1989 WL 52506
United States District Court, E.D. Pennsylvania.

UNITED STATES of America
v.
BOARD OF EDUCATION FOR The SCHOOL DISTRICT OF PHILADELPHIA and Commonwealth of Pennsylvania.

CIV. A. No. 87–2842.
|
May 17, 1989.

**Attorneys and Law Firms**

Edward T. Ellis, Susan Dein Bricklin, Asst. U.S. Attys., Philadelphia, Pa., William R. Worthen, William B. Fenton, Michelle Rodriguez, U.S. Dept. of Justice, Employment Litigation Sec., Civil Rights Div., Washington, D.C., for U.S.

Susan J. Forney, Sr. Deputy Atty General, Harrisburg, Pa., for Commonwealth of Pennsylvania.

Robert T. Lear, Philadelphia, Pa., for Board of Education for the School District of Philadelphia.

*MEMORANDUM OF DECISION*

JAMES McGIRR KELLY, District Judge.

***1** This case was brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.,* alleging discrimination in employment on the basis of religion. The United States alleges both a pattern or practice of religious discrimination by defendants and individual discrimination by defendants against Ms. Alima Dolores J. Reardon, who filed a charge with the Equal Employment Opportunity Commission (EEOC). The United States seeks a declaratory judgment and injunctive relief including backpay.

The parties entered into extensive stipulations of fact after which a non-jury trial was conducted on July 18, 19, and 20, 1988. The United States and the Commonwealth of Pennsylvania (Commonwealth) submitted proposed findings of fact and conclusions of law, and all parties submitted briefs to the court. In consideration of the stipulations of the parties, the testimony at trial, and the submissions of the parties, the court enters the following findings of fact and conclusions of law.

*FINDINGS OF FACT*

1. Plaintiff United States brings this action pursuant to 42 U.S.C. §§ 2000e–5(f)(1) and 2000e–6.

2. The defendant, Board of Education for the School District of Philadelphia (Board), is a body appointed by the Mayor of Philadelphia and is charged with responsibility for providing a system of public education for the school age children of Philadelphia, Pennsylvania.

3. Defendant Commonwealth of Pennsylvania (Commonwealth) is one of the fifty states of the United States of America. The State Department of Education is an administrative department and an agency of the Commonwealth, responsible for regulating certain aspects of the operation of public schools within the Commonwealth.

4. A statute of the Commonwealth, enacted in 1895, provides as follows:

(a) That no teacher in any public school shall wear in said school or while engaged in the performance of his duty as such teacher any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect or denomination.

(b) Any teacher employed in any of the public schools of this Commonwealth, who violates the provisions of this section, shall be suspended from employment in such school for the term of one year, and in case of a second offense by the same teacher he shall be permanently disqualified from teaching in said school. Any public school director who after notice of any such violation fails to comply with the provisions of this section shall be

guilty of a misdemeanor, and upon conviction of the first offense, shall be sentenced to pay a fine not exceeding one hundred dollars ($100), and on conviction of a second offense, the offending school director shall be sentenced to pay a fine not exceeding one hundred dollars ($100) and shall be deprived of his office as a public school director. A person thus twice convicted shall not be eligible to appointment or election as a director of any public school in this Commonwealth within a period of five (5) years from the date of his second conviction. 1949, March 10, P.L. 30, art. XI, § 1112.

***2** Pa.Stat.Ann. tit. 24, § 11–1112 (Purdon 1982).

5. Alima Dolores Reardon has a sincere and good faith belief that her Muslim religion requires her to be attired in public in clothing of the type she wore while teaching or seeking to teach in public schools in Philadelphia in 1984 and 1985, consisting of a head scarf which covered her head, neck, and bosom leaving her face visible and a long loose dress which covered her arms to her wrists and her legs to her ankles.

6. Except with respect to the issue of wearing garb, Ms. Reardon was fully qualified to teach in the Commonwealth of Pennsylvania and the School District of Philadelphia.

7. Ms. Reardon was refused employment at the F. Amadee Bregy School in the Philadelphia public school system on October 30, 1984, when she appeared in what the principal, Michael N. Ianelli, believed to be religious garb.

8. Murray Ginsburg, principal of the Chester A. Arthur Elementary School in the Philadelphia public school system on November 1, 1984, was involved in refusing Ms. Reardon the opportunity to teach as a substitute teacher at that school on that date.

9. Mr. Ginsburg had been alerted by the District 2 office of the Philadelphia School District that Ms. Reardon was assigned to his school and that she might be appearing in religious garb.

10. Mr. Ginsburg informed Ms. Reardon, on November 1, 1984, that she would not be allowed to teach at the school while wearing what Mr. Ginsburg believed was religious garb.

11. Joseph M. Gavin, principal at Kirkbride Elementary School in the Philadelphia public school system, attended a staff meeting of District 2 of the Philadelphia School District at which he was informed that the School District viewed Ms. Reardon's attire as religious garb and violative of section 11–1112.

12. During the six days when Ms. Reardon worked as a substitute teacher at the Kirkbride Elementary School during the 1983–1984 school year, starting on April 12, 1984, Ms. Reardon wore the garb of her religion on each of those days.

13. On November 9, 1984 Ms. Reardon appeared again at the Kirkbride Elementary School to work as a substitute teacher in the garb of her religion similar to what she had previously worn while teaching there in April 1984. On November 9, 1984 Mr. Gavin informed Ms. Reardon that her dress was considered religious and thus prohibited.

14. Ms. Reardon would have been allowed to substitute teach in the Philadelphia public school system from October through December 1984 if she had changed her clothing to what was considered non-religious garb.

15. Ms. Reardon was refused an opportunity to substitute teach in the Philadelphia public school system from October through December 1984 because she was wearing clothing of the type that she believed her Muslim religion required her to wear. The parties have stipulated that the backpay loss to Ms. Reardon for the 27 school days between October 30 and December 13, 1984 was $1,734.75, and that total interest on Ms. Reardon's backpay loss through June 30, 1988 was $779.06, calculated on the basis of interest rates applied by the I.R.S. to delinquent taxpayers.

***3** 16. Subsequently, in 1985, Ms. Reardon was allowed to work as a full time teacher in the Philadelphia school system while wearing the attire of her religious faith, and Ms. Reardon taught in the Philadelphia school system from September to December of that year while wearing the attire of her religious faith. Ms. Reardon never attempted to convert any student to Islam.

17. Ms. Reardon filed a charge of discrimination pursuant to Title VII on November 27, 1984 with the EEOC in Philadelphia, Pennsylvania against the School District of Philadelphia.

18. Ms. Reardon filed an amended charge of discrimination pursuant to Title VII on June 24, 1985 with the EEOC in Philadelphia, Pennsylvania against the School District of Philadelphia and the Commonwealth of

Pennsylvania.

19. Both Ms. Reardon's charge of discrimination dated and received by the EEOC on November 27, 1984 and her amended charge dated June 24, 1985 and received by the EEOC on June 26, 1985 alleged discrimination in employment on grounds of religion.

20. The EEOC styled the charge of discrimination filed by Ms. Reardon *Reardon v. School District of Philadelphia,* 031–85–0704.

21. On December 12, 1984, the EEOC referred Ms. Reardon's original charge of discrimination to the Philadelphia Commission on Human Relations, Philadelphia, Pennsylvania.

22. By undated memorandum signed by Thomas D. Hadfield, the EEOC noted to the Pennsylvania Human Relations Commission, Harrisburg, Pennsylvania that the EEOC had transmitted the charge which would be initially be processed pursuant to the work sharing agreement by the EEOC.

23. On December 12, 1984 the School District of Philadelphia was notified by certified mail that Ms. Reardon's charge of discrimination was referred to the Philadelphia Commission on Human Relations.

24. By memorandum dated March 5, 1985 and received by the EEOC on March 19, 1985, the Philadelphia Commission on Human Relations acknowledged receipt of Ms. Reardon's charge of discrimination from the EEOC and informed the EEOC that it would not proceed on the charge because it lacked jurisdiction as the practice complained of was based on State law.

25. The Equal Employment Opportunity Commission investigated the charge of discrimination filed by Ms. Reardon.

26. On June 17, 1986 Thomas P. Hadfield, Acting District Director in Philadelphia, Pennsylvania made a reasonable cause determination concluding, *inter alia,* that there was reasonable cause to believe that the School District of Philadelphia and the Commonwealth of Pennsylvania had discriminated against Ms. Reardon in employment on the basis of her religion.

27. The EEOC offered the opportunity to both the School District of Philadelphia and the Commonwealth of Pennsylvania to engage in conciliation of Ms. Reardon's charge of discrimination.

28. By letters dated August 1, 1986 and August 8, 1986 the Commonwealth of Pennsylvania by and through the authority of Senior Deputy Attorney General Susan Forney informed the EEOC that it was unwilling to participate in conciliation of the Reardon charge.

***4** 29. By telephone on August 5, 1986 Equal Employment Opportunity Specialist Arthur Tucker contacted Mr. Robert T. Lear who represented the Philadelphia School District. Mr. Lear informed Mr. Tucker that the School District would not engage in conciliation of the Reardon charge.

30. By letter dated August 11, 1986 the EEOC, through Mr. Hadfield, informed the School District of Philadelphia that its efforts to conciliate Ms. Reardon's charge, Charge No. 031–85–0704, had been unsuccessful.

31. By letter dated August 11, 1986 the EEOC through Mr. Hadfield informed the Commonwealth of Pennsylvania that its efforts to conciliate Ms. Reardon's charge, Charge No. 031–85–0704 had been unsuccessful.

32. By letter of August 11, 1986 EEOC Compliance Manager William D. Cook notified Ms. Reardon that conciliation had been unsuccessful and that the charge would be referred to the Department of Justice.

33. By memorandum of August 15, 1986, received by the Department of Justice on August 19, 1986, the EEOC transmitted Ms. Reardon's charge, Charge No. 031–85–0704, to the Department of Justice.

34. The School District of Philadelphia is part of the system of public education of the Commonwealth of Pennsylvania.

35. The Board of Education of the School District of Philadelphia, by a majority vote of all of its members, appoints and fixes the compensation of the Superintendent of Schools.

36. The Superintendent of Schools is the chief administrative officer and chief instructional officer of the Board of Education of the School District of Philadelphia.

37. The Superintendent is responsible for carrying out the actions of the Board, administering the public schools pursuant to the Board's policies and state law, and supervising all matters relating to instruction in the

schools.

38. The Board of Education for the School District of Philadelphia presently intends to prevent individuals who wear what the Board or its designees understand to be religious marks, emblems, insignia or garb as described in section 11–1112 from teaching in institutions subject to the public school code.

39. The Pennsylvania Secretary of Education is appointed by the Governor and is a member of his cabinet.

40. Generally, the State Department of Education is responsible for commissioning superintendents and assistant superintendents, certificating teachers, prescribing minimum curriculum requirements, inspecting school buildings to insure that they are fit for use, enforcing certain aspects of the public school code and allocating state subsidies for public schools, as required by state statute.

41. The State Department of Education does not hire teachers, principals or superintendents for the School District of Philadelphia.

42. The State Department of Education does not directly pay teachers, principals or superintendents employed in the School District of Philadelphia.

43. The Commonwealth of Pennsylvania believes that section 11–1112 was correctly invoked to prevent Ms. Reardon from substitute teaching in the public schools under the jurisdiction of the Board of Education for the School District of Philadelphia.

***5** 44. The Commonwealth of Pennsylvania by and through the State Department of Education believes that section 11–1112 applies and is enforceable in all public schools and institutions in Pennsylvania subject to the public school code.

45. If asked by a local school board or administrator the Commonwealth of Pennsylvania State Department of Education and the Commonwealth of Pennsylvania Office of State Attorney General would advise that section 11–1112 is valid and enforceable.

46. The Pennsylvania State Department of Education has responsibility to see that the public school code is enforced.

47. The State Department of Education has within its authority as a method for enforcing the public school code the right to take action against a school superintendent's commission in accordance with the decertification provisions of the public school code.

48. The State Department of Education can withhold the state subsidy to a school district for failing or refusing to comply with the laws and regulations of any department of the Commonwealth for preserving the health and safety of pupils enrolled in the public schools.

49. The State Department of Education has never considered whether a violation of section 11–1112 could be considered a violation of the health or safety of public school students.

50. The State Department of Education has never brought an action to enforce section 11–1112.

51. Mr. Harvey Cooper has been a teacher in the Philadelphia public school system since 1974.

52. Mr. Cooper wears a yarmulke as part of his religious practice as an Orthodox Jew, and has worn it while teaching every day beginning in 1976.

53. While seeking a transfer from John Marshall Elementary School in 1983, Mr. Cooper was informed by the superintendent of District 7 that if he transferred to another school in the same district, he would be forced to comply with section 11–1112. Mr. Cooper therefore transferred to a school in another district, Lincoln High School.

54. No administrator at Lincoln High School has prohibited Mr. Cooper from teaching while wearing his yarmulke.

55. Mr. Cooper observes all Jewish holidays, and does not shave at certain times of the year for religious reasons.

56. Students have infrequently asked Mr. Cooper about his beard, why he wore his yarmulke, and why he was out of school on certain days.

57. Mr. Cooper has noticed other teachers in the schools in which he has worked regularly wearing religious garb or symbols, and he has never heard or seen a disruptive effect on students from the wearing of religious garb or symbols in the classroom.

58. Factions have not formed among his students based on

Mr. Cooper's wearing of his yarmulke.

59. Mr. Cooper has never advocated nor attempted to teach his religious beliefs to his students, nor has he ever been accused of such conduct. No parent or student has ever complained about Mr. Cooper's wearing of his yarmulke in the classroom.

***6** 60. Deborah Goins has been employed by the Board as an aide in the Philadelphia public school system since 1980.

61. Ms. Goins has worn a Star of David during her school duties as a practice of expressing her religious beliefs as a Jew.

62. No parent or student has ever complained to Ms. Goins about her wearing a Star of David, and she has never been asked a question by a student about her Star of David.

63. Ms. Goins never attempted to teach or advocate her religious beliefs to any students.

64. Ms. Goins saw other aides or teachers in the Philadelphia public schools wearing religious symbols or insignia.

65. Ms. Goins was never asked to remove her Star of David until she began work as a classroom aide at the Lowell Elementary School in March, 1988, at which time she was told by the principal to remove the Star of David and not to return to the school wearing the symbol.

66. Ms. Goins was not offered any accommodation of her practice of wearing the Star of David. Ms. Goins did not strictly comply with the order, however, and wore the Star of David inside a blouse or sweater.

67. Cynthia Moore sought employment with READS, an organization in the Philadelphia School District which provided private schools with counseling services.

68. Ms. Moore, wearing a head scarf, was interviewed for a counseling job at READS.

69. Ms. Moore was offered the alternative of working for READS without wearing a head scarf or wearing the head scarf and not getting the job.

70. Ms. Moore wore the head scarf as a practice of her Islamic faith.

71. Mr. Donald C. Rippey is Administrative Assistant to the Superintendent in the Lancaster County, Pennsylvania public school system. For more than 20 years, Mr. Rippey served exclusively as a principal in that system.

72. Mr. Rippey became aware of section 11–1112 in 1973, when the superintendent of the Lancaster County school system ordered him, pursuant to section 11–1112, to instruct a Mennonite teacher in Mr. Rippey's school to remove her Mennonite bonnet.

73. Prior to 1973, Mr. Rippey saw teachers in the Lancaster County public school system who were wearing Mennonite bonnets.

74. Mr. Rippey was not aware of the contents of section 11–1112, nor was he aware of any action taken to prevent teachers in the Lancaster school system from wearing Mennonite bonnets, prior to 1973. Mr. Rippey heard no complaints from students, parents, teachers or administrators prior to 1973 about teachers wearing religious garb.

75. Mr. Rippey was not trained as to what was prohibited by section 11–1112 as religious garb, emblems, marks, or insignia, nor was he familiar with all such items worn by adherents of every religion.

76. Ms. Mary M. Rogers has been Chief Counsel for the Pennsylvania State Department of Education since 1984.

77. Ms. Rogers has never been called upon personally to answer any questions about section 11–1112.

78. As of December 23, 1987 Ms. Rogers did not recall having supervised any employee who was requested to answer any questions with respect to section 11–1112, which were coming from a school district or from any other State Department of Education employee.

***7** 79. The Pennsylvania State Department of Education has never had an occasion to ask the Office of the State Attorney General about the scope of Section 11–1112.

80. Private residential rehabilitative institutions (PRRIs) are private institutions in Pennsylvania which provide educational and rehabilitative services to juveniles who are committed to the institutions' care by court order.

81. PRRIs receive state funds through the Pennsylvania State Department of Education and are subject to section

11–1112.

82. Intermediate units and local school districts have the power to contract with the PRRIs to provide the educational services needed by juveniles.

83. The State Department of Education provides guidelines for the development of contracts between intermediate units or school districts and PRRIs.

84. Section 11–1112 is referenced in the text of the "Basic Guidelines for Contract Development Between the Intermediate Unit or School District and the Private Residential Rehabilitative Institution."

85. One of the assurances in the guidelines states that "no teacher in any institution shall in the performance of his/her duty wear any dress, mark, emblem, or insignia indicating the fact that he/she is a member or adherent of any religious order, sect, or denomination."

86. This assurance is also contained in paragraph 27 of the model contract provided by the State Department of Education to school districts and intermediate units.

87. In 1984, one PRRI, St. Gabriel's Hall, raised an objection to including paragraph 27 (the requirement that the institution agree to be covered by the substance of section 11–1112) in its contract.

88. St. Gabriel's Hall is a private Catholic institution located in Montgomery County, Pennsylvania.

89. In order to participate in the PRRI program, St. Gabriel's Hall was required to sign a contract for services with the Montgomery Intermediate Unit that included paragraph 27 (the requirement that the private institutions agree to be covered by the requirements of section 11–1112).

90. All PRRIs including St. Gabriel's Hall have been required to sign affidavits to the effect that they will abide by the requirements of Section 11–1112 pursuant to their contracts.

91. The objection to the inclusion of paragraph 27 resulted in a dispute between St. Gabriel's Hall and the Montgomery Intermediate Unit. The issue of paragraph 27 was initiated by St. Gabriel's Hall and not by the Montgomery Intermediate Unit, the State Department of Education or the United States Department of Education, Office of Civil Rights, Region III.

92. Mr. William Mader was the Chief of the Correctional Education Division of the Pennsylvania State Department of Education on December 23, 1987.

93. Mr. Mader's position as Chief of the Correctional Education Division involves responsibility for providing educational opportunities for youth development centers; forestry camps; and correction facilities. Mr. Mader is responsible for educational systems which supervise, on an average daily basis, 700 students who are subject to the Pennsylvania public school code and hence section 11–1112, and 4,500 adult prisoners who are not subject to section 11–1112.

***8** 94. Prior to 1987, Mr. Mader had never heard of section 11–1112.

95. Mr. Mader's knowledge of section 11–1112 is a result of the instant lawsuit.

96. Mr. Mader has never received instructions from a superior on the implementation of section 11–1112.

97. Mr. Mader has never informed his subordinates with respect to the implementation, meaning or application of section 11–1112.

98. The Pennsylvania State Department of Education requires the teachers at three state owned schools to comply with section 11–1112.

99. Mr. William R. Logan is Deputy Commissioner of the Pennsylvania State Department of Education. He has direct responsibility for two state schools, the Scotland School for Veterans' Children and the Scranton School for the Deaf, and some responsibility for the Thaddeus Stevens State School of Technology. He started working for the Pennsylvania State Department of Education in 1968.

100. Mr. Logan has never been instructed with respect to the proper application of section 11–1112.

101. Mr. Logan has never instructed any subordinate with respect to the proper application of section 11–1112.

102. Mr. Logan was Director of the Bureau of Basic Education Fiscal Administration in the Pennsylvania State Department of Education which was, among other things, responsible for the PRRI program in 1984 and 1985.

103. Prior to the objection raised by St. Gabriel's Hall in 1984, Mr. Logan had not been aware of section 11–1112.

104. When Mr. Logan was Director of the Bureau of Fiscal Administration with responsibility for the PRRI program, he did not do anything to implement section 11–1112.

105. Mr. Joseph Bard is the Chief of the Division of Advisory Services of the Bureau of Basic Education Support Services and is responsible for interpretation and enforcement of the Pennsylvania public school code and the regulations applicable to school districts across Pennsylvania.

106. The division works with school district superintendents by issuing advice and approval as required to superintendents or their school districts with regard to the pblic school code.

107. Mr. Bard began as chief of the division in 1984.

108. According to Mr. Bard, there are no specific responsibilities arising from section 11–1112 for any individual in the division.

109. Mr. Bard has not advised any school district or school superintendent on the application of section 11–1112 nor has he been asked by anyone to advise any school districts or superintendents on it.

110. Mr. Bard first became aware of section 11–1112 when he became aware of this case between late fall and early winter of 1987.

111. Mr. Bard has never received instructions from his superiors on the proper application, understanding, interpretation or enforcement of section 11–1112.

112. Mr. Bard does not know what the Commonwealth's role would be in enforcing section 11–1112 in state-owned schools.

113. Mr. Bard is not aware of any other individual in the Department of Education who has responsibility more specific than his to enforce, interpret, or advise local school boards, school districts or school superintendents with respect to section 11–1112.

***9** 114. Mr. Ianelli, a principal in the Philadelphia public school system who refused employment to Ms. Reardon based on her garb, has been aware of the prohibition against teachers wearing religious garb or symbols since he began teaching.

115. While a public school principal in Philadelphia, Mr. Ianelli has asked teachers under his authority wearing a small cross or a Star of David to take them off because they are prohibited under section 11–1112.

116. Mr. Ginsburg, a public school principal in Philadelphia who refused employment to Ms. Reardon based on her garb, was aware of the substance of section 11–1112 as common knowledge, but never received a copy of the provision or an explanation of how to apply it.

117. Mr. Ginsburg instructed teachers under his authority wearing small crosses to take the symbols off or to hide them to prevent the students from seeing the symbols.

118. Mr. Gavin, a public school principal in Philadelphia who refused employment to Ms. Reardon based on her garb, instructed teachers under his authority wearing crosses or Stars of David that the display of such symbols was not permitted.

119. On August 18, 1987, Mr. Arnold Moss was an Assistant Director of the Office of Personnel Operations of the School District of Philadelphia.

120. Mr. Moss was designated by the Board of Education for the School District of Philadelphia pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure to testify on the methods of selection used by the School District of Philadelphia to select teachers and substitute teachers.

121. The first knowledge that Mr. Moss had of section 11–1112 was gained as a result of the incident involving Ms. Dolores Reardon in 1984–1985.

122. Mr. Moss began his employment in the School District of Philadelphia as a teacher in 1959.

123. Mr. Moss started his current job in July, 1966.

124. The "Handbook for Substitute Teachers" issued by the School District of Philadelphia from its Office of Staff Training and Office of Curriculum and Instructional Development does not mention section 11–1112.

125. On October 7, 1987, Patricia A. Donovan, Esquire, was employed as Assistant General Counsel to the Board of Education of the School District of Philadelphia. She has held this position since 1980.

126. Ms. Donovan was designated by the Board of Education for the School District of Philadelphia pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure to testify on, among other matters, the meaning and application of section 11–1112.

127. Ms. Donovan's primary duty is to advise the Board and school district officers, with respect to state and federal programs and matters.

128. Ms. Donovan's understanding is that section 11–1112 prohibits the wearing of religious garb by a teacher in a public classroom even though the intent of the wearer was not religious.

129. I find that neither the Board nor the Commonwealth has applied the prohibition against the wearing of religious garb or symbols by teachers in the public schools set forth in section 11–1112 regularly or consistently.

***10** 130. I find that neither the Board nor the Commonwealth has established any program or set of guidelines for the consistent application of section 11–1112 in public schools subject to that provision.

131. Fr. Peter Stravinskas, a priest in the Roman Catholic church, is an administrator of Holy Trinity church and a Professor of Education at St. Johns University in New York City.

132. Fr. Stravinskas testified as an expert on education and on 19th century American anti-Catholicism.

133. In the opinion of Fr. Stravinskas, there is a direct linkage between anti-Catholicism and the enactment of section 11–1112.

134. Fr. Stravinskas reviewed the legislative debate over the passage of section 11–1112.

135. The legislative debates referred to the need to overcome the result of *Hysong v. School District of Gallitzin,* 164 Pa. 629, 30 A. 482 (1894), which had indicated that there was no legal barrier to wearing religious garb in public school classrooms.

136. The fact that the Pennsylvania religious garb bill, presently codified as section 11–1112, appeared in the legislature soon after the failure in *Hysong v. Gallitzin* to exclude garbed Catholic nuns and priests from teaching in public school helped persuade Fr. Stravinskas that there was a causal relationship between the failure in the courts to exclude garbed nuns from the classroom and the introduction and enactment into law of the garb bill.

137. Fr. Stravinskas testified that there were references in the legislative debates to the Junior Order of United American Mechanics and the American Protective Association, and that there were recurrent references to keeping "our public schools" and "our common schools" free of sectarian influence. Fr. Stravinskas testified that the word "sectarian" was historically used as code language for Roman Catholic.

138. Fr. Stravinskas drew a variety of conclusions based on the research he reviewed and his overall expertise in the fields of American anti-Catholicism and education. It was his conclusion that the principal "patriotic orders" in 19th century America were the American Protective Association (APA), the Order of United American Mechanics and the Junior Order of United American Mechanics, and that the Pennsylvania religious garb bill of 1895 was a part of the legislative agenda of the Junior Order of United American Mechanics and the APA.

139. Fr. Stravinskas concluded that a major tenet of anti-Catholic organizations such as the Junior Order of United American Mechanics and the APA in the 1890's was exclusion of Catholic priests and nuns from direct involvement in public education.

140. With regard to the *History of the Junior Order of United American Mechanics,* Fr. Stravinskas believes that the claims of responsibility for the Pennsylvania religious garb bill made by the Junior Order in the book are reliable, and that there was a direct correlation between the failure of the plaintiffs in *Hysong v. Gallitzin* to prevent Catholic nuns and priests from teaching in public schools and the subsequent efforts to enact the garb bill.

***11** 141. Fr. Stravinskas testified that at the time of the passage of the religious garb bill, Protestant ministers were substantially involved at every level of American public education, and that bible reading from the King James version of the Bible, a non-Catholic version, was a standard practice. Fr. Stravinskas also testified that it was his opinion that regular reading from the King James version of the Bible in public schools was certainly part of the agenda of the "patriotic orders" of 19th century America.

142. The opinion of Fr. Stravinskas that there is a direct

linkage between anti-Catholicism and the enactment of the religious garb bill was also influenced by reports he read in general circulation newspapers of the period in question.

143. I find Fr. Stravinskas' testimony and the evidence upon which he based his conclusions highly persuasive, and I conclude that anti-Catholicism was a significant factor in the passage of the Pennsylvania religious garb bill of 1895, now codified as section 11–1112.

144. Dr. Frank J. Landy testified as an expert in applied psychology regarding the effect on students of a teacher wearing religious garb in the classroom.

145. Dr. Landy testified as to his conclusions as a result of a review conducted by Dr. Landy and a team of psychologists of scientific literature deemed relevant to the question of the effect of a teacher's religious garb on students.

146. Dr. Landy and his team reached their conclusions without conducting a clinical study of the effect of a teacher's religious garb on students.

147. Dr. Landy and his team reached their conclusions without reviewing any specific studies of the effect of religious garb on students.

148. Dr. Landy concluded that students would perceive the wearing of religious garb by a teacher as an endorsement of the religion by the teacher.

149. Dr. Landy concluded that teachers are authority figures in the classroom and have the capacity, should they choose to exercise it, of influencing the religious attitudes and beliefs of students in the classroom.

150. Dr. Landy concluded that wearing religious garb in the classroom is a novel stimulus that will lead to question asking behavior.

151. Dr. Landy concluded that there is a possibility that ingroup and outgroup formation among students along religious lines could occur as a result of the wearing of religious garb by a teacher.

152. Dr. Landy and his team reviewed no studies regarding religion as a stimulus for the grouping phenomenon among students.

153. Dr. Landy testified, upon viewing Gov.Ex. 86, a picture of Ms. Goins wearing a Star of David, that such a symbol is not a sufficiently novel stimulus to generate question asking behavior among students.

154. Dr. Landy testified, upon viewing Gov.Ex. 84, a picture of Ms. Moore wearing the scarf of her Islamic faith, that such garb is not a sufficiently novel stimulus to generate question asking behavior by students.

***12** 155. Dr. Landy testified that there is a possibility that the wearing of religious garb by a teacher could be seen by students as an endorsement of the religion by the state or the school district.

156. I find Dr. Landy's view, that the wearing of religious garb by a teacher could possibly result in a perception by students of an endorsement of the religion by the state or school district, unpersuasive on the issue of whether such a result is likely or probable. Dr. Landy did not base his views on the review of any studies of the impact of religious garb on students nor did Dr. Landy and his team conduct any such clinical studies.

157. I find from the unrebutted evidence presented at trial that only five states have statutes or regulations similar to section 11–1112.

## *CONCLUSIONS OF LAW*

### *Jurisdiction*

1. This court has jurisdiction over the parties and subject matter pursuant to 28 U.S.C. § 1345; 42 U.S.C. §§ 2000e–5(f)(3), 2000e–6(b).

### *Section 2000e–2(a)(1)*

2. The United States asserts that each of the defendants has committed an unlawful employment practice by failing to accommodate Ms. Reardon's religious practice, by utilizing section 11–1112 as a basis for preventing Ms. Reardon from substitute teaching in the Philadelphia public schools in the fall of 1984. 42 U.S.C. § 2000e–2

provides in pertinent part that:

[i]t shall be an unlawful employment practice for an employer—to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e–2(a)(1).

3. 42 U.S.C. § 2000e(j) defines the term religion as including "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." *Id.* "The intent and effect of this definition was to make it an unlawful employment practice under § 703(a)(1) for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees." *Trans World Airlines, Inc. v. Hardison,* 432 U.S. 63, 74 (1977). The result is the creation of a religious accommodation requirement as part of Title VII'S statutory scheme.

4. The Board of Education for the School District of Philadelphia is a statutory employer, pursuant to 42 U.S.C. § 2000e(a), (b), and was Ms. Reardon's employer for purposes of section 2000e–2(a)(1) during the fall of 1984.

5. The Commonwealth of Pennsylvania fits the statutory definition of employer, pursuant to 42 U.S.C. § 2000e(a), (b). Nevertheless, the Commonwealth is not Ms. Reardon's employer for purposes of liability under section 2000e–2(a)(1). The control exercised by the Commonwealth over the terms of her employment, through the force of section 11–1112, is exercised by the Commonwealth in its role as regulator and not in its role as employer in the customary sense of the word. *See George v. New Jersey Board of Veterinary Medical Examiners,* 635 F.Supp. 953, 956 (D.N.J.1985), *aff'd,* 794 F.2d 113 (3d Cir.1986). Nothing resembling an employer-employee relationship has been shown to exist between the Commonwealth and Ms. Reardon. Therefore, I conclude that the Commonwealth is not an employer within the meaning of section 2000e(b) with respect to Ms. Reardon, and is therefore not subject as to Ms. Reardon to the prohibition of unlawful employment practices set forth in section 2000e–2(a)(1).

***13** 6. Ms. Reardon's commitment to wearing her head scarf and other attire was a result of her sincere and good faith belief that her religion requires her to be attired in such clothing while in public. Ms. Reardon's commitment to wearing her garb in public was a religious practice subject to the protection of sections 2000e–2(a)(1) and 2000e(j).

7. The Board did not make any offer to accommodate Ms. Reardon's practice of wearing her religiously required garb. Ms. Reardon was simply refused employment as a substitute teacher while wearing her garb, by three principals of the Philadelphia public school system. The principals who refused Ms. Reardon employment did so on the basis of what they understood to be the prohibition on religious garb embodied in section 11–1112. Ms. Reardon was otherwise qualified to substitute teach, and would have been allowed to do so from October to December 1984 if she had changed her clothing to what was considered non-religious garb. The Board has stated that it intends to continue this policy of preventing teachers wearing religious garb or symbols from teaching in the public schools. The Board failed to propose or engage in any reasonable accommodation of Ms. Reardon's religious practice.

8. In a religious accommodation case, once a plaintiff establishes a prima facie case, the burden shifts to the employer to demonstrate that it cannot reasonably accommodate the worker without undue hardship. *See Protos v. Volkswagen of America, Inc.,* 797 F.2d 129, 133–34 (3d Cir.), *cert. denied,* 479 U.S. 972 (1986). A prima facie case is established by showing: "(1) he or she has a bona fide religious belief that conflicts with an employment requirement; (2) he or she informed the employer of this belief; (3) he or she was disciplined for failure to comply with the conflicting employment requirement." *Id.* at 133 (citations omitted).

9. It is clear that the United States has demonstrated a prima facie case of the Board's failure to accommodate Ms. Reardon's religious practice. The principals who refused Ms. Reardon the opportunity to substitute teach explicitly asserted that her religious practice of wearing the attire of her faith was the very reason for preventing her from teaching. Moreover, because the case was fully tried on the merits, the relevant issue for decision is whether the defendant has demonstrated either a reasonable accommodation to Ms. Reardon's practice or that it is unable to so accommodate without undue

hardship. *See Ansonia Bd. of Educ. v. Philbrook,* 479 U.S. 60, 67–68 (1986).

10. I conclude that the Board has not engaged in nor proposed any reasonable accommodation to Ms. Reardon's religious practice. Therefore, the Board must show that it is unable to reasonably accommodate Ms. Reardon without incurring undue hardship. *Id.* at 68–69.

11. In *Hardison,* the Court held that to require an employer "to bear more than a *de minimis* cost" in accommodating its employee is an undue hardship. *Hardison,* 432 U.S. at 84. The determination of the extent of undue hardship which would be incurred by the employer by reason of accommodation of the employee's practice is to be made by considering the particular factual context of the case, including an evaluation of the fact as well as the magnitude of hardship. *Protos,* 797 F.2d at 134 (quoting *Tooley v. Martin–Marietta Corp.,* 648 F.2d 1239, 1243 (9th Cir.), *cert. denied,* 454 U.S. 1098 (1981)).

***14** 12. The Board contends that it could not accommodate Ms. Reardon's religious beliefs without violating section 11–1112, a current provision of Pennsylvania law, and that violating the statute would constitute undue hardship. The Board also asserts in its answer that it cannot accommodate Ms. Reardon's practice without undue hardship because to do so would (1) violate the establishment clause of the first amendment of the United States Constitution; and (2) contravene the Board's compelling interest in avoiding endorsement of religion in the public schools or the appearance of such endorsement. I conclude that the Board has not demonstrated that it is unable to accommodate Ms. Reardon's religious practice without undue hardship.

13. The Board would not incur undue hardship, by violating section 11–1112, in accommodating Ms. Reardon's practice of wearing the attire of her faith. The evidence demonstrates that the Commonwealth has never brought an action to enforce section 11–1112, nor has it ever taken any responsive action against violators of the statute. Moreover, the Board itself has permitted teachers in the Philadelphia public schools to wear religious garb or symbols in the past without adverse legal consequences. In fact, Ms. Reardon herself was permitted to teach full-time in the Philadelphia public schools in 1985.

The supremacy clause of the Constitution mandates that Title VII's religious accommodation requirement, which clearly conflicts with the absolute prohibition on accommodation set forth in section 11–1112, controls the issue. Moreover, the argument asserted by the Board and the Commonwealth based on the principles of the establishment clause is a separate justification of the Board's actions which is inapplicable to the Board's state statute hardship argument.

The Board would incur no cost whatsoever in violating section 11–1112 by complying with the reasonable accommodation provision of Title VII. A review of the evidence of the inconsistent and sporadic enforcement of section 11–1112 by the Board and the complete lack of enforcement of section 11–1112 by the Commonwealth compels the conclusion that any cost to the board as a result of violating section 11–1112 in accommodating Ms. Reardon is merely hypothetical,[1] and thus does not constitute undue hardship.

14. The Board asserts that it has a compelling interest in avoiding the actual or symbolic endorsement of religion by the public schools. Nevertheless, the evidence has not shown that accommodating Ms. Reardon's practice of wearing the attire of her religious faith would contravene this interest arising from establishment clause principles and thus result in undue hardship to the Board. I have not found from the evidence presented at trial that permitting a public school teacher to wear a scarf required by her religious faith would be likely or probable to create a perception among students that the school, the school district, or the municipal or state governmental entity endorsed the religion of the teacher.

***15** Dr. Landy, the Commonwealth's expert at trial on the issue of the effect of a teacher's religious garb on students, did not testify that such a result was likely or probable to occur. Moreover, I have previously found that Dr. Landy's testimony that permitting a teacher to wear religious garb might possibly result in a perception by students that the school or local governmental entity endorsed the teacher's religion was unpersuasive. Defendant Board has simply failed to demonstrate that accommodation of Ms. Reardon's religious practice would contravene the important interest of avoiding the symbolic or actual endorsement of religion by the Board or other official entity, and thus has failed to demonstrate that accommodation would require the Board to incur more than a *de minimis* hardship.[2]

15. The Board finally asserts that it would incur undue hardship in accommodating Ms. Reardon's religious

practice because to do so would violate the establishment clause of the first amendment. This contention can be viewed as requiring two separate lines of analysis. The first issue arising from the Board's contention is whether the Board would violate the establishment clause if it failed to prohibit Ms. Reardon from wearing the attire of her religious faith. The second issue is whether the religious accommodation requirement of Title VII itself violates the establishment clause of the first amendment. I conclude that no violation of the establishment clause would result from the Board's acquiescence in Ms. Reardon's religious practice pursuant to the religious accommodation requirement of Title VII.

16. The Board's acquiescence in Ms. Reardon's religious practice would not violate the establishment clause. The relevant test for determining whether government action violates the establishment clause is the three-pronged test set forth in *Lemon v. Kurtzman,* 403 U.S. 602 (1971). The Supreme Court has noted that the *Lemon* test has been relied on "in every case involving the sensitive relationship between government and religion in the education of our children." *Grand Rapids School Dist. v. Ball,* 473 U.S. 373, 383 (1985).

The *Lemon* test requires that: (1) the government action or statute must have a secular purpose; (2) the principal or primary effect of the statute or action must be one that neither advances nor inhibits religion; and (3) the action or statute must not foster excessive governmental entanglement with religion. *Lemon,* 403 U.S. at 612–13.

17. None of the defendants has disputed that the first and third prongs of the *Lemon* test are met here. First, if the Board allowed Ms. Reardon to wear the attire of her religious faith in the classroom, it would be for the purpose of complying with the accommodation requirement of Title VII, a manifestly secular purpose. Moreover, the purpose of the accommodation requirement itself is plainly "to relieve individuals of the burden of choosing between their jobs and their religious convictions, where such relief will not unduly burden others." *Protos,* 797 F.2d at 136 (citations omitted).

***16** Second, permitting Ms. Reardon to wear the attire of her religious faith, or more precisely, refraining from enforcing section 11–1112's prohibition against wearing such garb, would not foster institutional entanglement with religion. To the contrary, entanglement in the form of monitoring or continuing evaluation and surveillance would necessarily arise in the course of enforcement of section 11–1112, rather than in the course of refraining from enforcement of that section in compliance with Title VII. Enforcement of section 11–1112 would require an evaluation by the Board or its designees of whether the particular garb or symbol at issue indicated that the wearer was a member or adherent of a religious group, whereas non-enforcement of section 11–1112 would require no action by the Board whatsoever.

18. The issue whether, in permitting Ms. Reardon to wear the attire of her religious faith, the Board's action would have the principal or primary effect of advancing or inhibiting religion presents a closer question. The United States, the Commonwealth and the Board have focused primarily on this issue in their arguments before the court and in their briefs. The court is not unmindful of the sensitive inquiry required in the circumstances presented by this case. As the Supreme Court has noted,

an important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices. The inquiry into this kind of effect must be conducted with particular care when many of the citizens perceiving the governmental message are children in their formative years.

*Grand Rapids School Dist. v. Ball,* 473 U.S. at 390 (footnote omitted).

Initially, it must be noted that I have concluded that the testimony of the expert witness presented on the issue of the effect of teacher's religious garb on students did not demonstrate that students were likely to perceive the wearing of religious garb by a teacher as an endorsement of religion by the school, the Board, or the state or local government entity. Moreover, the defendants' expert witness in applied psychology testified at trial, upon viewing photographic exhibits depicting two of the witnesses in this case wearing a Star of David and the attire of the Islamic faith, respectively, that neither the symbol nor the garb pictured was a sufficiently novel stimulus to generate question asking behavior among students, and specifically that students would have no idea that the Islamic head scarf pictured was worn for religious purposes.

19. The state action at issue in the present case is distinguishable from statutes or governmental action previously held by the Supreme Court to violate the

establishment clause in the context of primary or secondary education. For example, the impermissible effect in *Grand Rapids School District* arose from the symbolic union of government and religion inherent in two programs in which state-paid instructors conducted non-religious courses in non-public schools, in classrooms leased from the predominantly religious schools. The Court concluded that because the government-financed programs took place in the religious school buildings and the classes were composed largely of students who were adherents of the same religious denomination, the resulting enterprise involving both government and religion created a symbol of state endorsement of the religious beliefs taught at other times in the non-public schools. *Grand Rapids School District,* 473 U.S. at 391–92. Unlike the programs in *Grand Rapids School District,* the government action at issue in the case before this court involves no activities conducted in religious school classrooms nor any activities conducted in classes composed of adherents of one religion. I conclude that the mere acquiescence of the Board in Ms. Reardon's religious practice would not create an environment establishing a symbolic union of government and religion in a united enterprise such as was found impermissible in *Grand Rapids School District.*

***17** Additionally, acquiescing in Ms. Reardon's wearing of the attire of her religion involves no endorsement by the Board of any substantive religious viewpoint. The Board would not, for example, be permitting or requiring a moment of silence in the classroom, *see Wallace v. Jaffree,* 472 U.S. 38 (1985), nor would the Board be forbidding the teaching of evolution, *see Epperson v. Arkansas,* 393 U.S. 97 (1968), requiring the teaching of creation science along with the theory of evolution, *see Edwards v. Aguillard,* 482 U.S. 578 (1987), or requiring that the Ten Commandments be posted in public classrooms, *see Stone v. Graham,* 449 U.S. 39 (1980). While the Court focused on the impermissible purpose behind the statutes at issue in the above cases, a comparison of the dramatic state action involved in those cases with the Board's non-action in permitting Ms. Reardon to wear her religiously-required attire demonstrates the stark contrast between state action which has been held to violate the establishment clause and the action at issue in this case. Unlike any of the cases referred to above, the action of the Board in permitting Ms. Reardon to wear her religiously-required attire does not involve the endorsement of a particular substantive religious message or viewpoint.

20. The history of sporadic and inconsistent enforcement of section 11–1112 by both the Board and the Commonwealth does not support the Board's contention that enforcement of section 11–1112 is essential to avoid the effect of symbolic state endorsement of religion in the public schools. Quite to the contrary, the Board's assertion that failure to enforce section 11–1112 would violate the establishment clause is severely undercut by the history of failure by the Board to consistently enforce section 11–1112 or to develop any program setting forth guidelines for the application of the provision or promoting awareness of the provision among the administrators or teachers of the Philadelphia public school system. In fact, the "Handbook for Substitute Teachers" issued by the Philadelphia School District contains no reference to section 11–1112. Moreover, Mr. Moss, Assistant Director of the district's Office of Personnel Operations since 1966, became aware of section 11–1112 only as a result of the incident involving Ms. Reardon in 1984.

21. In contending that failure to enforce section 11–1112, in compliance with the requirements of Title VII, would violate the establishment clause, the Board is in effect arguing that enforcement of section 11–1112 is compelled by the establishment clause. Nevertheless, the unrebutted evidence presented at trial demonstrates that only three other states have statutes similar to section 11–1112 and that only two other states have similar regulations, all of which were enacted prior to the passage of Title VII.

Moreover, in light of this court's finding that a substantial motivating factor in the enactment of section 11–1112 was anti-Catholic animus, the provision is more closely analogous to the state statutes invalidated in *Wallace, Epperson, Edwards,* and *Stone,* in that the provision was enacted for the purpose of advancing or inhibiting a particular religious viewpoint, thus rendering the presently asserted justification for the provision less compelling.

***18** 22. Additionally, no evidence has been presented which demonstrates that the negative effects of non-enforcement of section 11–1112 asserted by the defendants to be certain to occur have in fact occurred. This absence of evidence is especially persuasive in light of the fact that Ms. Reardon was permitted to teach in the Philadelphia public school system while wearing the attire of her religious faith in 1985, and in light of the evidence of the wearing of religious garb or symbols by others in the Philadelphia public school system without complaint or incident.

This lack of evidence of incidents of perception by students of religious endorsement, and of complaints regarding such perceived endorsement is significant, unlike the absence of evidence of incidents of religious indoctrination deemed insignificant in *Grand Rapids School District.* In *Grand Rapids School District,* the Court noted that there was no reason to believe that incidents of impermissible ideological influence would be reported by students or parents, where the students attending the classes at issue were predominantly adherents of the religion associated with the non-public school in which the classes were taught. *See Grand Rapids School District,* 433 U.S. at 388–89. In this case, on the other hand, the wearing of religious garb or symbols took place in public schools, in some instances over a period of years, and yet the evidence at trial demonstrated no complaints or reports by parents or students of any perception of impermissible official endorsement of the wearer's religion.

23. The Supreme Court has noted, in *Lynch v. Donnelly,* 465 U.S. 668 (1984), that the metaphor of a wall between church and state "is not a wholly accurate description of the practical aspects of the relationship that in fact exists between church and state." *Id.* at 673. The *Lynch* Court further noted that a rigid, absolutist view of the establishment clause is inappropriate "[i]n our modern, complex society, whose traditions and constitutional underpinnings rest on and encourage diversity and pluralism in all areas." *Id.* at 678.

The Court stated:

No significant segment of our society and no institution within it can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government.... Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. Anything less would require the 'callous indifference' we have said was never intended by the Establishment Clause. Indeed, we have observed, such hostility would bring us into 'war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion.'

*Id.* at 673 (citations omitted).

In sum, I conclude that the Board, in permitting Ms. Reardon to substitute teach dressed in the attire of her religious faith, would not violate the establishment clause. In so concluding, I am guided by the teaching of *Lynch,* and I therefore decline to apply the establishment clause in an absolutist fashion. I conclude that permitting Ms. Reardon to wear her religiously-required garb does not have the principal or primary effect of endorsing and thus advancing her religion, or of inhibiting the religious beliefs of others or their freedom to have no religious beliefs at all. If the Board's compliance with the religious accommodation requirement of Title VII in this case has any communicative effect, it is instead the effect of endorsing the principles behind the religious accommodation requirement, the principles of freedom of conscience and freedom from discrimination in the workplace. *See Protos,* 797 F.2d at 136.

***19** 24. I also conclude that the religious accommodation requirement of Title VII does not violate the establishment clause, either facially or as applied in this case. In *Protos,* the Third Circuit found no constitutional infirmity in the religious accommodation requirement, in part relying on the difference between that provision and the Connecticut law providing an absolute guarantee of the right not to work on one's Sabbath which was held to violate the establishment clause in *Thornton v. Caldor, Inc.,* 472 U.S. 703 (1985). *See Protos,* 797 F.2d at 136. The *Protos* court additionally relied on Justice O'Connor's concurring opinion in *Thornton v. Caldor,* in which she concluded that Title VII's religious accommodation requirement would satisfy the *Lemon* test. *Id.* (citing *Thornton,* 472 U.S. at 711–12 (O'Connor, J., concurring)).

I conclude that the religious accommodation requirement of Title VII as applied in this case does not violate the establishment clause, for the reasons stated previously in this Memorandum, as well as pursuant to the analysis set forth by the Third Circuit in *Protos.* As the *Protos* court noted, section 2000e(j) has a clearly secular purpose, would not lead to excessive governmental entanglement with religion, and has the "primary effect of promoting freedom of conscience and prohibiting discrimination in the workplace." *Id.*

### *Section 2000e–6*

25. The Commonwealth and the Board have not engaged in a pattern or practice of resistance to the full enjoyment of the right established by section 2000e–2(a) to be free

from discrimination in employment because of one's religion. The Supreme Court has stated that the plaintiff's burden on a claim pursuant to section 2000e–6(a) is "to establish by a preponderance of the evidence that ... discrimination was the [defendant's] standard operating procedure—the regular rather than the unusual practice." *International Bhd. of Teamsters v. United States,* 431 U.S. 324, 336 (1977).

The United States has not proved more than the occurrence of isolated or sporadic acts of refusal of the Commonwealth and the Board to reasonably accommodate the religious practices of employees.

The Commonwealth and the Board each have stated that it is their intent to enforce section 11–1112 in the future. Nevertheless, the evidence presented by the United States demonstrates that the actual practice of the defendants was not the consistent application and enforcement of section 11–1112. Instead, the evidence clearly shows that any enforcement of section 11–1112 was an unusual occurrence, and that virtually all of the defendants' officials responsible for the interpretation or application of section 11–1112 were unaware of the existence of that provision until the occurrence of the incidents involving Ms. Reardon which led to the institution of this civil action. The evidence therefore compels the conclusion that the enforcement of section 11–1112 was not the standard operating procedure of either the Commonwealth or the Board.

*RELIEF*

***20** 26. Pursuant to 42 U.S.C. § 2000e–5(g), the Board shall be required to provide make-whole relief to Ms. Reardon for the period of time in 1984 in which she was prohibited from teaching in the Philadelphia School District because of her religious practice. The parties have stipulated that Ms. Reardon's 27 day backpay loss is $1,734.75. The parties have additionally stipulated that the interest on that backpay loss is $779.06, calculated through June 30, 1988 on the basis of Internal Revenue Service interest rates. The court awards the stipulated amount of backpay loss and prejudgment interest to Ms. Reardon.

The Board shall be enjoined from enforcing section 11–1112. Section 11–1112 is contrary to and in conflict with 42 U.S.C. § 2000e(j), the reasonable accommodation requirement of Title VII, in that section 11–1112 sets forth an absolute prohibition against any accommodation to religious practices of public school teachers which involve the wearing of certain garb, emblems, symbols or insignia.

*ORDER*

AND NOW, this 17th day of May, 1989, in accordance with the foregoing Findings of Fact and Conclusions of Law, the court enters the following Order:

1. Judgment is ENTERED in favor of the United States and against defendant Board of Education for the School District of Philadelphia, and in accordance therewith, it is ORDERED that the Board of Education for the School District of Philadelphia shall pay Ms. Alima Dolores Reardon the amount of $2,513.81. It is further ORDERED that defendant Board of Education for the School District of Philadelphia is enjoined from giving any further force or effect to Pa.Stat.Ann. tit. 24, § 11–1112.

2. Judgment is entered in favor of defendant Commonwealth of Pennsylvania and against the United States.

3. It is declared that Pa.Stat.Ann. tit. 24, § 11–1112 is contrary to and in conflict with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

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**Footnotes**

1 *See Tooley,* 648 F.2d at 1243.

2 While the articulation of the *Hardison* standard has been set forth in this section as part of the court's conclusions of law, the conclusion that the Board has failed to demonstrate any actual undue hardship due to contravention of the important interest of avoiding the symbolic endorsement of religion is a factual finding. *See Protos,* 797 F.2d at 135 n. 3.