

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

LORI S. EVANS,

Complainant,

v.

DOCKET NO. ES-99-86

GINO'S PIZZA OF
WEST HAMLIN, INC.

Respondent.

FINAL ORDER

On the 14th day of January, 1987, the Commission reviewed the proposed Order and Decision of Hearing Examiner, James Gerl, in the above-captioned matter. After consideration of the aforementioned and the entire record, the Commission does hereby adopt the Recommended Decision encompassing Findings of Facts and Conclusions of Law as its own with the amendments set forth below.

The Commission hereby supplements the Findings of Fact with the following finding:

"31. Complainant's attorney submitted an affidavit for attorney fees and costs and said affidavit is appended as Exhibit A of this decision."

The Commission does hereby adopt the subsection titled Discussion of Conclusions of the Hearing Examiner as its own with the exception set forth below.

Following the end of the second full sentence on page 12, all subsequent discussion contained therein is deleted, and the following language is substituted by the Commission:

"The WV Human Rights Commission, in interpreting the Human Rights Act, adopts the standard set forth in the EEOC Guidelines for Sexual Harassment as determinative of employer liability for sexual harassment committed by supervisory employees and agents."

Finally, the Commission adopts the Relief subsection of the Proposed Order and Decision of the Hearing Examiner as its own.

It is hereby ORDERED that the Hearing Examiner's proposed Order and Decision encompassing Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order except as amended by this Order.

Accordingly, it is hereby ORDERED as follows:

1. Respondent shall cease and desist from unlawful sexual harassment at its workplace;

2. The respondent shall immediately rehire the complainant to her former position at a rate of pay comparable to that which she would be receiving but for the discriminatory conduct of the respondent;

3. The respondent shall pay to the complainant the sum of wages she would have earned but for respondent's unlawful termination of complainant's employment. Such wages are calculated at the stipulated amount of \$3.45 per hour upon a 35 hour work week, or \$120.75 a week, multiplied by the number of weeks since the date of complainant's termination up to the date of her reinstatement, less a \$500.00 offset for complainant's interim earnings. Interest should be calculated on the backpay amount at the rate of 10% per annum until paid;

4. The respondent shall pay to the complainant the sum of \$5,000.00 as compensatory damages for humiliation, embarrassment, emotional and mental distress and the loss of personhood and dignity suffered by the complainant as a result of respondent's discriminatory treatment;

5. The respondent shall pay complainant's reasonable attorney fees in the amount of \$4,950.00, as supported by the fee affidavit attached; and

6. The respondent shall pay to complainant the sum of \$474.40 for costs reasonably expended by complainant and reasonably necessary for litigation of this matter;

The respondent is hereby ORDERED to provide to the Commission proof of compliance with the Commission's Order within thirty-five (35) days of service of said Order by copies of cancelled checks, affidavit 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 that they have the right to judicial review.

Entered this 19th day of February, 1987.

RESPECTFULLY SUBMITTED,

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

BEFORE THE
STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

LORI S. EVANS,

Complainant,

v.

DOCKET NO. ES-99-86

GINO'S PIZZA OF
WEST HAMLIN, INC.,

Respondent.

RECEIVED

SEP 18 1986

W.V. HUMAN RIGHTS COMM.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

A public hearing for this matter was convened on September 19, 1986, in Hamlin, West Virginia. Commissioner Nate Jackson served as Hearing Commissioner. The complaint was filed on August 16, 1985. The notice of hearing was issued on May 1, 1986. A telephone Status Conference was convened on July 14, 1986. Subsequent to the hearing, both parties filed 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 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 findings as stated herein, it is not credited.

CONTENTIONS OF THE PARTIES

Complainant contends that respondent fired her for failing to submit to the sexual advances of her supervisor. Respondent maintains that the alleged sexual harassment never occurred.

FINDINGS OF FACT

Based upon the parties stipulations of uncontested facts as set forth in the joint pre-hearing memorandum, the Hearing Examiner has made the following findings of fact:

1. Complainant is a female who, during the time relevant to this action, was employed by respondent as a waitress/cook/cashier at its store in West Hamlin, Lincoln County, West Virginia.
2. Complainant worked for respondent an average of 35 hours per week at the wage of \$3.45 per hour.
3. J. Watts, a male, was, at all times relevant hereto, the manager of respondent's West Hamlin store. J. Watts is the husband of D. Watts, also an employee of respondent.
4. In December, 1984, complainant resided with J. and D. Watts in their home in Branchland, West Virginia, along with the Watts' two infant children.
5. More often than not, during the period relevant hereto, complainant and J. Watts worked the evening shift in the West Hamlin store, and D. Watts worked the day shift. On an average of one or two evenings per week, J. Watts and

complainant were the only employees scheduled to work in the West Hamlin store.

6. Complainant's last day of employment with respondent was May 17, 1985.

7. During the course of her employment with respondent, no formal disciplinary action was ever taken against complainant.

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

8. J. Watts had the authority to hire and fire the employees he supervised at the West Hamlin store. In practice, he would consult with Barclay, his supervisor, before such actions would be finalized.

9. Complainant moved out of the Watts' home because J. Watts had been making sexual advances toward her in the house. On one occasion Watts tried to put his arms around complainant and kiss her. Complainant instructed him to leave her alone. On another occasion, J. Watts awakened her by climbing onto the couch where she had been sleeping while telling her to be quiet so as not to wake his wife. Complainant threatened twice to yell for his wife before J. Watts desisted.

10. In approximately mid April, 1985, J. Watts began sexually harassing complainant at work.

11. The first incident of sexual harassment involved J. Watts putting his arms around complainant, pinching her behind, and telling her that he wanted to "get (her) in bed." Complainant told him to leave her alone. J. Watts responded by saying that complainant had a "pretty behind" and by repeating

his intention to take her to bed. Complainant again requested that he leave her alone.

12. After the first incident at work, J. Watts continuously attempted to hug complainant, kiss her, unbutton her blouse, pinch her behind, and state that he wanted to go to bed with her. He sexually harassed complainant in this manner nearly every shift that they worked together by themselves, that is, when they were the only two employees working a particular shift.

13. On each occasion, complainant rejected the sexual advances of J. Watts. After repeated incidents of sexual harassment, complainant slapped him. Complainant made it clear to Watts that his sexual harassment was unwelcome.

14. After complainant had rebuked his sexual advances for several weeks, J. Watts began to subject complainant's work to an elevated level of scrutiny and criticism. On many occasions he would criticize complainant's work in front of customers.

15. After one such criticism of complainant's work, Goddard, a co-employee, asked complainant why J. Watts was "snapping" at her.

16. On Wednesday, May 15, 1985, complainant decided to speak to Barclay about J. Watts' unfair criticism of her work. Barclay agreed that employees should not be criticized in front of customers. Complainant never mentioned J. Watts' sexual harassment of her to Barclay or his superiors because she felt it would be fruitless to do so.

17. Barclay authorized complainant to take the day off on May 16, because he observed how upset complainant was on May 15.

18. On May 17, 1985, complainant worked the 4:30 p.m. shift with Goddard and J. Watts. At about 7:00 p.m. complainant noticed that a pizza party order had been taken by J. Watts. Complainant protested that she had not been informed of the order, which would be the customary procedure in the store. J. Watts told her to keep her eyes open. She began making a pizza. J. Watts asked her what she was doing and asked her, "why don't you read your ticket again." Complainant said she was reading it right. J. Watts said complainant was "half blind." In the ensuing exchange, Watts raised his voice and spoke in angry tones which were heard by the customers. Complainant felt humiliated and embarrassed; she clocked out and went home.

19. On may 18, 1985, complainant reported to the West Hamlin store at about 4:00, or about $\frac{1}{2}$ hour before the beginning of her regular shift. Complainant was not in uniform. She had planned to drive home, which was five minutes away, if Barclay did not block her attempt to return to work. When complainant arrived at the store, J. Watts, Goddard, and Stowers were already working. Complainant asked to speak to Barclay, but J. Watts told her she no longer worked there. Complainant explained that she had not quit. When J. Watts repeated his answer, complainant became angry, cursed him repeatedly, and threatened to tell his wife of the sexual advances he had been making towards her. J. Watts walked away, and complainant was not permitted to follow him.

20. Later that evening complainant's father, F. Evans, entered the West Hamlin store with complainant. F. Evans repeatedly cursed and threatened J. Watts. Although no physical violence occurred, the incident was very ugly.

21. After the F. Evans incident, Barclay completed a Payroll/Personnel Data Sheet which stated the reason for termination as "quit or walked off the job. Couldn't get along with other employees. If she didn't quit, she is fired."

22. Respondent terminated complainant's employment on May 18, 1985.

23. Respondent has no policy defining sexual harassment or making sexual harassment a disciplinary offense.

24. Respondent's general grievance procedure is outlined in its employee handbook. The procedure provides that all complaints should be directed to the store manager. If the complaint is not satisfied by the store manager, the employee may ask for a meeting with respondent's employee relations director.

25. Subsequent to her termination, complainant has been employed for six weeks as a waitress at Annette's Drive-In for \$2.00 per hour plus tips for an eight or nine hour day. Her total earnings at Annette's Drive-In were no more than \$500.00.

26. Subsequent to her termination, complainant has performed work in the mornings for Gore's Grocery in exchange for credit on her rent and utilities. Because such work is done in the morning, it would not conflict with her work at respondent, where her normal shift began at 4:30 p.m.

27. The sexual harassment by J. Watts caused complainant to become humiliated and distressed. The sexual advances by J. Watts "kept going over and over . . ." in complainant's mind.

28. Mike Kelly, complainant's attorney, reasonably expended 66 hours of attorney time in litigating this matter.

29. An hourly rate of \$75.00 per hour is reasonable for the legal services rendered by complainant's attorney.

30. Complainant reasonably expended \$474.40 in costs in litigating this matter.

CONCLUSIONS OF LAW

1. Lori S. Evans 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. Gino's Pizza of West Hamlin, Inc., 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. An employer is liable for all sexual harassment committed by its supervisory employees or agents.

4. Respondent discriminated against complainant on the basis of her sex in violation of West Virginia Code, §5-11-9 (a) by terminating her employment because she rebuked the unwelcome sexual advances of her supervisor.

DISCUSSION OF CONCLUSIONS

Sexual harassment in the workplace violates the provisions of the Human Rights Act which prohibits discrimination on the basis of sex. Graves v. West Virginia Belt Sales and Repair Docket No. ES-373-81 (W.V.H.R.C. May 15, 1986). The West Virginia

courts look to the Federal anti-discrimination laws and decisions for guidance, although Federal law is not binding upon the Human Rights Commission, in interpreting the West Virginia Human Rights Act. West Virginia Human Rights Commission v. United Transportation Union, Local 6551 280 S.E. 2d 653 (1981).

The Federal Equal Employment Opportunity Commission has adopted comprehensive findings which pertain to the topic of sexual harassment. The EEOC Guidelines are treated with deference by the courts because they constitute a body of experience and informed judgment. Griggs v. Duke Power 401 U.S. 424, 433-434 (1971).

The EEOC Guidelines on Discrimination Because of Sex define the parameters of sexual harassment as follows:

". . . Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, [or]
2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
3. such conduct has the purpose or effect of unreasonably interfering with and individual's work performance or creating an intimidating, hostile, or offensive work environment."

29 CFR §1604.11(a) (1985).

The gravamen of any type of sexual harassment claim is that the alleged sexual advances are unwelcome. Meritor Savings Bank v. Vinson ___ U.S. ___, 106 S. Ct. 2339, 54 U.S.L.W. 4703, 4706 (June 19, 1986). The test for unwelcomeness is an objective test, and the proper inquiry involves the facts rather than plaintiff's frame of mind. Jennings v. DHL Airlines 34 F.E.P.

1423 (N.D. Ill. 1984).

The paradigm sexual harassment case involves an allegation that an employee was fired for refusing to submit to a supervisor's sexual advances. If such allegations are proven, unlawful sex discrimination has occurred. EEOC v. Domino's Pizza 34 F.E.P. 1075 (E.D. Mich. 1983); Koster v. Chase Manhattan Bank 554 F. Supp. 285 (S.D.N.Y. 1983); 29 CFR §1604.11(a)(1).

In sexual harassment cases of this variety the tripartite allocation of proof as set forth in Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission 309 S.E. 2d 342, 352-353 (W. Va. 1983) is usually not helpful. The issue is generally one of credibility, a swearing contest where one party accuses and the other denies. In such cases the prima facie case, legitimate reason, pretext analysis, which was designed to help prove more subtle types of discrimination, is often inappropriate. Rather than a tortured analysis, such cases should be decided primarily upon the credibility of the testimony of the witnesses. Of course, in some cases the tripartite analysis may be helpful and should be employed, but where inappropriate, it should not become a hindrance. In the instant case, the testimony of complainant is more credible than the testimony of respondent's witnesses. Complainant's demeanor was very credible and believable. Although complainant's testimony did include a few minor discrepancies, both related to issues regarding time. It was clear during complainant's testimony that she was slightly confused with regard to dates and time. Overall, complainant's

testimony marked by a very credible demeanor. It is noteworthy that complainant consistently testified that she never notified any of Watts' supervisors that he had been sexually harassing her. If complainant were to have had the inclination to fabricate testimony, she would undoubtedly have testified that she notified management higher than her supervisor that her supervisor was sexually harassing her. That complainant did not attempt such a story, even though it would have added strength to her legal position, enhances the credibility of her testimony.

The testimony of Watts, however, was impaired by a poor demeanor. During his testimony, he seemed nervous and often hesitated. When explaining his statements, he sometimes seemed quite confused. Moreover, his testimony included numerous contradictions and discrepancies. During his testimony he stated that complainant twice called in the night that she walked out of the store, May 17, 1985. Yet, complainant's alleged telephone calls were not reflected on any of the paperwork filed by Watts subsequent to complainant's last day of work. In addition, Watts wrote on an employee reprimand form after complainant had left work that she doesn't get along with everyone. When questioned regarding what the statement meant, Watts could not supply any reasonable explanation. It appears from the record that Watts supplied at least four different explanations with regard to his comment that complainant does not get along with everyone, but that none of such explanations can withstand scrutiny. Another contradiction involves Watts' testimony that complainant did not show up for work on May 18, 1985. An employee reprimand form which Watts completed on May 17, 1985, clearly

demonstrated that Watts knew that complainant would not be permitted to come back to work. Watts' testimony was contradicted by Goddard with respect to a very important point. Watts testified that on complainant's last day of work, she was given an order for a pizza and that she replied "I can read," and that Watts then gave her the ticket and complainant walked out of the store for no explainable reason. Goddard, who worked the same shift with complainant and Watts on May 17, 1985, however, testified that there was an incident on that night involving an alleged "mistake" on a ticket. Thus, Goddard's testimony supports and buttresses complainant's testimony on this important point.

The testimony of respondent's other witnesses was also discredited by various inconsistencies and discrepancies. For example, Barclay, Watts' supervisor, could not explain at the hearing his statement in a document completed after complainant had been terminated that she could not get along with the other employees. It is also significant that Barclay refers to the female employees which he supervises as "girls". The testimony of Stowers contradicts her deposition testimony with regard to whether she ever worked at the West Hamlin store prior to Saturday, May 18, 1985. The testimony of Goddard is questionable because her memory at the hearing was much better than her memory at her deposition, even though the deposition occurred closer in time to the events underlying this case. In view of the demeanor of the witnesses and the various internal and external inconsistencies in the respondent's witnesses, it is concluded that the testimony of complainant is much more credible.

Respondent argues that because complainant never notified any of the high ranking management of the respondent of the alleged sexual harassment, that complainant is not entitled to any relief. The EEOC Guidelines on Discrimination Because of Sex impose liability upon the employer for all sexual harassment committed by the employer's supervisory employees and agents. 29 CFR §1604.11(c). The United States Supreme Court in interpreting Title VII of the Civil Rights Act of 1964, however, has rejected this standard for employer liability. Meritor Savings Bank v. Vinson, supra. Although the court refused to issue a definitive ruling on employer liability because of the inadequate record before it, the court did specifically reverse a holding by the Court of Appeals that employers are always automatically liable for sexual harassment by their supervisors. Id. The court held that while the absence of notice to the employer does not necessarily insulate the employer from liability, the court suggested that the proper analysis would involve the use of agency principles. Id.

The Hearing Examiner strongly recommends the Human Rights Commission in interpreting the West Virginia Human Rights Act follow the EEOC Guidelines, rather than the federal court position that Title VII does not impose liability upon the employer for sexual harassment by its supervisors. Because the Commission is not bound by decisions interpreting Title VII, the Commission should carefully weigh the appropriate analysis of employer liability under the West Virginia Human Rights Act. In all other areas of discrimination law, the employer is held responsible for the acts of its supervisors. For example, if a

supervisor were to terminate an employee because of his race, the employer must assume responsibility, even if the upper levels of management had no notice of the supervisor's action. Similarly, a company will be held responsible for a supervisor who engages in racial name-calling on the job. It would be analytically inconsistent, as well as not in the interest of justice, to carve out special rules for notice to the employer in situations involving sexual harassment.

Even assuming, *arguendo*, that the Human Rights Commission decides to follow the approach of the Supreme Court of the United States in Meritor Savings Bank v. Vinson, however, complainant will prevail in the instant case. The appropriate analysis under the Meritor doctrine involves application of agency principles. Here, the actions of J. Watts are clearly the actions of the respondent. It is extremely significant that Watts had the authority to hire and fire employees of respondent. Thus, the employer gave to Watts the ability to make the most important personnel decisions with respect to his store. Indeed, in this case Watts exercised his ability to fire the complainant. Also significant under the Meritor analysis is whether the respondent had a policy defining and forbidding sexual harassment specifically, and whether said policy permitted the employee in question to go over the head of the alleged perpetrator to a higher level of management when making a complaint of sexual harassment. In the instant case, respondent had no policy with regard to sexual harassment. Respondent's grievance policy required that the grievance be filed in the first instance with the employee's supervisor. Thus, respondent's complaint procedure is subject

to the frustration noted by the Court in Meritor. Respondent's general grievance policy which required the employee, in this case, to complain directly to Watts of his sexual harassment, would render the employer liable for sexual harassment by its supervisors. Other general agency principles such as respondeat superior, and the duty to provide a safe work place compel the conclusion that respondent should be liable for the sexual harassment of complainant by Watts, even though complainant never complained to anyone other than Watts of the sexual harassment.

RELIEF

Because complainant was terminated for rejecting the unwelcome sexual advances of her supervisor, she should be reinstated to her job at respondent. She should also receive back pay in the amount that she has lost because of her termination by respondent. Said amount would be \$3.45 per hour X 35 hours per week since her termination minus the interim earnings she has had since her termination which amount to \$500.00 from Annette's Drive-In. The in-kind compensation which complainant has received from Gore's Grocery in exchange for certain work should not be deducted from her back pay because complainant's work at Gore's Grocery was performed in the morning hours and, consequently, would not conflict with her work for respondent, which would not have begun until 4:30 p.m. The amount of back pay should include pre-judgment interest at the rate of ten percent (10%).

Complainant testified that the sexual harassment which she endured caused her nerves to be "tore all to pieces." She also provided compelling testimony that the incidents of sexual

harassment which she suffered kept being replayed in her mind. In view of the humiliation and embarrassment inherent in any sexual harassment as compounded by complainant's particular suffering of embarrassment, humiliation, and distress as a result of the constant comments, kissing, hugging, feeling, etc., by Watts, complainant should be awarded a substantial amount of incidental damages. The amount which complainant requests, \$5,000.00, seems to be reasonable under the circumstances.

Complainant prays for attorney's fees and costs. The 66 hours which complainant's attorney expended upon this matter seems reasonable. The hourly rate of \$75.00 per hour requested by complainant's attorney seems very reasonable given the high quality of representation of complainant herein; indeed, it seems that this rate constitutes a bargain in view of the experience and ability of counsel. Complainant has reasonably expended \$474.40 in costs for deposition and hearing transcripts in this matter.

PROPOSED ORDER

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

1. That the complaint of Lori S. Evans, Docket No. ES-99-86, be sustained.
2. That respondent **rehire** complainant to her former position at a rate of pay comparable to what she would be receiving but for the discriminatory termination.
3. That respondent pay to complainant the sum of **wages she would have earned but for respondent's unlawful termination of complainant's employment. Such wages should be calculated in**

an amount equal to \$3.45 per hour times 35 hours per week times the number of weeks since the date of her termination minus the sum of \$500.00 in interim earnings. The back pay award should be multiplied by ten percent (10%) for prejudgment interest.


4. That respondent pay to complainant the sum of \$5,000.00 for incidental damages for humiliation, embarrassment, emotional and mental distress, and the loss of personhood and dignity as a result of the discriminatory treatment she received.

5. That respondent be required to pay complainant's reasonable attorney's fees in the amount of \$4,950.00.

6. That respondent be ordered to pay to complainant the sum of \$474.40 for costs reasonably expended by complainant and reasonably necessary to the litigation of this matter;

7. That respondent be ordered to cease and desist from permitting sexual harassment of its employees in the workplace.

8. That respondent report to the Commission within thirty (30) days of the entry of the Commission's Order, the steps taken to comply with the Order.



JAMES GERL
Hearing Examiner

ENTERED: December 5, 1986

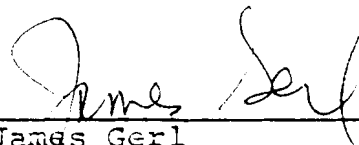
CERTIFICATE OF SERVICE

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:

Mike Kelly, Esquire
Appalachian Research and Defense Fund, Inc.
1116-B Kanawha Boulevard, East
Charleston, WV 25301

O. C. Spaulding, Esquire
2712 Main Street
Hurricane, WV 25526

on this 5th day of December, 1986.



James Gerl

BEFORE THE
STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

LORI S. EVANS,
Complainant,

v.

DOCKET NO. ES-99-86

GINO'S PIZZA OF
WEST HAMLIN, INC.,
Respondent.

AFFIDAVIT FOR ATTORNEY FEES AND COSTS

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

I, Mike Kelly, counsel for the complainant in this action, hereby state under oath as follows:

1. The following is a true and actual summary of my time spent in litigating this action as compiled from my time records routinely kept throughout the duration of this matter:

<u>Date(s)</u>	<u>Activity</u>	<u>Hours</u>
August 10, 1985	Review case with intern	0.5
December 9, 1985	Review Letter of Determination; write letter to HRC	0.5
December 10, 1985	Look at HRC file	0.5
January 3, 1986	Prepare for Review Hearing and Hearing	1.5
June 13, 1986	Draft Discovery	1.5
June 23, 1986	Prepare for Depositions	2.0
June 24, 1986	Depositions	3.0
July 14, 1986	Conference Call	0.5
September 1, 1986	Review documents, prepare Memo	2.0
September 16, 1986	Meet with client	1.0
September 17, 1986	Read complete Record	1.5

September 18, 1986	Prepare for Hearing	4.5
September 19, 1986	Prepare and Hearing	6.0
September 25, 1986	Research	8.0
September 26, 1986	Read Record	4.0
September 29, 1986	Findings of Fact	8.0
September 30, 1986	Findings of Fact	8.0
October 3, 1986	Write Brief	4.0
October 4, 1986	Write Brief	<u>9.0</u>
	<u>TOTAL HOURS</u>	<u>66.0</u>


2. I have been a member of the Bar of the State of West Virginia for ten years and have been engaged in the practice of civil rights law for a combined period of four years.

3. Given the time and labor required in this action, the difficulty of the questions involved, the results obtained, and the fee customarily charged in the Kanawha Valley area for similar legal services by attorneys of similar experience, a fee of \$75 per hour in this action is reasonable.

4. The costs expended in this action on behalf of complainant are \$286.60 for depositions and \$187.60 for the hearing transcript, for a total of \$474.40.

5. That the total amount due and owing to the Appalachian Research and Defense Fund, Inc., for attorney fees and costs is:

Attorney fees (66 hours x \$75/hr.)	\$4,950.00
Costs	<u>474.40</u>
<u>TOTAL AMOUNT DUE</u>	<u>\$5,424.40</u>


 MIKE KELLY
 1116-B Kanawha Blvd., East
 Charleston, WV 25301

Taken, sworn to, and subscribed before me this 15
day of October, 1986.

My Commission expires 10/15/1991.

[Signature]
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Mike Kelly, counsel for the complainant in the above-styled action, hereby certify that I on this the 10th day of October, 1986, have served a true copy of the attached Memorandum of Law in Support of Complainant and accompanying Affidavit for Attorney Fees and Costs upon the respondent by United States Mail, postage prepaid, by mailing a true copy thereof to:

James Gerl
Hearing Examiner
216 South Jefferson Street
Lewisburg, WV 24901

O. C. Spaulding
Attorney at Law
2713 Main Street
Hurricane, WV 25526
Counsel for Respondent


Mike Kelly