



COPY

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

TELEPHONE: 304-348-2616

1/2/86
December 20, 1985

Robert H. White
Assistant Prosecuting Attorney
206 Court Street
Madison, WV 25130

Pamela Brown
65 Hickory Lane
Maidson, WV 25130

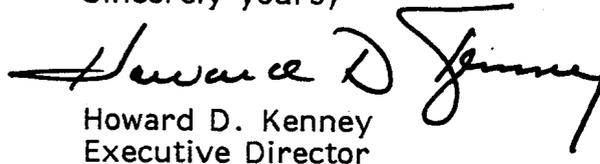
RE: Pamela Brown V Boone County Sheriff's Dept.
ES-347-85

Dear Mr. White and Ms. Brown:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Pamela Brown V Boone County Sheriff's Dept.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,


Howard D. Kenney
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

PAMELA BROWN,
Complainant,

V.

DOCKET NO. ES-347-85

BOONE COUNTY SHERIFF'S
DEPT.
Respondent.

FINAL ORDER

At the regularly scheduled meeting held on November 13, 1985, the Commission examined the record in this case and upon review of the same decided to adopt the Hearing Examiner's proposed order and decision.

It is, therefore, ORDERED that the Hearing Examiner's proposed order and decision be and the same is hereby incorporated as a part of this final order for all pertinent purposes. In view of the foregoing, it is further ORDERED that the complaint in this matter be dismissed with prejudice.

Entered this 5 day of December, 1985.

WV HUMAN RIGHTS COMMISSION

BY ITS Betty Ogsten Hamilton
CHAIR/VICE CHAIR

WEST VIRGINIA HUMAN RIGHTS COMMISSION

RECEIVED

SEP 24 1985

W.V. HUMAN RIGHTS COMM.
m. st

PAMELA J. BROWN,

Complainant,

vs.

DOCKET NO. FS-347-85

BOONE COUNTY SHERIFF'S DEPARTMENT,

Respondent.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

A public hearing was convened for this matter on July 22, 1985, in Madison, West Virginia. The complaint was filed on January 17, 1985. A Status Conference was held on May 30, 1985. Subsequent to the hearing, both parties have submitted proposed findings of fact, and complainant has submitted a post-hearing brief.

All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and views as stated herein, they have been accepted, and to the extent that 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 as presented. To the extent that the testimony of various witnesses is not in accord with the findings herein, it is not credited.

CONTENTIONS OF THE PARTIES

Complainant contends that respondent discriminated against her on the basis of her sex by discharging her. Respondent maintains that complainant was discharged because of budgetary problems.

FINDINGS OF FACT

Based upon the parties' stipulations of uncontested facts as set forth on the record at the hearing, the Hearing Examiner has made the following findings of fact:

1. Complainant is female.
2. During the term of her employment, complainant received a salary of \$860.00 per month.
3. Complainant was hired by respondent on a temporary basis on October 1, 1981, and she was terminated effective December 1, 1984.
4. Vernon Harless was the sheriff of Boone County, West Virginia, at all times relevant to this case.

Based upon a preponderance of the evidence, the Hearing Examiner has made the following findings of fact:

5. Complainant's first job with respondent was in the tax office and she was transferred to the jail on February 1, 1983, to become a Communications Operator on the midnight shift.

6. Three people worked the midnight shift: one Communications Operator, one person to take up slack during the week, and one person on road control.

7. As a Communications Operator, complainant received telephone calls of complaints that came into the jail, dispatched deputies, city officers or the state police, operated the teletype and typed the log sheets.

8. Price, respondent's Chief Deputy, was complainant's supervisor. Pauley was chief communication officer, and also was a supervisor of complainant, and deputies on the road during complainant's shift were also her supervisors.

9. Respondent's deputies are covered under the civil service system. Civilian employees such as complainant are not covered under the civil service system.

10. Complainant received no written reprimands as a Communications Operator. Neither did she receive any oral reprimands.

11. Complainant was told that she was doing a good job. No one ever told her that she did not do a good job as a Communications Operator. It was the opinion of her co-workers that she performed her duties as Communications Operator competently.

12. Price cursed the complainant and made accusations against her on several occasions.

13. After an incident in which complainant was required to wake Price at night to perform a law enforcement duty, Price became upset and vowed to have complainant fired.

14. Price made several uncomplimentary comments about complainant's being overweight. Such comments included phrases such as "two ton".

15. Although many male deputies of respondent are overweight, Chief Deputy Price has never made any comments regarding their weight.

16. It was common for Chief Deputy Price to harass the female employees of respondent. Such harassment included referring to female employees as "bitch", "slut", and "whore"; subjecting the work of female employees to elevated scrutiny; publicly criticizing and ridiculing female employees for conduct similar to conduct of male employees which resulted in private criticism; and touching or placing objects upon a female employee's breasts.

17. Because of budget problems, respondent found it necessary to lay off one employee. The Sheriff decided that he could not lay off any law enforcement employee or any tax department employee. Because the complainant was the communications employee with the least amount of time in that department, she was selected for layoff.

18. Sheriff Harless made the decision to fire complainant by himself. The Sheriff received no input from Chief Deputy Price regarding the decision to fire complainant. The Sheriff found complainant's work performance to be competent and acceptable.

CONCLUSIONS OF LAW

1. Pamela J. Brown is an individual claiming to be aggrieved by an alleged unlawful discriminatory practice and is a proper complainant for purposes of the Human Rights Act. West Virginia Code, Section 5-11-10.

2. Boone County Sheriff's Department is an employer as defined in West Virginia Code, Section 5-11-3(d) and is subject to the provisions of the Human Rights Act.

3. Complainant has made out a prima facie case of sex discrimination.

4. Complainant has not demonstrated that the reasons articulated by respondent for her discharge is pretextual.

5. Respondent did not discriminate against complainant on the basis of sex by discharging her. West Virginia Code, Section 5-11-9(a).

DETERMINATION

The complaint in this matter is not supported by a preponderance of the evidence.

DISCUSSION

In fair employment, disparate treatment cases, the initial burden is upon the complainant to establish a prima facie case of discrimination. Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission 309 S.E.2d 342, 352-353 (W.Va. 1983); McDonnell-Douglas Corporation v. Green 411 U.S. 792 (1973). If complainant makes out a prima facie case, respondent is required to offer or articulate a legitimate non-discriminatory reason for the action which it has taken with respect to complainant. Shepherdstown Volunteer Fire Department, supra; McDonnell Douglas, supra. If respondent articulates such a reason, complainant must show that such reason is pretextual. Shepherdstown Volunteer Fire Department, supra; McDonnell Douglas, supra.

In the instant case, complainant has established a prima facie case of discrimination. The parties have stipulated that complainant is female, that she was employed by respondent and that she was discharged by respondent. Complainant has proven that her work performance was competent; she received no written or oral reprimands, and her work was never criticized by respondent.

It was the uncontroverted testimony of complainant and her witnesses that respondent's Chief Deputy Price harassed respondent's female employees. Such harassment included name calling, touching or poking at female employees breasts, subjecting the work of females to a higher level of scrutiny, and publicly criticizing female employees for conduct that he would only mention to male employees in private. Such facts are sufficient to establish a prima facie case of discrimination because, if otherwise unexplained they raise an inference of discrimination. Furnco Construction Company v. Waters 438 U.S. 567, 577 (1978); Texas Department of Community Affairs v. Burdine 450 U.S. 248 (1981).

Respondent has articulated a legitimate non-discriminatory reason for its discharge of complainant. Respondent has proven that it was experiencing a problem with its budget for the 1984-1985 fiscal year. The Sheriff was faced with a situation wherein he was required to terminate one employee. He determined that he could not let go any law enforcement officer or any employee in the tax department. Because complainant was the employee with the least amount of time in the communications department, she was the one that the Sheriff chose to terminate.

Complainant has not demonstrated that the reason articulated by respondent for her discharge is pretextual. Most significantly, it was the credible testimony of Sheriff Harless that he alone

made the decision to terminate the complainant without any input from his chief deputy. Thus, complainant has not established any link between the sex harassment which Chief Deputy Price routinely engaged in and complainant's discharge. Although Sheriff Harless should be ashamed of his chief deputy and although Sheriff Harless should clearly take some disciplinary action against a chief deputy who defies the purposes underlying the Human Rights Act, complainant has not established any link between Price's behavior and her discharge.

Counsel for the Human Rights Commission claims that complainant has demonstrated pretext because of an apparent discrepancy in respondent's evidence concerning the budgetary shortfall. Upon close examination, however, there is no significant discrepancy. Respondent received an initial payroll budget of \$493,426.00 from the county commission. Because of an expected shortfall respondent received a supplemental appropriation of \$2,835.00 from the county commission. In fact the total aggregate salaries for respondent for the entire fiscal year were \$495,823.57, or \$437.43 less than the total amount appropriated. The excess is largely attributable to the fact that one employee quit before she was expected to do so. Although one of respondent's witnesses testified that the excess was only \$15.00, a difference

of \$400.00 out of \$495,000 budget is probably understandable. In any event, the record evidence is clear that by discharging complainant, respondent saved approximately \$6,000.00 in its Fiscal Year 1984-1985 budget. Because respondent finished the fiscal year only \$400.00 in the black, it is evident that had respondent not fired complainant it would have finished the fiscal year with a budgetary deficit. The claimed discrepancies in respondent's proof do not amount to a showing of pretext.

RECOMMENDED ORDER

In view of the foregoing, the Hearing Examiner recommends that the complaint in this matter be dismissed with prejudice.



JAMES GERL,
HEARING EXAMINER

ENTERED:

September 19, 1985

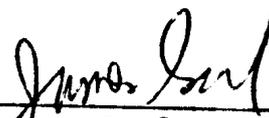
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing Proposed Order and Decision by placing true and correct copies thereof in the United States Mail, postage prepaid, addressed to the following:

Roxanne Rogers, Attorney at Law
Human Rights Commission
1036 Quarrier Street
Charleston, WV 25301

Robert H. White, Attorney at Law
Assistant Prosecuting Attorney
206 Court Street
Madison, WV 25130

on this 23d day of September, 1985.



James Gerl