

1 2. Superintendent Ray Phipps recommended Williams for a position as Activities
2 Director on August 14, 1995. The board of trustees accepted Phipps' recommendation. The
3 stipend for the assignment, covering high school activities and athletics and seventh and eighth
4 grade athletics, was \$5,000. Superintendent Phipps recommended Williams for reappointment
5 as Activities Director on April 10, 1996. The board of trustees accepted the recommendation.
6 His stipend for this assignment covering high school activities and athletics and seventh and
7 eighth grade athletics was \$5100. Uncontested facts.

8 3. After Williams' first school year in the district, in the summer of 1995, the
9 superintendent and the high school principal both resigned. The athletic director also resigned
10 from that full-time position and was reassigned a full-time teaching position. The new
11 superintendent, Dr. Phipps, then offered Williams the athletic director position, as a part-time
12 job. Testimony of Williams. Over the course of the 1995-96 school year, Williams helped
13 handle disciplinary matters, taught three classes (approximately half-time), and was coach and
14 athletic director. Testimony of Williams, Exhibits 4 and 5.

15 4. In the beginning of the 1996-97 school year, Williams told the high school
16 principal, Elaine Forrest (who assumed her position starting with the 1995-96 school year),
17 that he was not willing to handle disciplinary matters again unless he was paid for the duties.
18 Williams perceived Forrest to view him and treat him differently than other faculty members
19 because of his race. Williams believed that his refusal to continue to assist with discipline
20 exacerbated Forrest's bias. Testimony of Williams.

21 5. In November of 1996, the girls' basketball coach, Dean Allen, kept the team
22 overnight in Miles City after they lost a second game, exiting the tournament. Phipps and
23 Forrest opposed having an athletic team stay at the tournament site after elimination, for
24 reasons of cost. Williams understood that the chairman of the district's board of trustees had
25 instructed Allen to keep the team at the tournament site overnight. He disregarded directions
26 from Forrest and Phipps to write a letter of reprimand to Allen. Williams did not think it fair
27 to blame Allen. Forrest and Phipps considered his conduct insubordinate. The conflict among
28 the three over Allen resulted from their different views of how to deal with a board chairman

1 who gave directions to a staff member contravening those of the administration. Testimony of
2 Williams, Phipps and Forrest, Exhibit 15(1).

3 6. Near the end of the 1996-97 girls' basketball season, someone broke into the
4 concession stand, committing both theft and vandalism. Williams followed the
5 recommendation of the operator of the stand, Allison Legg, to close it until it was cleaned up.
6 Forrest did not agree, and wanted the stand kept open and further investigation of the break-in
7 conducted. Williams was uncooperative, and Forrest believed that Williams dropped
8 supervision of the concessions at that time. With approval of the administration, the school's
9 booster club took over the stand, and Legg's participation ceased. Williams disapproved of the
10 change, and took no further role in the concession stand operation. The wife of the chairman
11 of the board of trustees was prominently involved with the booster club. Testimony of
12 Williams and Forrest.

13 7. During the 1996-97 school year, the cross-country team (two students and coach
14 Cynthia Ward) had room reservations for the state meet in Helena. Because of a blizzard
15 forecast, Ward asked to leave with her athletes during the morning. Williams refused to allow
16 the early departure from Lame Deer, because he believed lunch in the cafeteria would be
17 cheaper than sack lunches. Williams does not recall whether he asked either Forrest or Phipps
18 to confirm the reservations in Helena. The weather got worse. The trip to Helena took
19 longer, and was more hazardous. The room reservations were not confirmed, and were
20 canceled before Ward and the athletes arrived. Although Ward was able to scramble and find
21 rooms, the rooms were not together, and she had difficulty supervising the athletes. Because
22 she was unable to leave earlier with her athletes, they did not get a chance to walk through the
23 course before competing. The athletes did not have proper clothing to compete in the bad
24 weather. Afterwards, Ward was critical of Williams. He confronted her about her criticism
25 because he did not like her talking behind his back. Testimony of Ward and Williams.

26 8. Ward, as coach, had to prepare meet entry forms and either fax them or arrange
27 registration on arrival, in order to assure her athletes were entered in cross-country meets. She
28 experienced continual problems with buses and transportation. She had to prepare the

1 purchase orders, get the signatures for approval, and generally make all of the meal and
2 lodging arrangements. She experienced problems getting and maintaining uniforms for her
3 athletes. She never observed Williams attend any meets. She became frustrated at the lack of
4 assistance and support during cross-country and resigned as track coach when Williams
5 confronted her about criticizing him. Testimony of Ward.

6 9. Antoinette Gross was the cheerleader supervisor for the high school in 1996-97.
7 She found Williams fair and consistent. Gross agreed with Williams that participants in
8 cheerleading must follow the Montana High School Association guidelines (Exhibit D). The
9 two were at loggerheads with the board of trustees and the administration on this issue,
10 particularly with regard to attendance at practices. Both Williams and Gross thought that
11 Forrest, on behalf of the administration, supported the board's practice of permitting
12 participation in cheerleading despite academic problems and lack of attendance at practices.
13 Testimony of Gross and Williams.

14 10. Forrest took over supervision of the cheerleaders, because Williams kept insisting
15 that cheerleaders, like players, had to follow the eligibility rules and show up at practices.
16 Forrest believed that developing a cheerleader cadre was more important initially than
17 rigorously enforcing the practice attendance rules. She recognized the insistence of the board
18 of trustees on having cheerleaders despite attendance problems at practices. Neither Forrest
19 nor Phipps supported or directed bending the academic eligibility rules. Testimony of Forrest
20 and Phipps. See also, Exhibit P-3 regarding cheerleaders.

21 11. In January 1997, the district hired Gordon Real Bird to teach physical education.
22 Exhibit A-10. He had 15 years' coaching experience and 3 years' athletic director experience.

23 12. Lame Deer High School did not have a pep rally for the girls' basketball team prior
24 to the tournament season, in part because of cheerleader problems. When directed to organize
25 a pep rally for the boys' basketball team prior to its tournament season, Williams refused.
26 Real Bird and Forrest organized the pep rally. Testimony of Williams and Forrest.

27 13. Williams dealt thoroughly and professionally with athletic directors, coaches and
28 administrators from other schools and with sports officials hired for Lame Deer athletic events.

1 He succeeded in raising the expectations of other schools regarding the professionalism and
2 efficiency of the Lane Deer athletics department. Testimony of Williams, Greg Smith and
3 Lydia Green.

4 14. The district hired Jason Fisher, a community member and not a faculty member, as
5 volleyball coach in the 1996-97 school year. The district was apparently unaware that Fisher
6 had personal problems, until some of his players complained in writing of his absence from a
7 game in February, 1997. Exhibit O. Forrest blamed Williams for not advising her of the
8 problems, but Williams was as ignorant of Fisher's problems as the district itself. Testimony
9 of Williams and Forrest. However, as athletic director, Williams should have become aware
10 of Fisher's absences before team members complained about him. Even though Forrest
11 blamed Williams for the wrong reason, the district could reasonably question Williams'
12 supervision of Fisher. In addition, Williams refused to write a termination letter to Fisher, that
13 Forrest then wrote. Testimony of Forrest, Exhibit N. This was the third instance of direct
14 refusal to follow the principal's directions, the reprimand to Allen and the pep rally being the
15 other two.

16 15. Concerned about Williams' increasing refusal to follow directions, Forrest
17 attempted to reign in the athletic director. Williams requested an early paycheck so he could
18 leave to attend a basketball tournament. Williams made the request directly to Phipps, without
19 routing it first through Forrest for her approval. He did so because he was concerned about
20 getting approval in time to get the check and leave for the tournament. Phipps approved the
21 request, but recognizing the validity of Forrest's concern for going through channels, returned
22 it to Forrest with directions to have Williams get her approval as well. Forrest put the
23 paperwork in Williams' box at the school, expecting him to come to her for her signature.
24 Williams instead took the paperwork back to Phipps' office, and obtained his check from the
25 staff without ever consulting with Forrest. He did not see the necessity of doing so. Forrest
26 saw his conduct as another refusal to follow directions, although Phipps did not consider the
27 matter of much significance, considered in isolation. Testimony of Williams, Forrest and
28 Phipps.

1 16. In the spring of 1997, Williams voluntarily resigned as boys' basketball coach.
2 Exhibit Q. He expected to be athletic director again in 1997-98. Testimony of Williams.

3 17. Forrest never provided a formal evaluation of Williams during his tenure as athletic
4 director. She did give him feedback about his performance, including negative feedback on the
5 incidents detailed in these findings. Williams did not perceive the negative feedback as part of
6 any kind of evaluation process. Instead, he saw Forrest as simply being wrong about such
7 things as having a pep rally for boys' basketball after not having one for girls' basketball. He
8 attributed at least part of the source of on-going conflict with Forrest to racial bias. Testimony
9 of Williams and Forrest. He also perceived part of the source of the conflict to be Forrest's
10 inferior knowledge about the right way to get things done in the athletic department. Williams
11 saw no necessity to follow the directions of either the high school principal (Forrest) or the
12 superintendent (Phipps) when he considered them wrong.

13 18. During his tenure with the district, Williams experienced occasional racial epithets
14 and instances of hostile bias. He was not satisfied that the district reacted strongly or promptly
15 enough to those incidents he reported. However, until the district hired Real Bird as a full-
16 time athletic director, and Williams subsequently filed his Human Rights complaint, he took no
17 action to pursue his dissatisfaction. He handled such incidents himself, as he considered
18 appropriate. Testimony of Williams.

19 19. Real Bird is Native American. Williams is black (African American). Uncontested
20 facts. Both Phipps and Forrest had previously worked with Real Bird in the Lodge Grass
21 Public School District. Testimony of Phipps, Forrest and Real Bird.

22 20. During Williams' tenure as athletic director, the board of trustees initially sought
23 his input on matters such as hiring coaches and participation in MHSA activities. Exhibit A-3
24 (Board minutes, 8/14/95), Exhibit A-8 (Board minutes, 4/10/96). However, the later minutes
25 of the board of trustees do not reflect any input from Williams. Exhibit A-9 through A-15.

26 21. Forrest wrote the long memo to Phipps detailing her reasons for not recommending
27 Williams for athletic director for 1997-98 (Exhibit 15, with the hand-written date of March 24,
28 1997). At about this same time, Forrest met with Williams to discuss her concerns about his

1 job performance. After that meeting and before the April 14, 1997, meeting of the board of
2 trustees, Forrest and Phipps met with Williams regarding the insubordination Forrest alleged
3 had occurred. Williams denied any insubordination. He believed he had done nothing wrong,
4 and was not insubordinate. Testimony of Williams, Forrest and Phipps. Phipps then
5 concurred in Forrest's recommendation not to recommend renewal of Williams as athletic
6 director. Testimony of Phipps.

7 22. In preparing her memo, Forrest included as complete a list as possible of the
8 problems she perceived with Williams. She included the incidents already detailed in these
9 findings, as well as other instances she considered to be poor job performance. Virtually
10 without exception, those other incidents involved poor communication or miscommunication
11 between Williams and Forrest or other district employees. Exhibit 15, items 3, 6, 7, 8 and 9.
12 Forrest also added some comments to the memo about being "very sure the Board members do
13 not want him back" and about "rumors" of Williams "being in the bars in Colstrip." Exhibit
14 15, last page.

15 23. Williams did not see Exhibit 15 until the investigation of his Human Rights Act
16 complaint. He had no opportunity to respond in any meaningful way to the memo itself.
17 Testimony of Williams. However, Forrest and Phipps both attempted, before recommending
18 Williams' non-renewal, to apprise him of the problems that developed. Both Forrest and
19 Phipps attempted to work with Williams to address and correct these problems. Williams did
20 not take the problems seriously, and did not cooperate with these attempts. Testimony of
21 Forrest and Phipps.

22 24. On April 14, 1997, the board of trustees voted to offer contracts to teachers,
23 including another year as a half-time social studies teacher for Williams. Exhibit A-13. No
24 mention of either "Activities Director" or "Athletic Director" appears in the minutes.

25 25. On April 24, 1997, after receiving his contract for the 1997-98 school year and
26 noting it did not include the athletic director duties and was solely for a half-time teaching
27 position, Williams wrote to the chairman of the board, requesting reasons for the "alteration
28 and/or termination" of his other duties. Exhibit S. On May 8, 1997, Phipps responded for the

1 chairman, noting only that Williams' certification and the district's needs matched for the half-
2 time teaching position. No mention of Williams' former other duties appears in that response.
3 Exhibit T. The district provided no written reason for replacing Williams as athletic director
4 until the Human Rights Bureau's investigation was under way. Exhibit 3.

5 26. Williams accepted the part-time position, but he pursued an administrative appeal
6 with the County Superintendent, until a full-time position was offered (see finding No. 29),
7 after which he withdrew his appeal. Testimony of Williams.

8 27. Phipps canvassed the current district employees for anyone interested in the athletic
9 director position. He already knew he wanted Real Bird, but he did make some minimal
10 efforts to identify other candidates inside the district, in order to satisfy the collective
11 bargaining agreement's internal hiring provisions (Exhibit F). Phipps had already confirmed
12 that Real Bird was interested. On June 9, the district offered Real Bird the full-time position of
13 athletic director, and he accepted. Testimony of Phipps and Real Bird. Exhibit A-15.

14 28. Forrest resigned her position with the district in July of 1997. Exhibit A-16. She
15 is now principal of the high school in the Wolf Point School District. Testimony of Forrest.

16 29. Forrest, before her departure, made it clear she considered Williams a capable and
17 competent teacher. Testimony of Forrest. Phipps also considered Williams a capable and
18 competent teacher. Both administrators wrote strong letters of reference for Williams in May
19 of 1997, when he was looking for other work because he now had only a part-time job.
20 Exhibits 4 and 5. Phipps knew that Williams had originally agreed to accept the part-time
21 teaching assignment in 1995-96 because the district had simultaneously offered the part-time
22 athletic director position. As the administration and the board of trustees decided assignments
23 and plans for the 1997-98 school year during the summer, Phipps was able to offer Williams a
24 full-time teaching position. Testimony of Phipps, see also Exhibit X. Williams accepted, and
25 continued to work for the district as a teacher. Testimony of Phipps and Williams.

26 30. The purported distinction between "Activities Director" and "Athletic Director"
27 had no substance. Williams was hired as activities director. Exhibit A-3. However, the
28 memo to Phipps from Forrest recommending that Williams not be renewed (Exhibit 15) refers

1 to his job as “Athletic Director.” The district’s written reasons for not renewing (“hiring”)
2 Williams as director in 1997 likewise refer to his athletic director position (noting it was part-
3 time). Exhibit 3. Williams’ part-time position in 1995-96 and 1996-97 was, in fact and often
4 in name, athletic director. The full-time position the district filled in 1997 by hiring Real Bird
5 rather than Williams was likewise that of athletic director. The district did not advertise an
6 opening for the Activities Director position for 1997-98. Uncontested facts. The “Activities
7 Director” duties were subsumed within the athletic director job description. Exhibit 14.

8 IV. Opinion

9 Montana law prohibits discrimination in employment based upon race or national
10 origin. §49-2-303(1)(a) MCA (1997). This case turns on whether the district took adverse
11 action against Williams because of his race or because of poor job performance.

12 1. McDonnell Douglas Provides the Appropriate Framework

13 Federal and Montana law analyzes discrimination claims in terms of "membership in a
14 protected class." *E.g., McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).¹ Everyone
15 belongs to particular "classes" of people, by race, creed, religion, color, national origin, age,
16 marital status and sex. Discriminating against a person in employment because of that person's
17 membership in any of these protected classes is illegal. §49-2-303(1)(a) MCA.

18 The prohibitions against discrimination in the Montana Human Rights Act closely
19 mirror Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e), *et seq.* The Montana
20 Supreme Court has examined the rationale of the federal case law, and has expressly adopted,
21 for Human Rights Act cases involving disparate treatment of a protected class member, the
22 three-tier standard of proof of *McDonnell Douglas*, *supra*.²

23 Williams must prove four elements to establish a *McDonnell Douglas* prima facie case:

24 (i) that he belongs to a [protected class] . . . ; (ii) that he . . . was qualified for a job
25 [in this case the job he held]; (iii) that, despite [his] qualifications, he was rejected; and

26 ¹ *Johnson v. Bozeman School Dist.*, 226 Mont. 134, 734 P.2d 209 (1987); *European Health Spa v. Human*
27 *Rights Comm'n*, 212 Mont. 319, 687 P.2d 1029 (1984); *Martinez v. Yellowstone Co. Welfare Dept.*, 192 Mont. 42,
626 P.2d 242 (1981).

28 ² *Crockett v. City of Billings*, 234 Mont. 87, 761 P.2d 813 (1988); *Johnson, supra*; *European Health Spa,*
supra; *Martinez, supra*.

1 (iv) that, after [his] rejection, the position remained open and the employer continued to
2 seek applicants from persons of complainant's qualifications.
McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. at 1924.

3 This is the "first tier" of proof. This standard of proof is flexible. The four elements
4 may not necessarily apply to every disparate treatment claim. In *Martinez*, the Montana
5 Supreme Court recognized that a charging party could satisfy the fourth element in *McDonnell*
6 *Douglas* by showing that the applicant who filled the job vacancy was not a member of the
7 particular protected group. *See Martinez*, 626 P.2d at 246, *citing Crawford v. West.Elec.Co.*,
8 614 F.2d 1300 (5th Cir. 1980).

9 Proof of a prima facie case under *McDonnell Douglas* raises the inference of illegal
10 discrimination. The district then must "articulate some legitimate, nondiscriminatory reason
11 for the employee's rejection." *McDonnell Douglas*, 411 U.S. at 802, 93 S.Ct. at 1824. This is
12 the second tier of *McDonnell Douglas*. The district must meet this burden for two reasons:

13 [To] meet the plaintiff's prima facie case by presenting a legitimate reason for
14 the action and . . . frame the factual issue with sufficient clarity so that the plaintiff will
15 have a full and fair opportunity to demonstrate pretext.

16 *Texas Dpt. of Comm. Affairs v. Burdine*, 450 U.S. 248, 255-56, 101 S.Ct. 1089, 1095,
17 67 L.Ed.2d 207, 217 (1981); *see also, Johnson, op. cit.*, 734 P.2d at 212.

18 If the district has produced a legitimate reason for its decision not to rehire, Williams
19 then must show that the proffered reason is a pretext. *McDonnell Douglas*, 411 U.S. at 802,
20 93 S.Ct. at 1824; *Martinez*, 626 P.2d at 246. This is the third tier of *McDonnell Douglas*
21 proof. Proof of pretext may be either direct or indirect:

22 [H]e may succeed in this either directly by persuading the court that a
23 discriminatory reason more likely motivated the employer or indirectly by showing that
24 the employer's proffered explanation is unworthy of credence.

25 *Burdine*, 450 U.S. at 256, 101 S.Ct. at 1095. Ultimately, Williams must persuade the
26 department by a preponderance of the evidence that the district intentionally discriminated
27 against him. *Crockett, op. cit.*, 761 P.2d at 817-18 (1988). *Johnson*, 734 P.2d at 213.

28 2. Williams Proved His Prima Facie Case

In the present case, Williams proved membership in a "protected class." He is black.
His successor as athletic director, Gordon Real Bird, is Indian. Williams' case in chief

1 established his qualifications. From his testimony, his references and the testimony of his
2 witnesses regarding his performance, Williams established that he adequately performed as
3 athletic director. The inference arises that the district treated Williams differently because of
4 his race.

5 The inference is significant, because Williams did not present sufficient direct evidence
6 of discriminatory intent to prove his case without the inference. *For precedent on direct*
7 *evidence cases, see, Reeves v. Dairy Queen, Inc.*, 1998 MT 13, __ Mont. __, __ P.2d __,
8 55 St. Rep. 44 (1998). Although Williams did testify to some racial epithets, most of his
9 proffered direct evidence was hearsay (Exhibits 2, 6, 8, 9, 10,11, 12 and 13). Additional
10 direct evidence about racial comments and bias were, with two exceptions, isolated incidents
11 that did not involve administration or board of trustees members. The two exceptions,
12 Williams' perception that the administration took too little action too late on his reports of
13 racial bias, and Williams' testimony that a member of the board used a racial epithet towards
14 him, are not credible.

15 The district proved the validity of the majority of Forrest's criticisms of Williams.
16 Williams himself substantiated several of them, including his refusal to organize a pep rally for
17 boys' basketball. In each instance, the pep rally being an example, Williams offered
18 explanations for his actions, without ever directly admitting that he had, indeed, refused to
19 follow the explicit directions of his boss.³ Under these circumstances, the hearing examiner
20 cannot trust Williams' perception that the administration did too little too late, or nothing at all,
21 about his reports of racial epithets. Williams' perception is demonstrably unreliable regarding
22 what his superiors in the school district--the principal, the superintendent and the board of
23 trustees--said and did. Williams perception is demonstrably unreliable regarding what some of
24 his peers and colleagues said and did. His perception is sufficiently unreliable that it cannot
25 form the basis of a finding of a racially hostile work environment. Williams failed to

26
27 ³ At hearing, Williams defended his refusal to organize a pep rally both by denying that he was directly
28 ordered to do so, and by arguing that since there had been no pep rally for girls' basketball, it would have been
discrimination to organize a rally for boys' basketball. After the fact justification of refusing to follow the boss'
directions because of a belief (not articulated at the time) that the action directed was illegal discrimination falls
short of rebutting insubordination.

1 corroborate his claims of both hostile environment and prior instances of bias sufficient to
2 establish a course of conduct.

3 Williams' testimony that a member of the board used a racial epithet towards him flies
4 in the face of his failure to disclose or assert this incident throughout the discovery process.
5 The district argues convincingly that such an incident would not likely be forgotten throughout
6 the prehearing proceedings, only to surface during hearing. Failure timely to disclose this
7 alleged incident does not necessarily mean Williams fabricated it. It does mean that, having
8 failed timely to disclose it and give the district a fair chance to produce evidence to rebut the
9 testimony, Williams cannot rely upon his testimony to establish the incident.⁴

10 Perhaps more troubling than Williams' direct evidence is the statement made by district
11 counsel to the Human Rights Bureau investigator that the district "does have a practice of
12 giving preference to members of the community when making hiring decisions if the
13 community member is substantially equal in qualifications with other applicants." Exhibit 3.
14 This "practice" may be illegal on its face, if "members of the community" is a code phrase for
15 Native American. But because the evidence does not implicate any such practice in the
16 district's decisions not to renew Williams and then to hire Real Bird as athletic director, the
17 practice is not at issue in this case (see Section 5 of this opinion).

18 Without sufficient credible direct evidence of discriminatory motive, Williams must
19 rely upon the *McDonnell Douglas* inference. The district must rebut the inference with a
20 legitimate business reason for its action.

21 3. The District Established a Legitimate Business Reason for the Adverse Action

22 The district's witnesses admitted Williams' proficiencies--as a classroom teacher and as
23 an athletic director. The district also proved by the preponderance of the evidence that
24 Williams sometimes simply refused to follow directions when he disagreed with the
25 administration's positions. The district, through examination of Williams himself, proved by
26 the preponderance of the evidence that Williams did not consider himself bound to follow the

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28 ⁴ Because Williams did not disclose this incident in discovery (see Exhibit M, Williams' discovery responses), the district had no way either to prepare to meet the evidence of the incident or to make a motion to compel, regarding an incident of which it had no notice.

1 orders of his bosses, the principal and the superintendent, in conducting the school's business.
2 Williams was, repeatedly and unabashedly, insubordinate.

3 This is clearly a legitimate business reason for not renewing Williams' contract as
4 athletic director. Solving a conflict with the boss by disregarding the directions of the boss is
5 not appropriate employee conduct.

6 4. Williams Did Not Prove the Business Reason Was Pretextual

7 Principal Forrest had a personality conflict with Williams. He would not do what she
8 told him to do, and she did not like it. Forrest also made at least two comments, one in
9 writing and the other substantiated by her own testimony, that must be examined as possible
10 evidence of racial bias.

11 She commented upon Williams' "black English." Williams says she commented
12 negatively upon it, Forrest says "if" she commented it would have been positively, as a pattern
13 of speech or dialect she was familiar with and liked. Williams testified to other comments of at
14 least facially racial nature, all denied by Forrest. During the course of the hearing, Williams
15 did not noticeably display any pattern of speech so distinctive as to be different from the range
16 of speech patterns heard in Montana. If anything, this supports Williams' claim that Forrest's
17 comment displayed racial bias.

18 Forrest did write, in her memo explaining her problems with Williams (Exhibit 15) that
19 although Williams was "an above average teacher for this environment; but I do not think he
20 would be able to compete too well in a setting where staff is expected to function at a high
21 intellectual level." Williams argues that this comment proves Forrest's bias against him on the
22 basis of his race.

23 This argument is not well taken. Forrest was certainly questioning whether Williams,
24 as opposed to other college graduates certified to teach, was at the upper end of the intellectual
25 spectrum. But at least as plausible an explanation for this comment stems from Forrest's
26 frustration with Williams' refusal to follow directions. The evidence does not rule out racial
27 bias, but Forrest had ample reasons to question Williams' job performance regardless of his
28 race. Pretext is not established by equivocal evidence suggesting bias.

1 the district failed timely to notify Williams of the more limited contract offered him for the
2 1997-98 school year.

3 Second, Williams has cited no legal obligation for the district to state reasons for the
4 change in his position, since that change did not constitute a termination of employment.
5 Written notice of “reelection” or lack of it is required by statute. §20-4-206(1) MCA (1995).
6 When a nontenured teacher is not “reelected” to his position, he can ask for a written statement
7 of reasons, which the school must then provide within 10 days of the request.
8 §20-4-206(3) MCA (1995). There is no authority for the proposition that a half-time teacher
9 who retains his half-time job (and is before the succeeding school year advanced to a full-time
10 job) is entitled to the benefit of the statute when his part-time athletic director position is not
11 renewed.

12 Given the collective bargaining preference for filling positions with internal applicants,
13 whether the district advertised for the position offered Gordon Real Bird is not relevant. Real
14 Bird was a qualified internal applicant. No outside applicant was eligible.

15 Whether the district provided Williams with evaluations is not relevant. In his
16 conversations with Phipps and Forrest, as well as in his testimony at hearing, Williams made it
17 quite clear that he rejected criticism of his conduct as athletic director. The absence of formal
18 evaluations, or any process Williams recognized as evaluative, is not evidence of unlawful
19 discriminatory motive. The evidence is clear and probative that formal evaluations would have
20 made no difference. The administration wanted Williams to start following directions and
21 working within the established chain of command. Williams knew it, and refused.

22 Alleged past racial discrimination by the district might be relevant if neither too remote
23 nor presented through inadmissible hearsay evidence, testimony withheld from the district
24 during discovery, or the self-serving testimony of Williams about his perceptions. Williams
25 offered no evidence within this potential sphere of relevancy.

26 **V. Conclusions of Law**

27 1. The department has jurisdiction over this discrimination complaint. §§49-2-501,
28 49-2-505 and 49-2-509(7) MCA.

