

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

ROSE BOWEN, ET AL. *

Complainant

and

**UNITED FELLOWSHIP CLUB
OF BARBERTON**

Respondent

COMPLAINTS: #8553-8564
#8646
#8819-8825
#8848
#8906, 8908
#8933, 8934

**HEARING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDATIONS**

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INTRODUCTION AND PROCEDURAL HISTORY

Tammie Stanley filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on November 23, 1998. Rose M. Bowen, Barbara Brown, Marianne Fox, Mona R. Gault, Noralynn Hughes, Helen Kline, Norma Kline, Leah Lane, Lillian “Flo” McIndoo, Joan Stalnaker, and Alison Wilson filed sworn charge affidavits with the Commission on November 24, 1998.

The Commission investigated these charges and found probable cause that The United Fellowship Club of Barberton (Respondent) (Club) engaged in unlawful discriminatory practices in violation of Revised Code 4112.02(G). The Commission attempted, but failed to resolve these charges by informal methods of conciliation. The Commission then issued Complaints #8553–8564 on June 10, 1999. The Complaints alleged that Respondent denied each Complainant membership because of her sex.

Alison Wilson filed a sworn charge affidavit with the Commission on January 7, 1999. The Commission investigated this charge and found probable cause that Respondent engaged in unlawful retaliatory practices

in violation of R.C. 4112.02(I). The Commission attempted to conciliate this matter without success. The Commission subsequently issued Complaint #8646 on October 7, 1999. The Complaint alleged that Respondent denied the Ladies Auxiliary use of the Slovene Center in retaliation for Wilson (and other members of the Ladies Auxiliary) filing previous charges of discrimination against the Club.

Leah Lane filed a sworn charge affidavit with the Commission on September 2, 1999. Alison Wilson, Joan Stalnaker, Flo McIndoo, and Norma Kline filed sworn charge affidavits with the Commission on September 9, 1999. Marianne Fox and Mona Gault filed sworn charge affidavits with the Commission on February 22, 2000.

The Commission investigated these charges and found probable cause that Respondent engaged in unlawful retaliatory practices in violation of R.C. 4112.02(I). The Commission attempted and failed to conciliate these charges. The Commission subsequently issued Complaints in these charges on June 23, 2000. Complaints #8819–8821 and #8823–8825 alleged that Lane, Wilson, Stalnaker, Kline, Fox, and Gault were removed as officers of the Ladies Auxiliary in retaliation for filing previous charges of

discrimination against Respondent. Complaints #8819 and #8822 alleged that Respondent charged Lane and McIndoo fees for grass mowing at their lots in retaliation for filing previous charges of discrimination against Respondent.

Larry Lane filed a sworn charge affidavit with the Commission on March 27, 2000. The Commission investigated this charge and found probable cause that Respondent engaged in unlawful retaliatory practices in violation of R.C. 4112.02(I). The Commission issued a Complaint on August 10, 2000 after its conciliation efforts failed. The Complaint alleged that Respondent refused to accept Lane's payment of mowing fees and membership dues and subsequently "expelled" him from the Club because his wife had filed previous charges of discrimination against Respondent.

Respondent filed a Motion to Stay Proceedings on August 23, 2000. Respondent requested a stay of the hearing in Complaints #8646 and #8819–8825 because the allegations in these Complaints involved "identical" retaliation claims filed by the Complainants in state court. The Hearing Examiner ruled that the state court filing, which the Commission was not a party to, did not divest the Commission of its statutory authority

to proceed with the administrative hearing process. The Hearing Examiner denied the Motion on September 11, 2000.

On September 18, 2000, a public hearing was held on Complaints #8553–8564, #8646, #8819–8821, #8823-8825 at the courtroom for the Ninth District Court of Appeals in Akron, Ohio.¹ Respondent stipulated that the Commission attempted conciliation prior to issuing the Complaints, and those efforts were unsuccessful. (Tr. 2) After testimony was presented in the morning, the Commission moved to adjourn the hearing for venue reasons. Specifically, the Commission moved to adjourn the hearing because the county where the alleged discrimination and retaliation occurred was Stark County instead of Summit County. The Commission also moved for leave to file Amended Complaints, which named the proper county where the Club is located. Respondent did not object to these motions. The Hearing Examiner granted the Motions and adjourned the hearing.

¹ Since other retaliation complaints involving fees for grass mowing were forthcoming, the only issue heard on Complaint #8819 was Leah Lane's removal as an officer of the Ladies Auxiliary.

The Commission filed Motions to Amend Complaints on both September 25, 2000 and October 3, 2000. The Commission moved to amend Complaints #8553-8564, #8646, #8848, #8819-8825 to correct the county “where Respondent resides, transacts business, and where the alleged discrimination [and retaliatory] acts occurred.” The Hearing Examiner granted the Motions on October 11, 2000.

Respondent filed Amended Answers to the Amended Complaints on November 9, 2000. Respondent denied that it is a place of public accommodation. Respondent also denied that the Commission attempted and failed to conciliate these matters before issuing the Complaints. Respondent pled lack of jurisdiction and other affirmative defenses.

The public hearing on Complaints #8553-8564, #8646, #8819-8825 reconvened from December 4-8, 2000 at the City of Canton, Council Chambers, in Canton, Ohio. Respondent stipulated during the hearing that the Club refused to consider Complainants’ applications for membership because of their sex and otherwise denied them membership for that reason. (Tr. 262-65) The hearing was adjourned with the intent to reconvene in late January 2001 to hear evidence on Complaint #8848, the

retaliation claims in Complaints #8819 and #8822 involving fees for grass mowing, and other recently issued Complaints involving the same or related issues.

Leah Lane, Flo McIndoo, Barbara Brown filed sworn charge affidavits with the Commission on February 22, 2000. Keith Brown filed a sworn charge affidavit with the Commission on March 27, 2000. The Commission investigated these charges and found probable cause that Respondent engaged in unlawful retaliatory practices in violation of R.C. 4112.02(I). The Commission attempted to conciliate these charges without success. The Commission issued Complaints #8906 and #8908 on November 16, 2000 and Complaints #8933 and #8934 on December 7, 2000.

Complaint #8906 alleged that Leah Lane was forced to move her trailer from Respondent's campground because the Club refused to accept her husband's payment of grass mowing fees, membership dues, and camping fees in retaliation for her filing of previous charges of discrimination against Respondent. Complaint #8908 alleged that Keith Brown was forced to move his trailer from Respondent's campground because the Club refused to accept his payment of grass mowing fees,

membership dues, and camping fees in retaliation for his mother's filing of previous charges of discrimination against Respondent.

Complaint #8933 alleged that Respondent revoked Flo McIndoo's camping privileges and removed her trailer from her lot in retaliation for her filing of previous charges of discrimination against the Club. Complaint #8934 alleged that Respondent revoked Barbara Brown's camping privileges and forced to remove her trailer because Respondent refused to accept her son's payment of grass mowing fees and membership dues in retaliation for her filing of a previous charge of discrimination against the Club.

Respondent filed Answers to Complaints #8906 and #8908 on November 28, 2000 and Complaints #8933 and #8934 on December 15, 2000. Respondent denied that it is a place of public accommodation. Respondent also denied that the Commission attempted and failed to conciliate these charges prior to issuing these Complaints. Respondent pled lack of jurisdiction and other affirmative defenses.

The public hearing reconvened at the City of Canton, Council Chambers, on June 26-27, 2001 to hear evidence on Complaints #8819, #8822, #8848, #8906, #8908, #8933 and #8934.² Respondent stipulated that the Commission attempted to conciliate these Complaints without success. (Tr. 1788)

The record consists of the previously described pleadings, a transcript divided into eight volumes consisting of 2,244 pages of testimony, exhibits admitted into evidence during the hearing, stipulated exhibits, post-hearing briefs filed by the Commission on April 30, 2001 and September 25, 2001, and Respondent on June 13, 2001 and October 16, 2001, and reply briefs filed by the Commission on July 9, 2001, and October 24, 2001.

² The public hearing did not proceed in late January 2001 because counsel informed the Hearing Examiner that they were close to settling the retaliation claims. When settlement efforts failed, counsel requested additional time to engage in discovery and prepare for hearing on these claims. This explains why the hearing did not reconvene until June 2001.

FINDINGS OF FACT

The following findings of fact are based, in part, upon the Hearing Examiner's assessment of the credibility of the witnesses who testified before him in this matter. The Hearing Examiner has applied the tests of worthiness of belief used in current Ohio practice. For example, he considered each witness's appearance and demeanor while testifying. He considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. He further considered the opportunity each witness had to observe and know the things discussed, each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the Hearing Examiner considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. The Complainants in these matters collectively filed 25 sworn charge affidavits with the Commission alleging that Respondent engaged in unlawful discriminatory and retaliatory practices in violation of R.C. 4112.02(G) and R.C. 4112.02(I).

2. The Commission determined on June 10, 1999 that it was probable that Respondent engaged in unlawful discriminatory practices in violation of R.C. 4112.02(G). The Commission determined on October 7, 1999, June 23, 2000, November 16, 2000, and December 7, 2000 that it was probable that Respondent engaged in unlawful retaliatory practices in violation of R.C. 4112.02(I).

3. At various times, the Commission attempted to resolve the charges against Respondent by informal methods of conciliation. The Commission issued 25 Complaints against Respondent after each conciliation attempt failed.

4. Respondent is a nonprofit, tax-exempt organization located in Canal Fulton, Ohio. Respondent operates under a Constitution and Bi-laws (Bi-laws). (Comm.Ex. 3) Under the Bi-laws, Respondent elects seven officers yearly to conduct its general business: president, vice-president, financial secretary-treasurer, recording secretary, and three trustees. Respondent elects these officers at its January meeting. The officers serve one-year terms except for the trustees whose terms are staggered from one to three years.

5. Respondent originated in 1939 as “a sportsmen’s club.” (Tr. 1540) Throughout the years, Respondent has leased “as much as 8,000 acres” from local farmers in various counties to provide hunting and fishing opportunities for its members. (Tr. 250) The preamble of the Bi-laws has remained the same since its inception:

The object of this club shall be fostering and encouraging of better SPORTSMANSHIP, the cultivation of friendship and fellowship among its members and the promotion of better friendship with the farmers and respectful consideration of their property and personal feelings, and also for the elevation and improvement of the moral, intellectual, social, and economic condition of the sportsman.

(Comm.Ex. 3)

6. Respondent has also acquired land and buildings over the years. Respondent owns and maintains 39 acres of land, which includes three ponds.³ Respondent also owns and maintains a “large” clubhouse, a “small” clubhouse, two pavilions, and a swimming pool. (Comm.Ex. 1, R.Ex. C) The large clubhouse and the pavilions are available for rent by members and their spouses for family picnics, birthday parties, and other private functions. Nonmembers may attend these functions as guests.

³ One of the ponds is sand-filled and used for swimming. The other two ponds are used primarily for fishing.

7. Respondent established a campground on its property around 1970. The campground has 43 “Class A” lots and four “primitive” lots. Members may rent a Class A lot for \$275 per year, which includes storage of their trailer. This camping fee must be paid by April 1.

8. The camping season begins in April and ends in mid-October. Respondent has promulgated rules for campers. (Comm.Ex. 8) Among other things, the camping rules require members to maintain their lots. For example, if a member fails to mow grass, the park manager “will” mow the lot and charge a \$10 fee. *Id.*

9. The camping rules also allow each member to have five guests or one family per visit. Members may have guests stay overnight at their campsite. The overnight guest fee is one dollar (\$1) per guest. The charge for overnight camping in the primitive area is \$3.00. The camping rules require overnight guests to register with the park manager “when entering or leaving the park.” *Id.*

10. The Club president appoints a park manager whose primary responsibility is the general maintenance of Respondent’s grounds and

facilities. The park manager is also responsible for “keeping track of money coming in from camping, guests staying overnight, [and] rental of buildings and pavilions.” (Tr. 1494) The park manager usually provides a verbal report at Respondent’s monthly meetings and submits any monies collected to the financial secretary-treasurer at that time.

11. Respondent holds its meetings the first Monday of the month. All members in good standing may attend the meetings. The meetings are held at the large clubhouse from May through October. In the past, Respondent held its meetings at the Slovene Center from November through April. Respondent paid the Slovene Center \$90 to hold its meetings (and the Ladies Auxiliary meetings) there during these months.

12. The president presides over the meetings. The preamble is read at the beginning of each meeting. There must be 10 members present to conduct a meeting. Typically, “two dozen” members attend these monthly meetings. (Tr. 211)

13. Members may sponsor two persons per year for membership in the Club. A prospective member may secure an application from a member. (Tr. 71) The prospective member must complete an application and pay a \$10 fee. All applicants are required to attend the meeting where their applications are read aloud by the recording secretary.⁴ The president then appoints two persons to screen the applicant.

14. The two screeners take the applicant for a walk outside of the building. They engage in a “general discussion” with the applicant during the walk. (Tr. 74) This discussion lasts approximately 15 minutes. The screeners and the applicant return to the meeting after their discussion. Upon their return, the screeners inform the president whether the applicant is “suitable” for membership. (Tr. 201) The decision on acceptance or denial of the application occurs at the next meeting.

15. The applicant must attend the next meeting. All members present at that meeting may vote on the application for membership. The votes are registered through “a ball system.” (Tr. 104) The members vote

⁴ The applicant must stand while the recording secretary reads the application. If the applicant is not present when his application is read, the application is usually held until the next meeting. (Tr. 1197)

by dropping a white ball or black ball into a ballot box. If all of the balls deposited are white, then the applicant is accepted and sworn in as a new member. New members must pay an additional \$70 for hunting, fishing, and initiation fees.⁵

16. If any black balls are deposited, then those who deposited them must approach the officers and explain why they “black-balled” the applicant. Respondent received 59 applications for membership from October 1, 1992 through September 30, 1998. (Comm.Ex. 6) Respondent rejected one applicant during that period. (Tr. 74, 203-04)

17. Under Respondent’s Bi-laws, members must be at least 18 years of age. The Bi-laws limit the Club’s membership to 250. The number of Respondent’s members in recent years has been well below the membership ceiling.⁶

⁵ Members pay \$20 in annual dues after the first year.

⁶ Respondent has averaged around 90-100 paying members in recent years. William Sands has been Respondent’s financial secretary-treasurer since 1997. Sands testified that Respondent had 91 “dues-paying members” as of December 2000. (Tr. 1408) He also testified that Respondent had approximately 25-30 “non-dues paying members” who were either inactive or retired members. *Id.* These members have no voting rights.

18. The Bi-laws also state that a Ladies Auxiliary shall be maintained “to add to the strength of the club.” (Comm.Ex. 3) The wives, mothers, sisters, and daughters of members are eligible for membership in the Ladies Auxiliary. The members of the Ladies Auxiliary have the same access, rights, and responsibilities as the male members of the Club except for the right to attend Respondent’s meetings, vote on its business, rent space for trailers at its campground, and serve as a trustee or hold one of the Club’s other officer positions.⁷

19. The Ladies Auxiliary has the same officer positions, including trustees, as Respondent’s hierarchy. The Ladies Auxiliary also holds its elections in January and meets the first Monday of the month. The Ladies Auxiliary usually meets in the small clubhouse from May through October. The Ladies Auxiliary previously held its meetings at the Slovene Center from November through April. The Ladies Auxiliary reimbursed Respondent a portion (\$30) of the total cost for both organizations to meet at the Slovene Center during these months.

⁷ The female relatives of Club members are eligible to join the Ladies Auxiliary, but they are not required to do so. The females who do not join the Ladies Auxiliary have the same access, rights, responsibilities, and restrictions as those who join the organization.

20. The Ladies Auxiliary also operates under a Constitution and Bi-laws (LA Bi-laws). The LA Bi-laws required the organization to meet once a month. The president or majority of the members in good standing have the authority to call special meetings, but all members must receive notice of such meetings “at least twelve (12) hours before it convenes.” (Comm.Ex. 28)

21. The LA Bi-laws have a mechanism to remove officers who fail to perform their duties. Article IV, Section 5 states that:

Any officer failing to discharge the duties of her office for any two consecutive meetings shall have her office declared vacant by the president, unless a satisfactory excuse is present.

22. Since its reestablishment in the early 1980s, the Ladies Auxiliary has organized and paid for most events held at the Club.⁸ Most of these events were held at the large clubhouse. Members and nonmember attended these events.

⁸ The Club paid for the annual picnic. However, members of the Ladies Auxiliary also assisted with this event; it was “a joint venture.” (Tr. 347)

23. Prior to the December meeting, the Ladies Auxiliary usually created a schedule of events for the following year. The Ladies Auxiliary submitted the schedule to the Club for approval and distribution at the January meeting. The 1998 Schedule of Events contained at least 20 events, e.g., an Italian night, a steak dinner, a Chinese auction, and the annual picnic. (Comm.Ex. 11)

24. These events were not only intended as social functions, but also fund raisers. The Ladies Auxiliary used money raised by these events to purchase equipment for the Club, such as lawn mowers, refrigerators, and stoves. The Ladies Auxiliary also used the proceeds to make charitable contributions and pay money directly to the Club for campground expenses/projects, such as purchasing sand and gravel. The Ladies Auxiliary usually acquiesced to the Club's monetary requests. (Tr. 688-89)

25. The members of the Ladies Auxiliary performed most of the work for the events. They purchased the food, prizes, and other necessary items. They prepared the food, arranged tables, organized games, and collected money at the door. They also advertised several

events outside of the campground by placing flyers on telephone poles and bulletins boards at grocery stores. (Comm.Ex. 12, Tr. 732, 1778-80) They placed an advertisement in a local newspaper for the rummage/bake sale. (Tr. 731)

26. In addition to these events, other fundraisers were held on Respondent's premises in 1998. In early February, Respondent voted to hold turkey shoots to raise money to offset higher operating expenses. (Comm.Ex. 37, p. 153) The Club needed additional income to avoid raising camping fees and annual dues. Al Stalnaker, the park manager, was placed in charge of the Turkey Shoots. Respondent allocated \$200 to get the Turkey Shoots started.

27. In order to publicize the fundraiser, Stalnaker placed advertisements in local newspapers about the Turkey Shoots. (Comm.Ex. 22) A sign about the Turkey Shoots was posted at one of the entrances of the Club. (Tr. 1767) Members and their relatives placed a flyer used for previous turkey shoots on telephone poles, and bulletin boards at local stores and their places of employment. (Comm.Ex. 21, Tr. 500, 645, 876)

28. Respondent held the Turkey Shoots every Sunday (10:00 a.m. to 4:00 p.m.) from mid-February to mid-April. The majority of the participants in the Turkey Shoots were nonmembers. (Tr. 495) Stalnaker reported at Respondent's monthly meeting about the income raised from the Turkey Shoots. (Comm.Ex. 37, p. 154-59) Overall, the Club raised \$2,671 from the Turkey Shoots.

29. In September 1998, most of the officers of the Ladies Auxiliary and other members of the organization completed applications for membership in the Club. (Comm.Ex. 13) There were 12 applicants. Stalnaker brought the applications and money for the application fees to the September meeting. Stalnaker handed the applications and money to Mac Hylton, the recording secretary. Hylton briefly reviewed the applications and gave them to the Club's president, Bud Gelhausen. Shortly thereafter, Gelhausen decided to hold a special officer's meeting to review the applicants. The meeting was concluded without the applications being read aloud.

30. A special officer's meeting was held on this matter before the October meeting. (Tr. 1771-72) All of the officers were present except for

William Sands, the financial secretary-treasurer. Gelhausen appointed Dave McKee to replace Sands for the meeting. Dave Gault, the vice president, and trustees, Ken Wilson and Waylon Davenport, voted to accept the ladies' applications; Hylton, McKee, and Brian Neal, a trustee, voted against accepting them. Gelhausen broke the tie in favor of not accepting the ladies' applications. (Tr. 358, 401)

31. Respondent did not address the ladies' applications at its October and November meetings. Meanwhile, the ladies' applications made it difficult for the Ladies Auxiliary to conduct its meetings during those months.⁹ (Comm.Ex. 35, Tr. 707) Several members of the Ladies Auxiliary were extremely angry about the ladies' applications. They expressed their displeasure, wanted to debate the issue at the meetings, and asked those officers who applied to resign from the Ladies Auxiliary. (*Id.*, Tr. 1637)

32. On December 7, 1998, Respondent and the Ladies Auxiliary held their meetings at the Slovene Center. During Respondent's meeting, Gelhausen announced that the officers had decided not to accept the

⁹ Respondent and the Ladies Auxiliary held their November meetings at the Slovene Center. The men met in a room on the second floor while the ladies' meetings were held downstairs in the bar and dining area next to the bowling alley.

ladies' applications. McKee moved to return the ladies' applications and the monies paid. The Motion carried. (Comm.Ex. 37, p. 177) Gelhausen then granted a recess of the meeting. Gelhausen directed Sands to walk down to the Ladies Auxiliary meeting during the recess and return the ladies' applications and monies. Sands followed his instruction.

33. On January 4, 1999, Respondent and the Ladies Auxiliary met at the Slovene Center. Gelhausen addressed the Ladies Auxiliary prior to their meeting. He announced that the Club and the Ladies Auxiliary was no longer allowed to meet at the Slovene Center because the ladies were "loud and disruptive" during their meetings there.¹⁰ During their meeting, the members of the Ladies Auxiliary voted to cancel its meetings until May, unless they had a place to meet. (Comm.Ex. 35, p. 71) The Ladies Auxiliary did not meet in February, March, and April.

34. On May 3, 1999, Respondent met at the large clubhouse while the Ladies Auxiliary resumed its meetings at the small clubhouse. During

¹⁰ Gelhausen also made the same announcement during the Club's meeting. (Comm.Ex. 37, p. 179) Respondent decided to hold its next meeting at the large clubhouse unless there was "too much snow." *Id.* Respondent held its meetings at the large clubhouse in February, March, and April.

their meeting, Respondent's members voted to cancel all events until the lawsuits (and charges of discrimination) over the ladies' applications were resolved. (Comm.Ex. 37, p. 188)

35. On May 20, 1999, the Ladies Auxiliary held its mother/daughter banquet at Ryan's Steakhouse. Alison Wilson, the president of the Ladies Auxiliary, announced at the end of the banquet that there would be no monthly meetings until further notice because Respondent had cancelled all events.¹¹ This decision was made by a majority of the officers prior to the banquet.

36. On June 7 and July 5, 1999, several members of the Ladies Auxiliary gathered at the small clubhouse while Respondent held its meetings at the large clubhouse. (R.Ex. G) These members of the Ladies Auxiliary disagreed with the officers' decision to cancel the monthly meetings and believed that the meetings could only be cancelled by a vote of the body. None of the officers appeared at the small clubhouse on June 7.

¹¹ Wilson asked members of the telephone committee to inform those who did not attend the banquet about this decision.

37. Two officers appeared on July 5, but they did not enter the small clubhouse. Marianne Fox, the recording secretary, and Mona Gault, a trustee, sat at a table outside the entrance of the building. At the entrance, they posted a letter from the officers about the suspension of the monthly meetings. They also had copies of this “official notice” at the table. (Comm.Ex. 36)

38. In late June 1999, Gelhausen issued written notice to eight individuals that he had mowed their lots as the park manager: William Sands, Bertha Gissingner, Dave Gault, Flo McIndoo, Leonard Judge, Larry Lane, Barbara Brown, and Marianne Fox.¹² (Comm.Ex. 45) The notices, which were dated June 25, 1999, indicated how many times Gelhausen mowed their lots and the amount due. The notices also indicated that “[t]his matter should be resolved before or during the next monthly meeting.” *Id.*

¹² Gelhausen appointed himself as the park manager after Stalnaker was suspended and ordered to remove his trailer from the campground in October 1998. (Comm.Ex. 37, p. 172) Sands prepared the typed form used for the notices at Gelhausen’s request. This was the first time that the form was used.

39. Respondent held its next monthly meeting on July 5, 1999. Gissinger, Gault, Judge, and Fox paid their mowing fees before or during the meeting; McIndoo, Lane, and Brown did not pay the fees by that date.¹³ *Id.* McIndoo and Lane subsequently paid their mowing fees on July 15, and July 23, respectively. (Comm.Exs. 18, 52, Tr. 1902) Barbara Brown's son, Keith, attempted to pay the fees at the next meeting on August 2, 1999. (Comm.Ex. 46, Tr. 1845-46) Respondent refused to accept his payment. Gelhausen informed Brown that the officers voted at the July 5 meeting to not accept late payment for the mowing fees issued in late June 1999. (Comm.Ex. 18, Tr. 1846)

40. On July 27, 1999, Gelhausen issued notices to Leonard Judge, Jim Havassy, and Grace Martin that he mowed their lots. These notices were on the same form as the notices issued in late June 1999. Havassy and Martin did not pay their mowing fees by the next meeting on August 2.¹⁴

¹³ There is no record that Sands paid his mowing fee on or before July 5, 1999.

¹⁴ There is no record that Judge paid the July 27 mowing fee on or before August 2, 1999.

41. On August 2, 1999, several members of the Ladies Auxiliary gathered at the small clubhouse. (R.Ex. E) None of the officers appeared. Helen Gelhausen introduced Shirley Cochrane, an attorney, to those present. Cochrane advised the members that they could elect new officers because the current officers missed two consecutive meetings. (Tr. 1675) A vote was taken to approve “a new slate of officers.” (R.Ex. I) The new officers were sworn in.

42. The new president, Debbie Papp, then called a meeting of the Ladies Auxiliary. New members including Cochrane were sworn in; business was conducted.¹⁵ For example, Joanne Griffin, the new recording secretary, moved for the Ladies Auxiliary to pay Respondent a portion of the cost of a shuffleboard court built at the campground.¹⁶ The Motion carried.

¹⁵ Cochrane lives in Reynoldsburg, Ohio. She has not attended any subsequent meetings of the Ladies Auxiliary. (Tr. 1702)

¹⁶ The Ladies Auxiliary previously agreed to share the cost of the shuffleboard court with the Club. The cost was approximately \$1,200. When the court was completed, some members of the Ladies Auxiliary did not want to pay this amount because they believed the court was not built to specifications. Other members wanted to pay Respondent because the Club had already paid the contractor. This issue was debated at Ladies Auxiliary meetings in the latter part of 1998.

43. Cochran drafted a resolution during the meeting. The resolution, signed by those present, stated that the LA Bi-laws require the organization to meet “at least once a month.” (R.Ex. J) The resolution further stated that the officers “have exceeded their authority” in canceling meetings in June and July and therefore, the Ladies Auxiliary voted to remove them from office and elected new officers. *Id.* After the meeting, Cochran sent the officers a letter that informed them of their removal and demanded return of materials belonging to the Ladies Auxiliary. (Comm.Ex. 23)

44. On September 1, 1999, Gelhausen issued “second notice[s]” to Havassy and Martin about their failure to pay for grass mowing on July 27. These notices also included charges for Gelhausen mowing their lots on August 31.

45. Respondent held its next monthly meeting on September 13. Martin did not pay her mowing fees on that date. Mark Freeman paid Havassy’s July mowing fees on his behalf at the meeting. Respondent accepted this payment. (Comm.Ex. 45, Tr. 2223)

46. On December 14, 1999, Gelhausen sent McIndoo and Lane written notice that Respondent's officers voted not to accept their payment of the grass mowing fees issued in late June 1999. (Comm.Exs. 18, 47, 53) Gelhausen returned McIndoo's check for \$31 and Lane's money order for \$21. Gelhausen wrote the following in McIndoo's letter:

Your allegations to [the] Civil Rights Commission were that in the past years you had never been charged for mowing of grass. You don't seem to realize that was only because of the thoughtfulness and kindness of good members and neighbor [Gelhausen] that saw to it that your grass was mowed whenever necessary. That is the way it always was in the past.

(Comm.Exs. 18, 47)

47. Gelhausen also sent Keith Brown written notice on December 14 about Respondent's refusal to accept his payment of grass mowing fees issued in late June 1999. (Comm.Ex. 46) Gelhausen acknowledged that Brown attended the August 2 meeting and attempted to pay \$21 for grass mowing. Gelhausen wrote that Respondent refused to accept his payment on August 2 because its officers had "already" ruled that any payment after July 5 was "extremely late" and would not be accepted. *Id.*

48. On January 3, 2000, Respondent met at the large clubhouse. Gelhausen spoke during the meeting about “people who have not been mowing there [sic] camp lots.” (Comm.Ex. 37, p. 205) Gelhausen also indicated that the officers “recommend[ed]” that these members’ dues not be accepted next year. *Id.* Respondent held its yearly elections later in the meeting. A motion carried to keep the same officers. Following the election, Dave McKee, the recording secretary, moved to not accept the dues from “campers who have violated the park rules by not mowing there [sic] lots.” *Id.*, at 206. William Sands, the financial secretary-treasurer, seconded the Motion. The Motion carried.

49. In the spring of 2000, McIndoo, Lane, and Keith Brown attempted to pay their annual dues and camping fees.¹⁷ Respondent refused to accept their payment.

50. On April 22, 2000, Gelhausen sent McIndoo, Lane, and Martin, and Keith Brown a letter informing them that their trailers had been moved to Respondent’s parking lot. (Comm.Ex. 48, R.Ex. K, Tr. 2101-02, 2225)

¹⁷ There is no evidence that Martin attempted to pay her dues and camping fees for 2000. Martin eventually removed her trailer from the campground after Gelhausen moved it to the parking lot.

Respondent advised these individuals that their trailers and other “personal items” would be towed away for storage if they were not removed from the campground within 30 days. *Id.*

51. Keith Brown visited the campground prior to the deadline on May 21, 2000. Brown complied with the April 22 notice and removed his trailer from the campground. Brown did not take any action to have his trailer returned to the campground.

52. McIndoo and Lane took legal action upon receipt of their notices. In mid-May 2000, a common pleas court granted a temporary restraining order, which prohibited Respondent from removing McIndoo’s and Lane’s trailers from the campground. Later that month, settlement was reached at a court hearing where Respondent agreed to return McIndoo’s and Lane’s trailers to their lots. McIndoo’s trailer was returned “a few days” after the agreement; Lane’s trailer was eventually returned on May 19, 2001. (Tr. 2104, 2105)

CONCLUSIONS OF LAW

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.

JURISDICTION

1. The Commission alleged in the Complaints #8553-8564 that Respondent denied each Complainant membership because of her sex.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

- (G) For any proprietor or any employee, keeper, or manager of a place of public accommodation to deny any person, except for reasons applicable alike to all persons regardless of . . . sex, . . . the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.

3. The jurisdictional issue in these cases, properly framed, is whether Respondent is a place of public accommodation. R.C. 4112.01(A)(9) defines “place of public accommodation” as:

[A]ny inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which *the accommodations, advantages, facilities, or privileges are available to the public.*

(Emphasis added.)

4. The Commission’s regulations, embodied in the Ohio Administrative Code, provide an extensive, but not exhaustive, list of places of public accommodation. Ohio Admin. Code 4112-5-02(I). This list includes “swimming pools”, “recreation parks”, and “trailer camps”. *Id.* The list also contains the catchall provision: “any place that offers accommodations, advantages, facilities or privileges to a substantial public on a nonsocial, sporadic, impersonal and nongratiuitous basis.” *Id.*

5. R.C. 4112.08 requires a liberal construction of R.C. Chapter 4112 to effectuate its purposes, i.e., to eliminate unlawful discrimination and make victims of such discrimination whole. Thus, the meaning of “place of public accommodation” must be construed liberally:

When determining the scope of the “public accommodations” amendment to Chapter 4112, the commission, initially, and the courts, upon review, are to construe those statutes liberally in order to effectuate the legislative purpose and fundamental policy implicit in their enactment, and to assure that the rights granted by the statutes are not defeated by overly restrictive interpretation.

Ohio Civ. Rights Comm. v. Lysyj (1974), 38 Ohio St.2d 217, 220, *citing* R.C. 4112.08 (other statutory citation omitted).

6. In *Lysyj*, the court recognized that places of public accommodation share two common characteristics:

- (1) Each place offers accommodations, advantages, facilities, or privileges to a substantial public; and
- (2) Each place offers its accommodations to the public on a nonsocial, sporadic, impersonal, and nongratuitous basis.

Id., at 220.

The determination of whether a particular entity, establishment, or organization is a place of public accommodation must be made on a case-by-case basis.

7. Respondent argues that the Commission lacks jurisdiction in these cases because it is a private club rather than a place of public accommodation. A private club and a place of public accommodation have distinct characteristics. Since a private club does not exhibit the same characteristics of a place of public accommodation, a finding that Respondent is, in fact, a private club would necessarily preclude coverage under R.C. 4112.02(G).

8. Several factors are relevant in determining whether Respondent is a private club:

- (1) The genuine selectivity of the group;
- (2) The membership's control over the club's operations;
- (3) The history of the organization;
- (4) The use of facilities by nonmembers;
- (5) The club's purpose;
- (6) Whether the club advertises for members; and
- (7) Whether the club is nonprofit or for profit.

Casey Martin v. PGA Tour, Inc., 984 F.Supp. 1320 (D. Or. 1998), *citing United States v. Lansdowne Swim Club*, 713 F.Supp. 785 (E.D. Pa. 1989), *aff'd*, 894 F.2d 83 (3d Cir. 1990).

In deciding private club status, each of these factors should be considered with “the genuine selectivity of the membership process” given the most weight. *Lansdowne, supra* at 797.

GENUINE SELECTIVITY

9. The evidence shows that Respondent approved 58 out of 59 or 98% of the membership applications from October 1, 1992 through September 30, 1998. (Comm.Ex. 6, Tr. 74, 203-04) Respondent’s president, Bud Gelhausen, testified that one applicant was rejected during that period because he used “nasty language” during his discussion with screeners. (Tr. 75)

10. The Commission argues that Respondent’s high acceptance rate of applicants demonstrates that the Club is not truly selective in its membership. Although a club’s acceptance rate of applicants is an important factor in determining selectivity, such evidence must be viewed in light of the number of prospective members turned away prior to the formal application process. The inclusion of these prospective members provides a more accurate reflection of a club’s selectivity.

11. Respondent spent a great deal of its brief comparing itself to the respondent in *Joann Baker, et al. v. Tippecanoe Country Club, Inc.*, Complaints #7923, #7924, #7937, #7939, and #8178.¹⁸ In *Tippecanoe*, the respondent accepted 34 out of 37 or 92% of the membership applications in a two-year period. The Hearing Examiner discounted this rejection rate because Tippecanoe's "selectivity occurs prior to the application stage and is directly attributed to its extensive pre-application process." *Tippecanoe, supra* at 23 (colon removed).

12. For example, a prospective member of Tippecanoe had to overcome a number of obstacles prior to *receiving* an application for membership:

- (1) A prospective member must pass pre-screening by a member of the Membership Committee. The potential sponsoring member discusses the compatibility of the prospective member with current members and the other factors that the Membership Committee would later consider. The person who conducts the pre-screening may "make some calls" about unanswered questions about the prospective member;

¹⁸ On November 18, 1999, the Commission reversed the Hearing Examiner's finding that Tippecanoe is not a place of public accommodation and remanded the cases for a hearing on the merits. The Hearing Examiner issued a recommendation on the merits on September 18, 2001. The Commission adopted this recommendation, but the Commission has apparently not issued final orders in these cases.

- (2) Two existing members must nominate a prospective member to receive an application for membership;
- (3) The Membership Committee must determine that the prospective member is qualified for membership considering 17 factors and recommend approval of the request for application; and
- (4) The Board of Directors must approve the request for application by three-quarters ($\frac{3}{4}$) of its members present at the meeting.

13. Tippecanoe also provided testimony from a former chairman of the Membership Committee that he turned away approximately 10 to 12 prospective applicants during pre-screening in one year. This testimony, coupled with the other evidence of Tippecanoe's extensive pre-application process, demonstrated that its acceptance rate was, in reality, significantly lower when those who attempted but failed to receive an application are considered.

14. In comparison, there is no evidence that Respondent rejected any applicants in the six-year period during its screening process.¹⁹

¹⁹ Although the screeners apparently had concerns about one applicant because of his use of "nasty language", Respondent voted on his application anyway and "black-balled" him. (Tr. 204) Thus, the rejection of this applicant was considered in calculating Respondent's acceptance rate at 98%.

Respondent's screening process is very informal. When the Club receives an application for membership at a meeting, the applicant is required to stand while the recording secretary reads the application aloud. The Club president then selects two members to screen the application. The two screeners simply engage the applicant in a "general discussion" during a 15-minute walk while the meeting proceeds. (Tr. 74) The screeners are not required to ask specific questions during the walk; they decide what questions to ask the applicant. (Tr. 200) Upon their return, the screeners do not provide a "detailed account" of the discussion. The screeners merely inform the club president whether the applicant is "suitable" for membership. (Tr. 201)

15. Respondent argues that applicants naturally "tend to qualify" because of the requirement that they must be sponsored by two current members. (R.Br. 14) The rationale of this argument is that the sponsoring members have personal knowledge of the prospective member and would not sponsor individuals who are incompatible with current members or otherwise unsuitable for membership. Although this argument has some

merit, the requirement of two sponsoring members, by itself, is insufficient to demonstrate genuine selectivity of membership:

The fact that recommendations [from two active club members] are required is an insufficient demonstration of selectivity.

Lansdowne, supra at 800 (citations omitted).

16. Even though Respondent waits until the next meeting to vote on the applicant, the Club does not investigate the applicant's background, character, credit history, or financial status in the interim. The applicant must attend the next meeting where members in attendance may vote on the application. The members who vote on the applications are not necessarily those who attended the prior meeting when the application was initially read. The application may be reread at the meeting; however, there is no evidence that the screeners inform membership about their conversation with the applicant at the prior meeting. Nor is there any evidence that the sponsoring members speak at the meeting on behalf of the applicant.

17. Without any meaningful information about the applicant, Respondent's members are not in a position to make an informed decision about the applicant's (and the applicant's family members) compatibility

with existing members. In other words, Respondent's selection process hinders membership's ability to differentiate between applicants in any meaningful way. This inability likely contributed to Respondent's high acceptance rate of applicants from October 1992 to September 1998. Since there is no evidence that Respondent turned away any applicants during its screening process, there is no reason to discount Respondent's 98% acceptance rate during that period. Such evidence is a strong indicator of Respondent's lack of genuine selectivity in its membership. *Lansdowne, supra* at 800 (lack of selectivity of club's membership process was "dramatically revealed" by its results).

18. The Commission provided other persuasive evidence that Respondent is not truly selective in its membership. Respondent's only written qualification for membership is the requirement that members must be at least 18 years of age. (Comm.Ex. 3) Other than this age requirement, Respondent does not have any articulated objectives or eligibility standards for approving applications for membership. The lack of such criteria indicates that Respondent is not genuinely selective in its

membership, and not deserving of private club status. *Landsdowne, supra* at 800 (“If there is no established criteria for selecting members, the courts are reluctant to accept the claim of private status”); *See also In Re Kline*, Complaint #6698, (cease and desist order, April 1995) (country club was “not genuinely selective because there are no objectives, articulated standards, or criteria for approving individuals for membership”).

19. Likewise, Respondent’s lack of investigation of applicants suggests that the Club is not truly selective in its membership. Unlike Tippecanoe, Respondent does not conduct any professional investigation of applicants at any stage of the selection process. In fact, there is no evidence that Respondent conducts any investigation of applicants whatsoever:

Where there is a . . . policy of admission without any kind of investigation, the logical conclusion is that membership is not selective.

Landsdowne, supra at 800, quoting *Nesmith v. YMCA*, 397 F.2d 96, 102 (4th Cir. 1968) (citations omitted).

MEMBERSHIP CONTROL

20. The evidence shows that Respondent is governed by seven officers. These officers are elected yearly by membership. These officers conduct the Club's general business at its monthly meetings. The Club's president appoints a park manager who performs the general maintenance of Respondent's grounds and facilities. The park manager is also responsible for collecting money from campers and renters of the Club's facilities.

21. One common attribute of a private club is the membership's control over the selection of new members. Such control is necessary to preserve the common interests shared by the membership:

By participating in the selection process, members guarantee that the interests they share with other members will continue to bind the membership in the future.

EEOC v. The Chicago Club, 86 F.3d 1423, 1436 (7th Cir. 1996).

22. Respondent acknowledges that "[m]embership participation in the selection of new members is a crucial attribute of a private club." (R.Br. 12) However, Respondent does not have any requirement that a

certain percentage of its membership must approve a new member. (Tr. 210, 216) Gelhausen testified that usually “two dozen” members attend the Club’s monthly meetings. (Tr. 211) Gelhausen testified that those members who attend a meeting are not required to vote on an application for membership. (Tr. 215)

23. Assuming a typical meeting where 24 members attend and those in attendance decide to vote on an application for membership, an applicant could be approved for membership by approximately one-fourth ($\frac{1}{4}$) of Respondent’s total membership (90 to 100 active members). Theoretically, this percentage could even be lower since Respondent only needs 10 members for a quorum. Other than attending the meeting when a vote is taken, Respondent does not provide all members the opportunity to express their views on each application for membership.

24. In comparison, Tippecanoe requires three-quarters ($\frac{3}{4}$) of its members who attend the meeting to vote in favor of a prospective member’s application. If this hurdle is cleared, the prospective member’s

name is posted on a bulletin board in the clubhouse for 10 days to allow all members the opportunity to comment on the application. Tippecanoe sends members notice of the posting via mail.

25. At its next meeting, the Membership Committee of Tippecanoe informs the Board of Directors of any “comments by the membership” about the posting. *Tippecanoe, supra* at 15. Any negative comments filed by members are read to the Board. The Board, which consists of 12 stockholding members, then takes the final vote on the application. This vote requires approval of three-quarters ($\frac{3}{4}$) of those Board members in attendance.

26. Although Respondent’s general business and upkeep are ultimately controlled by its membership, the Club does not ensure a high degree of membership participation in the selection of new members. As a result, Respondent lacks this “crucial attribute” of a private club.

HISTORY OF ORGANIZATION/CLUB'S PURPOSE

27. The evidence shows that Respondent originated in 1939 “as a sportsmen’s club.” (Tr. 1540) Respondent has acquired land and buildings over the years. The Club established a campground in 1970. Since then, the focus of the Club has gradually changed from hunting and fishing to camping and other more leisurely activities. (Tr. 1040, 1541) With this change, the Club has become more “family oriented.” (Tr. 1627) Gelhausen testified that it was “commonly agreed”—when the campground was established—that all family members could participate in the camping, fishing, and other activities of the Club. *Id.*

28. Although there is no evidence that Respondent was ever intended to be open to the public or created to avoid the reaches of Ohio’s anti-discrimination laws, the Club has changed its purpose from a male-dominated sportsmen’s club to a seasonal campground for family recreational activities. This change has resulted in nonmembers, such as the wives, and other relatives of members, having the same access and right to use Respondent’s property and facilities as its members enjoy.

USE OF FACILITIES BY NONMEMBERS

29. The evidence shows that the wives and other relatives of members have the same access and right to use Respondent's property and facilities as its membership. These nonmembers have such access and rights regardless of whether they join the Ladies Auxiliary. Further, these nonmembers have such access and rights without the male member paying any additional consideration. In other words, the members do not pay higher annual dues and camping fees for their wives' and other relatives' use of the Club.

30. With such access and rights, the wives and other relatives of members may camp, swim, fish, and engage in other recreational activities on Respondent's premises during the camping season. They may engage in such activities with or without the presence of the male member. They may rent the pavilions and large clubhouse for private functions. They may invite guests to attend these functions, stay overnight at the campground, and otherwise use the Club's facilities. As members of the Ladies Auxiliary, they may plan social events and raise money for the benefit of their organization and the Club as well.

31. Prior to 1999, the Ladies Auxiliary organized and paid for most of the events held at the Club.²⁰ Most of the events, approximately 20 in number, were held at the large clubhouse. Members and nonmembers attended these events.

32. Alison Wilson, the former president of the Ladies Auxiliary, testified that the Ladies Auxiliary usually created a schedule of events for the year. Wilson further testified that the Ladies Auxiliary submitted the schedule to the Club for approval and distribution at its January meeting. (Tr. 697-699) This evidence demonstrates that Respondent expressly approved these social events, which were also intended as fundraisers.

33. As with most fundraisers, the Ladies Auxiliary sought to attract as many people as possible to these events. The Ladies Auxiliary advertised most of the events by placing flyers in the surrounding communities. For the rummage/bake sale, the Ladies Auxiliary advertised the event in a local newspaper. (Tr. 731) Members of the public were allowed to rent a table

²⁰ On May 3, 1999, Respondent cancelled all events until the lawsuits (and charges of discrimination) over the ladies' applications were resolved. (Comm.Ex. 37, p. 188) This was an obvious attempt to avoid the reaches of Ohio's anti-discrimination laws after the fact.

for \$5 or donate the proceeds from their sales to the Ladies Auxiliary without renting one. (Tr. 730) Respondent did not prevent the Ladies Auxiliary from advertising these events to the general public or take any action to prohibit members of the public from attending.

34. The evidence also shows that Respondent benefited financially from the money raised at these events. The Ladies Auxiliary used the proceeds from the events to purchase equipment for the Club. Norma Kline, the financial secretary/treasurer, testified that the Ladies Auxiliary received prior approval from the Club for each purchase. (Tr. 874) The Ladies Auxiliary also used these proceeds to pay money directly to the Club for campground expenses and projects. Wilson testified that the Ladies Auxiliary usually acquiesced to the Club's monetary requests for such purposes. (Tr. 688-89)

35. In addition to these events, Respondent sanctioned turkey shoots as a fundraiser in 1998. Respondent raised \$2,671 from the Turkey Shoots, which were held on its property every Sunday from mid-February to mid-April. The majority of the participants of the Turkey Shoots were nonmembers.

36. Respondent allocated Al Stalnaker, the park manager, \$200 to get the Turkey Shoots started. With part of this money, Stalnaker advertised the Turkey Shoots in local newspapers. (Comm.Ex. 22) A sign about the Turkey Shoots was posted at one of the entrances of the Club. (Tr. 1767) Members and their relatives posted a flyer used in previous turkey shoots on telephone poles, and bulletin boards at local stores and their workplaces. (Comm. 21, Tr. 500, 645, 876)

37. Respondent argues that Stalnaker advertised the Turkey Shoots in the newspapers “on his own” without the Club’s authorization. (R.Br. 19) This argument is contrary to the evidence. Ken Wilson, a trustee in 1998, made the motion to allocate \$200 for the Turkey Shoots. Wilson testified that the money was “to get the word out” about the Turkey Shoots in addition to buying shells and prizes, e.g., turkey, ham, and bacon. (Tr. 493) Dave Gault, the Club’s vice president in 1998, testified that it was common knowledge that advertising was needed for the Turkey Shoots because the whole purpose was to raise money from “people from the outside, not members of the club.” (Tr. 468) This explains why Respondent

kept an old flyer from previous turkey shoots and a “mailing list” of past participants in these events.²¹ (Comm.Exs. 21, 34)

38. Respondent implies in its proposed Findings of Fact that Stalnaker was disciplined for his actions in running the Turkey Shoots. (R.Br. 6) This is also untrue. Respondent did file charges of misconduct against Stalnaker in October 1998; but, according to Gelhausen, none of these charges involved his advertising of the Turkey Shoots “whatsoever.” (Tr. 246) Gelhausen also acknowledged that he saw the advertisement for the Turkey Shoots in *The Akron Beacon Journal* on March 27, 1998, but he “didn’t do anything” to prevent further advertisements. (Tr. 234) Respondent’s membership was also not concerned about the advertising. Stalnaker gave monthly reports about the income raised from the Turkey Shoots, yet the issue of advertising the events was never raised as a problem at the meetings. (Tr. 469, 501) As with the events organized by the Ladies Auxiliary, the advertising later became an issue when

²¹ The Turkey Shoots in 1998 were not isolated events. Respondent has used turkey shoots throughout the years to raise money. In fact, Respondent’s Bi-laws specifically reference turkey shoots. (Comm.Ex. 3) The Bi-laws state that no guns may be fired on the Club’s premises except for turkey shoots. Respondent paid for the sewer system and other expenses related to establishing its campground with money from turkey shoots. (Tr. 252-53)

Respondent received the charges of discrimination filed by the ladies who applied for membership in the Club.

39. Respondent exhibited the same careless or relaxed attitude toward the use of the Club by guests and other nonmembers in general. Respondent did not regulate the number of occasions a particular guest may visit the Club, or for that matter, stay overnight during a period of time.²² (Tr. 461-62, 612, 1508) Respondent issued membership cards, but members were not required to show them to enter the club or a facility for an event. (Tr. 1466)

40. Williams Sands, the financial secretary/treasurer, testified candidly that Respondent did not have “anybody that is designated as a policeman to watch over the Club.” (Tr. 1358) Sands testified that such policing of the Club’s rules is not “economically feasible.” *Id.* Instead, Respondent used the “honor system” to enforce its requirement that overnight guests register with the park manager and pay a nominal fee (\$1) per night. (Tr. 1491) The same is true with the camping rule that limits

²² Ken and Alison Wilson testified that euchre was played during the summer in the large clubhouse on Friday nights. (Tr. 519, 735) They testified that some of the players were nonmembers.

each member to five guests or one family per visit. (Tr. 1492) Such rules are meaningless without enforcement.

41. The Commission argues that the “geography of the Club’s park does not lend itself to excluding non-members.” (Comm.Br. 19) This argument is well taken. There are two access roads to Respondent’s property. (Comm.Ex. 1, R.Ex. C) These roads cannot be gated because they also provide access to private residences. Respondent does not police the entrances to the Club to keep nonmembers out.

WHETHER THE CLUB ADVERTISES FOR MEMBERS

42. There is no evidence that Respondent advertises for members. A club or other organization, which solicits members through advertising, is more akin to a place of public accommodation than a private club. See *Wright v. Salisbury Club, Ltd.*, 632 F.2d 309 (4th Cir. 1980) (organizations which advertise and solicit new members do not fall within the private club exemption under Title VII). A club’s use of advertising to solicit new members suggests a lack of genuine selectivity of membership.

WHETHER THE CLUB IS NONPROFIT

43. Respondent is a nonprofit organization. (Tr. 253, 1344) As in most cases, this fact weighs in favor of private club status. Although the Ladies Auxiliary had fundraisers for the Club, the purpose of these events was to raise money to purchase equipment for the Club and pay for its campground expenses and projects. Similarly, the purpose of the Turkey Shoots in 1998 was to avoid raising annual dues and camping fees to offset higher operating expenses. There is no evidence that Respondent primarily exists to further the commercial interests of its members. *Cf. Martin, supra* at 1325 (PGA Tour's fundamental purpose of enhancing profits for its members does not weigh in favor of exempt status despite being a nonprofit corporation); *Quijano v. University Federal Credit Union*, 617 F.2d 129, 133 (1980) (nonprofit federal credit union lacked private club status since it existed for "purely mercantile purposes").

JURISDICTIONAL CONCLUSION

44. Based on the foregoing analysis, the factors weigh heavily toward a finding that Respondent is not a private club and, instead, falls under the rubric of a place of public accommodation. Respondent is not truly selective in its membership and lacks a high degree of membership participation in the selection of new members. Respondent also allows nonmembers, including the wives and female relatives of members, substantial access and use of its facilities. Respondent operates in a manner that makes it actually open to the public and may not ignore state anti-discrimination laws under the guise of a private club.

45. The acceptance of the wives and female relatives of current members will not infringe upon the membership's freedom of association. They have already decided to associate with these females at the Club. They camp with them, play cards with them, and engage in other recreational activities with them. As Bud Gelhausen testified, the Club has evolved from a sportsman's club into a "family oriented" recreational facility. Other than sex discrimination, there is no reason why the women should

not have the opportunity to enjoy the same rights of membership as the men.

DENIAL OF MEMBERSHIP

46. Respondent stipulated during the hearing that Rose Bowen, Barbara Brown, Marianne Fox, Mona Gault, Noralynn Hughes, Helen Kline, Norma Kline, Leah Lane, Flo McIndoo, Joan Stalnaker, Tammie Stanley, and Alison Wilson were denied membership in the Club because of their sex. (Tr. 264) As a place of public accommodation, Respondent cannot deny persons membership on the basis of sex. This constitutes a violation of R.C. 4112.02(G). The Complainants in Complaints #8553-8564 are entitled to relief.

RETALIATION CLAIMS

47. In Complaints #8646, #8819-8825, #8848, #8906, #8908, #8933, and #8934, the Commission alleged that Respondent engaged in various acts of retaliation against those who filed previous charges of discrimination against the Club, and those who relatives' filed such charges. These allegations, if proven, would constitute a violation of R.C. 4112.02 provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

- (I) For any person to discriminate in any manner against any other person because . . . that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

48. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(I) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

49. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 Ohio

St.3d 569. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful retaliation under Title VII of the Civil Rights Act of 1964 (Title VII).

50. Under Title VII case law, the evidentiary framework established in *McDonnell Douglas Co. v. Greene*, 411 U.S. 792 (1973) for disparate treatment cases applies to retaliation cases. This framework usually requires the Commission to prove a *prima facie* case of unlawful retaliation by a preponderance of the evidence. The burden of establishing a *prima facie* case is not onerous. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981). It is simply part of an evidentiary framework “intended progressively to sharpen the inquiry into the elusive factual question of intentional discrimination.” *Id.*, at n.8.

51. The proof required to establish a *prima facie* case is also flexible and, therefore, may vary on a case-by-case basis. *McDonnell Douglas*, *supra* at 802, n.13. In these cases, the Commission may establish a *prima facie* case of unlawful retaliation by proving that:

- (1) Each Complainant engaged in an activity protected by R.C. Chapter 4112;
- (2) Respondent knew about the protected activity;

- (3) Thereafter, Respondent subjected each Complainant to an adverse action; and
- (4) There was a causal connection between the protected activity and the adverse action.

Cf. Hollins v. Atlantic Co., Inc., 188 F.3d 652 (6th Cir. 1999) (setting forth *prima facie* elements of Title VII retaliation claim).

SLOVENE CENTER

52. The Commission alleged in Complaint #8646 that Respondent denied the Ladies Auxiliary use of the Slovene Center in retaliation for Alison Wilson (and other members of the Ladies Auxiliary) filing previous charges of discrimination against the Club. Although the Commission established the first two elements of a *prima facie* case, the Commission must also prove that Respondent took an adverse action against Wilson, and for that matter, the other members of the Ladies Auxiliary who filed charges of discrimination.

53. The evidence shows that Bud Gelhausen informed both the Ladies Auxiliary and Respondent on January 4, 1999 that both organizations were no longer allowed to use the Slovene Center because

the ladies were “loud and disruptive” during their meetings in late 1998. (Comm.Ex. 37, p. 179, Tr. 801) This announcement prompted the Ladies Auxiliary to cancel its meetings until May, unless they found another meeting place in the meantime. The Ladies Auxiliary did not meet in February, March, and April while Respondent held its monthly meetings at the large clubhouse during those months.

54. Prior to 1999, Respondent and the Ladies Auxiliary had used the Slovene Center for at least the last 10 years during the months that the campground was closed. Gelhausen testified that Anthony Lukezic made the arrangements for the Club to use the Slovene Center while he was Respondent’s financial secretary-treasurer. (Tr. 322) Gelhausen testified that Lukezic was also a Board member of the Slovene Center at the time. (Tr. 322, 1593)

55. Other evidence demonstrates that Lukevic, a long-time member of the Slovene Center, played a key role in arranging Respondent’s use of the Slovene Center for meetings at a nominal cost. In a letter dated February 2, 1999, three trustees of the Slovene Center indicated that

Respondent was allowed to use the small hall for a “minimum fee” as a favor to Lukezic. (Comm.Ex. 15) The letter further indicated that:

This hall rents for \$75.00 with the Slovene catering and it is not available without our catering service. Since Mr. Lukezic is no longer an active member of your group and we now must have a responsible Slovene employee unlock and lock the doors, turn on lights, heat, etc., it came to our attention that this was something we no longer could afford to do. The Slovene is a banquet hall and we do not rent the rooms to anyone unless they use our catering.

Id.

56. Assuming Gelhausen misled Respondent and the Ladies Auxiliary about why both organizations could no longer meet at the Slovene Center, the evidence suggests that the increased cost of renting the Slovene Center was the likely reason for the change. Respondent usually did not provide food at its meetings and apparently decided that it could not afford to pay the additional cost to rent the Slovene Center with catering. Even one of the Commission’s witnesses, Dave Gault, believed that the additional cost of renting the Slovene Center was the real reason for Respondent no longer meeting there. Gault testified that it was his understanding that the Slovene Center “raised the price” to use its facilities, and Respondent “did not want to pay” the increase. (Tr. 408, 439)

57. Further, even though Respondent was not willing to pay more for renting the Slovene Center, this did not prevent the Ladies Auxiliary from paying the additional cost or renting another place for its monthly meetings. Such arrangements may not have been as convenient, but would have allowed the Ladies Auxiliary to continue its meetings.²³ There is no evidence that Respondent prevented the Ladies Auxiliary from meeting at the Slovene Center or elsewhere. Without such evidence, the Commission is unable to prove a *prima facie* case of unlawful retaliation in Complaint #8646.

REMOVAL OF LADIES AUXILIARY OFFICERS

58. The Commission alleged in Complaints #8819-8821 and #8823-8825 that Leah Lane, Alison Wilson, Joan Stalnaker, Marianne Fox, and Mona Gault were removed as officers of the Ladies Auxiliary in retaliation for filing previous charges of discrimination against Respondent. As with the allegations regarding the Slovene Center, the Commission

²³ Historically, Respondent and the Ladies Auxiliary held their meetings at the campground or Slovene Center on the same night. This was convenient because husbands and wives could travel together to and from the meetings.

must establish that Respondent took an adverse action against the officers who filed charges of discrimination.

59. The evidence shows that members of the Ladies Auxiliary removed Lane, Wilson, Stalnaker, Fox, and Gault from office on August 2, 1999. Although the Ladies Auxiliary is affiliated with Respondent, this affiliation does not establish that Respondent removed these Complainants from office. As discussed earlier, the members of the Ladies Auxiliary are not members of the Club.

60. The members of the Ladies Auxiliary who voted to remove its officers clearly had motives for this action. The Ladies Auxiliary became bitterly divided after several of its officers and members submitted applications to join Respondent. The Ladies Auxiliary was split between those who attempted to join Respondent and those who believed that this attempt was detrimental to the Ladies Auxiliary. The tension between the two camps was high.

61. This tension was apparent at Ladies Auxiliary meetings. Alison Wilson, the president in 1998, testified that the ladies' applications caused

“quite a commotion” and “it was hard to conduct business” at the meetings. (Tr. 707) Wilson further testified that “some of the women just really took offense” to the ladies’ applications. (Tr. 708) The minutes of the Ladies Auxiliary meetings corroborate Wilson’s testimony about the divisiveness and difficulty of conducting meetings in that environment. (Comm.Ex. 35) One member even asked the officers to resign at the November 1998 meeting. *Id.*, p.59.

62. This tension increased on May 20, 1999 when the officers cancelled the monthly meetings of the Ladies Auxiliary without a vote from the body. Some members believed the officers lacked the authority to cancel meetings and voted to remove them from office after they failed to appear for two consecutive meetings in June and July 1999. The reasons for removing the officers were memorialized in a resolution written by Shirley Cochrane on August 2, 1999. (R.Ex. J)

63. The Commission attempts to implicate Respondent in these removals because of Cochrane’s presence at the August 2 meeting and the “legal advice” that she provided at the meeting about removing the officers. (Comm.Br. 39-41) The Commission contends that Cochrane, an attorney,

also provided legal assistance to Respondent on other matters during the “same period of time.” *Id.* The Commission also notes that Bud Gelhausen’s wife, Helen, introduced Cochran to the group at the beginning of the meeting.

64. While Cochran may have represented the Club in August 1999, this fact alone does not establish Respondent’s involvement in the removals. The Commission failed to prove that Bud Gelhausen or other members of Respondent solicited Cochran to assist their wives and other Ladies Auxiliary members in removing Complainants from office.²⁴ Similarly, Respondent’s involvement is not established simply because its president’s wife introduced Cochran to the group before the meeting. Helen Gelhausen had her own motives for introducing Cochran; she sided with those who felt the ladies’ applications were detrimental to the Ladies Auxiliary and believed the officers exceeded their authority in canceling the monthly meetings.

65. In summary, the evidence shows that the members of the Ladies Auxiliary removed its own officers because they cancelled monthly

²⁴ Neither the Commission nor Respondent called Cochran as a witness.

meetings and failed to appear for two consecutive meetings. The Commission failed to prove that Respondent had any involvement in the removal of these officers. Without such evidence, the Commission is unable to prove a *prima facie* case of unlawful retaliation in Complaints #8819-8821 and #8823-8825.²⁵

GRASS MOWING FEES

66. The Commission alleged in Complaints #8819 and #8822 that Respondent charged Leah Lane and Flo McIndoo, respectively, grass mowing fees in retaliation for filing previous charges of discrimination against the Club. In these cases, the Commission established the first two elements of a *prima facie* case. As with the earlier retaliation claims, the Commission must also show that Respondent took an adverse action against Lane and McIndoo.

²⁵ This conclusion only pertains to a portion of Complaint #8819, which alleged that Leah Lane was removed as an officer of the Ladies Auxiliary due to unlawful retaliation.

67. The evidence shows that Bud Gelhausen, as the park manager, issued notices of grass mowing fees to eight individuals on June 25, 1999. (Comm.Ex. 45) Leah Lane was not one of these individuals.²⁶ Nor is there any evidence that Gelhausen charged her for grass mowing on another occasion. The Commission's allegation that Respondent charged Leah Lane fees for grass mowing lacks factual support in the record; therefore, this portion of Complaint #8819 must be dismissed.

68. In McIndoo's case, she received one of the notices in late June 1999. Her notice indicated that she owed \$31 for Gelhausen mowing her lot on three occasions. This notice constitutes an adverse action against McIndoo.

69. The fourth and final element of a *prima facie* case requires the Commission to establish a causal connection between McIndoo's receipt of grass mowing fees and her filing of a previous charge of discrimination against Respondent. A causal connection may be inferred from evidence

²⁶ Leah Lane's husband, Larry, was one of the eight individuals who received notices from Gelhausen. In light of his relationship with his wife, Larry Lane could have filed a third-party retaliation claim on his receipt of grass mowing fees. (See *Conclusions of Law*, paragraphs 80-81). However, his wife was not harmed in this regard.

that the adverse action closely followed the protected activity or other evidence that establishes by a preponderance of the evidence a link between the two events.

70. The evidence shows that McIndoo was one of the 12 ladies who filed applications to join the Club in September 1998. Respondent's president, Bud Gelhausen, strongly opposed the ladies' attempt to join the Club. In fact, Gelhausen broke the officers' deadlock on the issue in favor of not considering the ladies' applications. (Tr. 358, 401)

71. Prior to September 1998, Gelhausen had been friends and neighbors with McIndoo and her late husband, who died in the early 1990s. When McIndoo's husband died, she continued to live in the trailer beside Gelhausen and remained friends with him. Gelhausen (and others) mowed McIndoo's lot without charging her.

72. McIndoo testified that her relationship with Gelhausen changed after she attempted to join the Club. McIndoo testified that Gelhausen became "mad" at her and was no longer "friendly" toward her. (Tr. 2026) McIndoo testified that Gelhausen also stopped talking to her. The Hearing

Examiner credited McIndoo's testimony that Gelhausen harbored animus toward her and the other ladies after their attempt to join the Club. This is not surprising given his strong opposition to the ladies' application for membership.

73. It is also not surprising that Gelhausen's animosity toward McIndoo only heightened when she was among those who filed charges of discrimination against Respondent. Gelhausen even referred to McIndoo's "allegations" to the Commission in a letter to her dated December 14, 1999.²⁷ (Comm.Exs. 18, 47) Gelhausen informed McIndoo in the letter that she was not charged for mowing in previous years because of the "thoughtfulness and kindness" of himself and others. *Id.* Gelhausen also made it clear that such generosity was "the way" of the past. *Id.* The Commission presented sufficient evidence to infer a causal connection between Complainant's receipt of grass mowing fees and her filing of a charge of discrimination with the Commission.

²⁷ This is the letter in which Gelhausen informed McIndoo that he was returning her payment of the grass mowing fees because the officers voted not to accept payment after July 5, 1999.

74. The Commission having established a *prima facie* case, the burden of production shifted to Respondent to articulate a legitimate, non-retaliatory reason for its actions. See *McDonnell Douglas, supra* at 802.

To meet this burden of production, Respondent must:

. . . “clearly set forth, through the introduction of admissible evidence,” reasons for its actions which, *if believed by the trier of fact*, would support a finding that . . . [unlawful retaliation] was not the cause of the . . . [adverse] action.

St. Mary’s Honor Center v. Hicks, 509 U.S. 502, 507 (1993), quoting *Burdine, supra* at 254-55, n.8.

75. Respondent met its burden of production with Bud Gelhausen’s testimony. Gelhausen testified that he had to charge McIndoo for mowing her lot because she had to be “treated equally” to the others who received bills for grass mowing. (Tr. 2070, 2098) Gelhausen testified that he could not make an exception for McIndoo because he feared action by the Commission if he did not charge her:

Q: Did you have any fears that there would be any retribution against you if you did not charge her?

A: Quite possibly there would have been through the action of the Civil Rights [Commission].

(Tr. 2098-99)

76. Respondent having met its burden of production, the inquiry moves to the ultimate issue of the case, i.e., whether Respondent retaliated against McIndoo because of her filing of a charge of discrimination against the Club. The Commission must provide sufficient evidence for the factfinder to infer that McIndoo was, more likely than not, the victim of unlawful retaliation.

77. The evidence shows that Respondent's articulated reason for charging McIndoo mowing fees was motivated by not only McIndoo's charge of discrimination, but also the multitude of charges filed with the Commission against Respondent in late 1998 and early 1999. In other words, Gelhausen's misguided fear that the Commission would take action against him or the Club for not charging McIndoo for mowing her lot was predicated on the Club's receipt of her charge of discrimination and the numerous others filed with the Commission during the same period.

78. Respondent argues that the Commission cannot establish unlawful retaliation because Gelhausen also billed members who are not parties "to the underlying discrimination claims." (R.Br. 4) This does not explain Gelhausen's treatment of McIndoo. Specifically, this does not

explain why Gelhausen failed to inform McIndoo that he was no longer mowing her lot without charging her. Instead, Gelhausen mowed McIndoo's lot on three occasions and then billed her for the work. This lack of notice deprived McIndoo, an elderly widow, the opportunity to have someone else mow her lot gratuitously. Gelhausen's treatment of McIndoo under the circumstances constitutes unlawful retaliation under R.C. 4112.02(I).

REFUSAL TO ACCEPT PAYMENT OF FEES/DUES

79. The Commission alleged in Complaints #8848, #8909, and #8933 that Respondent refused to accept payment of grass mowing fees, annual dues, and camping fees from Larry Lane, Keith Brown, and Flo McIndoo, respectively. The Commission alleged that Respondent took these actions against Lane and Brown in retaliation for their female relatives' (Lane's wife and Brown's mother) filing previous charges of discrimination against the Club. In McIndoo's case, the Commission alleged that Respondent took these actions against her because she filed previous charges of discrimination against the Club.

80. In these cases, the Commission may established the first element of a *prima facie* case of unlawful retaliation by showing that either the Complainant engaged in protected activity or a relative of a Complainant engaged in such activity. See *EEOC v. Nalbandian Sales, Inc.*, 36 F.Supp. 2d 1206, 1210 (employee may prove first element of *prima facie* case of third-party retaliation under Title VII with evidence that relative engaged in protected activity). Like its federal counterpart, the plain language of R.C. 4112.02(I) should not be strictly construed at the expense of the underlying purposes of the statute. See *EEOC v. Ohio Edison Co.*, 7 F.3d 541, 545 (6th Cir. 1993) (court recognized that Title VII’s anti-retaliation provision may be viewed outside of literal terms to effectuate that statute’s clear purposes).

81. As discussed, R.C. 4112.08 mandates that R.C. Chapter 4112 should be liberally construed to effectuate its purposes—eradicating unlawful discrimination and making discrimination victims whole.²⁸ An overly narrow interpretation of R.C. 4112.02(I) would leave persons “free to

²⁸ The Ohio Supreme Court recently noted that R.C. Chapter 4112 is “remedial legislation.” *Smith v. Friendship Village of Dublin, Ohio, Inc.* (2001), 92 Ohio St.3d 503, 505. Although this Chapter focuses primarily on employment and housing discrimination, it is designed to remedy the effects of discrimination in public accommodation as well. *Lysyj, supra* at 220.

engage in indirect retaliatory conduct, accomplishing indirectly what it is prohibited from doing directly.” *Nalbandian Sales, supra* at 1210. Such an interpretation would chill persons from engaging in protected activity under R.C. 4112.02(I) out of fear that their filing of a charge of discrimination (or opposing unlawful discrimination) could adversely jeopardize a relative in some manner. This chilling effect would undoubtedly hinder the statute’s underlying objectives.

82. The Commission proved the first three elements of a *prima facie* case in these cases. The evidence shows that Lane’s wife, Brown’s mother, and McIndoo filed previous charges of discrimination against the Club. Respondent was aware of these charges prior to December 14, 1999. On that date, Gelhausen sent written notice to Lane, Brown, and McIndoo that the Club’s officers voted not to accept their payment of grass mowing fees issued in late June 1999. The Club’s refusal to accept payment of grass mowing fees from Lane, Brown, and McIndoo constitutes an adverse action against them because Respondent later refused to accept their annual dues and camping fees based, at least in part, on the nonpayment of the grass mowing fees. Similarly, the refusal to accept Lane, Brown, and McIndoo’s annual dues and camping fees led

to the loss of their membership privileges and eventually the removal of the trailers from their lots.

83. The Commission also proved the fourth element of a *prima facie* case with evidence that Respondent treated others more favorably than Lane, Brown, and McIndoo. Neither of the individuals who received more favorable treatment nor their relatives had filed charges of discrimination against the Club.

84. The evidence shows that Gelhausen issued notices to Jim Havassy and Grace Martin on July 27, 1999 that he mowed their lots. These notices, like the ones issued in late June, indicated that the matters “should be resolved before or during the next monthly meeting.” (Comm.Ex. 45) Havassy and Martin did not pay their mowing fees by the next meeting, which occurred on August 2. Yet Gelhausen provided Havassy and Martin “second notice[s]” on September 1, 1999 about their failure to pay for grass mowing on July 27. Respondent did not provide Lane, Brown, and McIndoo the benefit of receiving second notices. Instead, Respondent deemed their attempts to pay before or at the

following meeting as “extremely late” and refused to accept their payments.²⁹ (Comm.Ex. 46)

85. In its defense, Respondent did not provide an explanation for Martin’s receipt of a second notice. In Havassy’s case, Respondent contended that an exception was made for him because “he was in the middle of a divorce and his mail was not being forwarded to him.” (R.Br. 6) This contention is flawed because Gelhausen issued Havassy a second notice on September 1, 1999—12 days *before* he learned that Havassy had not received the earlier notice.³⁰ Respondent accepted Havassy’s payment on September 13, 1999. (Comm.Ex. 45, Tr. 2223)

86. The Commission having established a *prima facie* case, the burden shifted to Respondent to articulate a legitimate, nonretaliatory

²⁹ Gelhausen wrote in his letter to Brown on December 14, 1999 that the officers ruled that any payment after July 5 was “extremely late” and would not be accepted. (Comm.Ex. 46) The evidence shows that McIndoo and Lane attempted to pay their grass mowing fees on July 15 and July 23, respectively. Brown attempted to pay at the following meeting on August 2, but Respondent refused his payment as untimely. Ironically, this is the same meeting that Havassy and Martin failed to pay their grass mowing fees issued on July 27.

³⁰ Gelhausen testified that Mark Freeman brought an envelope to the September meeting showing that Havassy recently received the notice issued in late July. The meeting was held on September 13 because the first Monday of the month was Labor Day.

reason for its actions. Respondent met its burden of production with Gelhausen's testimony and documentary evidence. Gelhausen testified that the Respondent's officers decided on July 5, 1999 that any subsequent payment of the mowing fees issued in late June 1999 were untimely and would not be accepted. In mid-December 1999, Gelhausen sent Lane, Brown, and McIndoo written notification of this decision, along with the return of McIndoo's check and Lane's money order. (Comm.Exs. 18, 46, 47, 53) The documentary evidence also shows that Respondent voted on January 3, 2000 to not accept the dues from "campers who have violated the park rules by not mowing there [sic] lots." (Comm.Ex. 37, p. 205)

87. Respondent having met its burden of production, the Commission must show by a preponderance of the evidence that Respondent's articulated reasons for the adverse actions against Lane, Brown, and McIndoo were not its true reasons, but were "a pretext" or cover-up for unlawful retaliation. *Hicks, supra* at 515, *quoting Burdine, supra* at 253. Ultimately, the Commission must convince the factfinder that, more likely than not, these Complainants were victims of unlawful retaliation.

88. In order to show pretext, the Commission may directly or indirectly challenge the credibility of Respondent's articulated reasons for its actions against Lane, Brown, and McIndoo. The Commission may directly challenge the credibility of Respondent's articulated reasons by showing that the reasons had no basis *in fact* or were *insufficient* to motivate its actions. *Manzer v. Diamond Shamrock Chemicals Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994); *See also Dews v. A.B. Dick Co.*, 231 F.3d 1016, 1021 (6th Cir. 2000). Such direct attacks, if successful, permit the factfinder to infer retaliation from the rejection of the reasons without additional evidence:

The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may together with the elements of the *prima facie* case, suffice to show intentional . . . [retaliation]. Thus, rejection of the defendant's proffered reasons will *permit* the trier of fact to infer the ultimate fact of . . . [retaliation], and . . . no additional proof is required.³¹

Hicks, supra at 511, (bracket removed); *See also Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097, 2108 (2000).

³¹ Even though rejection of a respondent's articulated reasons is "enough at law to *sustain* finding of discrimination", there must be a finding of unlawful retaliation. *Hicks, supra* 511, n.4.

89. The Commission may indirectly challenge the credibility of Respondent's reasons by showing that the sheer weight of the circumstantial evidence makes it "more likely than not" that the reasons are a pretext for unlawful retaliation. *Manzer, supra* at 1084. This type of showing, which tends to prove that the reasons did not *actually* motivate the actions, requires the Commission produce additional evidence of unlawful retaliation besides evidence that is part of the *prima facie* case. *Id.*

90. In these cases, the Commission directly challenged Respondent's contention that it refused to accept payment for grass mowing from Lane, Brown, and McIndoo because they failed to pay by the next meeting. As discussed, the evidence shows that Respondent issued second notices to noncomplainants who also failed to pay grass mowing fees by the next meeting. This disparate treatment suggests that Respondent's actions toward Lane, Brown, and McIndoo were not motivated by the untimeliness of their payment.

91. The evidence also shows that this was the first year that Respondent used the notices that Gelhausen asked Williams Sands, the

financial secretary-treasurer, to prepare for him. As the Commission points out, the notices did not specifically state that *payment* had to be made by the next meeting. The notices only stated that such matters “should” be resolved before or during the next meeting. Respondent never offered any reason why the mowing fees had to be paid by the next meeting. The timing of the decision to not accept “late” payments for grass mowing fees, at least those payments from Lane, Brown, and McIndoo, is suspect because Respondent allegedly made this decision on July 5, 1999 *after* they did not pay these fees on that date.

92. Other evidence shows that Respondent deviated from past practice in requiring payment of grass mowing fees by the next meeting. Al Stalnaker, a former park manager, testified that members were previously allowed to submit payment for grass mowing fees with their membership dues and camping fees the following year. Gelhausen performed the duties of park manager prior to 1999, and he never required mowing fees to be paid by the next meeting.

93. The Commission also directly challenged Respondent’s reason for refusing to accept annual dues and camping fees from Lane, Brown,

and McIndoo. Respondent voted on January 3, 2000 to not accept the dues from “campers who have violated the park rules by not mowing there [sic] lots.” (Comm.Ex. 37, p. 206) Prior to the vote, Gelhausen spoke about “people who have not been mowing there [sic] camp lots.” *Id.*, at 205. Gelhausen also informed membership that the officers recommended that these members’ dues not be accepted next year.

94. The Commission argues that Gelhausen misled membership into believing that Lane, Brown, and McIndoo were not mowing their lots. This argument is well taken. There is no evidence that Lane, Brown, and McIndoo (or someone on her behalf) were not mowing their lots in 1999. In fact, Gelhausen only issued them notices for mowing on June 25, 1999. Respondent’s articulated reason for not accepting annual dues and camping fees from Lane, Brown, and McIndoo has no basis in fact.

95. After a careful review of the entire record, the Hearing Examiner concludes that Lane, Brown, and McIndoo were, more likely than not, victims of unlawful retaliation. Respondent’s actions against them, i.e., refusing to accept their payments of mowing fees, annual dues, and camping fees, resulted in the loss of their membership privileges. The

Commission presented sufficient evidence to conclude that Respondent's articulated reasons for its adverse actions against them were a pretext or cover-up for unlawful retaliation.

REMOVAL OF TRAILERS

96. The Commission alleged in Complaints #8906, #8933, and #8934 that Respondent removed the trailers of Leah Lane, Flo McIndoo, and Barbara Brown from their lots in retaliation for their filing of previous charges of discrimination against the Club. The Commission alleged in Complaint #8908 that Respondent removed Keith Brown's trailer from his lot in retaliation for his mother's filing of a previous charge of discrimination against the Club.

97. At this point, there is no need to undertake a prolonged analysis of these allegations. The removal of these trailers flowed from Respondent's prior retaliatory actions against Larry Lane, Keith Brown, and Flo McIndoo, namely the Club's refusal to accept their payment of mowing fees, annual dues, and camping fees. The removal of the trailers was, more likely than not, the *coup de grâce* of a rudimentary plan to retaliate

against those who filed charges of discrimination against Respondent; those whose relatives filed such charges; and those who otherwise supported the ladies' applications to join the Club.³²

RECOMMENDATIONS

For all of the foregoing reasons, the Hearing Examiner recommends the following:

1. The Commission issue Dismissal Orders in Complaints #8646, #8819-8821, and #8823-8825;

2. The Commission issue Cease and Desist Orders in Complaints #8553-8564, #8822, #8848, #8906, #8908, #8933, and #8934. Specifically, the Commission order Respondent to cease and desist from engaging in sex discrimination, unlawful retaliation, and other practices that violate R.C. Chapter 4112;

³² The trailers of Leah Lane and McIndoo have been returned to their original locations as part of a settlement of legal proceedings against Respondent. The Browns removed their trailer as ordered by Respondent. Their trailer has not been returned to the campground.

3. The Commission order Respondent to reinstate, within 45 days of the Commission's Final Order, Keith Brown as a member and return his trailer to the campground at its original location. Brown must inform Respondent, within 15 days of the Commission's Final Order, in writing of his desire to be reinstated and his intent to return his trailer to the campground. Upon receipt of such notice, Respondent must contact Brown and make arrangements for the return of his trailer within 45 days of the Commission's Final Order. Respondent must have Brown's lot mowed and otherwise prepared for the return of his trailer on the agreed date. Respondent must pro-rate Brown's annual dues and camping fees depending upon his return as a member and camper;

4. The Commission order Respondent to accept, within 45 days of the Commission's Final Order, the Complainants in Complaints #8553-8564 as members of the Club. These new members shall be treated equally as the current members of the Club. These new members shall be afforded all the privileges of membership enjoyed by current members, including but not limited to, the right to attend the Club's meetings, vote on its business, rent space for trailers at the campground, and serve as a trustee or hold one of the Club's other officer positions;

5. The Commission order Respondent to offer, within 45 days of the Commission's Final Order, these new members (who are not widow members) the opportunity to rent their current lot either in their name or in both their name and their husband's or other male relative's name;

6. The Commission order Respondent to offer, within 45 days of the Commission's Final Order, these new members who are widows the opportunity to rent their current lot in their name;

7. The Commission order Respondent to amend, within 60 days of the Commission's Final Order, its Bi-Laws to make the language gender neutral and otherwise nondiscriminatory on the basis of sex. Among other things, this includes removing language that discriminates against female children of members and lifting restrictions on widowed members who decide to remarry;

8. The Commission order Respondent to provide, within 30 days of its completion, a copy of its new Bi-laws to the Commission's Office of

Special Investigations (OSI) at 1111 East Broad Street, Suite 301, in Columbus, Ohio. Once the new Bi-laws are submitted, Respondent must provide the OSI written notice of any changes in its Bi-laws over the next four years;

9. The Commission order Respondent to consider all future applicants for membership without regard to their sex. If any new members have husbands or male relatives who are current members, they shall have the opportunity to rent their current lot either in their name or in both their name and their husband's or other male relative's name³³; and

10. The Commission order Respondent to provide the OSI a yearly report which includes, but is not limited to, the following:

- A current membership list;
- The names of all prospective applicants for membership;
- Copies of all applications for membership;
- Separate lists of all applicants for membership who were rejected and accepted;

³³ In the future, Respondent may opt to offer single or family memberships in both spouse's names.

- The names of all officers of the Club;
- A copy of the minutes of all Club meetings; and
- Any other documents or information requested by the OSI for compliance purposes.

TODD W. EVANS
HEARING EXAMINER

May 10, 2002