

United States Senate

REPUBLICAN POLICY COMMITTEE

Larry E. Craig, Chairman

Jade West, Staff Director



June 10, 1997

President Should Enforce the Civil Rights Laws as Written

Administration Sanctions Race-Based Layoffs

This week the President plans to unveil a major new initiative on race relations. We assume that Sharon Taxman will not be invited to the unveiling ceremony. Ms. Taxman is the New Jersey teacher who was betrayed and abandoned in the federal courts by the Clinton Administration. Here is Ms. Taxman's story:

Affirmative Action in Piscataway, New Jersey. Sharon Taxman taught in the Business Department at Piscataway (New Jersey) High School. The Piscataway Board of Education had an affirmative action program for employment decisions, including layoffs, which allowed the Board to prefer racial and ethnic minorities and women when candidates appeared to have equal qualifications. The Board adopted its policy although there was *no* evidence within the school system of any prior discrimination or underrepresentation of racial minorities. When the Board found it necessary to reduce the teaching staff in the Business Department by laying off one teacher, it looked to the two teachers with the least seniority, Sharon Taxman, a white woman, and Debra Williams, a black woman.

Deciding by Race. Decisions regarding layoffs by New Jersey school boards are controlled by state law. Local school boards have no discretion in choosing which employees to let go except in those rare cases when employees tie in seniority. In prior cases of ties, the Board had broken the tie by drawing lots. In none of those instances, however, had the employees been of different races. When the Board had to decide between Taxman and Williams, it decided to apply its affirmative action plan. Accordingly, the Board laid off Taxman and retained Williams because she was the only black teacher in the Business Education Department. There is no dispute that Taxman was let go because of her race. The Board defended itself by saying that it was striving for diversity in the Business Department.

Teacher Wins With Help of Bush Administration. Taxman, with the help of the United States Government (under the Bush Administration), filed suit against the school board under Title VII of the 1964 Civil Rights Act. Title VII makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment" on the basis of "race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a). At the district court, Taxman and the United States Government won a major victory. The School Board was found liable for

unlawful race-based discrimination and ordered to pay more than \$134,000 for backpay, fringe benefits, and interest. Taxman also regained her full seniority rights. *United States v. Bd. of Educ. of the Township of Piscataway*, 832 F. Supp. 836 (D.N.J. 1993).

Teacher Abandoned by Clinton Administration -- but Continues to Win. After the decision of the district court, the Department of Justice (now under President Clinton) abandoned Taxman. The Government said it could no longer support its previous position. The court of appeals refused to permit the Government to switch sides, and the Government withdrew from the case, but Taxman continued the case on her own and won again, the appellate court saying:

"It is clear that the language of Title VII is violated when an employer makes an employment decision based upon an employee's race. The Supreme Court determined in *United Steelworkers v. Weber*, 443 U. S. 193 (1979), however, that Title VII's prohibition against racial discrimination is not violated by affirmative action plans which first, 'have purposes that mirror those of the statute' and second, do not 'unnecessarily trammel the interests of the [non-minority] employees.' We hold that Piscataway's affirmative action policy is unlawful because it fails to satisfy either prong of *Weber*. Given the clear antidiscrimination mandate of Title VII, a non-remedial affirmative action plan, even one with a laudable purpose, cannot pass muster. . . ." *Taxman v. Bd. of Educ. of the Township of Piscataway*, 91 F.3d 1547 (3d Cir. 1996) (en banc).

Clinton Administration Tells Supreme Court that the Lower Courts Were Wrong to Strike Down Race-Based Layoffs -- but Asks Supreme Court to Let the "Error" Stand. After losing for the second time, the School Board asked the Supreme Court to review the case, and the Court asked the Government whether it had a position. Last week, the Clinton Administration said that, yes, the lower courts were wrong, but that, no, the Supreme Court should *not* consider the case. Apparently, the White House is concerned that the Supreme Court may agree with the court of appeals and start telling employers all across the country that they must stop discriminating on the basis of race.

Even the *Washington Post* was not persuaded by the Administration's ploy. The *Post* called it "a cop-out," and then went on to say:

"Either an error should be reversed, or the courts below are right and their ruling should not be disturbed. The real reason for the [Justice] department's self-contradictory position is the fear that Mrs. Taxman will win in the high court and that such a ruling will prohibit racially based firings that are not undertaken in the name of remedying past discrimination. . . . The Supreme Court should take this case. It is perhaps the clearest example of race-based firing to arise in recent memory because no other factors -- seniority, performance, or special talents -- entered into the decision. . . ."

If the President is looking for an initiative on racial justice, he might consider telling his own Administration to enforce the Civil Rights Act of 1964. He would find enormous support from the American people.

Kenneth Foss assisted in the preparation of this paper.