age." Because Buynak is also pursuing his case on the theory that the Department failed to accommodate his disability and harassed him, his ability to proceed on these additional claims rather than on age discrimination only does not ensure that pursuit of his interests will advance those of the proposed class members.

In addition, the class was certified as to those who suffered "adverse employment decisions;" however, this phrase is not defined or identified in the order or elsewhere. Consequently, the class could encompass not only employees

alleging denials of promotions, accommodations and harassment based upon age, but also those alleging suspensions, reprimands, terminations and all other employment decisions considered by someone to be "adverse." This class could also include those past and present employees whose claims were previously adjudicated. Buynak cannot adequately represent the interests of these additional employees.

Further, as previously addressed, of those class members who did allege denials of promotions and accommodations based on age discrimination, many held different positions, different persons made the employment decisions on behalf of the Department, and the circumstances surrounding their denials varied. Buynak did not produce evidence to show that the circumstances surrounding his own claim of age discrimination so closely aligned with those of his class members' claims that in proving his own case of age discrimination, he would show a Department policy and course of conduct of discrimination that affected each of the members of the certified class. As such, nothing ensures that the pursuit of Buynak's interests will advance the interests of the proposed class members.

In granting Buynak's class certification motion as to the typicality element solely upon the finding that Buynak and the other witnesses at the hearing all alleged injuries resulting from age discrimination, the trial court neglected to consider the requirements of Rule 1702(3) and abused its discretion by certifying the class.

Adequacy of Representation

Rule 1702(4) requires a demonstration that the class representative and his counsel will “fairly and adequately assert and [protect the interests of the class.]” Pa. R.C.P. No. 1702(4). In determining the adequacy of representation, the three factors contained in Pa. R.C.P. No. 1709 must be considered.³ *Cook*. With regard to these factors, courts will assume that members of the bar are skilled in their profession until the contrary is demonstrated. *Janicik*. Courts may infer the attorney’s adequacy from pleadings, briefs and other materials presented to the court. *Klusman*. In this case, the trial court showed concern over Buynak’s counsel representing the entire class. It wrote in its opinion:

The Court’s greatest concern is in this requirement for class certification and notes that while the attorney for [Buynak’s] brief set forth his background and experience, this Court does have some reservations as to his ability to fairly and adequately represent the class. Nevertheless, the Court notes that unless the contrary is demonstrated, the court will assume that members of the bar are skilled

³ Pa. R.C.P. No. 1709 states:

In determining whether the representative parties will fairly and adequately assert and protect the interests of the class, the court shall consider among other matters

(1) whether the attorney for the representative parties will adequately represent the interests of the class.

(2) whether the representative parties have a conflict of interest in the maintenance of the class action, and

(3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

in this area and that they will fairly represent the class. While counsel for the [Department] raises issues thereto which cause this Court some hesitation, nevertheless, the questions are not sufficient to deny class certification.

Trial court opinion at 3. Buynak had not met his burden as to this prerequisite because counsel's actions up to the certification proceedings already evidenced inadequate and inefficient representation.

To begin, Buynak's counsel failed to move promptly for class certification. Pa. R.C.P. No. 1707 requires a person seeking to commence a class action to move to certify the class within 30 days after the close of the pleadings or within 30 days after the last required pleading was due. In this case, the Department filed its answer to the complaint and new matter on January 17, 2001; Buynak answered the new matter on February 4, 2001. Under Rule 1707, Buynak's motion for class certification should have been filed within 30 days or no later than March 6, 2001. However, counsel for Buynak did not file the motion to certify the class on March 6, 2001, or seek an extension of time within which to do so. Likewise, counsel for Buynak did not inform the Court of any reason he was unable to comply with Rule 1707. The failure to move promptly for class certification or a motion for an extension filed after the expiration of the 30 day period in Rule 1707 is a factor to be considered in determining whether to certify a class. *Klusman*.

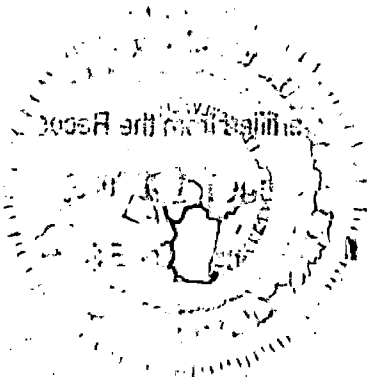
More importantly, though, at the class certification hearing, counsel for Buynak admitted that he might need to obtain assistance from unidentified attorneys outside his firm to prosecute this class action. However, he failed to

disclose to the trial court any facts about this outside assistance which would permit it to assess their qualifications or the existence of any conflicts of interest. Adequacy of representation is determined by the adequacy of counsel before the court, not some unknown attorney who may be called in later to assist in the class action. Given that Buynak's counsel admitted that he would need additional assistance but did not introduce any details about the qualifications of the unknown counsel, a showing that class counsel was adequate was not made out.

Because Buynak did not meet his burden of proving the prerequisites of Pa. R.C.P. No. 1702, specifically, the requirements of commonality 1702(2), typicality 1702(3) and adequacy of class counsel 1702(4), the decision of the trial court is reversed.

Dan Pellegrini

DAN PELLEGRINI, JUDGE



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph M. Buynak

v.

No. 1046 C.D. 2003

Department of Transportation,
Commonwealth of Pennsylvania,
Appellant

ORDER

AND NOW, this 15th day of October, 2003, the order of the Court of
Common Pleas of Clearfield County is reversed.

Dan Pellegrini
DAN PELLEGRINI, JUDGE

Certified from the Record

OCT 15 2003

and per Exit



Supreme Court of Pennsylvania

Western District

November 26, 2003

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Joseph M. Buynak, Petitioner
v.
Department of Transportation,
Commonwealth of Pennsylvania, Respondent
Commonwealth Docket Number - 1046 CD 2003

Trial Court/Agency Dkt. Number: 00-501-CD

No. 607 WAL 2003

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: November 14, 2003

Disposition:

Date:

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/dad

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DEC 01 2003

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

JOSEPH M. BUYNAC,

Plaintiff,

v.

**DEPARTMENT OF TRANSPORTATION, :
COMMONWEALTH OF PENNSYLVANIA:**

Defendant,

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No. 00-501-CD

(Jury Trial Demanded)

FILED

DEC 29 2003

William A. Shaw
Prothonotary/Clerk of Courts

DEFENDANT'S RESPONSE TO PETITION TO INTERVENE

A petition to intervene was filed on behalf of twenty-two present or former employees of the Department of Transportation. The petition to intervene asserts that these individuals are all forty years of age or older, are employed by the Department of Transportation, and were subjected to discrimination because of their age. By the petition, these individuals seek to intervene as plaintiffs in the pending age discrimination action commenced by Joseph Buynak. The Department opposes the petition.

Section 962(c) of the Human Relations Act provides the prerequisites to filing a suit based upon claims of discrimination in the courts of common pleas:

If within one (1) year after the filing of a complaint with the Commission, the Commission dismisses the complaint or has not entered into a conciliation agreement to which the complainant is a party, the Commission must so notify the complainant. On receipt of such notice the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based upon the right to freedom from discrimination granted by this act.

43 P.S. §962(c). The language in Section 962 has been interpreted as a requirement that parties exhaust their administrative remedies under the Act before commencing suit in the common pleas courts. Schweitzer v. Rockwell International, 402 Pa. Super. 34, 586 A.2d 383, 386

(1990). Rule 2327 of the Pennsylvania Rules of Civil Procedure does not modify or supercede that requirement and the individuals on whose behalf the petition has been filed have not presented any other authority which does so.¹

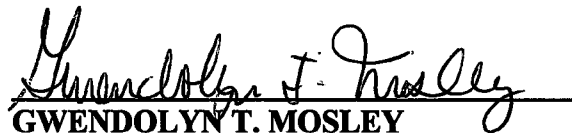
Because the petition does not present facts showing that the twenty-two individuals have exhausted administrative remedies provided by Section 962 or authority which allows them to intervene in this Court without them having done so, the Court lacks subject matter jurisdiction over their discrimination complaints and should deny the petition on that basis.

For these reasons, the Court should deny the petition to intervene.

Respectfully submitted,

GERALD J. PAPPERT
Acting Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: December 26, 2003

¹The petition appears to cite Rule 1713 (a)(3) as support for relief. Reliance upon Rule 1713 (a)(3) is misplaced. Rule 1713 relates to a court's authority to issue orders in the context of a class action. In light of the Commonwealth Court's decision reversing the grant of class action status in this case, this Court has no current authority to issue orders pursuant to Rule 1713.

DATE: December 26, 2003

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JURY TRIAL DEMANDED

VS.

) (Judge Reilly)

FILED

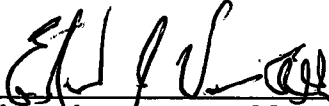
DEC 21 2001

William A. Shaw
Prothonotary

Gwendolyn T. Mosley, Esquire
Senior Deputy Attorney General
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Fax: (717) 772-4526

#27

statements made herein are subject to the penalties set forth in
18 Pa.C.S.A § 4904 relating to unsworn falsification to
authorities.



Edward J. Van Allen, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JOHN M. BUYNACK :

-vs- :

No. 00 - 501 - CD

DEPARTMENT OF TRANSPORTATION :

COMMONWEALTH OF PENNSYLVANIA:

ORDER

NOW, this 21st day of December, 2001, this being the day and date set for argument into Plaintiff's Motions to Compel Answers to Interrogatories and for Production of Documents, it is the ORDER of this Court that Defendant shall within ten (10) days from date hereof, respond to Plaintiff's Interrogatory No. 1, and following receipt of such response, Plaintiff shall, within twenty (20) days thereafter, move to certify as a class action. In all other respects, consideration of said Motions shall be and is hereby continued pending ruling on said Motion for Certification.

By the Court.

President Judge

FILED

DEC 24 2001

William A. Shaw
Prothonotary

FILED

DEC 24 2001

01/10/2001
William A. Shaw
Per Honorable

31
HWA

1 cc to atty: Van Allen
1 cc to atty: Mosley

CA
(27)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPT. OF TRANSPORTATION
COMMONWEALTH OF
PENNSYLVANIA

Defendant.

No. 00-501-CD

(Jury Trial Demanded)

**DEFENDANT'S MOTION FOR ENLARGEMENT
OF TIME WITHIN WHICH TO RESPOND TO INTERROGATORY NO.1**

Defendant, Department of Transportation, by its attorneys, hereby move the Court to enlarge by 14(fourteen) days the time for responding to plaintiff's interrogatory number 1 in the above-captioned case. In support of this motion, the defendant states the following:

1. By order dated December 21, 2001 the Court directed the defendant to respond within ten days to plaintiff's Interrogatory No. 1 which reads:

Identify all persons who are residents of the Commonwealth of Pennsylvania who on or after April 27, 1996, (a) were or are employed by PennDOT in a non-managerial position; (b) were 40 years of age or older; and (c) were subject to an actual or threatened Adverse Employment Decision or Decisions made PennDot.

FILED

DEC 31 2001

William A. Shaw
Prothonotary

(28)

2. Under the terms of the Order, the defendant's response to interrogatory number 1 is due on December 31, 2001.

3. Counsel for the defendant has been informed by staff within the defendant's Personnel Office that there is no one source for the information sought in interrogatory number 1. In order for the defendant to respond to interrogatory number 1, it will be necessary for staff to program the computer to sort the data for sub-sections (a) and (b) and then cross match the list created from those sorts with names in yet another file which is not computerized.

4. Because of office closings on December 24-25, 2001 and employee absences resulting from the holidays, it is not possible to obtain this information within the time allowed by the Court.

5. At the conference held on December 21, 2001 in this matter, the Court stated that counsel for the defendant should request additional time for responding to interrogatory number 1 if the time prescribed were not sufficient.

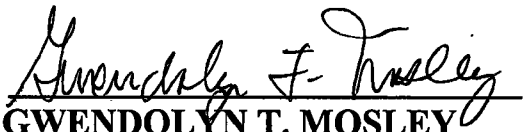
6. Accordingly, the defendant asks that the time for responding to plaintiff's interrogatory number 1 be enlarged by 14 (fourteen) days or until January 14, 2002.

WHEREFORE, the defendant asks the Court to grant its motion and enlarge to January 14, 2002 the time for responding to plaintiff's interrogatory number 1.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: December 28, 2001

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

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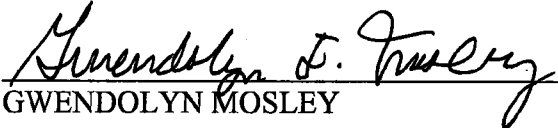
No. 00-501-CD

(Jury Trial Demanded)

CERTIFICATE OF SERVICE

I, Gwendolyn Mosley, Senior Deputy Attorney General, hereby certify that I have this day served the foregoing **DEFENDANT'S MOTION FOR ENLARGEMENT**, by placing a copy of it in the mail, postage prepaid and addressed to the following:

Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801


GWENDOLYN MOSLEY
Senior Deputy Attorney General

DATE: December 28, 2001

CP
728

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	(Judge Reilly)
Defendant.	)	

MOTION FOR SANCTIONS PURSUANT TO PA.R.C.P. 4019(c)(2)

NOW COMES the Plaintiff by and through his attorneys, Edward J. Van Allen, P.C., and seeks sanctions against the Defendant pursuant to Pa.R.C.P. 4019(c)(2), in support thereof the Plaintiff avers as follows:

1. The Plaintiff served written interrogatories upon the Plaintiff on or about July 6, 2000.
2. The Defendant objected to certain of those interrogatories including Interrogatory number 1.
3. On October 25, 2001, the Plaintiff filed a Motion to Compel Answers to said interrogatories.
4. This Court issued a Rule to Show Cause upon the Defendant why it should not be compelled to answer said interrogatories on November 5, 2001.

FILED

JAN 17 2002

William A. Shaw
Prothonotary

#30

5. Following a continuance the rule was ultimately returnable on December 21, 2001.

6. At the conclusion of oral argument this Court entered an Order which stated:

Now, this 21st day of December, 2001, this being the day and date set for argument into Plaintiff's Motions to Compel Answer to Interrogatories and for Production of Documents it is the ORDER of this Court that Defendant shall within ten (10) days from date hereof, respond to Plaintiff's Interrogatory No. 1, and following receipt of such response, Plaintiff shall, within twenty (20) days thereafter, move to certify as a class action. In all other respects, consideration of said Motions shall be and is hereby continued pending ruling on said Motion for Certification.

7. This Court also stated during oral argument of December 21, 2001, that if the information sought was not on Defendant's computer, the Defendant could request additional time to go through the files manually and such a Motion for Extension must be filed within ten (10) days.

8. On December 31, 2001, the Defendant requested an Extension alleging that it had to "cross match" its computerized records of section (a) and (b) of Interrogatory number 1 to an unspecified Defendant file which would require up to an additional fourteen (14) days. A copy of which is attached as Exhibit 1.

9. On January 8, 2002, Ms. Mosley, Senior Deputy Attorney General and counsel for the Defendant, mailed to the Undersigned, a list of employees which she represented to be the Defendant's Answer to Interrogatory number 1, which was received by the Undersigned on January 10, 2002. A copy of which is attached as Exhibit 2.

10. However, the Defendant's Response included only matters which were subject to administrative or civil litigation and not all non-managerial persons over forty who were Pennsylvania residents and employed by the Pennsylvania Department of Transportation who had suffered adverse employment decisions. Adverse employment decisions are broader than civil or administrative litigation as not all adverse employment decisions are litigated.

11. At oral argument the Defendant contended that only those persons who had filed a timely complaint of employment discrimination with the Pennsylvania Human Relations Commission could be included in the Plaintiff's class action as members of the class.

12. This argument was rejected by this Court.

13. This argument was also rejected by the landmark Pennsylvania Superior Court in Lukus v. Westinghouse, 276 Pa.Super. 232; 419 A.2d 431, 1980 Pa Super.

14. Such data was not signed nor verified.

15. Each of the employees on said list had filed administrative or civil litigation against the Defendant.

16. When the Undersigned explained via a letter dated January 10, 2002, and faxed to the counsel for the Defendant, Ms. Mosley, that such was not responsive to Interrogatory number 1, which called for employees who had suffered actual or threatened adverse employment decisions, Ms. Mosley stated that she had done what this Court had ordered her to do. A copy of this faxed letter is attached as Exhibit 3.

17. By a subsequent letter which was also faxed on January 11, 2002, to counsel for the Defendant, Ms. Mosley, the Undersigned articulated the examples of adverse employment decisions, a copy of which is attached as Exhibit 4, and again stated that the Defendant's Response did not address these examples and was not within the scope of 43 P.S. § 955(a) which speaks to unlawful discriminatory practices.

18. Ms. Mosley responded to the Undersigned's January 10, 2002 letter, by her letter dated January 11, 2002, a copy of which is attached as Exhibit 5, that the Defendant did not have access on its computer to persons who were

denied promotions and that she believed that she was not required to verify her Answer.

19. As previously stated Ms. Mosley sought an extension of time for the stated purpose to "cross match" the data that was not on the computer against part (a) and (b) of Interrogatory number 1 which she had admitted was on the Defendant's computer.

20. Thus, Ms. Mosley continue to ignore this Court's statement and the decision of the Superior Court in Lukus v. Westinghouse, Id., that not all members of a class need file individual complaints with the Pennsylvania Human Relations Commission to be members of the class.

21. Thus, the conduct of the Defendant and Ms. Mosley has been obstructionist and they have willfully failed to provide the information Ordered by this Court on December 21, 2001. See the Affidavit of Joseph Holenchik which addresses the Defendant's intentional stated strategy of running Mr. Buynak out of money, a copy of which is attached hereto as Exhibit 6.

22. The aforesaid list of the Defendant consisted of fifteen (15) employees out of approximately 12,000, the first three (3) of which came from a file known as the BEO file. The Plaintiff has already assembled numerous names of employees suffering adverse employment decisions and

none of these names appears on the Defendant's Response to Interrogatory number 1. Apparently, Ms. Mosley only cross matched (a) and (b) of Interrogatory number 1 against a litigation file.

23. Through other documents in the possession of the Plaintiff, including his own ADA request and its denial, the BEO file is defined as the Bureau of Equal Opportunity and is even defined as such on the Defendant Pennsylvania Department of Transportation's own web-site which is accessible to anyone with a computer.

24. The BEO file contains a collection of miscellaneous matters which relate to alleged discrimination.

25. The three names in the Defendant's Response to Interrogatory number 1 are employees who filed discrimination complaints with the BEO over issues of age, sex, disability, and promotion.

26. Again, Ms. Mosley has submitted to the Undersigned a list of lawsuits and not a comprehensive list of adverse employment decisions.

27. It is also important to note that the Plaintiff's ADA request and similar documents were placed in the BEO file before he filed his complaint. Other employees discrimination issues have to filed there also.

28. Another file which the Defendant is required by Federal law to maintain is an EEO file. This file means Equal Opportunity file and should also contain relevant information.

29. In addition to the foregoing, the Undersigned duly noticed a deposition of Ms. Mosley on November 28, 2001, via fax and first class mail, for the expressly stated purpose of ascertaining what defenses the Defendant had to the Plaintiff's Motions to Compel Answers to Interrogatories and Motion to Compel Production of Documents.

30. The Undersigned also duly noticed through Ms. Mosley, via fax and first class mail, the deposition of Joseph S. Robinson, Mr. Buynak's Team Leader to ascertain other information applicable to the forthcoming oral argument before this Court scheduled for the next week.

31. Ms. Mosley did not file objections to the Notices of Deposition under Pa.R.C.P. No. 4016(d), nor did she file a Motion for a Protective Order nor did she request a Continuance.

32. Rather, during the late afternoon of Sunday, December 9, 2001, Ms. Mosley faxed from her office to the office of the Undersigned a one sentence letter just stating that neither she nor Mr. Robinson would attend the

depositions scheduled to begin the next morning, Monday December, 10, 2002. A copy of which is attached hereto as Exhibit 7.

33. On Tuesday, December 11, 2001, Mr. Robinson stated to Mr. Buynak that he was instructed by Ms. Mosley concerning the aforesaid deposition, "If you get something in the mail, then go. If not, don't go."

34. Thus, Ms. Mosley willfully induced Mr. Robinson not to appear for a deposition in violation of Pa.R.C.P. No. 4019(a)(1)(v).

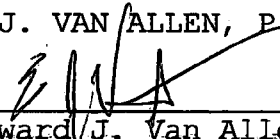
35. Ms. Mosley's refusal to produce herself constituted her refusal as representative of the Defendant to appear is in violation of Pa R.C.P.No. 4019(a)(1)(iv).

WHEREFORE, the Plaintiff requests that this Court issue an Order which forbids the Defendant Pennsylvania Department of Transportation from opposing Plaintiff's forthcoming Motion for Class Certification pursuant to Pa R.C.P. No.4019(c)(2). Since the Plaintiff has only derived a few names of the putative class members, the Plaintiff also requests that this Court order the Defendant to immediately produce for inspection and copying its BEO file, its EEO file and such similar other files that

contain the names of those Defendant employees who have suffered adverse employment decisions.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, Esq

PA I.D. No. 11250

119 S. Burrowes Street

State College, PA 16801

(814) 238-2088

Fax: (814) 466-2711

Date: January 17, 2002

EXHIBIT 1

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

JOSEPH M. BUYNAC,

Plaintiff,

v.

**DEPT. OF TRANSPORTATION
COMMONWEALTH OF
PENNSYLVANIA**

Defendant.

No. 00-501-CD

(Jury Trial Demanded)

**DEFENDANT'S MOTION FOR ENLARGEMENT
OF TIME WITHIN WHICH TO RESPOND TO INTERROGATORY NO.1**

Defendant, Department of Transportation, by its attorneys, hereby move the Court to enlarge by 14(fourteen) days the time for responding to plaintiff's interrogatory number 1 in the above-captioned case. In support of this motion, the defendant states the following:

1. By order dated December 21, 2001 the Court directed the defendant to respond within ten days to plaintiff's Interrogatory No. 1 which reads:

Identify all persons who are residents of the Commonwealth of Pennsylvania who on or after April 27, 1996, (a) were or are employed by PennDOT in a non-managerial position; (b) were 40 years of age or older; and (c) were subject to an actual or threatened Adverse Employment Decision or Decisions made PennDot.

2. Under the terms of the Order, the defendant's response to interrogatory number 1 is due on December 31, 2001.

3. Counsel for the defendant has been informed by staff within the defendant's Personnel Office that there is no one source for the information sought in interrogatory number 1. In order for the defendant to respond to interrogatory number 1, it will be necessary for staff to program the computer to sort the data for sub-sections (a) and (b) and then cross match the list created from those sorts with names in yet another file which is not computerized.

4. Because of office closings on December 24-25, 2001 and employee absences resulting from the holidays, it is not possible to obtain this information within the time allowed by the Court.

5. At the conference held on December 21, 2001 in this matter, the Court stated that counsel for the defendant should request additional time for responding to interrogatory number 1 if the time prescribed were not sufficient.

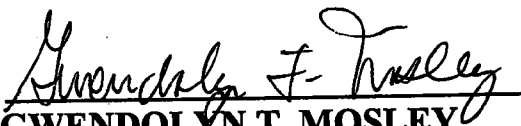
6. Accordingly, the defendant asks that the time for responding to plaintiff's interrogatory number 1 be enlarged by 14 (fourteen) days or until January 14, 2002.

WHEREFORE, the defendant asks the Court to grant its motion and enlarge to January 14, 2002 the time for responding to plaintiff's interrogatory number 1.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: December 28, 2001

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAC,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION, :
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

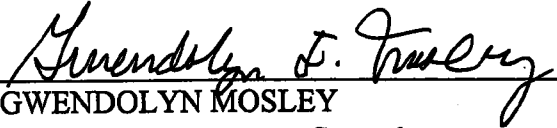
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: No. 00-501-CD
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: (Jury Trial Demanded)
:

CERTIFICATE OF SERVICE

I, Gwendolyn Mosley, Senior Deputy Attorney General, hereby certify that I have this
day served the foregoing **DEFENDANT'S MOTION FOR ENLARGEMENT**, by placing a
copy of it in the mail, postage prepaid and addressed to the following:

Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801


GWENDOLYN MOSLEY
Senior Deputy Attorney General

DATE: December 28, 2001

EXHIBIT 2



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

January 8, 2002

MIKE FISHER
ATTORNEY GENERAL

15th Floor, Strawberry Square
Harrisburg, PA 17120
PHONE: (717) 787-8106 (DIRECT)
FAX: (717) 772-4526

Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
1129 S. Burrows Street, Suite 103
State College, PA 16801

RE: Buynak v. PA Department of Transportation
No. 00-501-CD (Clearfield County)

Dear Mr. Van Allen:

I enclose the document which contains the information responsive to plaintiff's interrogatory number 1.

Very truly yours,

A handwritten signature in cursive script, reading "Gwendolyn T. Mosley".

Gwendolyn T. Mosley
Senior Deputy Attorney General

GTM/jf

Buynak – Civil

<u>Name:</u>	<u>Birth Date:</u>	<u>Date of Allegation:</u>	<u>Nature of Complaint:</u>
1. Quick, Thomas	05/08/53	10/09/97	Age/Sex/Union/Political
2. Anderson, Yvonne	09/05/58	07/28/00	Disability
3. Menhennett, Charles	08/06/40	November 1997	Age/Promotion
4. Scott, Gloria	06/09/50	05/07/01	Age
5. Engle, Jeanette	05/22/43	05/07/01	Age/Race
6. Moses, Abraham	04/17/44	06/23/98	Age
7. Ashmore-Temas, Kathleen	05/07/50	12-29/93-present	Sex/Disability
8. Kisling, Thomas	07/27/54	09/23/99	Disability
9. Wilson, Charles	08/15/48	06/01/98	Retaliation/Age
10. Fetrow, Alvin	11/02/59	06/15/00	Disability
11. Bunyak, Joseph	01/13/43	April 2000	Age/Disability
12. Brey, Patricia	05/07/57	02/28/98-03/30/98	Age/Sex/Retaliation
13. DiGiacomo, Renee	01/30/55	09/15/98	Non job related Disability
14. Lockhart, Thomas	12/08/50	06/16/96	Disability
15. Tennant, Tyrone	09/15/57	12/06/99-12/31/00	Race/Disability

Dispositions by Number

1. BEO complaint is pending
2. BEO complaint closed 02/14/01. The investigator showed no evidence that the essential job functions statement was written to exclude the complaint from consideration as its language was essentially identical to language in pamphlets which previously served as the essential job functions statement for same position.
3. BEO complaint closed 02/12/97. Complainant was promoted to Highway Foreman II position.
4. EEO/HRC complaint is pending.
5. EEO/HRC complaint is pending.
6. EEO/HRC complaint dismissed. Right to sue letter issued.
7. EEO/HRC complaint dismissed. Right to sue letter issued.
8. EEO/HRC complaint dismissed. Right to sue letter issued.
9. EEO/HRC complaint dismissed. Right to sue letter issued.
10. EEO/HRC complaint dismissed. Right to sue letter issued.
11. EEO/HRC complaint pending litigation as of October 2001.
12. EEO/HRC complaint was dismissed. Civil Suit Judgement for Commonwealth of Pennsylvania.
13. EEO/HRC complaint was settled per agreement.
14. EEO/HRC complaint was withdrawn.
15. EEO/HRC complaint was withdrawn.

EXHIBIT 3

The Law Offices of
EDWARD J. VAN ALLEN, P.C.

Labor and Employment Law
119 S. Burrowes Street, Suite 103
State College, Pennsylvania 16801
814.238.2088
Fax: 814.466.2711
edward@vanallen.com

January 10, 2002

Gwendolyn Mosley
Chief Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

VIA FAX: (717) 772-4526

Re: Joseph M. Buynak v. Pennsylvania Department of Transportation; Number 00-501-CD

Dear Ms. Mosley:

Today I received your letter to me dated January 8, 2002, and an attachment thereto which your letter describes as containing "the information responsive to plaintiff's Interrogatory number 1". However, said attachment appears to describe only one facet of the first category of documents set forth in Mr. Buynak's Motion to Compel Defendant to Produce Documents. Said attachment is not responsive to Interrogatory number 1, and I do expect to receive from you the correct response to Interrogatory number by Monday, January 14, 2002.

Also, said attachment does not set forth Mr. Buynak's failure to promote claim, and I do expect PennDot's Answer to Interrogatory number 1 to include those adverse employment decisions which constitute PennDot's failure to promote

Further, I will expect PennDot's Answer to Interrogatory number 1 to be properly verified.

Very truly yours,

EDWARD J. VAN ALLEN, P.C.

By:


Edward J. Van Allen, Esq.

EJVA/lw

cc: Joseph M. Buynak

EXHIBIT 4

The Law Offices of
EDWARD J. VAN ALLEN, P.C.

Labor and Employment Law
119 S. Burrowes Street, Suite 103
State College, Pennsylvania 16801
814.238.2088
Fax: 814.466.2711
edward@vanallen.com

January 11, 2002

Gwendolyn Mosley
Chief Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

VIA FAX: (717) 772-4526

Re: Joseph M. Buynak v. Pennsylvania Department of Transportation; Number 00-501-CD

Dear Ms. Mosley:

As Ms. Van Allen informed you by telephone at approximately noon today when she called to verify your reception of my fax of yesterday, January 10, 2002, I anticipate that PennDot's Answer to Interrogatory number 1 with respect to actual or threatened adverse employment decisions for current or former PennDot employees forty years of age or older who are residents of the Commonwealth of Pennsylvania will include the following employees who:

1. were discharged;
2. were demoted in compensation or duties and responsibilities;
3. were suspended;
4. were given written reprimands;
5. have (like most TCI's not only in QA but those hundreds assigned to District offices) not been promoted, many of which who have never been promoted; or
6. have filed grievances related to working conditions.

I believe that the foregoing are encompassed by the language of section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. § 955(a).

Upon receipt of a full and complete Answer to Interrogatory number 1, I will timely file a Motion for Class Certification pursuant to Judge Reilly's Order. I have also enclosed for your ease of reference Section 955(a) of the Pennsylvania Human Relations Act and annotations from Purdon's Statutes Section 959 with respect to class actions.

I look forward to receiving PennDot's Answer to Interrogatory number 1. Kindly mail the same to the address stated on this letterhead.

Very truly yours,

EDWARD J. VAN ALLEN, P.C.

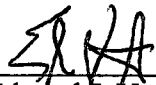
By: 
Edward J. Van Allen, Esq.

EXHIBIT 5.



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

January 11, 2002

MIKE FISHER
ATTORNEY GENERAL

REPLY TO:
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120
FAX: 717-772-4526
DIRECT: 717-787-8106

Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801

RE: Buynak v. PA Department of Transportation
No. 00-501-CD (Clearfield CCP)

Dear Mr. Van Allen:

This will respond to your faxed letter to me dated January 10, 2002. The Court's December 21, 2001 order directed the Department to respond to plaintiff's interrogatory number 1 which reads: "Identify all persons who are residents of the Commonwealth of Pennsylvania who on or after April 27, 1996, (a) were or are employed by PennDOT in a non-managerial position; (b) were 40 years of age or older; and (c) were subject to an actual or threatened Adverse Employment Decision or Decisions made by PennDOT." The information that I sent you is all that the Department can capture from its computerized files which responds to that interrogatory. The Department has no data base containing the name of every employee who sought and was denied a promotion. Rule 4006(b) permits the party who has been served with written interrogatories to respond by providing a record or compilation which contains the information requested lieu of a written answer detailing the information. See Pa.R.C.P 4006(c). That is what I have done. Rule 4006 has no requirement that a verification be provided when the option provided for in sub-section (b) is chosen.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Gwendolyn T. Mosley".
Gwendolyn T. Mosley
Senior Deputy Attorney General

GTM/ss

EXHIBIT 6

Commonwealth of Pennsylvania

SS:

County of Clearfield

AFFIDAVIT

I, Joseph R. Holenchik, being duly sworn, do
depose and state that: Joseph R. Holenchik

I was employed by the penna Dept of Transportation
from May 1957 to ~~July~~ February 1976 and from May
1995 to December 2000. as the Local Bridge Program
Coordinator (From May 1995 to December 2000).

One day in my Penna DOT office Paul Albright made
a statement to me that Joseph Buynak wasn't too
bright, also he made another statement that they
(who?) were trying to run Mr Buynak out of money.
This took place during the month of ~~May~~ June, 2000.

Sworn to and subscribed
to before me, a Notary
Public, on this 15th day
of January, 2002.

Joseph R. Holenchik
Joseph R. Holenchik

Lois H. Lobb
Notary Public

My commission expires:

(SEAL)

Notarial Seal
Lois H. Lobb, Notary Public
Houtzdale Boro, Clearfield County
My Commission Expires July 14, 2004
Member, Pennsylvania Association of Notaries

EXHIBIT 7

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

D. MICHAEL FISHER
ATTORNEY GENERAL

Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

FAX (717) 772-4526

FAX TRANSMISSION SHEET

DATE: December 9, 2001

TIME: 4:10 p.m. PAGES TO FOLLOW: 1

SUBJECT: Buynak v. PennDOT

TO: Edward J. Van Allen, Esquire

FAX NO.: 814-466-2711

FROM: Gwendolyn T. Mosley
Senior Deputy Attorney General
Litigation Section

COMMENTS:

CONFIDENTIALITY NOTICE:

The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by the virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or the agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service.

* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (717) 783-1471.

Original will not follow.



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

December 7, 2001

MIKE FISHER
ATTORNEY GENERAL

REPLY TO:
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120
FAX: 717-772-4526
DIRECT: 717-787-1180

Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801

RE: Baynak v. PA Department of Transportation
No. 00-501-CD (Clearfield CCP)

Dear Mr. Van Allen:

This is to advise that neither I nor Mr. Robinson will attend the depositions you scheduled on December 10, 2001.

Very truly yours,

A handwritten signature in cursive script that reads "Gwendolyn T. Mosley".

Gwendolyn T. Mosley
Senior Deputy Attorney General

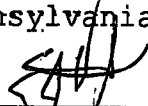
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	(Judge Reilly)
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on this the 17th day of January, 2002, I served a true and correct copy of the Plaintiff's Motion for Sanctions, a Proposed Rule to Show Cause, a Proposed Order and a Certificate of Service upon the Defendant by U.S. mail first class, postage prepaid, to its attorney of record, addressed as follows:

Gwendolyn Mosley
Senior Deputy Attorney General
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120


Edward J. Van Allen, Esq.

FILED

JAN 17 2002

03,4714cc

William A. Shaw
Prothonotary



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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

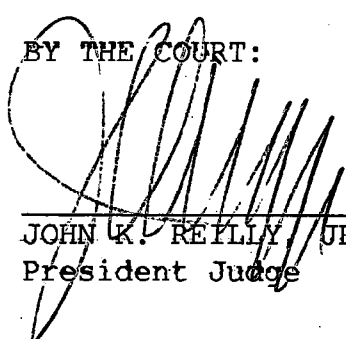
Defendant.

)
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)
) Number 00-501-CD
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) JURY TRIAL DEMANDED
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)
) CLASS ACTION
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)
) (Judge Reilly)
)

ORDER

AND NOW, this 21st day of January, 2002, upon
consideration of the Plaintiff's Motion for Sanctions, a
Rule is hereby issued on Defendant to appear and show cause
why the Motion should not be granted. Rule Returnable the
27th day of February, 2002, at 1:30 P.M. in
Courtroom No. 1, Clearfield County Courthouse,
Clearfield, PA.

BY THE COURT:



JOHN K. REILLY, JR.
President Judge

FILED

JAN 21 2002

William A. Shaw
Prothonotary

FILED

JAN 21 2002

01/11/02 a.m.
William A. Shaw
Prothonotary

cc to Atty Van Allen

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William A. Shaw
Prothonotary

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Plaintiff,

JURY TRIAL DEMANDED

CLASS ACTION

(Judge Reilly)

Defendant.

#32

3. Following a continuance the rule was ultimately returnable on December 21, 2001.

4. At the conclusion of oral argument this Court entered an Order which stated:

Now, this 21st day of December, 2001, this being the day and date set for argument into Plaintiff's Motions to Compel Answer to Interrogatories and for Production of Documents it is the ORDER of this Court that Defendant shall within ten (10) days from date hereof, respond to Plaintiff's Interrogatory No. 1, and following receipt of such response, Plaintiff shall, within twenty (20) days thereafter, move to certify as a class action. In all other respects, consideration of said Motions shall be and is hereby continued pending ruling on said Motion for Certification.

5. This Court also stated during oral argument of December 21, 2001, that if the information sought was not on Defendant's computer, the Defendant could request additional time to go through the files manually and such a Motion for Extension must be filed within ten (10) days.

6. On December 31, 2001, the Defendant requested an Extension alleging that it had to "cross match" its computerized records of section (a) and (b) of Interrogatory number 1 to an unspecified Defendant file which would require up to an additional fourteen (14) days.

7. On January 8, 2002, Ms. Mosley, Senior Deputy Attorney General and counsel for the Defendant, mailed to

the Undersigned, a list of employees which she represented to be the Defendant's Answer to Interrogatory number 1, which was received by the Undersigned on January 10, 2002.

8. However, the Defendant's Response included only matters which were subject to administrative or civil litigation and not all non-managerial persons over forty who were Pennsylvania residents and employed by the Pennsylvania Department of Transportation who had suffered **adverse employment decisions**. Adverse employment decisions are broader than civil or administrative litigation as not all adverse employment decisions are litigated.

9. At oral argument the Defendant contended that only those persons who had filed a timely complaint of employment discrimination with the Pennsylvania Human Relations Commission could be included in the Plaintiff's class action as members of the class.

10. This argument was rejected by this Court.

11. This argument was also rejected by the landmark Pennsylvania Superior Court in Lukus v. Westinghouse, 276 Pa.Super. 232; 419 A.2d 431, 1980 Pa Super.

12. Such data was not signed nor verified.

13. Each of the employees on said list had filed administrative or civil litigation against the Defendant.

14. When the Undersigned explained via a letter dated January 10, 2002, and faxed to the counsel for the Defendant, Ms. Mosley, that such was not responsive to Interrogatory number 1, which called for employees who had suffered actual or threatened adverse employment decisions, Ms. Mosley stated that she had done what this Court had ordered her to do.

15. By a subsequent letter which was also faxed on January 11, 2002, to counsel for the Defendant, Ms. Mosley, the Undersigned articulated the examples of adverse employment decisions and again stated that the Defendant's Response did not address these examples and was not within the scope of 43 P.S. § 955(a) which speaks to unlawful discriminatory practices.

16. Ms. Mosley responded to the Undersigned's January 10, 2002 letter, by her letter dated January 11, 2002, that the Defendant did not have access on its computer to persons who were denied promotions and that she believed that she was not required to verify her Answer.

17. As previously stated Ms. Mosley sought an extension of time for the stated purpose to "cross match" the data that was not on the computer against part (a) and (b) of Interrogatory number 1 which she had admitted was on the Defendant's computer.

18. Thus, Ms. Mosley continues to ignore this Court's statement and the decision of the Superior Court in Lukus v. Westinghouse, Id., that not all members of a class need file individual complaints with the Pennsylvania Human Relations Commission to be members of the class. The Defendant has continuously argued this position before this Court and on all occasions this argument has been rejected. Obviously, the Defendant's objective is to delay the proceedings in any way.

19. Thus, the conduct of the Defendant and Ms. Mosley has been obstructionist and they have willfully failed to provide the information Ordered by this Court on December 21, 2001.

20. The aforesaid list of the Defendant consisted of fifteen (15) employees out of approximately 12,000, the first three (3) of which came from a file known as the BEO file. The Plaintiff has already assembled numerous names of employees suffering adverse employment decisions and none of these names appears on the Defendant's Response to Interrogatory number 1. Apparently, Ms. Mosley only cross matched (a) and (b) of Interrogatory number 1 against a litigation file.

21. Through other documents in the possession of the Plaintiff, including his own ADA request and its denial,

the BEO file is defined as the Bureau of Equal Opportunity and is even defined as such on the Defendant Pennsylvania Department of Transportation's own web-site which is accessible to anyone with a computer.

22. The BEO file contains a collection of miscellaneous matters which relate to alleged discrimination.

23. The three names in the Defendant's Response to Interrogatory number 1 are employees who filed discrimination complaints with the BEO over issues of age, sex, disability, and promotion.

24. Again, Ms. Mosley has submitted to the Undersigned a list of lawsuits and not a comprehensive list of adverse employment decisions.

25. It is also important to note that the Plaintiff's ADA request and similar documents were placed in the BEO file before he filed his complaint. Other employees' discrimination issues have to filed there also.

26. Another file which the Defendant is required by Federal law to maintain is an EEO file. This file means Equal Opportunity file and should also contain relevant information.

27. On January 17, 2002, the Plaintiff filed a Motion for Sanctions against the Defendant. On or about January

21, 2002, this Court issued a Rule to Show Cause upon the Defendant why Plaintiff's said Motion for Sanctions should not be granted. This Rule is returnable on February 27, 2002, at 1:30 PM.

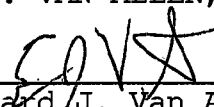
28. Because the Defendant has failed to provide the ordered answer to Interrogatory number 1 which information is necessary to the Plaintiff's Motion for Class Certification, it is essential for the Plaintiff to have the additional time of thirty (30) days to file a Motion for Class Certification following this Court's disposition of said Motion for Sanctions for the Plaintiff to inspect and copy the names of putative class members from the Defendant's BEO file, its EEO file and such similar other files that contain the names of those Defendant employees who have suffered adverse employment decisions.

WHEREFORE, the Plaintiff requests an Extension of Time to file a Motion for Class Certification for a period of thirty (30) days following the Court's disposition of the aforesaid Rule to Show Cause.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By:


Edward J. Van Allen, Esq
PA-I.D. No. 11250
119 S. Burrowes Street
State College, PA 16801

Date: January 24, 2002

(814) 238-2088

Fax: (814) 466-2711

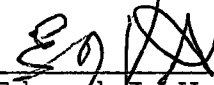
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	(Judge Reilly)
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of January, 2002, I caused a true and correct copy of the within Motion to be served upon the Defendant by U.S. mail, first-class and postage prepaid addressed to counsel for the Defendant as follows:

Gwendolyn Mosley, Esq.
Senior Deputy Attorney General
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120


Edward J. Van Allen, Esq

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

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) Number 00-501-CD
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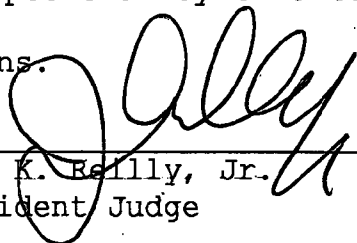
) JURY TRIAL DEMANDED
)

) CLASS ACTION
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) (Judge Reilly)
)

ORDER

AND NOW this 25 day of January, 2002, it is ORDERED
that the Plaintiff is hereby granted an Extension of Time
of thirty (30) days to file his Motion for Class
Certification from the date of disposition by this Court of
the Plaintiff's Motion for Sanctions.



John K. Reilly, Jr.
President Judge

FILED

JAN 25 2002

William A. Shaw
Prothonotary

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• • • • •

No. 00-501-CD

V.

(Jury Trial Demanded)

Defendant.

files manually” as is stated in this paragraph; therefore, she can neither ADMIT nor DENY that averment.

8. ADMITTED.

9. ADMITTED that counsel for the defendant served a list of employees to counsel for the plaintiff on or about January 8, 2002 which was described as Defendant’s Answer to Interrogatory Number 1. Counsel for the defendant does not know when the list was received therefore, she can neither ADMIT nor DENY that averment.

10. ADMITTED that the category of “adverse employment decisions” can be construed as being broader than that encompassed by “civil or administrative litigation”. DENIED that the defendant’s response to plaintiff’s interrogatory included only matters which were subject to administrative or civil litigation. Plaintiff’s Interrogatory Number 1 reads as follows: “Identify all persons who are residents of the Commonwealth of Pennsylvania who on or after April 27, 1996, (a) were or are employed by PennDot in a non-managerial position; (b) were 40 years of age or older; and (c) were subject to an actual or threatened Adverse Employment Decision or Decisions made by PennDot.” The list of individuals provided by the defendant in response to interrogatory number 1 represents past or current employees of the Department of Transportation who are over forty years old who reported complaints of adverse employment decisions to the Department. The names on the list provided by the defendant are not limited to those who commenced civil or administrative litigation as asserted by plaintiff’s counsel.

11. ADMITTED that at the argument on Plaintiff’s Motion to Compel held on December 21, 2001, Counsel for the Defendant argued that only those persons who had filed a timely complaint of employment discrimination should be considered for inclusion in plaintiff’s putative class

action. DENIED that counsel's position during that argument influenced the response given by the defendant to plaintiff's interrogatory number 1. The list of individuals provided in response to interrogatory number 1 includes all non-managers forty years of age and older who reported adverse employment decisions, regardless of whether those individuals filed complaints with the Pennsylvania Human Relations Commission.

12. Counsel for the defendants does not recall whether the Court expressly ruled on her argument; therefore, she can neither ADMIT nor DENY the averment in this paragraph. In any event, the Court's view on whether a class action can include individuals others than those who filed complaints before the Pennsylvania Human Relations Commission has no relevance to the appropriateness of the defendant's response to plaintiff's interrogatory number 1. The list of names provided by the defendant in response to plaintiff's interrogatory number 1 is not limited to individuals who filed complaints with the Pennsylvania Human Relations Commission.

13. The averment in this paragraph is a LEGAL CONCLUSION to which NO RESPONSE is required. If deemed factual, it is DENIED that the decision in Lukus v. Westinghouse has any applicability to plaintiff's motion for sanctions. The defendant's response included all complaints of adverse employment decisions reported to the Department, whether or not the complainant filed complaints with the Pennsylvania Human Relations Commission.

14. ADMITTED that the list of names provided in response to plaintiff's interrogatory number 1 was not signed or verified. By way of further answer, defendant's list is not required by the discovery rules to be signed or verified. Rule 4006 (b) of the Pennsylvania Rules of Civil Procedure permits a party who has been served with written interrogatories to respond by providing a record or compilation which contains the information requested in lieu of a written

answer detailing the information. Rule 4006 has no requirement that a verification be provided when the option provided for in sub-section (b) is chosen. Counsel for the defendant signed the letter which transmitted the list of names provided in response to interrogatory number 1. Rule 4006 does not require more.

15. ADMITTED. By way of further answer, the list provided by the defendant in response to interrogatory number 1 also represents all employees known by the Department who reported adverse employment decisions to it. The Department has no other file which contains the names of other employees within the categories designated by the plaintiff who reported complaints of adverse employment decisions.

16. ADMITTED only that the letter attached to plaintiff's motion for sanctions as Exhibit 3 is a true and correct copy of the defendant's counsel's written response to plaintiff's counsel's January 10, 2002 letter. The letter speaks for itself.

17. ADMITTED only that the letter attached to plaintiff's motion for sanctions as Exhibit 4 is a true and correct copy of plaintiff's counsel's January 11, 2002 letter. The letter speaks for itself.

18. ADMITTED only that the letter attached to plaintiff's motion for sanctions as Exhibit 5 is a true and correct copy of defendant's counsel's January 11, 2002 letter to Plaintiff's counsel. The letter speaks for itself.

19. ADMITTED. By way of further answer, the time sought by counsel for the defendant in its motion for extension of time was utilized for the precise purpose stated in the motion.

20. DENIED. Counsel for the defendant has not ignored any statement of this Court and has not acted in any manner which is inconsistent with the decision of the Superior Court in Lukus v.

Westinghouse. The list of names provided by the defendant in response to plaintiff's interrogatory number 1 is not limited to individuals who filed complaints before the Pennsylvania Human Relations Commission.

21. DENIED. The defendant fully complied with the Court's order when it provided the list attached to plaintiff's motion as Exhibit 2. By way of further answer, neither the defendant nor its counsel has been "obstructionist". Neither the defendant nor its counsel has "willfully failed to provide the information Ordered by this Court on December 21, 2001." On the contrary, the defendant fully complied with the Court's order when it provided the list attached to plaintiff's motion for sanctions as Exhibit 2. Counsel for the defendant does not know Joseph Holenchik and the defendant has not authorized Joseph Holenchik to speak on its behalf. Therefore, there is no legal basis for the Court to attribute the statement of Joseph Holenchik to the defendant or to credit his statement as representing the position or views of the defendant.

22. ADMITTED that the list of names provided by the defendant in response to plaintiff's interrogatory number 1 consists of fifteen names and that the first three of which were names taken from the Department's BEO log. The BEO log tracks the contents of the grievance and complaint records file maintained by the Bureau of Equal Opportunity. DENIED that the population of employees from which the list of names was taken was 12,000 employees; the population of employees is less than that. The defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment in this paragraph concerning the names assembled by the plaintiff; therefore, the defendant can neither ADMIT nor DENY this averment. The remaining averment in this paragraph is DENIED. By way of further answer, the steps taken by the Department to compile the names on the list attached to plaintiff's motion

for sanctions as Exhibit 2 are set forth in the Affidavit of Denise A. Gross which is attached to this Answer as Exhibit-1.

23. DENIED. The BEO file is described as the Grievance/Complaint Records file and is maintained by the Bureau of Equal Opportunity.

24. DENIED. The Grievance/Complaint Records file contains written complaints of discrimination which have been reported to the Bureau of Equal Opportunity.

25. ADMITTED.

26. DENIED. The list of names provided in response to plaintiff's interrogatory number 1 is a comprehensive list of employee complaints of adverse employment decisions reported to the Department. The names on that list were taken from the Grievance/Complaint Records file maintained by the Bureau of Equal Opportunity and from the PHRC/EEOC Complaint log.

27. ADMITTED that plaintiff's ADA request was placed in the Grievance/Complaint Records file before he filed his complaint and that the written complaints of other employees may have been placed in that file also. DENIED that the BEO or Grievance/Complaint Records file maintained by the Bureau of Equal Opportunity is the only file in which discrimination complaints could be maintained.

28. ADMITTED. By way of further answer, names on the list that the defendant provided came from a review of the log of PHRC/EEOC file complaints.

29. ADMITTED that plaintiff's counsel noticed a deposition of counsel for the defendant on November 28, 2001 by fax and by first class mail. The defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment in this paragraph concerning the purpose of the deposition, therefore, it is DENIED. By way of further answer, the

proposed deposition of defendant's counsel was not necessary because the bases for the defendant's objections to plaintiff's discovery were stated in writing in the response which was served upon plaintiff's counsel. In addition, it is not clear why the subject of plaintiff's proposed deposition of defendant's counsel on December 10, 2001 is relevant to the present motion for sanctions. The defendant's response to plaintiff's interrogatory number 1 was proper and was not influenced in any way by plaintiff's attempt to depose defendant's counsel on December 10, 2001.

30. ADMITTED only that plaintiff's counsel faxed and mailed a copy of a notice of deposition directed to Joseph Robinson for a deposition scheduled on December 10, 2001 to defendant's counsel. The defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment in this paragraph concerning the reason for the notice; therefore, it is DENIED. By way of further answer, it is not clear why the subject of plaintiff's proposed deposition of Joseph Robinson is believed relevant to the present motion for sanctions. The defendant's response to plaintiff's interrogatory number 1 was proper and was not influenced in any way by plaintiff's attempt to depose Mr. Robinson.

31. ADMITTED. By way of further answer, counsel for the defendant was not required to object to plaintiff's notices of depositions directed to her and to Mr. Robinson, to move for a protective order or to move to continue the depositions. Counsel for the plaintiff did not comply with applicable procedural rules when he attempted to depose defendant's counsel and Mr. Robinson; therefore, counsel for the defendant had no obligation to take any action in response to the notices. In any event, it is not clear why the subject of plaintiff's attempt to depose defendant's counsel and Mr. Robinson is relevant to the present motion for sanctions. The

defendant's response to plaintiff's interrogatory number 1 was proper and was not influenced in any way by plaintiff's attempts at depositions in December of 2001.

32. ADMITTED. By way of further answer, counsel for the defendant had prepared the letter advising plaintiff's counsel that neither she nor Mr. Robinson would attend the scheduled depositions on December 7, 2001 and had intended that the letter be faxed to him on that date.

However, through inadvertence, defendant's counsel's secretary failed to do so. Defendant's counsel discovered that the letter had not been faxed on Sunday, December 9, 2001 and faxed the letter to him immediately thereafter.

33. The defendant is without knowledge or information concerning the truth or falsity of the statements in this paragraphs attributed to Mr. Buynak and Mr. Joseph Robinson; therefore, they are DENIED. By way of further answer, it is DENIED that defendant's counsel "instructed" Mr. Joseph Robinson not to attend the deposition scheduled on December 10, 2001. Upon receiving a copy of plaintiff's November 28, 2001 notice of deposition directed to Mr. Robinson, counsel for the defendant called Mr. Robinson and asked him if he had been served with a written notice of deposition, subpoena and a witness fee which are required in order to compel an individual's attendance at a deposition. When Mr. Robinson responded that he had not been so served, counsel advised him that he could waive the requirements and attend the deposition voluntarily if he wished to do so. Mr. Robinson responded that he did not wish to waive the requirements of a written notice, subpoena and witness fee and attend the deposition voluntarily. Counsel for the defendant then advised Mr. Robinson that should he either receive the required documents or change his mind about waiving the requirements, he should let counsel know. Mr. Robinson did not do so. Counsel's advice was neither wrong nor improper.

34. DENIED. By way of further answer, whether or not counsel for the defendant "willfully induced Mr. Robinson not to appear for a deposition" scheduled for December 10, 2001 is not an issue that was addressed at the conference held on December 21, 2001 and so is not relevant to whether the defendant complied with the Court's order directing it to respond to plaintiff's interrogatory number 1.

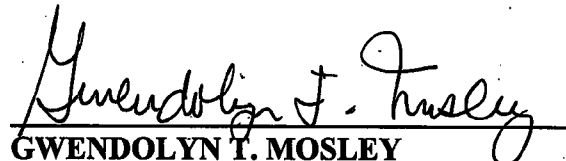
35. ADMITTED that defendant's counsel's refusal to produce herself at the deposition scheduled on December 10, 2001 constituted her refusal to appear. DENIED that this refusal constitutes a violation of Rule 4019(a)(1)(iv). Plaintiff's counsel failed to satisfy the requirements for compelling an individual's appearance at a scheduled deposition; therefore, counsel was not obligated to appear. Further, whether or not counsel violated Rule 4019(a)(1)(iv) by refusing to attend the deposition scheduled on December 10, 2001 is not an issue that was addressed at the conference held on December 21, 2001 and so is not relevant to whether the defendant complied with the Court's order directing it to respond to plaintiff's interrogatory number 1.

WHEREFORE, plaintiff's motion for sanctions should be denied.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

VERIFICATION

The undersigned verifies that the facts set forth in the forgoing Answer to Plaintiff's Motion for Sanctions are true and correct and understands that false statements made herein are subject to the penalties set forth in 18 Pa. C.S.A Section 4904 relating to unsworn falsification to authorities:

Date: February 26, 2002

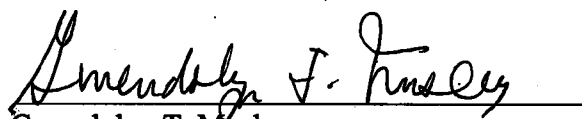

Gwendolyn T. Mosley
Senior Deputy Attorney General

EXHIBIT 1

4. Because Mr. Buynak complained of discrimination based upon his age and disability, I

interpreted this interrogatory to be requesting information concerning present and former employees over forty years of age who had reported complaints alleging discrimination based upon age and disability.

5. There is no single repository within the Department of Transportation containing a listing of employees referenced by disciplinary actions taken or threatened against them. In fact, I know of no records which list disciplinary actions which are threatened, but not taken, against departmental employees.

6. In order to provide the requested information, I first had to obtain a list of all employees in non-managerial positions who were 40 years of age or older. I accessed the personnel data base available to us and did a query seeking all employees over forty years of age who were included in all bargaining units except those for managerial employees. This list consisted of over 5,665 names.

7. I took this list and cross-referenced it with the only two computerized complaint logs that are maintained by the Department of Transportation: 1) the Grievance/Complaint Records file maintained by the Department's Bureau of Equal Opportunity; and 2) the Pennsylvania Human Relations Commission ("PHRC")/ Equal Employment Opportunity Commission ("EEOC") Complaint Log maintained by the Division of Labor Relations.

8. The Grievance/Complaint Records file contains the complaints reported by active employees concerning alleged incidents of discrimination.

9. The PHRC/EEOC complaint log contains the complaints filed with the Pennsylvania Human Relations Commission /Equal Employment Opportunity Commission and served upon the Department by active and former employees alleging discrimination.

10. This cross- referencing produced a list of fifteen individuals.

11. I prepared a special listing identifying all fifteen individuals and included thereon the date of the complaint, the age of the complainant, the nature of the complaint, and the disposition of the complaint. A true and correct copy of this listing is attached here and marked Exhibit 1.

12. The listing does not include the names of individuals with PHRC/EEOC complaints which predated 1998 because our system for logging complaints did not come into existence until that time.

13. Hard copy archived files do exist for PHRC/EEOC employee complaints that were served upon the Department after August 9, 1994.

14. To capture the names of employees within the requested categories with PHRC/EEOC complaints which predate 1998 would have required a search of the actual copies of the filed complaints which were not purged since August 9, 1994 and are maintained in the Department's archives. The archived complaints are maintained in alphabetical order. It would therefore have been necessary for me to search every single archived complaint to obtain those which predate 1998 which could not have been accomplished within the time period I had available to me.

15. The listing also does not include the names of current or former employees forty years of age and over who were subject to oral or written reprimands over two years old because records of this type are required to be purged from the personal history folder after two years, provided there was no reoccurrence of the same violation.

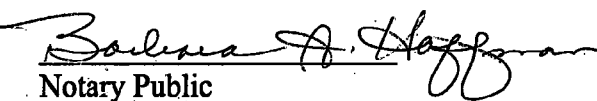
16. To capture the names of employees within the requested categories with complaints concerning suspensions which were not the subject of formal complaints to PHRC/EEOC or BEO would have required a search of each employee's official personnel file which could not have been accomplished within the time period I had available to me. Because the personnel files of departmental employees are not centrally located but are maintained in the county in

which the employee is employed, a search of each employee's personnel file would require substantial staff resources and a substantial amount of time which would subject the Department to extraordinary expense.

17. The listing does not include the names of present or former employees over forty years of age who sought promotions but were not selected because the Department's Classification and Placement Division receives and reviews only the Selection/Interview forms which record the names of the candidates who were selected and not selected. The forms contain no information concerning the age of the eligible candidates. These files are maintained by the Classification and Placement Division for only three years and are thereafter purged.


Denise A. Gross

Sworn to and subscribed before me
this 21 day of February, 2002


Notary Public

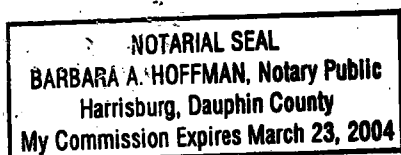


EXHIBIT 1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

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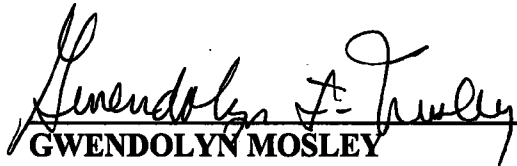
No. 00-501-CD

(Jury Trial Demanded)

CERTIFICATE OF SERVICE

I, GWENDOLYN MOSLEY, Senior Deputy Attorney General, hereby certify that I
have this day served the foregoing **Defendant's Answer to Plaintiff's Motion for Sanctions**, by
hand delivering a copy of it to the following:

Edward J. Van Allen, Esquire


GWENDOLYN MOSLEY
Senior Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: February 26, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JOSEPH M. BUYNAK, individually and :
on behalf of all other persons :
similarly situated :

-VS-

No. 00 - 501 - CD

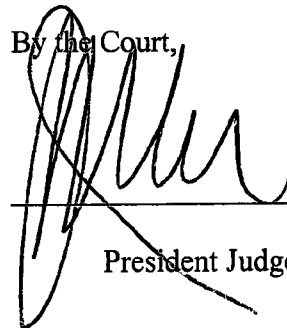
DEPARTMENT OF TRANSPORTATION :
COMMONWEALTH OF PENNSYLVANIA:

ORDER

NOW, this 27th day of February, 2002, following argument into Motion for Sanctions filed on behalf of Plaintiff above-named, it is the ORDER of this Court that said Motion be and is hereby granted to the extent that Plaintiff shall be entitled to examine all personnel files of Defendant for persons who were or are employed by Defendant in a non-managerial position who are 40 years of age or older as of April 27, 1996. Said inspection to be completed within 90 days from date hereof.

It is the further ORDER of this Court that counsel for Plaintiff and/or members of his staff shall disclose nothing contained in these subject files to any person other than this Court with copies to opposing counsel.

By the Court,



President Judge

FILED

FEB 27 2002

William A. Shaw
Prothonotary

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JURY TRIAL DEMANDED

VS.

CLASS ACTION

(Judge Reilly)

Defendant.

FILED

MAR 26 2002

William A. Shaw
Prothonotary

4. On January 24, 2002, the Plaintiff filed a Motion for an Extension of Time.

5. This Court issued an Order granting the Plaintiff thirty (30) days to file a Motion for Class Certification following this Court's disposition of said Motion for Sanctions.

6. On February 27, 2002, this Court issued an Order which entitled Plaintiff to examine personnel files of the Defendant to be completed within ninety (90) days thereof.

7. However, the current posture of the case is that although the Plaintiff is afforded ninety (90) days to inspect personnel files to ascertain class members, which period ends on May 28, 2002, the Plaintiff must file a Motion for Class Certification on March 29, 2002, before he has the data from the necessary personnel files to file said Motion for Class Certification.

8. Although the Plaintiff's results in identifying class members to date have been quite successful and he probably will not need the full ninety day for personnel file inspection, the Plaintiff would like to examine such personnel files as he deems necessary to file a Motion for Class Certification.

9. The Plaintiff therefore requests this Honorable Court to grant him an Extension of Time until June 4, 2002, or until seven (7) days after such time as he completes inspection of personnel files, whichever first occurs.

WHEREFORE, the Plaintiff requests that this Honorable Court issue an Order which would grant the Plaintiff an Extension of

Time until June 4, 2002, or until seven (7) days after such time as he completes inspection of personnel files, whichever first occurs.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By:

EJV/A
Edward J. Van Allen, Esq.
PA ~~I~~.D. No. 11250
119 S. Burrowes Street
State College, PA 16801
(814) 238-2088
Fax: (814) 466-2711

Date: March 26, 2002

Edward J. Van Allen, Esq.

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAK,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

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) Number 00-501-CD
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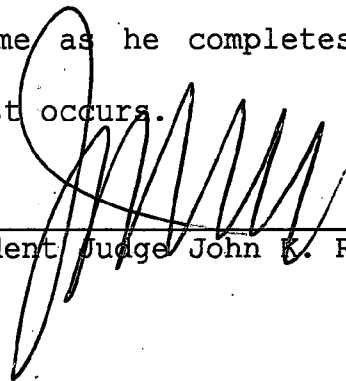
) JURY TRIAL DEMANDED
)

) CLASS ACTION
)

) (Judge Reilly)
)

ORDER

NOW this 27th day of March, 2002, it is the Order of this Court that the Plaintiff is granted an Extension of Time to file a Motion for Class Certification until June 4, 2002, or until seven (7) days after such time as he completes inspection of personnel files, whichever first occurs.



President Judge John K. Reilly, Jr.

FILED

MAR 27 2002

011113cc atty Van Allen

William A. Shaw
Prothonotary



of April 27, 1996. Said inspection to be completed within 90 days from date hereof.

5. PennDot has not responded to the repeated requests for over two weeks made by Edward J. Van Allen, Esq. to Gwendolyn T. Mosley, Esq., counsel for the Defendant, to supply the workplace locations of those persons set forth on PennDot's incomplete Answer to Interrogatory number 1 nor has she responded to the Plaintiff's request to see EEO, EEOC and PHRC files. Because the Undersigned has uncovered several PennDot employees whose names were not supplied to the Undersigned in its Answer to Interrogatory number 1 and who did, in fact, file actual complaints and who were or are employed outside of Harrisburg, who match the criteria in the Plaintiff's Interrogatory number 1, the Undersigned believes that those employees in said list may have all been employed in the Harrisburg region. Since there are eleven District offices and 67 county maintenance facilities, it is logical to believe that EEO, EEOC and PHRC complaints have been filed by employees assigned to other than the Harrisburg office. A copy of the Undersigned's unanswered requests for this information are attached.

6. PennDot has also not provided the names of those employees who filed with the EEO, the EEOC and the PHRC in 1996 and 1997 because as Denise Gross, Personnel Analyst III, stated in the Affidavit attached to PennDot's Answer to Plaintiff's

Motion for Sanctions, "To capture the names of employees within the requested categories with PHRC/EEOC complaints which predate 1998 would have required a search of the actual copies of the filed complaints which were not purged since August 9, 1994 and are maintained in the Department's archives. The archived complaints are maintained in alphabetical order. It would therefore have been necessary for me to search every single archived complaint to obtain those which predate 1998 which could not have been accomplished within the time period I have available to me."

7. Ms. Gross Affidavit suggests that PennDot has so many EEOC/PHRC complaints that it would be burdensome to retrieve them.

8. However, such is not an option that Ms. Gross has because PennDot's objections to Interrogatory number 1 were overruled by this Court on December 21, 2001.

9. Accordingly, PennDot should be required to produce at its Clearfield District 2-0 office all EEO and EEOC and PHRC complaints filed by persons employed by PennDot since April 27, 1996, who are over forty years of age or older and are non-managerial employees.

10. PennDot is estopped from asserting that such complaints are not relevant as Ms. Mosley has erroneously contended in several oral arguments before this Court that only

those employees who have filed EEO, EEOC or PHRC complaints are relevant to this class action. Ms. Mosley has also contended that such complaints are the only source of ascertaining which employees have been subjected to adverse employment conditions. Although the Plaintiff has already located over fifty PennDot employees who have not filed complaints but do match the criteria of Interrogatory number 1, it would be ludicrous to not also include in the class action those employees who have complained about their adverse employment decisions in EEO, EEOC and PHRC complaints.

11. This should not be a monumental undertaking as such complaints can be faxed to the Clearfield District 2-0 office and there collected for inspection by the Undersigned's staff. Also, the Clearfield District 2-0 office staff can identify the office origin of such complaints. The proposed Order should also Order that the Defendant identify the workplace location of all employees in its answer to Interrogatory number 1, as well as, the workplace origin of each EEO, EEOC and PHRC complaint.

WHEREFORE, this Honorable Court should enter an Order that that the Defendant Pennsylvania Department of Transportation produce for inspection by the Plaintiff or his staff at PennDot's Clearfield District 2-0 office a photocopy or facsimile transmission of each EEO, EEOC and PHRC complaint

filed by non-managerial, forty years of age or older employees of PennDot since April 27, 1996.

This Honorable Court should further Order that the Defendant identify the workplace location of all employees it supplied in its Answer to Interrogatory number 1, as well as, the workplace origin of each EEO, EEOC and PHRC complaint.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By: EJA
Edward J. Van Allen, Esq.
PA I.D. No. 11250
119 S. Burrowes Street
State College, PA 16801
(814) 238-2088
Fax: (814) 466-2711

Filed by:

William A. Shaw, Jr., Esq.

The Law Offices of
EDWARD J. VAN ALLEN, P.C.

Labor and Employment Law
119 S. Burrowes Street, Suite 103
State College, Pennsylvania 16801
814.238.2088
Fax: 814.466.2711
edward@vanallen.com

March 11, 2002

Gwendolyn Mosley
Chief Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

VIA FAX TO: (717) 772-4526

Re: Joseph M. Buynak v. Pennsylvania Department of Transportation; Number 00-501-CD

Dear Ms. Mosley:

I do want to thank you for providing an advance list of over forty non-managerial PennDot employees for my people when they inspected the files in Bellefonte and Hyde. However, we do need those similar files for employees from April, 1996 on, who may no longer be employed by PennDot. If those files for District 2-0 employees are maintained in the Clearfield office, those files could be made available when the inspections are done there.

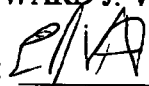
To facilitate both of our needs, I can advise you that we intend to concentrate on those employees in Interrogatory number 1 who are or were employees in District 2-0 in the next couple of weeks at each of the county maintenance facilities and also at the Clearfield District 2-0 office. If the lists are complied now and faxed to each of these locations, my people can go there to inspect the files without need of bothering you each day. We do plan to revisit Bellefonte and Hyde for a few hours each.

In addition we note that there were EEO drawers that we believe will contain relevant information, and we would like to have access to that information which should be a facile way of obtaining the correct answer to Interrogatory number 1. Are the BEO files also maintained at each location? They, too, would have the names and necessary information for us to make a correct assessment.

Thank you for your assistance.

Very truly yours,

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, Esq.

EJVA/lw

The Law Offices of
EDWARD J. VAN ALLEN, P.C.

Labor and Employment Law
119 S. Burrowes Street, Suite 103
State College, Pennsylvania 16801
814.238.2088
Fax: 814.466.2711
edward@vanallen.com

March 13, 2002

Gwendolyn Mosley
Chief Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

VIA FAX TO: (717) 772-4526

Re: Joseph M. Buynak v. Pennsylvania Department of Transportation; Number 00-501-CD

Dear Ms. Mosley:

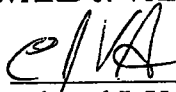
We plan to begin our inspection of personnel files in the Clearfield District 2-0 Office tomorrow, March 14, 2002. We have been informed that certain "sensitive" files from Bellefonte County Maintenance are now located in the Clearfield District Office. We do not understand why these files are now in the Clearfield District Office when each county has an EEO Coordinator responsible for these files. In any event, we would like to review these "sensitive" files when we are in the Clearfield District Office tomorrow. It does not appear that a review of EEO files from the county offices or district offices was made. Thus, we would like to review these files as well. From Ms. Gross' Affidavit attached to PennDot's Answer to Motion for Sanctions she admitted in Paragraph 12 that she did not "include the names of individuals with PHRC/EEOC complaints which predated 1998" and she also admitted in Paragraph 13 that "[H]ard copy archived files do exist for PHRC/EEOC employee complaints that were served upon the Department after August 9, 1994." She states that this search "could not have been accomplished within the time period" she had available to her.

In addition, PennDot's purported Answer to Interrogatory number 1 does not identify whether those fifteen (15) employees worked in Harrisburg or in a county or a district office. Please fax that information to 814.466.2711.

Thank you for your cooperation.

Very truly yours,

EDWARD J. VAN ALLEN, P.C.

By: 
Edward J. Van Allen, Esq.

EJVA/jb

The Law Offices of
EDWARD J. VAN ALLEN, P.C.

Labor and Employment Law
119 S. Burrowes Street, Suite 103
State College, Pennsylvania 16801
March 19, 2002
Fax: 814.466.2711
edward@vanallen.com

Gwendolyn Mosley, Esq.
Chief Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

VIA FAX TO: (717) 772-4526

Re: Joseph M. Buynak v. Pennsylvania Department of Transportation; Number 00-501-CD

Dear Ms. Mosley:

Kindly respond to my letters of March 11 and 13, 2002. Where is the base of operations for the fifteen (15) employees listed in your Answer to Interrogatory number 1? Are any of those employees assigned to District 2-0? Why were names of William Hineman, Shiwendra Singh and Charlie Savage not included in the Answer to Interrogatory number 1? Were others omitted because they were located in the county or district offices?

Denise Gross has acknowledged in Paragraph number 12 that the "listing does not include the names of individuals with PHRC/EEOC complaints which predated 1998," and states in Paragraph 13 that "[H]ard copy archived files do exist for PHRC/EEOC employee complaints that were served upon the Department after August 9, 1994." In Paragraph 14 she further states that it would have required a search of the actual copies of the filed complaints" . . . that "are maintained in the Department's archives." Searching for "every single archived complaint" "could not have been accomplished within the time period" Denise Gross said she had available. Since we did inspect a couple EEO files at the Clearfield District 2-0 Office last Thursday, it has been reported to us that such files are maintained at the District Offices. Even with PennDot's "run-around" (Each location claiming such files were elsewhere.), we were able to identify over 40 PennDot employees in three locations who fit the requirements of Interrogatory number 1. I believe that PennDot should have made more of an effort. How burdensome and costly would it have been for PennDot to email each County Coordinator and each District personnel office and request the list of employees in their EEO and PHRC files that match the criteria in Interrogatory number 1 and then list the adverse employment decisions each suffered.

I anticipate being able to move for class certification in the near future because we now have over 50 names of PennDot employees who fit the criteria of Interrogatory number 1, but I will possibly file a Motion for an Extension for Class Certification since that is already due by March 29, 2002.

Please also contact Indiana District 10-0, Holidaysburg District 9-0, Montoursville District 3-0, Franklin District 1-0 so they can anticipate our file inspection. Please have them have available to us their EEO and PHRC files from April 26, 1996. We do appreciate their having the list of

Gwendolyn Mosley, Esq.

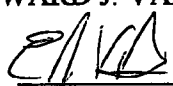
Page two

March 19, 2002

over forty, non-managerial employees ready when we arrive. The Clearfield District 2-0 Office said they did not know our inspection was to take place last Thursday. Were they not notified?

Very truly yours,

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, Esq.

EJVA/jb

The Law Offices of
EDWARD J. VAN ALLEN, P.C.

Labor and Employment Law
119 S. Burrowes Street, Suite 103
State College, Pennsylvania 16801
814.238.2088
Fax: 814.466.2711
edward@vanallen.com

April 1, 2002

Gwendolyn Mosley
Chief Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

VIA FAX TO: (717) 772-4526

Re: Joseph M. Buynak v. Pennsylvania Department of Transportation; Number 00-501-CD

Dear Ms. Mosley:

In my March 13, 2002, letter I requested the employment location for each of the fifteen names that were submitted in Answer to Interrogatory number 1 on January 8, 2002. As of this date I have not received those locations from you.

In addition if those employees were all based in Harrisburg, as is Mr. Buynak, then do the District Offices house those records for employees who have filed EEO and PHRC complaints? Please advise.

We need to complete this phase of the personnel file inspection so that we can file Mr. Buynak's Motion for Class Certification. We currently have approximately sixty names of "similarly situated" persons just from the files we have inspected and names we have been given. Although class certification in Pennsylvania does not require a specific number, we are confident that we soon be able to require the numerosity requirement by any standard which the Court may set. We also believe that those who have filed with the EEO and PHRC between April, 1996, through 1997, which Ms. Gross admitted were not on the computer, should also be included in our Motion, as well as, employees based out of Harrisburg. I look forward to receiving your timely response because we intend to inspect those files this week.

Very truly yours,

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, Esq.

EJVA/lw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

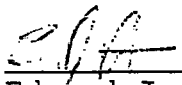
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	(Judge Reilly)
Defendant.	)	

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of April, 2002, I caused a true and correct copy of the within Motion to be served upon the Defendant by U.S. mail, first-class and postage prepaid addressed to counsel for the Defendant as follows:

Gwendolyn Mosley, Esq.
Senior Deputy Attorney General
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
And via fax: 1.717.772.4526



Edward J. Van Allen, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAK,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

Number 00-501-CD

JURY TRIAL DEMANDED

CLASS ACTION

(Judge Reilly)

ORDER

It is hereby Ordered on this the 5 day of May, 2002, that the Defendant Pennsylvania Department of Transportation ("PennDot") produce for inspection by the Plaintiff or his staff at PennDot's Clearfield District 2-0 office a photocopy or facsimile transmission of each EEO, EEOC and PHRC complaint filed by non-managerial, forty years of age or older employees of PennDot since April 27, 1996.

It is further Ordered that the Defendant identify the workplace location of all employees it supplied in its answer to Interrogatory number 1, as well as, the workplace origin of each EEO, EEOC and PHRC complaint.

By the Court:

John K. Reilly, Jr., President Judge

FILED

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William A. Shaw
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	(Judge Reilly)
Defendant.	)	

MOTION FOR ORDER DIRECTING IMMEDIATE COMPLIANCE WITH PRIOR
ORDER AND FOR EXTENSION OF TIME TO FILE MOTION FOR
CLASS CERTIFICATION

NOW COMES the Plaintiff Joseph M. Buynak, by his attorneys Edward J. Van Allen, P.C., and makes this Motion for Order Directing Immediate Compliance with Prior Order and for Extension of Time to file Motion for Class Certification.

1. On March 26, 2002, the Plaintiff filed a Motion for Extension of Time to file a Motion for Class Certification.

FILED

MAY 22 2002

0/2:20/wf
William A. Shaw
Prothonotary

1 COPY TO ATTORNEY

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2. On March 27, 2002, this Court issued an Order which granted the Plaintiff an Extension of Time until June 4, 2002, to file that Motion for Class Certification.

3. On February 27, 2002, this Court issued an Order which entitled Plaintiff to examine personnel files of the Defendant to be completed within ninety (90) days thereof.

4. On April 4, 2002, the Plaintiff filed a Motion to seek discovery of the Defendant's EEO, EEOC, and PHRC files.

5. The Defendant did not oppose this Motion.

6. On May 8, 2002, this Court issued an Order which granted said Motion.

7. By letter dated May 9, 2002, the Undersigned faxed a letter to Gwendolyn T. Mosley, Counsel of Record for PennDot and stated that he and his staff would arrive at the Clearfield District 2-0 office on Wednesday, May 15, 2002, to review the EEOC, EEO and PHRC complaints stated in the Order and would also look forward to reviewing the workplace site of each complainant in the Defendant's Answer to Interrogatory number 1.

8. However, a telephone call to the clerical staff of the Clearfield District office on Monday, May 13, 2002, revealed that all the personnel officers were at a

statewide meeting through Wednesday, May 15, 2002, but would return on Thursday, May 16, 2002.

9. During the early morning of May 16, 2002, the Undersigned received a facsimile transmission from Ms. Mosley stating that she intended to file a Motion for Reconsideration of this Court's Order of May 8, 2002, and stated that "In the interim, we are unable to provide you with the information you have requested."

10. As of the afternoon of May 21, 2002, Ms. Mosley has neither filed a Motion for Reconsideration, nor has she made available the aforesaid complaints.

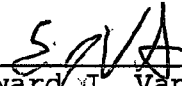
11. The Undersigned believes that he needs to review the EEOC, EEO and PHRC complaints to prepare a Motion for Class Certification.

WHEREFORE, this Court should enter an Order directing that Gwendolyn T. Mosley, Esq. and the Pennsylvania Department of Transportation immediately comply with this Court's Order of May 8, 2002; that the Plaintiff's representatives be granted an Extension of Time of one week following the aforesaid compliance to complete their inspection of the Defendant's personnel files; and that the Plaintiff be granted an Extension of Time until June 30, 2002, to file a Motion for Class Certification.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By:


Edward J. Van Allen, Esq.

PA I.D. No. 11250

119 S. Burrowes Street

State College, PA 16801

(814) 466-2848

Fax: (814) 466-2711

Date: May 22, 2002



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

May 16, 2002

MIKE FISHER
ATTORNEY GENERAL

REPLY TO:
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120
FAX: 717-772-4526
DIRECT: 717-787-8106

VIA FACSIMILE

Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801

RE: Buynak v. PA Department of Transportation
No. 00-501-CD (Clearfield CCP)

Dear Mr. Van Allen:

I received and read the copy of the Court's order. I have been out of the office. I am asking the Court to reconsider its order and to stay it pending resolution of our reconsideration motion. In the interim, we are unable to provide you with the information you have requested.

Very truly yours,


Gwendolyn T. Mosley
Senior Deputy Attorney General

GTM/ss

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
)
) Number 00-501-CD
)

) JURY TRIAL DEMANDED
)

) CLASS ACTION
)

) (Judge Reilly)
)

ORDER

It is hereby Ordered on this the 5 day of May,
2002, that the Defendant Pennsylvania Department of
Transportation ("PennDot") produce for inspection by the
Plaintiff or his staff at PennDot's Clearfield District 2-0
office a photocopy or facsimile transmission of each EEO, EEOC
and PHRC complaint filed by non-managerial, forty years of age
or older employees of PennDot since April 27, 1996.

It is further Ordered that the Defendant identify the
workplace location of all employees it supplied in its answer to
Interrogatory number 1, as well as, the workplace origin of each
EEO, EEOC and PHRC complaint.

BY THE COURT,

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

/s/ JOHN K. REILLY, JR.

MAY 08 2002

Judge

Attest.

W. A. H.
Prothonotary/
Clerk of Courts

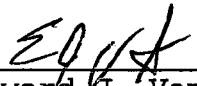
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	(Judge Reilly)
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on this the 22th day of May, 2002, I caused a true and correct copy of the within Motion to be served upon the Defendant by U.S. mail, first-class and postage prepaid addressed to counsel for the Defendant as follows:

Gwendolyn Mosley, Esq.
Senior Deputy Attorney General
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120


Edward J. Van Allen, Esq.

40 GA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA :

Defendant.

No. 00-501-CD

(Jury Trial Demanded)

FILED

MAY 22 2002
m 2/21/02 E. Shaw
William A. Shaw
Prothonotary

1 sent to AG.

MOTION OF DEFENDANT
DEPARTMENT OF TRANSPORTATION FOR RECONSIDERATION

Defendant, Department of Transportation, by its attorneys, hereby moves the Court to reconsider and vacate the order dated May 8, 2002 in the above-referenced case. In support of this motion, the defendant states the following:

1. This lawsuit purports to be a class-action filed on behalf of present and former non-managerial employees of the Department of Transportation ("the Department") who are forty years of age and older and who are disabled. No motion for class certification has yet been filed.
2. On December 21, 2001, at the argument held on plaintiff's motion to compel discovery, the Court determined that because the issue of class certification had not been resolved, defendant should be required to respond only to interrogatory number 1 which reads:

Identify all persons who are residents of the Commonwealth of Pennsylvania who on or after April 27, 1996, (a) were or are employed by PennDOT in a non-managerial position; (b) were 40 years of age or older; and (c) were subject to an actual or threatened Adverse Employment Decision or Decisions made PennDot.

The Court therefore directed the defendant to respond only to interrogatory number 1.

3. The defendant complied with the Court's order on January 8, 2002.
4. Because plaintiff was not satisfied with defendant's response, his attorney filed a motion for sanctions.
5. Argument on plaintiff's motion for sanctions was held on February 27, 2002 at which time the Court granted the motion in part, allowing plaintiff the right "to examine all personnel files of Defendant for persons who were or are employed by Defendant in a non-managerial position who are 40 years of age or older as of April 27, 1996". The inspection was to be completed within 90 days from February 27, 2002.
6. On or about April 8, 2002, plaintiff filed a motion requesting that the Court's order dated February 27, 2002 be amended to read

It is hereby ordered on this ____ day of April 2002, that the Defendant Pennsylvania Department of Transportation ("PennDot") produce for inspection by the Plaintiff or his staff at PennDot's Clearfield District 2-0 office a photocopy or facsimile transmission of each EEO, EEOC and PHRC complaint filed by non-managerial, forty years of age or older employees of PennDot since April 27, 1996.

It is further ordered that the Defendant identify the workplace location of all employees it supplied in its answer to Interrogatory number 1, as well as, the workplace origin of each EEO, EEOC and PHRC complaint.

7. On May 8, 2002, the Court granted the motion.
8. Defendant believes that reconsideration of that order is warranted.
9. For one thing, the May 8, 2002 order does not specify a date or time within which the production of EEO, EEOC and PHRC complaints should be accomplished. Nor does it specify who should bear the cost of complying with the Court's order.
10. As was the case of the personnel records which were at issue in connection with interrogatory number 1, the EEO, EEOC and PHRC files are not computerized but are

maintained in the normal course of business at each of the Department's County District Offices. Just as it was unduly burdensome for the Department to have to gather all the personnel files of the putative class members and send them to one central location for plaintiff to inspect, it is equally burdensome for the Department to have to gather all the EEO, EEOC and PHRC files of these individuals and send them to the Clearfield District Office 2-0, for plaintiff to inspect.

11. Moreover, the task of compiling the requested files and sending them to the Clearfield District Office 2-0 requires the involvement of departmental staff and is time consuming. It is simply not fair to impose such a financial burden upon the defendant when plaintiff is the only one who will benefit from the expenditures.
12. The Court recognized that undue burden upon the defendant with respect to the personnel files plaintiff requested and directed the plaintiff to go the office where the files are maintained in the normal course of business to inspect them. The Court should likewise recognize the burden upon the Defendant in the case of EEO, EEOC and PHRC files if those files are found to be necessary.
13. However, the defendant does not believe that any of the activity or information are subjects of the amended order are necessary.
14. Counsel for the plaintiff claimed that access to the personnel files was needed in the first instance so that he could obtain information necessary to file plaintiff's motion for class certification.
15. That access has been provided and according to plaintiff's counsel, he now has sufficient information to file the motion for class certification.
16. Since the goal of the initial discovery has been met, it makes little sense to expand the

scope of the original order and require the defendant to expend further time and personnel resources to produce more information than is needed at this juncture.

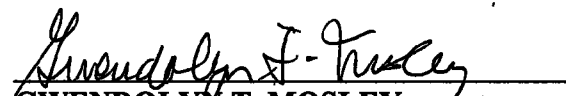
17. For these reasons, defendant asks the Court to reconsider its Order dated May 8, 2002 and vacate it because it is unnecessary. In the alternative, should the Court decline to vacate the May 8, 2002 order, defendant asks that the May 8, 2002 order be further amended to specify the time period within which defendant should produce the EEO, EEOC and PHRC files at issue and that defendant be permitted to produce those files at each District Office where they are maintained in the normal course of business.

WHEREFORE, defendant asks the Court to grant its motion and vacate the Order dated May 8, 2002. In the alternative, defendant asks that the Court to further amend the May 8, 2002 order to specify a time period within which the inspection of EEO, EEOC and PHRC files should occur and permit the defendant to produce those files in each District Office where they are maintained in the normal course of business.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: May 21, 2002

DATE: May 21, 2002

FILED

80

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, MAY 23 2002 PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

William A. Shaw
Prothonotary

Number 00-501-CD

JURY TRIAL DEMANDED

CLASS ACTION

(Judge Reilly)

PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR RECONSIDERATION

NOW COMES the Plaintiff Joseph M. Buynak by his attorneys Edward J. Van Allen, P.C. and submits this Answer in opposition to the Defendant's Motion for Reconsideration ("Motion"). The numbered paragraph's of this Answer correspond to the numbered paragraphs of the Motion.

1. The gratuitous definition of the class supplied by the Defendant to include "disabled" persons as a criteria for membership in the class is denied. To the contrary, the purported class consists of all non-managerial persons since April 27, 1996, who have been or were formerly employed by PennDot, were forty years of age or older and have been subjected to actual or threatened adverse employment decisions.

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Indeed, neither the Complaint, nor the PHRC complaint nor the amendments thereto includes those who have suffered handicap or disability discrimination. The only allegations addressed to Mr. Buynak's handicap or disability is that he was denied a reasonable accommodation for his disability because of his age. The only discrimination addressed in the Plaintiff's Complaint is age discrimination. It is admitted that no Motion for Class Certification has been filed. The reasons, therefor, are set forth in the Plaintiff's currently filed and pending Motion for an Extension to File Class Certification.

2. Admitted.

3. It is denied that the Defendant complied with this Court's Order of December 21, 2001. This is evidenced by this Court's granting sanctions against the Defendant on February 28, 2002, for such failure to comply.

4. It is admitted that the Plaintiff was not satisfied with the Defendant's Response. However, it is denied that the Defendant was in compliance with the December 21, 2001 Order of this Court.

5. Admitted.

6. Admitted.

7. Admitted.

8. Denied. The Defendant did not oppose the Plaintiff's Motion filed on April 4, 2002, although it has had ample

opportunity to do so. As this Court's Order of May 8, 2002, was not issued until approximately 5 weeks following the Plaintiff's filing of said Motion and proposed Order. The Defendant is therefore guilty of laches in filing its Motion for Reconsideration. Such delay should not be rewarded by this Court. Surely the Attorney General's office with all of its resources and attorneys could respond in a timely fashion. It is the practice of the undersigned's office, out of respect for this Court and fellow members of the bar, to respond in a timely fashion. Whereas, it has been the practice of the Defendant to constantly engage in dilatory behavior. In fact, the Plaintiff's Motion for Class Certification would have been previously filed but for the scavenger hunt for the appropriate files of employees which would answer Interrogatory number 1. Reconsideration of the May 8th Order is not warranted.

9. Admitted. Any mythical date established for the viewing of the EEO, EEOC and PHRC complaints would have only have resulted in inspiring the Defense to respond that it could not possibly accomplish this burdensome task in such a period of time as was the case in January 2002. Please see Affidavit of Denise Gross attached to the Plaintiff's Motion for Sanctions. The cost of complying with the Court's Order should be borne by the party whose conduct resulted in the imposition of this Court's Order of May 8, 2002.

10. Denied. The Plaintiff seeks only the EEO, EEOC and PHRC **complaints** (approximately 2-3 pages each), not the files. These complaints could be transmitted via facsimile from the District offices to the Clearfield District 2-0 office. The Defendant once again would like to institute the scavenger hunt for the Plaintiff to travel all over the Commonwealth for records readily available to it and that could be easily transmitted. Once again the defendant attempts to make the Plaintiff's discovery unduly burdensome. Also one must wonder how frequently and in what magnitude the Defendant receives civil rights complaints from its employees if the production of such is so costly and burdensome.

11. Denied. See the Plaintiff's Answer to paragraph number 10 which is incorporated herein by reference. The cost of the Defendant's compliance is minimal and the benefits will inure to all of the employees of the Pennsylvania Department of Transportation and will assist in the demise of the perpetuation of rampant age discrimination practiced by the Pennsylvania Department of Transportation against its older employees.

12. Denied. This Court made no such observation. Again the Undersigned is only requesting the 2-3 pages of the EEO, EEOC and PHRC complaints not the entire files. It is interesting now that the Defendant suggests that the EEO, EEOC and PHRC complaints are unnecessary when the Defendant has

repeatedly argued unsuccessfully before this Court that only those persons who have filed timely PHRC complaints could possibly be members of the Plaintiff's class in an attempt to unfairly eliminate those discriminatees from the class.

13. Denied. See the answer to paragraph number 12 which is herein incorporated by reference.

14. Admitted.

15. It is denied that access was provided because the Defendant knew that the information that the Plaintiff sought was hidden within the EEO, EEOC and PHRC files. The exact number of employees required for class certification is subject to interpretation.

16. Denied. The goal of the initial discovery has not been met for the names and locations of employment for countless discriminatees is hidden within the EEO, EEOC and PHRC files which the Pennsylvania Department of Transportation refers to as "sensitive" files. The EEO, EEOC and PHRC complaints are indeed needed since, for reasons best known to the Defendant, such complaints are not maintained within the individual employees' personnel files.

For the aforesaid reasons the Defendant's untimely Motion for Reconsideration should be denied. Such complaints should be supplied immediately as such does not constitute an entire search through the maze of personnel files but is contained in

only the EEO, EEOC and PHRC files in just the eleven District offices and in Harrisburg.

Wherefore, this Court should deny the Defendant's Motion for Reconsideration in its entirety.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By:



Edward J. Van Allen, Esq.

PA I.D. No. 11250

119 S. Burrowes Street

State College, PA 16801

(814) 466-2848

Fax: (814) 466-2711

May 23, 2002

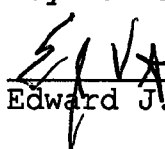
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	(Judge Reilly)
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on this the 23rd day of May, 2002, I caused a true and correct copy of the within Motion to be served upon the Defendant by U.S. mail, first-class and postage prepaid addressed to counsel for the Defendant as follows:

Gwendolyn Mosley, Esq.
Senior Deputy Attorney General
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120



Edward J. Van Allen, Esq

FILED
9:41 AM
MAY 23 2002
JCC
Atty. Van Allen
for William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

43

JOSEPH M. BUYNAC,
individually and on behalf of all other
persons similarly situated

vs.

No. 00-501-CD

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA

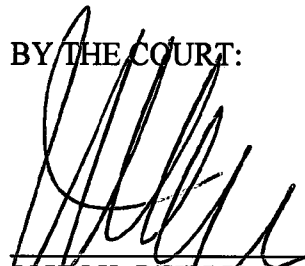
ORDER

AND NOW, this 23rd day of May, 2002, upon consideration of Plaintiff's Motion for Order Directing Immediate Compliance with Prior Order and for Extension of Time to File Motion for Class Certification, a Rule is hereby issued on Defendant to appear and show cause why the Motion should not be granted. Rule Returnable the 14 day of June, 2002, at 9:30 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

It is the further ORDER of the Court that the June 4, 2002 deadline for filing for Class Action is extended pending ruling on outstanding motions.

FILED

BY THE COURT:


JOHN K. REILLY, JR.
President Judge

MAY 23 2002
6/2:25/MS
William A. Shaw
Prothonotary

2 CENT TO ATT



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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

42

JOSEPH M. BUYNAC,
individually and on behalf of all other
persons similarly situated

vs.

No. 00-501-CD

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 23rd day of May, 2002, upon consideration of

Plaintiff's Answer to Defendant's Motion for Reconsideration, a Rule is hereby
issued on Defendant to appear and show cause why the Motion should not be granted.

Rule Returnable the 14 day of June, 2002, at 9:30

A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield,

PA.

FILED

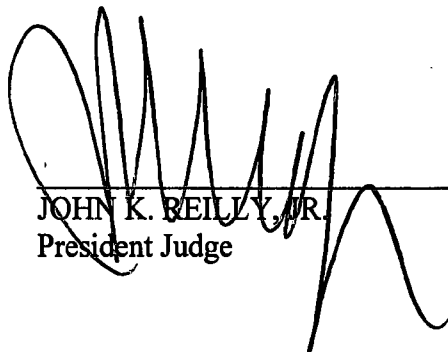
MAY 23 2002

0/2:30/w
William A. Shaw
Prothonotary

2 SENT. TO ARTY

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BY THE COURT:



JOHN K. REILLY, JR.
President Judge

44

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. BUYNAC,
individually and on behalf of all other
persons similarly situated

vs.

No. 00-501-CD

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA

ORDER

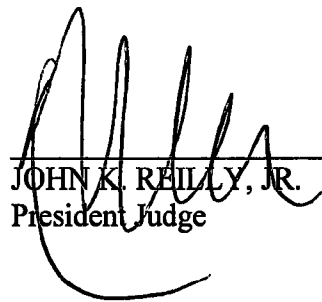
AND NOW, this 23rd day of May, 2002, upon consideration of
Motion of Defendant Department of Transportation for Reconsideration, a Rule is
hereby issued on Plaintiff to appear and show cause why the Motion should not be
granted. Rule Returnable the 14 day of June, 2002, at
9:30 A.M. in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, PA.

FILED

MAY 23 2002

6/2:30 / 405
William A. Shaw
Prothonotary

BY THE COURT:


JOHN K. REILLY, JR.
President Judge

#45

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED

JUN 14 2002

45

JOSEPH M. BUYNAC,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

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No. 00-501-CD

William A. Shaw
Prothonotary

(Jury Trial Demanded)

DEFENDANT'S ANSWER TO PLAINTIFF'S
MOTION FOR ORDER AND FOR EXTENSION OF
TIME TO FILE MOTION FOR CLASS CERTIFICATION

Defendant, Department of Transportation, by its attorney, hereby answers the plaintiff's motion for order and for extension of time to file motion for class certification in the above-captioned case as follows:

1. ADMITTED.
2. ADMITTED.
3. ADMITTED.
4. DENIED. The motion filed by the plaintiff was entitled a motion for amendment of order. The order to which plaintiff's motion referred was the order dated February 27, 2002 granting him leave to examine all of defendant's personnel files concerning individuals who were or are employed in a non-managerial position who are 40 years of age or older as of April 27, 1996.
5. ADMITTED. By way of further answer, counsel for the defendant was not afforded sufficient time to respond to plaintiff's motion for amendment of order before it was

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granted by the Court.

6. ADMITTED. By way of further answer counsel was not afforded sufficient time to respond to plaintiff's motion for amendment of order before it was granted by the Court.

7. ADMITTED.

8. ADMITTED.

9. ADMITTED.

10. ADMITTED.

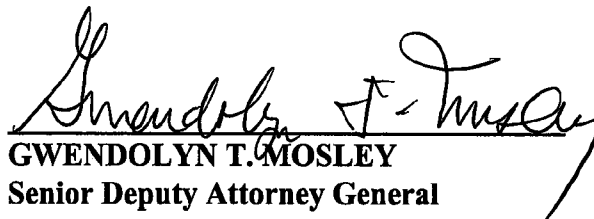
11. ADMITTED that plaintiff's counsel may "believe" that he needs to review the EEOC, EEO and PHRC complaints to prepare a motion for class certification. DENIED that plaintiff's counsel actually needs to reviews these complaint to prepare the motion for class certification. By way of further answer, plaintiff's counsel now has all the information from the personnel files he and his agents reviewed he needs to file the motion for class certification.

WHEREFORE, plaintiff's motion for an order directing immediate compliance with prior order should be denied.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNACK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

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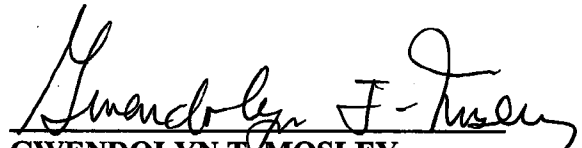
No. 00-501-CD

(Jury Trial Demanded)

CERTIFICATE OF SERVICE

I, GWENDOLYN T. MOSLEY, Senior Deputy Attorney General, hereby certify that I have this day served the foregoing Defendant's Answer to Plaintiff's Motion for Order and for Extension of Time to File Motion for Class Certification, by hand delivering a copy of it to the following:

Edward J. Van Allen, Esquire


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: June 14, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. BUYNAK

:

VS.

: NO. 00-501-CD

DEPARTMENT OF TRANSPORTATION, :

COMMONWEALTH OF PENNSYLVANIA :

O R D E R

NOW, this 14th day of June, 2002, upon consideration of Plaintiff's Motion for Directing Immediate Compliance with Prior Order and for Extension of Time to File Motion for Class Certification and following argument thereon, it is the ORDER of this Court that said Motion for Order Directing Immediate Compliance shall be and is hereby dismissed at the present stage of the proceeding and Plaintiff granted twenty (20) days from date hereof to file his Motion for Class Certification.

It is the further Order of this Court that Defendant's Motion for Reconsideration shall be and is hereby dismissed without prejudice.

BY THE COURT,

President Judge

FILED

JUN 17 2002

William A. Shaw
Prothonotary

46
117

FILED

0/3:54
JUN 17 2002

William A. Shaw
Prothonotary

1 CC Atty Edward Van Allen
1 CC Atty Gwendolyn Mosley
EWS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
)
) Number 00-501-CD
)
)

) JURY TRIAL DEMANDED
)
)

) CLASS ACTION
)
)

) (Judge Reilly)
)
)

NOTICE TO PLEAD

To: The Defendant,
The Pennsylvania Department of Transportation

You are hereby notified to file a written response to the enclosed Plaintiff's Motion for Class Certification within twenty (20) days from service hereof or a judgment may be entered against you.

Edward J. Van Allen, P.C.

By: Edward J. Van Allen

Edward J. Van Allen, Esq.
PA T.D. No. 11250
119 S. Burrowes Street
State College, PA 16801
(814) 769-6950

Attorney for the Plaintiff
Joseph M. Buynak

July 2, 2002

FILED

JUL 03 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	(Judge Reilly)
Defendant.	)	

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

NOW COMES the Plaintiff, Joseph M. Buynak, by and through his attorneys Edward J. Van Allen, P.C., and files this Motion for Class Certification. The Plaintiff is 59 year old male who resides in Osceola Mills, Clearfield County, Pennsylvania and is employed by the Pennsylvania Department of Transportation ("PennDot") as a Transportation Construction Inspector. In support thereof, Plaintiff avers as follows:

1. This civil action is brought by the Plaintiff, Joseph M. Buynak on his own behalf and also on behalf of all similarly situated persons, under Pa. R.C.P. No. 1702. In order for an action to be certified as a class action, there must be questions of law or fact which are common to all the members of the putative class. There must be questions involving facts

which are substantially the same, so that proof as to one claimant would be proof as to all. It is this requirement which gives a class action its legal viability. Common questions of law or fact will generally exist if class members' legal grievances arise out of the same practice or course of conduct on the part of a class opponent. It is essential that there be a predominance of common issues shared by all class members which can be justly resolved in a single proceeding.

2. Sufficient commonality of law or fact exist between the Plaintiff and the representatives of the class defined below: All persons who are residents of the Commonwealth of Pennsylvania and who since March 1, 1996 (three years prior to filing of Plaintiff's PHRC Complaint), were or are employed by PennDot in a non-managerial capacity who were 40 years of age or older and who suffered one or more adverse employment decisions.

3. The Plaintiff is unable to state precisely the size of the class, but the Plaintiff believes the members of such class to number at least in excess of one hundred past and present employees of PennDot and to logically include 1000 or more individuals. Through file investigation and multiple, detailed and lengthy personal interviews the Plaintiff has been able to define over 50 members of the class in just the Clearfield District 2-0. PennDot has ten other Districts in the state of Pennsylvania. PennDot also supplied, in its partial Answer to

Interrogatory number 1, the names of approximately 15 employees who have since March 1, 1996, actually filed charges of age discrimination against PennDot. However, PennDot did not comply with an Order of this Court to disclose to the Plaintiff the employment location of such persons, but the Plaintiff believes that they may be employees based out of the Harrisburg office. In "The Pennsylvania Department of Transportation 2002 Equal Employment Opportunity Plan" publication PennDot reveals that from January 1, 2001 to December 31, 2001 at least 17 employees filed age discrimination charges against PennDot either with PennDot's own EEO office or with the Pennsylvania Human Relations Commission ("PHRC"). Because the names are not given in this publication, the Plaintiff does not know if any of these persons was in the previously supplied Answer to Interrogatory number 1. Nevertheless, there are missing the names of those persons who so filed from March 1, 1996 to January 1, 2001, and those persons who have recently filed with the EEO office and PHRC in 2002. PennDot also refused to disclose each of the names of employees who actually filed age discrimination charges with PennDot's EEO office or the PHRC even though the Defendant repeatedly erroneously argued, but, nevertheless argued, before this Court that these persons were the only persons it believed should be members of the class. The Plaintiff, therefore, reasonably believes the number of

potential class members to be in excess of 100 and possibly to be in excess of 1000 persons. Therefore, another prerequisite to a class action, pursuant to Pa. R.C.P. No 1702(1) that the class is so numerous that joinder of all members is impracticable, has been met.

4. There are numerous common questions of law or fact with respect to the Defendant's practices of age discrimination. Pursuant to Pa. R.C.P. No. 1702(2) relating to common questions of fact arising out of the same practice or course of conduct, PennDot uses its collective bargaining agreement, which is a readily available printed document to classify certain management positions as "entry level" which it routinely fills with younger unqualified and inexperienced persons rather than promoting or transferring the best able and most competent, qualified and experienced employees over the age of forty to these positions. The Plaintiff and all other potential class members identified to date have been adversely affected by this contractual provision which PennDot uses against older more costly employees. The Defendant unlawfully discriminated against non-managerial persons who are residents of the Commonwealth of Pennsylvania and who since March 1, 1996, were or are employed by PennDot who were 40 years of age or older and who suffered one or more adverse employment decisions and

were treated less favorably than persons under the age of forty by:

a. not promoting them notwithstanding the fact that they were the most qualified and best able to perform the duties and responsibilities of such positions even though in many cases such persons had assumed the duties and responsibilities of such positions in an acting capacity or who were trained and often certified for that position;

b. even requiring that these persons over forty train the younger, inexperienced, new employees to be the very supervisor or foreman in charge of this older person who trained them;

c. not transferring them to lateral positions for which they would have earned greater compensation notwithstanding the fact that they were the most qualified and best for the positions and best able to perform the duties and responsibilities of such positions;

d. assigning them greater duties and responsibilities without appropriately compensating them;

e. threatening, harassing, intimidating or coercing these persons in positions they held;

f. creating an atmosphere which has a "chilling effect" on qualified individuals who would have otherwise applied but for the knowledge that such positions would be

filled by persons under forty who were hand-picked due to PennDot asking them to apply for the position. The Plaintiff twice requested promotions and each time his request was denied. The second denial was accompanied by a threat of potential job loss if he persisted in such requests. In his complaint the Plaintiff also complained of never having been promoted, which is contrary to the Defendant's affirmative action policy, and he requested relief with respect to other such matters of threats, harassment, intimidation and coercion. The Plaintiff would have applied for more positions, as well as transfers, but for the aforesaid chilling effect.

5. Because the only question of law or fact which is not common to all class members is the amount of individual damages for each particular class member, common questions of law or fact also clearly predominate within the meaning of Pa. R.C.P. No. 1708 which states that in determining whether a class action is a fair and efficient method of adjudicating a controversy, a court must first consider whether common questions of law or fact predominate over any question affecting only individual members of a class. Common questions of law and fact do predominate. The common question of law is whether the aforesaid persons forty years of age or older suffered age discrimination. The common questions of fact are set forth in paragraph 4, a-f, inclusive.

6. The claims of the Plaintiff are typical of the claims of the class. The Plaintiff's overall position on common issues is sufficiently aligned with that of the absent class members to ensure that his pursuit of those interests correspond to the interests of the class members.

7. The Plaintiff will fairly and adequately assert and protect the interests of the class under the criteria set forth in Pa. R.C.P. No. 1709. He will pursue a resolution of the controversy with vigor and in the interest of class members. Also, the Plaintiff is a member of the class, which he has to be in order to have the class certified, and he shares a common interest with other class members. Adequacy of representation of a class by a representative party is an essential element of class action procedure, and the fiduciary aspects of the position of a representative party mandate a consideration of the representative's ability to protect the interests of the class. Adequacy of representation is a mandatory condition for certification of an action as a class action under Rule 1702(4), which cross refers to Rule 1709 for a statement of the criteria to be considered in determining whether the representation of a class is adequate. Rule 1709 specifies three conditions in addition to "other matters," namely, whether a class' attorney will adequately represent the interests of the class, whether there is a conflict of interest between a class and its

representative parties, and whether the representative parties have or can acquire adequate financial resources.

8. The attorneys for the Plaintiff are highly experienced in civil rights litigation having previous class action experience and will aggressively pursue the interests of the class. Under Rule 1709(1), a trial court is charged with the responsibility of determining the adequacy of any attorney's representation when deciding a question of certification of a class. A court may infer an attorney's adequacy from pleadings, briefs, and other material presented to the court. Courts may generally presume that no conflict of interest exists in a class' counsel unless otherwise demonstrated; moreover, until the contrary is demonstrated, courts will assume that members of the bar are skilled in their profession and that they will adequately protect a class' interests.

9. Neither the Plaintiff nor his attorneys have a conflict of interest in the maintenance of this class action.

10. The Plaintiff has or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

11. A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Pa. R.C.P. No. 1708. The Plaintiff's counsel does not anticipate problems of manageability as his prior class action

experience includes class actions involving several hundred class members.

12. The class consists of at least one hundred persons. Because of the common interests of all class members, the difficulties likely to be encountered in the management of the action as a class action will be minimal.

13. The scope of the damages inflicted by the Defendant upon the class members is substantial and its discrimination has been intentional. Thus, the prosecution of separate actions by individual class members would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members of the class not parties to the adjudication or substantially impair or impede their ability to protect their interests.

14. Upon information and belief, there is no other litigation already commenced by or against class members involving the issues herein.

15. A common pleas court is an appropriate forum for the litigation of the claims of an entire class because a common pleas court may exercise jurisdiction over absent class members who are Pennsylvania residents and past and/or present employees of PennDot which, in this case, is a substantial number. In this case the Court of Common Pleas of Clearfield County,

Pennsylvania is an appropriate forum because the Defendant maintains a large office in Clearfield County, a substantial number of class members work in Clearfield County and because of the experience of this Court in administering class action litigation.

16. In view of the complexities of the issues and the expenses of the litigation, forcing multiple individual claims would be potentially unfair to litigants and can be inefficient because if numerous class members did bring individual suits, this Court's docket would become unnecessarily clogged with repetitive litigation.

17. It is not likely that the amounts which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

18. A substantial claim for damages exists on behalf of all class members. In order to achieve maximum judicial economy and fairness to litigants, a class action is desirable to assure that an award of damages is made in a single proceeding and fairly and uniformly allocated among all of the class members.

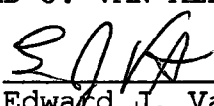
19. The Defendant has acted or refused to act on grounds generally applicable to the class, thereby making final equitable relief appropriate with respect to the class.

20. Class certification is appropriate in this case.

WHEREFORE, the Plaintiff requests this Honorable Court, following this Motion for Class Certification and a hearing on said Motion, to certify the class as defined in numbered paragraph 4 hereof. The damages claimed by the class members are more than the maximum amount for compulsory arbitration.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, Esq.
PA F.D. No. 11250
119 S. Burrowes Street
State College, PA 16801
(814) 769-6950
Fax: (814) 238-1875
Attorney for the Plaintiff,
Joseph M. Buynak, and
for the Class

July 2, 2002

CIVIL ACTION - LAW

Defendant.

(Judge Reilly)

The Undersigned avers that he is authorized to make this verification, he has read the within Motion for Class Certification, the averments of fact set forth in the within Motion for Class Certification are true and correct to the best of his knowledge, information or belief, and this verification is made subject to 18 PA C.S.A. § 4904 relating to unsworn falsifications to authorities.

Joseph M. Buynak 7/2/02

Edward J. Van Allen, Esq.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED

JOSEPH M. BUYNAC,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

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No. 00-501-CD

(Jury Trial Demanded)

JUL 26 2002

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William A. Shaw
Prothonotary

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**DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO
RESPOND TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

Defendant Department of Transportation, by its attorney, hereby moves the Court to enlarge the time for responding to plaintiff's motion for class certification in the above-captioned case. The defendant states the following in support of this motion:

1. More than two years after filing his complaint, plaintiff has moved for class certification.
2. Counsel for plaintiff filed the motion on or about July 2, 2002; however, undersigned counsel received the motion on July 5, 2002.
3. In accordance with the applicable rules, because there was notice to plead included in the motion, the defendant has until July 25, 2002 to file and serve its answer.
4. The defendant intends to file an answer to the motion and an opposing brief; however, its counsel is unable to do so by the prescribed date.
5. Undersigned counsel experienced unanticipated problems in her home this past week which needed immediate repairs which required her presence at home on July 23 and 24, 2002. The missed time left her insufficient time to complete the defendant's submissions in time

#49

to file and serve them by July 25, 2002.

6. Counsel faces another pressing litigation deadlines in a matter which must be received in Scranton on July 26, 2002 which prevents her from resuming work on defendant's answer and opposing brief in this case until July 29, 2002.

7. Counsel for the defendant anticipates that she can complete the work in time to file and serve its answer and opposing brief on July 31, 2002.

8. Undersigned counsel sought concurrence in this motion from plaintiff's attorney, but he declined.

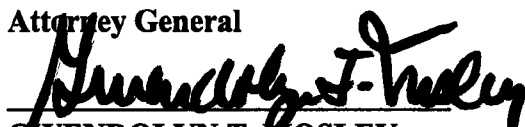
9. Given the long delay in plaintiff's attempt to certify a class, the several enlargements of time sought by plaintiff's counsel in which undersigned counsel has concurred and brevity of the enlargement which is now being requested, the defendant asks the Court to grant its motion.

WHEREFORE, the Defendant Department of Transportation asks the Court to grant its motion and enlarge to July 31, 2002 the time for filing and serving its answer and brief opposing plaintiff's motion for class certification.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

Office of Attorney General
15th Fl., Strawberry Square
Litigation Section
Harrisburg, PA 17120
(717) 787-1180

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

COUNSEL FOR DEFENDANTS

Dated: July 25, 2002

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

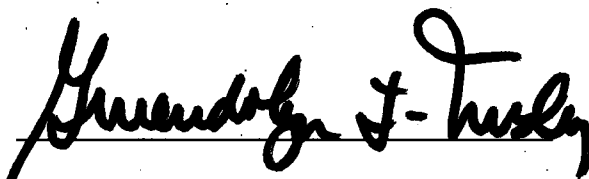
No. 00-501-CD

(Jury Trial Demanded)

CERTIFICATE OF SERVICE

I, Gwendolyn T. Mosley, Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on July 25, 2002, I served a true and correct copy of the foregoing Defendant's Motion for Enlargement of Time Within Which to Respond to Plaintiff's Motion for Class Certification, by causing it to be deposited in the United States Mail, first-class postage prepaid to the following:

Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801



GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

JUL 25 2002

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JUL 25 2002

48 CR

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

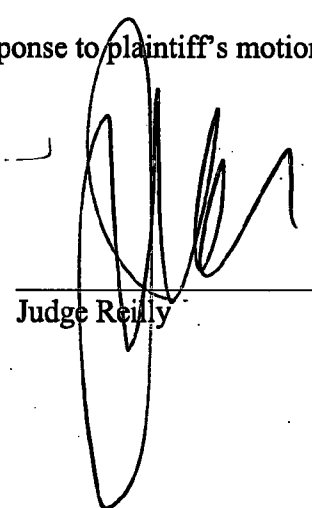
Defendant.

No. 00-501-CD

(Jury Trial Demanded)

ORDER

AND NOW, this 29th day of July, 2002, upon consideration of the Defendant's motion for enlargement of time within which to respond to plaintiff's motion for class certification, and there being good cause for the enlargement, the motion is hereby GRANTED. Defendant Department of Transportation shall file and serve its response to plaintiff's motion for class certification on or before July 31, 2002.



Judge Reilly

FILED

JUL 29 2002
013:0517 *W. A. Shaw*
William A. Shaw
Prothonotary *W. A. Shaw*

v

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49

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

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No. 00-501-CD

(Jury Trial Demanded)

**DEFENDANT'S ANSWER TO
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

Defendant, the Pennsylvania Department of Transportation (hereinafter "the Department" or "PennDot"), by its attorneys, hereby responds to the averments in plaintiff's motion for class certification in the above-captioned case as follows:

1. The averments in this paragraph are a mixture of descriptive statements about the nature of this action and a paraphrasing of the substance of Pa.R.C.P. 1702 concerning class actions and, as such, require NO RESPONSE.

2. ADMITTED only that the purported class is said to be made up of "all persons who are residents of the Commonwealth of Pennsylvania and who since March 1, 1996 (three years prior to filing of Plaintiff's PHRC Complaint), were or are employed by PennDot in a non-managerial capacity who were 40 years of age or older and who suffered one or more adverse employment decisions". DENIED that the purported class is a proper one or that there exists sufficient commonality of law or fact between the plaintiff and all the members of the purported class.

FILED

JUL 31 2002

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William A. Shaw
Prothonotary

[Handwritten signature]
General
#51

3. ADMITTED that there may exist a sufficient number of individuals now or formerly employed by the Department who could properly be included in a class to satisfy the numerosity requirement. DENIED that it is stated in the Pennsylvania Department of Transportation 2002 Equal Employment Opportunity Plan that from January 1, 2001 to December 31, 2001 at least 17 employees filed age discrimination charges against the Department either with its own EEO office or with the Pennsylvania Relations Commission. DENIED that the class defined by the plaintiff is proper; as stated, it is overbroad. DENIED that the Defendant improperly failed to comply with any of the orders of this Court. DENIED that the Department improperly refused to disclose the names of employees who actually filed age discrimination charges with the Department's EEO office or the PHRC. The averment in this paragraph that plaintiff has satisfied the numerosity requirement is a LEGAL CONCLUSION which requires NO RESPONSE. The Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph; therefore, they are all DENIED.

4. DENIED that there are numerous common questions of law or fact with respect to the Department's practices which are said to affect the purported class or that the Department has engaged in the practice of age discrimination against the plaintiff or any of its others employees. Plaintiff has complained that he has been subjected to age discrimination. Specifically, plaintiff has alleged that the Department denied him a reasonable accommodation he requested because of a disability, forced him to exhaust his sick days, forced him to undergo physical examinations and denied him promotions because he is over forty years of age. However, the purported class is said to include those who suffered "one or more adverse employment decision". Logically, because of the breadth of this category, it encompasses individuals who may have allegedly

suffered "adverse" actions wholly unrelated or unlike those which plaintiff included in his complaint. It would include individuals over forty years of age who, unlike plaintiff, have no disability who were discharged from their employment even though plaintiff was not discharged. It would include individuals over forty years of age who have no disability who were suspended from their employment even though plaintiff was never suspended. It would include individuals over forty years of age who have disabilities who suffered no compensable injuries. The class as described by the plaintiff would therefore include claims which present neither common questions of law or fact. DENIED that the Department has implemented the collective bargaining agreement in such a way as to discriminate against present, past or potential employees who are in the protected age group. DENIED that the plaintiff and all other potential class members identified to date have been adversely affected by any of the provisions in the collective bargaining agreement because of their age. DENIED that the Department unlawfully discriminated against non-managerial persons who are residents of the Commonwealth of Pennsylvania and who since March 1, 1996, were or are employed by PennDot who were 40 years of age or older and who suffered one or more adverse employment decisions and were treated less favorably than persons under the age of forty by:

"a. not promoting them notwithstanding the fact that they were the most qualified and best able to perform the duties and responsibilities of such positions even though in many cases such persons had assumed the duties and responsibilities of such positions in an acting capacity or who were trained and often certified for that position;

b. even requiring that these persons over forty train the younger, inexperienced, new employees to be the very supervisor or foreman in charge of this older person who trained them;

c. not transferring them to lateral positions for which they would have earned greater compensation notwithstanding the fact that they were the most qualified and best for the positions and best able to perform the duties and responsibilities of such positions;

d. assigning them greater duties and responsibilities without appropriately compensating them;

e. threatening, harassing, intimidating or coercing these persons in positions they held;

f. creating an atmosphere which has a "chilling effect" on qualified individuals who would have otherwise applied but for the knowledge that such positions would be filled by other persons who are under forty who were hand-picked due to PennDot asking them to apply for the position."

DENIED that plaintiff has twice requested promotions or that his requests were denied.

DENIED that the second denial was accompanied by a threat of potential job loss if he persisted in such requests. ADMITTED that plaintiff included in his complaint that he was never promoted and that he requested relief in that complaint with respect to other such matters of threats, harassment, intimidation and coercion. DENIED that the Department has acted in a way which is contrary to its affirmative action policy or that it has subjected plaintiff to threats, harassment, intimidation or coercion. The Department is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment concerning his motivations for applying for positions, therefore, it is DENIED. DENIED that the Department has created an atmosphere that has a chilling effect upon the plaintiff.

5. DENIED that the amount of individual damages for each purported class member is the only question of law or fact which is not common to all class members. DENIED that

common questions of law predominate. DENIED that the common question of law is whether the purported class members suffered age discrimination. DENIED that the common questions of fact are set forth in paragraph 4, a-f, inclusive.

6. DENIED that the claims of the plaintiff are typical of the claims of the purported class. Plaintiff claims that he has been subjected to adverse action because he is over the age of 40 and is disabled. Because his claims are not like the claims of those in the purported class who were not disabled who have not applied for promotions, his position is not sufficiently aligned with that of the purported class members to ensure that his pursuit of those interests correspond to the interests of the class members.

7. DENIED that the plaintiff will fairly and adequately assert and protect the interests of the class under the criteria set forth in Pa.R.C.P 1709 or pursue a resolution of the controversy with vigor and in the interests of class members. For one thing, plaintiff delayed in filing a motion for class certification which Rule 1707 requires be filed within thirty days after the pleadings are closed or within thirty days after the last required pleading was due. DENIED that plaintiff shares a common interest with the other purported class members. The remaining averments in this paragraph merely restate the substance of Rules 1702(4) and 1709 and as such requires NO RESPONSE insofar as those rules speak for themselves.

8. The Department is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph concerning the experience of plaintiff's counsel in civil rights litigation and his aggressiveness; therefore they are DENIED. By way of further answer, neither plaintiff nor his counsel has provided evidence that plaintiff's counsel possesses the requisite experience or aggressiveness to adequately represent the members of a class litigation. Plaintiff's counsel's long delay in filing the motion for class certification does

not constitute proof of counsel's experience or adequacy to serve as class counsel. The remaining averments in this paragraph merely restate the court's task in reviewing a motion for class certification and as such require NO RESPONSE.

9. ADMITTED that there is no clear evidence that either plaintiff or his attorney have a conflict of interest that will hinder the maintenance of a class action.

10. The Department is without knowledge or information to form a belief as to the truth or falsity of the averment in this paragraph; therefore, it is DENIED. By way of further answer, it would appear from plaintiff's attempt to impose discovery obligations upon the Defendant and its personnel which require the expenditure of substantial resources that neither plaintiff nor his counsel has or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

11. DENIED that a class action provides a fair and efficient method for the adjudication of the claims in this lawsuit. On the contrary, requiring plaintiff to proceed with his claim individually would be the most fair and efficient method of resolving the claims presented by his complaint. The Department is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph concerning what problems plaintiff's counsel may or may not anticipate; therefore, they are DENIED.

12. DENIED that a properly constituted class would consist of at least one hundred persons. DENIED that as presented, the purported class members have interests common among each other or between the plaintiff. DENIED that as presented, the difficulties likely to be encountered in the management of the action as a class action will be minimal.

13. DENIED that the Defendant inflicted compensable injuries upon the plaintiff or anyone else. DENIED that the Department discriminated against the plaintiff or anyone else.

The Defendant does not understand the remaining averment in this paragraph; therefore, it is unable to respond to it.

14. The Defendant is not aware of any other litigation commenced by or against a class involving the issues presented by plaintiff's complaint.

15. ADMITTED that in an appropriate case, a court of common pleas could properly exercise jurisdiction over a class action. ADMITTED that this Court in an appropriate case could properly exercise jurisdiction over a class action. DENIED that the claims presented by the plaintiff are appropriately encompassed in a class action heard in Clearfield County. Aside from the commonality and representational issues already discussed, there has been no showing by the plaintiff that the Clearfield County Court of Common Pleas is the best place to hear claims of a state-wide class action.

16. DENIED that denying plaintiff's motion for a class action is necessary because of the complexities of the issues presented in this complaint or the expenses required to prosecute the case. DENIED that denying plaintiff's motion for class certification and requiring individual litigants to bring individual claims would be either unfair to litigants or inefficient. There has been no showing that there are numerous potential litigants with claims alleging age and disability discrimination who are desirous of commencing actions in the Clearfield County Court of Common Pleas which would likely clog the Court's dockets with repetitive litigation.

17. DENIED.

18. DENIED that a substantial claim for damages exists on behalf of plaintiff or any other potential plaintiff. DENIED that proceeding by way of a class action is the best way to achieve maximum judicial economy or fairness to all concerned.

19. DENIED that either equitable or damages is appropriate relief in this case.


DENISE A. GROSS
Personnel Analyst

DATE: July 30, 2002

49

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

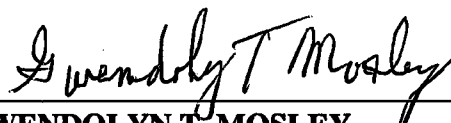
Defendant.

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: No. 00-501-CD
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: (Jury Trial Demanded)
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CERTIFICATE OF SERVICE

I, GWENDOLYN T. MOSLEY, Senior Deputy Attorney General, hereby certify that I have this day served the foregoing **Defendant's Brief in Opposition to Plaintiff's Motion for Class Certification**, by depositing a copy of it in the United States Mail, First Class, Postage Prepaid to the following:

Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: July 31, 2002

FILED
01/31/02 BY ^{NO}EC
JUL 31 2002 _{9/21}

William A. Shaw
Prothonotary

#52

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

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) Number 00-501-CD
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) **JURY TRIAL DEMANDED**
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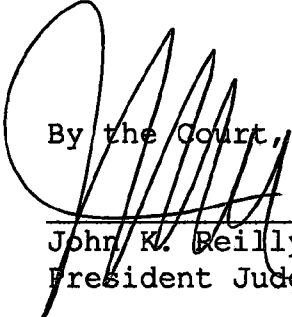
) **CLASS ACTION**
)

) (Judge Reilly)
)

ORDER

AND NOW this 14th day of November, 2002, it is ORDERED
that a hearing on the Plaintiff's Motion for Class Certification
is hereby scheduled for the 30 day of December, 2002, at
1:30 PM in Courtroom No. 1 in the Clearfield County
Courthouse.

By the Court,



John W. Reilly, Jr.
President Judge

FILED

NOV 15 2002

William A. Shaw
Prothonotary

#53

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Case No. 02-10000

Exhibit A

Exhibit B

Exhibit C

FILED

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NOV 15 2002

William A. Shaw
Prothonotary

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Atty Van Allen

[Signature]

CIVIL ACTION - LAW

NOV 14 2002

refused to talk with the Undersigned and requested that he, "put it in writing."

4. Later that same day on October 17, 2002, the Undersigned submitted by fax the Plaintiff's written offer to settle to Ms. Mosley.

5. After one week without hearing from Ms. Mosley, the Undersigned again requested that his office manager call Ms. Mosley to inquire as to whether Ms. Mosley had, in fact, communicated the Plaintiff's offer to settle to her client PennDot.

6. Ms. Mosley stated that she had not submitted the offer to Defendant PennDot and attempted to justify her conduct by stating, "Nope! This is a bureaucracy and things move slowly." The office manager then explained that Mr. Van Allen would then have to file a Petition for a hearing date as the Court may wonder why the Undersigned had not filed the Petition. To that Ms. Mosley responded "It doesn't matter anyway. The Court doesn't care."

7. To this date Ms. Mosley has not responded to the Plaintiff's proposal.

8. Therefore, the Undersigned is submitting this Petition to set a hearing date for Plaintiff's Motion for Class Certification.

9. The Plaintiff estimates that it will take approximately three hours to present his case for class certification.

WHEREFORE, the Plaintiff requests that this Court set a hearing date for the Plaintiff's Motion for Class Certification. A proposed Order is attached.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By: *EJA*
Edward J. Van Allen, P.C.
PA I.D. No. 11250
119 S. Burrowes Street
State College, PA 16801
866.779.2900
Fax: 814.238.1875
Attorney for the Plaintiff,
Joseph M. Buynak

Date: November 12, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
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) Number 00-501-CD
)

) JURY TRIAL DEMANDED
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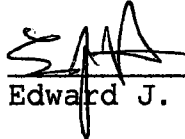
) CLASS ACTION
)

) (Judge Reilly)
)

CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of November, 2002, I caused a true and correct copy of the within Petition to be served upon the Defendant by depositing the same in the U.S. mail, first class and postage prepaid, addressed to the Defendant's attorney of record as follows:

Gwendolyn Mosley, Esq.
Senior Deputy Attorney General
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120


Edward J. Van Allen, Esq.

IN RE: [illegible]

[illegible]

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FILED ^{ncc}

NOV 14 2002
11:30 AM

William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH M. BUYNAK

-vs-

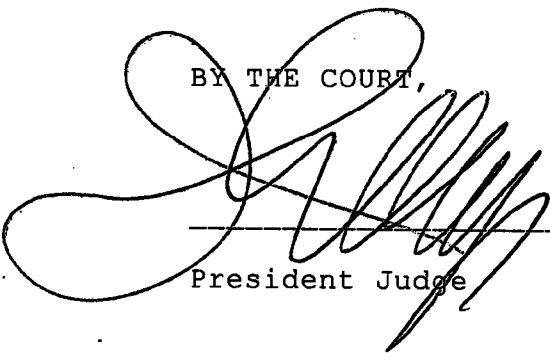
DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA :

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: No. 00-501-CD
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O R D E R

NOW, this 30th day of December, 2002, this being the day and date set for hearing on Plaintiff's Motion for Class Certification, it is the ORDER of this Court that the Commonwealth have no more than five (5) days from date hereof in which to file a reply brief in response to Petitioner's brief.

BY THE COURT,



President Judge

FILED

DEC 31 2002

William A. Shaw
Prothonotary

#54

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAC,

Plaintiff,

v.

**DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:**

Defendant.

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No. 00-501-CD

(Jury Trial Demanded)

FILED

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William A. Shaw
Prothonotary/Clerk of Courts

**DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO FILE ITS
REPLY BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

Defendant, Pennsylvania Department of Transportation, by its attorneys hereby move the Court to enlarge to January 8, 2003 the time for filing the reply brief in opposition to plaintiff's motion for class certification in the above-captioned case. In support of this motion, the defendant states the following:

1. By order dated December 30, 2002 the Court directed the defendant to file its reply brief in response to plaintiff's brief in support of its motion for class certification within five days.
2. The Court's order was entered based upon the optimistic expectation of counsel for the defendant that five days was a sufficient amount of time to prepare its reply brief and get it to Court within five days.
3. Unfortunately, the time allowed by the Court based upon defense counsel's estimation was not sufficient.
4. For one thing, the Commonwealth closed at noon on December 31, 2002 and was closed

for the entire day on January 1, 2003, New Year's day, as were the courts of common pleas. These office closings obviously lessened by 1 ½ the time available for counsel to work on Defendant's reply brief.

5. In addition, severe snow and ice conditions on January 2, 2003 which made travel difficult and consequently shortened the work day for Commonwealth employees and the absence of counsel's secretary due to illness on January 3, 2003 further hampered the efforts of defense counsel to complete and file defendant's reply brief within the prescribed time.
6. Because counsel for the defendant was prevented from complying with the Court's order by circumstances she did not anticipate and could not control and because the additional time requested is so brief, defendant requests an enlargement of time to January 8, 2003 to file its reply brief.
7. Defendant submits that the grant of such a brief enlargement will not unduly prejudice the plaintiff.

WHEREFORE, the Defendant asks the Court to grant this motion and enlarge to January 8, 2003 the time for filing Defendant's reply brief.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: 
GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: January 8, 2003

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

JOSEPH M. BUYNAK,

Plaintiff,

v.

**DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:**

Defendant.

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No. 00-501-CD

(Jury Trial Demanded)

CERTIFICATE OF SERVICE

I, **GWENDOLYN T. MOSLEY**, Senior Deputy Attorney General, hereby certify that I have this day served the foregoing Defendant's Motion for Enlargement of Time within which to file its Reply Brief in Opposition to Plaintiff's Motion for Class Certification Reply Brief In Opposition to Plaintiff's Motion for Class Certification, by depositing a copy of it in the United States Mail, First Class, Postage Prepaid to the following:

**Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801**


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

**OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180**

DATE: January 8, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
)
) Number 00-501-CD
)

JURY TRIAL DEMANDED

CLASS ACTION

) (Judge Reilly)
)

VERIFICATION

I hereby swear that I have read Plaintiff's Motion for Class Certification and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties set forth in 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

Date: January 20, 2003

Joseph M. Buynak
Joseph M. Buynak

FILED

0 12.03 BHA NOCC

JAN 21 2003

William A. Shaw
Prothonotary

56

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

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) Number 00-501-CD
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) JURY TRIAL DEMANDED
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) CLASS ACTION
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) (Judge Reilly)
)

FILED

0 12.03 BA NOCC

JAN 21 2003

William A. Shaw
Prothonotary

**PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR
ENLARGEMENT OF TIME**

NOW COMES the Plaintiff Joseph M. Buynak by and through his attorneys Edward J. Van Allen, P.C. and makes this Answer to Defendant's Motion ("Motion") for Enlargement of Time as follows:

1. The averments of fact in paragraph 1 the Motion are admitted.

2. The averments of paragraph 2 of the Motion are denied. Rather the Order was based on the unequivocal statement of Counsel for the Defendant that she could file the Reply Brief within five days. Such was not stated by Counsel for the Defendant to be a mere expectation nor wishful thinking. Rather, such a statement was unqualified and was freely given in

open court in the presence of all who were in attendance. It was Counsel for the Defendant who freely pronounced to this Court that she would file a Reply Brief within five days in response to this Court's question as to how long Counsel would need to reply.

3. The averments of paragraph 3 of the Motion are denied. As previously stated, it was Counsel for the Defendant who herself selected the time frame for filing the Reply Brief.

4. The averments of paragraph 4 of the Motion are admitted in part and denied in part. Counsel for the Defendant does not state nor suggest that she was barred from her office at noon on December 31, 2002. She could have worked on the Reply Brief at her office or in her home. Moreover, Counsel for the Defendant must have known of the pending holiday when she volunteered that she would file the Reply Brief within five days. To reiterate what was previously stated herein, it was not this Court but the Counsel for the Defendant who selected the filing date of the Reply Brief. Uniquely enough, New Year's Day was a holiday this year and Counsel for the Defendant must have known that her office would be closed at 12:00 PM on December 31, 2003 just the day after her appearance at the class certification hearing and that her office would also be closed on the following day which was New Year's Day. Again the Plaintiff could have gone into her office or worked at home.

5. The averments of fact in paragraph 5 of the Motion are admitted in part and denied in part. On January 2, 2003, after Counsel for the Defendant realized there had been a holiday abbreviating her work schedule and after she realized that severe snow and ice conditions were also abbreviating her work schedule and after she realized her secretary's illness was abbreviating her work schedule, Counsel for the Defendant could have contacted this attorney to ask for concurrence and then filed her Motion for Enlargement of Time in a timely manner. However, as is typical for Counsel for the Defendant, she is again attempting to contrive excuses for not meeting deadlines notwithstanding the fact that she is the one who imposed the five day deadline on herself in front of everyone in court. Furthermore, there must have been another employee at the Office of the Attorney General who could have typed the Reply Brief presuming it was already completed.

6. The averments of paragraph 6 of the Motion are denied. Counsel for the Defendant was no way prevented from complying with her own deadline which was merely reiterated by this Court in its Order of December 30, 2003, and the circumstances should have been anticipated and alternatives selected by the Counsel for the Defendant.

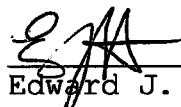
7. The averments of paragraph 7 of the Motion are denied. Counsel for the Plaintiff is again required to respond to

frivolous documents generated by the Counsel for the Defendant causing delay and expense for Mr. Buynak and this Court.

WHEREFORE, the Defendant's Motion for Enlargement of Time should be denied and dismissed and the Defendant's Reply Brief should be stricken as untimely.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By: 
Edward J. Van Allen, P.C.
PA I.D. 11250
119 S. Burrowes Street
State College, PA 16801
866.779.2900
Attorney for the Plaintiff,
Joseph M. Buynak

Date: January 20, 2003

Joseph M. Buynak

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) Number 00-501-CD
)
) **JURY TRIAL DEMANDED**
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)
) **CLASS ACTION**
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)
)
) (Judge Reilly)
)

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2003, I caused a true and correct copy of the within Answer to be made upon counsel of record for the Defendant by depositing the same in the United States mail, first class and postage prepaid, addressed as follows:

Gwendolyn T. Mosley
Senior Deputy Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

Fax: 717.772.4526


Edward J. Van Allen, Esquire

FILED

JAN 21 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JOSEPH M. BUYNAK

-vs-

No. 00 - 501 - CD

FILED

DEPARTMENT OF TRANSPORTATION :
COMMONWEALTH OF PENNSYLVANIA:

FEB 07 2003

OPINION AND ORDER

William A. Shaw
Prothonotary

Plaintiff above-named has filed a Complaint against the Pennsylvania

Department of Transportation alleging that the Defendant discriminated against him during his employment with the Department on the basis of age. He now wants to have this matter certified as a class action seeking to include as Plaintiffs all persons who are residents of the Commonwealth of Pennsylvania and who, since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who, during said time period, were 40 years of age or older and who suffered one or more adverse employment decisions.

Hearing on Plaintiff's request for certification was held and following argument and briefs thereon the matter is before this Court for determination.

This Court does herein grant Plaintiff's Motion for Certification and in doing so relies on the Superior Court's decisions in Cavanaugh v. Allegheny Ludlum Steel, 528 A.2d 236 (Pa. Super. 1987) which states:

Parties seeking certification have the burden of proof in a class certification proceeding. However, our courts do not require a strict burden of proof, but instead, observe the policy that decisions in favor of maintaining a class action should be liberally made.

Citations omitted.

and Janick v. Prudential Insurance Company of America, 451 A.2d 451, wherein the Court stated:

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Because the requirements for class certification are closely interrelated and overlapping, the class proponent need not prove separate facts supporting each; rather, her burden is to sufficiently establish those underlying facts from which the court can make the necessary conclusions and discretionary determinations.

the prima facie showing shifts to the class opponent the burden of coming forward with contrary evidence, and absent such, would ordinarily satisfy the class proponent's burden.

With the above in mind, the Court makes the following findings of fact and conclusions of law solely for the purpose of considering whether to certify Plaintiff's Complaint as a class action.

Pennsylvania Rule of Civil Procedure 1702 sets forth the prerequisites to a class action. 1702(1) requires that the class be so numerous that joinder of all members is impractical. The Court notes that Petitioner need not prove the exact number of class members as long as he is able to define the class with some precision and provide the Court with sufficient proof that more members exist than would be practical to join individually. Based on the testimony at the hearing, this Court is satisfied that the number of prospective members of the class is such that to require them to join individually would be impossible.

1702(2) requires that there be questions of law or fact common to the class so that proof as to one claim would be proof as to all. Common questions of law or fact will generally exist if class members' legal grievances arise out of the same practice or course of conduct on the part of the Defendant. There must be a predominance of common issues shared by all class members, which can be resolved in a single proceeding. In the instant case the common issues of law and fact are whether the Defendant created such discrimination against the class members and if so, what loss was sustained by the individual members of the class.

1702(3) requires that the claims or defenses of the representative parties are typical of the claims or defenses of the class. With regards to this requirement, the Court notes the finding of fact set forth above for 1702(2).

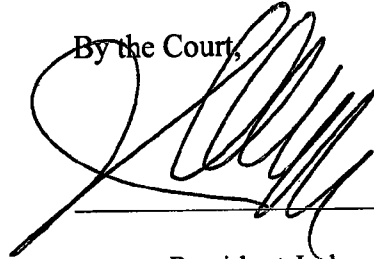
1702(4) requires that the representative parties will fairly and adequately assert the interest of the class. The Court's greatest concern is in this requirement for class certification and notes that while the attorney for the Plaintiff's brief sets forth his background and experience, this Court does have some reservations as to his ability to fairly and adequately represent the class. Nevertheless, the Court notes that unless the contrary is demonstrated, the court will assume that members of the bar are skilled in this area and that they will fairly represent the class. While counsel for the Defendant raises issues thereto which cause this Court some hesitation, nevertheless, the questions are not sufficient to deny class certification. In holding that Plaintiff has met this requirement, at least at this stage, the Court notes that under Pennsylvania Rule of Civil Procedure 1710(d) the Court may reverse, alter or amend its order either on its own motion or on the motion of any party.

Finally, 1702(5) requires that a class action provides a fair and efficient method for adjudication of the controversy. Here the Court notes that under Pennsylvania Rule of Civil Procedure 1708 where monetary recovery alone is sought as in the instant case, the Court shall consider seven sub-parts thereunder. The Court has done so and consistent with the foregoing findings of fact finds that the Plaintiff has satisfied these requirements. Therefore, the Court makes the following conclusions of law. The Court concludes as a matter of law that at this stage of the proceedings the Plaintiff has met the requirements of Pennsylvania Rules of Civil Procedure 1702, 1708 and 1709 in accordance with the foregoing and does therefore enter the following:

ORDER

NOW, this 6th day of February, 2003, following hearing into Plaintiff's Request for Certification as a Class Action, it is the ORDER of this Court that said Request be and is hereby granted and the class limited to all persons, residents of the Commonwealth of Pennsylvania, and who since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age. Every member of this class shall be included as a party Plaintiff unless on or before August 6, 2003, the member files of record a written election to be excluded from the class.

By the Court,

A handwritten signature in black ink, appearing to be "J. L. Smith", is written over a horizontal line.

President Judge

FILED

01/11/2003
FEB 07 2003

ICC. Amy Masley

ICC Amy Van Allen

ICC ~~Shaw~~ D. Nilesell

Shaw
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

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)
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) Number 00-501-CD
)

) JURY TRIAL DEMANDED
)

) CLASS ACTION
)

) (Judge Reilly)
)

FILED

FEB 19 2003

William A. Shaw
Prothonotary

MOTION TO APPROVE NOTICE TO CLASS

NOW COMES Joseph M. Buynak on behalf of himself and all class members by their attorneys Edward J. Van Allen, P.C., and make this Motion to Approve Notice to Class. In support, thereof, the Plaintiffs allege as follows:

1. On February 6, 2003, this Court entered an Order certifying the class as follows:

[C]lass limited to all persons, residents of the Commonwealth of Pennsylvania, and who since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age. Every member of this class shall be included as a party Plaintiff unless on or before August 6, 2003, the member files of record a written election to be excluded from the class.

2. Rule 1712 of the Pennsylvania Rules of Civil Procedure provides for notice of the class certification to be given to class members.

3. The Plaintiffs propose that the Defendant the Pennsylvania Department of Transportation (the "Defendant") be ordered to conspicuously post on an accessible bulletin board in each of its facilities within the Commonwealth of Pennsylvania a true and correct copy of the Notice.

4. The Plaintiffs will bear the cost of printing and mailing to the Defendant an adequate number of notices.

5. The Defendant shall also publish in each newsletter and other publications which it sends to its employees and former employees, a copy of said Notice for two successive months beginning with the month of April, 2003.

6. The Defendant shall also publish a true and correct copy of the Notice on its website www.state.pa.gov beginning April 1, 2003, through June 30, 2003.

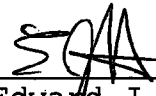
7. The Defendant shall also provide to the Plaintiffs within two weeks from this Court's Order approving the Notice a list of the names and addresses of each labor organization which represents class members in order that the Plaintiffs can provide each of them with a class Notice.

WHEREFORE, the Plaintiffs request that this Honorable Court issue an Order approving said Notice and directing said Notice be published and advertised as aforesaid.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By:


Edward J. Van Allen, Esq.
119 S. Burrowes St., Ste. 103
State College, PA 16801
(866) 779-2900
Attorneys for the Plaintiffs,
Joseph M. Buynak, et al

February 18, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	(Judge Reilly)
Defendant.	)	

NOTICE

President Judge John K. Reilly, Jr., of the Clearfield County Court of Common Pleas has certified a class in the above-referenced age discrimination case as follows:

[C]lass limited to all persons, residents of the Commonwealth of Pennsylvania, and who since March 1, 1996, were or are employed by Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age. Every member of this class shall be included as a party Plaintiff unless on or before August 6, 2003, the member files of record a written election to be excluded from the class.

If you believe you should be included as a member of the class, send a written statement of your reasons to support such a claim along with details including age; job position; facility of employment; qualifications; positions sought, if applicable, date positions were sought; name, age and qualifications of

persons who obtained such positions; if harassed include name of person or persons who harassed you, their age and the dates listing harassment; or state if you were deterred from applying for other positions, when and why.

For a more detailed explanation and to submit your statement online, go to stopbias.com and follow the instructions for inclusion in this age discrimination class action.

Or, mail your statement to the attorneys for the class at:

Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, Pennsylvania 16801

If you do not wish to be a member of the class, you must send a signed letter by August 6, 2003, to Edward J. Van Allen, P.C., at the above address, stating that you do not wish to be a member of the class.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAK,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

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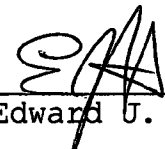
) (Judge Reilly)
)

CERTIFICATE OF SERVICE

I hereby that on this the 18th day of February, 2003, I
served a true and correct copy of the within document upon the
Defendant by fax and by U.S. mail, first class and postage
prepaid, to its counsel of record as follows:

Gwendolyn Mosley
Senior Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

Fax: (717) 772-4526


Edward U. Van Allen, Esq.

FILED

FEB 19 2003

William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW IN THE COURT

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
)
) Number 00-501-CD
)

) JURY TRIAL DEMANDED
)

) CLASS ACTION
)

) (Judge Reilly)
)

FILED

FEB 19 2003

PRAECIPE TO SET HEARING DATE

William A. Shaw
Prothonotary

NOW COMES the Plaintiffs Joseph M. Buynak on behalf of himself and all class members by their attorneys Edward J. Van Allen, P.C. and make this Praecipe to Set Hearing Date.

1. On February 6, 2003, this Court certified a class to proceed in this matter.

2. Rule 1712 of the Pennsylvania Rules of Civil Procedure provides for notice of the class certification to be given to class members.

3. Rule 1712 also provides that this Court have a hearing on the form of Notice given.

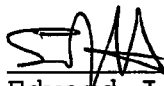
4. It is estimated that the total time for said hearing will not exceed 30 minutes.

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WHEREFORE, the Plaintiffs request that this Honorable Court
set a date and time for said Hearing.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, Esq.
119 S. Burrowes St., Ste. 103
State College, PA 16801
(866) 779-2900
Attorneys for the Plaintiffs,
Joseph M. Buynak, et al

February 18, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAK,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

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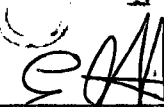
) (Judge Reilly)
)

CERTIFICATE OF SERVICE

I hereby that on this the 18th day of February, 2003, I served a true and correct copy of the within document upon the Defendant by fax and by U.S. mail, first class and postage prepaid, to its counsel of record as follows:

Gwendolyn Mosley
Senior Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

Fax: (717) 772-4526



Edward J. Van Allen, Esq.

FILED
FEB 19 2003
CLERK OF COURT
CLEARFIELD COUNTY
PENNSYLVANIA

Wendy A. Melina
Assistant

William A. Shaw
Prothonotary

FILED
FEB 19 2003

FILED

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

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) Number 00-501-CD
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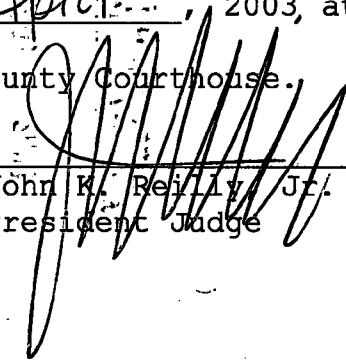
) **JURY TRIAL DEMANDED**
)
)

) **CLASS ACTION**
)
)

) (Judge Reilly)
)
)

ORDER

AND NOW this 25th day of February, 2003, it is ORDERED
that the hearing on Plaintiffs' Motion to Approve Notice is
hereby set for the 4 day of April, 2003, at 2:30 PM
in Courtroom #1 in the Clearfield County Courthouse.



John K. Reilly, Jr.
President Judge

FILED

FEB 25 2003

William A. Shaw
Prothonotary

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FEB 25 2003

William A. Shaw
Prehensory


 Amy VanAllen

FILED

FEB 25 2003

William A. Shaw
Prehensory

Pennsylvania, and who since March 1, 1996, were or are employed by the Defendant in non-managerial capacities and who are 40 years of age or older and who suffered one or more adverse employment decisions based on their age. Every member of this class shall be included as a party Plaintiff unless on or before August 6, 2003, the member files of record a written election to be executed to be excluded from the class."

7. Pursuant to 42 Pa.C.S.A. § 702(b), the Department asks this Court to amend its February 6, 2003 order certifying a class to add the statutory language so as to allow an interlocutory appeal.
8. The required language is that this Court "shall be of the opinion that such order involves a controlling question of law to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter..." 42 Pa. C.S.A. § 702(b)
9. The first ground for an interlocutory appeal, which requires the existence of a controlling question of law, exists in that plaintiff failed to move for the certification of the class within the time period prescribed by Pa. R.C. 1707 which requires that motions for class certification be filed "within thirty days after the pleadings are closed or within thirty days after the last required pleading was due." Pa. R.C.P. 1707
10. Plaintiff did not timely move for class certification, timely move for an enlargement of the time for filing a motion for class certification or show cause why the motion for class certification should be filed outside the requisite period.
11. As a consequence of plaintiff's failure to file a motion for class certification in a timely fashion, employment and other records which the Department needs to defend against the claims of a statewide class have been lost. Thus, the Department will be prejudiced in its efforts to defend against the claims of a class by plaintiff's failure.

12. A second ground justifying an interlocutory appeal involves a determination that there is a substantial ground of difference of opinion. In this case there is a substantial ground of difference of opinion on several important issues, including but not limited to plaintiff's adequacy as a representative of a statewide class consisting of individuals whose job classifications differ from his and whose claims involve alleged "adverse actions" other than the denial of promotions, denials of transfer or harassment because of age. The language of the class certified by the court encompasses employees 40 years of age and older who are not similarly situated with Plaintiff.
13. There is a substantial ground of difference of opinion as to whether the testimony presented at the class certification hearing concerning the claims of putative class members who work in Clearfield County is, as a matter of law, capable of being generalized to those of unknown employees who work outside Clearfield County to support a request for a state-wide class action.
14. There is also a substantial ground of difference of opinion as to whether there was evidence presented at the hearing or at any other time which demonstrates that counsel for plaintiff is adequate to represent the interests of a class. Plaintiff's counsel failed to move her class certification in a timely manner, made several errors which protracted these proceedings and is unable to prosecute the claims of a statewide class without outside assistance and resources.
15. The third ground for an interlocutory appeal involves a determination that an immediate appeal may advance the ultimate termination of the matter. If the Commonwealth Court on immediate appeal should decide that plaintiff's motion for class certification was not

timely, the tremendous expenditure of judicial time and resources necessary for a statewide class action would be obviated and the individual claims of Mr. Buynak could be resolved expeditiously.

16. The criteria which support the amendment of the Court's February 6, 2003 order to allow an interlocutory appeal exist in this case.

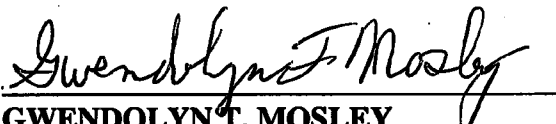
WHEREFORE, the Department asks this Court to amend its February 6, 2003 order to add the following language:

"This Court is of the opinion that the order dated February 6, 2003 involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the matter."

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: March 10, 2003

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

JOSEPH M. BUYNAK,

Plaintiff,

v.

**DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:**

Defendant,

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No. 00-501-CD

(Jury Trial Demanded)

CERTIFICATE OF SERVICE

I, **GWENDOLYN T. MOSLEY**, Senior Deputy Attorney General, hereby certify that I have this day served the foregoing Application for Amendment of Interlocutory Order, by depositing a copy of it in the United States Mail, First Class, Postage Prepaid to the following:

**Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801**


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

**OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180**

DATE: March 10, 2003

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

FILED

MAR 21 2003

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
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) Number 00-501-CD
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)

William A. Shaw
Prothonotary

JURY TRIAL DEMANDED

CLASS ACTION

(Judge Reilly)

**PLAINTIFF'S RESPONSE TO DEFENDANT'S APPLICATION FOR AMENDMENT
OF INTERLOCUTORY ORDER**

NOW COMES the Plaintiffs, by and through their attorneys Edward J. Van Allen, P.C.
and make this Response to the Defendant's Application for Amendment of Interlocutory Order.

1. Admitted in part and denied in part. The action is a certified class action alleging denial of promotions, denial of transfers and harassment because of his age, over forty, but also includes the issue of older employees who are required to train younger supervisory employees, assignment of greater duties and responsibilities without proper compensation, intimidation, coercion and the chilling effect preventing those employees over the age of forty from further attempts for promotion and transfer and also includes demotion and threat of demotion. If the counsel for the Defendant had deposed the Plaintiff Joseph M. Buynak ("Buynak") or had cross examined him during the December 30, 2002 hearing for class certification she would know he is the proper representative of the class because all of this has happened to him.
2. Denied. The complaint was filed on May 1, 2000.

3. Denied. The correct date of the filing was January 16, 2001.
4. Denied. Plaintiff filed for class certification on July 3, 2002.
5. Denied as stated. The correct date of the hearings were December 30, 2002, and January 31, 2003.
6. Admitted in part and denied in part. The last sentence does not include the phrase "to be executed".
7. Admitted that this is the relief requested. Denied that the request for relief would be appropriate as set forth herein.
8. Admitted that this is the language required to certify an interlocutory appeal. But denied that such that would be correct in this case because this Order for Class Certification is not a final order and would not put the Defendant out of court. It would, however, put out of court hundreds of PennDot employees who are currently part of this case.
9. The averments of paragraph 9 of the Application are denied. It is the implication in paragraph 9 of the Application that a class may not be certified if a motion is not filed within 30 days. Rule 1707(a) states that the court may extend the time for filing a motion for class certification for cause shown. Rule 1707(a) also provides that if the "Plaintiff fails to move for certification, the court if so notified shall promptly set a date for a certification hearing." Rule 1707(b) further states that:

The court may postpone the hearing to a later date pending the disposition of other motions or to permit discovery with respect to the class action issues.

The Defendant took no discovery. The Plaintiff diligently attempted to take discovery to establish the existence of the other class members but it was the Defendant who attempted to thwart that discovery which protracted the case. Paul Albright, a former team leader for

PennDot, also stated that "they would run the Plaintiff out of money" which would also serve to corroborate PennDot's deliberate delays thereby forcing the Plaintiff to seek redress from this Court on several occasions. See Plaintiff's Motion to Compel Answers to Interrogatories and to Compel Production of Documents and Plaintiff's Motion for Sanctions and Plaintiff's Motion for Immediate Enforcement of Order.

10. The averments of paragraph 10 are patently false. To the contrary, the Plaintiff filed two timely Motions for Extension of Time for cause shown and said Extensions were granted. The Plaintiff filed his Motion for Class Certification several days prior to the expiration date for filing that motion. In fact, it was the Plaintiff that filed a Praecipe to Set a Hearing Date. Therefore, the Court never had to set the matter for hearing on its own volition. The only untimeliness involved was the untimeliness of the Defendant. Each of the Plaintiff's Motions for Extension of Time set forth good causes and were granted by this Court and these motions were not opposed by the Defendant.

11. The averments of paragraph 11 are denied and, in fact, constitute a fabrication. Plaintiff filed Interrogatories on the proposed class on July 7, 2000 approximately 2 months after the Plaintiff filed his complaint on May 1, 2000, which set forth a complete set of class action allegations. At argument on Plaintiff's Motion to Compel Answers to Interrogatories Defendant's counsel stated routinely that the Defendant did not keep track of promotions for which PennDot employees applied. Any prejudice which the Defendant suffers, it caused itself. Moreover, if these documents have been destroyed, as it appears, sanctions should be granted against the Defendant following the filing of an appropriate Motion for Sanctions. Moreover, if Defendant cannot produce the appropriate records, the Plaintiff now has been contacted by large numbers of class members through the Commonwealth of Pennsylvania and can and will supply the

particular proof at trial. Again if anyone were prejudiced in this case it would be the volume of class members who seek redress via this class action and whom the Defendant attempts to exclude through frivolous allegations

12. The averments of paragraph 12 of the application are admitted in part and denied in part. It is admitted that a second ground for making application for an interlocutory appeal is a substantial ground of difference of opinion. It is denied, however, that a substantial ground for difference of opinion is present in this case. To the contrary the common question of law is whether the employer discriminated against members of the class because of their age, i.e., forty years of age or older. As a class representative the Plaintiff can represent job classifications other than his own. See the landmark case of Lukus v. Westinghouse, 276 Pa. Super.232, 419A.2d431; 1980 Pa. Super. LEXIS 1829; 30 Fair Empl. Prac. Cas. (BNA) 317, where the class consisted of all past, present and future female Westinghouse employees in Pennsylvania who, since July 9, 1969, while Westinghouse employees, were or will be absent from work due to disability from pregnancy, childbirth and complications therefrom, and who have not received and will not receive sickness and accident payments for said absences, and the recent 9th Circuit case of Boeing, Inc., which consisted of 15,000 management and non-management employees from 27 states. (A copy of which was provided to this court at oral argument.) In both cases these employees did not all have the same employment positions.

Mr. Buynak's complaint and testimony complains of lack of promotion and transfer, attempted discharge, harassment, intimidation and coercion and the denial of benefits because of his age and threats involving transfer.

13. The averments of paragraph 13 are denied as stated. Mr. Buynak testified as to PennDot statewide Affirmative Action Plan and Equal Opportunity Policy both which emanate from

PennDot's central control in Harrisburg. Several witnesses testified at the hearing for class certification that promotional decisions are made by PennDot in Harrisburg and testimony at trial need not stand by itself as no such testimony is even required at a class certification hearing. See the particularized allegations of the verified Motion for Class Certification. The Defendant herself in the Defendant's partial answer to Interrogatory number 1 gave the names of at least a dozen persons who fit the criteria for class certification who are not from Clearfield or Centre Counties.

14. Denied. Counsel for the Plaintiff made a timely Motion for Class Certification as set forth in this Court's Orders, unlike the counsel for the Defendant who has delayed the action. Counsel for the Plaintiff has made no mistakes nor had any filing delay as of this date. Plaintiff's counsel did not state that he had to have anyone assist him but stated that he had numerous qualified counsel if that assistance would be helpful. Moreover, notwithstanding counsel for the Defendant's statements at oral argument that she has to handle the case and many other, all by herself, it should be noted that she does have assistance of other counsel. Indeed, one Susan Forney, Chief Deputy Attorney General, is also listed as counsel for Defendant on the Defendant's Application.

Admitted that this is a correct statement of the law but would not apply in this case. An appeal would only serve to postpone this litigation which the Defendant has attempted to do throughout this litigation. The averments are denied that class members do not have a legitimate claim and they are the ones who will be prejudiced if the class were obviated. Also, Mr. Buynak tried to resolve this matter with PennDot but PennDot's stated purpose was to force him to retire and "run him out of money." The only opportunity the Commonwealth Court would have to review the class certification, assuming it would accept such an appeal, would be after this Court, the court that

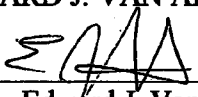
was the very court that evaluated the evidence, testimony and documents supporting the Plaintiff's Motion for Class Certification, would suddenly decide to give its permission to the Commonwealth Court to second guess its own decision. This Court's opinion in support of class certification order was well-reasoned and articulate. The Defendant has not met the prerequisites of having this Court certify its interlocutory order for appeal.

16. The averments of paragraph 16 are denied. To the contrary said requirements have not been met in Defendant's Application. Defendant's arguments are simply a rehash of arguments she made in opposing Plaintiff's Motion for Class Certification. These arguments were rejected by this Court then and they should be rejected now. Plaintiff incorporates herein by reference by way of further answer the averments set for in paragraph 15 of this Answer.

WHEREFORE, the relief requested by the Defendant should be denied and its Application dismissed.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By: 
Edward J. Van Allen, Esq.
PA I.D. No. 11250
119 S. Burrowes Street
State College, PA 16801
(866) 779-2900
Fax: (814) 353-1970
Attorney for the Plaintiffs

Date: March 21, 2003

THE COURT OF COMMON PLEAS OF CHESTER COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

Number 00-201-CD

JOHN J. HARRIS

CIVIL ACTION

(Plaintiff vs. Defendant)

COMMONWEALTH OF PENNSYLVANIA

On March 21, 2003, I caused a true and correct copy of this within
report to be filed with the court clerk and to be deposited in the
court's file for the case and to be made available to the public.

Geography T. Mosley
Senior Deputy Attorney
12, Floor, Strawberry
Housing, Penna) Court

Page 217, 215, 230

FILED

MAR 21 2003

William A. Shaw
Prothonotary

Att. Van Allen

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

JOSEPH M. BUYNAK

:

-vs-

:

No. 00 - 501 - CD

DEPARTMENT OF TRANSPORTATION :

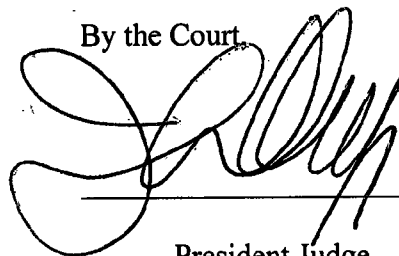
COMMONWEALTH OF PENNSYLVANIA:

ORDER

NOW, this 9th day of April, 2003, upon consideration of Defendants Application for Amendment of Interlocutory Order, it is the ORDER of this Court that said Application shall be and is hereby granted and the Order of this Court dated February 6, 2003, shall be and is hereby amended to include the following language:

The Court further finds that the Order sub judice involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal by permission from this Order may materially advance the ultimate termination of the matter per 42 Pa. C.S.A. § 702(b) and Pa. R.A.P. 1311.

By the Court



President Judge

FILED

APR 09 2003

William A. Shaw
Prothonotary

#67

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

00-501-CD

Department of Transportation,
Petitioner

v.

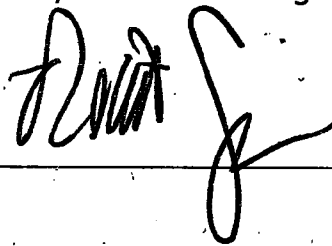
Joseph M. Buynak,

Respondent

No. 775 C.D. 2003

ORDER

NOW, April 17, 2003, upon consideration of petitioner's motion to withdraw petition for permission to appeal, the motion is granted.



J.

Certified from the Record

APR 21 2003
and Order Exit

FILED
mll:20-701 No cc
APR 23 2003 E
Jett

William A. Shaw
Prothonotary

18

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FILED

00-501-CD JUN 02 2003

JOSEPH M. BUYNAK :

v. :

DEPARTMENT OF TRANSPORTATION, :
COMMONWEALTH OF PENNSYLVANIA, :
Appellant :

William A. Shaw
Prothonotary

COPY

No. 1046 C.D. 2003

ORDER

NOW, May 28, 2003, upon consideration of appellant's petition for permission to appeal and the brief in opposition thereto, said petition is granted and the appeal is allowed from the orders entered in the Court of Common Pleas of Clearfield County on February 6, 2003 and April 9, 2003, at No. 00-501-CD.

The Chief Clerk is directed to list oral argument on the merits of this matter on the September 2003 argument list in Harrisburg.

The prothonotary of the Court of Common Pleas of Clearfield County shall certify the record in this matter to this Court on or before June 30, 2003.

Appellant's brief (15 copies) and reproduced record (8 copies) shall be filed and served on or before July 25, 2003. Appellee shall file and serve his brief (15 copies) on or before August 15, 2003. Any reply brief (15 copies) shall be filed and served no later than August 25, 2003.

5/29

All proceedings in this matter in the Court of Common Pleas of Clearfield County are stayed pending resolution of the instant appeal.

In addition to mailing copies of this Order to counsel of record, the Chief Clerk shall mail a copy of same to the Honorable John K. Reilly of the Court of Common Pleas of Clearfield County and to the prothonotary of said court.

Warren G. Morgan

S.J.

Certified from the Record

**MAY 29 2003
and Order Exit**

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

JOSEPH M. BUYNAC,

Petitioner

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Respondent

: No. 607 WAL 2003

:
:
: Petition for Allowance of Appeal from the
: Order of the Commonwealth Court

ORDER

PER CURIAM

AND NOW, this 29th day of September, 2004, the Petition for Allowance of Appeal is
hereby DENIED.

A True Copy Patricia Nicola

As of: September 29, 2004

Attest: *Patricia Nicola*
Chief Clerk

Supreme Court of Pennsylvania

FILED *NO*
11/32/04 *CC*
OCT 25 2004

William A. Shaw
Prothonotary/Clerk of Courts



Supreme Court of Pennsylvania

Western District

~~September 29, 2004~~

Oct. 18, 2004

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Joseph M. Buynak, Petitioner
v.
Department of Transportation,
Commonwealth of Pennsylvania, Respondent
Commonwealth Docket Number - 1046 CD 2003

Trial Court/Agency Dkt. Number: 00-501-CD

No. 607 WAL 2003

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: November 14, 2003

Disposition: Order Denying Petition for Allowance of Appeal

Date: September 29, 2004

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/dad

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX (814) 765-7659

*Do not record -
Do not issue briefing
schedule.*

June 9, 2003

Commonwealth Court of Pennsylvania
Office of the Prothonotary
PO Box 11730
Harrisburg, PA 17108

Re: Joseph M. Buynak
Vs.

Department of Transportation, Commonwealth of Pennsylvania
No. 00-501-CD
Commonwealth Court No. 1046 C.D. 2003

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed three transcripts.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

80:1 P 01 NOV 2003
RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FILED

00-501-CD JUN 02 2003

JOSEPH M. BUYNAC

:

William A. Shaw
Prothonotary

v.

:

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,
Appellant

:

:

No. 1046 C.D. 2003

ORDER

NOW, May 28, 2003, upon consideration of appellant's petition for permission to appeal and the brief in opposition thereto, said petition is granted and the appeal is allowed from the orders entered in the Court of Common Pleas of Clearfield County on February 6, 2003 and April 9, 2003, at No. 00-501-CD.

The Chief Clerk is directed to list oral argument on the merits of this matter on the September 2003 argument list in Harrisburg.

The prothonotary of the Court of Common Pleas of Clearfield County shall certify the record in this matter to this Court on or before June 30, 2003.

Appellant's brief (15 copies) and reproduced record (8 copies) shall be filed and served on or before July 25, 2003. Appellee shall file and serve his brief (15 copies) on or before August 15, 2003. Any reply brief (15 copies) shall be filed and served no later than August 25, 2003.

169

4
All proceedings in this matter in the Court of Common Pleas of Clearfield County are stayed pending resolution of the instant appeal.

In addition to mailing copies of this Order to counsel of record, the Chief Clerk shall mail a copy of same to the Honorable John K. Reilly of the Court of Common Pleas of Clearfield County and to the prothonotary of said court.

Warren C. Morgan

S.J.

Certified from the Record

**MAY 29 2003
and Order Exit**

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

00-501-CD

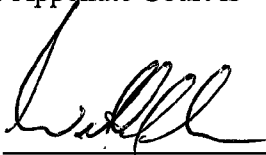
**Joseph M. Buynak, individually and on behalf of all other persons similarly situated
VS.**

Department of Transportation, Commonwealth of Pennsylvania

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 69**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is
June 9, 2003.



Prothonotary/Clerk of Courts

(seal)

Edward J. Van Allen, P.C.	JOSEPH M. BUYNAC, Individually and on behalf of all other persons similarly situated	MAY 1, 2000, COMPLAINT IN CIVIL ACTION, filed by Edward J. Van Allen P.C., Attorney for the Plaintiff Five Certified Copies to Attorney	①
		JUN 12, 2000, PRAECIPE TO REINSTATE, filed by s/EDWARD J. VAN ALLEN, ESQ.	②
		FIVE (5) REINSTATED TO ATTORNEY	
		JUN 30, 2000, PRAECIPE FOR ENTRY OF APPEARANCE, filed by s/MICHAEL A. FARNAN, ESQ. ONE (1) CER TO ATTY	③
		CERTIFICATE OF SERVICE, filed.	
	00-501-CD	JUN 30, 2000, SHERIFF RETURN, COMPLAINT UPON DEFENDANT: SO ANSWERS, CHESTER A. HAWKINS, SHERIFF by s/Marilyn Hamm	④
		JUL 12, 2000, PRELIMINARY OBJECTIONS, filed by s/MICHAEL A. FARNAN, ESQUIRE	⑤
		CERTIFICATE OF SERVICE, filed.	
		JUL 13, 2000, FIRST AMENDED PRELIMINARY OBJECTIONS, filed by s/MICHAEL A. FARNAN, ESQ.	⑥
Michael A. Farnan	DEPARTMENT OF TRANSPORTATION, COMMONWEALTH OF PENNSYLVANIA	NOTICE to PLEAD, filed. VERIFICATION, s/DENISE A. GROSS CERTIFICATE OF SERVICE, filed.	
		JUL 24, 2000, MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY PENDING DISPOSITION OF PRELIMINARY OBJECTIONS, filed by s/MICHAEL A. FARNAN, ESQUIRE	⑦
		VERIFICATION, s/DENISE A. GROSS CERTIFICATE OF SERVICE, filed.	
	Pro BY ATTY 80.00	JUL 27, 2000, PLAINTIFF'S ANSWER TO DEFENDANT'S PRELIMINARY OBJECTIONS, filed by s/EDWARD J. VAN ALLEN, ESQUIRE	⑧
	Pro By Atty 7.00	VERIFICATION, s/JOSEPH M. BUYNAC	
	Shiff Hawkins By Atty 57.64	JUL 27, 2000, PLAINTIFF'S PRELIMINARY OBJECTIONS TO DEFENDANT'S PRELIMINARY OBJECTIONS, filed by s/EDWARD J. VAN ALLEN, ESQ.	⑨
	Shiff Lotwick By Atty 31.50	VERIFICATION, s/JOSEPH M. BUYNAC	
		JUL 28, 2000, CERTIFICATE OF SERVICE, UPON ATTY FARNAN: filed by s/EDWARD J. VAN ALLEN, ESQUIRE	⑩
		AUG. 14, 2000, DEFENDANT'S RESPONSE TO PRELIMINARY OBJECTIONS, filed by s/MICHAEL A. FARNAN, ESQ.	⑪
		CERTIFICATE OF SERVICE, filed.	
		AUG. 16, 2000, ORDER, RE: ARGUMENT ON THE MOTION FOR PROTECTIVE ORDER AND STAY SCHEDULED FOR OCT. 11, 2000: BY THE COURT, s/JOHN K. REILLY, J.R., PRESIDENT JUDGE	⑫
		AUGUST 31, 2000, PLAINTIFF'S RESPONSE TO THE DEFENDANT'S RESPONSE, filed by s/Edward J. Van Allen, Esq. ONE (1) CC ATTY	⑬
		CERTIFICATE OF SERVICE, filed.	
		OCT. 03, 2000, PLAINTIFF'S ANSWER TO MOTION FOR PROTECTIVE ORDER, filed by s/EDWARD J. VAN ALLEN, ESQ.	⑭
		CERTIFICATE OF SERVICE, filed.	

**PLEASE REFER TO COMPUTER
FOR FURTHER ENTRIES**

Current Judge: John K. Reilly Jr.

Joseph M. Buynak vs. Dept. of Transp./Comm. of Penna.

Civil Other

Date		Judge
12/12/2000	Transferred from the docket.	No Judge
	Withdrawal/Entry of Appearance. s/Michael A. Farnan, Esq. (With.) s/Gwendolyn Mosley, Esq. (Enter) filed. 2 cc atty Mosley, Atty Gen. Office, w/M.K. Letter	No Judge
12/20/2000	Opinion and Order, re: Objections be and are hereby dismissed in accordance with the foregoing Opinion. By the Court, s/JRK,JR. PJ 1 cc atty Van Allen, atty Farnan, & Dep. Atty General	No Judge
01/17/2001	Answer and New Matter of Defendant Department of Transportation. filed by s/Gwendolyn T. Mosley, Esq. Verification. Cert. of Service. no cc	No Judge
02/05/2001	Answer to New Matter, Filed by s/Edward J. Van Allen, Esq. Verification, s/Joseph M. Buynak. Certificate of Service. no cc	No Judge
02/13/2001	Petition For Enlargement Of Time, Filed by s/Gwendolyn T. Mosley, Esq. 2 cert to Atty	No Judge
	Rule to Show Cause, NOW, this 13th day of February, 2001, Rule issued upon the Plaintiff, returnable the 5th day of March, 2001, for filing written response. By the Court, s./JKR,JR.,PJ. 2 cert to Atty	No Judge
02/15/2001	Verification. s/Denis A. Gross. No cc	John K. Reilly Jr.
02/16/2001	Defendant's Motion to Quash Subpoena, filed by s/Gwendolyn T. Mosley One Certified Copy to Attorney General Office Certificate of Service, filed. s/Gwendolyn Mosley	John K. Reilly Jr.
	Rule to Show Cause, NOW, this 16th day of Feb., 2001, issued upon the Plaintiff, returnable Feb. 20, 2001. By the Court, s/JKR,JR.,PJ	John K. Reilly Jr.
02/23/2001	Certificate of Service, Defendant's Rule to Show Cause and Petition for Enlargement of Time, upon Edward J. VanAllen, Esq. Filed by s/Gwendolyn Mosley, Esq. no cc	John K. Reilly Jr.
10/30/2001	Motion to Compel Answers to Plaintiff's First Set of Interrogatories to Defendant. s/Edward J. Van Allen, Esq. Certificate of Service no cc	John K. Reilly Jr.
	Motion to Compel Defendant to Produce Documents. Filed by s/Edward J. Van Allen Certificate of Service	John K. Reilly Jr.
11/05/2001	ORDER, AND NOW, this 5th day of Nov. 2001, re: Motion to Compel Answers to Plaintiff's First Set of Interrogatories, Rule issued on Defendant to appear and show cause. Rule Returnable the 18th day of Dec. 2001, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 2 cc Atty Van Allen	John K. Reilly Jr.
	Order, AND NOW, this 5th day of November, 2001, Re: Motion to Compel Defendant to Produce Documents, rule issued to show cause, Rule Returnable the 18th day of December, 2001, at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Atty Allen	John K. Reilly Jr.
12/21/2001	Affidavit of Service, Rules to Show Cause upon Atty Mosley. Filed by s/Edward J. Van Allen, Esq. no cc	John K. Reilly Jr.
12/24/2001	ORDER, NOW, this 21st day of December, 2001, re: Argument into Plaintiff's Motions to Compel Answers to Interrogatories and for Production of Documents. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Van Allen, Mosley	John K. Reilly Jr.
12/31/2001	Defendant's Motion for Enlargement of Time Within Which to Respond to Interrogatory No. 1. Filed by s/Gwendolyn T. Mosley, Esq. Cert of Svc no cc	John K. Reilly Jr.
01/17/2002	Motion For Sanctions Pursuant to Pa. R.C.P. 4019(c)(2) Filed by s/Edward J. Van Allen, Esq. 4 cc	John K. Reilly Jr.
01/21/2002	ORDER, AND NOW, this 21st day of Jan. 2002, Rule issued upon Defendant, returnable the 27th day of February, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Van Allen	John K. Reilly Jr.
01/24/2002	Plaintiff's Motion for an Extension of Time. Filed by s/Edward J. VanAllen, Esq. Cert of Svc 4 cc to Atty	John K. Reilly Jr.

Date: 06/04/2003

Time: 09:15 AM

Page 2 of 4

Orfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-00501-CD

Current Judge: John K. Reilly Jr.

Joseph M. Buynak vs. Dept. of Transp./Comm. of Penna.

Civil Other

Date		Judge
01/25/2002	ORDER, AND NOW, this 25th day of Jan. 2002, re: Extension of Time of 30 days is GRANTED. by the Court, s/JKR,JR.,P.J. 4 cc Atty Van Allen	John K. Reilly Jr.
02/27/2002	Defendant's Answer to Plaintiff's Motion for Sanctions. Filed by s/Gwendolyn T. Mosley, Esq. Verification s/Gwendolyn T. Mosley, Esq. Certificate of Service 1 cc to Atty	John K. Reilly Jr.
	ORDER, NOW, this 27th day of Feb. 2002, re: Motion for Sanctions. by the Court, s/JKR,JR.,P.J. 1 cc Van Allen, Mosley	John K. Reilly Jr.
03/26/2002	Motion for Extension of Time, filed by s/Edward J. Van Allen, Esq. Three CC Attorney Van Allen	John K. Reilly Jr.
03/27/2002	ORDER, NOW, this 27th day of March, 2002, re: Plaintiff is GRANTED an Extension of Time to file a Motion for Class Certification until June 4, 2002 or until 7 days after such time as he completes inspection of personnel files, whichever first occurs. by the Court, s/JKR, JR. P.J. 3 cc Atty Van Allen	John K. Reilly Jr.
04/04/2002	Motion For Amendment of Order. s/Edward J. Van Allen, Esq. Filed by s/William A. Shaw, Jr., Esq. 3 cc Atty Shaw	John K. Reilly Jr.
05/08/2002	ORDER, re: Motion For Amendment of Order. by the Court, s/JKR,JR.,P.J. 3 cc Atty Shaw	John K. Reilly Jr.
05/22/2002	Motion for Order Directing Immediate Compliance with prior Order and for Extension of Time to File Motion for Class Certification, filed by Atty. Van Allen. 1 Cert. to Atty.	John K. Reilly Jr.
	Motion of Defendant Department of Transportation for Reconsideration, filed by A.G. Sr. Deputy Mosley 1 Cert. to AG	John K. Reilly Jr.
05/23/2002	Plaintiff's Answer to Defendant's Motion for Reconsideration, filed by s/Edward Van Allen Two CC Attorney Van Allen	John K. Reilly Jr.
	ORDER, AND NOW, this 23rd day of May, 2002, re: Rule issued upon DEFENDANT. Rule Returnable the 14th day of June, 2002, at 9:30 a.m. Also, June 4, 2002, deadline for filing for Class Action is extended pending ruling on outstanding motions. by the Court, s/JKR,JR.,P.J. 2 cc to Atty	John K. Reilly Jr.
	ORDER, AND NOW, this 23rd day of May, 2002, Rule issued upon DEFENDANT. Rule Returnable the 14th day of June, 2002, at 9:30 a.m. by the Court, s/JKR,JR.,P.J. 2 cc to Atty	John K. Reilly Jr.
	ORDER, AND NOW, this 23rd day of May, 2002, Rule is issued upon PLAINTIFF. Rule Returnable the 14th day of June, 2002, at 9:30 a.m. by the Court, s/JKR,JR.,P.J. 2 cc to Atty	John K. Reilly Jr.
06/14/2002	Defendant's Answer to Plaintiff's Motion for Order and for Extension of Time to File Motion for Class Certification, filed by s/Gwendolyn T. Mosley Four CC Attorney Mosley	John K. Reilly Jr.
06/17/2002	ORDER, NOW, this 14th day of June, 2002, re: Plaintiff's Motion for Directing Immediate Compliance w/Prior Order and for Extension of Time to File Motion for Class Certification is hereby DISMISSED at the present stage of the proceeding and Plaintiff granted 20 days from date hereof to file his Motion for Class Certification. Defendant's Motion for Reconsideration shall be and is hereby dismissed w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Edward Van Allen and Atty Gwendolyn Mosley	John K. Reilly Jr.
07/03/2002	Plaintiff's Motion For Class Certification. Filed by s/Edward J. Van Allen, Esq. Verification s/Joseph M. Buynak Certificate of Service no cc	John K. Reilly Jr.
07/26/2002	Defendant's Motion For Enlargement Of Time Within Which to Respond To Plaintiff's Motion For Class Certification. Filed by s/Gwendolyn T. Mosley, Esq. Certificate of Service 2 cc to Atty	John K. Reilly Jr.
07/29/2002	ORDER, AND NOW, this 29th day of July, 2002, re: Defendant's Motion for Enlargement of Time is GRANTED. by the Court, s/JKR,JR.,P.J. 2 cc Atty General	John K. Reilly Jr.

Date		Judge
07/31/2002	Defendant's Answer To Plaintiff's Motion For Class Certification. Filed by s/Gwendolyn T. Mosley, Esq. Verification s/Denise A. Gross Certificate of Service 1 cc Attorney General	John K. Reilly Jr.
	Certificate of Service, Defendant's Brief In Opposition to Plaintiff's Motion for Class Certification upon EDWARD J. VAN ALLEN, ESQ. filed by s/Gwendolyn T. Mosley, Esq. no cc	John K. Reilly Jr.
11/14/2002	Petition To Set Hearing Date For Motion For Class Certification. s/Edward J. Van Allen, Esq. Certificate of Service no cc	John K. Reilly Jr.
11/15/2002	ORDER, AND NOW, this 14th day of November, 2002, Hearing on the Plaintiff's Motion for Class Certification is hereby scheduled for the 30th day of December, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Van Allen	John K. Reilly Jr.
12/31/2002	ORDER: NOW, this 30th day of December, 2002 it is the order of this Court that the Commonwealth have no more than five days to file a reply. s/JKR 2 CC to Atty. Van Allen. 2 CC to Atty. Mosley.	John K. Reilly Jr.
01/08/2003	Filing: Defendant's Motion for Enlargement of Time within which to file its reply brief in opposition to Plaintiff's Motion for Class Certification. Filed by D. Michael Fisher, Attorney General. No cc.	John K. Reilly Jr.
01/21/2003	Verification of Plaintiff's Motion for Class Certification s/Mr. Buynak	John K. Reilly Jr.
	Filing: Plaintiff's answer to Defendant's Motion for Enlargement of Time filed by Plaintiff. no cc	John K. Reilly Jr.
02/04/2003	Transcript of Testimony of Dianne VanAllen, December 30, 2002. filed.	John K. Reilly Jr.
	Tramscript of Testimony of Gail Francisko, December, 30, 2002. filed.	John K. Reilly Jr.
	Transcript of Testimony of Thomas F. McCracken, December 30, 2002. filed.	John K. Reilly Jr.
02/07/2003	Opinion and Order, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Mosley, Atty Van Allen, D. Mikesell	John K. Reilly Jr.
02/19/2003	Motion To Approve Notice To Class. filed by s/Edward J. VanAllen, Esq. Certificate of Service no cc	John K. Reilly Jr.
	Praeipce To Set Hearing Date, filed by s/Edward J. VanAllen, Esquire Certificate of Service no cc	John K. Reilly Jr.
02/25/2003	ORDER, AND NOW, this 25th day of February, 2003, re: Hearing on Plaintiffs' Motion to Approve Notice is hereby set for the 4th day of April, 2003, at 2:30 p.m. by the Court, s/JKR,JR., P.J. 2 cc Atty Van Allen	John K. Reilly Jr.
03/10/2003	Defendant's Application for Amendment of Interlocutory Order, filed by Atty. Mosley No Cert. Copies.	John K. Reilly Jr.
03/21/2003	Plaintiff's Response To Defendant's Application For Amendment of Interlocutory Order. filed by s/Edward J. Van Allen, Esq. Certificate of Service 1 cc Atty Van Allen	John K. Reilly Jr.
04/09/2003	ORDER, NOW, this 9th day of April, 2003, upon consideration of Defendants Application for Amendment of Interlocutory Order it is the ORDER of this Court that said Application shall be and is hereby GRANTED and the Order of this Court dated February 6, 2003, shall be and is hereby amended to include the following language: The Court finds that the Order sub judice involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal by permission from this Order may materially advance the ultimate termination of the matter per 42 Pa. C.S.A. 702(b) and Pa. R.A.P. 1311. by the Court, s/JKR,JR.,P.J. 1 cc Atty Van Allen, Mosley	John K. Reilly Jr.
04/23/2003	ORDER, NOW, April 17, 2003, upon consideration of Petitioner's Motion to Withdraw Petition For Permission To Appeal, the Motion is GRANTED. (by Commonwealth Court) no cc	John K. Reilly Jr.

Date: 06/04/2003

Time: 09:15 AM

Page 4 of 4

Orfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-00501-CD

Current Judge: John K. Reilly Jr.

Joseph M. Buynak vs. Dept. of Transp./Comm. of Penna.

Civil Other

Date		Judge
06/02/2003	ORDER, NOW, May 28, 2003, re: Appellant's Petition For Permission To Appeal is GRANTED, etc. s/Warren G. Morgan, S.J. no cc (ORDER FROM COMMONWEALTH COURT)	John K. Reilly Jr.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUN 04 2003

Attest.

W. G. Morgan
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-501-CD

**Joseph M. Buynak, individually and on behalf of all other persons similarly situated
VS.**

Department of Transportation, Commonwealth of Pennsylvania

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	05/01/00	Complaint in Civil Action	20
02	06/12/00	Praeipce to Reinstate	01
03	06/30/00	Praeipce for Entry of Appearance	02
04	06/30/00	Sheriff Return, Complaint upon Defendant	04
05	07/12/00	Preliminary Objections	27
06	07/13/00	First Amended Preliminary Objections	29
07	07/24/00	Motion for Protective Order to Stay Discovery Pending Disposition of Preliminary Objections	11
08	07/27/00	Plaintiff's Answer to Defendant's Preliminary Objections	61
09	07/27/00	Plaintiff's Preliminary Objections to Defendant's Preliminary Objections	08
10	07/28/00	Certificate of Service	01
11	08/14/00	Defendant's Response to Preliminary Objections	11
12	08/16/00	Order, Re: Argument on the Motion for Protective Order and Stay scheduled for Oct. 11, 2000	01
13	08/31/00	Plaintiff's Response to the Defendant's Response	03
14	10/03/00	Plaintiff's Answer to Motion for Protective Order	08
15	12/12/00	Withdrawal/Entry of Appearance; Michael A. Farnan withdrawn, Gwendolyn Mosley entered	02
16	12/20/00	Opinion and Order	04
17	01/17/01	Answer and New Matter of Defendant Department of Transportation	13
18	02/05/01	Answer and New Matter filed by Edward Van Allen	10
19	02/13/01	Petition for Enlargement of Time with Rule to Show Cause	04
20	02/15/01	Verification	01
21	02/16/01	Defendant's Motion to Quash Subpoena with Rule to Show Cause	12
22	02/23/01	Certificate of Service, Defendant's Rule to Show Cause and Petition for Enlargement of Time	01
23	10/30/01	Motion to Compel Answers to Plaintiff's First Set of Interrogatories to Defendant	72
24	10/30/01	Motion to Compel Defendant to Produce Documents	27
25	11/05/01	Order, Re: Motion to Compel Answers to Plaintiff's First Set of Interrogatories, Rule issued on Defendant	01
26	11/05/01	Order, Re: Motion to Compel Defendant to Produce Documents, Rule issued to show cause	01
27	12/21/01	Affidavit of Service, Rules to Show Cause upon Attorney Mosley	02
28	12/24/01	Order, Re: Argument into Plaintiff's Motions to Compel Answers to Interrogatories and for Production of Documents	01
29	12/31/01	Defendant's Motion for Enlargement of Time within which to Respond to Interrogatory No. 1	04
30	01/17/02	Motion for Sanctions Pursuant to Pa.R.C.P. 4019(c)(2), filed by Edward Van Allen	29
31	01/21/02	Order, Re: Rule issued upon Defendant	01
32	01/24/02	Plaintiff's Motion for an Extension of Time	09
33	01/25/02	Order, Re: Extension of Time of 30 days is granted	01
34	02/27/02	Defendant's Answer to Plaintiff's Motion for Sanctions	17
35	02/27/02	Order, Re: Motion for Sanctions	01
36	03/26/02	Motion for Extension of Time filed by Edward Van Allen	04
37	03/27/02	Order, Re: Plaintiff is Granted an Extension of Time to file a Motion for Class Certification	01
38	04/04/02	Motion for Amendment of Order	11

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-501-CD

**Joseph M. Buynak, individually and on behalf of all other persons similarly situated
VS.**

Department of Transportation, Commonwealth of Pennsylvania

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
39	05/08/02	Order, Re: Motion for Amendment of Order	01
40	05/22/02	Motion for Order directing Immediate Compliance with prior Order and for Extension of Time to File Motion for Class Certification	08
41	05/22/02	Motion of Defendant Department of Transportation for Reconsideration	05
42	05/23/02	Plaintiff's Answer to Defendant's Motion for Reconsideration	07
43	05/23/02	Order, Re: Plaintiff's Motion for Order Directing Immediate Compliance with Prior Order and for Extension of Time to File Motion for Class Certification; deadline for filing class action extended	01
44	05/23/02	Order, Re: Plaintiff's Answer to Defendant's Motion for Reconsideration	01
45	05/23/02	Order, Re: Motion of Defendant Department of Transportation for Reconsideration	01
46	06/14/02	Defendant's Answer to Plaintiff's Motion for Order and for Extension of Time to file Motion for Class Certification	03
47	06/17/02	Order, Re: Plaintiff's Motion for Directing Immediate Compliance with Prior Order and for Extension of Time to file Motion for Class Certification	01
48	07/03/02	Plaintiff's Motion for Class Certification	14
49	07/26/02	Defendant's Motion for Enlargement of Time within which to Respond to Plaintiff's Motion for Class Certification	03
50	07/29/02	Order, Re: Defendant's Motion for Enlargement of Time is granted	01
51	07/31/02	Defendant's Answer to Plaintiff's Motion for Class Certification	10
52	07/31/02	Certificate of Service, Defendant's Brief in Opposition to Plaintiff's Motion for Class Certification upon Edward J. Van Allen, Esq.	01
53	11/14/02	Petition to Set Hearing Date for Motion for Class Certification and Order scheduling hearing	05
54	12/31/02	Order, Re: Plaintiff's Motion for Class Certification	01
55	01/08/03	Defendant's Motion for Enlargement of Time within which to file its reply brief in opposition to Plaintiff's Motion for Class Certification	04
56	01/21/03	Verification of Plaintiff's Motion for Class Certification	01
57	01/21/03	Plaintiff's Answer to Defendant's Motion for Enlargement of Time	06
58	02/04/03	Transcript of Testimony of Dianne Van Allen, December 30, 2002	Separate Cover
59	02/04/03	Transcript of Testimony of Gail Francisko, December 30, 2002	Separate Cover
60	02/04/03	Transcript of Testimony of Thomas F. McCracken, December 30, 2002	Separate Cover
61	02/07/03	Opinion and Order	04
62	02/19/03	Motion to Approve Notice to Class	06
63	02/19/03	Praecipe to Set Hearing Date	03
64	02/25/03	Order, Re: Hearing on Plaintiff's Motion to Approve Notice	01
65	03/10/03	Defendant's Application for Amendment of Interlocutory Order	05
66	03/21/03	Plaintiff's Response to Defendant's Application for Amendment of Interlocutory Order	07
67	04/09/03	Order, Re: Defendant's Application for Amendment of Interlocutory Order	01
68	04/23/03	Order, Re: Petitioner's Motion to Withdraw Petition for Permission to Appeal, Motion granted (Commonwealth Court's Order)	01
69	06/02/03	Order, Re: Appellant's Petition for Permission to Appeal is granted (Commonwealth Court's Order)	02

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

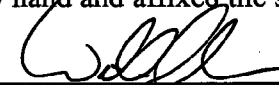
I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

Joseph M. Buynak, individually and on behalf of all other persons similarly situated
VS.

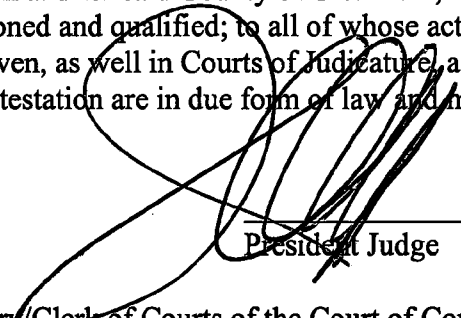
Department of Transportation, Commonwealth of Pennsylvania
00-501-CD

So full and entire as the same remains of record before the said Court, at No. 00-501-CD

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 4th Day of June, 2003.


Prothonotary/Clerk of Courts

I, **John K. Reilly, Jr.**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.


President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **John K. Reilly, Jr.**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have
hereunto set my hand and affixed
the seal of said Court, this 9
day of June, 2003


Prothonotary/Clerk of Courts

①



NOTICE TO DEFEND

TO: DEFENDANT ABOVE NAMED

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing, in writing with the court, your defenses and objections to the claims set forth against you. **YOU ARE WARNED** that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

FILED

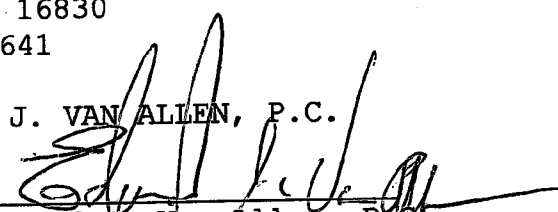
MAY 01 2000

William A. Shaw
Prothonotary

①

Prothonotary
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, P.C.
PA I.D. No. 11250
1832 Woodledge Drive
State College, PA 16803
(814) 238-2088
FAX: (814) 867-6123
Attorney for the Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	
Defendant.	)	

CIVIL ACTION COMPLAINT

NOW COMES the Plaintiff, by his attorney, Edward J. Van Allen, P.C., and makes this Civil Action Complaint against the Defendant.

1. The Plaintiff, Joseph M. Buynak, (Plaintiff "Buynak") is a 57 year old citizen of the United States who resides at 204½ West Front Street, Osceola Mills, Pennsylvania 16666.

2. The Defendant, Department of Transportation, Commonwealth of Pennsylvania, ("PennDot") is an administrative agency which maintains a facility in Clearfield, Pennsylvania.

approximately eight years until May, 1998, the Plaintiff was afforded accommodations to enable him to perform his job in a satisfactory or better than satisfactory manner. His date of birth is January 13, 1943. On January 13, 1998, he reached 55 years of age and problems with PennDot began shortly thereafter.

9. In May of 1998, the Plaintiff experienced further medical problems. This time he was not given the accommodations which he had for 8 years and he was harassed and coerced to retire on disability. However, the Plaintiff would not accept a disability retirement as he could still perform his duties with reasonable accommodations. Rather, PennDot required him to accept a six month temporary office position following PennDot's placing him on leave without pay. His last day of work as a Transportation Construction Inspector was May 28, 1998.

10. On December 3, 1998, PennDot denied the Plaintiff an ADA reasonable accommodation request.

11. The Plaintiff was replaced in his Inspector position by a much younger man. This younger man suffered injuries when he fell from a roof in a non-job related accident. Although he was on crutches, he was permitted to continue in his Inspector position and he did not have to accept a temporary office duty position.

12. With respect to the Plaintiff, PennDot has required the Plaintiff to exhaust his sick leave, has taken away leave, has ignored the physician's report permitting the Plaintiff to return to work, tried to make the Plaintiff take a temporary Finals Unit job which created a strain on his eyesight and caused him to suffer severe headaches, has coerced the Plaintiff in effect to get him to take disability retirement, or leave without pay, has given the Plaintiff a more difficult work assignment in the Finals Unit, has changed the Plaintiff's work assignments and vacillated in PennDot's position with respect to the Plaintiff's employment with PennDot by going from reinstating the Plaintiff's job to the Plaintiff's having no job at all, the Plaintiff has been required by PennDot to have frequent physical exams and has his work performance continually evaluated by PennDot requiring various functional capacity evaluations by HealthSouth. Because the Plaintiff questioned PennDot's job description and just wanted to "get back to work at his regular job," the Defendant continued to discriminate against him because of his age as follows:

PennDot required its Clearfield facility employees who took snow days in accordance with PennDot's practice to use paid leave days and then blamed the Plaintiff for creating

this situation in an attempt to alienate the Plaintiff from his fellow employees; PennDot supervisors have arbitrarily refused to initial the Plaintiff's payroll card; a PennDot supervisor suggested that a roller operator ignore the Plaintiff's instructions to adhere to weight specifications when rolling asphalt; with no notice the Plaintiff was instructed to immediately travel to Holidaysburg for a class although the supervisor knew that because of the lateness of the hour, the Plaintiff would miss almost the entire class.

13. PennDot also has continuously refused to promote the Plaintiff to a supervisory position although the Plaintiff has been qualified for supervisory positions and vacancies have been available.

14. PennDot gave much more support and encouragement to persons under age 40 than it did to persons 40 years of age or older.

15. The aforesaid actions by PennDot were taken against the Plaintiff and other persons 40 years of age or older because of the age of such persons, i.e. 40 years of age or older. The nature and extent of PennDot's action with respect to persons 40 years of age and older was more negative than to persons under 40 years of age.

16. The Plaintiff filed a timely complaint of age discrimination with the Pennsylvania Human Relations Commission ("PHRC") on March 1, 1999, a copy of which is attached hereto as Exhibit 1 and is incorporated by reference as if set forth herein in its entirety. The Plaintiff has twice amended this complaint. Copies of these amended complaints were served upon the Defendant by the PHRC.

17. More than one year has elapsed since the Plaintiff filed his PHRC complaint. The PHRC has not entered into a conciliation agreement in which Plaintiff Buynak is a party.

18. On May 1, 2000, the Plaintiff by letter requested that the PHRC dismiss his complaint because the Plaintiff intended to file a lawsuit against PennDot for age discrimination.

19. The Defendant's coercion, harassment and intimidation of the Plaintiff and the hostile working environment because of age directed against the Plaintiff were motivated by the Defendant's intent to discriminate against the Plaintiff because of his age which is in excess of 40.

20. The Defendant's disparate treatment of class members as set forth herein was motivated by the

20. The Defendant's disparate treatment of class members as set forth herein was motivated by the Defendant's intent to discriminate against the class members because of their age, 40 years of age or older.

21. By discriminating against the Plaintiff and class members, the Defendant violated the provisions of the Act which makes it unlawful for an employer to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's age.

22. Proximately, directly and solely as a result of the Defendant's discrimination against the Plaintiff and class members because of their age, 40 years of age or older, the Plaintiff and class members have suffered damages as previously set forth.

CLASS ACTION ALLEGATIONS

23. This civil action is brought by Plaintiff Buynak on his own behalf and, under Pa. R.C.P. No. 1702, as representative of the class defined below:

All persons who are residents of the Commonwealth of Pennsylvania and who since April 27, 1996 have been or were formerly employed by PennDot, were forty years of age

or older and who were subject to actual or threatened adverse employment decisions made by PennDot.

24. The Plaintiff is unable to state precisely the size of the class, but the members of such class number at least more than 100. The class is sufficiently numerous that joinder of all of its members is impracticable.

25. There are numerous common questions of law or fact with respect to the Defendant's practices of age discrimination in employment. These common questions of law or fact predominate over any questions affecting only individual members of the class. The class members' legal grievances arise out of the same practice or course of conduct on the part of the Defendant.

26. Because the only question of law or fact which is not common to all class members is the amount of individual damages for each particular class member, common questions of law and fact also clearly predominate within the meaning of Pa. R.C.P. No. 1708.

27. The claims of Plaintiff Buynak are typical of the claims of the class. Plaintiff Buynak's overall position on common issues is sufficiently aligned with that of the absent class members to ensure that their pursuit of those interests will advance those interests of the class members.

28. Plaintiff Buynak will fairly and adequately assert and protect the interest of the class under the criteria set forth in Pa. R.C.P. No. 1709. He will pursue a resolution of the controversy with vigor and in the interest of class members. Also, Plaintiff Buynak is a member of the class and shares a common interest with other class members.

29. The attorney for Plaintiff Buynak is experienced and able and will aggressively pursue the interests of the class.

30. Plaintiff Buynak has no conflict of interest in the maintenance of this class action.

31. Plaintiff Buynak has or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

32. A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Pa. R.C.P. No. 1708.

33. The class consists of at least one hundred employees and former employees of PennDot. Because of the predominance of the common questions of law or fact and the common interests of all class members, the difficulties likely to be encountered in the management of the action as a class action will be minimal.

34. The scope of the damages inflicted by the Defendant upon the class members is substantial and its misconduct has been intentional. Thus the prosecution of separate actions by individual class members would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members of the class not parties to the adjudication or substantially impair or impede their ability to protect their interests.

35. Upon information and belief, there is no other litigation already commenced by or against class members involving the issues herein.

36. A common pleas court is an appropriate forum for the litigation of the claims of an entire class because a common pleas court may exercise jurisdiction over absent class members who are Pennsylvania residents which, in this case, is a substantial number. In this case the Court of Common Pleas of Clearfield County, Pennsylvania is an appropriate forum because the Defendant maintains a large facility and does business in Clearfield County and because Plaintiff Buynak is and has been employed at that facility where age discrimination against the Plaintiff occurred.

37. In view of the complexities of the issues and the expenses of the litigation, forcing multiple individual

claims would be potentially unfair to litigants and can be inefficient because if numerous class members did bring individual suits, court dockets would become unnecessarily clogged with repetitive litigation.

38. It is not likely that the amounts which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

39. The Defendant has acted or refused to act on grounds generally applicable to the class, thereby making final relief appropriate with respect to the class.

40. Class certification is appropriate in this case.

DAMAGES

41. Because of the intentional age discrimination, the Plaintiff has suffered extreme mental anguish and emotional distress for at least 4 years and continuing to date, including, but not limited to, the Plaintiff's personality and way of life have been altered; he is fearful of further adverse action by PennDot; he is depressed and bitter; he is worried and anxious all the time over monetary issues and if he will have a job tomorrow or not; he gets jumpy when the telephone rings believing it will be bad news; although he detests hearing the telephone ring, yet when he

gets home from work, he doesn't want to leave the house unless someone is home to answer the telephone, even though he has an answering machine; although he fears he may be terminated, he wants to know as soon as possible; he gets into moods where he feels depressed all the time; he always feels alone, as if no one understands how he is suffering; he is not able to fall asleep or even get a good night's sleep because he is worrying all the time; all he thinks about is work; all he wants to do is work; he is afraid to take time off work, and he is afraid to say he is ill, he has trouble thinking things through to completion or resolve issues; he cannot organize his thoughts at times; he gets upset and yells at his wife and children for no reason; his grandson hardly knows him because he cannot get out of this mood to be the loving grandfather he should be; even when he watches TV, he cannot relax because he cannot keep his mind on what he is watching for he is worried about the status of his employment all the time; he has almost ceased his social life with family and friends; and he has suffered loss of esteem and perceives that his professional reputation has been destroyed.

42. The aforesaid acts of intentional age discrimination are the direct and proximate cause of the

extreme mental anguish and emotional distress of the Plaintiff created by PennDot.

and issues so triable.

43. The Plaintiff and class members are suffering continuing and immediate injuries and damages as a result of the Defendant's unlawful age discrimination.

44. Plaintiff demand a trial by jury of all claims.

45. The aforesaid damages demanded exceed the amount set for compulsory arbitration.

WHEREFORE, the Plaintiff Buynak requests this Honorable Court:

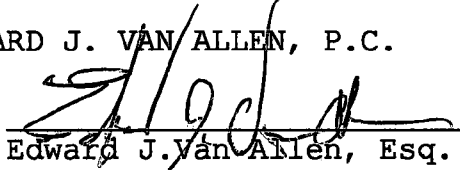
a. following a motion for class certification and a hearing on said motion, certify the class as defined in numbered paragraph 23 hereof.

b. award the Plaintiff and all class members all damages to which they may be entitled to recover, including without limitation, back pay, front pay, liquidated damages, compensatory damages, attorneys' fees, interest and costs from the Defendant,

c. permanently enjoin the Defendant from engaging in the practices and discrimination complained of,

d. and grant such other relief as may be just.

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, Esq.

Pa I. D. No. 11250

1832 Woodledge Drive

State College, PA 16803

(814) 238-2088

Fax: (814) 867-6123

Attorney for Plaintiff

Joseph M. Buynak

JURY TRIAL DEMANDED

EXHIBIT 1

Joseph M. Buynak
204 ½ Front Street
Osceola Mills, Pennsylvania 16666
(814) 339-6148

March 1, 1999

U.S. Equal Employment Opportunity Commission
Liberty Center, Suite 300
1001 Liberty Avenue
Pittsburgh, Pennsylvania 15222

Dear Sir or Madam:

I hereby make this charge of employment discrimination under the Age Discrimination in Employment Act against the Commonwealth of Pennsylvania, Department of Transportation, c/o Bureau of Personnel, 555 Walnut Street, 9th Floor, Harrisburg, Pennsylvania 17101-1900.

For approximately ten years I was employed by the Bureau of Construction as a Transportation Construction Inspector. In 1990, I had a heart attack followed by a stroke. I had a second stroke in 1994. For approximately eight years until May, 1998, I was afforded accommodations to enable me to perform my job in a satisfactory or better than satisfactory manner. My date of birth is January 13, 1943. On January 13, 1998, I reached 55 years of age and problems with the Department of Transportation began shortly thereafter.

In May of 1998, I experienced further medical problems. This time I was not given the accommodations which I held for 8 years and I was harassed and coerced to retire on disability. However, I would not accept a disability retirement as I could still perform my duties with reasonable accommodations. Rather, the Department of Transportation required me to accept a six month temporary office position following its placing me on leave without pay. My last day of work as a Transportation Construction Inspector was May 28, 1998.

On December 3, 1998, the Department of Transportation denied my ADA Reasonable Accommodation Request.

I have been replaced in my Inspector position by a much younger man. This young man suffered injuries when he fell from a roof in a non-job related accident. Although he was on crutches, he was permitted to continue in his Inspector position and he did not have to accept a temporary office duty position.

U.S. Equal Employment Opportunity Commission
Page two
March 1, 1999

I believe that the aforesaid actions discriminated against me because of my age in excess of forty.

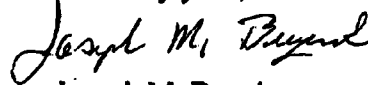
The Department of Transportation employs greatly in excess of 100 full time persons.

Proceeding involving this alleged unlawful employment practice have been commenced with the Pennsylvania Human Relations Commission, the State agency charged with the enforcement of fair employment practices laws, by the filing on this date by mail a duly executed counterpart of this letter.

I make this charge of age discrimination on behalf of myself and on behalf of all similarly situated employees and former employees.

My attorney is Edward J. Van Allen, P.C., 1832 Woodledge Drive, State College, Pennsylvania 16803, (814) 238-2088.

Sincerely your,


Joseph M. Bynak

cc: The Pennsylvania Human Relation Commission
Edward J. Van Allen, Esquire

VERIFICATION

The undersigned verifies that the facts set forth herein are true and correct and understands that false statements made herein are subject to the penalties set forth in 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities:

Date:

4/27/00

Joseph M. Buynak

Joseph M. Buynak

12

pen 10

Document

Reinstated/Reissued to Sheriff/Attorney
for service.

William A. Shaw

Deputy Prothonotary

FILED

MAY 01 2000

6/4:30 / wsr
William A. Shaw
Prothonotary

PD
80-
BY ATTY

5 cent to ATTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

53 JOSEPH M. BUYNAK,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

)
)
)
) Number 00-501-00
)

) JURY TRIAL DEMANDED
)

) CLASS ACTION
)
)

Prarrice To Reinstate

*Please reinstate the Complaint in the
abovementioned case.*

EDWARD J. VAN ALLEN, P.C.

[Signature]
By: *Edward J. Van Allen*

FILED

JUN 12 2000

William A. Shaw
Prothonotary

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No. 00-501-CD

JURY TRIAL DEMANDED

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• •

PRAECIPE FOR ENTRY OF APPEARANCE

Please enter my appearance on behalf of the Pennsylvania Department of Transportation
above-captioned action.

D. MICHAEL FISHER
Attorney General

Michael A. Farnan
MICHAEL A. FARNAN
Deputy Attorney General

**Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
Direct: (717) 787-7369
Date: June 27, 2000**

FILED

JUN 30 2000
m/12:00/67
William A. Shaw
Prothonotary

10 1 cent to ATT
E 11/22

#3

DATED: June 27, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BUYNAK, JOSEPH M.

00-501-CD

VS

DEPARTMENT OF TRANSPORTATION,

COMPLAINT

SHERIFF RETURNS

NOW JUNE 12, 2000 JOHN LOTWICK, SHERIFF OF DAUPHIN COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON DEPARTMENT OF TRANSPORTATION AND COMMONWEALTH OF PENNSYLVANIA, DEFENDANTS.

NOW JUNE 19, 2000 SERVED THE WITHIN COMPLAINT ON DEPARTMENT OF TRANSPORTATION, DEFENDANT BY DEPUTIZING THE SHERIFF OF DAUPHIN COUNTY. THE RETURN OF SHERIFF LOTWICK IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED MITZ TAYLOR, P.I.C.

NOW JUNE 19, 2000 SERVED THE WITHIN COMPLAINT ON COMMONWEALTH OF PENNSYLVANIA, OFFICE OF ATTORNEY GENERAL, DEFENDANT BY DEPUTIZING THE SHERIFF OF DAUPHIN COUNTY. THE RETURN OF SHERIFF LOTWICK IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED ANNETE LAUCK, RECPT.

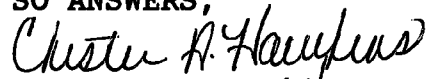
37.64 SHFF. HAWKINS PAID BY: ATTY.
31.50 SHFF. LOTWICK PAID BY: ATTY.
20.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

30th DAY OF June 2000


WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

SO ANSWERS,



CHESTER A. HAWKINS
SHERIFF

FILED

JUN 30 2000

012:30/44
William A. Shaw
Prothonotary



Office of the Sheriff

Mary Jane Snyder
Real Estate Deputy

William T. Tully
Solicitor



Ralph G. McAllister
Chief Deputy

Michael W. Rinehart
Assistant Chief Deputy

Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 255-2660 fax: (717) 255-2889

Jack Lotwick
Sheriff

Commonwealth of Pennsylvania : BUYNAK JOSEPH M
vs
County of Dauphin : DEPT OF TRANSPORTATION

Sheriff's Return

No. 1385-T - - -2000
OTHER COUNTY NO. 00-501-CD

AND NOW: June 19, 2000 at 11:00AM served the within

COMPLAINT upon
DEPT OF TRANSPORTATION by personally handing
to MITZ TAYLOR, STENO TYPIST III 1 true attested copy(ies)
of the original COMPLAINT and making known
to him/her the contents thereof at 555 WALNUT ST
HBG, PA 00000-0000

Sworn and subscribed to
before me this 22ND day of JUNE, 2000

Stephen C. Parina
PROTHONOTARY

So Answers,

J R Lotwick

Sheriff of Dauphin County, Pa.

By *Ronald Hopkins*
Deputy Sheriff

Sheriff's Costs: \$31.50 PD 06/16/2000

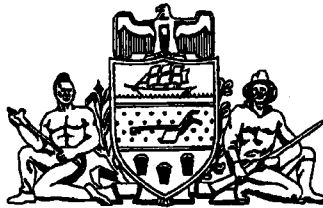
RCPT NO 138050

RH

Office of the Sheriff

Mary Jane Snyder
Real Estate Deputy

William T. Tully
Solicitor



Ralph G. McAllister
Chief Deputy

Michael W. Rinehart
Assistant Chief Deputy

Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 255-2660 fax: (717) 255-2889

Jack Lotwick
Sheriff

Commonwealth of Pennsylvania

: BUYNAC JOSEPH M

vs

County of Dauphin

: DEPT OF TRANSPORTATION

Sheriff's Return

No. 1385-T - - -2000

OTHER COUNTY NO. 00-501-CD

AND NOW: June 19, 2000 at 11:15AM served the within

COMPLAINT

upon

OFFICE OF THE ATTORNEY GENERAL
MICHAEL FISHER
to ANNETE LAUCK, RECEPTIONIST

by personally handing

1 true attested copy(ies)

of the original

COMPLAINT

and making known

to him/her the contents thereof at 16TH FLOOR

STRAWBERRY SQUARE

HBG, PA 00000-0000

Sworn and subscribed to
before me this 22ND day of JUNE, 2000

Stephen C. Parina
PROTHONOTARY

So Answers,

J R Lotwick

Sheriff of Dauphin County, Pa.

By *Ronald Hopkins*

Deputy Sheriff

Sheriff's Costs: \$31.50 PAID BY COUNTY

RH



Sheriff's Office
Clearfield County

SUITE 116
1 NORTH SECOND STREET - COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-6089

CHESTER A. HAWKINS
SHERIFF

DARLENE SHULTZ
CHIEF DEPUTY

MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK

NO. 00-501-CD

VS

ACTION: COMPLAINT

DEPARTMENT OF TRANSPORTATION al

SERVE BY: 7/11/00

OR

HEARING DATE:

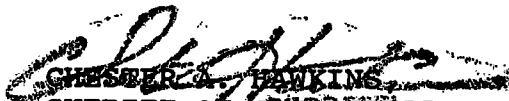
SERVE: DEPARTMENT OF TRANSPORTATION and COMMONWEALTH OF PENNSYLVANIA

ADDRESS: See Attached Letters

Know all men by these presents, that I, CHESTER A. HAWKINS,
HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby
deputize the SHERIFF of DAUPHIN County to execute this writ.

This deputation being made at the request and risk of the plaintiff
this 12th day of JUNE 2000.

Respectfully,


CHESTER A. HAWKINS
SHERIFF OF CLEARFIELD COUNTY

MAKE REFUND PAYABLE TO: EDWARD J. VAN ALLEN, Attorney

5

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

:
:
: No. 00-501-CD
:
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:
:
: (Jury Trial Demanded)
:

PRELIMINARY OBJECTIONS

Defendant Pennsylvania Department of Transportation, through its attorneys, hereby files the following preliminary objections and respectfully requests that the Court dismiss the case:

I. LACK OF JURISDICTION: PLAINTIFF HAS FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

1. Plaintiff filed his second amended complaint with the Pennsylvania Human Relations Commission ("PHRC") on April 10, 2000. Exhibit A.
2. On May 9, 2000, defendant filed an answer and new matter to the second amended complaint. Exhibit B.
3. By letter dated June 1, 2000, the PHRC notified the defendant that "[p]rior to completion of the investigation or a formal finding, the complainant requested that the complaint . . . be withdrawn." Exhibit C.
4. Because plaintiff withdrew his complaint filed with the PHRC before one year after the date of filing it and before completion of the PHRC's investigation, he

FILED

JUL 12 2000

William A. Shaw
Prothonotary

45

has failed to exhaust administrative remedies. See Fye v. Central Transportation, Inc., 487 Pa. 137, 409 A.2d 2 (1979).

5. Therefore, the Court lacks jurisdiction over this matter. Id.

WHEREFORE, the defendant respectfully requests that the Court grant its preliminary objection and dismiss the case for lack of jurisdiction.

II. IMPROPER VENUE: PROPER VENUE LIES IN THE DAUPHIN COUNTY COURT OF COMMON PLEAS.

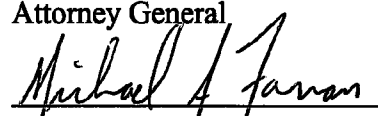
6. Paragraphs 1 through 5 are incorporated herein by reference as if set forth in full.
7. In cases involving Commonwealth parties, venue lies in three possible locations:
1) the county in which the principal office is located; 2) the county in which its local office is located; 3) the county in which the cause of action arose. 42 Pa.C.S. §8523.
8. Although, as an inspector, plaintiff performs work in several counties, he works in the Bureau of Construction and Materials, Quality Assurance Division "West", which is located at 1118 State Street, Harrisburg, Pennsylvania.
9. His supervisors work at the Division headquarters in Harrisburg.
10. None of the alleged discriminatory conduct occurred in Clearfield County.
11. The Attorney General, by regulation, has designated that the Department's principal office is in Dauphin County. See 37 Pa. Code §§111.1 and 111.4.
12. Therefore, venue does not lie in Clearfield County, it lies in Dauphin County.

WHEREFORE, the defendant respectfully requests that the Court transfer this case to the Court of Common Pleas of Dauphin County.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY:


MICHAEL A. FARNAN
Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Litigation Section

Counsel for DEFENDANT,
PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 787-7369

DATE: July 10, 2000

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA

00 APR 10 AM 11:50

GOVERNOR'S OFFICE

RECEIVED BY
PA HUMAN RELATIONS COMMISSION
HARRISBURG REGIONAL OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joseph M. Buynak,

Complainant

v.

Commonwealth of Pennsylvania,
Department of Transportation,

Respondent

:
:
:
:
: PHRC DOCKET no. E-92870-A
:
: EEOC Charge No. 17F993733
:
:
:
:

SECOND AMENDED COMPLAINT

1. The Complainant herein in:

Joseph M. Buynak
204½ Front Street
Osceola Mills, PA 16666

2. The Respondent herein is:

Commonwealth of Pennsylvania
555 Walnut Street
Forum Place
Harrisburg, PA 17101-1900

Commonwealth of Pennsylvania, Department of
Transportation, Bureau of Personnel
555 Walnut Street
9th Floor, Forum Place
Harrisburg, PA 17101-1900

3. I allege the Respondent violated § 5 of the
Pennsylvania Human Relations Act, as follows:

- a. On December 3, 1998, the Respondent refused to
accommodate my non-job related disabilities, heart

condition and strokes, by no reinstating to my former position of Transportation Construction Inspector because of my age, fifty-five, and/or my non-job related disabilities, heart condition and strokes.

- (1) I was hired by the Respondent as a Quality Assurance (West)/Transportation Construction Inspector in 1988.
- (2) After my heart attack and stroke in 1990, I was permitted to return to work and not perform concrete testing because of loss of dexterity and bimanual manipulation of my left hand
 - (a) After my second stroke in 1994, I returned to my position with a lifting restriction so I did not lift my own samples.
 - (b) I had a third stroke in 1998 and my doctor released me to return to work in July and again on September 17, 1998.
- (3) The Respondent requested that I fill-out an ADA accommodation request form, which I did.
 - (a) I had to have several medical evaluations and send the reports to the Respondent.
 - (b) My present accommodation needs are:
 - cannot perform concrete testing due to the limited dexterity of my left hand;
 - lifting restriction permitted to lift 50 lbs. however cannot carry over 10 feet;
 - and need extra time to organize thoughts and review written material.
- (4) On December 3, 1998, the Respondent refused to accommodate me and reinstate me.
 - (a) The Respondent had recently changed the essential function of the job.
 - (i) Several of the listed functions are

not essential to the job and several are slated to be discontinued as job duties.

- (b) All the medical reports show that I could have performed the job with accommodation/modification which were afforded me since 1990.
- (c) I was replaced by a much younger man.
 - (i) He had a non-job related accident and was on crutches. He was permitted to continue in his position and was not placed in an office position.
- (d) I was placed in a temporary duty assignment in Engineering District 2-0 performing construction cost duties. This position ends on May 31, 1999.
- (e) The Complainant initiates this Complaint as a collective action on behalf of himself and all similarly situated persons, i.e., persons of 40 years of age or older who were or are employed by PennDot and who suffered because of age discrimination due to intimidation, coercion and harassment and/or a hostile working environment created and perpetuated against them by PennDot.
- (f) With respect to the Complainant, PennDot has required the Complainant to exhaust his sick leave, has taken away leave, has ignored the physician's report permitting the Complainant to return to work, tried to make the Complainant take a temporary, finals Unit job which created a strain on his eyesight and caused him to suffer severe headaches, has coerced the Complainant in effect to get him to take disability retirement, or leave without pay, has given the Complainant a more difficult work assignment in the Finals

Unit, has changed the Complainant's work assignments and vacillated in PennDot's position with respect to the Complainant's employment with PennDot by going from reinstating the Complainant's job to the Complainant's having no job at all, the Complainant has been required to have frequent physical exams and has his work performance continually evaluated by requiring various functional capacity evaluations by HealthSouth, because the Complainant questioned PennDot's job description and just wanted to "get back to work at his regular job" the Respondant retaliated against him. PennDot has refused to promote the Complainant although the Complainant has been qualified for promotion and vacancies have existed.

- (g) PennDot gave much more support and encouragement to persons under age 40 than it did to persons 40 years of age or older.
- (h) The aforesaid actions by PennDot were taken against the Complainant and other persons 40 years of age or older because of the age of such persons, i.e. 40 years of age or older. The nature and extent of PennDot's action with respect to persons 40 years of age and older was more negative than to persons under 40 years of age.
- (i) The Respondant's coercion, harassment and intimidation of the Complainant and the hostile working environment because of age directed against the Complainant were motivated by the Respondant's intent to discriminate against the Plaintiff because of his age, 56.
- (j) The Respondant's disparate treatment of similarly situated persons as set forth herein was motivated by the Respondant's intent to discriminate against the

similarly situated persons because of their age, 40 years of age or older.

- (k) Because of the intentional age discrimination, the Complainant has suffered extreme mental anguish and emotional distress for at least 2½ years and continuing to date, including, but not limited to, the Complainant's personality and way of life have been altered; he is fearful of further adverse action by PennDot; he is depressed and bitter; he is worried and anxious all the time over monetary issues and if he will have a job tomorrow or not; he gets jumpy when the telephone rings believing it will be bad news; although he detests hearing the telephone ring, yet when he gets home from work, he doesn't want to leave the house unless someone is home to answer the telephone, even though he has an answering machine; although he fears he may be terminated, he wants to know as soon as possible; he goes into moods where he feels depressed all the time; he always feels alone, as if no one understands how he is suffering; he is not able to fall asleep or even get a good night's sleep because he is worrying all the time; all he thinks about is work; all he wants to do is work; he is afraid to take time off work, and he is afraid to say he is ill, he has trouble thinking things through to completion or resolve issues; he cannot organize his thoughts at times; he gets upset and yells at his wife and children for no reason; his grandson hardly knows him because he cannot get out of this mood to be the loving grandfather he should be; even when he watches TV, he cannot relax because he cannot keep his mind on what he is watching for he is worried about the status of his employment all the time; he has almost ceased his social life with family and friends; and he has suffered loss of esteem and perceives that his professional reputation has been destroyed.

- (l) The aforesaid acts of intentional age discrimination are the direct and proximate cause of the extreme mental anguish and emotional distress of the Complainant created by PennDot.
- (m) The Complainant is entitled to compensatory damages.
- (n) The acts complained of in this complaint against PennDot were intentional, outrageous and in reckless disregard of the rights of the Complainant, thereby entitling the Complainant to punitive damages.

WHEREFORE, this Commission should issue an Order awarding Complainant Buynak back pay, compensatory damages, punitive damages, attorney's fees, interest and costs.

Respectfully submitted,

By: Joseph M. Buynak
Joseph M. Buynak

Edward J. Van Allen, P.C.
PA I.D. No. 11250
1832 Woodledge Drive
State College, PA 16803
Phone: (814) 238-2088
Fax: (814) 867-6123
Attorney for the
Plaintiff, Joseph
M. Buynak

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joseph M. Buynak,

Complainant

v.

:
:
:
:
: PHRC DOCKET no. E-92870-A

:
: EEOC Charge No. 17F993733
:
:

Commonwealth of Pennsylvania,
Department of Transportation,

Respondent

VERIFICATION

I, Joseph M. Buynak, do hereby state that I have read the within Second Amended Complaint and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief.

Date: 4-07-2000

Joseph M. Buynak
Joseph M. Buynak

Sworn to and subscribed to
before me, a Notary Public,
this 7th day of April, 2000.

Scott T. Harlan
Notary Public

My commission expires:

[S E A L]

NOTARIAL SEAL
SCOTT T. HARLAN
Bellefonte Boro Centre County, PA
My Commission Expires Dec. 15, 2003

Joseph M. Buynak v. Commonwealth of Pennsylvania
Department of Transportation

PHRC Docket No. E-92870-AH

EEOC Charge No. 17F9983733

Certificate of Service

Pursuant to the requirements of 1 Pa. Code § 33.31, I hereby certify that I have this day served the foregoing Amended Complaint by first class mail, postage prepaid, as follows:

Commonwealth of Pennsylvania,
Department of Transportation
555 Walnut Street
9th Floor, Forum Place
Harrisburg PA 17101-1900
Respondent

Joseph M. Buynak
204 1/2 Front Street
Osceola Mills, PA 16666
Complainant

Commonwealth of Pennsylvania
555 Walnut Street
Forum Place
Harrisburg, PA 17101-1900
Special Respondent

Dated this 17 day of April, 2000

Regina Young

Regina Young

May 9, 2000

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

www.dot.state.pa.us



Ms. Suzanne G. Johnson
PA Human Relations Commission
Harrisburg Regional Office
Riverfront Office Complex
1101-1125 S. Front St., 5th Floor
Harrisburg, PA 17104

Joe Robinson
**COPY FOR YOUR
INFORMATION**

Dear Ms. Johnson,

Enclosed is the Respondent's answer for the PHRC AMENDED complaint brought forth by Joseph M. Buynak, Docket #E-92870-AH.

In compliance with the request, copies of the following documents were provided with the original response in November 1999: EEO 1 Report (FF 1), Current Union Contract (FF 2), and Employee Handbook/Manual (FF 3).

In compliance with the Document Request, copies of the following documents were also provided with the November 1999 response:

A. Full Legal Name/Address
of Respondent:

Pennsylvania Department of Transportation
Bureau of Personnel
Labor Relations Division
555 Walnut Street
9th Floor, Forum Place
Harrisburg, PA 10101-1900

B. Name of person designated to

provide information/documents: Denise A. Gross,
Personnel Analyst (717) 705-1537

C. Copies provided with original response:

1. Latest Pennsylvania Contract Compliance Report (OA 21) or most recent EEO1 Report to the United States Government. (FF-1)
2. Current Union Contract(s). (FF-2)
3. Employee Handbook/Manual. (FF-3)

D. Answer to specifics alleged in Section 3 of Second Amended Complaint:

E. Respondent's position on events or practices alleged by complainant as discriminatory is enclosed.

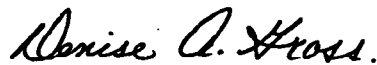
Further to requests for information:

3. Provided with original response is copy of documents governing job accommodations, light duty assignments, and leave policies. (See FF-2)
7. Provided with original response is Job description –
CONSTRUCTION/MATERIALS TEAM INSPECTOR (FF-4).

8. Daily duties and responsibilities of the job, significance and frequency with which they are performed, and qualifications necessary for the performance of each. (See FF-4)
9. Information regarding decisions concerning the complainant's disability and interference with performance. (See Exhibits 2-11)
10. Information concerning accommodation made, offered, suggested, or rejected. (Exhibits 1 & 1b)

If any further information is needed, please feel free to contact me directly at (717)705-1537. I am a Personnel Analyst with the Pennsylvania Department of Transportation, Labor Relations Division, and have completed the preliminary investigation herewith. Return correspondence should be directed to the undersigned at: Box 3245 Harrisburg, PA 17125-3245.

Sincerely,



Denise A. Gross, Personnel Analyst
Pennsylvania Department of Transportation
Bureau of Personnel

Enclosure

EXHIBIT B

Denise A. Gross, Personnel Analyst
Labor Relations Division
555 Walnut Street, 9th Floor
Forum Place
Harrisburg, PA 17105

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

In re the Grievance of:	)	Case No.: PHRC Docket No. E-92870-AH
Joseph M. Buynak,	)	EEOC Charge No. 17F993733
Complainant,	)	
And	)	
PA Department of Transportation,	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	
	)	

ANSWER AND NEW MATTER

AND NOW, comes the Respondent, Commonwealth of Pennsylvania, Department of Transportation, Bureau of Personnel, et. al., responding to the Complainant's complaint.

Dated this 9th day of May, 2000

555 Walnut Street, 9th
Floor
Forum Place
Harrisburg, PA 17105
Denise A. Gross

Response to the Individual Allegations

3. The Complainant alleges a violation of Section 5 of PHR Act. This allegation is denied.

a. Denied. The Respondent did not refuse the Complainant a reasonable accommodation because of his non-job-related disability, heart condition and strokes. Rather, the Complainant was offered a temporary modified duty assignment on September 14th 1998, which he did not accept until November 9th 1998.

3.a.(1) Affirmed. Mr. Joseph M. Buynak, The Complainant, was hired on April 18, 1988, as a Transportation Construction Inspector in the Department of transportation's Bureau of Construction and Materials.

3.a.(2) Affirmed. The Complainant was permitted to return to work after his heart attack and stroke in 1990 and not perform concrete testing, an Essential Job Function of his Transportation Construction Inspector classification. This relief was afforded The Complainant as he had experienced a loss of manual dexterity and bimanual manipulation, and there was not a significant amount of concrete work being done at that time. It should be noted the current construction program in the Department's District 2-0 has an extensive amount of concrete work due to the bypass of State College on State Routes 0026, 0322, and 0220.

3.a.(2)a. Denied. While the Department was aware of The Complainant's lifting restriction, it was portrayed as a temporary restriction and we did not relieve him from lifting samples during the performance of his duties. In addition, several requests to clarify if the restriction continued went unanswered from the time it was imposed up to his shoulder surgery and subsequent stroke in 1998.

3.a.(2)b. Denied. After The Complainant's stroke in 1998, his family physician and various specialists offered several medical opinions of The Complainant's physical condition and capabilities. However, due to the conflicting nature of the reports, the credibility of these reports was in question.

3.a.(3) Affirmed.

3.a.(3)a. Affirmed. See 3.a.(2)a. Above.

3.a.(3)b. Denied. At the Department's expense, The Complainant was re-evaluated by HealthSouth on May 20, 1999. The same Occupational Therapist whom had performed an earlier evaluation requested by The Complainant's physician was requested to ensure continuity. The

Response to PHRC Docket No. E-928
EEOC Charge No. 17F993733
Second Amended Complaint

results indicated that with modification of equipment and practice, The Complainant could possibly be able to perform the concrete testing that is an essential function of his position.

In addition, a meeting was held on January 13th, 2000, to explore possible concrete testing equipment modifications that would allow The Complainant to perform the concrete testing. At the meeting attended by a representative from PennDOT Labor Relations, a representative from PennDOT EEO, a representative from AFSCME, a representative of the Office of Vocational Rehabilitation, a representative from PA Human Relations Commission, The Complainant, and his supervisor, The Complainant agreed to try any possible equipment modifications the Department would make to concrete testing equipment that might allow him to be able to perform the concrete testing.

The other conditions stated are in agreement with HealthSouth's findings.

3.a.(4) Denied. On December 3, 1998 the Respondent disapproved the Complainant's request for accommodation. This decision was based on evidence that supported the fact that Mr. Buynak could not perform the essential functions of his position with or without accommodation.

Due to contradicting reports given by The Complainant's doctors, The Complainant was not reinstated to his position in Quality Assurance West. A temporary modified duty assignment was pursued and offered to The Complainant in the District 2-0 Finals Unit. This temporary assignment was given to allow him to return safely to work and have some time to recover from his latest medical problems. In addition, it also afforded the Respondent time to evaluate The Complainant's abilities and limitations. It should be noted The Complainant delayed several weeks in accepting this assignment.

3.a.(4)a. Denied. The Respondent did, in fact, clarify the Essential Functions of all Transportation Construction Inspectors in both Quality Assurance East and Quality Assurance West Divisions during this time period.

EEOC Charge No. 17F993733

Second Amended Complaint

3.a.(4)a.(i) Denied.

The Respondent, as the employer, is the party responsible for deciding what is or is not an Essential Function of any classification.

While several areas of a Transportation Construction Inspector's duties and Essential Functions in Quality Assurance are being examined and could change with possible changes to current business practices, Essential Functions must be based on current business needs and not what might happen in the future.

3.a.(4)b. Denied.

As stated in the response to 3.a.(2)b. and 3.a.(4) above, conflicting medical reports were supplied by The Complainant to the Respondent.

3.a.(4)c. Denied.

The Complainant was and continues to be a Transportation Construction Inspector in the Respondent's Quality Assurance West Division where he was originally hired. He was not replaced by anyone, and remains in his original position complement.

He was reassigned, along with his supervisor at the time, from District 2-0 to District 10-0 as a result of the Division's reorganization to address changing business requirements.

The "much younger man" referred to in the complaint was another Transportation Construction Inspector in the Division who was also assigned to District 2-0 prior to the reorganization. Due to his proximity to the geographic area to be covered, and his greater distance from District 10-0 relative to the Complainant, he was left in his existing assignment of District 2-0 and placed under a new supervisor.

After the "much younger man" left the Division to accept a lateral transfer to District 2-0, the Complainant was reassigned to District 2-0 under the new supervisor due to the Complainant's proximity to the geographic area needing coverage.

With regard to the issue of crutches, the other Transportation Construction Inspector did sustain a non-work-related injury and was temporarily on crutches after the Complainant was reassigned to District 10-0. However, after observation by his supervisor, it was confirmed he could continue to perform all of his field duties safely on crutches.

EEOC Charge No. 17F993733

Second Amended Complaint

- 3.a.(4)d. Denied. The Complainant was on temporary modified-duty assignment in the District 2-0 Finals Unit performing construction cost duties from November of 1998 until May 14, 1999.
- 3.a.(4)e. Denied. At no time did the Respondent discriminate against the Complainant based on his age. All decisions made concerning the Complainant were made based on geography, economics, business needs, and the Complainant's capabilities.
- 3.a.(4)f. Denied. The Complainant was required to exhaust his accrued sick leave, annual leave, personal leave, and go on leave without pay with benefits. He did not have leave taken away. The issues surrounding his medical reports were discussed in previous responses 3.a.(2)b. and 3.a.(4) above. The Respondent attempted to accommodate the Respondent's medical situation by giving him a temporary modified duty assignment to allow some recovery time and to keep him from being a hazard in the field to himself or those around him.

The assignment in the District 2-0 Finals Unit is usually given to a Construction Cost Technician I or II. The Construction Cost Technician I is a Pay Range 4 which is a lesser classification than a Transportation Construction Inspector. The Construction Cost Technician II is a Pay Range 5 which is the same range as a Transportation Construction Inspector. The work assignments, checking construction costs calculations, are consistent with work assignments given Transportation Construction Inspectors in the field. These inspectors would have similar responsibilities calculating payment quantities on their assigned projects.

With regard to the Complainant's claim the assignment caused him eyestrain or headaches, at no time did the Complainant report these issues to his supervisor.

With regard to changing assignments, vacillating on his status, and the issue of physical exams and evaluation, due to the Complainant's conflicting medical reports and the unknown nature of his true limitations, the Respondent acted in a cautious, if somewhat slow, manner to thoroughly evaluate the situation, explore options, and ensure the safety of all parties involved. As was explained in correspondence to the Complainant's counsel, these actions were not retaliatory but a necessary step in assessing the Complainant's abilities and dealing with the situation.

EEOC Charge No. 17F993733

Second Amended Complaint

Currently the Transportation Construction Inspector positions in both Quality Assurance West and East Divisions are considered "dead end" positions as there is no career path for individuals in this classification to advance. However, two inspectors in the Quality Assurance West Division did qualify for and were promoted to Civil Engineer positions. These individuals both hold Bachelor of Science degrees and one has his Engineer-in-Training credential from the Commonwealth.

The Complainant does not hold either a degree or professional credential that would qualify him for this type of position. In addition, the Complainant has not applied for positions that he would qualify for with the Districts or other Central Office Bureaus.

3.a.(4)g. Denied.

3.a.(4)h. Denied.

3.a.(4)i. Denied. The Complainant's current supervisor has had Transportation Construction Inspectors in the Division who were older than 56 years old work for him and no complaints were ever received.

3.a.(4)j. Denied.

3.a.(4)k. Denied. If the Complainant's state of mind is an issue; He has not fully discussed these issues with his supervisor. Had he done so, his supervisor would have referred him to the Respondent's State Employees' Assistance Program (SEAP) which offers resources to individual employees to assist them in dealing with a variety of issues including mental health. To date he has not sought such help from his supervisor or SEAP.

3.a.(4)l. Denied.

3.a.(4)m. Denied.

3.a.(4)n. Denied.

4. The Respondent should not be required to provide any remedies under Section 9 of the Pennsylvania Human Relations Act because Mr. Buynak was not denied a reasonable accommodation under the ADA.

Response to PHRC Docket No. E-92870-A
EEOC Charge No. 17F993733
Second Amended Complaint
NEW MATTER

The alleged basis of Mr. Buynak's complaint occurred on December 3, 1998; Respondent was not served notice of the complaint until October 14, 1999 and an Amended Complaint was served on April 17, 2000 with the same allegations. These complaints are untimely.

Mr. Buynak is still employed by the Department. The Department of Transportation previewed its plans regarding the modification of the concrete testing equipment for the Complainant on January 13, 2000. During the January 13, 2000 meeting, the Complainant agreed to try to perform concrete testing using the modified equipment. It is the Department's position that concrete testing is an essential function of a Transportation Construction Inspector. The Department has made a good faith effort to modify the concrete testing equipment as a reasonable accommodation to allow the Complainant to perform the essential functions of his classification. It is unreasonable to expect that the Department will permanently remove essential functions of any job description as an accommodation.

VERIFICATION

I, Denise A. Gross, hereby attest that I am authorized to make this Verification on behalf of the Commonwealth of Pennsylvania, Department of Transportation, et.al., and that the averments contained and set forth in the foregoing Answer and New Matter are true and correct to the best of my information and belief and that this Verification is made subject to the penalties of 18 Pa. C.S. s/s 4904 relating to unsworn falsification to authorities.



Denise A. Gross
Personnel Analyst
Division of Labor Relations
Bureau of Personnel
Department of Transportation
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120

EEOC Charge No. 17F993733

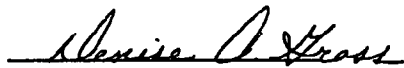
Second Amended Complaint

CERTIFICATION OF SERVICE

I Hereby certify that I have this 9th day of May 2000, served the foregoing Answer and New Matter upon the person and in the manner indicated below, which service satisfies the requirement of 1 Pa. Code s/s 33.35. Service by first class mail as follows:

Mr. Joseph M. Buynak (Complainant)
204 1/2 Front Street
Oscoela Mills, PA 16666

Edward J. Van Allen, P.C.
1832 Woodledge Drive
State College, PA 16803



Denise A. Gross
Personnel Analyst
Division of Labor Relations
Bureau of Personnel
Department of Transportation
Commonwealth of Pennsylvania

EXHIBIT C

Chairperson
ROBERT JOHNSON SMITH
Vice-Chairperson
RAQUEL OTERO de YIENGST
Secretary
GREGORY J. CELIA, JR.
Executive Director
HOMER C. FLOYD



COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION
101 South Second Street, Suite 300
P.O. Box 3145
Harrisburg, PA 17105-3145
(717) 787-4410 (Voice)
(717) 787-4087 (TT)

COMMISSIONERS
M. JOEL BOLSTEIN
JOSEPH J. BORGIA
THEOTIS W. BRADDY
CARL E. DENSON
RUSSELL S. HOWELL
ELIZABETH C. UMSTATT
SYLVIA A. WATERS
DANIEL D. YUN

Reply to:

P.O. Box 3145
Harrisburg, PA 17105-3145

June 1, 2000

Denise Gross
PA Dept of Transportation
555 Walnut Street 9th Floor
Forum Place
Harrisburg PA 17101

Re: Docket No. E92870AH- Joseph Buynak
v. PA Dept of Transportation
EEOC No. 17F993733

RECEIVED
JUN 2 2000
BUREAU OF PERSONNEL

Dear Denise Gross:

Prior to the completion of the investigation or a formal finding, the complainant requested that the complaint captioned above filed with the Pennsylvania Human Relations Commission be withdrawn. You are hereby notified that, in accordance with the complainant's request, this case is being closed. Enclosed is a Notice of the complainant's further rights in this matter.

The PHRA Act affords the complainant and the respondent the opportunity for comments after the final disposition of the complaint. If you wish to make written comments regarding the investigation of the complaint, please send them to Thomas L. Myers, the Director of Compliance, at the above address. Your comments will be provided to the Commission members. Thank you for your cooperation during the course of this investigation.

Very truly yours,

Homer C. Floyd
Executive Director

HCF/emb
Enclosure
Y2-R

PENNSYLVANIA HUMAN RELATIONS COMMISSION

**NOTICE OF RIGHTS OF COMPLAINANT AFTER
WITHDRAWAL OF COMPLAINT**

You are hereby notified that the Pennsylvania Human Relations Act provides that upon receipt of an official closing notice the complainant may have the right, if such a right has not already accrued to the complainant, to bring an action in the Court of Common Pleas for a judicial determination of the allegations of discrimination. The complainant may wish to consult a private attorney if he/she chooses this course of action.

M1/Y2-R

DATE: July 10, 2000

6.02

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAC,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

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:
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:
:

No. 00-501-CD

(Jury Trial Demanded)

NOTICE TO PLEAD

TO: Joseph M. Buynak through his counsel Edward J. Van Allen, Esquire

You are hereby notified to file a written response to the enclosed first amended preliminary objections within twenty (20) days from the service hereof or a judgment may be entered against you.


Michael A. Farran

Counsel for Pennsylvania Department of Transportation

Date: July 11, 2000

FILED

JUL 13 2000

William A. Shaw
Prothonotary

6.02

has failed to exhaust administrative remedies. See Fye v. Central Transportation, Inc., 487 Pa. 137, 409 A.2d 2 (1979).

5. Therefore, the Court lacks jurisdiction over this matter. Id.

WHEREFORE, the defendant respectfully requests that the Court grant its preliminary objection and dismiss the case for lack of jurisdiction.

II. IMPROPER VENUE: PROPER VENUE LIES IN THE DAUPHIN COUNTY COURT OF COMMON PLEAS.

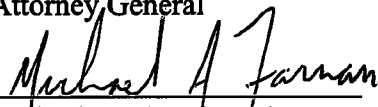
6. Paragraphs 1 through 5 are incorporated herein by reference as if set forth in full.
7. In cases involving Commonwealth parties, venue lies in three possible locations: 1) the county in which the principal office is located; 2) the county in which its local office is located; 3) the county in which the cause of action arose. 42 Pa.C.S. §8523.
8. Although, as an inspector, plaintiff performs work in several counties, he works in the Bureau of Construction and Materials, Quality Assurance Division "West", which is located at 1118 State Street, Harrisburg, Pennsylvania.
9. His supervisors work at the Division headquarters in Harrisburg.
10. None of the alleged discriminatory conduct occurred in Clearfield County.
11. The Attorney General, by regulation, has designated that the Department's principal office is in Dauphin County. See 37 Pa. Code §§111.1 and 111.4.
12. Therefore, venue does not lie in Clearfield County, it lies in Dauphin County.

WHEREFORE, the defendant respectfully requests that the Court transfer this case to the Court of Common Pleas of Dauphin County.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY:


MICHAEL A. FARNAN
Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Litigation Section

Counsel for DEFENDANT,
PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 787-7369

DATE: July 11, 2000

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA

00 APR 10 AM 11:50

GOVERNOR'S OFFICE

RECEIVED BY
PA HUMAN RELATIONS COMMISSION
HARRISBURG REGIONAL OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joseph M. Buynak,

Complainant

v.

Commonwealth of Pennsylvania,
Department of Transportation,

Respondent

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PHRC DOCKET no. E-92870-A

EEOC Charge No. 17F993733

SECOND AMENDED COMPLAINT

1. The Complainant herein in:

Joseph M. Buynak
204½ Front Street
Osceola Mills, PA 16666

2. The Respondent herein is:

Commonwealth of Pennsylvania
555 Walnut Street
Forum Place
Harrisburg, PA 17101-1900

Commonwealth of Pennsylvania, Department of
Transportation, Bureau of Personnel
555 Walnut Street
9th Floor, Forum Place
Harrisburg, PA 17101-1900

3. I allege the Respondent violated § 5 of the
Pennsylvania Human Relations Act, as follows:

- a. On December 3, 1998, the Respondent refused to
accommodate my non-job related disabilities, heart

condition and strokes, by no reinstating to my former position of Transportation Construction Inspector because of my age, fifty-five, and/or my non-job related disabilities, heart condition and strokes.

- (1) I was hired by the Respondent as a Quality Assurance (West)/Transportation Construction Inspector in 1988.
- (2) After my heart attack and stroke in 1990, I was permitted to return to work and not perform concrete testing because of loss of dexterity and bimanual manipulation of my left hand
 - (a) After my second stroke in 1994, I returned to my position with a lifting restriction so I did not lift my own samples.
 - (b) I had a third stroke in 1998 and my doctor released me to return to work in July and again on September 17, 1998.
- (3) The Respondent requested that I fill-out an ADA accommodation request form, which I did.
 - (a) I had to have several medical evaluations and send the reports to the Respondent.
 - (b) My present accommodation needs are:
 - * cannot perform concrete testing due to the limited dexterity of my left hand; lifting restriction permitted to lift 50 lbs. however cannot carry over 10 feet; and need extra time to organize thoughts and review written material.
- (4) On December 3, 1998, the Respondent refused to accommodate me and reinstate me.
 - (a) The Respondent had recently changed the essential function of the job.
 - (i) Several of the listed functions are

not essential to the job and several are slated to be discontinued as job duties.

- (b) All the medical reports show that I could have performed the job with accommodation/modification which were afforded me since 1990.
- (c) I was replaced by a much younger man.
 - (i) He had a non-job related accident and was on crutches. He was permitted to continue in his position and was not placed in an office position.
- (d) I was placed in a temporary duty assignment in Engineering District 2-0 performing construction cost duties. This position ends on May 31, 1999.
- (e) The Complainant initiates this Complaint as a collective action on behalf of himself and all similarly situated persons, i.e., persons of 40 years of age or older who were or are employed by PennDot and who suffered because of age discrimination due to intimidation, coercion and harassment and/or a hostile working environment created and perpetuated against them by PennDot.
- (f) With respect to the Complainant, PennDot has required the Complainant to exhaust his sick leave, has taken away leave, has ignored the physician's report permitting the Complainant to return to work, tried to make the Complainant take a temporary finals Unit job which created a strain on his eyesight and caused him to suffer severe headaches, has coerced the Complainant in effect to get him to take disability retirement, or leave without pay, has given the Complainant a more difficult work assignment in the Finals

Unit, has changed the Complainant's work assignments and vacillated in PennDot's position with respect to the Complainant's employment with PennDot by going from reinstating the Complainant's job to the Complainant's having no job at all, the Complainant has been required to have frequent physical exams and has his work performance continually evaluated by requiring various functional capacity evaluations by HealthSouth, because the Complainant questioned PennDot's job description and just wanted to "get back to work at his regular job" the Respondant retaliated against him. PennDot has refused to promote the Complainant although the Complainant has been qualified for promotion and vacancies have existed.

- (g) PennDot gave much more support and encouragement to persons under age 40 than it did to persons 40 years of age or older.
- (h) The aforesaid actions by PennDot were taken against the Complainant and other persons 40 years of age or older because of the age of such persons, i.e. 40 years of age or older. The nature and extent of PennDot's action with respect to persons 40 years of age and older was more negative than to persons under 40 years of age.
- (i) The Respondant's coercion, harassment and intimidation of the Complainant and the hostile working environment because of age directed against the Complainant were motivated by the Respondant's intent to discriminate against the Plaintiff because of his age, 56.
- (j) The Respondant's disparate treatment of similarly situated persons as set forth herein was motivated by the Respondant's intent to discriminate against the

similarly situated persons because of their age, 40 years of age or older.

- (k) Because of the intentional age discrimination, the Complainant has suffered extreme mental anguish and emotional distress for at least 2½ years and continuing to date, including, but not limited to, the Complainant's personality and way of life have been altered; he is fearful of further adverse action by PennDot; he is depressed and bitter; he is worried and anxious all the time over monetary issues and if he will have a job tomorrow or not; he gets jumpy when the telephone rings believing it will be bad news; although he detests hearing the telephone ring, yet when he gets home from work, he doesn't want to leave the house unless someone is home to answer the telephone, even though he has an answering machine; although he fears he may be terminated, he wants to know as soon as possible; he goes into moods where he feels depressed all the time; he always feels alone, as if no one understands how he is suffering; he is not able to fall asleep or even get a good night's sleep because he is worrying all the time; all he thinks about is work; all he wants to do is work; he is afraid to take time off work, and he is afraid to say he is ill, he has trouble thinking things through to completion or resolve issues; he cannot organize his thoughts at times; he gets upset and yells at his wife and children for no reason; his grandson hardly knows him because he cannot get out of this mood to be the loving grandfather he should be; even when he watches TV, he cannot relax because he cannot keep his mind on what he is watching for he is worried about the status of his employment all the time; he has almost ceased his social life with family and friends; and he has suffered loss of esteem and perceives that his professional reputation has been destroyed.

- (l) The aforesaid acts of intentional age discrimination are the direct and proximate cause of the extreme mental anguish and emotional distress of the Complainant created by PennDot.
- (m) The Complainant is entitled to compensatory damages.
- (n) The acts complained of in this complaint against PennDot were intentional, outrageous and in reckless disregard of the rights of the Complainant, thereby entitling the Complainant to punitive damages.

WHEREFORE, this Commission should issue an Order awarding Complainant Buynak back pay, compensatory damages, punitive damages, attorney's fees, interest and costs.

Respectfully submitted,

By: Joseph M. Buynak
Joseph M. Buynak

Edward J. Van Allen, P.C.
PA I.D. No. 11250
1832 Woodledge Drive
State College, PA 16803
Phone: (814) 238-2088
Fax: (814) 867-6123
Attorney for the
Plaintiff, Joseph
M. Buynak

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joseph M. Buynak,

Complainant

v.

Commonwealth of Pennsylvania,
Department of Transportation,

Respondent

:
:
:
:
: PHRC DOCKET no. E-92870-A
:
: EEOC Charge No. 17F993733
:
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:

VERIFICATION

I, Joseph M. Buynak, do hereby state that I have read the within Second Amended Complaint and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief.

Date: 4-07-2000

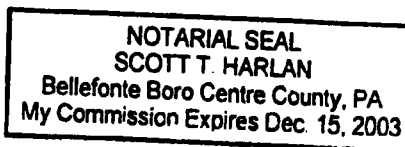
Joseph M. Buynak
Joseph M. Buynak

Sworn to and subscribed to
before me, a Notary Public,
this 7th day of April, 2000.

Scott T. Harlan
Notary Public

My commission expires:

[S E A L]



Joseph M. Buynak v. Commonwealth of Pennsylvania
Department of Transportation

PHRC Docket No. E-92870-AH

EEOC Charge No. 17F9983733

Certificate of Service

Pursuant to the requirements of 1 Pa. Code § 33.31, I hereby certify that I have this day served the foregoing Amended Complaint by first class mail, postage prepaid, as follows:

Commonwealth of Pennsylvania,
Department of Transportation
555 Walnut Street
9th Floor, Forum Place
Harrisburg PA 17101-1900
Respondent

Joseph M. Buynak
204 1/2 Front Street
Osceola Mills, PA 16666
Complainant

Commonwealth of Pennsylvania
555 Walnut Street
Forum Place
Harrisburg, PA 17101-1900
Special Respondent

Dated this 17 day of April, 2000

Regina Young

Regina Young

May 9, 2000

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us



Ms. Suzanne G. Johnson
PA Human Relations Commission
Harrisburg Regional Office
Riverfront Office Complex
1101-1125 S. Front St., 5th Floor
Harrisburg, PA 17104

Joe Robinson
**COPY FOR YOUR
INFORMATION**

Dear Ms. Johnson,

Enclosed is the Respondent's answer for the PHRC AMENDED complaint brought forth by Joseph M. Buynak, Docket #E-92870-AH.

In compliance with the request, copies of the following documents were provided with the original response in November 1999: EEO 1 Report (FF 1), Current Union Contract (FF 2), and Employee Handbook/Manual (FF 3).

In compliance with the Document Request, copies of the following documents were also provided with the November 1999 response:

A. Full Legal Name/Address
of Respondent:

Pennsylvania Department of Transportation
Bureau of Personnel
Labor Relations Division
555 Walnut Street
9th Floor, Forum Place
Harrisburg, PA 10101-1900

B. Name of person designated to
provide information/documents:

Denise A. Gross,
Personnel Analyst (717) 705-1537

C. Copies provided with original response:

1. Latest Pennsylvania Contract Compliance Report (OA 21) or most recent EEO1 Report to the United States Government. (FF-1)
2. Current Union Contract(s). (FF-2)
3. Employee Handbook/Manual. (FF-3)

D. Answer to specifics alleged in Section 3 of Second Amended Complaint:

E. Respondent's position on events or practices alleged by complainant as discriminatory is enclosed.

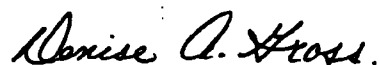
Further to requests for information:

3. Provided with original response is copy of documents governing job accommodations, light duty assignments, and leave policies. (See FF-2)
7. Provided with original response is Job description –
CONSTRUCTION/MATERIALS TEAM INSPECTOR (FF-4).

8. Daily duties and responsibilities of the job, significance and frequency with which they are performed, and qualifications necessary for the performance of each. (See FF-4)
9. Information regarding decisions concerning the complainant's disability and interference with performance. (See Exhibits 2-11)
10. Information concerning accommodation made, offered, suggested, or rejected. (Exhibits 1 & 1b)

If any further information is needed, please feel free to contact me directly at (717)705-1537. I am a Personnel Analyst with the Pennsylvania Department of Transportation, Labor Relations Division, and have completed the preliminary investigation herewith. Return correspondence should be directed to the undersigned at: Box 3245 Harrisburg, PA 17125-3245.

Sincerely,



Denise A. Gross, Personnel Analyst
Pennsylvania Department of Transportation
Bureau of Personnel

Enclosure

EXHIBIT B

Response to PHRC Docket No. E-928 A
EEOC Charge No. 17F993733
Second Amended Complaint

Denise A. Gross, Personnel Analyst
Labor Relations Division
555 Walnut Street, 9th Floor
Forum Place
Harrisburg, PA 17105

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

In re the Grievance of:	)	Case No.: PHRC Docket No. E-92870-AH
Joseph M. Buynak,	)	EEOC Charge No. 17F99733
Complainant,	)	
And	)	
PA Department of Transportation,	)	
Respondent	)	
	)	
	)	
	)	
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	)	
	)	
	)	

ANSWER AND NEW MATTER

AND NOW, comes the Respondent, Commonwealth of Pennsylvania, Department of Transportation, Bureau of Personnel, et. al., responding to the Complainant's complaint.

Dated this 9th day of May, 2000

555 Walnut Street, 9th
Floor
Forum Place
Harrisburg, PA 17105
Denise A. Gross

Response to the Individual Allegations

3. The Complainant alleges a violation of Section 5 of PHR Act. This allegation is denied.
- a. Denied. The Respondent did not refuse the Complainant a reasonable accommodation because of his non-job-related disability, heart condition and strokes. Rather, the Complainant was offered a temporary modified duty assignment on September 14th 1998, which he did not accept until November 9th 1998.
- 3.a.(1) Affirmed. Mr. Joseph M. Buynak, The Complainant, was hired on April 18, 1988, as a Transportation Construction Inspector in the Department of transportation's Bureau of Construction and Materials.
- 3.a.(2) Affirmed. The Complainant was permitted to return to work after his heart attack and stroke in 1990 and not perform concrete testing, an Essential Job Function of his Transportation Construction Inspector classification. This relief was afforded The Complainant as he had experienced a loss of manual dexterity and bimanual manipulation, and there was not a significant amount of concrete work being done at that time. It should be noted the current construction program in the Department's District 2-0 has an extensive amount of concrete work due to the bypass of State College on State Routes 0026, 0322, and 0220.
- 3.a.(2)a. Denied. While the Department was aware of The Complainant's lifting restriction, it was portrayed as a temporary restriction and we did not relieve him from lifting samples during the performance of his duties. In addition, several requests to clarify if the restriction continued went unanswered from the time it was imposed up to his shoulder surgery and subsequent stroke in 1998.
- 3.a.(2)b. Denied. After The Complainant's stroke in 1998, his family physician and various specialists offered several medical opinions of The Complainant's physical condition and capabilities. However, due to the conflicting nature of the reports, the credibility of these reports was in question.
- 3.a.(3) Affirmed.
- 3.a.(3)a. Affirmed. See 3.a.(2)a. Above.
- 3.a.(3)b. Denied. At the Department's expense, The Complainant was re-evaluated by HealthSouth on May 20, 1999. The same Occupational Therapist whom had performed an earlier evaluation requested by The Complainant's physician was requested to ensure continuity. The

EEOC Charge No. 17F993733

Second Amended Complaint

results indicated that with modification of equipment and practice, The Complainant could possibly be able to perform the concrete testing that is an essential function of his position.

In addition, a meeting was held on January 13th, 2000, to explore possible concrete testing equipment modifications that would allow The Complainant to perform the concrete testing. At the meeting attended by a representative from PennDOT Labor Relations, a representative from PennDOT EEO, a representative from AFSCME, a representative of the Office of Vocational Rehabilitation, a representative from PA Human Relations Commission, The Complainant, and his supervisor, The Complainant agreed to try any possible equipment modifications the Department would make to concrete testing equipment that might allow him to be able to perform the concrete testing.

The other conditions stated are in agreement with HealthSouth's findings.

3.a.(4) Denied. On December 3, 1998 the Respondent disapproved the Complainant's request for accommodation. This decision was based on evidence that supported the fact that Mr. Buynak could not perform the essential functions of his position with or without accommodation.

Due to contradicting reports given by The Complainant's doctors, The Complainant was not reinstated to his position in Quality Assurance West. A temporary modified duty assignment was pursued and offered to The Complainant in the District 2-0 Finals Unit. This temporary assignment was given to allow him to return safely to work and have some time to recover from his latest medical problems. In addition, it also afforded the Respondent time to evaluate The Complainant's abilities and limitations. It should be noted The Complainant delayed several weeks in accepting this assignment.

3.a.(4)a. Denied. The Respondent did, in fact, clarify the Essential Functions of all Transportation Construction Inspectors in both Quality Assurance East and Quality Assurance West Divisions during this time period.

EEOC Charge No. 17F993733

Second Amended Complaint

3.a.(4)a.(i) Denied.

The Respondent, as the employer, is the party responsible for deciding what is or is not an Essential Function of any classification.

While several areas of a Transportation Construction Inspector's duties and Essential Functions in Quality Assurance are being examined and could change with possible changes to current business practices, Essential Functions must be based on current business needs and not what might happen in the future.

3.a.(4)b. Denied.

As stated in the response to 3.a.(2)b. and 3.a.(4) above, conflicting medical reports were supplied by The Complainant to the Respondent.

3.a.(4)c. Denied.

The Complainant was and continues to be a Transportation Construction Inspector in the Respondent's Quality Assurance West Division where he was originally hired. He was not replaced by anyone, and remains in his original position complement.

He was reassigned, along with his supervisor at the time, from District 2-0 to District 10-0 as a result of the Division's reorganization to address changing business requirements.

The "much younger man" referred to in the complaint was another Transportation Construction Inspector in the Division who was also assigned to District 2-0 prior to the reorganization. Due to his proximity to the geographic area to be covered, and his greater distance from District 10-0 relative to the Complainant, he was left in his existing assignment of District 2-0 and placed under a new supervisor.

After the "much younger man" left the Division to accept a lateral transfer to District 2-0, the Complainant was reassigned to District 2-0 under the new supervisor due to the Complainant's proximity to the geographic area needing coverage.

With regard to the issue of crutches, the other Transportation Construction Inspector did sustain a non-work-related injury and was temporarily on crutches after the Complainant was reassigned to District 10-0. However, after observation by his supervisor, it was confirmed he could continue to perform all of his field duties safely on crutches.

EEOC Charge No. 17F993733

Second Amended Complaint

- 3.a.(4)d. Denied. The Complainant was on temporary modified-duty assignment in the District 2-0 Finals Unit performing construction cost duties from November of 1998 until May 14, 1999.
- 3.a.(4)e. Denied. At no time did the Respondent discriminate against the Complainant based on his age. All decisions made concerning the Complainant were made based on geography, economics, business needs, and the Complainant's capabilities.
- 3.a.(4)f. Denied. The Complainant was required to exhaust his accrued sick leave, annual leave, personal leave, and go on leave without pay with benefits. He did not have leave taken away. The issues surrounding his medical reports were discussed in previous responses 3.a.(2)b. and 3.a.(4) above. The Respondent attempted to accommodate the Respondent's medical situation by giving him a temporary modified duty assignment to allow some recovery time and to keep him from being a hazard in the field to himself or those around him.

The assignment in the District 2-0 Finals Unit is usually given to a Construction Cost Technician I or II. The Construction Cost Technician I is a Pay Range 4 which is a lesser classification than a Transportation Construction Inspector. The Construction Cost Technician II is a Pay Range 5 which is the same range as a Transportation Construction Inspector. The work assignments, checking construction costs calculations, are consistent with work assignments given Transportation Construction Inspectors in the field. These inspectors would have similar responsibilities calculating payment quantities on their assigned projects.

With regard to the Complainant's claim the assignment caused him eyestrain or headaches, at no time did the Complainant report these issues to his supervisor.

With regard to changing assignments, vacillating on his status, and the issue of physical exams and evaluation, due to the Complainant's conflicting medical reports and the unknown nature of his true limitations, the Respondent acted in a cautious, if somewhat slow, manner to thoroughly evaluate the situation, explore options, and ensure the safety of all parties involved. As was explained in correspondence to the Complainant's counsel, these actions were not retaliatory but a necessary step in assessing the Complainant's abilities and dealing with the situation.

EEOC Charge No. 17F993733

Second Amended Complaint

Currently the Transportation Construction Inspector positions in both Quality Assurance West and East Divisions are considered "dead end" positions as there is no career path for individuals in this classification to advance. However, two inspectors in the Quality Assurance West Division did qualify for and were promoted to Civil Engineer positions. These individuals both hold Bachelor of Science degrees and one has his Engineer-in-Training credential from the Commonwealth.

The Complainant does not hold either a degree or professional credential that would qualify him for this type of position. In addition, the Complainant has not applied for positions that he would qualify for with the Districts or other Central Office Bureaus.

3.a.(4)g. Denied.

3.a.(4)h. Denied.

3.a.(4)i. Denied. The Complainant's current supervisor has had Transportation Construction Inspectors in the Division who were older than 56 years old work for him and no complaints were ever received.

3.a.(4)j. Denied.

3.a.(4)k. Denied. If the Complainant's state of mind is an issue; He has not fully discussed these issues with his supervisor. Had he done so, his supervisor would have referred him to the Respondent's State Employees' Assistance Program (SEAP) which offers resources to individual employees to assist them in dealing with a variety of issues including mental health. To date he has not sought such help from his supervisor or SEAP.

3.a.(4)l. Denied.

3.a.(4)m. Denied.

3.a.(4)n. Denied.

4. The Respondent should not be required to provide any remedies under Section 9 of the Pennsylvania Human Relations Act because Mr. Buynak was not denied a reasonable accommodation under the ADA.

EEOC Charge No. 17F993733

Second Amended Complaint

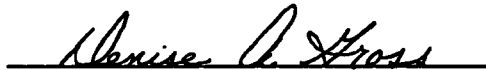
NEW MATTER

The alleged basis of Mr. Buynak's complaint occurred on December 3, 1998; Respondent was not served notice of the complaint until October 14, 1999 and an Amended Complaint was served on April 17, 2000 with the same allegations. These complaints are untimely.

Mr. Buynak is still employed by the Department. The Department of Transportation previewed its plans regarding the modification of the concrete testing equipment for the Complainant on January 13, 2000. During the January 13, 2000 meeting, the Complainant agreed to try to perform concrete testing using the modified equipment. It is the Department's position that concrete testing is an essential function of a Transportation Construction Inspector. The Department has made a good faith effort to modify the concrete testing equipment as a reasonable accommodation to allow the Complainant to perform the essential functions of his classification. It is unreasonable to expect that the Department will permanently remove essential functions of any job description as an accommodation.

VERIFICATION

I, Denise A. Gross, hereby attest that I am authorized to make this Verification on behalf of the Commonwealth of Pennsylvania, Department of Transportation, et.al., and that the averments contained and set forth in the foregoing Answer and New Matter are true and correct to the best of my information and belief and that this Verification is made subject to the penalties of 18 Pa. C.S. s/s 4904 relating to unsworn falsification to authorities.



Denise A. Gross
Personnel Analyst
Division of Labor Relations
Bureau of Personnel
Department of Transportation
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120

EEOC Charge No. 17F993733

Second Amended Complaint

CERTIFICATION OF SERVICE

I Hereby certify that I have this 9th day of May 2000, served the foregoing Answer and New Matter upon the person and in the manner indicated below, which service satisfies the requirement of 1 Pa. Code s/s 33.35. Service by first class mail as follows:

Mr. Joseph M. Buynak (Complainant)
204 1/2 Front Street
Oscoela Mills, PA 16666

Edward J. Van Allen, P.C.
1832 Woodledge Drive
State College, PA 16803


Denise A. Gross
Personnel Analyst
Division of Labor Relations
Bureau of Personnel
Department of Transportation
Commonwealth of Pennsylvania

EXHIBIT C

Chairperson
ROBERT JOHNSON SMITH
Vice-Chairperson
RAQUEL OTERO de YIENGST
Secretary
GREGORY J. CELIA, JR.
Executive Director
HOMER C. FLOYD



COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION

101 South Second Street, Suite 300
P.O. Box 3145

Harrisburg, PA 17105-3145
(717) 787-4410 (Voice)
(717) 787-4087 (TT)

COMMISSIONERS
M. JOEL BOLSTEIN
JOSEPH J. BORGIA
THEOTIS W. BRADY
CARL E. DENSON
RUSSELL S. HOWELL
ELIZABETH C. UMSTATTD
SYLVIA A. WATERS
DANIEL D. YUN

Reply to:

P.O. Box 3145
Harrisburg, PA 17105-3145

June 1, 2000

Denise Gross
PA Dept of Transportation
555 Walnut Street 9th Floor
Forum Place
Harrisburg PA 17101

Re: Docket No. E92870AH- Joseph Buynak
v. PA Dept of Transportation
EEOC No. 17F993733

RECEIVED
JUN 2 2000
BUREAU OF PERSONNEL

Dear Denise Gross:

Prior to the completion of the investigation or a formal finding, the complainant requested that the complaint captioned above filed with the Pennsylvania Human Relations Commission be withdrawn. You are hereby notified that, in accordance with the complainant's request, this case is being closed. Enclosed is a Notice of the complainant's further rights in this matter.

The PHRAAct affords the complainant and the respondent the opportunity for comments after the final disposition of the complaint. If you wish to make written comments regarding the investigation of the complaint, please send them to Thomas L. Myers, the Director of Compliance, at the above address. Your comments will be provided to the Commission members. Thank you for your cooperation during the course of this investigation.

Very truly yours,

Homer C. Floyd
Executive Director

HCF/emb
Enclosure
Y2-R

PENNSYLVANIA HUMAN RELATIONS COMMISSION

**NOTICE OF RIGHTS OF COMPLAINANT AFTER
WITHDRAWAL OF COMPLAINT**

You are hereby notified that the Pennsylvania Human Relations Act provides that upon receipt of an official closing notice the complainant may have the right, if such a right has not already accrued to the complainant, to bring an action in the Court of Common Pleas for a judicial determination of the allegations of discrimination. The complainant may wish to consult a private attorney if he/she chooses this course of action.

July 11, 2000

DATE: July 11, 2000

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAC,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

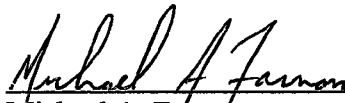
Defendant.

:
:
: No. 00-501-CD
:
:
:
: (Jury Trial Demanded)
:

NOTICE TO PLEAD

TO: Joseph M. Buynak through his counsel Edward J. Van Allen, Esquire

You are hereby notified to file a written response to the enclosed motion for protective order to stay discovery pending disposition of the preliminary objections within twenty (20) days from the service hereof or a judgment may be entered against you.



Michael A. Farnan

Counsel for Pennsylvania Department of Transportation

Date: July 20, 2000

-1-

3. By letter dated June 1, 2000, the PHRC notified the defendant that “[p]rior to completion of the investigation or a formal finding, the complainant requested that the complaint . . . be withdrawn.” Exhibit C.
4. Because plaintiff withdrew his complaint filed with the PHRC before one year after the date of filing it and before completion of the PHRC’s investigation, he has failed to exhaust administrative remedies. See Fye v. Central Transportation, Inc., 487 Pa. 137, 409 A.2d 2 (1979).
5. Therefore, the Court lacks jurisdiction over this matter. Id.
6. Moreover, defendant has asserted preliminary objections asserting that venue properly lies in Dauphin County.
7. Plaintiff has served discovery on defendant in the form of interrogatories.
8. To conduct a reasonable investigation to obtain responses to these interrogatories, defendant’s counsel would have to interview numerous Department employees, which may involve traveling to several work sites throughout the Central Pennsylvania counties in which plaintiff has worked.
9. Not only is the cost of traveling excessive, the costs associated with taking Department employees away from their regular duties to meet with counsel are excessive.
10. In a case not properly before the Court such as the present case, any discovery is by definition annoying, burdensome, and expensive.

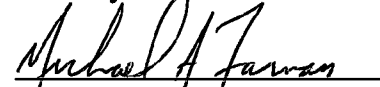
11. However, because of the relatively wide geographical area involved in this case, any reasonable investigation to respond to plaintiff's interrogatories would be particularly annoying, burdensome, and expensive.
12. Defendant attempted to stay discovery informally pending the disposition of the preliminary objections. Motion for Protective Order Exhibit 1 (attached).
13. Plaintiff refused to stay discovery without requiring defendant to file a motion. Motion for Protective Order Exhibit 2 (attached).
14. Without a protective order in place, plaintiff may seek additional discovery, including depositions, which would also be unduly annoying, burdensome, and expensive in light of the fact that this case is not properly before the Court.

WHEREFORE, the defendant respectfully requests that the Court enter a protective order to stay discovery pending the disposition of the preliminary objection and, presumably, the dismissal of the case.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY:


MICHAEL A. FARNAN
Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Litigation Section

Counsel for DEFENDANT,
PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 787-7369

DATE: July 20, 2000

EXHIBIT 1



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

July 12, 2000

MIKE FISHER
ATTORNEY GENERAL

REPLY TO:
15th Floor, Strawberry Square
Harrisburg, PA 17120
PHONE: (717) 787-7369
FAX: (717) 772-4526

Edward Van Allen, Esquire
1832 Woodledge Drive
State College, PA 16803

RE: Buynak v. Pennsylvania Department of Transportation
No. 00-501-CD (Clearfield County Court of Common Pleas)

Dear Mr. Van Allen:

I received plaintiff's first set of interrogatories on July 10, 2000. As you know, I have filed preliminary objections to your complaint, which, if granted, will moot these interrogatories. Therefore, in the interest of litigant and judicial economy, I propose that we agree to stay discovery until disposition of the preliminary objections. Unless I hear immediately from you to the contrary, I will assume that you are in agreement. Therefore, I will respond to the first set of interrogatories within thirty days after the disposition of the preliminary objections, if necessary.

If you have any questions or need additional information, please call me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Farnan".

MICHAEL A. FARNAN
Deputy Attorney General

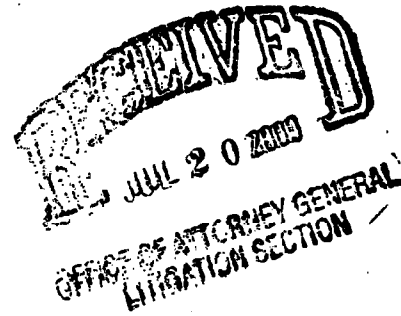
MAF/cmt

EXHIBIT 2

EDWARD J. VAN ALLEN, P.C.

Attorney at Law
1832 Woodledge Drive
State College, Pennsylvania 16803
(814) 238-2088
Fax: (814) 867-6123

July 18, 2000



Michael A. Farnan, Esquire
Deputy Attorney General
Office of Attorney General
15th Floor Strawberry Square
Harrisburg, Pennsylvania 17120

VIA FAX: (717) 772-4526
ORIGINAL BY: U.S. Certified Mail
Return Receipt Requested

Re: Joseph M. Buynak v. Pennsylvania Department of Transportation

Dear Mr. Farnan:

I received your letter dated and postmarked July 12, 2000, late in the afternoon of Friday, July 14, 2000. Although you requested an immediate response, I note that you did not telephone nor fax me on July 12, 2000. Rather, your letter was simply placed in the U.S. mail. Also, I deplore the bush-league tactic of stating that if I do not respond immediately, you will "assume" that I "am in agreement." Whatever you may wish to assume, you will also have to assume the risk that your assumption was erroneous.

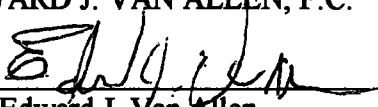
I do not agree that PennDot need not respond to the Plaintiff's First Set of Interrogatories until judicial disposition is made of PennDot's Preliminary Objections. These interrogatories were served on July 6, 2000, by fax and by U.S. mail. I will expect PennDot's response by no later than 30 days from July 6, 2000. My rationale is that I view said Preliminary Objections as having no merit and being just another delaying tactic by PennDot with the objective being to delay filing an Answer and responding to discovery and yet another effort by PennDot to frustrate Mr. Buynak's rights rather than to deal with the problem. This was originally just a simple matter of a person wanting to continue to work rather than to accept disability retirement. PennDot has continued to escalate the matter to such heights that Mr. Buynak was forced to resort to the Court.

I will timely file and serve an Answer to PennDot's Preliminary Objections and Brief in Opposition to PennDot's Preliminary Objections.

Very truly yours,

EDWARD J. VAN ALLEN, P.C.

By:


Edward J. Van Allen

EJVA/lw

cc: Joseph M. Buynak

July 20, 2000

DATE: July 20, 2000

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JURY TRIAL DEMANDED

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'JUL 27 2000

William A. Shaw
Prothonotary

PLAINTIFF'S ANSWER TO DEFENDANT'S PRELIMINARY OBJECTIONS

NOW COMES the Plaintiff, Joseph M. Buynak, on his own behalf and on behalf of all similarly situated persons by and through his attorney, Edward J. Van Allen, P.C., and makes the following Answers to the Defendant's Preliminary Objections as follows. For ease of reference the numbered paragraphs of this Answer correspond to the numbered paragraphs of the Defendant's Preliminary Objections.

I. JURISDICTION

1. Admitted. By way of further Answer the Plaintiff filed his original Complaint with the Pennsylvania Human Relations Commission ("PHRC") on or about March 1, 1999. A true and correct copy of this Complaint which was dual filed with the Equal Employment Opportunity Commission on that same date is attached as Exhibit 1, the Plaintiff's Civil Action Complaint

filed in this litigation and an additional copy is attached hereto for ease of reference. On or about July 25, 1999, the Plaintiff submitted his First Amendment to the PHRC Complaint entitled "Amended Complaint." A copy of which is attached hereto as Exhibit 3. On or about April 10, 2000, the Plaintiff amended his PHRC Complaint for the second time. This amendment was entitled "Second Amended Complaint," and a copy thereof is attached hereto as Exhibit 4.

The PHRC has promulgated regulations which address amendments to the Complaint. 16 Pa.Code Section 42.35(a) provides as follows:

The complaint or answer may be amended at any time prior to approval of a hearing on the merits and thereafter by leave of the commissioners, hearing commissioners or permanent hearing examiner.

More importantly 16 Pa. Code Section 42.35(b) provides as follows:

The complaint may be amended to cure technical defects or omissions, to clarify or amplify allegations made therein, or to add material allegations which are related to or grow out of the subject matter of the original complaint, and these amendments shall relate back to the original filing date of the complaint. (Emphasis added.)

Thus, both amendments to the Plaintiff's PHRC Complaint comply with 16 Pa. Code § 42.35(a) and (b) and relate back to the filing of the original Complaint as set forth in 16 Pa. Code § 42.35 (b).

2. Admitted. By way of further answer to the Plaintiff's knowledge, the Defendant for reasons best known to it did not file Answers or New Matter to the original Complaint and the First Amended Complaint.

3. Admitted. By way of further answer this was some fifteen months after the filing of the original Complaint with the PHRC and both amendments thereto relate back to the original filing date.

4. Denied in its entirety. See the Plaintiff's responses set forth in paragraphs 1 and 3 of this Answer which are incorporated herein by reference as if set forth in their entirety herein. Moreover, the Plaintiff complied with the requirements of the Pennsylvania Human Relations Act 43 Pa. C.S.A. § 962 (c) which provides that a complainant may file a complaint in the Court of Common Pleas after one year has elapsed since the filing of his PHRC complaint.

5. Denied. The Court has jurisdiction of this matter as provided in the aforesaid Section 43 Pa. S.C.A. § 962 (c) and

Lukus v. Westinghouse Elec. Corp., 419 A.2d 431, 276 Pa.Super.
232, (1980).

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court overrule the Defendant's Preliminary Objections as to lack of jurisdiction.

II. VENUE

6. Paragraphs 1 through 5 are incorporated herein by reference as if set forth in full.

7. Admitted.

8. Admitted. By way of further answer the Plaintiff's office is in his home in Osceola Mills, Clearfield County, Pennsylvania and PennDot's local office as herein relevant is located in or near Clearfield, Clearfield County, Pennsylvania. That office is located just 1.8 miles from the Clearfield County Courthouse.

9. Admitted. By way of further answer the Plaintiff's supervisors also work in Clearfield's, Clearfield County, Pennsylvania office facility.

10. Denied. Virtually all of the discriminatory conduct occurred in Clearfield County.

11. Admitted. But it is irrelevant.

12. Denied. See Exhibit 5 for examples of documentation that the discriminatory conduct occurred in Clearfield County and see Exhibit 6 which are photocopies of a picture and

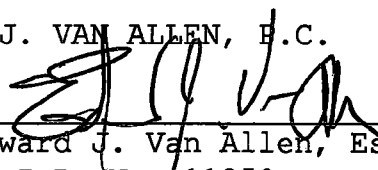
diagrams of PennDot's District 2-0 office which is in Clearfield County. Accordingly, PennDot's District 2-0 local office in Clearfield County is a bonafide office and not just a supply depot. In fact, in 1999 Mr. Buynak performed work in the Clearfield local office 222 days. In 1998, the Plaintiff performed duties in PennDot's Clearfield local office on 104 days. This number is less than 1999 because PennDot forced the Plaintiff to take a six month leave of absence without pay which was part of the age discrimination perpetrated against the Plaintiff by PennDot. Therefore, venue does lie in the Court of Common Pleas of Clearfield County, Pennsylvania.

WHEREFORE, the Plaintiff respectfully requests this Honorable Court overrule the Defendant's Preliminary Objections relating to venue.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By:


Edward J. Van Allen, Esquire
PA I.D. No. 11250
1832 Woodledge Drive
State College, PA 16803
(814) 238-2088
Fax: (814) 867-6123
Attorney for the Plaintiff,
Joseph M. Buynak

Date: July 26, 2000

EXHIBIT 1

Joseph M. Buynak
204 ½ Front Street
Osceola Mills, Pennsylvania 16666
(814) 339-6148

March 1, 1999

**U.S. Equal Employment Opportunity Commission
Liberty Center, Suite 300
1001 Liberty Avenue
Pittsburgh, Pennsylvania 15222**

Dear Sir or Madam:

I hereby make this charge of employment discrimination under the Age Discrimination in Employment Act against the Commonwealth of Pennsylvania, Department of Transportation, c/o Bureau of Personnel, 555 Walnut Street, 9th Floor, Harrisburg, Pennsylvania 17101-1900.

For approximately ten years I was employed by the Bureau of Construction as a Transportation Construction Inspector. In 1990, I had a heart attack followed by a stroke. I had a second stroke in 1994. For approximately eight years until May, 1998, I was afforded accommodations to enable me to perform my job in a satisfactory or better than satisfactory manner. My date of birth is January 13, 1943. On January 13, 1998, I reached 55 years of age and problems with the Department of Transportation began shortly thereafter.

In May of 1998, I experienced further medical problems. This time I was not given the accommodations which I held for 8 years and I was harassed and coerced to retire on disability. However, I would not accept a disability retirement as I could still perform my duties with reasonable accommodations. Rather, the Department of Transportation required me to accept a six month temporary office position following its placing me on leave without pay. My last day of work as a Transportation Construction Inspector was May 28, 1998.

On December 3, 1998, the Department of Transportation denied my ADA Reasonable Accommodation Request.

I have been replaced in my Inspector position by a much younger man. This young man suffered injuries when he fell from a roof in a non-job related accident. Although he was on crutches, he was permitted to continue in his Inspector position and he did not have to accept a temporary office duty position.

U.S. Equal Employment Opportunity Commission
Page two
March 1, 1999

I believe that the aforesaid actions discriminated against me because of my age in excess of forty.

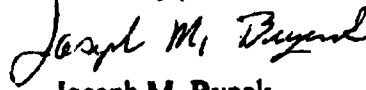
The Department of Transportation employs greatly in excess of 100 full time persons.

Proceeding involving this alleged unlawful employment practice have been commenced with the Pennsylvania Human Relations Commission, the State agency charged with the enforcement of fair employment practices laws, by the filing on this date by mail a duly executed counterpart of this letter.

I make this charge of age discrimination on behalf of myself and on behalf of all similarly situated employees and former employees.

My attorney is Edward J. Van Allen, P.C., 1832 Woodledge Drive, State College, Pennsylvania 16803, (814) 238-2088.

Sincerely your,


Joseph M. Bynak

cc: The Pennsylvania Human Relation Commission
Edward J. Van Allen, Esquire

EXHIBIT 2

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joseph M. Buynak,

Complainant

v.

Commonwealth of Pennsylvania, Department
of Transportation,

Respondent

PHRC DOCKET No.

EEOC Charge No.

E-92870-AH
17F993733

COMPLAINT

1. The Complainant herein is:

Joseph M. Buynak
204 1/2 Front Street
Osceola Mills, PA 16666

2. The Respondent herein is:

Commonwealth of Pennsylvania, Department of Transportation
555 Walnut St.
Forum Place
Harrisburg, PA 17101-1900

Commonwealth of Pennsylvania, Department of Transportation, Bureau of
Personnel
555 Walnut St.
9th Floor, Forum Place
Harrisburg, PA 17101-1900

Docket No. E-42870-AH
 EEOC No. 17F993733
 Social Security No.

99 MAR 30 PM 12:39

RECEIVED BY
 PA HUMAN RELATIONS COMMISSION
 REGIONAL OFFICE
 Harrisburg, PA
 This form is used to investigate complaints of discrimination based upon race, color, religion, ancestry, age (40 and above), sex, national origin, non-job related handicap or disability, or association with a handicapped or disabled individual, possession of a diploma based on passing a general education development test, or willingness or refusal to participate in abortion or sterilization.

IN-18 FORM FAILURE TO ACCOMMODATE QUESTIONNAIRE Questionnaire on the incident you are complaining about.

Rev. 11-94

To avoid rewriting your answers, please read this short questionnaire from beginning to end before filling out your answers to individual questions. Please answer every applicable question as fully as possible, and to the best of your present knowledge, information and belief. If you are unsure of your answer, please say so. It is your responsibility to notify this Agency of a change of address or times of unavailability. Failure to notify this Agency may result in dismissal of the matter.

Name Joseph M. Buynak
 Address 204 1/2 Front Street
 City Osceola Mills State Pa. ZIP Code 16666
 County Clearfield Telephone No. H (814) 339-3193 W (814) 765-0801
(717) 787-5610
 May we call you at work? Yes ☒ No ☐

Caution: Failure to correctly identify the name of the legal entity you are complaining about will hinder the processing of your complaint. Bring pay stubs, W-2 forms, contracts, etc. to aid in verification of the name and address.

Name of Organization your complaint is against:

Name Penna. Department of Transportation
 Address 9th Floor Forum Place, 555 Walnut Street
 City Harrisburg State Penna. ZIP Code 17101-1900
 Type of Business Roadway Construction Inspection
 County Dauphin Telephone No. (717) 787-5574

Number of employees who work at the organization named above. Please check one.

Less than 4 ☐ 15 to 100 ☐ 201 to 500 ☐ Unknown ☐
 4 to 14 ☐ 101 to 200 ☐ 501 plus ☒

Name and address of person who will know how to contact you and who does not reside in your home.

Name S. L. Bugnak

Address 206 Front St.

City Osceola Mills

State Penna. ZIP Code 16666

Telephone No. H (814) 339-7559 W ()

In this Questionnaire, you will see the word "class" mentioned. Class means the person's race, sex, age, ancestry, religion and so on. Depending on the issues in the complaint, you may belong to two or more classes. For example, a Black female could belong to two classes: race/Black and sex/female. A White male could belong to race/White and sex/male. All persons named in the complaint or questionnaire should be identified by their class as follows: John Doe (White male), John Doe (under age 40), Jane Doe (Black female). For example, if your complaint is based on race, include the race of all persons mentioned. If it is a sex complaint, mention the sex of all persons mentioned.

1. **Discrimination means difference of treatment.** Please explain what happened to you and why you feel you were treated differently. In other words, what happened to persons of a different class that makes you feel they received more favorable treatment than you.

After my Heart Attack & Stroke in 1990 I was permitted to return to work and not perform concrete testing. I could no longer do this testing due to the loss of dexterity & bimanual manipulation of my left hand. In 1994 the doctor put a lifting restriction on me and my Employer allowed me to return to work.

2. If you believe the organization treated you this way because of one or more of the reasons listed below, please check those reasons. If you believe the employer treated you this way for a reason which is not listed, explain what you believe to be the reason.

☐ Sex	☐ Ancestry	☒ Age (40+) Date of Birth <u>01/13/93</u>
☐ Race	☐ National Origin	☐ Use of guide dog or support animal
☐ Color	☐ CED	☐ Participation in/or refusal to participate in Abortion/Sterilization
☐ Religious Creed	☒ Retaliation	☒ Non-job related handicap/disability
		Identify your disability <u>Heart Attack</u> <u>Strokes</u>

3. What is the exact nature of your handicap/disability, and to what extent does it limit such major life activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working?

I cannot perform concrete Testing due to the limited dexterity in my left hand, which occurred in 1990.

4. How long have you had this condition?

Since September 1990.

5. How long is your condition expect to last?

Permanent

6. What types of physical activity are difficult or impossible for you to perform?

☐ Visual	☐ Bending	☒ Dexterity	☐ Standing for long periods
☐ Hearing	☐ Stooping	☐ Running	☒ Sitting for long periods
☐ Walking	☐ Turning	☐ Swallowing	☐ Perform manual tasks
☐ Lifting	☐ Climbing	☐ Other**	☐ Caring for yourself

If Other**, please explain. _____

Please provide copies of any medical information, certifications, etc., regarding your handicap/disability.

7. Do you have any restrictions on mental activities?

Yes ☒ No ☐If yes, please explain. Need extra time to organize thoughts and review reading material.

- 7a.

Please provide names and address of doctors, hospitals, counselors, organizations, etc. who may be able to provide data concerning your handicap/disability and the extent of any treatment or specialized training you have had or are receiving.

Name/Title PHILIP A. PILGRAM, M.D.Address 3 MEDICAL CENTER DRIVE, PHILIPSBURG, Pa. 16866Treatment/Training He is my Primary Care Physican.

Name/Title IRA B. GENSEMER, Ed. D.Address 100 NORTH ACADEMY AVE, DANVILLE, PA. 17022

Treatment/Training _____

Name/Title Ms. KELLY WEBB, MS. CCC-SLPAddress 210 LOCH LOMOND RD., PHILIPSBURG, PA. 16866Treatment/Training Worked on my Speech & Memory

- 7b. Do you have a physician, health service or rehabilitation clinic that has/will certify that you can perform the job in question with or without reasonable accommodation?

Yes ☒No ☐

If yes, please give names and addresses.

Name/Title PHILIP A. PILGRAM, M.D. (see 7a)

Address _____

Name/Title _____

Address _____

8. Do you know of others in your CLASS who have received the same or similar conditions? Please indicate their names, addresses, telephone numbers and their CLASS.

Name No direct knowledge however I believe Louie Gonzalez
had a similar problem with the district when he experienced a Heart Attack
CLASS _____ Telephone Number (814) 339-6510

Address L. Gonzalez - Osceola Mills P.O. R.D.
SCOTCH HOLLOW

Name _____

CLASS _____ Telephone Number () _____

Address _____

9. Do you know of others treated differently under the same or similar conditions? Please indicate their names, addresses, telephone numbers and their CLASS.

Name DAVE EVANSCLASS MT 1 or 2 Telephone Number () UNKNOWNAddress 5813 US HIGHWAY, 522 NORTH, MCCLURE, PA. 12841

Name _____

CLASS _____ Telephone Number () _____

Address _____

How were they treated differently?

I was not permitted to type at home in 1998,
however Mr. Evans injured himself at home and was
allowed to return to work full time.

10. If the physician, etc. stated you could perform the job with a reasonable accommodation, did you request this accommodation?

Yes ☒ No ☐

- 10a. From whom did you request this reasonable accommodation?

Name/Title Patricia Williamson ADB coordinator

- 10b. Was any cost attached to the reasonable accommodation?

Yes ☐ No ☒

If yes, approximately how much would these accommodations cost, including special equipment, building renovations and work force changes?

\$ _____

LAST
KNOWN
ADDRESS

- 10c. When did the employer become aware of the certification that you could perform the job with or without reasonable accommodation?

Date July 29, 1998

Did the Respondent refuse the request for a reasonable accommodation?

Yes ☒ No ☐

When was the reasonable accommodation refused?

Date Dec. 3, 1998

Who refused the reasonable accommodation?

Name/Title PATRICIA A. WILLIAMSON, ADS coordinator

What reason(s) was given, if any? SEE LETTER of DEC. 3rd 1998.
in PACKET with ADA REQUEST FORM.

11. Did the Respondent offer another or different accommodation?

Yes ☒ No ☐

- 11a. If yes, what was it? I was offered a Temporary position in the
District 2-0 Finals Unit. This job consists of Auditing
Finished Work, my full-time position was Roadway Const. Ins.

- 11b. Did you and/or your doctor refuse it?

Yes ☐ No ☒

If yes, why? However I couldn't accept the job until they
changed the wording from a temporary assignment.

12. Do you have any receipts or documents to back-up what you are saying?

Yes ☒ No ☐

If yes, please attach any copies you may have.

13. Do you have any witnesses to this treatment.

Yes ☐ No ☐ Not sure at this time. I will investigate but
I didn't have enough time to re-investigate.

13a. If yes, please list them.

Name/Title _____ CLASS _____

Address _____

_____ Telephone Number _____

What will this person say? _____

Did he/she personally observe what happened?

Yes _____ No _____

Name/Title _____ CLASS _____

Address _____

_____ Telephone Number _____

What will this person say? _____

Did he/she personally observe what happened?

Yes _____ No _____

Use the Continuation Page at the back of the questionnaire, if more space is needed.

11. Have you taken any court action regarding this matter?

Yes _____ No ☒

If so, please specify in what court and the date you filed, to the best of your recollection.

Name of Court _____

Date Action Filed _____

City _____ County _____

If there are other facts you feel should be considered, record these on the last page of the questionnaire (Continuation Page).

I hereby verify that the statements contained in this complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 PA.C.S. Section 4904, relating to unsworn falsification to authorities.

Joseph M. Byrke
Signature

3/28/99
Date

204 1/2 Front Street
Address

Osceola Mills, Pa. 16666
City, State and ZIP Code

(814) 339-6148
Telephone Number

CONTINUATION PAGE

For use if additional pages are needed to answer any question(s). Indicate the question number that is being answered before each response below.

① In 1998 after a third stroke I was required to fill-out an ADA accommodation Request form, and not allowed to return to work, even with my Doctors approval. (see Dr. Pilgrims letter of 09-17-98). At this time they had a younger man working my District. This person has since transferred to a position in District 2-0.

THIS IS MY ADA REQUEST FORM, THERE REPLY TO ME, THERE LETTER TO DR. PILGRIM, AND MY LETTER TRYING TO ANSWER THERE QUESTIONS MYSELF. ALSO THE PTM'S THEY WANTED ANSWERED. THEY ALSO SENT A FILM WHICH I STILL HAVE. ALSO TWO LETTERS ONE FROM P. WILLIAMSON THE OTHER FROM MR. MILLER, MY DIVISION CHIEF.

CONFIDENTIAL

CONFIDENTIAL

EO-20 (Rev. 2/98)
Reproduced LocallyPENNSYLVANIA DEPARTMENT OF TRANSPORTATION
DISABILITY SERVICES (DS) ACCOMMODATION FORM

(DEPARTMENT USE ONLY)

DS DOCKET #:

EMPLOYEE#:

APPROVED

DISAPPROVED

- Complete items 1-9 to request an accommodation under the Americans with Disabilities Act (ADA)
- Answering the following questions will enable the agency to understand and process your request
- If additional space is needed, use 8 1/2" x 11" paper
- The information you provide will be treated confidentially and will be handled on a need-to-know basis
- After completion, submit to your supervisor or interviewer

1. REQUESTER'S NAME

Joseph M. Buynak

2. DATE OF REQUEST

08/06/98

3. HOME ADDRESS
204 1/2 Front Street
Osceola Mills, Pa. 16666

4. DAYTIME PHONE NUMBER (814)

339-6148

5. JOB/POSITION TITLE

Quality Assurance / Trans. Const. Ins.

6. BUREAU/OFFICE

Const. & Mats. / Harrisburg, Pa. 17105

7. WHAT ARE THE ESSENTIAL FUNCTIONS OF THE POSITION WHICH WOULD BE OR ARE AFFECTED BY YOUR DISABILITY. (Specify fundamental duties and responsibilities of position as indicated in the job description.)

(A+B) I might have problems dealing with verbal / language tasks of a complex nature, and some higher level cortical tasks.

(C) I am ~~slow~~ slow on computer Key board due to strokes affecting my left hand.

(D) I need extra time to organize thoughts, proof read, and to think of words / language needed to communicate correctly.

(E) Unable to lift 50 lbs.

(G) When reading I have to stop occasionally for eyes to adjust.

(I) I have trouble with word finding and immediate memory.

Any increase of stress would cause a decline in my cognitive / linguistic skills

8. DESCRIBE ANY TYPE OF ACCOMMODATION WHICH WILL ENABLE YOU TO PERFORM THE ESSENTIAL FUNCTIONS OF THE POSITION.

(A.) Will need extra time to re-read material and check work

(D) Will need extra time to organize thoughts, proof read, and think of words.

(F) Will need assistance in ~~lifting~~ lifting heavy objects.

(I) Need extra time to describe things, think of words, write down information, and time to process information.

EVERY REPORT AGREES THAT WITH PROPER ADJUSTMENTS I WOULD BE ABLE TO PERFORM ESSENTIAL JOB FUNCTIONS ADEQUATELY.

9. IS MEDICAL DOCUMENTATION ATTACHED? YES ☒ NO ☐

REQUESTOR'S SIGNATURE

Joseph M. Buynak

DATE

08/06/98

SUPERVISOR'S COMMENTS: (Please state reasons why you approve or disapprove)

SUPERVISOR'S/INTERVIEWER'S SIGNATURE

DATE

BUREAU/DISTRICT DS COORDINATOR'S SIGNATURE

DATE

AGENCY DS COORDINATOR'S SIGNATURE

DATE

PTM No. 612

This PTM would require Mr. Buynak to have the manual dexterity to perform the Concrete Volumetric Method Air tests in accordance with PTM No. 612 and as indicated below.

- A. Remove the required equipment from inside the back of the assigned van and transport/carry to the testing site (each piece less than 10 pounds).
- B. Re-mix the concrete in the wheelbarrow with the sampling scoop or shovel.
- C. Manually lift the meter filled with concrete (approximately 20 pounds), invert and shake.
- D. Unscrew cap from meter.

A minimum of three tests are to be conducted for each review. The equipment is to be cleaned after each test.

Mr. Buynak must have the ability to document all test results in his Quality Assurance reports, make independent judgments of the acceptability of Acceptance and Quality Control Testing, and provide guidance to project inspectors when asked questions on proper materials sampling & testing procedures. He must be able to perform water/cement ratio of concrete & compute the yield of bituminous concrete placements.

PTM No. 615

This PTM would require Mr. Buynak to have the manual dexterity to perform the Concrete Pressure Method Air tests in accordance with PTM No. 615 and as indicated below.

- A. Remove the required equipment from inside the back of the assigned van and transport/carry to the testing site (each piece less than 20 pounds).
- B. Re-mix the concrete in the wheelbarrow with the sampling scoop or shovel.
- C. Clamp the cover onto the base so that it is properly sealed.
- D. Properly expel all air from both petcocks.
- E. Pumping to "initial pressure" using built-in pump while tapping gauge.
- F. Bleeding to "initial pressure" using needle valve while tapping gauge.
- G. Tap the sides of the base while pressing down on the "thumb lever".
- H. Tap the gauge with the finger while pressing down on the "thumb lever".
- I. Manually empty the meter filled with concrete (approximately 40 pounds).

A minimum of three tests are to be conducted for each review. The equipment is to be cleaned after each test.

PTM 607

This sampling procedure would require the use of a shovel to obtain samples and place in sample bags, the lifting of sample bags, placing them in transporting vehicle, and delivery to shipping a point. These samples would have a maximum weight of 50 lb.

Applicable sections of this PTM are 6.2, 6.3, and 7.1

Mr. Buynak must have the ability to document all test results in his Quality Assurance reports, make independent judgments of the acceptability of Acceptance and Quality Control Testing, and provide guidance to project inspectors when asked questions on proper materials sampling & testing procedures. He must be able to perform water/cement ratio of concrete & compute the yield of binuminous concrete placements.

Mr. Buynak must also be able to carry his personal computer to work sites; 15 lbs. and use the computer to prepare and upload his Quality Assurance reports. He must also use the computer to enter sample identification data in the CAMMS system.

PTM No. 611

Quality Assurance West Inspectors must have the manual dexterity to perform the Making and Curing Concrete Compression and Flexural Test Specimens in the Field in accordance with PTM No. 611 and as indicated below.

- A. Remove the required equipment from inside the back of the assigned van and transport/carry to the testing site (each piece less than 10 pounds).
- B. Re-mix the concrete in the wheelbarrow with the sampling scoop or shovel.
- C. Transport/carry each specimen (approximately 30 pounds) and place within curing box (usually within 20 feet of test site).

Three to five specimens are to be made from the same sample for each review. The specimens are to be made within 15 minutes of sampling. The specimens are made after slump and air content tests have been conducted. The specimens are not to be disturbed 15 minutes after they have been struck off. The equipment is to be kept clean after testing.

PTM 402

This PTM would require Mr. Buynak to use an aluminum tamping block to prepare a test site for testing. It would also require the lifting and carrying on the 34 Lb. nuclear testing device. Must be able to follow operational procedures to perform test.

PTM No. 600

This PTM would require Mr. Buynak to have the manual dexterity to perform Concrete Slump tests in accordance with PTM No. 600 and as indicated below.

- A. Remove the required equipment from inside the back of the assigned van and transport/carry to the testing site (each piece less than 10 pounds).
- B. Clamp the mold to the baseplate by rotating clamps onto ears of mold.
- C. Re-mix the concrete in the wheelbarrow with the sampling scoop or shovel.
- D. Rod each layer throughout its depth with 25 strokes. The rod is to be inclined slightly at the start for each layer and progress to vertical at the end of each layer. The strokes are to begin near the perimeter of the mold in a spiraling pattern toward the center.
- E. Apply downpressure to the mold as the baseplate clamps are rotated off the ears of the mold to prevent any movement of the mold.
- F. Raise the mold 12 inches in 3 to 7 seconds with no lateral or twisting motion.
- G. Measure the slump.

The test is to be conducted within 2-1/2 minutes. A minimum of three tests are to be performed for each review. The equipment is to be kept clean between tests.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

October 7, 1998

Phillip A. Pilgrim, MD
Penn State Geisinger
3 Medical Center Drive
Phillipsburg, PA 16866**CONFIDENTIAL**

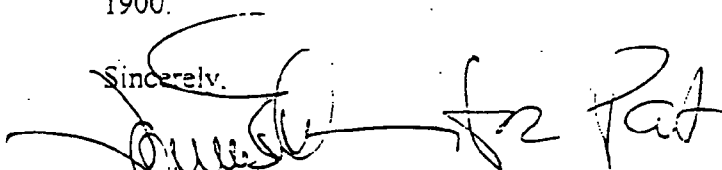
Dear Doctor Pilgrim:

This letter concerns your patient Mr. Joseph Buynak and your recommendations to return him to his Transportation Construction Inspector position with previously imposed restrictions. You stipulated in your letter dated September 17, 1998 (enclosed) that Mr. Buynak has been released to perform his usual duties as a TCI .

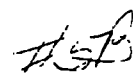
In order to facilitate a more thorough review and prevent further delay in processing Mr. Buynak's ADA Accommodation, the Department has prepared a special package for your review that includes (a) Technical Descriptions of the specific tests Mr. Buynak is require to perform and, (b) a video that highlights each test to allow a more visual observation of how these job functions are performed. It is requested that you review the enclosed materials and provide us with a more specific written interpretation of Mr. Buynak's ability to perform these itemized essential functions. These are the essential functions that Mr. Buynak is required to perform as a TCI.

The Department would appreciate your response in writing regarding the above information by October 16, 1998. If you have any questions please, contact me at (717) 783-0331 or 1- 800-468-4201. Our mailing address is: Department of Transportation Bureau of Equal Opportunity, Affirmative Action Division, Forum Place, 9th Floor, 555 Walnut Street Harrisburg, PA 17101-1900.

Sincerely,


Patricia A. Williamson, Agency
Disabilities Services Coordinator

Attachments:

cc: Robert C. Miller, P.E. Bureau of Construction Materials
BEO File

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

October 7, 1998

Mr. Joseph M. Buynak
204 1/2 Front Street
Osceola, PA 16666**CONFIDENTIAL**

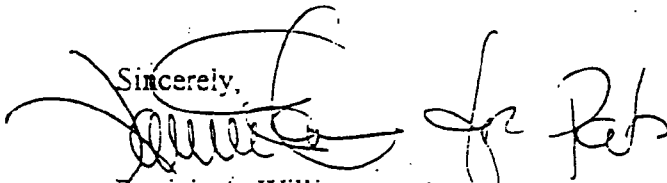
Dear Mr. Buynak:

This letter is in reference to your ADA Accommodation Request to returned to your Transportation Construction Inspector (TCI) position. In order to facilitate a thorough review of your ADA Request it is imperative that you submit to Dr. Phillip A. Pilgrim the technical descriptions of (PTM's) and Video that highlights the work performed on each test.

The Department would like Dr. Pilgrim to ascertain in writing after reviewing the enclosed materials whether you can perform the essential functions of the Transportation Construction Inspector job. The Department would appreciate your cooperative efforts in ensuring that your doctor receives the enclosed materials and respond to our request for this specific information by October 16, 1998.

If you have any questions, please contact me at (717) 783-0331 or 1- 800- 468-4201. Our mailing address is Department of Transportation, Bureau of Equal Opportunity, Affirmative Action Division, Forum Place 9th Floor, 555 Walnut Street, Harrisburg, Pennsylvania 17101-1900.

Sincerely,



Patricia A. Williamson, Agency
Disabilities Services Coordinator

Attachments

cc: BEO File

Robert C. Miller, P.E. Bureau of Construction Materials
Paul A. Albright, P.E. Bureau of Construction Materials
David L. Jarvist, P.E. Bureau of Construction Materials

#SB

10/11/98

Ms. Williamson/J.Rivera:

As soon as I received your packet for my Primary Care Physician, Doctor Pilgrim, I immediately called his nurse to make an appointment. I explained there was a video you wanted him to view along with technical descriptions of the specific tests.

Doctor Pilgrim called me at 4:35 P.M. on 10/09/98 and stated he felt all of this was foolish and that he wouldn't view the video. He further added he doubts that you would accept anything written, on my behalf. He then said it appears to him that they are trying to get rid of you. However, Doctor Pilgrim did offer to get in touch with a job analysis specialist. I feel this could take quite some time to get an appointment. He also said he didn't want to be bothered with this anymore.

In trying to maintain a cooperative effort with you, I'll try to answer the technical descriptions. Also, Doctor Pilgrim's letter dated 9/17/98 stated that "Mr. Buynak has been released to perform his usual occupation". You misquoted him in your letter dated 10/07/98 when you stated released to perform his usual duties.

Now, about the (PTM) technical description. PTM # 402 & 607 would be covered by the accommodations allowed me since 1994. PTM # 500, 611, 615 & 612 would be covered by the accommodations allowed me since 1990. As far as PTM # 612 goes, myself and fellow workers were permitted to return the test equipment needed to perform the Concrete Volumetric Method Air Test back to the MTD-Lab. Everything else in the packet can be accomplished.

DO YOU ALSO KNOW THAT THIS IS THE FIRST AND ONLY TIME IT WAS ASKED OF ME TO FILL OUT A DISABILITY ACCOMMODATION FORM !

I hope you would agree that the cooperation efforts that you mentioned earlier would go both ways. If this is true, then I would appreciate if you would answer the questions I have asked in my ongoing correspondence with you. I am sending you copies of the letters I'm talking about. I would appreciate a written reply to insure me that the cooperative efforts do exist.

Mr. Miller said he caught "HELL" from someone for allowing me to return to work in the past. Ms. Williamson said allowing me to return to work was a "mistake". One question comes to mind. Whose mistake was it, and why am I being punished for it? What was permitted in 1990 through the present sets a "PRECEDENT" for me.

You have no idea the amount of stress and the hardships that have been placed on my family and me throughout this ordeal. While I am on leave without pay, you and your colleagues have continued to receive a steady income. An immediate reply is requested as it has been over a month since my last paycheck. While I am doing everything I can to get this resolved, you keep throwing up roadblocks.

Thank You,

Joseph M. Buynak
Joseph M. Buynak

B

September 3, 1998

Joseph M. Buynak
204 1/2 Front Street
Oscoda Mills, PA 16666

Re: Americans with Disabilities Act
Pennsylvania Department of Transportation
Review of Disability Services (DS)
Accommodation Form

Dear Mr. Buynak:

Your completed Accommodation Form was faxed to me by the Bureau of EBO on August 27th. I reviewed your accommodation requests on August 28th along with your request to be placed on leave without pay, which I received on the 25th of August. Your requested accommodations did not address some of the past and present problems you have in performing the required work items of the Transportation Construction Inspector position.

Your position as a Quality Assurance Inspector requires you to perform the following items of work:

1. Perform concrete slump tests. - 1780
2. Perform concrete air tests. - No - 1510
3. Perform nuclear testing for compaction of soils. - 1994 lifting test
4. Lift aggregate samples at aggregate sources. - 1994 per lane projects did not
5. Lift bituminous concrete samples. - 4/0
6. Make judgements on the acceptability of Department Acceptance Testing and Contractor Quality Control Testing procedures. 4/0
7. Provide training and guidance to others. 4/0

Your present restrictions prevent you from performing most if not all of the above items. I must inform you that I can not provide you with work that meets your accommodation requests in my Division. I have no personnel available to go with you to provide you assistance in lifting heavy objects and I cannot guarantee that others will provide assistance. District, Consultant, and Contractor personnel are beyond my ability to make commitments for.

QA West personnel, with my agreement went above and beyond providing you with assistance in the past. They actually performed work that was your responsibility in hope that you would eventually recover and be able to perform all of your required job duties; this has not occurred.

I and others have been attempting to help you by seeking a temporary assignment in District 2-0 that can meet your accommodation requests. However, you seem reluctant to consider this as a viable alternative.

Hopefully, this will change in the near future so you can minimize the amount of time you may have to be on leave without pay with benefits.

4200RCM
jmb@lac2.wpd

Attachments

Very truly yours,

Robert C. Miller, P.E.
Division Chief
Quality Assurance West
Bureau of Construction and Materials

cc: Amar C. Bhajandas, P.E.
James Rivera, Bureau of EEO
Jacob Simonton, Bureau of Personnel
Mary C. Waddell
Robert C. Miller, P.E.
Paul A. Albright, P.E.
David L. Jarvis, P.E.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



December 3, 1998

Mr. Joseph M. Bunyak
204 ½ Front Street
Osceola Mills, PA 16666

Dear Mr. Bunyak:

This letter is in reference to your ADA Reasonable Accommodation Request (Docket # 284) filed with the Bureau of Equal Opportunity on August 17, 1998. You requested that the Department grant you extra time to read material and check your work. Due to your limitations you requested time to organize your thoughts, proofread, and think of words. You also requested that assistance be provided with lifting heavy objects due to lifting restrictions imposed by your physician.

On November 3, 1998, you underwent an extensive medical assessment/ evaluation to determine if you can perform the essential functions of the Transportation Construction Inspector position.

After careful review and consideration of your request, the Department of Transportation has decided to deny your request based on the following:

1. On November 23, 1998, I received by fax your medical assessment conducted by the Health South Rehabilitation Center-State College. The work assessment report indicates that you are unable to perform the PTM's # (600) (611) (615) due to limitations with your dexterity, bimanual manipulation and standards regarding the accuracy of these essential job functions.
2. There are noted limitations in performance of PTM # 402 with regards to removing and transferring the nuclear testing device which is a require tool in conducting this essential job function.
3. The report stipulates that you are unable to carry over 50 pounds and will require a wheelbarrow and other modifications to assist you to transport sample bags to their destinations PTM # (607).
4. The significant limitations as cited by the work assessment report clearly indicate a less than marginal ability to perform most of the essential functions of the Transportation Construction Inspector position. Unfortunately, we do not see this situation as one which would be remedied by the accommodations you requested.

You are currently under a (6) months-temporary duty assignment in Engineering District 2-0 , performing construction cost duties. During these interim (6) months an assessment of your capacity to perform your normal duties will be conducted by management . Your temporary assignment will expire on May 31, 1998. Management will evaluate alternative positions or proposed other options within resource capabilities.

If you disagree with the denial of your accommodation, and are alleging discriminatory practice or agency non-compliance of the ADA provisions, you may file a complaint under the procedures outlined in Management Directive 410.10, Guidelines for Investigating and resolving Discrimination Complaints with the Office of the Deputy Secretary for Administration as follows:

Department of Transportation
Robert C. Wonderling
Deputy Secretary for Administration
Forum Place, 555 Walnut Street- 9th Floor
Harrisburg, PA 17101-1900

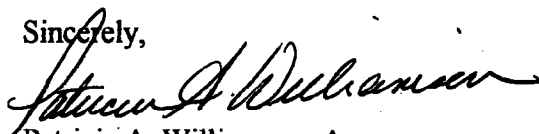
Please be advised that in addition to the above procedures, you can also filed complaints alleging violation of the ADA and the Pennsylvania Human Relations Act with the following:

Equal Employment Opportunity Commission
127 North 4th Street
Philadelphia, Pennsylvania 19106
(215) 451-5800

Pennsylvania Human Relations Commission
River Front Office Center
1101-1125
South Front Street /5th Floor
Harrisburg, PA 17110-2123
(717) 787-9780

If you have any questions regarding the above information, I can be reach at (717) 783-0331 or 1-800-468-4201.

Sincerely,



Patricia A. Williamson, Agency
Disabilities Services Coordinator

cc: Robert C. Miller, P.E. Bureau of Construction Materials
Paul Albright, P.E. Bureau of Construction Materials
David L. Jarvis, P.E. Bureau of Construction Materials
Robert C. Bell, Esq., Office of the Chief Counsel
Mary Waddell, Bureau of Construction Materials
Maureen Ritter, Bureau of Personnel
Samuel M. Lamonto, Chief, Labor Relations Division
John F. Bojalad, District Personnel Analyst, District 2-0
Joseph Bakaysa, Finals Unit Supervisor, District 2-0
BEO Office File

Attachment:

360/JR

EXHIBIT 3

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

99 JUL 29 AM 11:09
RECEIVED BY
PA HUMAN RELATIONS COMM
HKG. REGIONAL OFFICE

Joseph M. Buynak,

Complainant

v.

Commonwealth of Pennsylvania, Department
of Transportation,

Respondent

PHRC DOCKET No.

EEOC Charge No.

E-92870-AH

17F993733

AMENDED
COMPLAINT

1. The Complainant herein is:

Joseph M. Buynak
204 1/2 Front Street
Osceola Mills, PA 16666

2. The Respondent herein is:

Commonwealth of Pennsylvania, Department of Transportation
555 Walnut St.
Forum Place
Harrisburg, PA 17101-1900

Commonwealth of Pennsylvania, Department of Transportation, Bureau of
Personnel
555 Walnut St.
9th Floor, Forum Place
Harrisburg, PA 17101-1900

3. I allege the respondent violated § 5 of the Pennsylvania Human Relations Act, as follows:

a. On December 3, 1998, the respondent refused to accommodate my non-job related disabilities, heart condition and strokes, by not reinstating me to my former position of Transportation Construction Inspector because of my age, fifty-five, and/or my non-job related disabilities, heart condition and strokes.

(1) I was hired by the respondent as a Quality Assurance (West)/Transportation Construction Inspector in 1988.

(2) After my heart attack and stroke in 1990, I was permitted to return to work and not perform concrete testing because of loss of dexterity and bimanual manipulation of my left hand.

(a) After my second stroke in 1994, I returned to my position with a lifting restriction so I did not lift my own samples.

(b) I had a third stroke in 1998 and my doctor released me to return to work in July and again on September 17, 1998.

(3) The respondent requested that I fill-out an ADA accommodation request form, which I did.

(a) I had to have several medical evaluations and send the reports to the respondent.

(b) My present accommodation needs are: cannot perform concrete testing due to the limited dexterity of my left hand; lifting restriction (am permitted to lift 50 lbs. however cannot carry over 10 feet); and need extra time to organize thoughts and review written material.

(4) On December 3, 1998, the respondent refused to accommodate me and reinstate me.

(a) The respondent had recently changed the essential functions of the job.

(i) Several of the listed functions are not essential to the job and several are slated to be discontinued as job duties.

(b) All the medical reports show that I could have performed the job with accommodation/modification which were afforded me since 1990.

Joseph M. Buynak

v.

Commonwealth of Pennsylvania, Department of Transportation

4. The complainant prays that the respondent be required to provide all appropriate remedies under § 9 of the Pennsylvania Human Relations Act.
5. This charge has been dual filed with EEOC.

I hereby verify that the statements contained in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

7/25/99

(Date Signed)

Joseph M. Buynak
Joseph M. Buynak

Joseph M. Buynak v. PA Department of Transportation

PHRC Docket No. E-92870-AH

EEOC Charge No. 17F993733

Certificate of Service

Pursuant to the requirements of 1 Pa. Code § 33.31, I hereby certify that I have this day served the foregoing Complaint (Questionnaires signed by Complainant) and the Amended Complaint by first class mail, postage prepaid, as follows:

PA Department of Transportation
555 Walnut Street
9th Floor, Forum Place
Harrisburg, PA 17101-1900
Respondent

PA Department of Transportation
Bureau of Personnel
555 Walnut Street
9th Floor, Forum Place
Harrisburg PA 17101-1900
Respondent Special Service

Joseph M. Buynak
204 1/2 Front Street
Osceola Mills, PA 16666
Complainant

Dated this 14 day of October, 1999



Regina Young

EXHIBIT 4

COMMONWEALTH OF PENNSYLVANIA

00 APR 10 AM 11:50

GOVERNOR'S OFFICE

RECEIVED BY
PA HUMAN RELATIONS COMMISSION
HARRISBURG REGIONAL OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joseph M. Buynak,

Complainant

v.

Commonwealth of Pennsylvania,
Department of Transportation,

Respondent

:
:
:
:
: PHRC DOCKET no. E-92870-A
:
: EEOC Charge No. 17F993733
:
:
:
:

SECOND AMENDED COMPLAINT

1. The Complainant herein in:

Joseph M. Buynak
204½ Front Street
Osceola Mills, PA 16666

2. The Respondent herein is:

Commonwealth of Pennsylvania
555 Walnut Street
Forum Place
Harrisburg, PA 17101-1900

Commonwealth of Pennsylvania, Department of
Transportation, Bureau of Personnel
555 Walnut Street
9th Floor, Forum Place
Harrisburg, PA 17101-1900

3. I allege the Respondent violated § 5 of the
Pennsylvania Human Relations Act, as follows:

- a. On December 3, 1998, the Respondent refused to
accommodate my non-job related disabilities, heart

condition and strokes, by no reinstating to my former position of Transportation Construction Inspector because of my age, fifty-five, and/or my non-job related disabilities, heart condition and strokes.

- (1) I was hired by the Respondent as a Quality Assurance (West)/Transportation Construction Inspector in 1988.
- (2) After my heart attack and stroke in 1990, I was permitted to return to work and not perform concrete testing because of loss of dexterity and bimanual manipulation of my left hand
 - (a) After my second stroke in 1994, I returned to my position with a lifting restriction so I did not lift my own samples.
 - (b) I had a third stroke in 1998 and my doctor released me to return to work in July and again on September 17, 1998.
- (3) The Respondent requested that I fill-out an ADA accommodation request form, which I did.
 - (a) I had to have several medical evaluations and send the reports to the Respondent.
 - (b) My present accommodation needs are:
 - * cannot perform concrete testing due to the limited dexterity of my left hand; lifting restriction permitted to lift 50 lbs. however cannot carry over 10 feet; and need extra time to organize thoughts and review written material.
- (4) On December 3, 1998, the Respondent refused to accommodate me and reinstate me.
 - (a) The Respondent had recently changed the essential function of the job.
 - (i) Several of the listed functions are

not essential to the job and several are slated to be discontinued as job duties.

- (b) All the medical reports show that I could have performed the job with accommodation/modification which were afforded me since 1990.
- (c) I was replaced by a much younger man.
 - (i) He had a non-job related accident and was on crutches. He was permitted to continue in his position and was not placed in an office position.
- (d) I was placed in a temporary duty assignment in Engineering District 2-0 performing construction cost duties. This position ends on May 31, 1999.
- (e) The Complainant initiates this Complaint as a collective action on behalf of himself and all similarly situated persons, i.e., persons of 40 years of age or older who were or are employed by PennDot and who suffered because of age discrimination due to intimidation, coercion and harassment and/or a hostile working environment created and perpetuated against them by PennDot.
- (f) With respect to the Complainant, PennDot has required the Complainant to exhaust his sick leave, has taken away leave, has ignored the physician's report permitting the Complainant to return to work, tried to make the Complainant take a temporary finals Unit job which created a strain on his eyesight and caused him to suffer severe headaches, has coerced the Complainant in effect to get him to take disability retirement, or leave without pay, has given the Complainant a more difficult work assignment in the Finals

Unit, has changed the Complainant's work assignments and vacillated in PennDot's position with respect to the Complainant's employment with PennDot by going from reinstating the Complainant's job to the Complainant's having no job at all, the Complainant has been required to have frequent physical exams and has his work performance continually evaluated by requiring various functional capacity evaluations by HealthSouth, because the Complainant questioned PennDot's job description and just wanted to "get back to work at his regular job" the Respondant retaliated against him. PennDot has refused to promote the Complainant although the Complainant has been qualified for promotion and vacancies have existed.

- (g) PennDot gave much more support and encouragement to persons under age 40 than it did to persons 40 years of age or older.
- (h) The aforesaid actions by PennDot were taken against the Complainant and other persons 40 years of age or older because of the age of such persons, i.e. 40 years of age or older. The nature and extent of PennDot's action with respect to persons 40 years of age and older was more negative than to persons under 40 years of age.
- (i) The Respondant's coercion, harassment and intimidation of the Complainant and the hostile working environment because of age directed against the Complainant were motivated by the Respondant's intent to discriminate against the Plaintiff because of his age, 56.
- (j) The Respondant's disparate treatment of similarly situated persons as set forth herein was motivated by the Respondant's intent to discriminate against the

similarly situated persons because of their age, 40 years of age or older.

- (k) Because of the intentional age discrimination, the Complainant has suffered extreme mental anguish and emotional distress for at least 2½ years and continuing to date, including, but not limited to, the Complainant's personality and way of life have been altered; he is fearful of further adverse action by PennDot; he is depressed and bitter; he is worried and anxious all the time over monetary issues and if he will have a job tomorrow or not; he gets jumpy when the telephone rings believing it will be bad news; although he detests hearing the telephone ring, yet when he gets home from work, he doesn't want to leave the house unless someone is home to answer the telephone, even though he has an answering machine; although he fears he may be terminated, he wants to know as soon as possible; he goes into moods where he feels depressed all the time; he always feels alone, as if no one understands how he is suffering; he is not able to fall asleep or even get a good night's sleep because he is worrying all the time; all he thinks about is work; all he wants to do is work; he is afraid to take time off work, and he is afraid to say he is ill, he has trouble thinking things through to completion or resolve issues; he cannot organize his thoughts at times; he gets upset and yells at his wife and children for no reason; his grandson hardly knows him because he cannot get out of this mood to be the loving grandfather he should be; even when he watches TV, he cannot relax because he cannot keep his mind on what he is watching for he is worried about the status of his employment all the time; he has almost ceased his social life with family and friends; and he has suffered loss of esteem and perceives that his professional reputation has been destroyed.

- (l) The aforesaid acts of intentional age discrimination are the direct and proximate cause of the extreme mental anguish and emotional distress of the Complainant created by PennDot.
- (m) The Complainant is entitled to compensatory damages.
- (n) The acts complained of in this complaint against PennDot were intentional, outrageous and in reckless disregard of the rights of the Complainant, thereby entitling the Complainant to punitive damages.

WHEREFORE, this Commission should issue an Order awarding Complainant Buynak back pay, compensatory damages, punitive damages, attorney's fees, interest and costs.

Respectfully submitted,

By: Joseph M. Buynak
Joseph M. Buynak

Edward J. Van Allen, P.C.
PA I.D. No. 11250
1832 Woodledge Drive
State College, PA 16803
Phone: (814) 238-2088
Fax: (814) 867-6123
Attorney for the
Plaintiff, Joseph
M. Buynak

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Joseph M. Buynak,

Complainant

v.

Commonwealth of Pennsylvania,
Department of Transportation,

Respondent

:
:
:
:
: PHRC DOCKET no. E-92870-A
:
: EEOC Charge No. 17F993733
:
:
:
:

VERIFICATION

I, Joseph M. Buynak, do hereby state that I have read the within Second Amended Complaint and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief.

Date: 4-07-2000

Joseph M. Buynak
Joseph M. Buynak

Sworn to and subscribed to
before me, a Notary Public,
this 7th day of April, 2000.

Scott T. Harlan
Notary Public

My commission expires:

[S E A L]

NOTARIAL SEAL
SCOTT T. HARLAN
Bellefonte Boro Centre County, PA
My Commission Expires Dec. 15, 2003

Joseph M. Buynak v. Commonwealth of Pennsylvania
Department of Transportation

PHRC Docket No. E-92870-AH

EEOC Charge No. 17F9983733

Certificate of Service

Pursuant to the requirements of 1 Pa. Code § 33.31, I hereby certify that I have this day served the foregoing Amended Complaint by first class mail, postage prepaid, as follows:

Commonwealth of Pennsylvania,
Department of Transportation
555 Walnut Street
9th Floor, Forum Place
Harrisburg PA 17101-1900
Respondent

Joseph M. Buynak
204 1/2 Front Street
Osceola Mills, PA 16666
Complainant

Commonwealth of Pennsylvania
555 Walnut Street
Forum Place
Harrisburg, PA 17101-1900
Special Respondent

Dated this 17 day of April, 2000

Regina Young

Regina Young

EXHIBIT 5

DOC ID	SUBMITTING ORGANIZATION	SERIAL NUMBER	PAY NO.	ASSIGNED ORGANIZATION
062	4200	210798		4230

TOTAL DOC AMT.	\$ 115.75
LINE ITEM COUNT	5
CURRENT DATE	04/17/95

TRAVEL EXPENSE VOUCHER

LIST EXPENSE IN DETAIL ON REVERSE SIDE



SOC. SECURITY NO.	LAST NAME	FIRST NAME	INITIAL	BARG. UNIT	WORK PHONE	CLASS TITLE

194-34-8161	Baynak	Joseph	M.	B-1	(717) 783-5610	T.C.I.
RESIDENCE	204 1/2 Front Street, Osceola Mills, Pa. 16666					
HEADQUARTERS	204 1/2 Front Street, Osceola Mills, Pa. 16666					

LINE NO.	BUDGET FISCAL YEAR	STATE ROUTE	SUB. PROJ.	PHASE	SECTION	PART CODE	ORG.	REF. UNIT	PROGRAM	OBJECT	COST FUNC.	LINE ITEM AMOUNT	EQUIP. NO. SERVICED	NATURE OF WORK PERFORMED
1	94					2	4200		379	30101	9829	\$99.50		Quality Assurance Activities
2	94					2	4200		379	30101	9812	3.25		Quality Assurance Training
3	94	0	66666	0	9	000	2	0220	712	30101	9964	3.25		Quality Assurance Activities
4	94	0	66666	0	9	000	2	0210	712	30101	9964	6.50		Quality Assurance Activities
5	94	6	2012	0	7	A01	1	0230	362	30101	9964	3.25		Reviews & Reports
6														
7														
8														
9														
10														
11														
12														
13														
14														
15														
16														
17														

TOTAL EXPENSES FOR THE PERIOD FROM 03/16/95 TO 04/14/95 INCLUSIVE	\$ 115.75
LESS CASH ADVANCEMENT CHECK NO.	AMOUNT
PAY NO. 1 : AMOUNT DUE EMPLOYEE (EXPENSES LESS CASH ADVANCE)	\$ 115.75
PAY NO. 2 : AMOUNT DUE DEPARTMENT (CASH ADVANCE LESS EXPENSES)	

REMARKS CONTINUED:

I certify that I have personally examined this statement. The items of expense herein agree with reports of work performed which are on file in this office, and the amounts charged are not excessive.

I certify that the above expenses or materials were actually incurred, rendered or purchased in the fulfillment of my duties to the Commonwealth of Pennsylvania, that they do not include personal expenses, and the information given in this voucher is true and correct.

Supervisor's Signature and Date: Joseph M. Baynak 04/17/95

Employee's Signature and Date: Joseph M. Baynak 04/17/95

PRE-AUDIT

(SHORT FORM)

TOTAL DOC AMT. \$	21.00
LINE ITEM COUNT	3
CURRENT DATE	12/09/96

TRAVEL EXPENSE VOUCHER

(SHORT FORM)



TOTAL DOC AMT. \$	21.00
LINE ITEM COUNT	3
CURRENT DATE	12/09/96

TRAVEL EXPENSE VOUCHER

(SHORT FORM)



TOTAL DOC AMT. \$	21.00
LINE ITEM COUNT	3
CURRENT DATE	12/09/96

TRAVEL EXPENSE VOUCHER

(SHORT FORM)



I certify that the above expenses, or materials were actually incurred, rendered or purchased in the fulfillment of my duties to the Commonwealth of Pennsylvania, that they do not include personal expenses, and the information given in this voucher is true and correct.

I certify that the above expenses, or materials were actually incurred, rendered or purchased in the fulfillment of my duties to the Commonwealth of Pennsylvania, that they do not include personal expenses, and the information given in this voucher is true and correct.

Joseph M. Buntz 12/09/96

Employee's Signature and Date

PREF-AUDIT

(SHORT FORM)

TOTAL DOC AMT: \$	21.00
LINE ITEM COUNT	2
CURRENT DATE	03/01/11

NAME	INITIAL
oh	m.

Wills Pa	16666	2

REF#	UNIT	PROGRAM	OBJECT	COST FUND.
7		379	30101	982
7		712	30101	996

TO 02/29/96 INCLUSIVE	AMOUNT
(CASH ADVANCE)	—
(LESS EXPENSES)	—

[illegible]

to changed lunch
as per union cont'd
to 3:30 P.M.
for all assn.

I certify that the above-
in the fulfillment of my
personal expenses, and



TRAVEL EXPENSE VOUCHER

(SHORT FORM)

DOC ID	SUBMITTING ORGANIZATION	SERIAL NUMBER	PAY NO.	ASSIGNED ORGANIZATION
062	4200	345432		4250

TOTAL DOC AMT. \$ **31.50**
 LINE ITEM COUNT **4**
 CURRENT DATE **10/21/96**

SOC. SECURITY NO. **199-39-8161** LAST NAME **Buyonak** FIRST NAME **Joseph**

INITIAL **M.**

BARG. UNIT **B-1** WORK PHONE **(617) 787-5610**

CLASS TITLE **T.C.I.**

RESIDENCE **204 1/2 Front Street, Oscoda Mills, Pa. 16666**

HEADQUARTERS

204 1/2 Front Street, Oscoda Mills, Pa. 16666

LINE NO.	BUDGET YEAR	STATE PROJECT NUMBER				PART CODE	ORG.	REPT. UNIT	PROGRAM	OBJECT	COST FUNC.	LINE ITEM AMOUNT	EQUIP. NO. SERVICED	NATURE OF WORK PERFORMED
		SYSTEM	STATE ROUTE NUMBER	SUB. PROJ.	PHASE									
1	96	2	0026	0	7	C04	1	0210	373	30101	9964	\$14 00		
2	96	8	0155	0	7	A01	1	0290	362	30101	9964	10 50		Quality Assurance
3	96	0	97079	0	8	000	2	0220	711	30101	9964	3 50		Operational activities, Reports and reviews
	96	0	97056	0	8	000	2	0210	711	30101	9964	3 50		

TOTAL EXPENSES FOR THE PERIOD FROM **10/01/96** TO **10/15/96** INCLUSIVE → **\$ 31 50**

LESS CASH ADVANCEMENT — CHECK NO.

AMOUNT → **\$ 31 50**

PAY NO. 1 : AMOUNT DUE EMPLOYEE (EXPENSES LESS CASH ADVANCE)

AMOUNT → **\$ 31 50**

PAY NO. 2 : AMOUNT DUE DEPARTMENT (CASH ADVANCE LESS EXPENSES)

AMOUNT → **\$ 31 50**

MONTH AND DAY	LOCATIONS				TRANSPORTATION				OTHER				TOTALS	
	FROM CITY / STATE	TO CITY / STATE	TIME DEPARTED	TIME RETURNED	INITIALS OF CARRIER	NO. OF MILES	RATE PER MILE	PERSONAL AUTO ALLOWANCE	OTHER TRANSPORTATION	ROOM ORDER NO./ CASH PAID	SUBSISTENCE (MEALS)	PAID FOR	AMOUNT	
(10)	Oscoda Mills	Bellefonte	08:00		DE						\$3.50		\$3.50	
01	A	Clearfield	08:00		A						3.50		3.50	
02		Bellefonte	08:00								3.50		3.50	
03		Bellefonte	08:00								3.50		3.50	
04		Bellefonte	08:00								3.50		3.50	
07		Bellefonte	08:00								3.50		3.50	
08		Bellefonte	08:00								3.50		3.50	
09		Clearfield	08:00								3.50		3.50	
		Hyde	08:00		DE						3.50		3.50	
		Oscoda Mills	08:00								3.50		3.50	
											\$31.50		\$31.50	

REMARKS: From 10/01/96 to 10/15/96 charged lunch expenses while traveling more than 15 miles from headquarters to work site as per union contract.
 Normal work hours 7:30 A.M. to 3:30 P.M.

APPROVALS:

I certify that I have personally examined this statement. The items of expense herein agree with reports of work performed which are on file in this office, and the amounts charged are not excessive.

I certify that the above expenses, or materials were actually incurred, rendered or purchased in the fulfillment of my duties to the Commonwealth of Pennsylvania, that they do not include personal expenses, and the information given in this voucher is true and correct.

Paul A. M.T.T.
 Supervisor's Signature and Date **10/21/96**

Joseph M. Buyonak
 Employee's Signature and Date **10/21/96**

4. EMPLOYEE'S COPY

PRE-AUDIT

TOTAL DDC AMT.	\$ 218.03
LINE ITEM COUNT	2
CURRENT DATE	3/18/97

LIST EXPENSE IN DETAIL ON REVERSE SIDE

INITIAL	BARG. UNIT	WORK PHONE	CLASS TITLE
	B-1	(717) 787-5610	T.C.I.
HEADQUARTERS			
2041/2 Front Street, Ascocda Mills, Pa. 16666			

TOTAL EXPENSES FOR THE PERIOD FROM 3/03/97 TO 3/13/97 INCLUSIVE	→	\$ 218	03
LESS CASH ADVANCEMENT - CHECK NO.	→	—	—
PAY NO. 1 : AMOUNT DUE EMPLOYE (EXPENSES LESS CASH ADVANCE)	→	\$ 218	03
PAY NO. 2 : AMOUNT DUE DEPARTMENT (CASH ADVANCE LESS EXPENSES)	→	—	—

1. <i>What is the main purpose of the study?</i> 2. <i>What are the research questions or hypotheses?</i> 3. <i>What methods were used to collect data?</i> 4. <i>What were the results of the study?</i> 5. <i>What are the conclusions and implications of the study?</i>

Employee Signature and Date

PRE-AUDIT

EXHIBIT 1A

September 17, 1998

Clearfield, PA
Phone: 8-814-765-0415

Request for ADA Accommodation
Joseph Bunyak

Mr. James Rivera, Equal Opportunity Specialist
Bureau of Equal Opportunity

John F. Bojalad, Personnel Officer
Engineering District 2-0

I spoke with Mr. Joseph Bunyak on September 14, 1998, and offered him temporary employment in the Clearfield Engineering District Office working in the Construction Services area where he would be involved with the computation of quantities and costs of materials used in highway and bridge construction.

Mr. Bunyak did not accept or refuse our offer at that time, but he did say that he would get back to us.

020/JFB/tle
EEO.JFB

c: G. M. Khoury, P.E.
K. R. Kline, P.E.
B. R. LaParne, P.E.

Exhibit 1

COMMONWEALTH EMPLOYE WITNESS STATEMENT

The following statement is being given by me freely and without coercion for official Commonwealth business and will be considered for all purposes, including actions under the Statutes of this Commonwealth, just as though it had been sworn or affirmed before a court of law or formal arbitration panel.

I spoke with Mr. Buynak by telephone on Monday, September 14, 1998 to offer him a temporary work assignment with the Clearfield Engineering District Office. The work he was offered involved the computation of quantities and costs for materials used in highway and bridge construction. The work would be performed in the Finals Section of the Engineering District Office.

Mr. Buynak did not initially accept or refuse our offer at that time, but he did say that he would get back to us. It was not until sometime later - October 15, 1998 - that Mr. Buynak indicated to the supervisor of his regular position with our Central Office Facility that he would accept the temporary position which was offered in District 2-0.

3/5/99
Date

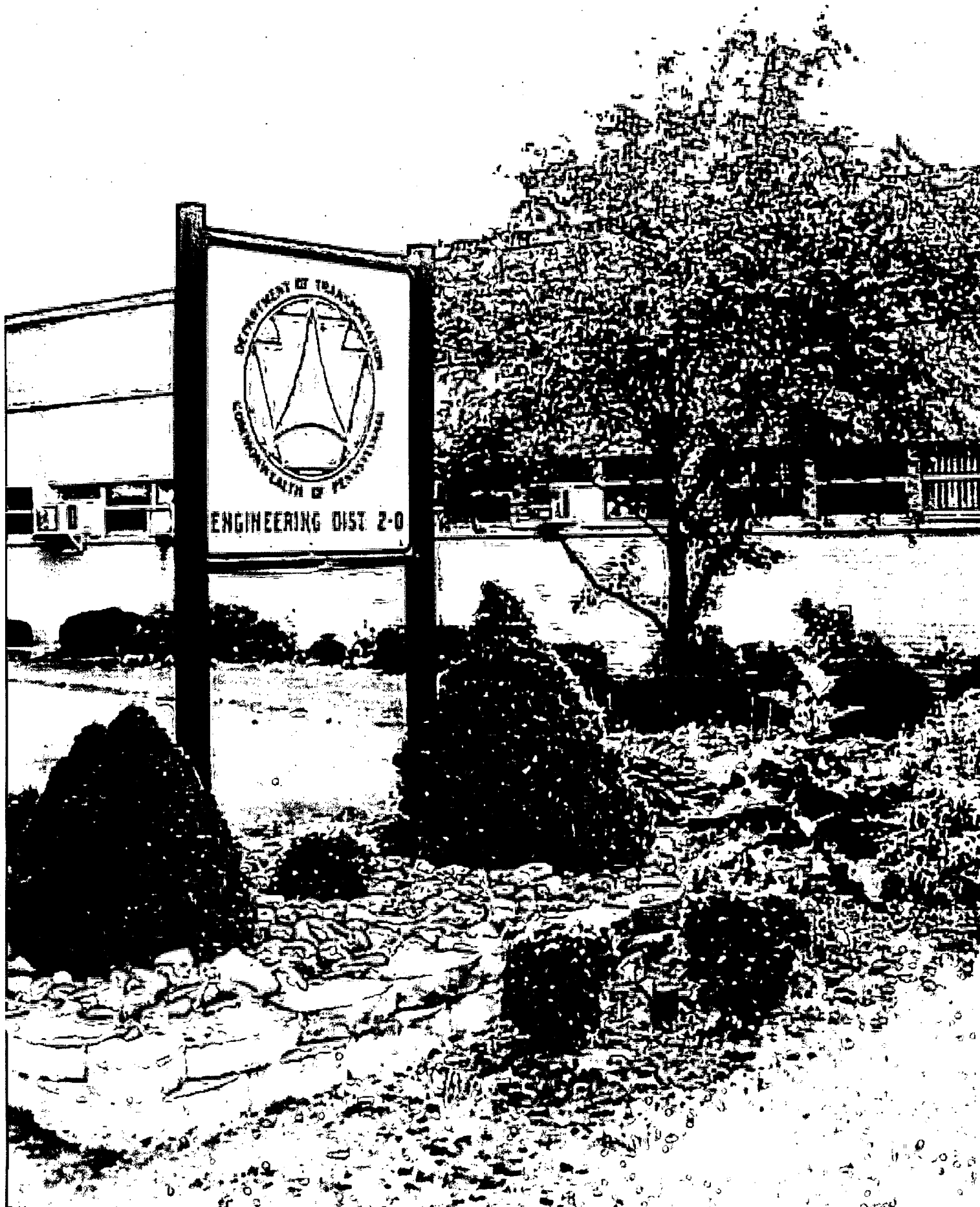
3/5/99
Date

PERSONNEL OFFICER
John J. Bojarski
Signature

Heather J. Berenholz
Typist's signature

NOTE: This form is to be completed and signed by an employee who is a witness to an incident involving an employee of the Commonwealth. If the text is typed by someone other than the employee giving the statement, it must be read and signed by the employee. In the event the statement is typed, the party typing the statement must sign and date the document.

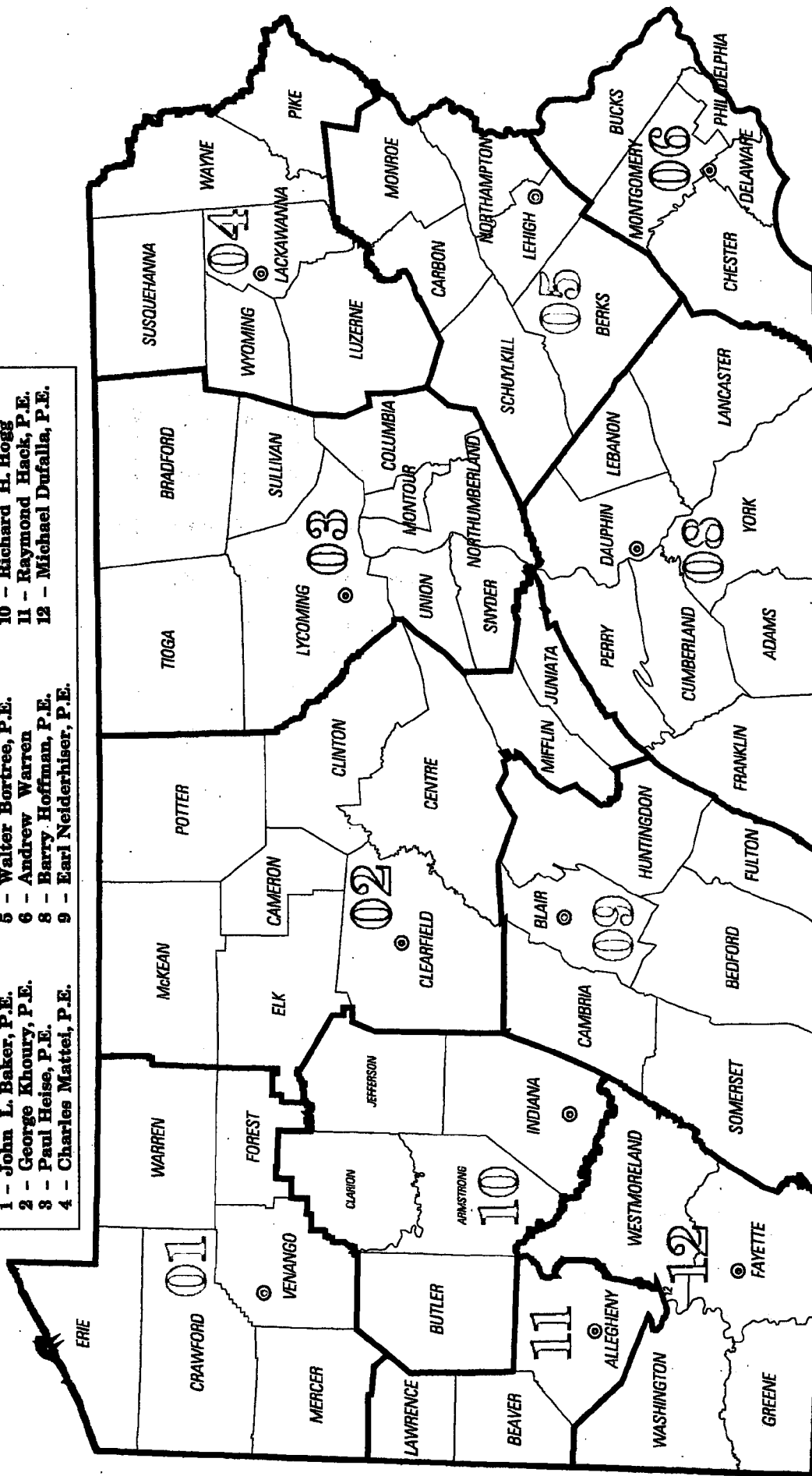
EXHIBIT 6



PENNSYLVANIA

DISTRICT ENGINEERS/ADMINISTRATOR - 1999

1 - John L. Baker, P.E.	5 - Walter Bortree, P.E.	10 - Richard H. Hogg
2 - George Khoury, P.E.	6 - Andrew Warren	11 - Raymond Hack, P.E.
3 - Paul Heise, P.E.	8 - Barry Hoffman, P.E.	12 - Michael Dufalla, P.E.
4 - Charles Mattei, P.E.	9 - Earl Neiderhiser, P.E.	



ENGINEERING DISTRICT DATA

1 - 1140 Liberty Street P.O. Box 711 Franklin, PA 16823	3 - 715 Jordan Ave. P.O. Box 218 Montoursville, PA 17754	6 - 200 Radnor-Chester Road St. Davis, PA 19087	10 - Rt. 286, South P.O. Box 429 Indiana, PA 15701
2 - 1924-30 Daisy Street P.O. Box 342 Clearfield, PA 16830	4 - P.O. Box 111 Scranton, PA 18501	8 - 2140 Herr Street Harrisburg, PA 17103-1699	11 - 45 Thomas Run Road Bridgeville, PA 15017
	5 - 1713 Lehigh Street Allentown, PA 18103	9 - 1620 North Juniata Street Hollidsburg, PA 16848	12 - N. Gallatin Ave. Ext. P.O. Box 459 Uniontown, PA 15401

OPERATOR: G. W. HARRIER
FILE NAME: DES: (30.3)01ST20FF.CAN: 1

CONSTRUCTION DIVISION

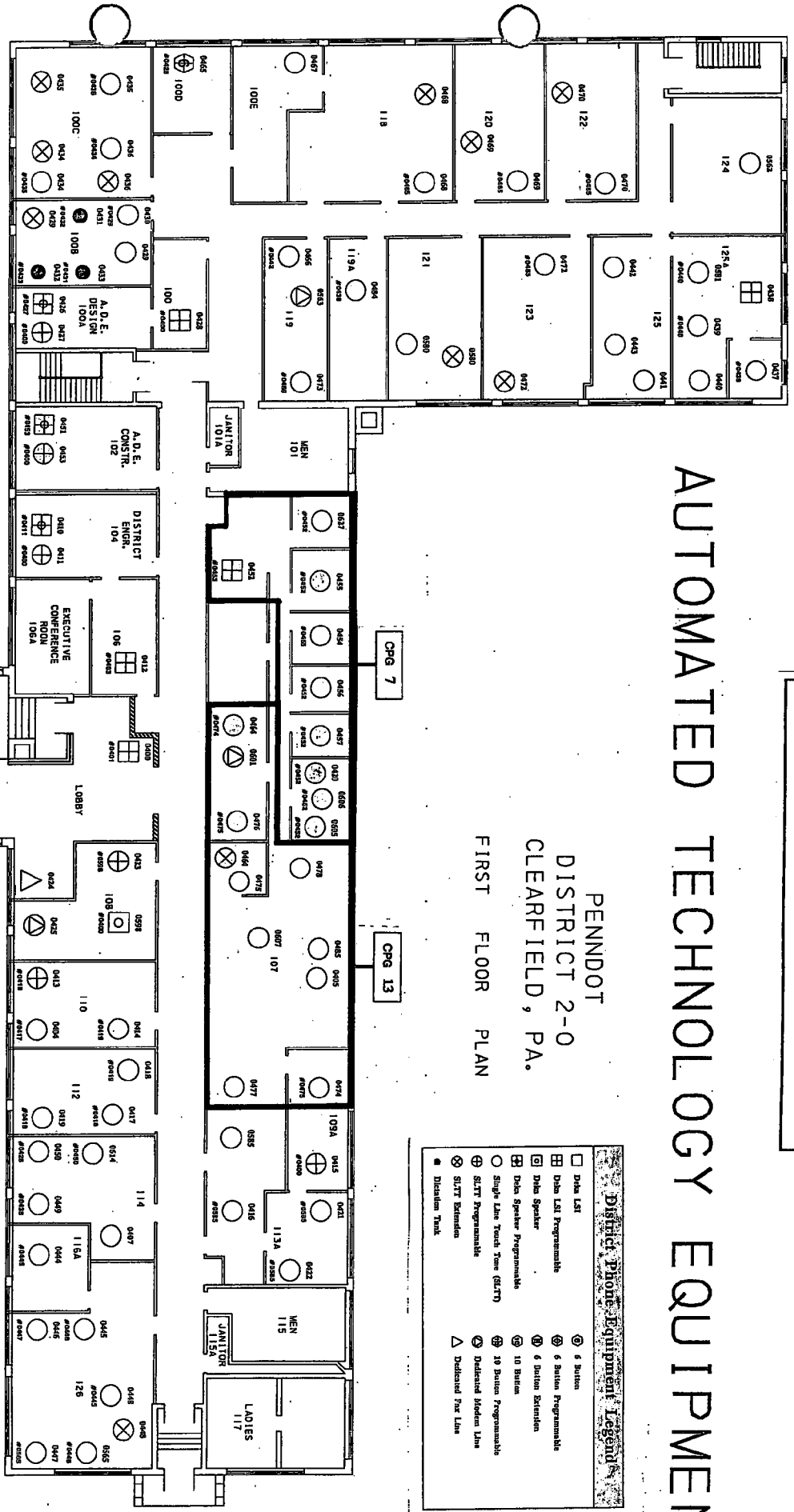
DISTRICT	COUNT	ROUTE	SECTION	SHEET
-0				OF
REVISION				
DATE				BY

AUTOMATED TECHNOLOGY EQUIPMENT

PENNDOT
DISTRICT 2-0
CLEARFIELD, PA.
FIRST FLOOR PLAN

Phone Equipment Legend

☐ Data LSI	☒ 6 Button
☒ Data LSI Programmable	☒ 6 Button Programmable
☒ Data Speaker	☒ 6 Button Extension
☒ Data Speaker Programmable	☒ 10 Button
☒ Single Line Touch Tone (SLTT)	☒ 10 Button Programmable
☒ SLTT Programmable	☒ Dedicated Modern Line
☒ SLTT Extension	☒ Dedicated Fax Line
☒ Dictation Tank	



Phone Line Features Legend

The Color ☐ = Call Forward on Busy Only
The Color ☐ = Call Forward on No Answer Only
The Color ☐ = Call Forward on Busy or No Answer
The Symbol # = Calls Forward to This Number



RECORD OF EQUIPMENT OPERATION

District/Organization Code **4250** Equipment Number **055-6026** Vehicle Make **Chevy** Vehicle Type ☒ Auto ☐ Van ☐ Station Wagon ☒ 4x4 ☐ Corp Bus License Number **PA65488**

ASSIGNED OPERATOR DATA
 Name J. M. Bynak
 Residence (city) Osceola Mills, Pa.
 Round Trip Mileage (Home to Headquarters) 0

DATE	DESTINATION		ODOMETER READINGS		TOTAL MILES OPERATED	TRAVEL STATUS F or H	NAME OF OPERATOR	ORG.	ALLOT	COST FUNC.	STATE PROJECT NUMBER				
	FROM	TO	START	STOP							Sys.	S.R. or W.O.	Spur	Pha	Section
01/02	Osceola Mills	Hyde	126,851	126,903	52	F	J. M. Bynak	4200	379	9829					
01/03	Hyde	Hyde	126,903	126,956	53	A		4200	379	9829					
01/04	Hyde	Hyde	126,956	127,009	53			4200	379	9829					
01/05	Hyde	Belleville	127,009	127,128	119			0220	712	9829	0	66666	0	9	000
01/06	Hyde	Hyde	127,128	127,248	120			4200	379	9829					
01/07	Hyde	Hyde	127,248	127,301	53			4200	379	9829					
01/08	Hyde	Hyde	127,301	127,463	162			4200	379	9829					
01/09	Hyde	Hyde	127,463	127,600	137			0900	712	9829	0	66666	0	9	000
01/10	Hyde	Hyde	127,600	127,684	84			0220	712	9829	0	66666	0	9	000
01/11	Hyde	Hyde	127,684	127,736	52	V		0900	712	9829	0	66666	0	9	000
01/12	Osceola Mills	Holladayville	127,736	127,813	77	F	J. M. Bynak	4200	379	9829					
TOTALS					962	Total Number "F"	0								

Operated for PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

I hereby certify that the information above is correct and that this equipment has been used only in the fulfillment of my duties for the Commonwealth of Pennsylvania.

OPERATOR'S SIGNATURE

DATE 01/26/96

SUPERVISOR'S SIGNATURE

DATE 1/26/96



RECORD OF EQUIPMENT OPERATION

ASSIGNED OPERATOR DATA

Name J. BUYNACK

Residence (city) Osceola Mills

Round Trip Mileage (Home to Headquarters) 0

PM 4th - WED - EVEN

District/Organization Code	Equipment Number	Vehicle Make	Vehicle Type	License Number
4200	092-4026	CHEVROLET	☒ Auto ☐ 4 x 4 ☐ Van ☐ Station Wagon ☐ Corp Bus	PA 14305

DATE	DESTINATION		ODOMETER READINGS		TOTAL MILES OPERATED	TRAVEL STATUS F or H	NAME OF OPERATOR	ORG.	ALLOT	COST FUNC.	STATE PROJECT NUMBER			
	FROM	TO	START	STOP							Sys.	L.R. or W.O.	Spur	Pha
3/24	Osceola Mills	Quehanna	18 706	18 811	103	F	J.M. Buynack	Fuel*	4200	379	9829			
3/25	Osceola Mills	Clearfield	18 811	18 839	28	A			4200	379	9829			
3/26	Clearfield	State College	18 839	18 890	51				4200	379	9829			
3/27	State College	Hollydaysburg	18 890	18 935	45				4200	379	9829			
3/28	Hollydaysburg	Osceola Mills	18 935	18 972	37				4200	379	9829			
3/29	Osceola Mills	Quehanna	18 972	19 002	30				4200	379	9829			
3/30	Quehanna	Belleville	19 002	19 064	62				0 210	373	9829	2	0 0 2 6	0 7
3/31	Belleville	Osceola Mills	19 064	19 117	53				0 210	373	9829	2	0 0 2 6	0 7
3/32	Osceola Mills	Hollydaysburg	19 117	19 153	36				4200	379	9829			
3/33	Hollydaysburg	Harrisburg	19 153	19 212	119				4200	379	9829			
3/34	Harrisburg	Osceola Mills	19 212	19 395	123				4200	379	9829			
3/35	Osceola Mills	Hollydaysburg	19 395	19 477	82			Fuel*	0 210	373	9829	2	0 0 2 6	0 7
3/36	Hollydaysburg	Zenith	19 477	19 637	160				4200	379	9829			
3/37	Osceola Mills	Hollydaysburg	19 637	19 674	37				0 210	383	9829	B	0 0 2 6	0 8
3/38	Hollydaysburg	Pleasant Gap	19 674	19 732	58				0 210	383	9829	B	0 0 2 6	0 8
3/39	Pleasant Gap	Osceola Mills	19 732	19 777	45				0 210	383	9829	B	0 0 2 6	0 8
3/40	Osceola Mills	Hollydaysburg	19 777	19 852	75				0 210	383	9829	B	0 0 2 6	0 8
3/41	Hollydaysburg	Hollydaysburg	19 852	19 927	75				4200	379	9829			
3/42	Osceola Mills	Maginney	19 927	20 050	123				0 270	712	9829	0	6 6 6 6 6	0 9
3/43	Maginney	Hollydaysburg	20 050	20 170	120			Fuel*	0 270	712	9829	0	6 6 6 6 6	0 9
3/44	Hollydaysburg	Hude	20 170	20 194	24				4200	379	9829			
3/45	Hude	Hollydaysburg	20 194	20 260	66			Fuel*	4200	379	9829			
3/46	Hollydaysburg	Osceola Mills	20 260	20 297	37				4200	379	9829			
3/47	Osceola Mills	Carters Gap	20 297	20 416	119				1050	383	9829	C	0 3 2 2	0 8
3/48	Carters Gap	Hollydaysburg	20 416	20 496	80				1050	383	9829	C	0 3 2 2	0 8
3/49	Hollydaysburg	Milesburg	20 496	20 579	103				4200	379	9829			
3/50	Milesburg	Belleville	20 579	20 729	130				0 210	373	9829	2	0 0 2 6	0 7
3/51	Belleville	Osceola Mills	20 729	20 853	124			Fuel*	0 210	373	9829	2	0 0 2 6	0 7
3/52	Osceola Mills	Hollydaysburg	20 853	20 929	76	F	J.M. Buynack		4200	379	9829			
TOTALS					2221	Total Number "H"	0							

Operated for PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

I hereby certify that the information above is correct and that this equipment has been used only in the fulfillment of my duties for the Commonwealth of Pennsylvania.

OPERATOR'S SIGNATURE Joseph M. Buynack DATE 4/18/97
SUPERVISOR'S SIGNATURE David [Signature] DATE 4/18/97

WRITE ON FUEL RECEIPT

M-805 03-98 EQUIP. # MILAGE
 LICENSE #

RECORD OF EQUIPMENT OPERATION

District/Registration Code		Equipment Number	Vehicle Make	Vehicle Type	License Number	NAME		ASSIGNED OPERATOR DATA									
4200		#115-4021	CHEVROLET	☐ Auto ☐ Sta. Wdg.	18032 PA	J. M. BUYNAR		J. M. BUYNAR									
Date	DESTINATION	TO	ODOMETER READINGS		TOTAL STATUS	NAME	Orig.	ALLOT	COST -								
FROM			START	FUEL	STOP	MILES	F	H	FUNC.								
									STATE PROJECT NUMBER								
									S.R. WO. Spur. Pha. Section								
1	6/26	OSTEOLEA MILLS	HOLIDAYSBURG	12578	X	12664	86	X	BUYNAR	0210	711	9864	0	97070	0	8	000
2	28		PLEASANT GAP	12664		12744	80			4200	379	9829					
3	29		HOLIDAYSBURG	12744		12824	80			4200	379	9829					
4	30		STATE COLLEGE	12824		12950	126			0210	373	9864	2	0026	0	7	002
5	7/65		HOLIDAYSBURG	12950		13030	80			0210	711	9864	0	97070	0	8	000
6	06		HOLIDAYSBURG	13030	X	13154	124			4200	379	9829					
7	07		PHILIPSBURG	13154		13172	18			0220	383	9864					
8	10		HOLIDAYSBURG	13172		13246	74			4200	379	9829					
9	11		MAHAFLEY	13246		13346	100			0220	711	9864	0	97098	0	3	000
10	12		HYDE	13346		13398	52			0220	711	9864	0	97098	0	8	000
11	13		ROCKVIEW	13398		13488	90			0210	373	9864	2	0026	0	7	003
12	14		HOLIDAYSBURG	13488		13562	74			4200	379	9829					
13	17		HOLIDAYSBURG	13562		13652	90			4200	379	9829					
14	18		HOLIDAYSBURG	13652		13726	74			4200	379	9829					
15	19		HOLIDAYSBURG	13726	X	13842	116			4200	379	9829					
16	20		BRADFORD	13842	X	14092	250			4200	379	9829					
17	21		HOLIDAYSBURG	14092		14172	80	V		4200	379	9829					
18																	
19																	
20																	
21																	
22																	
23																	
24																	
25																	
26																	
27																	
28																	

TOTAL MILES TRAVELED 1594 TOTAL "H" -0-

I hereby certify that the information above is correct and that this equipment has been used only in the fulfillment of my duties for the Commonwealth of Pennsylvania.

OPERATOR'S SIGNATURE

Joseph M. Rumanak

DATE: 7/21/00

Supervisor's Signature

Robert A. Miller

Date: 7/31/00

PROCEDURE FOR ACCIDENTS ; SUBMIT ALL PAPER WORK WITHIN 24hrs.

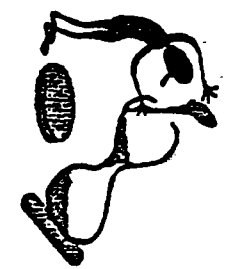
INFORM
SUPERVISOR
INFORM
AUTO OFFICER

FILL OUT FORM
AUTO ACCIDENT NOTICE
STD-541

FILL OUT FORM
ACCIDENT STATEMENT
P-6122

FILL OUT
PA.DOT
ACCIDENT INVESTIGATION
REPORT

ALL SIGNED PAPERWORK
SUBMITTED TO
AUTO OFFICER LENNY ELSE
(717) 783-7191



- PLEASE CHECK OIL LEVEL &
- WINDSHIELD STICKER FOR P.M.

VERIFICATION

I, Joseph M. Buynak, state that I have read the within Answer to Defendant's Preliminary Objections and the facts set forth therein are true and correct to the best of my knowledge, or my information and belief.

I understand that false statements made herein are subject to the penalties set forth in of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

7/25/00
Date

Joseph M. Buynak
Joseph M. Buynak

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
)
) Number 00-501-CD
)

) JURY TRIAL DEMANDED
)

) CLASS ACTION
)
)
)

ORDER

AND NOW, to-wit, this _____ day of _____, 2000, it is
hereby Ordered that the Defendant's Preliminary Objections to
Complaint are overruled and the Defendant is directed to file an
Answer to the Plaintiff's Complaint within twenty (20) days from
the date of this Order.

J.

(9)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
)
) Number 00-501-CD
)
)

) JURY TRIAL DEMANDED
)
)

) CLASS ACTION
)
)
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)

FILE
JUL 27 2000
William A. Shaw
Prothonotary

PLAINTIFF'S PRELIMINARY OBJECTIONS TO DEFENDANT'S
PRELIMINARY OBJECTIONS

NOW COMES the Plaintiff, Joseph M. Buynak, on his own behalf and on behalf of all similarly situated persons by and through his attorney, Edward J. Van Allen, P.C. and makes the following Preliminary Objections to the Defendant's Preliminary Objections pursuant to Pa.R.C.P. 1028(a)(2) because the Defendant's Preliminary Objections do not conform to law or rule of court as follows:

1. The Defendant was served at its principal office in Harrisburg, Pennsylvania with a true and correct copy of the Plaintiff's Reissued Complaint on June 19, 2000, by the Sheriff of Dauphin County, Pennsylvania after having been deputized to make such service by the Sheriff of Clearfield County,

Pennsylvania. A true and correct copy of the return of service by the Sheriff of Dauphin County is attached as Exhibit 1.

2. Said Complaint contained a conspicuous Notice to Defend pursuant to Pa R.C.P. 1018.1. Said Notice to Defend and Pa.R.C.P. 1026 require the Defendant to file a Response, an Answer or Preliminary Objections within twenty (20) days from the date of service.

3. The Defendant did not seek or obtain an agreement with the undersigned attorney for the Plaintiff for an extension of time to file said response.

4. The Defendant did not file an Answer but filed Preliminary Objections on July 12, 2000, or twenty-three (23) days after being served with the Complaint. Even if the Defendant's Preliminary Objections were mailed to the Prothonotary of Clearfield County such is irrelevant as filing was not accomplished by mail with twenty (20) days as the filing could not occur until it was received by the Prothonotary pursuant to Pa R.C.P. 205.1 for "a paper sent by mail shall not be deemed filed until received by the appropriate officer."

5. Accordingly, the Defendant's Preliminary Objections were untimely filed and thus do not conform to law or rule of court and must be overruled.

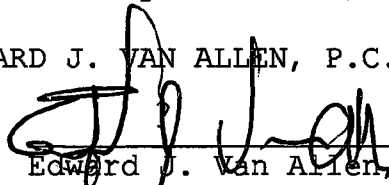
WHEREFORE, the Plaintiff respectfully submits that this Honorable Court should overrule the Defendant's Preliminary

Objections as such are untimely and, therefore, do not conform to law or rule of court.

A proposed Order is attached.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, Esquire

PA I.D. No. 11250

1832 Woodledge Drive

State College, PA 16803

(814) 238-2088

Fax: (814) 867-6123

Attorney for the Plaintiff,

Joseph M. Buynak

Date: July 26, 2000

EXHIBIT 1

Office of the Sheriff

Mary Jane Snyder
Real Estate Deputy

William T. Tully
Solicitor



Ralph G. McAllister
Chief Deputy

Michael W. Rinehart
Assistant Chief Deputy

Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 255-2660 fax: (717) 255-2889

Jack Lotwick
Sheriff

Commonwealth of Pennsylvania : BUYNAC JOSEPH M
vs
County of Dauphin : DEPT OF TRANSPORTATION

Sheriff's Return

No. 1385-T - - -2000

OTHER COUNTY NO. 00-501-CD

AND NOW: June 19, 2000 at 11:00AM served the within

COMPLAINT

upon

DEPT OF TRANSPORTATION

by personally handing

to MITZ TAYLOR, STENO TYPIST III

1 true attested copy(ies)

of the original

COMPLAINT

and making known

to him/her the contents thereof at 555 WALNUT ST

HBG, PA 00000-0000

Sworn and subscribed to
before me this 22ND day of JUNE, 2000

Stephen C. Arina

PROTHONOTARY

So Answers,

J R Lotwick

Sheriff of Dauphin County, Pa.

By *Ronald Hopkins*
Deputy Sheriff

Sheriff's Costs: \$31.50 PD 06/16/2000

RCPT NO 138050

RH

Office of the Sheriff

Mary Jane Snyder
Real Estate Deputy

William T. Tully
Solicitor



COPY
Ralph G. McAllister
Chief Deputy

Michael W. Rinehart
Assistant Chief Deputy

Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 255-2660 fax: (717) 255-2889

Jack Lotwick
Sheriff

Commonwealth of Pennsylvania : BUYNAC JOSEPH M

vs

County of Dauphin : DEPT OF TRANSPORTATION

Sheriff's Return

No. 1385-T - - -2000

OTHER COUNTY NO. 00-501-CD

AND NOW: June 19, 2000 at 11:15AM served the within

COMPLAINT

upon

OFFICE OF THE ATTORNEY GENERAL
MICHAEL FISHER
to ANNETE LAUCK, RECEPTIONIST

by personally handing

1 true attested copy(ies)

of the original

COMPLAINT

and making known

to him/her the contents thereof at 16TH FLOOR

STRAWBERRY SQUARE

HBG, PA 00000-0000

Sworn and subscribed to
before me this 22ND day of JUNE, 2000

Stephen C. Arina
PROTHONOTARY

So Answers,

J R Lotwick

Sheriff of Dauphin County, Pa.

By *Ronald Hopkins*
Deputy Sheriff

Sheriff's Costs: \$31.50 PAID BY COUNTY

RH

VERIFICATION

I, Joseph M. Buynak, state that I have read the within Plaintiff's Preliminary Objections to Defendant's Preliminary Objections and the facts set forth therein are true and correct to the best of my knowledge, or my information and belief.

I understand that false statements made herein are subject to the penalties set forth in of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

7/25/00
Date

Joseph M. Buynak
Joseph M. Buynak

FILED

JUN 27 2000

1 cc
A44

William A. Shaw
Prothonotary

WAS

J.

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JURY TRIAL DEMANDED

VS.

CLASS ACTION

Defendant.

SERVICE
26th day of

Office of Attorney General
15th Floor Strawberry Square
Harrisburg, Pennsylvania 17120

- ant's Preliminary
- 
- ard J. Van Allen, Esq

FILED

William A. Shaw
Prothonotary

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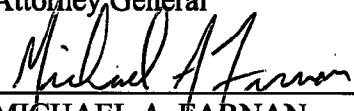
action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties." Plaintiff was served with a response on the twentieth day after service of the complaint was made. His substantial rights were not prejudiced. Therefore, it is denied that defendant's preliminary objections must be overruled.

WHEREFORE, the defendant respectfully requests that the Court deny plaintiff's preliminary objections to defendant's preliminary objections.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY:


MICHAEL A. FARNAN
Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Litigation Section

Counsel for DEFENDANT,
PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 787-7369

DATE: August 11, 2000

DATE: August 11, 2000

Date: August 11, 2000

J.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

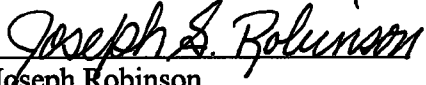
DEPARTMENT OF TRANSPORTATION, :
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

:
:
: No. 00-501-CD
:
:
:
:
:
: (Jury Trial Demanded)
:

VERIFICATION

The undersigned verifies that the facts set forth in defendant's response to preliminary objections are true and correct and understands that false statements made herein are subject to the penalties set forth in 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.


Joseph Robinson
Pennsylvania Department of Transportation

July 11, 2000

Plaintiff filed a second amended complaint with the Pennsylvania Human Relations

Commission ("PHRC") on April 10, 2000 alleging age discrimination. Exhibit A.¹ Defendant answered that complaint. Exhibit B. Within two months, plaintiff withdrew his complaint "before the completion of the investigation or a formal finding," and the PHRC closed the case. Exhibit C. None of the alleged discriminatory conduct occurred in Clearfield County. The Department's principal office is in Dauphin County. 37 Pa. Code §§111.1 and 111.4.

Plaintiff caused his complaint to be served on June 19, 2000. Defendant responded by serving preliminary objections on plaintiff's counsel on July 10, 2000, within the period prescribed by the rules for filing a response.

QUESTIONS PRESENTED

**WHETHER THE COURT SHOULD DENY
PLAINTIFF'S PRELIMINARY
OBJECTIONS?**

ARGUMENT

**THE COURT SHOULD OVERRULE
PLAINTIFF'S PRELIMINARY OBJECTIONS.**

The Court should exercise its discretion to overrule plaintiff's preliminary objections because the plaintiff has not been prejudiced in any way.

Plaintiff has filed preliminary objections alleging that the preliminary objections of the defendant were three-days late.² Defendant served its preliminary objections on July 10, 2000,

¹Exhibits referenced in this brief are attached to the defendant's preliminary objections pending before this Court.

²Plaintiff asserts that the complaint was served on June 19, 2000 and the reply was filed on July 12, 2000. Twenty days from June 19, 2000 is July 9, 2000, which was a Sunday. Pursuant to Pa.R.C.P. No. 106(b), whenever the last day of a period is a Sunday, "such day shall be omitted from the computation." Therefore, the preliminary objections were not three days late.

which is within the period prescribed by the rules for filing a response. See footnote 2; Pa.R.C.P.

No. 440(b). The Clearfield County prothonotary's office did not file the preliminary objections until July 12, 2000. Pa.R.C.P. No. 126 states that

[t]he rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

In the present case, plaintiff has not alleged that he has been prejudiced in any way. The preliminary objections were served on the plaintiff in a timely manner but not filed so.

Plaintiff's substantive rights have not been affected.

The Pennsylvania Supreme Court in Fisher v. Hill, 368 Pa. 53, 81 A.2d 860 (1951), decided that the trial court did not err when it allowed the filing of a responsive pleading ten (10) months after service of the complaint. In so holding, the Court stated that "it is sufficient now to hold that dilatory pleadings may be filed if the opposite party is not prejudiced and justice requires." Numerous Pennsylvania courts have permitted late-filed preliminary objections where, as in the present case, it does not prejudice to the rights of the non-objecting party. See, e.g., Goldsborough v. City of Philadelphia, 309 Pa. Super. 347, 350, 455 A.2d 643, 645 (1982) (four-day delay permitted); Boarts v. McCord, 354 Pa. Super. 96, 511 A.2d 204 (1986) (one-day delay permitted); and Green International v. Pennsylvania Department of General Services, 518 A.2d 1323 (Pa.Cmwlth.1987)(three-day delay permitted).

Plaintiff was served with a response within the required period after service of the complaint was made. As a result, he was placed on notice of the bases of defendant's preliminary objections in a timely manner. Plaintiff's substantial rights simply were not

prejudiced. Therefore, plaintiff's preliminary objections should be overruled.

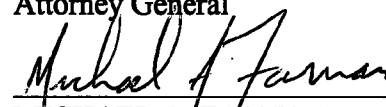
CONCLUSION

For the foregoing reasons, the defendant respectfully requests that the Court overrule plaintiff's preliminary objections.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY:


MICHAEL A. FARNAN
Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Litigation Section

Counsel for DEFENDANT,
PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 787-7369

DATE: August 11, 2000

DATE: August 11, 2000

(B) CX

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. BUYNACK

vs.

No. 00-501-CD

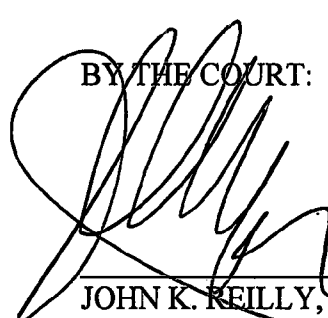
DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA

ORDER

NOW, this 16th ^{August} day of ~~July~~, 2000, Argument on the Motion for Protective Order and Stay in the above captioned matter shall be and is hereby scheduled for the 1st day of October, 2000, at 2:30 P.M. in Courtroom No. 1, Clearfield County Courthouse.

Pending scheduled argument, all proceedings shall be stayed.

BY THE COURT:



JOHN K. REILLY, JR.
President Judge

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William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

Number 00-501-CD

JURY TRIAL DEMANDED

CLASS ACTION

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PLAINTIFF'S RESPONSE TO THE DEFENDANT'S RESPONSE

1-3. Admitted.

4. Denied as stated. The Defendant still did not file its Response until July 12, 2000. Incredibly, the Defendant offers no excuse whatsoever for its failure to comply with the Pennsylvania Rules of Civil Procedure which required the Defendant's Preliminary Objections be filed within twenty (20) days. Had the Defendant's counsel ever gone to the trouble of working on Saturday, he could have sent by Federal Express or U.S. Express mail his response which would have arrived on July 10, 2000. Thus, the Defendant's Response is spurious.

5. Denied as stated. The Plaintiff need not show prejudice to show enforcement of the rules. Moreover, the matters set forth in numbered paragraph 5 of the Defendant's Response are

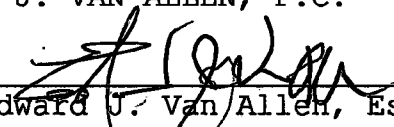
discretionary with the Court. The relief request by the Defendant should not be granted as such would encourage and condone the slipshod disregard of the rules.

WHEREFORE, the Plaintiff's Preliminary Objections should be granted.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By:


Edward J. Van Allen, Esq.
PA I.D. No. 11250
1832 Woodledge Drive
State College, PA 16803
Attorney for the Plaintiff

Date: August 31, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAK,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

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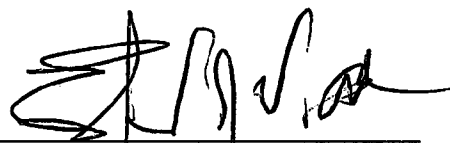
) JURY TRIAL DEMANDED
)

) CLASS ACTION
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CERTIFICATE OF SERVICE

The within Response was served by mail and fax on Michael
S. Farnan, Esquire on August 31, 2000 as follows:

Michael S. Farnan, Esquire
Deputy Attorney General
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
Fax: (717) 772-4526



Edward J. Van Allen, Esq.

Date: August 31, 2000

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JURY TRIAL DEMANDED

CLASS ACTION

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1. The averments of Paragraph 1 are admitted. By way of further answer the Plaintiff filed his original Complaint with the Pennsylvania Human Relations Commission ("PHRC") on or about March 1, 1999. On or about March 28, 1999 the PHRC formalized the Plaintiff's Complaint on a complaint form of its own. On or about July 25, 1999, the Plaintiff submitted his First Amended Complaint to the PHRC

entitled "Amended Complaint." On or about April 10, 2000, the Plaintiff amended his PHRC Complaint for the second time. This amendment was entitled "Second Amended Complaint." The PHRC has promulgated regulations which address amendments to the Complaint. 16 Pa.Code Section 42.35(a) provides as follows:

The complaint or answer may be amended at any time prior to approval of a hearing on the merits and thereafter by leave of the commissioners, hearing commissioners or permanent hearing examiner.

More importantly 16 Pa. Code Section 42.35(b) provides as follows:

The complaint may be amended to cure technical defects or omissions, to clarify or amplify allegations made therein, or to add material allegations which are related to or grow out of the subject matter of the original complaint, and these amendments shall relate back to the original filing date of the complaint. (Emphasis added.)

2. The averments of paragraph 2 are admitted.

3. The averments of paragraph 3 are admitted.

4. The averments of paragraph 4 are denied. Moreover, the Defendant's averment set forth in paragraph 4 is frivolous as it ignores a clear and plain reading of 43 Pa.C.S.A § 962 (c) and the above stated regulation which provides, in part, that amendments to a PHRC Complaint relate back to the date of the filing of the original PHRC

Complaint. The Defendant also made this allegation in the Defendant's Preliminary Objections which was also frivolous and the Plaintiff clearly explained the law on this subject as set forth above to the Defendant in paragraphs 3 and 4 of its Answer to the Defendant's Preliminary Objections. However, the Defendant has not withdrawn its Preliminary Objections nor has it withdrawn its motion for a Protective Order. Nevertheless, the Defendant's counsel continues to make this baseless allegation although the PHRC regulations are to the contrary. This, in all probability, is in furtherance of PennDot's grand scheme as stated by Paul Albright, the Plaintiff's team leader to Joe Holenchik before June 1, 2000, in the Clearfield local office that PennDot was probably going to "run him (Buynak) out of money" when they (Albright and Holenchik) were discussing Buynak.

5. The averments of paragraph 5 are denied. See the foregoing.

6. The averments of paragraph 6 are admitted.

Moreover, this allegation and the Defendant's Preliminary Objection as to venue are irrelevant as the propriety of discovery under the Pennsylvania Rules of Civil Procedure does not depend upon the county in which venue lies. This is another example of the frivolous

nature of the Defendant's allegations, and as such is another example of the dilatory conduct on the part of the Defendant.

7. The averment of paragraph 7 is admitted.

8. The averments of this paragraph are admitted in part and denied in part. It is admitted that the Defendant would have to conduct a reasonable investigation to properly respond to the Plaintiff's First Set of Interrogatories which were served more than 2½ months ago on July 6, 2000. However, the Plaintiff denies that the Defendant's counsel would have to travel to many different counties. To the contrary, the undersigned Plaintiff's counsel knows that Michael A. Farnan, Esquire, the Defendant's counsel, as Assistant Attorney General in the Commonwealth of Pennsylvania has access to the U.S. mail which he used to file the Defendant's Preliminary Objections three days late and who has access to the telephone and fax because the Plaintiff's counsel has telephoned and faxed Mr. Farnan previously in this litigation. Moreover, when class certification is sought and obtained, the Defendant's counsel will have to speak to witnesses which are believed to be located throughout the entire Commonwealth of Pennsylvania. He will surely do this by telephone and fax. Also, it is believed that

Defendant's counsel has access to PennDot's Human Resources Department and computer system.

9. The averments of paragraph 9 are denied as stated. See Plaintiff's response set forth in the preceding paragraph 8. To the contrary, any costs associated with the Defendant's answers to the Plaintiff's modest First Set of Interrogatories, which for the most part, relate to class certification are the direct result of the Defendant's unlawful age discrimination.

10. The averments of paragraph 10 are denied. The Plaintiff's complaint is properly before this Court and as previously stated, the propriety of discovery under the Pennsylvania Rules of Civil Procedure does not depend upon the county in Pennsylvania in which venue lies.

11. The averments of paragraph 11 are denied. It is believed that PennDot has a computer system which provides answers to many, if not all, of the Plaintiff's questions in the Plaintiff's First Set of Interrogatories. Also, the Defendant's Human Resource Department is located in Harrisburg as is Mr. Farnan. Moreover, see the Plaintiff's prior answers herein which are incorporated in this paragraph by reference.

12. The averments of paragraph 12 are admitted but are irrelevant.

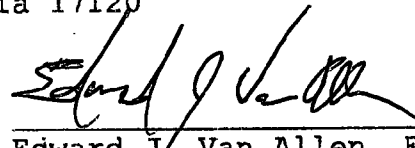
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of October, 2000, I caused service of a true and correct copy of the within document to be made upon the attorney for the Defendant by U.S. mail, first class delivery, postage prepaid and by fax to:

Michael A. Farnan, Esquire
Assistant Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120



Edward J. Van Allen, Esq.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

No. 00-501-CD

(Jury Trial Demanded)

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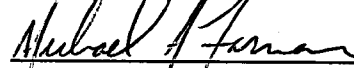
William A. Shaw
Prothonotary

WITHDRAWAL OF APPEARANCE

TO THE PROTHONOTARY:

Please withdraw my appearance on behalf of the Pennsylvania Department of Transportation in the above-captioned action.

Respectfully submitted,



MICHAEL A. FARNAN
Deputy Attorney General

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of the Pennsylvania Department of Transportation in the above-captioned action.

Respectfully submitted,



GWENDOLYN MOSLEY
Chief Deputy Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-1180

DATE: December 7, 2000

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

JOSEPH M. BUYNAK,

Plaintiff,

v.

**DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:**

Defendant.

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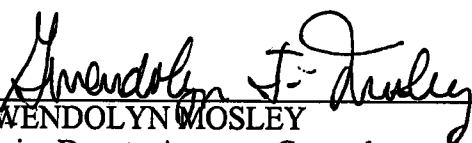
No. 00-501-CD

(Jury Trial Demanded)

CERTIFICATE OF SERVICE

I, Gwendolyn Mosley, Senior Deputy Attorney General, hereby certify that I have this day served the foregoing Withdrawal/Entry of Appearance, by placing a copy of it in the mail, postage prepaid and addressed to the following:

Edward J. Van Allen, Esquire
1832 Woodledge Drive
State College, PA 16803



GWENDOLYN MOSLEY
Senior Deputy Attorney General

DATE: December 7, 2000

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William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

JOSEPH M. BUYNAC, Individually and :
On behalf of all other persons similarly :
Situating :
:

-vs-

No. 00 - 501

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William A. Shaw
Prothonotary

DEPARTMENT OF TRANSPORTATION :
COMMONWEALTH OF PENNSYLVANIA:

OPINION AND ORDER

The Complaint filed in the above matter alleges age discrimination in employment by the Defendant, Department of Transportation (PennDot) against the Plaintiff. From the pleadings it appears that on March 1, 1999, the Plaintiff filed a Complaint alleging age discrimination pursuant to the Pennsylvania Human Relations Act (the Act) with the Pennsylvania Human Relations Commission (PHRC). On July 25, 1999, Plaintiff filed his first Amended Complaint with the PHRC and on April 10, 2000, again amended his Complaint. Pursuant to the Act, the PHRC has promulgated regulations which include rules of practice and procedure. These are set forth in 16 Pa. Code §42.35(a) and (b) and provide as follows:

The complaint or answer may be amended at any time prior to approval of a hearing on the merits and thereafter by leave of the commissioners, hearing commissioners or permanent hearing examiner;

and

the complaint may be amended to cure technical defects or omissions, to clarify or amplify allegations made therein; or to add material allegations which are related to or grow out of the subject matter of the original complaint, and these amendments shall relate back to the original filing date of the complaint. (Emphasis added)

Because the original PHRC Complaint had been filed in excess of one year earlier and the PHRC had not resolved the initial Complaint thereon, Plaintiff requested that PHRC dismiss his Complaint in order that he could file a civil action with this Court pursuant to §962(c) of the Act. The Plaintiff's Complaint was dismissed and he filed the above action in the Court of Common Pleas of Clearfield County.

Defendant has filed Preliminary Objections raising two issues. First, that this Court lacks jurisdiction because Plaintiff has failed to exhaust his administrative remedies and second, that Clearfield county is an improper venue for the above litigation.

This Court disagrees and does herein dismiss Defendant's Preliminary Objections.

With regards to Defendants first objection, Defendant argues that because the second Amended Complaint was filed in April of 2000, the PHRC had one year from the date of its filing for either conciliation or hearing and since this time has not expired, Plaintiff is premature in withdrawing his Complaint before the PHRC and proceeding before this Court.

Plaintiff argues that the one year granted to the PHRC to act as set forth above commences with the filing of the original Complaint and is not affected by the filing of the subsequent Amended Complaints.

Defendant relies on Fye v. Central Transportation, Inc., 487 Pa. 137, 409 A.2d 2 (1979). In Fye, the Plaintiff's file with the PHRC was closed at his request prior to the lapse of one year from the date of filing the Complaint and the Appellate Court held that such withdrawal did not permit Plaintiff to proceed in a Court of law as the one year granted to the PHRC to act had not expired.

Plaintiff argues that in the instant case, one year had expired from the date of filing the original Complaint and therefore, he was permitted to terminate his action before the PHRC and proceed with the above litigation. In support thereof, Plaintiff cites Snyder v. Pennsylvania Association of School Retirees, 566 A.2d 1235, 389 Pa. Super 261, wherein Plaintiff's original Complaint before the PHRC was amended to include an entirely new cause of action alleging retaliation. Thereafter, Plaintiff attempted to withdraw his Complaint before the PHRC and proceed with an action at law. The Appellate Court held that because one year had elapsed from the original Complaint alleging age and sex discrimination, Plaintiff may continue through the judicial process. However, since the retaliation claim, unrelated to the age and sex discrimination claim, had not been before the PHRC for the required one year period, the Complaint could not be transferred to the civil arena. In so holding, the Court stated:

Accordingly, because the plaintiff's "age and sex" discrimination complaint had been before the PHRC for longer than one year, we hold it was removable by the plaintiff to Common Pleas Court without violating subsections (b)(c) of Section 962 of the PHRC. As for the "amended" complaint of October, 1987, it being rooted in a "retaliation" charge, and having been before the PHRC for less than one year, it could not be withdrawn and made a part of the plaintiff's civil cause-of-action-complaint without running afoul of our interpretation of Clay, supra, Fye, supra, and Lukus, supra. More importantly, the PHRC, having been created by the Legislature for the specific purpose of developing a body of law to deal with the elusive and often complex body of discrimination law, i.e., wanting the PHRC to become the expert in the field so as to expeditiously resolve complaints and free the courts from such litigation, we are not in a position to question its administrative rationale for choosing to assign two different docket numbers to each of the plaintiff's discrimination allegations. See Murphy v. Com., supra.

As a result, the plaintiff's complaint, as it applies to his allegations of "age and sex" discrimination, may continue through the judicial process; whereas the "retaliation" claim, having been prematurely removed from the scope of PHRC scrutiny, cannot be transferred to the civil arena to be heard as a part of the plaintiff's complaint there.

In the instant case, the original Complaint was amended only as to substance but not as to form. No new cause of action was alleged or added, but the original allegations merely clarified and expanded upon. Therefore, this Court does dismiss Defendant's objection as to jurisdiction.

Defendant also objects to venue claiming the above-captioned matter should have been filed with the Court of Common Pleas of Dauphin County and in support thereof cites 42 Pa. C.S.A. §8523(a) which states:

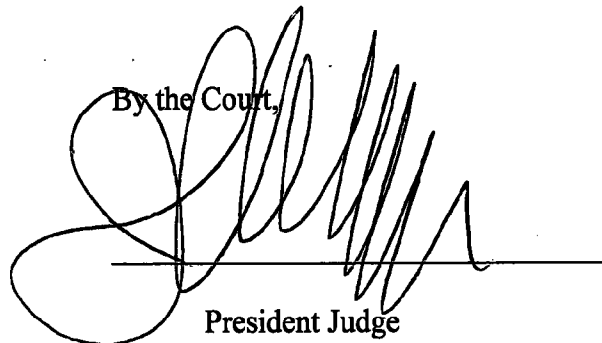
Venue – Actions for claims against a Commonwealth party may be brought in and only in a county in which the principal or local office of the commonwealth party is located or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose. . .

In this matter, the Defendant maintains a local office within Clearfield County known as District Office 2-0 and moreover, the Plaintiff has alleged, although not yet proven, that a number of the alleged discriminatory acts from which he seeks to recover occurred in Clearfield County. Therefore, based on the above cite, this Court will dismiss Defendant's Preliminary Objection for venue and enter the following:

ORDER

NOW, this 19th day of December, 2000, following argument and briefs into Preliminary Objections filed on behalf of Defendant above-named, it is the ORDER of this Court that said Objections be and are hereby dismissed in accordance with the foregoing Opinion.

By the Court,

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the President Judge.

President Judge

FILED

DEC 29 2000

William A. Shaw
Prothonotary

FILED

DEC 29 1

cc City Treasurer

Dep. City Clerk

copy

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**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

JOSEPH M. BUYNAC,

Plaintiff,

v.

**DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:**

Defendant.

:
:
: **No. 00-501-CD**
:
:
:
:
: **(Jury Trial Demanded)**
:

**ANSWER AND NEW MATTER OF
DEFENDANT DEPARTMENT OF TRANSPORTATION**

Defendant, Department of Transportation, by its attorneys, hereby responds to the
allegations in the above-captioned case as follows:

FILED

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William A. Shaw
Prothonotary

1. ADMITTED.
2. ADMITTED.
3. The averment in this paragraph purports to describe the capacity in which plaintiff brings this case and, as such, requires NO RESPONSE. If deemed factual, it is DENIED that this case is a proper vehicle for a class action and that plaintiff is a proper representative for a class.

SUBSTANTIVE ALLEGATIONS

4. The averments in this paragraph purport to describe in general terms the nature of this case and, as such, require NO RESPONSE. If deemed factual, it is DENIED that the defendant subjected plaintiff or any of its other employees to age discrimination, intimidation, coercion, harassment, and/or a hostile working environment.
5. ADMITTED.

6. The averment in this paragraph is a LEGAL CONCLUSION which requires NO RESPONSE.

7. ADMITTED.

8. ADMITTED and DENIED. ADMITTED that plaintiff was employed by defendant's Bureau of Construction as a Transportation Construction Inspector for approximately ten years; that plaintiff's date of birth is January 13, 1943; and that plaintiff reached 55 years of age on January 13, 1998. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph concerning plaintiff alleged heart attack and stroke in 1990 and alleged second stroke in 1994; therefore, they are DENIED. It is DENIED that the defendant afforded plaintiff accommodations to enable him to perform his job in a satisfactory or better than satisfactory manner for approximate eight years until May of 1998. By way of further answer, other individuals employed by the defendant covered plaintiff's caseload and performed those functions which he could not perform. It is DENIED that the defendant took any unlawful action against plaintiff after he reached 55 years of age which caused him problems.

9. ADMITTED and DENIED. ADMITTED that plaintiff reported to the defendant that he underwent an operation on his right shoulder rotator cuff in May of 1998 and a procedure for the removal of blood clots in June of 1998 and was not given an accommodation on his job. After reasonable investigation, the defendant is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph concerning plaintiff's reasons for not accepting a disability retirement; therefore, it is DENIED. It is also DENIED that the defendant had given plaintiff an accommodation previously, that the defendant required him to accept a six

month temporary office position or that plaintiff's last day of work as a Transportation Construction Inspector was May 28, 1998. By way of further answer, Plaintiff was offered and accepted a temporary assignment after he had exhausted all eligibility for earned and anticipated sick leave for 1998 pending the outcome of an assessment of his ability to perform in his prior capacity, with or without an accommodation.

10. ADMITTED.

11. ADMITTED and DENIED. ADMITTED that an employee named Dave Evans, age 35, was reclassified from a technician to a Transportation Construction Inspector position and did the same type of work as that previously performed by the plaintiff. It is ADMITTED that Mr. Evans suffered injuries when he fell from a roof in a non-job related accident which resulted in his having to use crutches, that Mr. Evans continued to perform the duties of a Transportation Construction Inspector while he was on crutches and was not offered or required to accept a temporary office duty position. By way of further answer, Mr. Evans was able to perform the concrete testing functions of his job while on crutches; plaintiff claimed that he could not perform these same functions. It is DENIED that Mr. Evans or anyone else replaced plaintiff in his Inspector position.

12. ADMITTED and DENIED. ADMITTED that one of the defendant's supervisor suggested that a roller operator ignore the plaintiff's instructions to adhere to weight specifications when rolling asphalt and that plaintiff was instructed to travel to Hollidaysburg for a class. DENIED that the plaintiff was not given notice of the need to attend the meeting in Hollidaysburg or that the supervisor knew plaintiff would miss almost the entire class. The plaintiff was told of the Hollidaysburg class weeks beforehand and the class was modified and

shortened at the last minute without the supervisor's knowledge. DENIED that the defendant took away the plaintiff's leave, ignored his physician's reports, forced plaintiff to take a job which caused him eye strain and severe headaches, coerced him to take disability retirement, gave him a more difficult work assignment in the Finals Unit, vacillated with respect to plaintiff's employment or discriminated against him because of his age. The defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph concerning Clearfield employees who took snow days or supervisors who allegedly refused to initial plaintiff's payroll cards; therefore, they are also DENIED.

13. ADMITTED and DENIED. ADMITTED that plaintiff may have been qualified for a supervisory position and that supervisory positions outside the Bureau of Construction were available. DENIED that the defendant continuously refused to promote plaintiff to an available supervisory position. By way of further answer, there were no Transportation Construction Inspector Supervisor positions in the Bureau of Construction available to be filled.

14. DENIED that the defendant gave support and encouragement to any of its employees, including the plaintiff, based upon the employee's age.

15. DENIED that the defendant took any unlawful action against the plaintiff or any of its other employees because of their age or that the nature and extent of the defendant's actions with respect to persons 40 years and older was more negative than those with respect to persons under 40 years of age.

16. DENIED that plaintiff's complaint of age discrimination was filed with the Pennsylvania Human Relations Commission ("PHRC") on March 1, 1999. By way of further answer, plaintiff's complaint was filed with the Equal Employment Opportunity Commission on March

1, 1999. The complaint was filed with the PHRC on July 25, 1999 and served on the defendant on October 14, 1999. It is also DENIED that plaintiff amended his complaint twice. The defendant has knowledge of only one amendment to the complaint which was served on April 17, 2000.

17. ADMITTED and DENIED. ADMITTED that the PHRC has not entered into a conciliation agreement in which the plaintiff is a party. DENIED that more than one year has elapsed since the plaintiff filed his complaint with the PHRC.

18. The defendant is without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph concerning plaintiff's alleged request to the PHRC for the dismissal of his complaint; therefore, it is DENIED.

19. DENIED that the defendant coerced, harassed or intimidated the plaintiff, subjected him to a hostile working environment or took any other unlawful action toward him because of his age or for any other reason. DENIED that the defendant had the intent to discriminate against the plaintiff because of his age or for any other reason.

20. DENIED that the defendant subjected plaintiff or any of its other employees to disparate treatment because of age or for any other reason. DENIED that the defendant had the intent to discriminate against the plaintiff or any of its other employees because of age or for any other reason.

21. The averment in this paragraph is a LEGAL CONCLUSION which requires NO RESPONSE. If deemed factual, it is DENIED that the defendant discriminated against the plaintiff and other employees or violated the provisions of the Pennsylvania Human Relations Act.

22. The averment in this paragraph is a LEGAL CONCLUSION which requires NO RESPONSE. If deemed factual, it is DENIED that the defendant took any action against the plaintiff or anyone else which caused them to suffer damages.

CLASS ACTION ALLEGATIONS

23. The averments in this paragraph purport to describe the basis of plaintiff's request for a class action and the proposed class and, as such, requires NO RESPONSE. If deemed factual, it is DENIED that this action is properly brought as a class action or that plaintiff is a proper representative of a class.

24. The averments in this paragraph are LEGAL CONCLUSIONS which require NO RESPONSE. If deemed factual, it is DENIED that there exists a number of individuals who have been subject to age discrimination by the defendant which is of sufficient size to justify the certification of a class.

25. The averments in this paragraph are LEGAL CONCLUSIONS which require NO RESPONSE. If deemed factual, it is DENIED that the defendant has engaged in any practices constituting age discrimination against the plaintiff or a class of individuals or that there are questions of fact and law concerning the defendant's practices which are common to a group of its employees.

26. The averments in this paragraph are LEGAL CONCLUSIONS which require NO RESPONSE. If deemed factual, it is DENIED that the defendant has engaged in any practices constituting age discrimination against the plaintiff or a class of individuals or that there are questions of law or fact concerning the defendant's practices which are common to a group of its employees.

27. The averments in this paragraph are LEGAL CONCLUSIONS which require NO RESPONSE. If deemed factual, it is DENIED that plaintiff's claims of age discrimination are typical of those of a group of other employees of the defendant or that plaintiff's overall position on any issue is aligned with that of a group of other employees.

28. After reasonable investigation, the defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are DENIED.

29. After reasonable investigation, the defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are DENIED.

30. After reasonable investigation, the defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph; therefore, they are DENIED.

31. After reasonable investigation, the defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in this paragraph; therefore, they are DENIED.

32. The averment in this paragraph is a LEGAL CONCLUSION which requires NO RESPONSE. If deemed factual, it is DENIED that this case is a proper one for a class action or that a class action provides a fair and efficient method for adjudicating the claims presented in this case.

33. DENIED that there are a hundred present or former employees of the defendant who have been subjected to unlawful discrimination, that there are questions of law or fact concerning age

discrimination shared by this group of individuals, or that there are interests related to age discrimination which are shared by this group of individuals.

34. DENIED that the defendant has inflicted damages upon the plaintiff or any of its other employees or that it intentionally engaged in misconduct which adversely affected them. The defendant does not understand the remaining averments in this paragraph concerning the prosecution of separate actions by individuals; therefore, it is unable to respond to them at this time.

35. DENIED that there is any other class litigation against the defendant which involves the same issues as those presented in this case.

36. ADMITTED and DENIED. ADMITTED that in an appropriate case, a common pleas court would be a proper forum for the litigation of a class action. ADMITTED that the defendant maintains an operation in Clearfield County sufficient to constitute a basis for the exercise of this Court's jurisdiction. DENIED that this case is a proper class action, that plaintiff is employed in defendant's Clearfield County facility or that the defendant has taken any action to subject plaintiff or anyone else to age discrimination.

37. DENIED that this case presents complex issues, that there are numerous other individuals employed by the defendant who are or have been subject to age discrimination by the defendant or that the prosecution of this case will require the expenditure of substantial amounts of money. It is also DENIED that the docket of this Court would become clogged with repetitive litigation if this case does not proceed as a class action.

38. DENIED that this is a proper case for a class action, that there are numerous other individuals employed by the defendant who have been subjected to age discrimination by the

defendant or that any individual including the plaintiff is likely to recover any sum of sufficient size in relation to the expense and effort of administering the case as to justify a class action.

39. DENIED that the defendant has taken any unlawful action against the plaintiff or any other of its employees which is a basis for awarding relief.

40. DENIED.

DAMAGES

41. The defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore they are DENIED. It is also DENIED that the defendant has taken any unlawful action against the plaintiff which is a basis for awarding him damages.

42. The averments in this paragraph are LEGAL CONCLUSIONS which require NO RESPONSE. If deemed factual, it is DENIED that the defendant subjected the plaintiff to age discrimination or took any other unlawful action which would justify the award of damages to him.

43. DENIED that the defendant has taken any unlawful action toward the plaintiff or any of its other employees which caused injury or which could be the basis of an award of damages.

The defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph concerning any injuries the plaintiff may be experiencing from some source other than the defendant; therefore, they are DENIED.

44. Insofar as the averment in this paragraph constitutes a demand for a jury trial, it is DENIED that plaintiff is entitled to a jury trial in this matter.

45. DENIED that the defendant has taken any unlawful action against the plaintiff or any of its other employees which justifies an award of damages.

NEW MATTER

1. The alleged basis of plaintiff's complaint occurred on December 3, 1998; the defendant was not served notice of the complaint until October 14, 1999.

2. The plaintiff is still employed by the defendant.

3. At the end of his temporary modified duty assignment, plaintiff returned to his regular job and performed all of the functions of that job with the temporary exception of concrete testing

4. According to Dr. Jennifer Etters of HealthSouth, the plaintiff can perform the function of concrete testing but cannot do so in the required time frame.

5. The standards and testing requirements for Transportation Construction Inspectors are set by the American Concrete Institute ("ACI").

6. The ACI has agreed to allow the plaintiff to witness rather than perform concrete testing so that he can become certified.

7. The plaintiff failed to set forth in the complaint the defendant's efforts to explore ways to avoid using leave without pay.

8. On August 21, 1998, when the plaintiff was ten days from exhausting his paid sick leave, he was notified of other options for obtaining leave.

9. At the same time, the defendant was searching for a modified duty assignment that the plaintiff could perform while he was recovering from what he reported as his third stroke.

10. On September 14, 1998, the defendant formally offered plaintiff a temporary modified duty assignment in District 2-0.

11. Throughout the period from September 14, 1998 to his eventual acceptance of the modified duty on November 9, 1998, there was dialogue between the plaintiff and the defendant regarding the conditions of this temporary reassignment.

12. The defendant allowed the plaintiff to use a Commonwealth vehicle to travel to and from his work site so that he would not incur any additional costs.

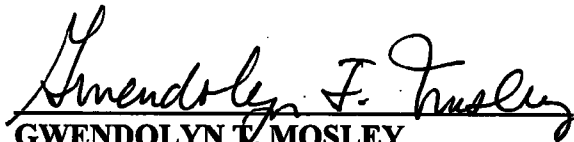
13. The plaintiff remained at the same pay grade during his reassignment.

14. The defendant has never taken any unlawful action against the plaintiff which subjected him to age discrimination.

NOTICE TO PLEAD

TO: Plaintiff Joseph M. Buynak

You are hereby notified to file a written response to the foregoing New Matter within twenty (20) days from service hereof or a judgment may be entered against you.



GWENDOLYN F. MOSLEY
Senior Deputy Attorney General
Counsel for the defendant


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

JOSEPH M. BUYNAK,

Plaintiff,

v.

**DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:**

Defendant.

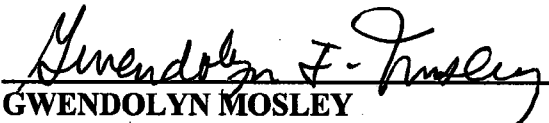
No. 00-501-CD

(Jury Trial Demanded)

CERTIFICATE OF SERVICE

I, **GWENDOLYN MOSLEY**, Senior Deputy Attorney General, hereby certify that I have this day served the foregoing **Answer and New Matter of Defendant Department of Transportation**, by placing a copy of it in the mail, postage prepaid and addressed to the following:

Edward J. Van Allen, Esquire
1832 Woodledge Drive
State College, PA 16803


GWENDOLYN MOSLEY
Senior Deputy Attorney General

**OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180**

DATE: January 16, 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
)
) Number 00-501-CD
)

) JURY TRIAL DEMANDED
)

) CLASS ACTION
)

) (Judge Reilly) FEB 05 2001
)

FILED

William A. Shaw
Prothonotary

ANSWER TO NEW MATTER

NOW COMES the Plaintiff Joseph M. Buynak, ("Buynak") by his attorneys, Edward J. Van Allen, P.C. and Ronit Zusman and submits this Answer to New Matter as follows:

1. The averments of numbered paragraph 1 of the Defendant's New Matter are denied as stated. To the contrary one of the many acts of age discrimination perpetuated upon the Plaintiff by the Defendant did occur on or about December 3, 1998, and was a part of the hostile work environment created by the Defendant against the Plaintiff and other employees forty (40) years of age or older. The Plaintiff filed a timely complaint with the Pennsylvania Human Relations Commission

("PHRC") on March 1, 1999. However, PHRC complaints are served by the PHRC and the Plaintiff has no knowledge or control of when service of process was made upon the Defendant because the knowledge of such date is solely within the PHRC and the Defendant.

2. The averments of numbered paragraph 2 of the Defendant's New Matter are admitted after expending all of his leave with pay and having to take leave without pay with benefits.

3. The averments of numbered paragraph 3 of the Defendant's New Matter are denied as stated. To the contrary, the elimination of concrete testing from the Plaintiff's job duties was permanent many years prior thereto to reasonably accommodate the Plaintiff's handicap, and the attempt by the Defendant to unilaterally again require concrete testing by the Plaintiff is just one of the many acts of age discrimination perpetuated upon the Plaintiff by the Defendant and is a part of the hostile work environment created by the Defendant against the Plaintiff and employees forty (40) years of age or older. Moreover, such act of age discrimination also violated the applicable collective bargaining agreement between the Plaintiff's union and the Defendant. It is also denied that the job assignment to which the Defendant refers in numbered

paragraph 3 of the New Matter was temporary.. Rather, it was a modified job assignment.

4. The averments set forth in numbered paragraph 4 of the Defendant's New Matter are denied as stated. To the contrary, there was no Dr. Jennifer Etters in the employ of HealthSouth Rehabilitation Hospital ("HealthSouth"). Rather, Ms. Etters was a physical therapist. It is admitted that the Plaintiff can perform concrete testing with certain limitations, one of which is the Plaintiff's need for a reasonable accommodation with respect to the time consumed in completing the tests and other factors not set forth in said numbered paragraph 4 of the Defendant's New Matter. Moreover, Ms. Etters so-called testing of the Plaintiff was, at the demand of the Defendant, undertaken in front of a small crowd in an effort by the Defendant to harass, humiliate and intimidate the Plaintiff and was repetitive of such tests that were administered a short time prior thereto, all of which constitutes acts of age discrimination and a hostile work environment perpetuated by the Defendant against the Plaintiff and employees forty (40) years of age or older. Moreover, the Plaintiff did not have to perform concrete testing since 1990, when he became disabled for the first time, as such testing was not required in an effort by the Defendant to afford the Plaintiff a reasonable accommodation because of his disabilities. However, when the Plaintiff

reached the age of fifty-five (55) the Defendant began to actively and continuously discriminate against the Plaintiff because of his age including but not limited to the Defendant's arbitrary refusal to afford the Plaintiff a documented continuation of its reasonable accommodation and its seeking and obtaining testing results from HealthSouth. Also, the testing by HealthSouth, as insisted upon by the Defendant, was an effort to set up the Plaintiff for failure and as such constitutes further age discrimination and the creation of a hostile work environment as aforesaid. Upon the direction of Defendant higher level management personnel, Joseph Robinson, engaged in systematic harassment, coercion and intimidation of the Plaintiff by preying upon the Plaintiff's apprehensions with respect to concrete testing and his concerns about his being able to continue his employment with PennDot, thereby causing the Plaintiff to suffer additional compensatory damages. Such conduct by PennDot personnel was intentional and with a reckless disregard of the rights of the Plaintiff in violation of the Pennsylvania Human Relation Act ("PHRA") and the Age Discrimination in Employment Act ("ADEA")

5. After reasonable investigation which includes a review of written materials supplied to Plaintiff by Defendant, the Plaintiff is without knowledge or information sufficient to form

a belief as to the truth of the averments set forth in numbered paragraph 5 of the Defendant's New Matter.

6. The averments of numbered paragraph 6 of the Defendant's New Matter that the Plaintiff should be permitted to witness rather than perform concrete testing are set forth in documents generated by the Federal Highway Administration and such documents do not require certification as suggested by the Defendant in numbered paragraph 6 of the Defendant's New Matter. Accordingly, the Plaintiff denies each allegation of the numbered paragraph 6 of the Defendant's New Matter to the extent such are inconsistent with the first sentence of the paragraph.

7. The averments of numbered paragraph 7 of the Defendant's New Matter are denied as the Plaintiff's written complaint speaks for itself. By way of further answer, to this vague allegation, the Plaintiff presently recalls only two (2) such options being made available to him: the first was disability retirement which only paid a fraction of his regular salary and offered the Plaintiff the only benefit of Medicare and no benefits to the Plaintiff's family if he died, and the second was the offering of a temporary job which would remove the Plaintiff from his bargaining unit and in effect make him terminable-at-will at the whim of the Defendant. Moreover, the aforesaid were no real options for another reason: All the Plaintiff, who was only in his fifties, wanted to do was work

for a living at his regular job for which he was more than qualified and further was released by his primary care physician to return to his regular job after two weeks recovery from this minor stroke. Thus, the Defendant as further acts of age discrimination and the perpetuation of the hostile work environment, as aforesaid, did not offer the Plaintiff legitimate, viable and non-discriminatory alternatives.

8. The averments of numbered paragraph 8 of the Defendant's New Matter are denied as stated. The only additional option the Defendant offered was leave without pay which was also an act of age discrimination against the Plaintiff and the perpetuation of a hostile work environment as aforesaid.

9. The averments of numbered paragraph 9 of the Defendant's New Matter are denied. The Plaintiff suffered three minor strokes, reported each such stroke to the Defendant and the Defendant paid the Plaintiff's medical bills with respect to all three strokes as required by the collective bargaining agreement. To the contrary, with respect to the Defendant's alleged search for a modified duty assignment, i.e. temporary assignment, the Defendant concentrated its efforts on the elimination of the Plaintiff from his employment with the Defendant and, as such, constituted age discrimination against

the Plaintiff and the perpetuation of a hostile work environment as aforesaid.

10. The averments of numbered paragraph 10 of the Defendant's New Matter are admitted as stated. By way of further answer upon information and belief the Plaintiff believes such an offer was age discrimination and the perpetuation of a hostile environment as aforementioned. The Plaintiff objected to the temporary nature of the job assignment because of reason stated above which are incorporated herein by reference.

11. With respect to the averments of numbered paragraph 11 of the Plaintiff's New Matter it is admitted that there was dialogue but the Plaintiff at no time bowed to the Defendant's pressure to accept a temporary position because of the reasons stated above which are incorporated herein by reference.. Once the temporary nature of the job was removed from the title the Plaintiff accepted the position with reservation.

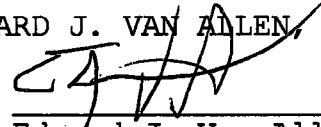
12. The averments of the numbered paragraph 12 of the Defendant's New Matter are admitted. By way of further answer and upon information and belief employees of the Defendant who are under the age of forty also use Commonwealth vehicles to perform their respective jobs. The Defendant was saved the cost of paying the Plaintiff's mileage for the use of his own vehicle on the job.

13. The averments of numbered paragraph 13 of the Defendant's New Matter are admitted.

14. The averments of numbered paragraph 14 of the Defendant's New Matter are frivolous and are specifically denied in their entirety. The Plaintiff incorporates herein as its answer to the aforesaid numbered paragraph 14 of the Defendant's New Matter each and every allegation set forth in the Plaintiff's Complaint and each and every averment set forth in this Plaintiff's Answer to New Matter.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By: 

Edward J. Van Allen, Esq.

PA/E.D. No. 11250

129 Harris Avenue

Boalsburg, PA 16827

(814) 238-2088

Fax: (814) 466-2711

Ronit Zusman, Esq.

Boalsburg, PA 16827

Attorneys for the
Plaintiff, Joseph M.

Buynak

Date: February 4, 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
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) Number 00-501-CD
)
) JURY TRIAL DEMANDED
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) CLASS ACTION
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) (Judge Reilly)
)

VERIFICATION

I have read the within Answer to New Matter and the facts set forth therein are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa C.S.A § 4904 relating to unsworn falsification to authorities.

Date: February 4, 2001

Joseph M. Buynak
Joseph M. Buynak

Edward J. Van Allen, Esq.

CP

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAC,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

:
:
: No. 00-501-CD
:
:
:
: (Jury Trial Demanded)
:

RULE TO SHOW CAUSE

NOW, this 13th day of February, 2001 upon consideration of the attached
Petition for Enlargement of Time, a Rule is hereby issued upon plaintiff to Show Cause why the
Petition should not be granted. Rule Returnable the 5th day of March, 2001, for filing
written response.

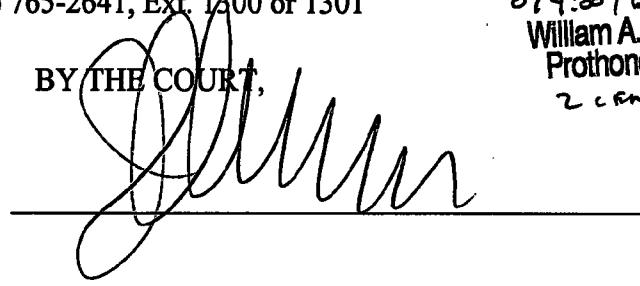
NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO
DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION BY
ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND
FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE
MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO
SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED
AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF
REQUESTED BY THE MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE
OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 or 1301

BY THE COURT,



FILED

FEB 13 2001

014:00 / W
William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAC,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

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No. 00-501-CD

(Jury Trial Demanded)

FILED

FEB 13 2001

William A. Shaw
Prothonotary

PETITION FOR ENLARGEMENT OF TIME

Defendant Department of Transportation, by its attorneys, hereby moves the Court pursuant to Rule 206 to enlarge the time for responding to discovery in the above-captioned case.

In support of this petition, the defendant states the following:

1. This is an action brought by an employee of the Pennsylvania Department of Transportation against the Department pursuant to the Pennsylvania Human Relations Act alleging discrimination on the basis of age.
2. Initially, the defense of the defendant was assigned to Deputy Attorney General ("DAG") Michael Farnan in the Office of Attorney General's Litigation Section. However, in December of 2000, DAG Farnan transferred from the Litigation Section to another section within the Office and the above-captioned case was assigned to undersigned counsel, Senior Deputy Attorney General Gwendolyn T. Mosley. Prior to the reassignment, undersigned counsel had had no knowledge of or involvement in any aspect of this case.
3. Before DAG Farnan's transfer, plaintiff's counsel served discovery upon the defendant. At the time this discovery was served, the defendant had preliminary objections raising venue

(A)

and jurisdiction pending which, if granted, would have obviated the need for the defendant to respond to the discovery.

4. Apparently, DAG Farnan communicated in writing to plaintiff's attorney proposing that discovery be stayed pending disposition of defendant's preliminary objection and agreeing to respond to the interrogatories within thirty days after disposition of the preliminary objections if necessary.

5. By order dated December 20, 2000, the Court dismissed the preliminary objections of the defendant. Notice of the Court's decision was received by undersigned counsel on December 23, 2000. By the terms of DAG Farnan's letter, defendant's written responses to plaintiff's discovery were due to be served on January 22, 2001.

6. Undersigned counsel was not aware of plaintiff's discovery or DAG Farnan's agreement to respond to it until she received a letter dated February 2, 2001 from plaintiff's counsel stating that the defendant's responses were overdue and demanding responses sometime during this week. This letter was the first communication undersigned counsel had received regarding the discovery responses.

7. Because of her lack of familiarity with plaintiff's discovery requests resulting from her recent assignment, undersigned counsel is unable to respond to the discovery within the time period set by plaintiff's attorney. Undersigned counsel needs more time and hereby requests the same in this motion.

8. Undersigned counsel anticipates that she can respond to plaintiff's discovery if given until February 23, 2001.

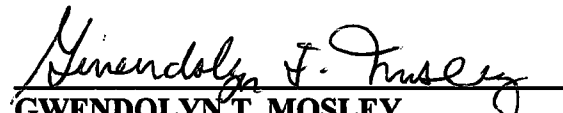
9. Undersigned counsel on behalf of the defendant therefore asks the Court to grant it until February 23, 2001 to serve its written responses to plaintiff's discovery.

WHEREFORE, The Department of Transportation asks the Court to grant its petition
and enlarge the time for responding to plaintiff's discovery to February 23, 2001.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: February 6, 2001

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAC,	:	
	:	
Plaintiff,	:	No. 00-501-CD
	:	
v.	:	
	:	
DEPARTMENT OF TRANSPORTATION,	:	
COMMONWEALTH OF PENNSYLVANIA:	:	
	:	(Jury Trial Demanded)
Defendant.	:	

VERIFICATION

I, Denise A. Gross, hereby attest that I am authorized to make this Verification on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the averments contained and set forth in the foregoing Answer and New Matter are true and correct tot he best of my information and belief. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Denise A. Gross
DENISE A. GROSS
Personnel Analyst

FILED
FEB 15 2001
ml:09/noc
William A. Shaw
Prothonotary
[Signature]

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No. 00-501-CD

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DEFENDANT'S MOTION TO QUASH SUBPOENA

Defendant Department of Transportation, by its attorney, hereby moves the Court pursuant to Rule 234.4 to quash the subpoena addressed to undersigned counsel. In support of this motion, the defendant states the following:

1. This is an action brought against the Department of Transportation by one of its employees pursuant to the Pennsylvania Human Relations Act alleging discrimination.
2. Undersigned counsel was recently assigned to represent the Department after its initial counsel, Deputy Attorney General Michael Farnan, transferred to another section within the Office of Attorney General.
3. Undersigned counsel had no knowledge of or involvement in any actions which form the basis of plaintiff's complaints before being assigned to represent the Department.
4. The only information undersigned counsel has concerning the allegations in plaintiff's lawsuit was obtained from others employed by the Department through her representation of the Department.

FILED

FEB 16 2001

William A. Shaw
Prothonotary

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5. By letter dated February 2, 2001, counsel for plaintiff, Mr. Edward Van Allen, asked for dates during the first three weeks of February on which undersigned counsel would be available for a deposition.

6. Believing that Mr. Van Allen was directing his attention toward undersigned counsel for a deposition because she had signed the verification to defendant's answer and new matter filed with the Court, undersigned counsel wrote to Mr. Van Allen, explained that her verification would soon be replaced by the verification of a departmental employee who provided the information contained in defendant's answer, and advised that undersigned counsel would not be available for a deposition. See letter from undersigned counsel to Mr. Van Allen dated February 8, 2001, attached as Exhibit 1.

7. Undersigned counsel's February 8, 2001 letter to Mr. Van Allen also informed him that she would fax him the names of employees of the defendant who have knowledge concerning his client's claims.

8. The next day, undersigned counsel faxed Mr. Van Allen the names of several employees who have knowledge concerning plaintiff's claims. The availability for a deposition of one of those employees, Ms. Gross, was also contained in the faxed letter. See letter from undersigned counsel to Mr. Van Allen dated February 9, 2001, attached as Exhibit 2.

9. On February 14, 2001, undersigned counsel forwarded to the Court for filing the signed verification of Ms. Denise Gross with a letter requesting that Ms. Gross' verification be substituted for that of undersigned counsel. Mr. Van Allen was copied on the letter to the Court.

10. Also on February 14, 2001, undersigned counsel received a subpoena from Mr. Van Allen, together with a check in the amount of \$26.00 representing a witness fee, directing her to

appear for a deposition on February 23, 2001. The subpoena directs undersigned counsel to bring with her to the deposition "all documents which reflect hours expended by PennDot personnel in preparing answers to interrogatories and all relevant documents in this case". See Subpoena attached as Exhibit 3.

11. Because undersigned counsel represents the defendant and has no information concerning this case except by virtue of that relationship, she should not be required to submit to a deposition by the opposing party.

12. In order to appear for a deposition as a witness, undersigned will have to make arrangements for her own representation.

13. Undersigned counsel's representation of the defendant will be compromised if she is compelled to give testimony at a deposition.

14. In addition, Mr. Van Allen has been given the names of employees of the Department who have actual knowledge of and/or involvement in the events which gave rise to plaintiff's lawsuit, his actions in subpoenaing undersigned counsel who has no such direct knowledge or involvement cannot be said to be taken in good faith.

15. Requiring undersigned counsel to appear as a witness at a deposition under the circumstances would cause unreasonable annoyance, oppression and expense.

16. Moreover, requiring undersigned counsel to comply with the subpoena's extremely broad request for documents would cause undue burden and expense.

17. Defendant and its counsel need protection from Mr. Van Allen's actions.

WHEREFORE, the defendant asks the Court to quash the subpoena directed to its attorney, Senior Deputy Attorney General Gwendolyn T. Mosley.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: February 15, 2001

EXHIBIT 1



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

February 8, 2001

MIKE FISHER
ATTORNEY GENERAL

REPLY TO:
15th Floor, Strawberry Square
Harrisburg, PA 17120
PHONE: (717) 787-1180
FAX: (717) 772-4526

Edward J. Van Allen, Esquire
129 Harris Avenue
Boalsburg, PA 16827

RE: Buynak v. PA Department of Transportation
No. 00-501-CD (Clearfield CCP)

Dear Mr. Van Allen:

I received your letter dated February 2, 2001 regarding our outstanding discovery responses. I am unable to respond to your discovery within the time period you prescribe; therefore, I have asked the Court to extend our response time. I will be serving our petition and the rule shortly.

As for your request for deposition times, please be advised that I will be substituting my verification for one executed by the Department of Transportation employee who provided me with the information contained in the answer. Therefore, I will not be available for a deposition by you at any time. I should have a list of departmental employees who have actual knowledge of the matters from which your client's claim arose by tomorrow and I will fax it to you. I will then be in a good position to provide you with dates on which these individuals are available for deposition.

Very truly yours,

A handwritten signature in cursive script, reading "Gwendolyn T. Mosley".

Gwendolyn T. Mosley
Senior Deputy Attorney General

GTM/dg

EXHIBIT 2



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

February 9, 2001

MIKE FISHER
ATTORNEY GENERAL

REPLY TO:
15th Floor, Strawberry Square
Harrisburg, PA 17120
PHONE: (717) 787-1180
FAX: (717) 772-4526

Edward J. Van Allen, Esquire
129 Harris Avenue
Boalsburg, PA 16827

RE: Buynak v. PA Department of Transportation
No. 00-501-CD (Clearfield CCP)

Dear Mr. Van Allen:

This is to advise that Denise Gross will be executing the verification to the Department's Answer and New Matter which will be substituted for the verification that I signed. Ms. Gross is the personnel analyst who has knowledge concerning Mr. Buynak's allegations and is available for a deposition on February 20 or 21, 2001. Other employees who have knowledge of Mr. Buynak's allegations or have had some involvement with Mr. Buynak are Joe Robinson, Robert Miller and William Cripps. I should know their availability for deposition early next week and will let you know.

Very truly yours,

A handwritten signature in cursive script, reading "Gwendolyn T. Mosley".

Gwendolyn T. Mosley
Senior Deputy Attorney General

GTM/dg

EXHIBIT 3

COMMONWEALTH OF PENNSYLVANIA
CLEARFIELD COUNTY

RECEIVED
FEB 14 2001

Joseph M. Buynak
Plaintiff(s)

Vs.

Dept. of Transp./Comm. of Penna.
Defendant(s)

No. 2000-00501-CD OFFICE OF ATTORNEY GENERAL
LITIGATION SECTION

SUBPOENA TO ATTEND AND TESTIFY

TO: Gwendolyn T. Mosley Senior Deputy Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120

1. You are ordered by the Court to come to Days Inn Clearfield, Conference Room
Exit 19, I-80, Rt 879 Clearfield, PA 16830 (814) 765-5381
(Specify Courtroom or other place)

at Clearfield County, Pennsylvania, on Feb. 26, 2001 at 10:00
o'clock, A M., to testify on behalf of the Plaintiff

_____ in the above case,
and to remain until excused.

2. And bring with you the following: ^{to interrogatories} all documents which reflect hours expended
by PennDot personnel in preparing answers and all relevant
documents in this case

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

ISSUED BY A PARTY/COUNSEL IN COMPLIANCE WITH PA.R.C.P. No. 234.2(a)

NAME: Edward J. Van Allen, P.C.
ADDRESS: 129 Harris Avenue
Boalsburg Pennsylvania 16827
TELEPHONE: (814) 238-2088
SUPREME COURT ID # 11250

BY THE COURT:

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

Prothonotary/Clerk, Civil Division

Deputy

DATE: Friday, February 09, 2001
Seal of the Court

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with PA.R.C.P. No. 234.1. If a subpoena for production of documents, records or things is desired, complete Paragraph 2.

DATE: January 12, 2001

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

No. 00-501-CD

(Jury Trial Demanded)

RULE TO SHOW CAUSE

NOW, this 16th day of February, 2001 upon consideration of the attached
Petition for Enlargement of Time, a Rule is hereby issued upon plaintiff to Show Cause why the
Petition should not be granted. Rule Returnable the 20th day of February 2001, ~~for~~
~~filing written response.~~ *at 1:00 P.M. by telephone at the initiation*
of Attorney Massey.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO
DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION BY
ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND
FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE
MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO
SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED
AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF
REQUESTED BY THE MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE
OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

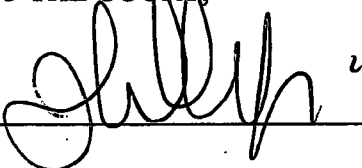
COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 or 1301

FILED

FEB 16 2001

William A. Shaw
Prothonotary

BY THE COURT,



22

No. 00-501-CD

(Jury Trial Demanded)

William A. Shaw
Prothonotary

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	
Defendant.	)	

MOTION TO COMPEL ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO DEFENDANT

NOW COMES the representative Plaintiff, Joseph M. Buynak, by and through his attorneys, Edward J. Van Allen, P.C. , and pursuant to Pa. R.C.P. No. 4019(a)(1) and (2) makes this Motion to Compel Answers to Plaintiff's First Set of Interrogatories to Defendant. In support thereof, the Plaintiff avers as follows:

1. On May 1, 2000, the Plaintiff filed his class action Civil Complaint against the Defendant with the Prothonotary of Clearfield County, Pennsylvania alleging age discrimination in violation of the Pennsylvania Human Relations Act, 43 Pa.C.S. § 951, et. seq.

2. The Defendant filed untimely Preliminary Objections to the Plaintiff's Complaint.

FILED

OCT 3 0 2001

William A. Shaw
Prothonotary

3. On July 6, 2000, the Plaintiff served the Defendant with the Plaintiff's First Set of Interrogatories to the Defendant.

4. The Defendant subsequently sought a Motion for Protective Order to preclude the Defendant from responding to said Interrogatories pending the disposition of its Preliminary Objections.

5. At oral argument on said Preliminary Objections which was held on November 22, 2001, this Court orally granted the Defendant's Motion for Protective Order pending disposition of said Preliminary Objections.

6. On December 19, 2000, this Court issued an Opinion and Order which denied the Defendant's Preliminary Objections in their entirety.

7. On February 23, 2001, the Defendant filed its Answers and Objections to the Plaintiff's First Set of Interrogatories.

8. During early June, 2001, the Defendant requested that the Plaintiff make a settlement offer which the Plaintiff did in writing on June 23, 2001.

9. On several occasions, one of which was in writing the Defendant stated that it would respond to the Plaintiff's settlement offer but did not do so until October 9, 2001.

10. On October 19, 2001, the Plaintiff rejected the Defendant's settlement offer as being insignificant.

11. In the meantime, while awaiting the Defendant's belated response to the Plaintiff's settlement offer, the Plaintiff served a Notice of Deposition on August 8, 2001, pursuant to Pa.R.C.P. 4007.1(e) to take the Deposition of the Defendant through its designated witnesses.

12. The Defendant subsequently designated just one person as its witness and the deposition of the Defendant by and through its designated witness was taken on August 20 and 21, 2001, and continued thereafter until later dates.

13. A copy of the Plaintiff's First Set of Interrogatories and the Defendant's Answers and Objections to the Plaintiff's First Set of Interrogatories is attached hereto as Exhibit 1. At the deposition PennDot's designated witness was instructed by the Defendant's attorney to refuse to answer any question concerning the basis for the Defendant's Objections to the Plaintiff's Interrogatories. Said attorney first attempted to invoke the attorney-client privilege as a basis for instructing the designated witness not to answer but then changed the basis for her instructions to the witness to be that the questions were inappropriately addressed to the witness notwithstanding that the undersigned attorney for Mr. Buynak simply wanted the factual basis for said objection. The stonewalling by PennDot's attorney is reflective of PennDot's approach to this case. PennDot's attorney attempted to bait the Undersigned into

deposing her so that she could file objections or a Notice for a Protective Order, obtain a hearing to waste this Court's and the Undersigned's time and to further delay the proceedings in this matter, the main objective being to frustrate the Plaintiff into accepting an insubstantial settlement offer. See Dep. Tr. Pp. 17, 18 and 22. See attached Exhibit 2.

14. In Interrogatory Number 1 the Plaintiff requested that the Defendant:

Identify all persons who are residents of the Commonwealth of Pennsylvania who on or after April 27, 1996, (a) were or are employed by PennDot in a non-managerial position; (b) were 40 years of age or older; and (c) were subject to an actual or threatened Adverse Employment Decision or Decisions made by PennDot.

15. The Defendant objected to Interrogatory Number 1 on the grounds that it was "overbroad and unduly burdensome." But the Defendant stated that without waving the objection that there was just one employee who was "similarly situated" and so identified that employee.

16. However, during the Deposition of the Defendant's designated witness, Denise Gross, Personal Analyst III, Ms. Gross readily acknowledged that virtually all employment data for the Defendant's employees is set forth in PennDot's Computer system. See Defendant's Dep. Tr., Pp. 77, 111, 113, 114, and 115, which are attached hereto as Exhibit 3. Further, the Defendant attempted to rewrite Interrogatory Number 1 by only

"similarly situated" employees which Ms. Gross revealed was narrowly defined to include only as those employees in the Plaintiff's specific job titles. Therefore, said Interrogatory Number 1 is not "burdensome" at all, let alone "unduly burdensome", and the objections should fail.

17. Moreover, the Plaintiff's Complaint is a class action complaint which includes a putative class of all current and former employees who are residents of Pennsylvania and are forty years of age or older who suffered an adverse employment action from April 27, 1996, through the present. Thus, the Plaintiff's initial class action discovery is not "overly broad" and the Plaintiff is entitled to know who the putative class members are.

18. Accordingly, the Defendant should be required to answer fully and completely the Plaintiff's Interrogatory Number 1.

19. Interrogatory Number 2 requests that:

For each person identified in PennDot's answer to interrogatory number 1 above, state that person's current or last known address and telephone number, that person's date of birth, that person's age when first employed by PennDot and that person's age when he or she incurred an Adverse Employment Decision.

20. In its Answer to Interrogatory Number 2 the Defendant only provided said information concerning the one employee identified by the Defendant in its Answer to Interrogatory Number

Number 1. Because the Defendant's Answer to Interrogatory Number 1 is grossly inadequate, its Answer to Interrogatory Number 2 is also grossly inadequate and the Defendant should be required to answer fully and completely Interrogatory Number 2 without further delay.

21. Interrogatory Number 3 requests:

For each person identified PennDot's answer to interrogatory number 1 above who is no longer employed by PennDot, list that person's date of termination, reason for termination, that person's age at termination, and the name, last known address and telephone number of the individual who replaced that person, the replacement's age when given the position in which he or she replaced the incumbent and the replacement's current position if still employed by PennDot.

22. Because the Defendant Answer to Interrogatory Number 1 was grossly inadequate, its Answer to Interrogatory Number 3 is also grossly inadequate and the Defendant should be required to answer fully and completely Interrogatory Number 3 without further delay.

23. In Interrogatory Number 4 the Defendant is requested to:

List all persons who since April 27, 1996, were or are employed by PennDot in a non-managerial position and who were 40 years of age or older who made application for a reasonable accommodation to his or her job or equipment because he or she suffered a handicap or disability as defined in the Pennsylvania Human Relations Commission's "Handicap Discrimination Rules."

24. PennDot responded "None" to this interrogatory. However, in the deposition of the Defendant's designated witness Denise Gross falsely interprets Interrogatory Number 5 as being those individuals who went through a formal application process and were supplied whatever equipment modifications necessary to accommodate their handicap. Whereas, one employee broke his leg and supplied his own crutches, and PennDot did not consider an accommodation to have been made to this individual since PennDot did not supply the crutches. See Gross Dep. Tr. Pp. 122-127, a copy of which is attached hereto as Exhibit 4. Moreover, PennDot did not list those accommodations which were made by informal procedures such as accommodations made by Division Chiefs and by past practice pursuant to the collective bargaining agreement with AFSCME. See Gross Dep. Tr. Pp. 61, 73, 74, and 155 and page 101, paragraph 6 of said collective bargaining agreement, both of which are attached hereto as Exhibit 5. Thus, PennDot should be required to answer this interrogatory as to all non-managerial employees who were over forty as of April 27, 1996, to the present, who expressly or implicitly made a request for a reasonable accommodation or who received a reasonable accommodation through the past practice clause of PennDot's collective bargaining agreement such as the Plaintiff who was not required to perform concrete testing for the past ten (10) years. PennDot knew very well that these

accommodations occurred and were expressly or implicitly requested by the recipients of their accommodation or persons acting on their behalf. Ms. Gross attempted to obfuscate these accommodations by stating, "maybe some mistakes were made out there and people were accommodated..." See Gross Dep. Tr. P. 154, attached hereto as Exhibit 6. PennDot once again attempted to dance through the raindrops rather than acknowledge that it could or did talk to its Division Chiefs by telephone or by sending a memo requesting the aforesaid information. Also, PennDot has approximately 11,000 employees and its assertion that not even one of such employees requested an accommodation is not worthy of belief. Moreover, the Plaintiff himself requested such a reasonable accommodation on prepared forms generated by PennDot, and it is incredible for PennDot to assert by implication that Mr. Buynak was the only person for whom they created a preprinted form. Further, PennDot designated one employee Patricia Williamson to be in charge of processing reasonable accommodation requests. To believe PennDot's Answer to Interrogatory Number 4 is to believe that Ms. Williamson had a job with at least one function which did not exist. Once again, PennDot attempted to rewrite this Interrogatory through a false interpretation to avoid a candid answer and to cause further delay for the Plaintiff.

25. Interrogatory Number 5 requests:

For each person listed in PennDot's answer to interrogatory number 4, please state that person's current or last known address and telephone number, the person's date of birth, whether the aforesaid reasonable accommodation was granted or denied, that person's age when the request for reasonable accommodation was granted or denied and the date such reasonable accommodation was actually granted or denied.

26. Because the Defendant Answer to Interrogatory Number 4 was grossly inadequate, its Answer to Interrogatory Number 5 is also grossly inadequate and the Defendant should be required to answer fully and completely Interrogatory Number 5.

27. See the aforesaid discussion with respect to Interrogatory Number 4 set forth in Plaintiff's Number 24 of this Motion which is incorporated herein by reference in its entirety.

28. Interrogatory Number 6 states:

For each person who was employed by PennDot since April 27, 1996, in a non-managerial position with PennDot and who did not request a reasonable accommodation to his or her equipment or job but who nevertheless received a reasonable accommodation by PennDot, state the date such reasonable accommodation was granted, that person's age when the reasonable accommodation was granted and the length of the reasonable accommodation.

29. Because the Defendant Answer to Interrogatory Number 4 was grossly inadequate, its Answer to Interrogatory Number 6 is

also grossly inadequate and the Defendant should be required to answer fully and completely Interrogatory Number 6.

30. See the aforesaid discussion with respect to Interrogatory Number 4 set forth in Plaintiff's Number 24 of this Motion which is incorporated herein by reference in its entirety.

31. Interrogatory number 7 requests the Defendant to:

Identify all mailings by category which PennDot makes to current employees and to former employees and when such mailings are made.

32. PennDot already knows it routinely sends to employees what Ms. Gross referred to as "payroll stuffers" which included information concerning reasonable accommodations. Not only is this further support for Mr. Buynak's contention that PennDot's Answer to Interrogatory Number 7 is incredible but it also shows that PennDot knows fully which information is communicated to employees. The purpose of this Interrogatory was to ascertain what merely goes to putative class members so that the Plaintiff could ascertain which vehicles are available to communicate notice to the putative class. Indeed, many courts have held that a Defendant in a class action which has regular mailings to putative or actual members of a class must include judicially approved notices to the class. Thus, this Interrogatory is not overbroad, vague or unduly burdensome and PennDot should be required to answer the interrogatory fully and completely and

without delay since the only purpose of this objection is to create further delay.

33. Interrogatory Number 9 requests that PennDot:

List all PennDot employees since April 27, 1996, who were employed in a non-managerial position, who were promoted, the age of each at the time of his or her promotion, the position to which he or she was promoted and the date he or she was promoted.

34. The information requested in Interrogatory Number 9 is contained in PennDot's computer and this is readily available to PennDot. Thus, it is not "burdensome" and certainly is not "unduly burdensome." Further, in his Complaint Mr. Buynak has complained of not having received a promotion. See Complaint, Paragraph 13, a copy of which is attached hereto as Exhibit 7. For the same reasons, Interrogatory Number 9 is not "overbroad". PennDot simply does not wish to answer the interrogatory and once again has contrived an objection for purposes of delay. Thus, PennDot should be required to answer fully and completely Interrogatory Number 9 without further delay. Moreover, PennDot is attempting to frustrate class action discovery which it should not be permitted to do and the Plaintiff is entitled to know which persons are putative class members and whether numerosity requirements are met. Ms. Gross had attempted without judicial approval to unduly narrow the putative class through her deposition testimony previously cited indicating

that the class consists only of the Plaintiff Buynak's job title. Further, she has acknowledged that other employees performed duties similar to Mr. Buynak but were given different job titles. For example, David Evans performed the functions of Mr. Buynak's position while being classified as an M Tech. See Gross Dep. Tr. P. 123, a copy of which is attached hereto as Exhibit 8.

35. Interrogatory Number 10 requires that PennDot:

State PennDot's policy and practice with respect to the promotion of employees.

You may provide a true and correct copy of PennDot's policy and practice in lieu of answering this interrogatory.

36. For the reasons set forth in 34 Paragraph of this motion PennDot's pattern and practice of promotion are not irrelevant and PennDot's objection was interposed only for purposes of delay. Also, this is a class action case and Mr. Buynak has a right to know whether there is a systemic pattern and practice of the denial of promotion of the persons forty years of age and older. Therefore, PennDot should be required to answer fully and completely without further delay.

37. Interrogatory Number 11 requests that PennDot:

State the name, address, telephone number and age of each person who made application to PennDot since April 27, 1996, for employment in a non-managerial position and state whether that person was hired by PennDot.

38. The information requested in Interrogatory Number 11 must be contained within PennDot's computer or manually available as applicant flow data is required by affirmative action plans and in reports filed with the Office of Federal Contract Compliance Programs for age and handicap/disability. The OFCCP monitors civil rights requirements for government contractors such as PennDot. Moreover, PennDot's hiring practices are relevant to a determination of whether a classwide discrimination exists. Thus, PennDot's objection fails.

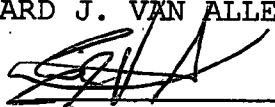
Thus, PennDot should be required to answer this Interrogatory fully and completely which it can readily do. Moreover, it should be required to answer without further delay.

WHEREFORE, for the reasons set forth herein PennDot should be required to provide full and complete answer to Interrogatory Numbers 1-7 and 9-11 within twenty days.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

DATE: October 30, 2001

By: 

Edward J. Van Allen, Esq.
PA I.D. No. 11250
119 S. Burrowes Street
State College, PA 16801
(814) 238-2088
Fax: (814) 466-2711

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
)
) Number 00-501-CD
)
)

) JURY TRIAL DEMANDED
)

) CLASS ACTION
)

) (Judge Reilly)
)

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of October,
2001, I served a true and correct copy of the within
document upon the Defendant by U.S. mail first class,
postage prepaid, addressed to its attorney of record,
addressed as follows:

Gwendolyn Mosley
Senior Deputy Attorney General
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120


Edward J. Van Allen, Esq.

Exhibit 1

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW**

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	
Defendant.	)	

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT

Plaintiff, Joseph M. Buynak, by and through his attorney, Edward J. Van Allen, P.C., hereby requests that Defendant, the Pennsylvania Department of Transportation, answer the interrogatories listed below within thirty (30) days of service hereof under oath and in writing in accordance with Rule 4006 of the Pennsylvania Rules of Civil Procedure.

These interrogatories shall be deemed to be continuing in nature so as to require seasonal supplemental answers if Defendant obtains further information subsequent to the time its answers are served and filed.

DEFINITIONS

1. An Adverse Employment Decision made by PennDot includes being given a performance appraisal with a lower overall rating than that of the immediately preceding performance appraisal, being placed on involuntary leave of absence, being placed on leave of absence without pay, being assigned a temporary position, being suspended, being demoted, being discharged or involuntarily retired and/ or retired under protest or objection.

2. "PennDot" means the Pennsylvania Department of Transportation in its entirety including, but not limited to, all departments and divisions.

INTERROGATORIES

1. Identify all persons who are residents of the Commonwealth of Pennsylvania who on or after April 27, 1996, (a) were or are employed by PennDot in a non-managerial position; (b) were 40 years of age or older; and (c) were subject to an actual or threatened Adverse Employment Decision or Decisions made by PennDot.

10 & 45

2. For each person identified in PennDot's answer to interrogatory number 1 above, state that person's current or last known address and telephone number, that person's date of birth, that person's age when first employed by PennDot and that person's age when he or she incurred an Adverse Employment Decision.

3. For each person identified PennDot's answer to interrogatory number 1 above who is no longer employed by PennDot, list that person's date of termination, reason for termination, that person's age at termination, and the name, last known address and telephone number of the individual who replaced that person, the replacement's age when given the position in which he or she replaced the incumbent and the replacement's current position if still employed by PennDot.

4. List all persons who since April 27, 1996, were or are employed by PennDot in a non-managerial position and who were 40 years of age or older who made application for a reasonable accommodation to his or her job or equipment because he or she suffered a handicap or disability as defined in the Pennsylvania Human Relations Commission's "Handicap Discrimination Rules."

5. For each person listed in PennDot's answer to interrogatory number 4, please state that person's current or last known address and telephone number, the person's date of birth, whether the aforesaid reasonable accommodation was granted or denied, that person's age when the request for reasonable accommodation was granted or denied and the date such reasonable accommodation was actually granted or denied.

6. For each person who was employed by PennDot since April 27, 1996, in a non-managerial position with PennDot and who did not request a reasonable accommodation to his or her equipment or job but who nevertheless received a reasonable accommodation by PennDot, state the date such reasonable accommodation was granted, that person's age when the reasonable accommodation was granted and the length of the reasonable accommodation.

7. Identify all mailings by category which PennDot makes to current employees and to former employees and when such mailings are made.

8. For each person identified in PennDot's answer to interrogatory number 1, state whether the sign required by the aforesaid "Handicap Discrimination Rules" was posted in a place or places which are or were prominent and accessible to that employee.

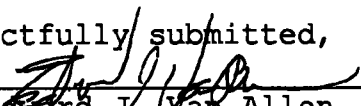
9. List all PennDot employees since April 27, 1996, who were employed in a non-managerial position, who were promoted, the age of each at the time of his or her promotion, the position to which he or she was promoted and the date he or she was promoted.

10. State PennDot's policy and practice with respect to the promotion of employees.

You may provide a true and correct copy of PennDot's policy and practice in lieu of answering this interrogatory.

11. State the name, address, telephone number and age of each person who made application to PennDot since April 27, 1996, for employment in a non-managerial position and state whether that person was hired by PennDot.

Respectfully submitted,

By: 

Edward J. Van Allen, P.C.

PA I.D. No. 11250

1832 Woodledge Drive

State College, PA 16803

(814) 238-2088

Fax: (814) 867-6123

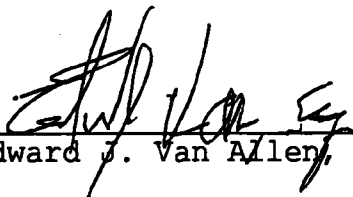
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAK,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of July, 2000, I caused service of the within Plaintiff's First Set of Interrogatories to Defendant to be served on Michael A. Farnan, Deputy Attorney General, counsel of record for the Defendant by facsimile transmission and by U.S. mail, first class and postage prepaid as indicated below:

Michael A. Farnan
Deputy Attorney General
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
Fax: (717) 772-4526



Edward J. Van Allen, Esquire

1. OBJECTION: Defendant objects to this interrogatory because it is overbroad and is unduly burdensome. Without waiving the objection, there was only one employee similarly situated with the plaintiff who was subject to an adverse employment decision within the prescribed time period. His name is Louis Amato..

- "2. For each person identified in PennDot's answer to interrogatory number 1 above, state that person's current or last known address and telephone number, that person's date of birth, that person's age when first employed by PennDot and that person's age when he or she incurred an Adverse Employment Decision."

2. RESPONSE: Department of Transportation
Materials Testing Laboratory
1118 State Street
Harrisburg, PA 17120

December 5, 1946

41 years of age

"3. For each person identified [sic] PennDot's answer to interrogatory number 1 above who is no longer employed by PennDot, list that person's date of termination, reason for termination, that person's age at termination, and the name, last known address and telephone number of the individual who replaced that person, the replacement's age when given the position in which he or she replaced the incumbent and the replacement's current position if still employed by PennDot."

3. RESPONSE: The person identified in defendant's answer to
interrogatory number 1 is still employed by the defendant.

- “4. List all persons who since April 27, 1996, were or are employed by PennDot in a non-managerial position and who were 40 years of age or older who made application for a reasonable accommodation to his or her job or equipment because he or she suffered a handicap or disability as defined in the Pennsylvania Human Relations Commission’s ‘Handicap Discrimination Rules.’ ”

4 RESPONSE: None.

"5. For each person listed in PennDot's answer to interrogatory number 4, please state that person's current or last known address and telephone number, the person's date of birth, whether the aforesaid reasonable accommodation was granted or denied, that person's age when the request for reasonable accommodation was granted or denied and the date such reasonable accommodation was actually granted or denied."

5. RESPONSE: Not applicable.

“6. For each person who was employed by PennDot since April 27, 1996, in a non-managerial position with PennDot and who did not request a reasonable accommodation to his or her equipment or job but who nevertheless received a reasonable accommodation by PennDot, state the date such reasonable accommodation was granted, that person’s age when the reasonable accommodation was granted and the length of the reasonable accommodation.”

6. RESPONSE: Not applicable.

"7. Identify all mailings by category which PennDot makes to current employees and to former employees and when such mailings are made."

7. OBJECTION: The defendant objects to this interrogatory because it is overbroad, vague and unduly burdensome.

"8. For each person identified in PennDot's answer to interrogatory number 1, state whether the sign required by the aforesaid "Handicap Discrimination Rules" was posted in a place or places which are or were prominent and accessible to that employee."

8. RESPONSE: Yes.

"9. List all PennDot employees since April 27, 1996, who were employed in a non-managerial position, who were promoted, the age of each at the time of his or her promotion, the position to which he or she was promoted and the date he or she was promoted."

9. OBJECTION: Defendant objects to this interrogatory because it is overbroad, irrelevant and unduly burdensome.

RD

"10. State PennDot's policy and practice with respect to the promotion of employees. You may provide a true and correct copy of PennDot's policy and practice in lieu of answering this interrogatory."

10. OBJECTION: Defendant objects to this interrogatory because it is irrelevant.

"11. State the name, address, telephone number and age of each person who made application to PennDot since April 27, 1996, for employment in a non-managerial position and state whether that person was hired by PennDot."

11. OBJECTION: Defendant objects to this interrogatory because it is overbroad, irrelevant and unduly burdensome.

Handwritten initials: XLO

Respectfully submitted,

Handwritten signature: Gwendolyn T. Mosley
Gwendolyn T. Mosley
Senior Deputy Attorney General

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAC,

Plaintiff,

v.

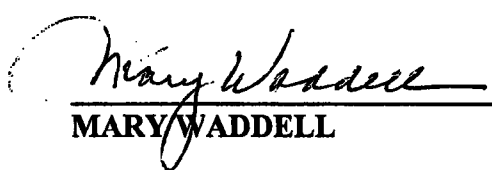
**DEPARTMENT OF TRANSPORTATION, :
COMMONWEALTH OF PENNSYLVANIA:**

Defendant.

:
:
: **No. 00-501-CD**
:
:
:
: **(Jury Trial Demanded)**
:

VERIFICATION

I, Mary Waddell, hereby attest that I am authorized to make this Verification on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the information set forth in response to interrogatories 1, 2, 3, 4, 8 is true and correct to the best of my information and belief. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



MARY WADDELL

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAK,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION, :
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

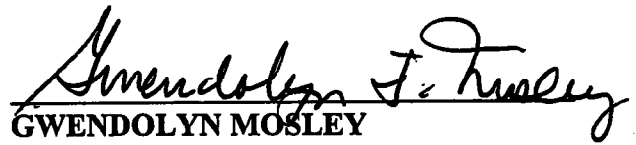
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: (Jury Trial Demanded)
:

CERTIFICATE OF SERVICE

I, GWENDOLYN MOSLEY, Senior Deputy Attorney General, hereby certify that I
have this day served the foregoing Defendant's Answers and Objections to Interrogatories,
by placing a copy of it in the mail, postage prepaid and addressed to the following:

Edward J. Van Allen, Esquire
129 Harris Avenue
Boalsburg, PA 16827


GWENDOLYN MOSLEY
Senior Deputy Attorney General

DATE: February 23, 2001

Exhibit 2

1 MS. MOSLEY: Well, I interposed that, so I'm
2 going to object to the form insofar as you're asking
3 her what I considered to be a legal question.

4 MR. VAN ALLEN: You're considering it to be
5 a legal conclusion that it's overly broad and unduly
6 burdensome?

7 MS. MOSLEY: Yes.

8 MR. VAN ALLEN: Okay. But I want to know
9 what factual basis there is for that.

10 MS. MOSLEY: But we have a venue for dealing
11 with objections and the basis for objections, and it's
12 not a deposition of the party. In other words, the
13 Rules of Civil Procedure provide a procedure whereby
14 you can challenge the sufficiency or basis, factual or
15 otherwise, of objections that have been interposed.
16 It's not through the deposition of a party who didn't
17 make the objection.

18 MR. VAN ALLEN: Oh, I understand I can
19 challenge them --

20 MS. MOSLEY: Yes.

21 MR. VAN ALLEN: -- and I intend to do that.

22 MS. MOSLEY: Okay.

23 MR. VAN ALLEN: But I just wanted to know
24 what factual basis there is for saying it's overly
25 broad and burdensome. Well, I don't understand why it

1 would be burdensome since you have most of the data on
2 the computer.

3 MS. MOSLEY: But I made that determination
4 and not the department or its representative. So
5 asking her to tell you why I made a legal judgment,
6 whether it's factual or otherwise, it's --

7 MR. VAN ALLEN: You're saying, then, that
8 all of the objections that are raised, to summarize it
9 and not have to do this for every one, all of the
10 objections that are raised in the Defendant's
11 objections to the Plaintiff's first set of
12 interrogatories were framed by you --

13 MS. MOSLEY: Yes.

14 MR. VAN ALLEN: -- and are legal
15 conclusions?

16 MS. MOSLEY: Yes.

17 MR. VAN ALLEN: And what about the facts
18 that formed the basis of that conclusion; are you the
19 one that reviewed the facts and made the basis for the
20 objection?

21 MS. MOSLEY: I had confidential
22 attorney/client conversations with many of the
23 individuals of the department, which informed my
24 objection.

25 MR. VAN ALLEN: Well, then are you -- so you

1 can certainly refuse to answer on the basis that it's
2 attorney/client privilege. Are you invoking that, as
3 well?

4 MS. MOSLEY: To your question to me today?

5 MR. VAN ALLEN: Yes. I don't have a
6 question to you today.

7 MS. MOSLEY: Well, see, that's what I'm
8 saying. You're asking her to respond to what I did.

9 MR. VAN ALLEN: Yes. Should I be asking
10 you?

11 MS. MOSLEY: This is not the venue for that,
12 nor is the deposition the venue for that.

13 MR. VAN ALLEN: I don't know. I have a
14 right to know the facts that form the basis of --

15 MS. MOSLEY: This is not the venue.

16 MR. VAN ALLEN: I have a right to know the
17 facts so I can challenge it.

18 MS. MOSLEY: You may do that, but not at a
19 deposition of the client.

20 MR. VAN ALLEN: Okay. Well, do you know
21 what you're getting into?

22 MS. MOSLEY: Yes. Yes, I do. And I
23 think --

24 MR. VAN ALLEN: We'll have to then give you
25 a notice as to the factual basis of the allegations.

1 MS. MOSLEY: You may do that --

2 MR. VAN ALLEN: Okay.

3 MS. MOSLEY: -- just as you did before,
4 we'll have a little conference with the Judge, and
5 we'll make a decision.

6 MR. VAN ALLEN: Okay. Well, that's what
7 we'll do, then.

8 MS. MOSLEY: Okay.

9 MR. VAN ALLEN: For all of these, right, so
10 we'll save time --

11 MS. MOSLEY: For the objections.

12 MR. VAN ALLEN: All of these objections?

13 MS. MOSLEY: Yes.

14 MR. VAN ALLEN: Okay. In essence, to
15 protect it from discovery today, you're invoking the
16 attorney/client privilege; is that correct?

17 MS. MOSLEY: I'm sorry?

18 MR. VAN ALLEN: To protect it from discovery
19 today, so she doesn't have to answer, you're invoking
20 the attorney/client privilege with respect to
21 information that PennDOT personnel gave you to form the
22 conclusions that you did which are set forth in the
23 objections?

24 MS. MOSLEY: Yes.

25 MR. VAN ALLEN: Okay. And that would be

1 with respect to each of the objections?

2 MS. MOSLEY: Actually, I'm saying it's
3 inappropriate, and I wasn't invoking the privilege.
4 Why would you ask the entity who didn't make the
5 response?

6 MR. VAN ALLEN: Somebody's going to have to
7 be responsible for --

8 MS. MOSLEY: Well, I am the person who made
9 the objection, and there is a procedure by which you
10 can get the legal basis and the factual basis for the
11 objection; it is not through asking the client who
12 didn't do it.

13 MR. VAN ALLEN: Somebody gave you the facts
14 on which you formed the conclusions, but you're saying
15 that's privileged, right?

16 MS. MOSLEY: No, what I'm saying is, there
17 is a procedure for that, and it's not here.

18 MR. VAN ALLEN: I don't think that's a good
19 grounds for an objection to a deposition question.

20 MS. MOSLEY: Well, that's my objection; it
21 is not here and it is not now.

22 MR. VAN ALLEN: Are you instructing the
23 witness not to answer?

24 MS. MOSLEY: Yes.

25 MR. VAN ALLEN: Okay, then we'll move on.

1 MS. MOSLEY: Okay.

2 MR. VAN ALLEN: And I am not accepting that,
3 just so the record is clear that I am not acquiescent
4 to that.

5 MS. MOSLEY: Okay.

6 MR. VAN ALLEN: Off the record.

7 (Discussion held off the record.)

8 BY MR. VAN ALLEN:

9 Q Interrogatory No. 2 and PennDOT's answer
10 thereto. (Checking.) Well, I have no questions of
11 that; I understand that.

12 A Are you going to ask me --

13 Q No, I'm not going to ask you about Question
14 2, I'm sorry, I withdraw that.

15 A Okay.

16 Q Going back to Interrogatory No. 1, it's in
17 the objection, but I think it's part of an answer,
18 because it says without waiving the objection, there
19 was only one employee similarly situated. Now, you
20 used "similarly situated", is that the same context you
21 defined it before?

22 A Yes.

23 Q Okay. Meaning people in Mr. Buynak's job
24 classification in the Bureau of Construction?

25 A Yes.

Exhibit 3

1 records?

2 A Yes. It's not necessary to keep the
3 records, unless...

4 Q Do you enter it on the computer somewhere?

5 A Um-hmm.

6 Q Oh, okay. So you do have computer
7 information as to when Mr. Buynak was absent and what
8 the reasons were? Like, for leave?

9 A Only for sick leave usage, we would be able
10 to determine sick leave, but not the reason.

11 Q Okay.

12 A We would be able to determine when he used
13 sick leave.

14 Q By the way, what is Mr. Buynak's attendance
15 record, is it pretty good?

16 A As far as I know, it is. I have never
17 received any attendance-related problems.

18 Q Never in your three years?

19 A No. In my three years with the department,
20 we have never had any attendance infractions reported
21 by Mr. Buynak.

22 Q In fact, he's received excellent attendance
23 certificates, has he not?

24 A I don't know. They're given at the local
25 level. We don't --

1 Q So he's always been a TCI?

2 A Yes. And his records do indicate that.

3 Q Well, okay.

4 A He never left the position.

5 Q What records indicate that?

6 A The transactions on the system that --

7 Q Is that on your computer?

8 A Yes, that track our job codes. If he had
9 been removed from a position and then reinstated, that
10 would be reflected in his personal history, which I did
11 supply with the Answer to my Human Relations
12 Commission.

13 Q With what?

14 A I did supply those computer printouts with
15 the Answer to this Complaint. It was called his
16 personal history transactions.

17 Q With this Answer to Complaint, you mean the
18 Answer in Clearfield County?

19 MS. MOSLEY: No, she said the Human
20 Relations Complaint.

21 BY MR. VAN ALLEN:

22 Q Oh, the Human Relations Complaint?

23 A Yes.

24 Q Okay.

25 A He never left that position network, and

1 Q Does whatever you have on your computer
2 indicate any memorandums of discussions that were had
3 with Mr. Buynak and some other PennDOT person
4 concerning the nature of this assignment?

5 A Oh, there's lots of correspondence that
6 transpired back and forth with the questions and the
7 nature of the assignment, yes.

8 Q And do you have that?

9 A Yes. They're all letters, they're not on
10 the computer.

11 Q Oh, they're not on the computer. What goes
12 on the computer with respect to employment data?

13 A The job code and the position code.

14 Q The job code and position code. Job code
15 would be like?

16 A Transportation construction inspector.

17 Q Inspector?

18 A In that organization.

19 Q And what was the other code?

20 A The position code.

21 Q Is that like the grade?

22 A No, that's the particular position
23 complement under the Bureau of Construction and
24 Materials.

25 Q What does that mean?

1 A Every bureau gets so many complement
2 pertinent full-time positions, and they also get, for
3 their seasonal work, they get so many limited-term
4 positions, also.

5 Q Okay.

6 A They are all associated with a position
7 code.

8 Q Yes.

9 A It's like a--the military is coming out in
10 me--it's like a unit manning report, okay?

11 Q Right, okay, I follow you.

12 A Okay.

13 Q What else do you have on there? Do you have
14 pay grade?

15 A Yes.

16 Q That's my characterization, is that what you
17 call it, pay grade, whatever, salary level or --

18 A Yes.

19 Q -- hourly wage level?

20 A Pay grade and level, yes, and the annual
21 salary is on there.

22 Q Do you have on there date of birth or age?

23 A No. We can pull that data up, but that's
24 not on the report I'm talking about.

25 Q But it's in your computer system, right,

1 date of birth --

2 A Oh, yeah.

3 Q -- you'd need that for retirement purposes,
4 I- imagine?

5 A Um-hmm.

6 Q Maybe insurance, I don't know.

7 A It's a different screen than the one I'm
8 referring to. The PET screen 116 is the one that I
9 supplied with my Answer previously.

10 Q Okay. What else do you have -- what else
11 does PennDOT have in its computer system respecting
12 employment data of any given individual?

13 A Union, we can look up the union number, you
14 know, their local union number, all of the background
15 history on salary.

16 Q Okay. What about if someone would have been
17 disciplined, would that be on there, too?

18 A No.

19 Q Suspended, whatever?

20 A Suspension, yes.

21 Q But nothing short of suspension?

22 A Only if it's a suspension without pay.

23 Q Right.

24 A If it's an alternative suspension, which we
25 normally use, then it doesn't show up on the computer,

Exhibit 4

1 Q Okay. So it is not based on employee
2 history or anything else, it's just based on a
3 mechanical formula?

4 A Yes, based on wages.

5 Q Okay. And --

6 A And years of service.

7 Q Okay. Because years of service, then,
8 determine the amount of sick leave; is that right?

9 A The rate.

10 Q The rate, okay.

11 (Brief pause.)

12 BY MR. VAN ALLEN:

13 Q Since 1995, has PennDOT ever given a
14 reasonable accommodation, either in equipment or in job
15 duties, to an employee without going through -- without
16 the employee having gone through the channels that you
17 described earlier in your testimony about
18 Ms. Williamson's involvement, Mr. Bell's involvement,
19 the physician's involvement; has that ever happened?

20 A I think it has, but the intention of the
21 department is that we use the system that we have in
22 place.

23 But we can't control everything -- I think
24 you're referring to the man on crutches?

25 Q Well, that's just one.

1 A Yeah.

2 Q I want to see if they're really asking for
3 any others.

4 A We really don't consider that accommodation,
5 because the fact that he was using crutches did not
6 limit him from doing his duties. So we didn't really
7 give him anything. We didn't give him the crutches.

8 Q How did he carry a wheelbarrow full of
9 cement when he was on crutches?

10 A He did it. That's what was --

11 Q Isn't that an accommodation if you don't
12 have to perform those essential job functions?

13 A No, he did perform his essential functions.

14 Q Well, isn't carrying the cement an essential
15 function?

16 A He was actually not a TCI right away. He
17 was an M-Tech, and he was reclassified. He was a
18 technician that was reclassified.

19 Q When was he reclassified to a TCI?

20 A Let's see. (Checking.) David Evans was
21 reclassified from an M-Tech II to a TCI and did the
22 same type of work.

23 Q Well, as a TCI, he would be doing concrete
24 testing, would he not?

25 A Yes.

1 Q Okay. If he was doing the same type of work
2 on a prior assignment, that would include concrete
3 testing, would it not?

4 A I don't know. The only thing I can tell you
5 is, he was able to perform the full duties with --
6 while he was on crutches, he was able to perform his
7 duties.

8 Q Do you know how he was able to do that?

9 A No.

10 Q Do you know how long he was on crutches?

11 A I don't know how he did it, I just know that
12 it was reported that he was able to perform at full
13 capacity.

14 Q At full capacity?

15 A Um-hmm.

16 Q And how long did he -- how long was he on
17 crutches?

18 A I don't know.

19 Q Do you know if, after he was off crutches,
20 he walked with a cane or had full support of his leg?

21 A I don't know.

22 Q Okay. But he was still performing --

23 A Yes.

24 Q -- all his duties?

25 A Yes.

1 Q What was the name of the job, class I think
2 it was, that he had before he was a TCI?

3 A He was a...

4 Q It sounded like you said med tech and I know
5 that's not correct.

6 A M-Tech.

7 Q What's an M-Tech?

8 A Materials technician.

9 Q Materials technician?

10 A Materials Technician II. They work in the
11 lab.

12 Q They work in the lab?

13 A Um-hmm.

14 Q Was he doing concrete testing?

15 A Concrete testing is normally done out on the
16 site.

17 Q Okay.

18 A The materials technicians work with, I know
19 they bring materials in --

20 Q Right.

21 A -- and make sure that the materials meet the
22 specifications.

23 Q So it would seem to me, and correct me if
24 I'm wrong, but if -- Mr. Evans was his name?

25 A Um-hmm.

1 Q -- was doing the same type of things as a
2 TCI as he was as an M-Tech -- and he was only doing
3 laboratory testing as an M-Tech; he wasn't doing any
4 field concrete testing, was he, as a TCI? Or am I
5 wrong?

6 A I don't know, I can't answer that because I
7 don't know when they changed his classification, what
8 date.

9 Q Okay. But doesn't it say there, as you read
10 into the record, when he was a TCI, he was doing, I
11 don't want to say the same thing, it doesn't say that,
12 but similar language, doing the same thing as he was as
13 an M-Tech?

14 A Did the same type of work as that previously
15 performed.

16 Q Okay. Thank you for correcting me, same
17 type of work as previously performed.

18 Isn't concrete testing -- then it is not the
19 same type of work as previously performed?

20 A I don't know, because previously performed
21 work, you know, is a general term. I don't know if
22 Mr. Evans even did concrete testing.

23 Q That's my question.

24 A Yes. I don't know if he did as a materials
25 technician, and I don't know if he had the opportunity

1 to do it as a TCI.

2 Q You mean the opportunity, where was
3 Mr. Evans headquartered, based out of?

4 A I don't know that, either.

5 Q He's based out of Clearfield, is he not,
6 District 2?

7 A I don't know.

8 Q Well, PennDOT knows, don't they?

9 A Yes. But nobody has ever asked me that
10 question, so I've never investigated that.

11 Q Mr. Evans' name appears, does it not, in the
12 Complaint as well as the Answer?

13 A Um-hmm. As far as his physical job
14 location.

15 Q Right.

16 A I didn't see that as relevant in my
17 investigation.

18 Q So you don't know where he does his work?

19 A No.

20 Q You don't know how long Mr. Evans was on --
21 I think you said you don't know how long he was on
22 crutches?

23 A No.

24 Q Would PennDOT have a record of that?

25 A Not a record, a recollection maybe of the

Exhibit 5

1 Q Okay. Do accommodations have to be formal?

2 A Yes. We have a system in place to request
3 an accommodation.

4 Q Right, right. And that was Ms. Williamson's
5 domain, was it not?

6 A Yes.

7 Q So apart from any request for an
8 accommodation, are you familiar with the concept of
9 past practice that's used in union contracts all the
10 time?

11 A Yes, I am.

12 Q Was Mr. Buynak required to actually perform
13 concrete testing from 1990 on up through 1998?

14 A No, he was not, but that was based on
15 operational reasons, this wasn't as an accommodation.

16 Q Let's break that answer down. No, he was
17 not. You're agreeing that he was not required to
18 perform concrete testing for a period of eight years
19 until 1998?

20 A Um-hmm.

21 Q And you said what, then, it was based on?

22 A Operational reasons.

23 Q Now, what were the operational reasons?

24 A The way that the bureau works is, they don't
25 just do testing of concrete, they also do bituminous

1 A Right.

2 Q What about past practice, the same thing?

3 A No.

4 Q So it could be a past practice that
5 Mr. Buynak has performed concrete testing, but not an
6 accommodation to a handicapped; is that correct?

7 A I wouldn't consider it a past practice,
8 either.

9 Q Okay, but it could be. In other words, the
10 two aren't synonymous. Something could be a past
11 practice but would not be accommodation, because it
12 hasn't been formally approved by whoever is in charge
13 of approving accommodations; is that correct?

14 A I don't understand the question.

15 Q Well, I'm not going to argue with you.
16 Simply to be a past practice is not necessarily an
17 accommodation, is it?

18 A It depends on the situation --

19 Q You can have past practices for everything,
20 right?

21 A Right.

22 Q Right.

23 A Right. And that's -- I don't understand the
24 analogy.

25 Q All right, let's make one. So Mr. Buynak is

1 not performing concrete testing for eight years; would
2 you consider that a past practice?

3 A No.

4 Q Oh, okay.

5 A No, I would not.

6 Q What does it have to be to be a past
7 practice?

8 A It was for operational reasons that he was
9 not performing concrete testing.

10 Q And the operational reasons, I think you
11 testified to, right?

12 A Right.

13 Q You didn't need him to --

14 A Right.

15 Q -- is sort of what it boils down to?

16 A Right.

17 Q Okay, I've got enough on that.

18 Did you bring Mr. Buynak's personnel file
19 with you today?

20 A No, I did not.

21 Q Why didn't you?

22 A I was not told to.

23 Q Were you told not to?

24 A No.

25 Q Isn't it included there as questions that

1 Q Right.

2 A And that decision is often made at the local
3 level. That doesn't go through us.

4 Q All right. Now, Mr. Evans wasn't a
5 work-related injury?

6 A No.

7 Q Because he fell off a roof or something?

8 A Right.

9 Q But you don't know of anybody else like
10 Mr. Evans who slipped through, as you would say, maybe
11 slipped through the cracks, got an accommodation?

12 A Not that I'm aware of.

13 Q All right. Does PennDOT have any records of
14 any such person?

15 A No.

16 Q All right. Who was Mr. Evans' supervisor at
17 the time when he was an M-Tech, or whatever it was?

18 A I don't know.

19 Q Was he in the Clearfield district then or
20 the Hollidaysburg district or some other?

21 A That's what I said before, I don't know what
22 location without --

23 Q Oh, you don't know, okay, good enough, we'll
24 skip it.

25 We've been talking here about temporary

Section 4. Where the term meet and discuss is used in this Agreement, it will be deemed to have the meaning of that term as defined and applied under the Public Employee Relations Act.

Section 5. Ratings shall be completed by supervisors who are familiar with the work performance of the employee. This shall in no way affect review procedures.

Section 6. Employee benefits and working conditions now existing and not in conflict with the Agreement shall remain in effect subject, however, to the right of the Employer to change these benefits or working conditions in the exercise of its management rights reserved to it under Article 2 of this Agreement.

Section 7. Travel expenses shall be paid in accordance with the Commonwealth's existing Travel Expense Regulations. The mileage allowance shall be 30 cents per mile or the General Services Administration rate, whichever is greater. If the General Services Administration of the Federal Government increases or decreases the mileage allowance for employees under its jurisdiction, the mileage allowance for employees under this Agreement will be increased or decreased by the same amount 30 days after the effective date of the General Services Administration change, but in no case will the amount fall below 26 cents per mile.

Section 8. Committees composed of representatives of the Union and the Employer are to be established at agency and appropriate local levels to resolve problems dealing with the implementation of this Agreement and to discuss other labor-management problems that may arise. The levels at which these committees are to function may be determined by agency or departmental discussions.

Exhibit 6

1 A We did not take away any of his essential
2 functions.

3 Q Okay.

4 A Nor did we provide him the crutches as an
5 accommodation.

6 Q Okay. I wasn't suggesting that you did. I
7 don't think that would help to carry concrete. But
8 anyway, anybody else besides Mr. Evans, you thought
9 there were some employees who were given some sort of
10 an accommodation, either job or equipment, for some
11 period of time since 1995?

12 A What I said was, if they had been given
13 that -- I can't speak for the -- maybe some mistakes
14 were made out there and people were accommodated, but
15 they did not run them through our process. I mean, I
16 can't say that somebody didn't make a mistake and
17 provide somebody, I wouldn't call it an accommodation,
18 but allow them --

19 Q Well, have you made any such mistake that
20 you're talking about?

21 A No. I can't say that there's not somebody
22 out there that we took some of their -- I know in
23 work-related injuries we do, okay, we do give them a
24 limited assignment. But that's part of our union
25 contract, that we have an obligation to do that.

Exhibit 7

this situation in an attempt to alienate the Plaintiff from his fellow employees; PennDot supervisors have arbitrarily refused to initial the Plaintiff's payroll card; a PennDot supervisor suggested that a roller operator ignore the Plaintiff's instructions to adhere to weight specifications when rolling asphalt; with no notice the Plaintiff was instructed to immediately travel to Holidaysburg for a class although the supervisor knew that because of the lateness of the hour, the Plaintiff would miss almost the entire class.

13. PennDot also has continuously refused to promote the Plaintiff to a supervisory position although the Plaintiff has been qualified for supervisory positions and vacancies have been available.

14. PennDot gave much more support and encouragement to persons under age 40 than it did to persons 40 years of age or older.

15. The aforesaid actions by PennDot were taken against the Plaintiff and other persons 40 years of age or older because of the age of such persons, i.e. 40 years of age or older. The nature and extent of PennDot's action with respect to persons 40 years of age and older was more negative than to persons under 40 years of age.

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JURY TRIAL DEMANDED

VS.

CLASS ACTION

(Judge Reilly

Defendant.

#24

1. On August 8, 2001, the Plaintiff served upon the Defendant a Notice of Deposition pursuant to Pa. R.C.P. 4007.1(e). In the aforesaid Notice of Deposition the Plaintiff requested the Defendant to produce the following documents:

FILED

William A. Shaw
Prothonotary .

handicap/disability, and age discrimination filed by employees or former employees with any federal, state or local governmental agency or with the Defendant itself; and all reasonable accommodations requests with respect to handicapped or disabled persons filed with the Defendant or its designees since January 1, 1996 to the present.

2. The Deposition of the Defendant through its designated witness Denise Gross, Personnel Analyst III, was taken on August 20 and 21, 2001 and continued thereafter.

3. However, the Defendant did not produce any documents at the aforesaid deposition solely on the grounds that since it had 30 days to respond to said request for production of documents it was not going to produce any documents for 30 days from the date of service of the Notice of Deposition. See Gross Dep. Tr. Pp. 168-169, attached as Exhibit 1. This necessitated the continuation of the designated witness's deposition until a later date notwithstanding the undersigned's protest that the Defendant was continuing to engage in delaying tactics. See Gross Dep. Tr. Pp. 169-173, attached as Exhibit 2. In attempting to make an excuse for being ill-prepared, counsel for the Defendant complained that the Undersigned did not provide the counsel for the Defendant with specific questions. However, counsel for the Defendant overlooks or was not aware of the fact that the Notice of Deposition, as well as, Rule 4007.1(e) requires only that the Notice of Deposition set forth areas of inquiry which the Plaintiff did in detail. Indeed, specific

questions do not have to be forwarded to a Defendant's counsel in advance of a deposition. See Notice of Deposition which is attached hereto as Exhibit No. 3.

4. On September 10, 2001, the Defendant served its Answers and Objections to the Plaintiff's Request for Production of Documents. See attached Exhibit 4.

5. The Plaintiff requested that the Defendant produce a copy of the aforesaid affirmative action plans. The Defendant objected to this request stating that it was "overbroad and sought information that was not relevant to Plaintiff's claims."

6. The affirmative action plans requested are required by federal law to be prepared and maintained by the Defendant and are to be available to any employee to view upon request.

These are usually maintained by an employee designated as the affirmative action officer. Most employers who are required to prepare and maintain affirmative action plans of the type requested by the Plaintiff usually just have two such plans, one for handicapped and disabled persons and one for persons forty years of age or older. Amendments to such plans are usually short and are not restatements of the entire plan. Thus, there can be no argument that the Plaintiff's request for such aforesaid affirmative action plans is "overly broad."

Moreover, the courts have frequently held that a violation of an affirmative action plan is evidence that an employer is

guilty of employment discrimination of the type set forth in the affirmative action plans. Thus, the affirmative action plans requested are highly "relevant" and the request is not "overbroad".

7. The Defendant objected to the aforesaid OFCCP reports relating to handicapped or disabled persons as being "overbroad and seeks information that is not relevant to plaintiff's claims." The OFCCP is a United States office of Federal Contract Compliance Program which requires periodic reports for all government contractors with respect to their affirmative action plans, i.e. as herein relevant the affirmative action plans for persons forty years of age or older and the affirmative action plans for handicapped or disabled individuals. The OFCCP monitors a government contractor's compliance with the discrimination statutes which compliance it ascertains from such reports. As with the affirmative action plans, the reports to the OFCCP are highly relevant as to whether discrimination has occurred and whether there is statistically significant evidence of discrimination. Thus, the request for these documents which address the nuts and bolts of discrimination are not "overly broad" and are highly "relevant," and these documents should be produced without any additional delay.

8. Like the affirmative action plans and the OFCCP reports the complaints that the Plaintiff seeks regarding age

discrimination and handicap discrimination are "relevant," not "overly broad" and would not be "unduly burdensome" for the Defendant to produce. The Plaintiff is not requesting that the Defendant generate any documents. Rather, the Plaintiff is only requesting that they supply a copy of such existing documents to the Plaintiff. This request is not "overly broad" because it pinpoints the issue of handicap and age discrimination. It should not be "unduly burdensome" unless the Defendant has so many age and handicap discrimination complaints that it cannot keep track of them on its computer. However, the Plaintiff has reason to believe that the Defendant can generate a copy of the designated documents from its computer or can ascertain which file contains these documents with little difficulty. These documents are also relevant because they may provide a common pattern and practice of certain types of age, as well as, handicap discrimination, and they will provide the names of complaining parties whom the Plaintiff can interview as witnesses. Thus, the Defendant should be required to produce true and correct copies of the aforesaid documents without further delay.

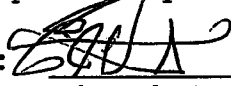
9. In its Answers to Interrogatories, the Defendant answers "None" to interrogatory number 4 which requested information concerning persons 40 or older who had filed a request for reasonable accommodation. The defendant now speaks

out of the other side of its mouth when it states that the request for these documents is "overbroad." Mr. Buynak has alleged discriminatory conduct with respect to reasonable accommodations so the request for these documents is right on point with his complaint and is not "overly broad." Thus, the Defendant should be required to produce true and correct copies of the above-requested documents without further delay.

WHEREFORE, the Defendant should be ordered to produce the aforesaid documents within twenty days.

Respectfully submitted,

DATE: October 30, 2001

By: 

Edward J. Van Allen, P.C.
PA I.D. No. 11250
119 S. Burrowes Street
State College, PA 16803
(814) 238-2088
Fax: (814) 466-2711

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
individually and
on behalf of all other persons
similarly situated,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
)
)
) Number 00-501-CD
)

) JURY TRIAL DEMANDED
)

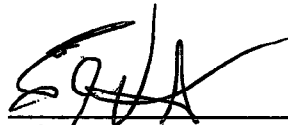
) CLASS ACTION
)

) (Judge Reilly)
)

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of October,
2001, I served a true and correct copy of the within
document upon the Defendant by U.S. 'mail first class,
postage prepaid, addressed to its attorney of record,
addressed as follows:

Gwendolyn Mosley
Senior Deputy Attorney General
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120



Edward J. Van Allen, Esq.

Exhibit 1

1 Q Okay. And you don't know whether there was
2 any detriment to PennDOT by how you did it, if you did
3 it?

4 A Right.

5 Q Let me ask you this--maybe it will jog your
6 memory, maybe it won't--did Mr. Evans perform any of
7 the TCI functions in District 2 when Mr. Buynak was on
8 what you call modified duty assignment?

9 A I don't know.

10 Q Does PennDOT have records of where Evans was
11 and what he was doing?

12 A Yes, PennDOT would have productivity
13 records. I haven't been asked to supply them, though.

14 Q Well, you were asked to bring with you any
15 documents you used in preparing your Answer.

16 A Two weeks.

17 Q No, no, no, you need them for deposition.

18 MS. MOSLEY: Let's go on.

19 THE WITNESS: Okay.

20 BY MR. VAN ALLEN:

21 Q Do you know where you're going to be in two
22 weeks?

23 A You can discuss that with Gwen where I'm
24 going to be in two weeks.

25 Q What's your interest in not supplying

1 documents today, but waiting for two weeks? I've heard
2 you say that several times.

3 MS. MOSLEY: That's been asked and answered,
4 Mr. Van Allen.

5 MR. VAN ALLEN: No, it hasn't.

6 MS. MOSLEY: Yes, it has; it's been asked
7 and answered.

8 MR. VAN ALLEN: What's the answer been?

9 MS. MOSLEY: The answer is, we have a time
10 limit provided by the Rules within which to produce
11 documents, and we exercise our rights to use the full
12 30 days.

13 MR. VAN ALLEN: Fine. I asked her why. I
14 don't ask for your opinion, legal opinion --

15 MS. MOSLEY: Because it's a legal
16 conclusion.

17 MR. VAN ALLEN: No, it's not.

18 MS. MOSLEY: Yes, it is, it's a legal
19 conclusion.

20 MR. VAN ALLEN: No, it's not.

21 MS. MOSLEY: Yes, it is. And she has
22 brought certain documents which she feels are helpful
23 to her in answering questions that she anticipated you
24 would ask. She has no way of knowing what's in your
25 head and what little permutations you're going to go

Exhibit 2

1 documents today, but waiting for two weeks? I've heard
2 you say that several times.

3 MS. MOSLEY: That's been asked and answered,
4 Mr. Van Allen.

5 MR. VAN ALLEN: No, it hasn't.

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19 conclusion.

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21 MS. MOSLEY: Yes, it is. And she has
22 brought certain documents which she feels are helpful
23 to her in answering questions that she anticipated you
24 would ask. She has no way of knowing what's in your
25 head and what little permutations you're going to go

1 off on in asking questions here today.

2 We're doing the best we can. If you had
3 given us a specified list of questions beforehand, we
4 could more precisely determine the documents that may
5 be necessary in order to answer them. We are doing the
6 best we can.

7 Not only that --

8 MR. VAN ALLEN: I don't think you are.

9 MS. MOSLEY: Not only that -- let me finish.

10 We have --

11 MR. VAN ALLEN: I don't think you're doing
12 anything except trying to hide the ball, like PennDOT
13 always does, trying to hide documents, concealing
14 people --

15 MS. MOSLEY: Well, that's your
16 interpretation, Mr. Van Allen.

17 MR. VAN ALLEN: That's right, if you're
18 going to put yours on the record, I'll put mine.

19 MS. MOSLEY: You can do that.

20 MR. VAN ALLEN: Right.

21 MS. MOSLEY: And in addition, we've provided
22 to you previously the same documents you're making
23 reference to today and the same documents that she
24 relied upon in responding to the Answer to the
25 Complaint in Clearfield County, which you know; you

1 simply chose not to bring them along to your deposition
2 today.

3 MR. VAN ALLEN: No, no, I thought she had
4 them.

5 MS. MOSLEY: Well, you have them. The very
6 same documents she's referring to, you have them.

7 MR. VAN ALLEN: Well, we'll bring them
8 tomorrow, then.

9 MS. MOSLEY: Okay, but those accusations
10 about us hiding because we're exercising our right is
11 just totally unfair.

12 MR. VAN ALLEN: Is that right? I don't
13 think it is. I think the record is going to show
14 PennDOT's track record so far.

15 MS. MOSLEY: Fine. That's fine, but we're
16 going to exercise our rights, just like any other
17 defendant would do, just like we would expect the
18 plaintiff to do.

19 If we noticed him for a deposition in two
20 weeks and asked him to bring along the documents, and
21 he chose not to do that because the Rules give him 30
22 days, we would not say, oh, he's hiding things, he's
23 being dishonest, his track record; we would say the
24 Rules give him 30 days, he has 30 days.

25 I chose to notice him before the time limit

1 for him to supply the documents. That's his privilege.
2 There's no innuendo attached to that, and I don't
3 understand why you persist in doing that. We've got 30
4 days. In 30 days, we'll provide the documents.

5 If you would like to continue this
6 deposition so we can get other people here--now that we
7 know the scope of your questions--until that time you
8 have those documents, that's fine, too. We're hiding
9 nothing. We're exercising the rights we have under the
10 Rules of Civil Procedure. There's nothing underhanded
11 about that.

12 MR. VAN ALLEN: I'll just reaffirm what I
13 said before rather than repeat myself.

14 MS. MOSLEY: Well, it's been answered.

15 BY MR. VAN ALLEN:

16 Q Now, I asked you why you needed 30 days.
17 Just because you have the right to; is that your
18 answer?

19 A No, as Ms. Mosley said, I cannot get in your
20 head and anticipate what you're going to ask me. I
21 came prepared to answer the questions that were in
22 here.

23 Q Okay.

24 A And you've kind of deviated from those
25 questions.

1 Q I'm just going off on your answers.

2 A Well, I can't anticipate what you're going
3 to ask me.

4 MR. VAN ALLEN: Let's take a 10-minute break
5 so I can go over my script.

6 (A recess was taken from 2:45 p.m. to 3:05
7 p.m.)

8 BY MR. VAN ALLEN:

9 Q Ms. Gross, during the time that Mr. Buynak
10 had the modified duty assignment, when he was in the
11 finals unit, did PennDOT require him to have any
12 medical examinations or assessments made by a physician
13 or physical therapist?

14 A No.

15 Q Okay. That was not until he returned?

16 A Right.

17 Q Nothing was done like that while he was in
18 the finals unit?

19 A No.

20 Q Who was his supervisor when he was in the
21 finals unit?

22 A It's in the letter that's in that packet
23 that you showed me.

24 Q Okay. If it's there, we'll find it. Okay.

25 A Yes.

Exhibit 3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,	)	
individually and	)	
on behalf of all other persons	)	
similarly situated,	)	Number 00-501-CD
	)	
Plaintiff,	)	<u>JURY TRIAL DEMANDED</u>
	)	
vs.	)	
	)	<u>CLASS ACTION</u>
DEPARTMENT OF TRANSPORTATION,	)	
COMMONWEALTH OF PENNSYLVANIA,	)	Judge Reilly
	)	
Defendant.	)	

NOTICE OF DEPOSITION

TO: PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
C/O GWENDOLYN T. MOSLEY, ESQUIRE
SENIOR DEPUTY ATTORNEY GENERAL
15th FLOOR, STRAWBERRY SQUARE
HARRISBURGH, PENNSYLVANIA 17120

Take notice that the Plaintiff will take the depositions upon oral examination pursuant to RULE 4007.1(e) of the Pennsylvania Rules of Civil Procedure of the Defendant, the Pennsylvania Department of Transportation, a governmental agency of the Commonwealth of Pennsylvania by and through its designated officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will

testify, commencing at 9:00AM on Thursday, August 16, 2001, at 9:00AM on Friday, August 17, 2001, at 9:00AM on Monday, August 20, 2001, at 9:00AM on Tuesday, August 21, 2001 and continuing thereafter from day to day until concluded. The depositions will take place in the first floor conference room in the Executive Offices located at 119 S. Burrowes Street, State College, Pennsylvania 16801. The depositions will be taken before a notary public authorized to administer oaths pursuant to applicable law. Your attorneys are invited to attend and participate as permitted by law.

A designation is required of all persons who shall testify. The matters to be inquired into are Defendant's Answers set forth in Paragraphs 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 of Defendant's Answers to Plaintiff's Complaint, all of which are incorporated herein by reference; Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Defendant's New Matter to Complaint, all of which are incorporated herein by reference; Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Defendant's Answer to Plaintiff's First Set of Interrogatories to Defendant, all of which are incorporated herein by reference; Defendant's Objections to Paragraphs 1, 7, 9, and 10 to Plaintiff's First Set of Interrogatories to Defendant, all of which are

incorporated herein by reference; the Defendant's Affirmative Action Plans which relate to handicapped and/or disabled employees and Affirmative Action Plans which relate to employees forty years of age or older; all reports provided to the Office of Federal Contract Compliance Programs ("OFCCP") from January 1, 1996 through the present with respect to handicapped or disabled employees, and employees forty years of age or older; the Plaintiff's personnel file; all documents referred to by the aforesaid designated persons in preparing for this deposition except those documents which are protected from disclosure by the attorney-client privilege; and all reasonable accommodation requests filed orally or in writing by handicapped or disabled employees since January 1, 1996 through the present.

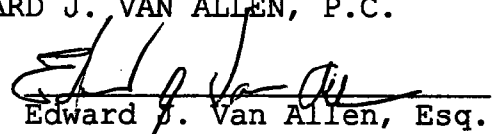
The documents to be produced are Defendant's Affirmative Action Plans since January 1, 1996 through the present, relating in any way to handicapped or disabled employees, and employees forty years of age or older; all reports from the Defendant to the OFCCP from January 1, 1996 to the present, relating to handicapped or disabled employees, and employees forty years of age or older; the personnel file of the Plaintiff; all complaints or charges of handicap/disability, and age discrimination filed by employees or former employees with any federal, state or local governmental agency or with the Defendant itself; and all reasonable accommodations requests

with respect to handicapped or disabled persons filed with the Defendant or its designees since January 1, 1996 to the present.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By:


Edward J. Van Allen, Esq.

PA I.D. No. 11250

119 S. Burrowes Street

State College, PA 16801

(814) 238-2088

Fax: (814) 466-2711

Attorney for the Plaintiff,

Joseph M. Buynak

Date: August 8, 2001

The Law Offices of
EDWARD J. VAN ALLEN, P.C.

Labor and Employment Law
119 S. Burrowes Street, Suite 103
State College, Pennsylvania 16801
814.238.2088
Fax: 814.466.2711
edward@vanallen.com

July 31, 2001

Gwendolyn Mosley
Chief Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

VIA FAX TO: (717) 772-4526

Re: Joseph M. Buynak v. Pennsylvania Department of Transportation; Number 00-501-CD

Dear Ms. Mosley:

Pursuant to the telephone call to my office from your secretary Sharon, I anticipate hearing from you this week as to whether the Buynak case will settle.

To facilitate your future scheduling, I have selected the following dates for deposition in August, 15, 16, 17, 20, 21, 2001 in State College, Pennsylvania. I will send you a Notice of Deposition on Monday, August 6, 2001, if I have not heard from you by then.

Very truly yours,

EDWARD J. VAN ALLEN, P.C.

By:

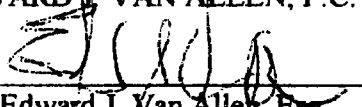

Edward J. Van Allen, Esq.

Exhibit 4

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH M. BUYNAC,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:

Defendant.

:
:
: No. 00-501-CD
:
:
:
: (Jury Trial Demanded)
:

**DEFENDANT'S ANSWERS AND OBJECTIONS TO
PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant Department of Transportation, by its attorneys, hereby responds to plaintiff's request for production of documents in the above-captioned matter as follows:

"1. Defendant's Affirmative Action Plans since January 1, 1996 through the present, relating in any way to handicapped or disabled employees, and employees forty years of age or older;"

OBJECTION: The Defendant objects to this request because it is overbroad and seeks information that is not relevant to plaintiff's claims.

"2. All reports from the Defendant to the OFCCP from January 1, 1996 to the present, relating to handicapped or disabled employees, and employees forty years of age or older;"

OBJECTION: The Defendant objects to this request because it is overbroad and seeks information that is not relevant to plaintiff's claims.

"3. The personnel file of the Plaintiff;"

RESPONSE: The Defendant will produce this file.

"4. All complaints or charges of handicap/disability, and age discrimination filed by employees or former employees with any federal, state or local governmental agency or with the Defendant itself;"

OBJECTION: The Defendant objects to this request because it is overbroad and seeks information that is not relevant to plaintiff's claims, and is unduly burdensome.

"5. All reasonable accommodations requests with respect to handicapped or disabled persons filed with the Defendant or its designees since January 1, 1996 to the present."

OBJECTION: The Defendant objects to this request because it is overbroad.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: 
GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-1180

DATE: September 10, 2001

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

JOSEPH M. BUYNAK,

Plaintiff,

v.

**DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA:**

Defendant.

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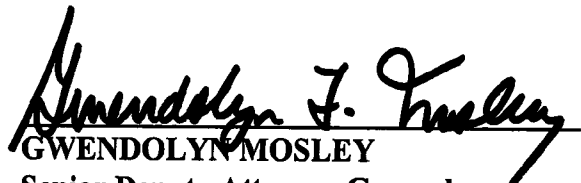
No. 00-501-CD

(Jury Trial Demanded)

CERTIFICATE OF SERVICE

I, Gwendolyn Mosley, Senior Deputy Attorney General, hereby certify that on
September 10, 2001, I caused to be served a true and correct copy of the foregoing document
Defendant's Answers And Objections to Plaintiff's Request For Production of Documents,
by placing a copy of it in the mail, postage prepaid and addressed to the following:

Edward J. Van Allen, Esquire
Law Offices of Edward J. Van Allen, P.C.
119 S. Burrowes Street, Suite 103
State College, PA 16801


GWENDOLYN MOSLEY
Senior Deputy Attorney General

DATE: September 10, 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. BUYNAC,
individually and on behalf of all other
persons similarly situated

vs.

No. 00-501-CD

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 5th day of November, 2001, upon
consideration of the Motion to Compel Answers to Plaintiff's First Set of
Interrogatories to Defendant, a Rule is hereby issued on Defendant to appear and
show cause why the Motion should not be granted. Rule Returnable the 18th day of
December, 2001, at 1:30 P.M. in Courtroom No. 1,
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

JOHN K. REILLY, JR.
President Judge

FILED

NOV 05 2001

William A. Shaw
Prothonotary

(23)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. BUYNAC,
individually and on behalf of all other
persons similarly situated

vs.

No. 00-501-CD

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA

ORDER

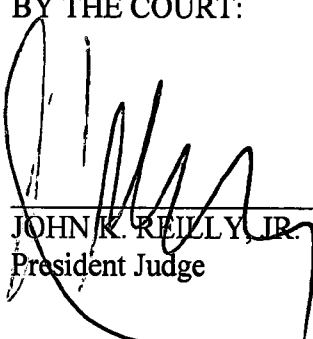
AND NOW, this 5th day of November, 2001, upon
consideration of the Motion to Compel Defendant to Produce Documents, a Rule is
hereby issued on Defendant to appear and show cause why the Motion should not be
granted. Rule Returnable the 18th day of December, 2001, at
1:30 P.M. in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, PA.

FILED

NOV 05 2001

William A. Shaw
Prothonotary

BY THE COURT:


JOHN K. REILLY, JR.
President Judge

#269

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW**

JOSEPH M. BUYNAC,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
) Number 00-501-CD
)
) **JURY TRIAL DEMANDED**
)
) **CLASS ACTION**
)
)
)
)

ORDER

And now, this _____ day of _____, _____ Moses Abraham, ✓ Kenneth A. Confer, Thomas A. Coulter, ✓ Richard L. Delucia, ✓ Raymond M. Devinsky, ✓ Gail R. Francisko, ✓ William Frankhouser, ✓ Archie Gettig, ✓ Jr., Elizabeth Haase, Robert Houser, John J. Marino, ✓ Thomas F. McCracken, ✓ Iris L. Myers, Terry A. Painter, Paul Pektas, ✓ Karen Reddish, Lawrence Sanker, Charlie Savage, ✓ Mona Smith, Deborah L. Spencer, Roger D. Thomas, ✓ James P. Vallely are permitted to intervene in this action as parties plaintiff upon the terms set forth in the Petition for Intervention.

BY THE COURT,

P.J.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW**

JOSEPH M. BUYNAC,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)

) Number 00-501-CD

)

) **JURY TRIAL DEMANDED**

)

)

) **CLASS ACTION**

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FILED

DEC 03 2003

013:50 [initials]

William A. Shaw

Prothonotary/Clerk of Courts

1 copy to Arny
w/o order

Eus

PETITION TO INTERVENE

NOW COME the Petitioners, past and present employees of the Pennsylvania Department of Transportation ("PennDot") who were formerly members of a class which was certified by this Honorable Court to participate in the within action, by and through their attorneys, Edward J. Van Allen, P.C., and file this within Petition to Intervene.

Said certification was revoked by the Commonwealth Court of Pennsylvania . Said Order of the Commonwealth Court has been appealed to the Supreme Court of Pennsylvania and a brief has been filed with said Supreme Court stating why said certification should be upheld. It is anticipated that the Petition to Appeal will be within the perview of the Supreme Court for a number of months.

Each of the following Petitioners is an aggrieved employee or former employee of PennDot and has a claim against PennDot for unpaid wages due to failure to promote or transfer or an adverse employment decision against the Petitioner because of his/her age and has

expressed a desire to proceed in this action as evidenced by the attached affidavits and corresponding verifications thereto.

The Petitioners seek this Order granting their Petition to Intervene pursuant to Pa.R.C.P.

2327 which states as follows:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if:

(3) such person could have joined as an original party in the action or could have been joined therein . . .

Pa R.C. P. 1713(a):3 regarding the Order permitting Intervention states:

Rule 1713 permits a court to issue an order during the course of a class action permitting an interested person to intervene in accordance with the rules governing intervention. Such an order might be issued when a class' representative party has been decertified.

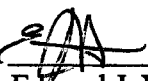
////Amram commentary: An intervenor can claim that the commencement of a class action tolls the statute of limitation for his or her benefit; because the class action rules make all the members of a class parties to a class action from its beginning, subject to possible failure of certification, decertification, or to opting-out, if an action is certified, it cannot be argued that a member is to be denied the right to intervene because he or she is barred by the statute of limitations.

The Petitioners hereby adopt Buynak's initial Complaint, the Motion for Class Certification and all testimony and evidence presented to this Court including the Affidavits and corresponding Verification herein and have, thus, authorized attorney Edward J. Van Allen, P.C., to file said Petition to Intervene on their behalf

The intervention of these additional past and present PennDot employees in the above age discrimination civil action additionally protects the interests of other similarly situated past and present PennDot employees over the age of forty who have suffered adverse employment decisions by PennDot because of their age, over forty.

Respectfully submitted,

EDWARD J. VAN ALLEN, P.C.

By:  _____
Edward J. Van Allen, Esq.

P.A.I.D. No. 11250

316 Presqueisle Street

Philipsburg, PA 16866

814. 343.4880

Fax: 814.343.4882

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW**

JOSEPH M. BUYNAC,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)

) Number 00-501-CD

)

) **JURY TRIAL DEMANDED**

)

)

) **CLASS ACTION**

)

)

)

)

VERIFICATION

I hereby swear that the information set forth in the within Petition to Intervene is true and correct to the best of my knowledge, information and belief. I hereby certify that false statements are subject to the penalties set forth in 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____



Edward J. Van Allen, Esq.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW**

JOSEPH M. BUYNAC,

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

)
) Number 00-501-CD
)
) **JURY TRIAL DEMANDED**
)
) **CLASS ACTION**
)
)
)
)

I hereby certify that on this the 3rd day of December, 2003, I served a true and correct copy of the within document upon the Defendant by fax and by U.S. mail, first class and postage prepaid, to its counsel of record as follows:

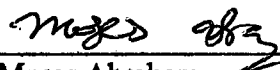
Gwendolyn Mosley
Senior Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Fax: (717) 772-4526



Edward J. Van Allen, Esq.

I, Moses Abraham, reside at 907 W. Foxcroft Drive, Camp Hill, Pennsylvania, 17011. I am 59 years of age and I have been employed by the Pennsylvania Department of Transportation, Aviation Bureau, Dauphin County since February 14, 1980. In 1998, I filed a complaint of age discrimination with the Pennsylvania Human Relations Commission on December 9, 1998 which was ruled in favor of the Department. I applied for my old position as Civil Engineer Manager on February 14, 2000 and again in December, 2000. This position was awarded to an outsider with only a bachelor's degree who was only 31 years of age. I then applied for the position of Senior Civil Engineer Manager which was posted on March 2000 and again in March 2001. This position was filled by a younger person ignoring the Civil Service list of qualified candidates who also did not have the requisite experience for supervising civil engineers. The Department also did not comply with my January 19, 2000, settlement agreement signed by Jacob Simonton and Robert Bell.

Date: 8-22-03


Moses Abraham

VERIFICATION

I, MOSES ABRAHAM, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-22-03

Moses Abraham

I, Kenneth Confer, reside at 1333 N. Allen St, State College, PA 16803. I am 62 years of age and I was employed by the Pennsylvania Department of Transportation at the Bellefonte facility District 0210 for 26 years as an equipment operator and an equipment operator instructor. Since 1996 I have applied for the position of foreman three times and all times another candidate significantly younger and less qualified was awarded the position. The persons PennDot selected as these foremen were Entry Level and "right off the street" with essentially no experience. It was difficult to take direction for someone who did not know what he was doing and had never even performed similar duties prior to becoming a foreman. Because of the incompetence of such foreman there are many examples of damage to equipment and costly errors out on the job site.

Date: 8-21-03


Kenneth Confer

VERIFICATION

I, Kenneth A. Conyer, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-21-03

Kenneth A. Conyer ✓

Commonwealth of Pennsylvania)

) ss:

County of Clearfield)

AFFIDAVIT

I, Thomas A. Coulter, being duly sworn, do depose and state that:

1. I am 51 years old.
2. I have been employed by PennDot for 29 years.
3. I have been an acting foreman for approximately 12 years.
4. On or about March 2002, I applied for the position of foreman at the PennDot Hyde shed located in Hyde, PA, Clearfield County.
5. I believe I am the best able and most-qualified candidate that applied for the position because of my years of experience, my good judgment, my ability to interact with fellow employees, my training and education received over the years at PennDot, and because of my three and one half years as an Equipment Instructor.
6. The successful candidate was several years younger and had considerably less experience with PennDot.
7. Thus, I believe PennDot has discriminated against me because of my age.
8. I also applied for a similar position on or about June 2000.
9. I believe I was the most qualified for this position due to my years of experience at that time.
10. The person selected for this position had only seven years experience and was many years younger.
11. I also applied for a foreman's position on or about October 2000.
12. I believe I was the most qualified for this position due to my years of experience.

13. The person selected for this position had only two years experience and was also many years my junior.
14. On or about January, 1999 I applied for a position as foreman as well.
15. I believe I was the most qualified for this position at that time.
16. The person selected for this position was much younger with little or no experience for the job.
17. I also applied for a similar position on or about September 1999.
18. I believe I was the most qualified for this position at that time.
19. The candidate selected for the position had little or no experience, and was much younger than I.
20. On or about February, 1997 I applied for a foreman position with PennDot, Hyde shed, Hyde, Clearfield County.
21. I believe I was the most qualified for this position at that time.
22. The position was filled with a much younger man with a lot less experience and time at PennDot.

Sworn to and subscribed

Thomas Coulter

To before me, a Notary

name

Public, on this 9 day

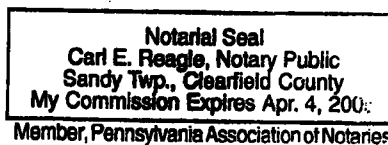
Of December 2002.

Carl E. Reagle

Notary Public

My commission expires:

[SEAL]



I, Thomas A Coulter, reside at 319 S. Highland Street, Dubois, PA, 15801. I am 51 years of age and I have been employed by the Pennsylvania Department of Transportation at the Hyde Maintenance facility in Clearfield County, District 0220 as an equipment operator for almost 30 years. Since March 1, 1996, I have applied for the position of foreman at Hyde at least 10 times only to have the positions awarded to significantly younger and less qualified individuals. Because of the lack of experience when many of these positions are filled by persons "right off the street," they have to be trained while on the job. They are also responsible for many costly errors.

Date: 8-23-03


Thomas A. Coulter

VERIFICATION

I, Thomas A. Crocker, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-23-03

Thomas A. Crocker ✓

I, Richard Delucia, reside at P.O. Box 64, Curwensville, PA, 16833, I am 50 years of age and have been employed by the Pennsylvania Department of Transportation at the Hyde Maintenance facility in Clearfield District 0220, since October, 1988 as a body repairman and painter . I have applied for the position of foreman several times in approximately 1996 and beyond because I believe I have the qualifications for the position. After several of these fruitless applications to be a foreman, I gave up realizing that the positions were given to significantly younger and less qualified individuals who were many times persons "right off the street" with absolutely no comparable experience. It was too upsetting to continue to apply when persons so much younger were given these jobs.

Date: AUGUST, 23, 2003

Richard L. Delucia
Richard Delucia

VERIFICATION

I, RICHARD DEUCIA, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-23-03

Richard Deucia

I, Raymond M. Devinsky, reside at 100 Mathew Drive, Harmony, PA 16037-9506 and started with PennDot on May 15, 1997 to the present. I have consistently applied for full time employment after working seven seasons, but even though I believe I am well-qualified having a commercial driver's license and driving a school bus, I am never called for operator jobs that are posted for bid. Consistently, younger persons who have only worked one winter get hired full-time in the spring or summer. This has happened to me for the past seven years. Management will not answer my queries regarding my employment and refuse to ever return my telephone calls.

Date: 9/2/03

Raymond M. Devinsky
Raymond M. Devinsky

08/28/2003 10:50

0143331970

VANALLEN LAW OFFIC

PAGE 02

VERIFICATION

I, Raymond M. Devinsky, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to perjury.

Date:

9/2/03Raymond M. Devinsky

I, William Frankhouser, reside 27375 Shawville Frenchville Highway, Frenchville, PA 16836. I am 58 years of age and have been employed by the Pennsylvania Department of Transportation for 25 years. I am currently employed as a Foreman II at the Hyde Maintenance Facility in District 2-0. I believe that when employees report for work that they should proceed to work and the work should be correctly completed. The Department does not seem to be concerned with such matters. For example, when I became a foreman approximately 10 years ago I realized that I faced many examples of employees at this facility being unsupervised. Some employees were spending time while at work in target practice and loading shells. I asked that this activity be stopped. When it was not, I reported them to management. Since this time I have been continually harassed by management. Some of the examples of harassment are taking my state vehicle and requiring that I spend extended time in collecting maggot-infested dead animals from the highway. The Department seems to prefer younger foreman who will turn a blind eye to inappropriate activity.

Date: 8-23-03


William Frankhouser

VERIFICATION

I, William F. Feltman, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-23-03

William F. Feltman

I, Archie Gettig, Jr., reside at 135 N. Gettig Lane, Bellefonte, PA 16823, I have been employed by the Pennsylvania Department of Transportation from 1977-1999 as a Transportation Equipment Operator "B" and am currently the Roadmaster of Marion Township. I am well-qualified and have repeatedly applied for the position of foreman. Although I believe that I have the qualifications to be a PennDot foreman and have trained for that position through the Training Academy, I have not attained the position of foreman. That position is consistently awarded to much younger and less qualified persons than myself.

Date: 8-22-03

Archie Gettig Jr.
Archie Gettig, Jr.

VERIFICATION

I, Archie Gettig Jr, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-22-03

Archie Gettig Jr

I, Elizabeth Haase, reside at 9 S. Village Avenue, Exton, Pennsylvania 19341. I am 50 years of age and have been employed by the Pennsylvania Department of Transportation as an equipment operator for over 8 years; 5 yrs. for 6-2 Chester County Maintenance and the last 4 yrs. for the 6-0 District Engineering Facility, in King of Prussia, PA.. I applied for the position of foreman in March, 2003. The position was awarded to a significantly younger man with less than 4 years experience as an equipment operator. I was told was told that this was an entry level position, and, therefore, they could hire whomever they wished. They even told my union rep and another union official that, "my co-workers do not like me."

Date: August 26, 2003

Elizabeth A. Haase

Elizabeth Haase

VERIFICATION

I, Elizabeth A. Haase, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: August 26, 2003
Elizabeth A. Haase

I, Robert Houser, reside at 461 Ginter Morann Highway, Smithmill, PA 16680. I am 51 and have been an equipment operator since 1989 for the Pennsylvania Department of Transportation. I have consistently applied for available foreman positions at the Hyde Maintenance Facility in Clearfield County, District 0220, and those positions have been awarded to significantly younger and less qualified persons. I last applied on or about 2001 and have basically given up due to the fact that such young unqualified persons were given these supervisory positions. I have been an acting foreman for 15 years and have filled in for absent foreman for up to two months at a time and have been certified from the Acting Foreman Academy for successfully completing the training course for those desiring to become foremen. I have been encouraged by the Training Coordinator in the Clearfield District to take the training course for foremen and told by the Department that the people taking this class would be the next people in line to become foreman. I have taken all the training offered ever since these training sessions began in the early nineties.

Date: 8-26-03

Robert Houser
Robert Houser

VERIFICATION

I, Robert D. Houser, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-26-03

Robert D. Houser

VERIFICATION

I, John J. Marino, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 23 Aug 03

John J. Marino

)

AFFIDAVIT

I, Thomas F. McCracken, being duly sworn, do depose
and state that:

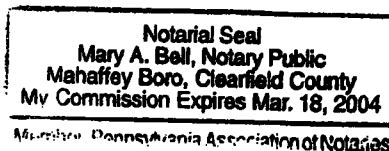
I am 49 years old and have been employed by Penn Dot since July 1990. I have held the position of Equipment Operator A and Currently Equipment Operator B. I have served as acting foremen or fill in foreman since 1994. Before my employment with Penn Dot, I attended 2 years of college majoring in Business Management and worked for 16 years in the mining industry. During my employment in the mining industry I obtained a Pennsylvania Blaster License and supervised a blasting crew for over 10 years. In 1998 I applied for the position of Foreman II at Penn Dot. During that time to the present I applied for 7 foreman openings. I believe I was the best able and most qualified candidate for all of these Foreman II positions, my years of experience supervising employee, my good judgement, my good employee performance reviews, my ability to get along with fellow employees and because of my training and education. The candidates that were awarded the Foreman II positions were all younger than me, (some over 20 years younger) most had little or no experience as a foreman and had no training to be a foreman. Every time a Foreman II position would become available, the County Manager and Assistant County Managers would encourage me to apply for the job.

Since I have applied for 7 Foreman II openings and all the successful candidates are younger, less qualified and less experience, I believe Penn Dot had discriminated against me because of my age.

Sworn to and subscribed
to before me, a Notary
Public, on this 9 day
of December, 2002.


name Thomas F. McCracken

Mary D Bell
Notary Public



My commission expires: March 18, 2004

[S E A L]

I, Thomas F. McCracken, reside at 343 E. Main Street, Mahaffey, Pennsylvania.15757; I am 50 years of age and have been employed by the Pennsylvania Department of Transportation, in District 0220 as an equipment operator since 1990. Because of my excellent qualifications, I have applied for the position of foreman eight times since 1990 only to have that position be awarded each time to significantly younger and less qualified individuals. Some of those candidates were between 10 and 20 years younger than I. I was embarrassed and felt betrayed because I believe I was the best qualified and most experienced candidate especially when management encouraged me to apply for the position.

Date:

08-21-03

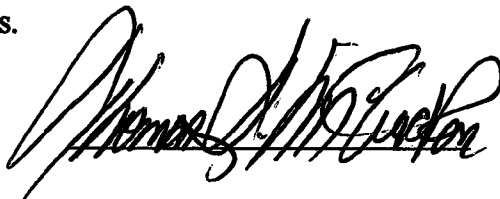


Thomas F. McCracken

VERIFICATION

I, Thomas F. Murrack do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 08-21-03

A handwritten signature in black ink, appearing to read "Thomas F. Murrack", written over a horizontal line.

I, Iris Myers, reside at 6 Turnpike Avenue, Clearfield, PA 16830. I am 52 years of age. I was employed by the Pennsylvania Department of Transportation as a Drivers License Examiner Assistant for 3 seasons. In the fall of 2002, I applied in person at the Clearfield District 2-0 Office for a full-time clerk position which required that the applicant be currently employed by the Department. I was not awarded that position. I was not even called for an interview. Although I met the qualifications for the position, I was told by John Bojalad the head of Human Resources at the facility, "Don't call us; we'll call you." Uniquely, I later found out that the Department could not even find my application on file. The facility has the reputation of hiring significantly younger and less qualified employees. Many of the very young women who work there arrive at work rather scantily clad which I do not consider professional attire.

Date: 8-22-03


Iris L. Myers

VERIFICATION

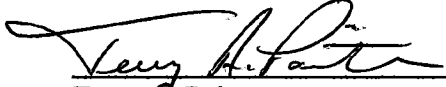
I, Irish Myers, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-22-03

Irish L. Myers

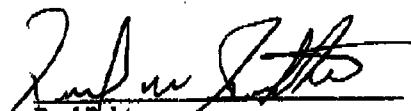
I, Terry A. Painter, reside at 9158 Rt. 68, Box 354, Rimersburg, PA 16248 am 48 years of age and have been employed by the Pennsylvania Department of Transportation as Transportation Construction Inspector since September, 1991, employed in District 1 which is now located in Oil City. I began applying on 12/20/94 for the Transportation Surveyor Tech Supervisor position which was awarded to a less qualified and significantly younger person. On 3/4/97 and again on 1/8/03 I applied for the posted Transportation Construction Inspector Supervisor positions which were then awarded to much younger and lesser qualified individuals. Although another TCIS position was posted on 3/19/03, I did not even apply because only young and unqualified persons are given the jobs anyway. Why does the employer spend the time posting the bids when they already know who they are going to select? Why should I as a well-qualified employee with years of experience bother to apply for jobs and be humiliated again by having younger and many times persons "right off the street" get those jobs?

Date: 8.25.03


Terry A. Painter

I, Paul Pektas, reside at 4639 Hampton Valley Drive, Allison Park, PA 15101. I am 46 years of age and have been employed by the Pennsylvania Department of Transportation as an equipment operator since approximately November, 1992. I have applied for promotions since March 1, 1996. I have applied for the position of foreman at least 6 + times only to have persons significantly younger and less qualified be awarded those positions. I also have applied for the position of tunnel maintainer at least 6 + times only to also have those positions assigned to persons significantly younger and less qualified. The Department states that they are looking for persons with towing experience, and I have had my own towing company for several years. Prior to that I worked for another towing company called Avelon Auto Service. I have to conclude that if I were younger, I would have been selected for a promotional position. It is particularly frustrating to have to take direction from someone who does not have the ability and experience to know how to give us direction.

Date: 8-26-2003


Paul Pektas

VERIFICATION

I, Robert M. Rutter, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 08-26-2003

Robert M. Rutter

I, Karen Reddish, reside at 6440 Apple Avenue, Pittsburgh, PA 15206. I am 49 years of age and I have been employed by the Pennsylvania Department of Transportation since 1969 as a Clerk II at the Aspinwall 11-1 in the garage office. I have applied for the purchase agent 1 job two times and the position was given to a 26 year old "right off the street." When the position for purchase agent 2 became available, that person was automatically promoted in less than a year's time. When I applied for the clerical supervisor's job, that position was given to a tradesman's helper, an employee who found parts for us and was only 28 years of age. I have applied for numerous positions because I am qualified for those positions, but, nevertheless, significantly younger and less qualified persons were promoted. For example, a temporary employee reports for work as a stock clerk II and if a job opening becomes available in that position then that temporary person is automatically awarded that position, according to our union contract.

Date:

8/26/03

Karen Reddish
Karen Reddish

VERIFICATION

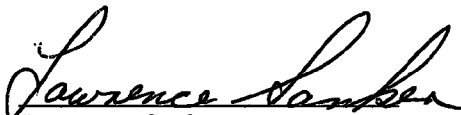
I, KAREN REDDISH, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date:

8/28/03Karen Reddish

I, Lawrence Sanker, reside at: 91 Hamburg, Road, Greenville, PA 16125. I am 55 years of age and I have been employed by the Pennsylvania Department of Transportation as a Transportation Construction Inspector in the Oil City District 1-0 Office for over 11 years. I have applied for the position of Transportation Construction Inspection Supervisor two times since March 1, 1996, only to have those positions awarded to persons who were significantly younger and less qualified than myself. I have been aware of the fact that the Department has for many years promoted persons who are young and inexperienced.

Date: 08-25-03


Lawrence Sanker

VERIFICATION

I, Lawrence Sanker, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-25-03

Lawrence Sanker

Commonwealth of Pennsylvania)

County of CLEARFIELD)

SS:

AFFIDAVIT

I, Charlie Savage, being duly sworn, do

depose and state that: Between 1998-1999 I did on three job openings on the district point crew. During the interviews I felt I was wasting my time. During one of the interviews 2 of the 4 people on the interview team didn't even have the courtesy of showing up. I felt that because I was a disabled Vietnam vet ~~50~~ over 50 years old with long hair and tattoos I was being discriminated against

Sworn to and subscribed
to before me, a Notary
Public, on this 25 day
Of February, 2002.

Charlie Savage

Pauline Blucher
Notary Public

My commission expires:

[S E A L]

Notarial Seal
Pauline B. Kitchen, Notary Public
Westover Boro, Clearfield County
My Commission Expires Oct. 17, 2002
Member, Pennsylvania Association of Notaries

Commonwealth of Pennsylvania

County of

)
) ss:
)

AFFIDAVIT

I, Paulie Savage, being duly sworn, do
depose and state that:

1. I have been employed by the Pennsylvania Department
of Transportation since (month, 5-5-86 day, year).

2. As a non-management employee, I have held the
position of (state the name of the position) since (month,
year). T.E.O. B - 11-28-92

3. My date of birth is (month, 2-13-47 day, year).

4. I have suffered the following adverse employment
decisions (demotion, failure to promote) discharge,
suspension, warning, denial of reasonable accommodations
because of disability/handicap) on the following dates:

Sworn to and subscribed

98-99

to before me, a Notary
Public, on this 25 day
Of February, 2002.

Pauline Bluth
Notary Public

My commission expires: 10-17-02

[S E A L]

Notarial Seal
Pauline B. Kitchen, Notary Public
Westover Boro, Clearfield County
My Commission Expires Oct. 17, 2002

Member, Pennsylvania Association of Notaries

I, Mona Smith, reside at 314 Spruce Street, Huntingdon, PA 16652. I am 58 years of age and I have been employed by the Pennsylvania Department of Transportation at the Hollidaysburg District Office 9-0 for over 10 years as a Transportation Construction Inspector. On May 7, 2003, I applied for the position of Construction Documentation Specialist only to have that position awarded to another person who was only 42 years of age with less years of service and less qualifications than I have. I also applied on May 7, 2003, for the position of Construction Cost Manager. This position was also awarded to a person who was only 43 years of age and who had little or no experience in documentation which is what I have done every since being employed by the Department. The Department also recognized the lack of training in the male employee who was awarded the Construction Cost Manager position because the Department sent him to Harrisburg for training to prepare him for this position even prior to his applying for the position. Both of these younger employees were told that they had the positions before the jobs were posted and before they were interviewed for the jobs.

Date: 08-23-03


Mona Smith

VERIFICATION

I, Mona Smith, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 08-23-03

Mona Smith

I, Deborah L. Spencer; R.D. 6, Box 120A, Wellsboro, PA 16901, age, ⁵¹~~52~~ I have been employed by the Pennsylvania Department of Transportation as a Transportation Equipment Operator since May, 1998 in District 3-7, Tioga County, Pennsylvania; applied for clerical position at the Tioga County Welcome Center in a timely manner before September 9, 2002, which Harrisburg then responded that my green application card was received and would be held on file for one year.

When I did call the office conducting the interviews, they claimed to know nothing of the green cards that were distributed to those submitting applications. When I called Erin Soden in Harrisburg who was the contact person regarding this position, she claimed that she did not receive my application and she stated that that was why she did not contact me for an interview.

Later that day Representative Baker called to say that PennDot had my timely application. In February, 2002, I found out that a young male approximately ²⁴~~25 to 26~~ who was not even a Commonwealth employee had been selected for that job. I am well-qualified for the position and have lived in Tioga County my entire life.

Date: Aug 30, 03

Deborah L. Spencer
Deborah L. Spencer

VERIFICATION

I, Deborah L. Spence do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: Aug 30, 03

(Deborah L. Spence)

I, Roger Thomas, reside at 1598 Chestnut Grove Highway, Grampian, PA 16838. I am 53 years of age and have worked for the Pennsylvania Department of Transportation for 33 years. I am currently a Roadway Program Tech II at the Hyde Maintenance Facility in Clearfield District 0220. I interviewed for the Roadway Program Coordinator's position in Clearfield County on July 10, 2002. Chad Diviney who was hired for this position started August 5, 2002. He was the Quality Coordinator for PennDot District 9-0. He was approximately 29 years of age when selected for this position. Mr. Diviney is not the only significantly younger supervisor to be hired by PennDot. PennDot consistently hires and promotes younger persons with little or no experience to be in its supervisory roles. It is embarrassing and humiliating for qualified, older workers to have such inexperienced, young persons be in charge particularly when they do not have the requisite experience to lead.

Date: 8/22/03

Roger Thomas
Roger Thomas

VERIFICATION

I, Roger Thomas, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8/22/03

Roger Thomas

Commonwealth of Pennsylvania)

) ss: 159-42-8106

County of CLEARFIELD)

AFFIDAVIT

I, *Roger D Thomas*, being duly sworn, do depose

and state that:

1. I am 53 years old.

2. I have been employed by PENNDOT for approx. 33 years

3. I have been an acting Roadway Program Coordinator for approximately 7 years.

4. On July 10, 2002 I interviewed for the position of Roadway Program Coord. at the PENNDOT Clearfield County Office located in Hyde Clearfield County.

5. I believe I am the best able and most-qualified candidate that applied for the position because of my years of experience, my good judgement, my ability to interact with fellow employees and because of my training and education. I have received training on Annual Work Planning (work program goals), and preparing, monitoring of work budgets. I am involved in contract management and evaluate vendor performance. I am assigned work that is normally performed by a Roadway Program Coordinator. (See high-lighted areas on attached job description). My job is to assist our Coordinator with areas high-lighted in blue. I purchase salt, anti-skid, aggregates, pipe, etc.

I have received a number of awards in my career with PENNDOT: 1. Secretarys Award for Excellence 1989. 2. Several Highway Beautification awards. 3. I have been nominated for a MVP award for my (successful) effort to lower the contract salt price for Clearfield County. We are paying \$35.58 vs. \$41.93 last contract. This will save a minimum of \$64,770.00 on salt this year based on a minimum purchase of 10,200 ton, with a potential savings of \$150,000.00 +. (Clearfield County has used 7571 ton of salt as of 12-26-02.

6. The successful candidate was only 29 yrs. old with no experience as a Roadway Program Coordinator and had been a Construction Inspector and Quality Coordinator with no training to be a RPC.

7. He received a full month of training from our former RPC. He has received training from our District Coordinator from time to time since he started the position. (Including this past week). I show him how to do job duties as well.

8. Thus I believe PENNDOT has discriminated against me because of my age.

9. I also believe I was the most qualified for the position at that time.

10. The person who was selected for the position was only 29 years of age with little or no experience for the job.

Sworn to and subscribed
to before me, a Notary
Public, on this 21st day
of ~~November~~, 2002.
December

Roger D Thomas
name

Kerri L Hummel
Notary Public

NOTARIAL SEAL
KERRI L. HUMMEL, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires Dec. 14, 2004

My commission expires:

[S E A L]

Commonwealth of Pennsylvania

County of Clearfield

)
) ss:
)

AFFIDAVIT

I, James P. Vallely, being duly sworn, do depose and state that:

1. I am 61 years old.
2. I have been employed by PennDot for 28 years.
3. I have been a foreman for PennDot for 18 years.
4. In September 1999, I applied for the position of Assistant County Maintenance Manager at PennDot in Hyde, Pennsylvania, for Clearfield County maintenance.
5. I believe I am the best able and most qualified candidate that applied for the position because of my years of experience, my good judgment, my ability to deal fairly with employees and the general public, and because of my training and education at PennDot. Because of my experience as a foreman, when the previous Assistant County Manager retired, I was appointed to fill this position temporarily until a new Assistant Manager was hired. I filled the position for three months and applied for the position permanently. I was #1 on the Civil Service list when the job interviews were given. I did not get the position.
6. The successful candidate was under 40 years old with no experience as an Assistant County Manager.
7. Thus, I believe PennDot has discriminated against me because of my age.
8. I also applied for a similar position in 2001.

9. I also was #1 on the Civil Service list at that time.
10. The person who was selected for that position was under 40 years of age.

Sworn to and subscribed
To before me, a Notary
Public, on this 12th day
Of December, 2002.

James P. Vallely
name

Nancy P. Hilliard
Notary Public

My commission expires
Nancy P. Hilliard, Notary Public
Sandy Twp., Clearfield County
[SEAL] My Commission Expires Jan. 26, 2006
Member, Pennsylvania Association Of Notaries

I, James Vallely, reside at 605 W. Weber Avenue, Dubois, Pennsylvania 15801. I am 62 years of age, and was employed by the Pennsylvania Department of Transportation as a Maintenance Repairman and then as a Foreman II since 1974 at the Hyde Maintenance facility in Clearfield County, District 0220. In 2000, and again in 2001, I applied for the position of Assistant County Manager. I was rated as the number 1 candidate for that position on the Civil Service list which could be viewed on the internet. Considerably younger persons were awarded the position each time. Each person was under forty and approximately 20 to 30 years younger than I. It was embarrassing and upsetting to have such candidates selected for the job for which I believe I was more experienced and rated higher.

Date: Aug. 26, 03

James P Vallely
James Vallely

VERIFICATION

I, James P. Vally, do hereby state that I have read the within application as it relates to me and that the averments of fact set forth therein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: Aug 26, 03

James P. Vally



Commonwealth Court of Pennsylvania

Charles R. Hostutler
Deputy Prothonotary/Chief Clerk

October 27, 2004

Irvis Office Building, Room 624
Harrisburg, PA 17120
717-255-1650

Certificate of Remittal/Remand of Record

TO:

RE: Dept of Trans. v. Buynak

No.1046 CD 2003

Trial Court/Agency Dkt. Number: 00-501-CD

Trial Court/Agency Name: Clearfield County Court of Common Pleas

Intermediate Appellate Court Number:

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572
is the entire record for the above matter.

Contents of Original Record:

Original Record Item	Filed Date	Description
Trial Court Record	June 10, 2003	1 stack
Date of Remand of Record: 10/27/2004		

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and
returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need
not acknowledge receipt.

[Signature]
Signature

CR Hostutler

Date

William A. Shaw
Printed Name

FILED

NOV 02 2004

William A. Shaw
Prothonotary

copy to Commonwealth Court

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. BUYNAK,
individually and on behalf of all other
persons similarly situated

vs.

No. 00-501-CD

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 8th day of November, 2004, it is the
ORDER of the Court that a status conference has been scheduled for Wednesday,
December 15, 2004 at 1:30 P.M. in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

01:34 PM 1cc atty Van Allen
1cc atty Mosley

NOV 08 2004

William A. Shaw
Prothonotary

CP

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH M. BUYNAC,
Individually and on behalf of all other
Persons similarly situated

Plaintiff,

vs.

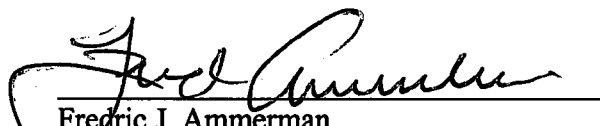
DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

:
:
:
: Number 00-501-CD
:
: **JURY TRIAL DEMANDED**
:
:
: **CLASS ACTION**
:
:
:

ORDER

AND NOW, this 14th day of December, 2004, it is hereby ORDERED that Plaintiffs' Petition for a Sixty (60) Day Continuance of the December 15, 2004 Status Conference is GRANTED. The status conference is rescheduled for 1:30, March 2, 2005, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.


Fredric J. Ammerman
President Judge

FILED ^{EGW}

6 3:08 PM 2004

DEC 16 2004

William A. Shaw
Prothonotary

**IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW**

JOSEPH M. BUYNAC,
Individually and on behalf of all other
Persons similarly situated

Plaintiff,

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,

Defendant.

:
:
:
: Number 00-501-CD
:

: **JURY TRIAL DEMANDED**
:

: **CLASS ACTION**
:
:
:
:
:

FILED

DEC 14 2004

William A. Shaw
Prothonotary

**PETITION FOR A SIXTY (60) DAY CONTINUANCE OF
THE DECEMBER 15, 2004 STATUS CONFERENCE**

AND NOW, comes Plaintiffs, Joseph M. Buynak, individually and on behalf of all other persons similarly situated, by and through their attorneys, Edward J. Van Allen, P.C. and Kelly, Hoffman, & Goduto, LLP, and respectfully file this Petition for a Sixty (60) Day Continuance of the December 15, 2004 Status Conference and, in support thereof, avers as follows:

1. On May 1, 2000, Joseph M. Buynak, individually and on behalf of all other persons similarly situated, filed a Complaint against the Pennsylvania Department of Transportation ("PENN DOT").

2. On November 8, 2004, the Honorable Judge Fredric J. Ammerman entered an Order scheduling a status conference for December 15, 2004 at 1:30 p.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

3. Plaintiffs' request that this Court grant a sixty (60) day continuance of the December 15, 2004 status conference due to the following reasons:

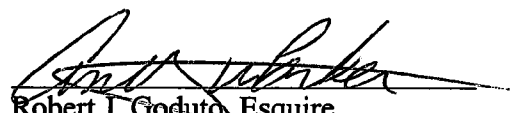
- a. Edward J. Van Allen is lead counsel for Plaintiffs;
- b. Mr. Van Allen had two (2) major surgeries resulting in three weeks of hospitalization in June and July, 2004;
- c. Mr. Van Allen has experienced postoperative complications which have hospitalized him seven (7) times since August, 2004 for treatment;
- d. Mr. Van Allen has recently spent three weeks at a rehabilitative hospital;
- e. Mr. Van Allen is still recuperating from his illnesses and the surgeries and is physically unable to attend the status conference on December 15, 2004.

4. Gwendolyn T. Mosley, Esquire, counsel for PENN DOT does not object to the continuance request.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant a sixty (60) day continuance of the December 15, 2004, status conference.

Respectfully submitted,

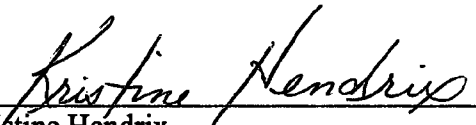

Edward J. Van Allen, Esquire
Attorney I.D. No. 11250
EDWARD J. VAN ALLEN, P.C.
316 Presqueisle Street
Philipsburg, PA 16866
814-343-4880


Robert J. Goduto, Esquire
Attorney I.D. No. 55763
Anthony W. Parker, Esquire
Attorney I.D. No. 81251
KELLY, HOFFMAN & GODUTO, LLP
Commerce Towers - 10th Floor
300 North Second Street
Harrisburg, PA 17101
717-920-8100

CERTIFICATE OF SERVICE

On this 9th day of December 2004, I, Kristine Hendrix, a legal secretary with the law offices of Kelly, Hoffman & Goduto LLP, hereby certify that I have served this day a true and correct copy of the foregoing **PETITION FOR A SIXTY (60) DAY CONTINUANCE OF THE DECEMBER 15, 2004 STATUS CONFERENCE** upon the person(s) and address(es) indicated below via facsimile and United States First Class Mail:

Gwendolyn T. Mosley, Esq.
Senior Deputy Attorney General
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120



Kristine Hendrix

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH BUYNAK

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF
PENNSYLVANIA

:
:
: No. 00-501-CD
:
:

ORDER

AND NOW, this 3rd day of March, 2005, it is the ORDER of the Court that an Evidentiary Hearing on the Petition to Intervene filed in the above matter has been scheduled for **Friday, April 15, 2005 at 9:00 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. One (1) day has been allotted for this matter.

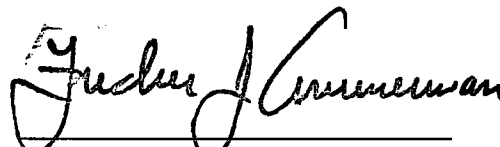
FILED

MAR 03 2005

0/3/2005
William A. Shaw
Prothonotary (W)

1 CENT TO ATTY MOSLEY
1 CENT TO ATTY VAN ALLEN

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

COPY

June 9, 2003

Commonwealth Court of Pennsylvania
Office of the Prothonotary
PO Box 11730
Harrisburg, PA 17108

Re: Joseph M. Buynak
Vs.
Department of Transportation, Commonwealth of Pennsylvania
No. 00-501-CD
Commonwealth Court No. 1046 C.D. 2003

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed three transcripts.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

John K. Reilly, Jr., P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Edward J. Van Allen, Esq.
1832 Woodledge Drive
State College, PA 16803

Gwendolyn T. Mosley, Esq.
Office of the Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

Joseph M. Buynak
Vs.
Department of Transportation, Commonwealth of Pennsylvania

Court No. 00-501-CD; Commonwealth Court No. 1046 C.D. 2003

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Commonwealth Court of Pennsylvania on June 9, 2003.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

John K. Reilly, Jr., P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

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15th Floor, Strawberry Square
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Joseph M. Buynak
Vs.
Department of Transportation, Commonwealth of Pennsylvania

Court No. 00-501-CD; Commonwealth Court No. 1046 C.D. 2003

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Commonwealth Court of Pennsylvania on June 9, 2003.

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Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

Joseph M. Buynak
Vs.
Department of Transportation, Commonwealth of Pennsylvania

Court No. 00-501-CD; Commonwealth Court No. 1046 C.D. 2003

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Commonwealth Court of Pennsylvania on June 9, 2003.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH M. BUYNAK

-VS-

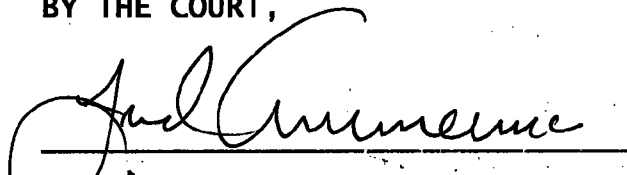
DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA :

No. 00-501-CD

O R D E R

NOW, this 15th day of April, 2005, following the taking of testimony relative the Petition to Intervene filed on behalf of a number of individuals, it is the ORDER of this Court that counsel for Plaintiff and Defense have no more than thirty (30) days from this date in which to submit appropriate brief to the Court.

BY THE COURT,


President Judge

FILED ^{6K} 2005
APR 15 2005
William A. Shaw
Prothonotary/Clerk of Courts
Van Allen
Mosley

FILED

012:07301

JUN 09 2005

William A. Shaw
Prothonotary/Clerk of Courts

icc Atty's: Van Allen, Mosley
icc D. M. Koseoff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOSEPH M. BUYNAC,
Plaintiff

vs.

DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF PENNSYLVANIA,
Defendant

NO. 00-501-CD

OPINION

On May 1, 2000, Joseph M. Buynak (Plaintiff) filed a Complaint in the Court of Common Pleas of Clearfield County alleging age discrimination against the Defendant (PennDOT). The Complaint contained class action allegations, wherein the Plaintiff was alleging a pattern of age discrimination by PennDOT against its employees. Following litigation of the matter, by Order of February 6, 2003 John K. Reilly, Jr., former President Judge of Clearfield County, certified the case as a class action. This certification was appealed by PennDOT to the Pennsylvania Commonwealth Court, who by its Order of October 15, 2003 reversed the Trial Court's certification of the case as a class action. 833 A.2d 1159 (Pa. Cmwlth. 2003). The Pennsylvania Supreme Court denied the Plaintiff's Petition for Allowance of Appeal by its Order of September 29, 2004. 859 A.2d 769 (Pa. 2004).

On December 3, 2003, a Petition to Intervene in the case was filed by twenty-two other past and/or present employees of PennDOT who also wished to proceed with an age discrimination claim and participate in the suit. The Court held an evidentiary hearing on the Petition to Intervene on April 15, 2005. At that time out of the twenty-two individuals who had been named in the Petition to Intervene, twelve appeared and provided testimony. The following individuals did not appear and the Court will dismiss their request to intervene on that basis: Kenneth A. Confer, Elizabeth Haase, Robert Houser, Iris L. Myers, Terry A.

Painter, Karen Reddish, Lawrence Sanker, Mona Smith, Deborah L. Spencer and James P. Vallely.

Of the twelve individuals who did provide testimony, four of them have absolutely no connection of any type with Clearfield County and are attempting to proceed in an inappropriate venue. Archie Gettig is a resident of Centre County, Paul Pektas is a resident of Allegheny County, Ray Davinsky is a resident of Harmony (not located in Clearfield County) and worked for PennDOT in Allegheny County and Moses Abraham resides in the Harrisburg area. The testimony of these four individuals was consistent in that they all confirmed they had never worked in Clearfield County nor had any PennDOT officials who had made decisions they believed to be adverse to their interests. The Judiciary Code, specifically Title 42 Pa. CSA §8523 governs the appropriate venue for filing legal proceedings against a Commonwealth party. The statute indicates that "actions or claims against a Commonwealth party may be brought in and only in a county in which the principle or local office of the Commonwealth party is located or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose." As the four individuals named have no connection of any type with Clearfield County, the statute provides that Clearfield County does not constitute the appropriate venue for the filing of their claim. Intervention must be denied on this basis. However, this Court also notes that none of the four individuals above-named provided information at the evidentiary hearing that they had exhausted their administrative remedies by filing a claim related to age discrimination with the Pennsylvania Human Relations Commission (PHRC). Their Petition to Intervene could also be dismissed on that basis. The Court will discuss this issue at greater length hereafter.

Rule 2327 of the Rules of Civil Procedure allows a person, who is not a party to an action, to intervene when that person could have been joined as an original party or could subsequently have been joined in the action. However, it is clear that in order for the interveners to initiate a lawsuit at the Court of Common Pleas against PennDOT for age discrimination that they must first exhaust their administrative remedies. Section 959 of the Pennsylvania Human Relations Act provides that:

Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign and file with the Commission a verified complaint, in writing, which shall state the name and address of the . . . employer . . . alleged to have committed the unlawful practice complained of, and shall set forth the particulars thereof and contain such other information as may be required by the Commission.

43 Pa.C.S. §959.

Our Appellate Courts have interpreted the language in Section 959 to be a requirement that the parties exhaust their administrative under the Human Relations Act before commencing suit in the Court of Common Pleas. Schweitzer v. Rockwell International, 586 A.2d 383 (Pa. Super. 1990); Bailey v. Storlazzi, 729 A.2d 1206 (Pa. Super. 1999). "The Doctrine of Exhaustion of Administrative Remedies is founded on judicial recognition of the mandate of the legislature that statutorily prescribed remedies are to be strictly pursued." Ohio Casualty Group v. Argonaut Insurance Company, 525 A.2d 1195, 1197 (Pa. 1987). The Act also provides, in Section 962(c)(1) that:

In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this act, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If within one (1) year after the filing of a complaint with the Commission, the Commission dismisses the complaint or has not entered into a conciliation agreement to which the complainant is a party, the Commission must so notify the complainant. On receipt of such a notice the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth

based on the right to freedom from discrimination granted by this act.

The following individuals who are requesting permission to intervene clearly indicated at the time of the evidentiary hearing that they had never filed any complaint with the Pennsylvania Human Relations Commission. Those individuals are Gail Francisco, Tom McCracken, Rick Deluccia, Tom Coulter, John Marino and Roger Thomas. Although this Court has considerable sympathy with the claims made by each of the said individuals, and the Court would prefer that they have their day in court, the law is clear that they are precluded from proceeding with a lawsuit against PennDOT at the Common Pleas level without having first exhausted their administrative remedies by filing a complaint with the PHRC. Therefore, the Court must dismiss their Petition to Intervene on this basis.

Only William Frankhouser¹ provided testimony that he had filed two claims with the PHRC. According to Mr. Frankhouser the first claim had previously been dismissed, and involved issues of alleged harassment which, according to Mr. Frankhouser's testimony, in no way related to age discrimination. The second complaint with the PHRC is pending, and Mr. Frankhouser indicated that this claim also involves what he terms as harassment by PennDOT officials due to him having made a mistake on a timecard and his being suspended as a result thereof. Since these complaints made to the PHRC do not in any way involve the claims of age discrimination on which Mr. Frankhouser now wishes to proceed, this Court cannot determine that he has exhausted his administrative remedies. Therefore, Mr. Frankhouser's request to intervene must also be denied.

¹ Paul Pektas also indicated he had filed a complaint with the PHRC approximately one month before the April 15, 2005 hearing. According to Mr. Pektas this claim relates to allegations of discrimination due to age and from his being injured on the job. As the claim is pending and one year from the filing of the same has not passed, it is premature for Mr. Pektas to proceed in the Court of Common Pleas.

The interveners argue in their Brief to the Court that the provisions of Rule 1713 of the Pennsylvania Rules of Civil Procedure provide authority that they may intervene. Rule 1713 grants courts the authority to permit an interested person to intervene in a class action with no prerequisite that a claim with the PHRC be filed. This is an exception to the normal requirement that administrative remedies be exhausted. However, as previously noted the case at bar is no longer a class action lawsuit and instead is a case involving the claims made by one plaintiff, Mr. Buynak, against PennDOT. Therefore, the proposed interveners' reliance on the rules pertaining to class actions is misplaced.

The interveners also argue in their brief that the precedent as set forth by the Superior Court in the case of Lukus v. Westinghouse Elec. Corp., 419 A.2d 431 (Pa. Super. 1980) enables the interveners to proceed with an action at the Court of Common Pleas level without the necessity of filing a claim with the PHRC. This position is based upon the argument that the original Plaintiff, Mr. Buynak, filed his claim with the PHRC on his behalf and on behalf of "all similarly situated" persons, thereby placing PennDOT on notice that the complaint relates to discriminatory conduct that applies not only to the Plaintiff but also to other employees of PennDOT. This reliance is misplaced.

In Lukus, a female employee sued claiming a violation of the Act relative the employer's exclusion of pregnancy-related disabilities from coverage under the employer's disability plan. The case was filed by the plaintiff not only on her behalf but also as a class action on behalf of all others similarly situated. Specifically, Lukus claimed that Westinghouse provided its employees with weekly sickness and accident payments, for a maximum period of twenty-six weeks, for all absences from work due to all disabling non-occupational sicknesses and accidents, except absences from work by female employees disabled by pregnancy or

childbirth. The Superior Court in Lukus confirmed that our Supreme Court has recognized that the relief afforded by the PHRC is in the nature of class relief, and may extend to all victims of a discriminatory practice, even though the complaint attacking the practice is filed with the PHRC by only one of the victims. Commonwealth, Human Relations Comm. v. Freeport Area School Dist., 359 A.2d 724 (Pa. 1976). In holding under the facts present in Lukus that the other alleged members of the class were not required to exhaust their administrative remedies by filing a claim with the PHRC, the Superior Court stated:

In cases where the investigatory and conciliatory powers have been invoked to eliminate, on a class-wide basis, a discriminatory practice, and the PHRC fails to enter into a conciliatory agreement within a year after an unnamed member of the class becomes aggrieved by the discriminatory practice, we believe it unnecessary for that unnamed member to file personally a complaint with the PHRC before being able to seek redress by an action in court. To impose such a requirement would be to establish a procedure that is not required by the PHRA and would serve no substantive purpose. Once the PHRC has expended its expertise in a futile attempt to conciliate the class complaint, it is unlikely that it will be able to conciliate an individual complaint based on the same grievance.

Lukus, Id. page 456. (emphasis added)

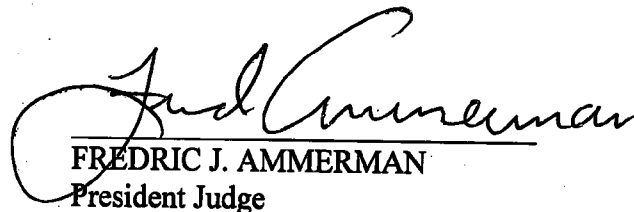
This Court would first note the Lukus case involved an attempt by the plaintiff to proceed with a class action suit. Such is not the case at bar, as the Commonwealth Court had previously overturned the Common Pleas determination that the matter could proceed as a class action. In addition, the alleged discriminatory practice in Lukus involved exactly the same claim with not only the plaintiff but with all other women who were denied disability benefits based upon pregnancy. Such uniformity of factual allegations and claims is not the situation in the case at bar. The testimony at the hearing on the Petition to Intervene showed that the proposed interveners held many different positions, that different persons made the employment decisions on behalf of PennDOT and that the alleged circumstances surrounding

the denials were quite different in many instances. The various allegations of age discrimination made by the proposed interveners is not so closely aligned with that of the Plaintiff and each other that it can be effectively argued once the PHRC would have investigated Mr. Buynak's claim it would have in essence already investigated the claims made by the other individuals. The testimony showed although each of the proposed interveners is claiming age discrimination in one form or another, their claims are clearly not based on the same grievance. Therefore, the rationale as set forth under the specific factual circumstance of Lukus does not apply.

ORDER

NOW, this 9th day of June, 2005, consistent with the provisions of the foregoing Opinion, it is the ORDER of this Court that the Petition to Intervene be and is hereby DISMISSED in regard to all proposed interveners.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Joseph Buynak
vs.
Department of Transportation,
Commonwealth of Pennsylvania
County of Clearfield)
State of Pennsylvania ss

No. 00-501-CD

FILED NO CC
01/10/2005
JUN 29 2005

William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT

I, Thomas McCracken, do depose and state that:

- a. At the hearing for the potential class certification of the Joseph M. Buynak case on December 30, 2002, I did testify that I had three times asked the management staff at the Hyde facility who made the decisions about the selection of the candidates for the Foreman II position for which I had applied. I was told that the decisions were made in Harrisburg by the Department of Transportation there. See attached testimony from the December 30, 2002 hearing.
- b. Since that time I applied for another Foreman II position for which management encouraged me to apply and for which management assured me that my evaluations were excellent. When I was not selected and someone much younger and less qualified was selected, I again asked who made such a decision. I was told by those who interviewed and encouraged me that the decision was made in Harrisburg by the Pennsylvania Department of Transportation.
- c. I, therefore, understand that Department of Transportation personnel decisions are not made locally but are made by the Department of Transportation in Harrisburg.

Sworn to and
subscribed to
before me, a
Notary Public,
on this the 28
day of June, 2005.

[S E A L]


Thomas McCracken


Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Mary A. Bell, Notary Public
Mahaffey Boro, Clearfield County
My Commission Expires Mar. 18, 2008
Member, Pennsylvania Association Of Notaries

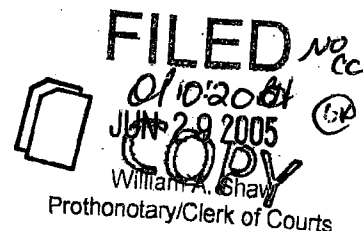
Joseph Buynak
vs.

Department of Transportation,
Commonwealth of Pennsylvania

County of Clearfield)
State of Pennsylvania ss

No. 00-501-CD

CA



AFFIDAVIT

I, Thomas McCracken, do depose and state that:

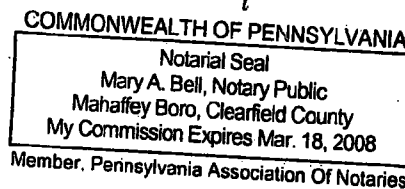
- a. At the hearing for the potential class certification of the Joseph M. Buynak case on December 30, 2002, I did testify that I had three times asked the management staff at the Hyde facility who made the decisions about the selection of the candidates for the Foreman II position for which I had applied. I was told that the decisions were made in Harrisburg by the Department of Transportation there. See attached testimony from the December 30, 2002 hearing.
- b. Since that time I applied for another Foreman II position for which management encouraged me to apply and for which management assured me that my evaluations were excellent. When I was not selected and someone much younger and less qualified was selected, I again asked who made such a decision. I was told by those who interviewed and encouraged me that the decision was made in Harrisburg by the Pennsylvania Department of Transportation.
- c. I, therefore, understand that Department of Transportation personnel decisions are not made locally but are made by the Department of Transportation in Harrisburg.

Sworn to and
subscribed to
before me, a
Notary Public,
on this the 28
day of June, 2005.

[S E A L]

Thomas McCracken

Notary Public



**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

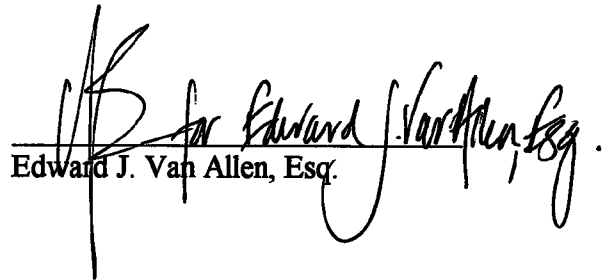
CIVIL DIVISION

Joseph M. Buynak,	:	
	:	No. 00-501-CD
vs.	:	
	:	<u>Jury Trial Demanded</u>
Department of Transportation,	:	
Commonwealth of Pennsylvania	:	Judge Ammerman

CERTIFICATE OF SERVICE

I, Edward J. Van Allen, Esq., do hereby certify that on this the 11th day of July, 2005, I did this day send, by United State mail, first class and pre-paid, a true and correct copy of the within Motion for an Extension to the counsel of record for the Defendant as follows:

Gwendoly Mosley, Esq.
Senior Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120


Edward J. Van Allen, Esq.

FILED

JUL 11 2005

William A. Shaw
Prothonotary/Clerk of Courts

[Handwritten signature]

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOSEPH BUYNAK

-VS-

DEPARTMENT OF TRANSPORTATION:
COMMONWEALTH OF PENNSYLVANIA:

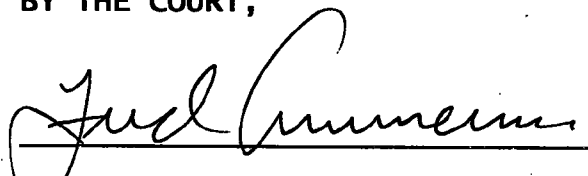
No. 00-501-CD

CA
FILED ^{2cc}
012:2061 Atty:
JUL 14 2005 VanAllen
William A. Shaw Mosley
Prothonotary/Clerk of Courts

O R D E R

NOW, this 13th day of July, 2005, the Court being in receipt of the Motion for an Extension of Time to File a Motion for Reconsideration presented on behalf of the Interveners, through counsel; this Court not being aware of any legal method that would enable the Court to grant an extension of time to file a Motion for Reconsideration; the Court noting that thirty (30) days has already passed from the docketing of the Court's Order in question and that, even if the Court granted additional time to file a Motion for Reconsideration, the applicable period of time in which to file an appeal has now lapsed; therefore, with the Court considering the Motion to be moot, it is hereby denied.

BY THE COURT,


President Judge