

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ANNA DISHNER, NINA RADFORD,
AND MABLE SPRADLIN,

Complainants,

v.

DOCKET NOS. EA-6-86, ES-7-86,
ES-644-85, ES-635-85
EA-643-85

PRINCETON ARMATURE CO., INC.,

Respondent.

FINAL ORDER

On the 12th day of February, 1987, the Commission reviewed the proposed order and decision of Hearing Examiner, James Gerl. After consideration of the aforementioned and exceptions thereto, the Commission does hereby adopt said proposed order and decision, encompassing proposed findings of fact and conclusions of law as its own, with modifications and amendments set forth below.

The Commission strikes the language in finding of fact number 16, "November 6, 1947," and substitutes therefore the date November 13, 1975.

Good cause having been shown, the Commission rejects the Hearing Examiner's denial of attorney fees to the prevailing parties, notwithstanding respondent's objections. (See Attachments A, B and C respectively)

It is hereby ORDERED that the Hearing Examiner's findings of fact and conclusions of law be attached hereto and made a part of this order except as amended by this order.

It is further ORDERED as follows:

1. Respondent, Princeton Armature, shall cease and desist from discrimination in terms and conditions of employment based on sex and age in violation of WV Code 5-11-1 et. seq.

2. The complaint of Nina Radford, Docket Nos. ES-644-85, is dismissed, with prejudice.

3. The complaints of Anna Dishner, Docket Nos. EA-6-86 and ES-7-86 and of Mable Spradlin, Docket Nos. ES-635-85 and EA-643-85, is sustained.

4. Respondent shall recall complainants, Anna Dishner and Mable Spradlin, from lay-off immediately.

5. Respondent shall pay complainant, Anna Dishner, backpay and reimbursement for loss of benefits in the amount of \$29,840.40 calculated to November 4, 1986 (plus any additional amount which accrues from that date until complainant is recalled) plus 10% per year as prejudgment interest.

6. Respondent shall pay complainant, Anna Dishner, the sum of \$2,000.00 as incidental damages for humiliation and embarrassment resulting from the discriminatory failure to recall from lay-off.

7. Respondent shall pay complainant, Mable Spradlin, backpay and compensation for loss of benefits the sum of \$21,067.98 calculated to November 4, 1986, (plus any additional amount which accrues from that date until complainant is recalled) plus 10% per year as prejudgment interest.

8. Respondent shall pay to complainant, Mable Spradlin, the sum of \$2,000.00 as incidental damages for humiliation and embarrassment resulting from the discriminatory failure to recall from lay-off.

9. Respondent shall pay complainant Anna Dishner's and complainant Mable Spradlin's attorney fees and costs in the amount of \$5,446.31. (See Attachment B)

It is finally ORDERED that respondent provide to the Commission proof of compliance with the Commission's order within 35 days of service of said order by copies of cancelled checks, affidavits or other means calculated to provide such proof.

By this order, a copy of which shall be sent by certified mail to the parties, the parties are hereby notified that they have ten days to request a reconsideration of this order and/or that they may seek judicial review.

Entered this 23rd day of April, 1987.

RESPECTFULLY SUBMITTED,

BY Betty A. Hamilton
BETTY A. HAMILTON
VICE CHAIR
WV HUMAN RIGHTS COMMISSION

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

ANNA DISHNER, NINA RADFORD,
and MABLE SPRADLIN,

COMPLAINANTS,

VS.

DOCKET NOS. EA-6-86 &
ES-7-86,
ES-644-85,
ES-635-85 &
EA-643-85

PRINCETON ARMATURE CO., INC.

RESPONDENT.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

RECEIVED

DEC 29 1985

W.V. HUMAN RIGHTS COMM.

A public hearing was convened for this matter on October 1 & 2, 1986, in Princeton, West Virginia. The complaints were filed on July 3, 1985, June 13, 1985 and June 25, 1985. The notice of hearing was served on November 25, 1985. Respondent answered on February 7, 1986. A telephone Status Conference was convened on July 8, 1986. Subsequent to the hearing, both parties submitted written briefs and proposed findings of fact.

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

Complainants contend that respondent discriminated against them on the basis of their sex and age by failing to recall them from layoff. Respondent maintains that it declined to recall complainants from layoff because a downturn in business caused it to not need complainants, complainant Radford had a poor attendance record and because complaint Spradlin was not strong enough to wind large motors.

FINDINGS OF FACT

Based upon the parties' stipulations of uncontested fact as contained in the written pre-hearing memorandum which was jointly submitted by the parties at the hearing, the Hearing Examiner has made the following findings of fact:

1. Complainants are residents of Mercer County, West Virginia, and are former employees of respondent.
2. Respondent is a resident domestic corporation of this state with its principal office and place of business located approximately one-half (1/2) mile east of the corporate limits of Princeton, West Virginia, all within Mercer County, West Virginia.
3. Respondent became incorporated in 1975 with K. Noble and Virginia Noble as incorporators and stock subscribers. Nobles have from the inception of respondent's business and now own all of the outstanding shares of capital stock in respondent as follows: K. Noble - 260 shares, V. Noble - 140 shares.

4. K. Noble is president and chief executive officer and V. Noble is secretary-treasurer of respondent.
5. Respondent's principal business is rebuilding electric motors of various sizes for the coal mining industry.
6. Complainants' work histories with respondent are as follows:
 - a. A. Dishner began her employment on December 3, 1966 and the last date which she worked was October 19, 1984.
 - b. N. Radford began her employment on August 29, 1971 and the last date which she worked was June 24, 1983.
 - c. M. Spradlin began her employment on August 8, 1971 and the last day which she worked was October 19, 1984.
7. The job classifications and wage rates of each complainant at the time that they last performed any work for respondent are as follows:
 - a. A. Dishner was classified as an AC coil winder at an hourly rate of \$8.10 for the first 40 hours/week at the time of her last work week, October 19, 1984.
 - b. N. Radford was classified as an AC coil winder at an hourly rate of \$8.45 for the first 40 hours/week at the time of her last work week, June 24, 1983.
 - c. M. Spradlin was classified as an AC winder at an hourly rate of \$9.20 for the first 40 hours/week at the time of her last work week, October 19, 1984.
8. Each complainant at the time they last performed any work for respondent was entitled to certain insurance fringe benefits. The monthly expense of providing such insurance fringe benefits was as follows: N. Radford - \$287.11, M. Spradlin - \$163.09; and A. Dishner - \$82.62.

9. The management of respondent has been and is primarily vested in its president and chief executive officer, K. Noble, who, with his spouse, V. Noble, maintains an upstairs apartment in one of the shop buildings where Princeton Armature's shop is located; however, Mr. Noble was in Little River, South Carolina for much of the time, four to five years prior to January, 1984 during which time and prior thereto F. Saunders was shop foreman. In February, 1984, B. Noble, a brother of K. Noble, became shop foreman upon F. Saunders leaving the employment of respondent, B. Noble having been an assistant shop foreman prior thereto.
10. In 1984, the repair business of respondent was slow, and it became necessary to lay off a number of employees. At first, employees were permitted to work one week and lay off the following week and receive lay-off slips in order to qualify them for unemployment compensation. Later, it became necessary for respondent to make lay offs of indefinite durations with a total of 14 employees being laid off during 1984, including the complainants Dishner and Spradlin.
11. Complainant Radford last worked for respondent the week ending June 24, 1983, at which time she took a maternity leave. She was delivered on August 8, 1983 and following that time, she requested additional time off. She never returned to her employment with respondent.

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

12. All three complainants are female.
13. Complainant Dishner was born on August 17, 1925.
14. Complainant Spradlin was born on December 7, 1934.

15. Subsequent to the lay-off of complainants, respondent hired Caldwell, a 23 year old male to perform the work previously performed by complainants. Caldwell was hired as a part-time employee in March 1985. He became a full-time employee in June, 1985.
16. Alvis, a male employee hired by respondent on November 6, 1947, was not laid off by respondent in 1984, and continues to be employed by respondent where he performs some of the duties formerly performed by complainant Spradlin.
17. Complainant Radford had a very poor attendance record during her employment with respondent. Her poor attendance caused problems for respondent's plant operations. On many occasions Radford did not call in to report that she would not be present for work. Her supervisor, Freeman, complained to Radford and warned her that her poor attendance was a problem.
18. Respondent has no written policy regarding lay-off and recall. Past practice, however, had been that all recalls from lay-off were based upon seniority.
19. Complainants were never recalled from lay-off. Each complainant had made her desire to be recalled known to respondent.
20. Respondent has never advertised job openings, had written policies, used job application forms or performed written or oral job performance evaluations.
21. Caldwell was trained by respondent to do coil department work. He had had no prior experience in coil work prior to being hired by respondent.
22. Caldwell holds a degree in electrical engineering, but on a normal day at respondent, he would make coils all day

long. Since he was hired by respondent, Caldwell has used his electrical knowledge on only one or two projects, occurring subsequent to the filing of complaints by the complainants.

23. Complainant Dishner's work experience at respondent included the following job duties: insulating coils, hand-taping coils, cutting wire, table work, operating the gang winder, tinning and looping coils and spreading coils.
24. During her employment with respondent, complainant Dishner was never reprimanded, received no oral or written warnings regarding her job performance, and she received merit pay increases. Her supervisor said she was doing "very good work."
25. During her employment with respondent complainant Spradlin worked as an AC winder and wound AC motors of varying sizes.
26. During her employment with respondent, complainant Spradlin was never reprimanded, she received no oral or written warnings regarding the performance of her job, and she received merit pay increases. Management did receive a complaint by a male co-worker, Aillenwater, that he did not want to work with Spradlin, but the complaint was resolved years before the lay-offs and played no part in the recall decisions.
27. Alvis was trained to wind AC motors after complainant Spradlin had left her employment with respondent. He spent at least 50% of his time at respondent winding motors after complainant Spradlin had been laid-off.
28. Complainant Spradlin was able to wind motors, and otherwise do her job, with no more help than the male employees

received.

29. While complainants were employed by respondent, various photographs and posters of nude and semi-nude women were displayed upon the premises of respondent. The photographs were explicit and were located where complainants necessarily had to view them in order to perform their work. One photograph was approximately 2 feet by 2 1/2 feet and was labeled "coil room Honey." Female employees of respondents, including complainants, requested that the offensive photographs be removed, but management took no action to remove the photographs.
30. Of approximately 20 employees now at respondent, only three are women. One employee is K. Noble's wife, another employee is K. Noble's sister.
31. K. Noble, respondent's president and chief executive officer, believes that there are jobs at respondent which no woman could perform.
32. K. Noble, respondent's president and chief executive officer, has stated that women, such as complainants would prefer unemployment to taking a pay cut to train on other jobs.
33. Walker, K. Noble's "right-hand man" told Thomas, a woman employed by respondent that she would be "the next female employee to leave."

CONCLUSIONS OF LAW

1. Anna Dishner, Nina Radord and Mable Spradlin are individuals claiming to be aggrieved by an alleged unlawful discriminatory practice and are proper complainants for purposes of the Human Rights Act. West Virginia Code,

§ 5-11-10.

2. Princeton Armature Co., Inc., is an employer as defined by West Virginia Code § 5-11-3(d) and is subject to the provisions of the Human Rights Act.
3. Each complainant has established a prima facie case of sex and/or age discrimination.
4. Complainant Radford has not demonstrated that the reason articulated by respondent for failing to recall her from lay-off is pretextual.
5. Respondent has not discriminated against complainant Radford on the basis of her sex by failing to recall her from lay-off. West Virginia Code § 5-11-9 (a).
6. Complainants Dishner and Spradlin have demonstrated that the reasons articulated by respondent for failing to recall them from lay-off are pretextual.
7. Respondent discriminated against complainants Dishner and Spradlin on the basis of their age and sex in violation of West Virginia Code § 5-11-9 (a) by failing to recall them from lay-off.

DISCUSSION OF CONCLUSIONS

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. 3d 342, 352-353 (W.Va. 1983); McDonnell-Douglas Corporation v. Green 411 U.S. 792 (1973). If the complainant makes out a prima facie case, respondent is required to offer or articulate a legitimate nondiscriminatory 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.

COMPLAINANT RADFORD

I.

Complainant Radford has established a prima facie case of sex discrimination. She has proven that she is female, the parties have stipulated that she was hired by respondent on August 29, 1971, that her last job at respondent was an AC Coil Winder, and that her last date of work was June 24, 1983. Complainant Radford has also proven that a 23 year old male, Caldwell, was hired by respondent in May, 1985 to perform duties that complainant had been performing prior to leaving the employment of respondent. Such facts are sufficient to establish prima facie case of sex discrimination because, if otherwise unexplained, they would be sufficient to raise an inference of discrimination. Furnco Construction Co., v. Waters 438 U.S. 567, 577 (1978); Texas Department of Community Affairs 450 U.S. 248 (1981).

Respondent has articulated a legitimate non-discriminatory reason for failing to recall complainant Radford. Although respondent lists other reasons, one of the reasons cited by respondent is complainant's poor record with regard to absenteeism. Respondent presented testimony and documentary evidence that complainant had a problem attending work on a regular basis. Complainant Radford's bad attendance record caused problems for the operation of respondent's business. On many occasions, complainant Radford did not call in to report that she would not be present

for work. Her supervisor complained to her and warned her that her poor attendance was a problem. Complainant Radford has not demonstrated that the reason articulated by respondent is pretextual. Indeed, it is most significant that complainant Radford admitted during her testimony that her attendance record at respondent was poor. Complainant does attempt to dispute the accuracy of respondent's payroll records, but her admission that she had a poor attendance record negates any attack upon the accuracy of such records. It is clear that the frequency of complainant Radford's absences from work caused difficulties for respondent. An employer is free to choose which employees it will recall from lay-off in a manner that may best serve the legitimate needs of the employer. Certainly an employee with a record of attendance as bad as complainant's Radford's record would not be helpful to an employer. It is concluded that the attendance reason articulated by respondent for failing to recall complainant Radford is not pretextual.

COMPLAINANT DISHNER

II.

Complainant Dishner established a prima facie case of age and sex discrimination. Complainant has proven that she was born August 17, 1925, and that she is female. The parties stipulated that complainant Dishner was hired by respondent on December 3, 1966, that the last job she worked at respondent was AC Coil Winder, and that the last date she worked for respondent was October 19, 1984. Complainant has also proven that respondent hired Caldwell, a 23 year old male, subsequent to the lay-off of complainant to perform duties which complainant Dishner was qualified by previous job experience and training to perform.

Respondent has articulated legitimate non-discriminatory reasons for failing to recall complainant Dishner. Specifically

respondent presented testimony that Caldwell was an engineer, and that Caldwell did not directly replace AC Gang Winder responsibilities that complainant Dishner performed as of the date of her lay-off.

Complainant Dishner has established that the reasons articulated by respondent for failing to recall her are pretextual. The testimony of complainant Dishner and the witnesses called on her behalf were more credible than the testimony of respondents witnesses. Because of the demeanor of the witnesses and because of various inconsistencies in the testimony of the witnesses called by respondent, more credit and weight is given to the testimony of complainant's witnesses.

Respondent's argument that Caldwell did not directly replace complainant as an AC Gang Winder is based upon a faulty premise. The focus of the respondent's analysis is limited to who replaced whom. It is sufficient for complainant to show that she was indeed qualified to perform the duties which Caldwell was performing. The analysis in a discrimination case can not be so narrowly drawn as to require that one employee directly replace another before any discrimination has occurred. Such an analysis would invite employers who are inclined to discriminate to merely shift around titles and duties to prevent liability for unlawful acts of discrimination.

Respondent's argument that Caldwell was hired because he has a degree in electrical engineering must be rejected. Caldwell testified that on a normal day at respondent he would make coils all day long. Caldwell's immediate supervisor, who observes his work on a daily basis, testified that Caldwell performed only one engineering application during the course of his employment with respondent. Clearly Caldwell was not hired as an electrical engineer.

At the time Caldwell was hired by respondent, he had no work experience within an armature plant. Caldwell was trained to perform coil winding duties by respondent. Respondent presented testimony that it hires only employees who need no training. Apparently, however, this refusal to provide training applies only to females. Caldwell, a male, was trained by the respondent.

Prior to complainant's lay-off, the respondent followed the past practice of recalling from lay-off based upon seniority. Respondent departed from this policy by not recalling complainant from lay-off.

Another indicator that the reasons given by respondent are pretextual involves respondent's attitude towards women. There were many photographs and posters of nude or semi-nude women through-out respondent's plant. The female employees of respondent found these disgusting and trashy displays to be offensive. For example, one photograph which measured 2 feet x 2 1/2 feet was labeled "coil room Honey." Despite the complaints of the female employees respondent took absolutely no action to remove these offensive photos and posters from respondent's plant. Respondent's insistence upon maintaining a plant in which posters and photographs degrading to women were on display for its work force were indicative of a sexist attitude by the highest level of management of respondent. Respondent's attitude toward women was also evidenced by testimony of K. Noble, respondent's chief executive officer, that women cannot perform certain jobs at respondent. The notion that no women can perform a job requiring strength is negated by common sense as well as by the record evidence in this case that in fact female employees of respondent were strong enough to perform many jobs requiring a great deal of strength. Additionally, K. Noble displayed a pater-

nalistic attitude by stating that women are not going to take a pay cut to train on another job. Apparently Mr. Noble believes the female workers prefer unemployment to a pay cut. Moreover, Walker, K. Noble's "right-hand man", threatened Thomas, a female employee of respondent, by telling her that she would be the next female to go. Walker, and by implication Noble, appeared to maintain one set of rules for female employees and another set for male employees. Believing that certain categories of jobs should be sex segregated, maintaining paternalistic attitudes toward female employees, and maintaining separate work rules for males and females probably goes a long way to explaining why only 3 of the 20 current employees of respondent are female, and why among the 3 female employees are 2 relatives of K. Noble.

Because of respondent's discrimination against complainant Dishner, she is entitled to be recalled to work. In addition, as complainant's back pay calculation submitted with her proposed findings of fact set forth, complainant is entitled to back pay and reimbursement for loss of benefits in the amount of \$29,840.40 as of the date of said proposed findings of fact, multiplied by 10% per year as prejudgment interest. In addition complainant presented testimony as to the anxiety caused by the discrimination, and she is entitled to incidental damages for humiliation and embarrassment in the amount of \$2,000.00. Complainant has never submitted petition for attorney's fees which was due to be filed by October 27, 1986. Accordingly, it is recommended that no attorney's fees be awarded.

COMPLAINANT SPRADLIN

III.

Complainant Spradlin has established a prima facie case for sex and age discrimination. Complainant has proven that she was born on December 7, 1934, and that she is female. The parties have stipulated that complainant was hired by respondent on August 8, 1971, that the last job she worked at respondent was as an AC Winder, and that the last date that she worked at respondent was October 19, 1984. In addition, complainant has proven that Alvis, a male who was born on November 6, 1947, and who was hired by respondent on November 13, 1975, was not laid-off by respondent and that he performed duties which complainant Spradlin was capable of performing subsequent to her lay-off.

Respondent has articulated legitimate non-discriminatory reasons for failing to recall complainant. Such reasons include that Alvis did not replace complainant, and that complainant was not strong enough to turn certain large motors.

Complainant Spradlin has demonstrated that the reasons articulated by respondent for failing to recall her from lay-off are pretextual. The discussion regarding pretext in the analysis of the case of complainant Dishner is incorporated herein by reference.

Respondent's argument that Alvis was a more versatile employee than complainant cannot be credited. Alvis was trained in many of his skills after complainant Spradlin was laid off. Although respondent argues that it does not train employees, Alvis, a younger male employee, was given the benefit of such training. Respondent did not consider training complainant Spradlin.

The record evidence does not support respondent's argument that complainant Spradlin required special help in turning larger motors.

Nearly every witness who testified, with the exception of K. Noble and B. Noble, indicated that male and female employees both needed help in turning motors and that complainant Spradlin required no more help than the other employees in turning motors.

Based upon the credibility of the witnesses it is concluded that Alvis spent approximately 50% of his time while at work performing AC winding duties since January 1, 1985. Although Alvis attempted to characterize his duties as only 25% AC winding, he gave a total percentage in excess of 100%, and his appearance of confusion regarding percentages renders his guess untrustworthy.

Because of the discrimination, complainant Spradlin is entitled to be **reinstated**. In addition, she is entitled to back pay and reimbursement for loss of benefits. According to complainant's seemingly accurate calculation as of the date of submission of her proposed findings of fact, back pay and reimbursement for benefit loss would amount to \$21,067.98, plus 10% per annum as prejudgment interest. In addition, complainant testified that the discrimination caused her embarrassment. Accordingly, she should be awarded \$2,000.00 for incidental damages for humiliation and embarrassment. Complainant has not yet provided a petition for attorney's fees, which was due on October 27, 1986. Accordingly, it is recommended that no attorney's fees be awarded.

PROPOSED ORDER

In view of the foregoing, the Hearing Examiner hereby recommends the following:

1. That the complaint of Nina Radford, Docket No. ES-644-85, be dismissed, with prejudice.
2. That the complaints of Anna Dishner, Docket No. EA-6-86 and ES-7-86 and of Mable Spradlin, Dockets Nos. ES-635-85 and EA-643-85,

be sustained.

3. That respondent recall complainant Dishner and Spradlin from lay-off.

4. That complainant Dishner be awarded back pay and reimbursement for loss of benefit in the amount of \$29,840.40 (plus any amount which has accrued since the date of submission of complainant's proposed findings of fact) plus 10% per year as prejudgment interest.

5. That respondent be ordered to pay complainant Dishner the sum of \$2,000.00 as incidental damages for humiliation and embarrassment resulting from the discriminatory failure to recall from lay-off.

6. That respondent pay complainant Spradlin as back pay and compensation for loss of benefits the sum of \$21,067.98 (plus any amount accrued since the date of complainant's submission of proposed findings of fact) plus 10% per year as prejudgment interest.

7. That respondent be ordered to pay to complainant Spradlin the sum of \$2,000.00 as incidental damages for humiliation and embarrassment resulting from the discriminatory failure to recall from lay-off.

8. That respondent be ordered to cease and desist from discriminating against individuals on the basis of their age and sex in making employment decisions.

9. That respondent report to the Commission within 45 days

of the entry of the Commission's Order, the steps taken to comply with the Order.



JAMES GERL
HEARING EXAMINER

ENTERED: December 23, 1964

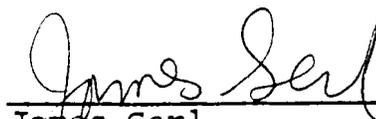
CERTIFICATE OF SERVICE

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:

Katherine R. Bayless, Esq.
1625 N. Walker Street
Princeton, WV 24740

Odell Huffman, Esq.
1604 West Main
Princeton, WV 24740

on this 23 day of December, 1986.


James Gerl

BAYLESS & WILLS
ATTORNEYS AT LAW
1625 NORTH WALKER STREET
PRINCETON, WEST VIRGINIA 24740

Attachment

A

KATHRYN REED BAYLESS
MARK E. WILLS

TELEPHONE
(304) 487-6181

RECEIVED

January 7, 1987

FEB 10 1987

W.V. HUMAN RIGHTS COMM.

Mr. James Gerl
Hearing Examiner
216 S. Jefferson Street
Lewisburg, WV 24901

RE: Anna Dishner, Nina Radford, and Mable Spradlin
Docket Nos. EA-6-86 & ES-7-86, ES-644-85, ES-635-85
and EA-643-85

Dear Mr. Gerl:

Enclosed you shall find a Motion for attorney's fees, along with supporting documentation, as well as complainants' Exceptions to the Proposed Order and Decision submitted earlier. I freely acknowledge that you had specifically requested that the material concerning the request for attorney's fees be submitted to you at the same time proposed findings and conclusions were submitted. However, I did not submit this material at that time for several reasons.

First of all, I felt it was much more important to prepare and submit to you the proposed findings and conclusions rather than a request for an attorney's fee and I simply did not have the time to complete all of that by the previously imposed deadline. Secondly, I was operating under the assumption, apparently mistaken, that I should proceed in the same fashion with respect to the fee request as I would had this case been in federal court. I contacted several attorneys within this area in an effort to come up with supporting affidavits concerning fees and ran into a great deal of difficulty with those efforts. I think the difficulty basically relates to the fact that there are so few attorneys in this area who handle these types of claims. I then ran into some time delay due to the holidays. However, I have prepared a Motion and attached what I believe is adequate supporting documentation with respect to fees which I am now speaking. I am submitting this information to you and am forwarding a copy to the Commission. I am assuming that the Commission probably would prefer a proposed order from you on this matter prior to addressing my request.

Page Two
January 7, 1986

Since this material has been somewhat delayed in its transition to you, I can assure you that the petition is complete as to the post-hearing work which has been done through this date.

Sincerely,

KATHRYN R. BAYLESS

dh

cc: Howard Kenny,
Executive Director
WV Human Rights Commission

cc: Odell Huffman, Attorney

cc: Anna Dishner
Mable Spradlin
Nina Radford

Attachment

B

BEFORE THE HUMAN RIGHTS COMMISSION OF THE STATE OF WEST VIRGINIA

ANNA DISHNER, NINA RADFORD,
and MABLE SPRADLIN,

COMPLAINANTS,

VS.

DOCKET NOS. EA-6-86 &
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PRINCETON ARMATURE CO., INC.

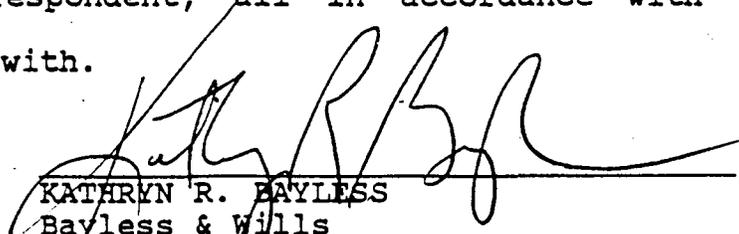
RESPONDENT.

MOTION FOR ATTORNEY'S FEES

Favorable decisions having been rendered on behalf of complainant Dishner and Spradlin, the undersigned does petition the Commission, on behalf of complainants, for awards of attorney fees and costs. In support of this motion, attached hereto as Exhibit 1 is an affidavit prepared by the undersigned counsel, as Exhibit 2 is an itemization of counsel's time spent on the claim of Anna Dishner, As Exhibit 3 is an itemization of counsel's time spent on the claim of Mable Spradlin, as Exhibit 4 is an itemization of counsel's time spent on the claim of Nina Radford and as Exhibit 5 is an itemization of all costs incurred on behalf of the complainants.

BAYLESS & WILLS
ATTORNEYS AT LAW
1625 NORTH WALKER ST.
PRINCETON, WV 24740
304-487-6161

Complainants would ask that reasonable fees and costs be awarded against the respondent, all in accordance with the material submitted herewith.



KATHRYN R. BAYLESS
Bayless & Wills
1625 N. Walker
Princeton, WV 24740

BEFORE THE HUMAN RIGHTS COMMISSION OF THE STATE OF WEST VIRGINIA

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EA-643-85

PRINCETON ARMATURE CO., INC.

RESPONDENT.

AFFIDAVIT OF KATHRYN R. BAYLESS

As counsel for complainants, I hereby depose and state as follows:

1. I am the attorney for each complainant in the matter. Subsequent exhibits attached hereto reflect the amount of time expended in this matter and these records were compiled from contemporaneously maintained time records within my office.

2. The time spent on behalf of each complainant was necessary and reasonable. Where it was impossible to be absolutely precise with respect to time spent on each separate complaint due to the fact that the same effort by counsel was expended on behalf of all complainants (including the unsuccessful complainant, Ms. Radford), I have divided such time by three and have thus accorded equal shares of such time to each complaint. Such procedure has resulted in an understatement of

the hours expended on behalf of Ms. Dishner and Mrs. Radford since their claims were slightly more complicated than Ms. Radford's due to the greater number of witnesses being involved, etc.

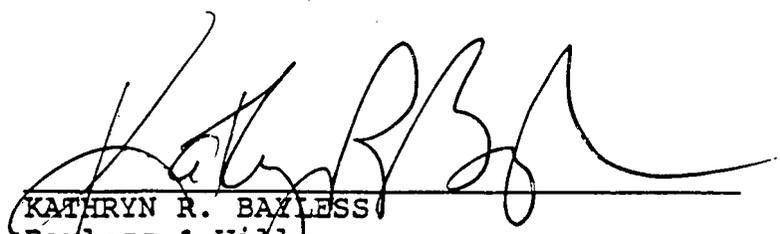
3. I have made a good faith effort to eliminate any time spent with or on behalf of the complainants which was not necessary to the litigation or which was in any way duplicative.

4. My standard hourly rate is \$75.00 per hour. That rate appears, based on the information available to me, to fall within the lower segment of the middle range of the hourly fees charged by members of this county's bar. That range of fees apparently begins at approximately \$50.00 per hour and extends to \$125.00 per hour.

5. While time records were also contemporaneously maintained by my office for the work performed by my legal assistant in these claims, I seek no reimbursement for that assistant's time.

6. My clients have agreed to make payment to me for attorney fees and costs. Each client agreed to pay a contingent fee of one-third of amounts recovered on her behalf minus whatever fee may be required to be paid by the respondent. A summary of costs is attached hereto and each client has agreed to pay her share of the costs.

Further your affiant sayeth not.



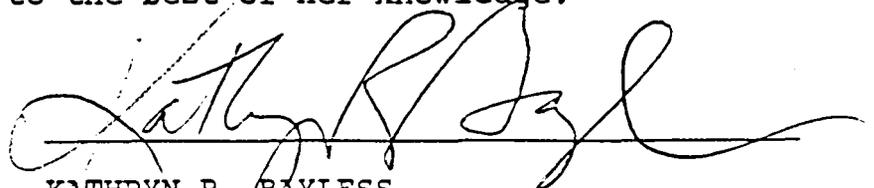
KATHRYN R. BAYLESS
Bayless & Wills
1625 N. Walker
Princeton, WV 24740

BAYLESS & WILLS
ATTORNEYS AT LAW
1625 NORTH WALKER ST.
PRINCETON, WV 24740
304-487-6181

STATE OF WEST VIRGINIA

COUNTY OF MERCER, TO-WIT;

This day came the counsel of complainants, KATHRYN R. BAYLESS, and after being first duly sworn, deposes and says that the facts and allegations contained in the foregoing AFFIDAVIT are true to the best of her knowledge.


KATHRYN R. BAYLESS

Taken, subscribed and sworn to before me this the 7th day of January, 1987.

My commission expires: October 22, 1996.



NOTARY PUBLIC

ANNA DISHNER

<u>DATE</u>	<u>DESCRIPTION OF SERVICES</u>	<u>TIME</u>
6/15/85	Conference with client. .	.30
6/17/85	Conference with client.	.50
6/18/85	Questionnaire completed. Letter to HRC.	.70
7/9/85	Conference with client.	.30
7/9/85	Letter to HRC. Letter to client. Letter to Noble.	.30
7/10/85	Telephone conference with Dishner.	.10
7/12/85	Telephone conference with client.	.20
7/15/85	Conference with client.	.20
7/19/85	Telephone conference with client regarding retirement.	.20
7/28/85	Telephone conference with client.	.10
12/6/85	Telephone conference with HRC. Letter to Lindell.	.10
12/30/85	Memo to Jerri regarding HRC conference.	.10
1/9/86	Conference with client. Travel to HRC.	.90
2/18/86	Telephone conference with opposing attorney.	.10
2/18/86	Telephone conference with Richardson regarding schedule.	.10
2/27/86	Letter to client.	.10
3/10/86	Conference with client regarding answers to interrogatories.	.30

3/12/86	Proofread answers to interrogatories.	.10
3/13/86	Telephone conference with opposing attorney.	.10
3/17/86	Letter to Richardson. Reviewed answers to interrogatories.	.10
4/5/86	Preparation of interrogatories and Motion to Produce.	.80
4/8/86	Proofread pleadings.	.10
4/24/86	Telephone conference with HRC.	.20
5/1/86	Telephone conference with client.	.20
5/1/86	Telephone conference with client.	.10
5/9/86	Memo to Jerri. Letter to client.	.10
5/27/86	Review of documents at Huffman's office.	.80
6/9/86	Conference with client regarding depositions.	1.00
6/10/86	Conference with client. Deposition of Walker and Noble.	1.80
6/11/86	Deposition of Dishner.	1.80
6/22/86	Telephone conference with Thelma Thomas.	1.00
8/30/86	Letter to opposing attorney.	.10
8/30/86	Preparation of response to Motion to dismiss. Letter to client.	.10
9/3/86	Review of file. Abstracted deposition.	1.10
9/7/86	Abstracted deposition.	.40
9/25/86	Trial preparation. Preparation of subpoenas.	.20

9/25/86	Telephone conference with opposing attorney. Telephone conference with Gerl.	.10
9/29/86	File review. Preparation for hearing. Revise pretrial order.	.70
9/30/86	Telephone conference with HRC. Telephone conference with Huffman. Prepare for and attend hearing. Telephone conferences with witnesses.	2.30
9/30/86	Preparation of PT Order. Conference Call with Gerl and Huffman.	.10
10/1/86	Attend hearing. Preparation for hearing.	3.80
10/2/86	Hearing before HRC. Conference with client.	2.80
10/7/86	Letter to opposing attorney regarding exhibits.	.10
11/2/86	Preparation of findings and conclusions.	2.90
11/3/86	Preparation of post-hearing brief. Letter to Gerl.	1.50
11/4/86	Proofread all findings.	.30
11/4/86	Proofread and revised brief.	.10
12/30/86	Telephone conference with client. Review of Hearing Examiner's decision.	.30
12/31/86	Letter to client. Telephone conference with HRC.	.30
1/5/87	Prepared exceptions to proposed order.	.40
1/5/87	Prepared motion for fees and supporting documentation and affidavit.	1.00

1/6/87

Letter to Gerl.

.10

TOTAL TIME TO DATE 31.50 HOURS

MABLE SPRADLIN

<u>DATE</u>	<u>DESCRIPTION OF SERVICE</u>	<u>TIME</u>
6/14/85	Conference with client regarding employment discrimination. Review of material.	.50
6/18/85	Conference with client.	.20
6/19/85	Review of pension material. Letter to Noble.	.30
6/20/85	Letter to HRC.	.10
7/1/85	Telephone conference with Dickerson at HRC.	.10
7/5/85	Telephone conference with HRC.	.10
7/9/85	Letter to HRC. Letter to client. Letter to Noble.	.30
7/10/85	Conference with client.	.30
7/13/85	Memo to Jerri regarding age complaint.	.20
7/15/85	Conference with client.	.20
7/17/85	Conference with client.	.40
7/20/85	Telephone conference with client regarding retirement.	.20
12/6/85	Conference with client.	.20
12/6/85	Telephone conference with HRC. Letter to Lindell.	.10
12/30/85	Memo to Jerri regarding HRC conference. Notice to client.	.10
1/9/86	Conference with client. Travel to HRC.	.90
2/13/86	Telephone conference with client.	.10

2/18/86	Telephone conference with opposing attorney.	.10
2/18/86	Telephone conference with Richardson regarding schedule.	.10
2/27/86	Letter to client.	.10
3/10/86	Conference with client regarding answers to interrogatories.	.30
3/10/86	Memo to Jerri regarding interrogatories.	.10
3/12/86	Proofread answer to inter- rogatories.	.10
3/13/86	Telephone conference with opposing attorney.	.10
3/17/86	Letter to Richardson. Review of answer to interrogatories.	.10
4/5/86	Preparation of interrogatories and Motion to produce.	.80
4/8/86	Proofread pleadings.	.10
4/24/86	Telephone conference with HRC.	.20
5/9/86	Memo to Jerri. Letter to client.	.10
6/10/86	Deposition of Walker and Noble. Conference with client.	1.80
6/11/86	Deposition of Noble and Spradlin.	1.80
8/30/86	Letter to opposing attorney.	.10
8/30/86	Preparation of response to Motion to dismiss. Letter to client regarding witnesses.	.10
9/3/86	Review of file and abstracted depositions.	1.20
9/7/86	Abstracted depositions.	.40

9/25/86	Trial preparation. Preparation of subpoenas.	.20
9/25/86	Telephone conference with opposing attorney. Telephone conference with Gerl.	.10
9/29/86	File review. Preparation for hearing. Revised pretrial order.	.70
9/30/86	Telephone conference with HRC and Huffman. Preparation for hearing. Telephone conferences with witnesses.	2.30
9/30/86	Preparation of PT Order. Conference call with Gerl and Huffman.	.10
10/1/86	Attend hearing. Preparation for hearing.	3.80
10/2/86	Hearing before HRC. Conference with client.	2.80
10/7/86	Letter to opposing attorney regarding exhibits.	.10
11/2/86	Preparation of findings and conclusions.	2.90
11/3/86	Preparation of post-hearing brief. Letter to Gerl.	1.50
11/4/86	Proofread all findings.	.30
11/4/86	Proofread and revised brief.	.10
12/30/86	Telephone conference with client. Review of Hearing Examiner's decision.	.30
12/31/86	Letter to client. Telephone conference with HRC.	.30
1/5/87	Prepared exceptions to proposed order.	.40

1/5/87

Prepared motion for fees and
and supporting documentation
and affidavit.

1.00

TOTAL TIME TO DATE 28.80 HOURS

NINA RADFORD

<u>DATE</u>	<u>DESCRIPTION OF SERVICE</u>	<u>TIME</u>
6/14/85	Conference with client regarding employment discrimination.	.50
6/18/85	Conference with client.	.20
6/20/85	Letter to HRC.	.10
7/1/85	Telephone conference with Dickerson at HRC.	.10
7/5/85	Telephone conference with HRC.	.10
7/8/85	Conference with client.	.50
7/9/85	Letter to HRC. Letter to client. Letter to Noble.	.30
12/6/85	Conference with client.	.20
12/6/85	Telephone conference with HRC. Letter to Lindell.	.10
12/30/85	Memo to Jerri regarding HRC conference. Notice to client.	.10
1/9/86	Conference with client. Travel to HRC.	.90
2/13/86	Conference with client.	.10
2/18/86	Telephone conference with opposing attorney.	.10
2/18/86	Telephone conference with Richardson regarding schedule.	.10
2/27/86	Letter to client.	.10
3/10/86	Conference with client regarding answers to interrogatories.	.30
3/10/86	Memo to Jerri regarding interrogatories.	.10

3/12/86	Proofread answer to interrogatories.	.10
3/13/86	Telephone conference with opposing attorney.	.10
3/17/86	Letter to Richardson. Review of answers to interrogatories.	.10
4/5/86	Preparation of interrogatories and Motion to produce.	.80
4/8/86	Proofread pleadings.	.10
4/24/86	Telephone conference with HRC.	.20
5/9/86	Memo to Jerri. Letter to client.	.10
6/10/86	Deposition of Walker and Noble. Conference with client.	1.80
6/11/86	Deposition of Noble and Radford.	1.80
8/30/86	Letter to opposing attorney.	.10
8/30/86	Preparation of response to Motion to dismiss. Letter to client regarding witnesses.	.10
9/3/86	Review of file and abstracted depositions.	1.20
9/7/86	Abstracted depositions.	.40
9/25/86	Trial preparation. Preparation of subpoenas.	.20
9/25/86	Telephone conference with opposing attorney. Telephone conference with Gerl.	.10
9/29/86	File review. Preparation for hearing. Revised pretrial order.	.70
9/30/86	Preparation of PT Order. Conference call with Gerl and Huffman.	.10

9/30/86	Telephone conference with HRC and Huffman. Preparation for hearing. Telephone conferences with witnesses.	2.30
10/1/86	Attend hearing. Preparation for hearing.	3.80
10/2/86	Hearing before HRC. Conference with client.	2.80
10/7/86	Letter to opposing attorney regarding exhibits.	.10
11/2/86	Preparation of findings and conclusions.	2.90
11/3/86	Preparation of post-hearing brief. Letter to Gerl.	1.50
11/4/86	Proofread all findings.	.30
11/4/86	Proofread and revised brief.	.10

TOTAL TIME TO DATE 25.70 HOURS

COSTS ADVANCED

RE: Dishner, Spradlin & Radford

01/06/86	Human Rights Commission, photocopies.	\$	13.80
01/14/86	Kathryn R. Bayless, travel expense.		16.41
06/23/86	Richard Daisey, Court Reporter. (Depositions)		808.15
09/26/86	D. B. Meadows, serving of subpoenas.		57.50
10/01/86	D. B. Meadows, serving of subpoenas.		7.50
10/02/86	Harold B. Wolfe, Jr., serving of subpoenas.		7.50
10/06/86	City of Princeton. (photocopies made during hearing)		3.20
10/14/86	N. Joan Thaxton Court Reporters, Inc. (Hearing Transcript)		156.10
10/20/86	N. Joan Thaxton Court Reporters, Inc. (Hearing Transcript)		198.80
09/02/86	52 photocopies @ .15 each.		7.80
09/26/86	10 photocopies @ .15 each.		1.50
09/30/86	79 photocopies @ .15 each.		11.85
09/30/86	Long distance telephone calls.		15.00
10/27/86	10 photocopies @ .15 each.		1.50
11/01/86	18 photocopies @ .15 each.		2.70
11/03/86	10 photocopies @ .15 each.		1.50
11/05/86	304 photocopies @ .15 each.		45.60

12/30/86	Long distance telephone call.	5.00
1/6/87	162 photocopies @ .15 each.	24.30
	TOTAL COSTS ADVANCED:	<u>\$1,385.71</u>

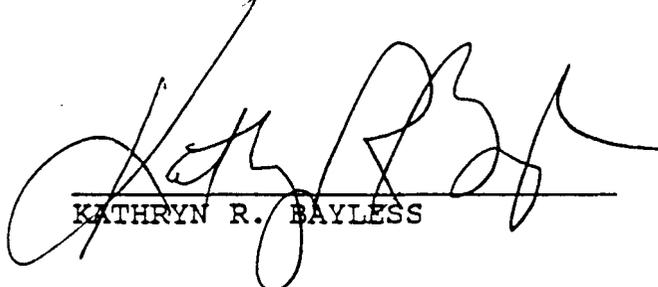
COSTS ADVANCED

Anna Dishner	\$461.91
Mable Spradlin	\$461.90
Nina Radford	\$461.90
	<hr/>
TOTAL COSTS ADVANCED:	\$1,385.71

CERTIFICATE OF SERVICE

I, KATHRYN R. BAYLESS,, attorney for the complainants, do hereby certify that on the 7th day of January, 1987, I served a copy of the foregoing MOTION FOR ATTORNEY'S FEES upon ODELL HUFFMAN, attorney for the respondent, by depositing a true copy thereof in the United States mail, postage prepaid in an envelope addressed to said attorney at:

Odell Huffman
Attorney at Law
1604 W. Main Street
Princeton, WV. 24740


KATHRYN R. BAYLESS

Attachment
C

RECEIVED

JAN 12 1987

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
WEST VIRGINIA HUMAN RIGHTS COMM.

ANNA DISHNER, NINA RADFORD,
and MABLE SPRADLIN,

Complainants,

v.

PRINCETON ARMATURE CO., INC.,

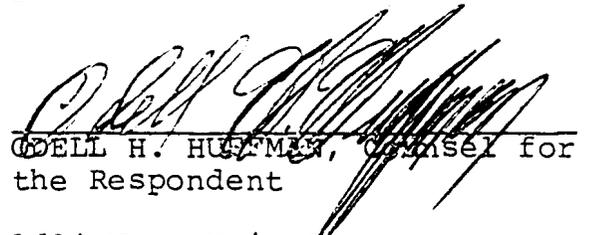
Respondent.

DOCKET NOS. EA-6-86 &
ES-7-86,
ES-644-85,
ES-635-85 &
EA-643-85

REPLY TO MOTION FOR ATTORNEY'S FEES

Respondent excepts to the Complainants' Motion for attorney's fees in as much as the Order of the Hearing Examiner, entered on October 2, 1986, and the Rules [7.22(d)] require that a Petition for attorney's fees must be filed only during the period specified by the Hearing Examiner and that allowing attorney's fees should not, as a matter of discretion of the Commission be awarded, nor should they be awarded as such is contrary to law.

SIGNED:


JOELL H. HUFFMAN, Counsel for
the Respondent

ADDRESS: 1604 West Main Street
Princeton, WV 24740
304/425-8791

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that service of the foregoing Reply to Motion for Attorney's Fees was effected upon Kathryn R. Bayless, counsel of record for the Complainants, by placing a true copy thereof in the United States mail, postage prepaid, at Princeton, West Virginia and addressed to: Kathryn R. Bayless, Bayless & Wills, Attorneys at Law, 1625 North Walker Street, Princeton, West Virginia 24740, on this 9th day of January, 1987.

SIGNED:


ODELL H. HUFFMAN, Counsel for
the Respondent

ADDRESS: 1604 West Main Street
Princeton, WV 24740
304/425-8791

RECEIVED

JAN 12 1987

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
W.V. HUMAN RIGHTS COMM.

ANNA DISHNER, NINA RADFORD,
and MABLE SPRADLIN,

Complainants,

v.

PRINCETON ARMATURE CO., INC.,

Respondent.

DOCKET NOS. EA-6-86 &
ES-7-86,
ES-644-85,
ES-635-85 &
EA-643-85

EXCEPTIONS TO FINDINGS OF FACT
AND CONCLUSIONS OF LAW AND ARGUMENT
IN SUPPORT OF EXCEPTIONS

Exception No. 1. The Respondent excepts to Finding No. 15 that "respondent hired Caldwell, a 23 year old male to perform the work previously performed by complainants".

ARGUMENT: The record is replete that Caldwell never did the work previously performed by Complainant Dishner (T. II-134-135). Complainant Dishner was an AC gangwinder (T. I-274, T. I-180). Please note the difference between an AC gangwinder and a DC winder. Mr. Caldwell did make DC coils (T. I-181, T. II-116). Since the time Complainant Dishner was laid off, only Thelma Thomas made AC coils (T. I-181, T. II-80-83).

Exception No. 2. Respondent excepts to Finding No. 22 in as much as the report seems to suggest that the coils which Caldwell made were part of the job previously done by Dishner. See Exception No. 1.

Exception No. 3. Respondent excepts to Finding No. 27, the finding that Mr. Alvis "spent at least 50% of his time at respondent winding motors after complainant Spradlin had been laid-off" because such finding is not based upon testimony.

Exception No. 4. Respondent excepts to Conclusion of Law No. 3 that each complainant has established a prima facie case of sex or age discrimination.

Exception No. 5. Respondent excepts to Conclusion of Law No. 6 that Complainants Dishner and Spradlin have demonstrated that the reasons articulated by the Respondent for failing to recall them from layoff are pretextual.

Exception No. 6. Respondent excepts to Conclusion of Law No. 7 that Respondent discriminated against Complainants Dishner and Spradlin on the basis of their age and sex by failing to recall them from layoff.

Exception No. 7. Respondent excepts to the decision of the Hearing Examiner not to recuse or decline to hear these cases upon the basis of those assigned reasons stated in the Respondent's Motion to Disqualify the Hearing

ODELL HUFFMAN Examiner.

ATTORNEY AT LAW

1604 W. MAIN STREET

PRINCETON, W. VA. 24740

Exception No. 8. Respondent excepts to the calculations of the Hearing Examiner as to Complainant Dishner for back wages, as apparently were taken from the proposed Findings of Fact by the Complainant Dishner. The calculations, using the per week figures, submitted by the Complainant Dishner actually totaly \$28,544.40 and not \$29,840.40 as stated in Complainant Dishner's Proposed Findings of Fact and as reflected in the total determined by the Hearing Examiner.

Exception No. 9. Respondent excepts to the finding of monetary damages in both the Dishner and Spradlin cases and in the findings that each of such complainants should be restored to her employment.

Exception No. 10. Respondent excepts to the findings in both the Dishner and Spradlin cases and the award of monetary damages for the loss of wages in as much as the Hearing Examiner did not find that such awards should be discounted for unemployment compensation paid by the West Virginia Department of Employment Security.

Exception No. 11. Respondent excepts to the findings of the Hearing Examiner and the proposal to make a large monetary award to the complainants in each, the Dishner and Spradlin cases, in as much as such award violates the constitutional rights of the Respondent to a jury trial (West Virginia Constitution Article III, Section 13).

Exception No. 12. The Complainants have not sustained their burden of proof in establishing their claim that the complained of actions of the Respondent were pre-textual.

Exception No. 13. The award of monetary damages is excessive and in excess of the statutory authority and jurisdiction of the Human Rights Commission.

Exception No. 14. Such Hearing Examiner's conclusions and proposed Order are clearly wrong in view of the reliable, probative, and substantial evidence on the whole record.

Exception No. 15. Such findings and proposed Order are arbitrary, capricious, and characterized by the abuse and unwarranted exercise of discretion.

ARGUMENT - DISHNER

The Hearing Examiner, in his discussion of conclusions, correctly points out that much of Caldwell's job performance was doing non-engineering type work, and this is admitted. However, it was not work which was customarily being done by Complainant Dishner, nor for which she was

qualified. The unrefuted evidence is that Caldwell was hired for engineering purposes with the intent to benefit from his engineering training in technical matters and in order to meet the customary standards of similar shops which perform the type of work that was performed by the Respondent. It was further amply demonstrated that Mr. Caldwell was, indeed, in a training period and that he was to learn all aspects of the work done at Respondent's shop. The fact that Mr. Caldwell did an inconsequential portion of work that had been done by Complainant Dishner was not sufficient to adjudge the Respondent guilty of sex and age discrimination. Moreover, there was no wrongful intent, as was amply demonstrated by the job for which Mr. Caldwell was employed, to discriminate and the fact that he may have done an insubstantial portion of the work for which Complainant Dishner was qualified should not be the basis of a finding that Respondent's reasons for hiring Mr. Caldwell were pretextual and therefore an intent to discriminate.

ARGUMENT - SPRADLIN

The Hearing Examiner, in his discussion of the reasons articulated by the Respondent for not recalling Complainant Spradlin, minimizes the prime reason articulated by the Respondent, namely, that Gary Alvis was able to do

many different jobs at the shop of the Respondent, whereas the Complainant Spradlin could do but a very limited number of jobs.

Gary Alvis, who was a motor vehicle mechanic by prior experience and training and who did mechanical work on the trucks of the Respondent, both in his regular work hours and in his off work hours and who could do numerous other jobs for the Respondent, was the matter of choice of the Respondent to spend at least part of his time doing the work of Complainant Spradlin. The record is replete with testimony that business was slow and that when the time for layoffs came, the most versatile employees would remain because there was not sufficient work to be done by those employees who were specialized in the performance of a limited number of tasks. It must be borne out that the Complainant Spradlin does not present a claim for discrimination based upon the time of layoff, but she presents her claim based upon a failure of the Respondent to recall her at a time when Gary Alvis was doing a great many different tasks for the Respondent. It is not contested by the Respondent that Mr. Alvis was, indeed, trained to perform some of the duties performed by Complainant Spradlin; however, the Respondent was faced with the dilemma of having to either recall Ms. Spradlin who could do a limited number of tasks

or keeping Mr. Alvis who was doing work that Complainant Spradlin could not do, the Respondent chose the latter. Under such circumstances, it cannot fairly be said that the action of the Respondent was pretextual, nor was there a showing that there was an intent to discriminate, the preponderance of the evidence being that the motivation for the action taken by the Respondent was for justifiable economic reasons.

SIGNED:

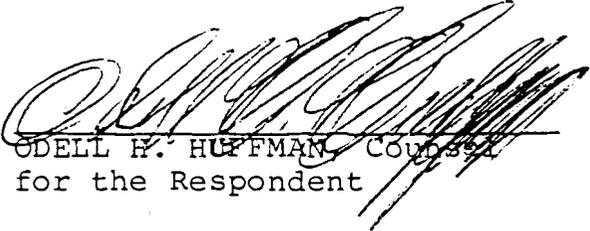

ODELL H. HUFFMAN, Counsel for
the Respondent

ADDRESS: 1604 West Main Street
Princeton, WV 24740
304/425-8791

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that service of the foregoing Exceptions to Findings of Fact and Conclusions of Law and Argument in Support of Exceptions was effected upon Kathryn R. Bayless, counsel of record for the Complainants, by placing a true copy thereof in the United States mail, postage prepaid, at Princeton, West Virginia and addressed to: Kathryn R. Bayless, Bayless & Wills, Attorneys at Law, 1625 North Walker Street, Princeton, West Virginia 24740, on this 9th day of January, 1987.

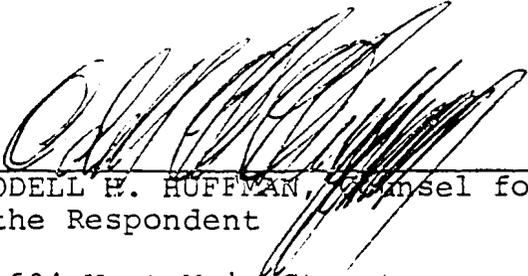
SIGNED:


ODELL H. HUFFMAN, Counsel
for the Respondent

ADDRESS: 1604 West Main Street
Princeton, WV 24740
304/425-8791

or keeping Mr. Alvis who was doing work that Complainant Spradlin could not do, the Respondent chose the latter. Under such circumstances, it cannot fairly be said that the action of the Respondent was pretextual, nor was there a showing that there was an intent to discriminate, the preponderance of the evidence being that the motivation for the action taken by the Respondent was for justifiable economic reasons.

SIGNED:


ODELL W. HUFFMAN, Counsel for
the Respondent

ADDRESS: 1604 West Main Street
Princeton, WV 24740
304/425-8791