

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

WILLIAM FORD,

Complainant,

v.

DOCKET NO. ER-121-77

CITY OF KEYSTONE,

Respondent.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW AND ORDER

I.

Proceedings

This came on for hearing on June 12, 1985, in the Welch, McDowell County, West Virginia. The Complainant, William Ford, appeared in person and by his counsel, F. Winston Polly, Esq. The Respondent, City of Keystone, appeared by counsel, Grover Goode, Esq. This hearing was presided over by Juliet Rundle, Hearing Examiner for the WV Human Rights Commission under the auspices of the WV Supreme Court of Appeals. The parties waived the presence of a Hearing Commissioner.

After full consideration of the entire testimony, evidence and the Hearing Examiner's Recommended Decisions (Said Decisions which are appended), this Commission rejects said Recommended Decisions and substitutes for them its own decision accompanied by Findings of Fact and Conclusions of Law as follows.

II.

Issue

Whether the Complainant, William Ford, was treated disparately in terms of conditions of employment by the Respondent, City of Keystone, on the basis of his race in violation of the WV Human Rights Act WV Code 5-11-1 et seq.

III.

Findings of Fact

1. Complainant, William Ford, a black citizen of McDowell County, West Virginia was accepted through the Governor's Manpower Program as a CETA (Comprehensive Employment and Training Act) employee for the City of Keystone in June 1975.

2. Respondent, City of Keystone, is a municipal corporation located in McDowell County, West Virginia.

3. Prospective CETA employees were referred by the Employment Security Office in Welch, West Virginia to the City of Keystone in response to the City's request that various vacancies be posted.

4. According to the Complainant, the local employment office posted a CETA position for police officer with the City of Keystone, and the Complainant assumed he would be hired as such if accepted.

5. According to the Respondent, the CETA job position it placed with the employment office, to which the Complainant responded, was as a night watchman.

6. Masei Purdue, the mayor of the City of Keystone in 1975, interviewed and accepted the Complainant for a position with the city as a night watchman.

7. No inquiry was made into Complainant's qualifications relative to a position as either night watchman or police officer by Mayor Purdue.

8. The City of Keystone employed its own police officer and also accepted persons for police work under the CETA program or similar governmental programs.

9. The City of Keystone, by its mayor, had the authority to assign job positions and to set the job duties and responsibilities for CETA employees it accepted.

10. The Complainant's duties as a night watchman included: patrolling the city as a deterrent to crime; and generally ensuring the public peace and order by enforcing the city curfew and checking property to make sure that the law was not being violated.

11. During Complainant's employment tenure, no other night watchman was employed by the City of Keystone nor was any police officer on duty during Complainant's regular evening shift which was 9:00 p.m. to 5:00 a.m.

12. The Complainant was required to wear a City of Keystone police uniform; and, therefore, was perceived by the public as a police officer subject to risks as well as benefits of that perception.

13. The Complainant was not allowed to use a police cruiser but rather was required to walk or alternatively use his personal vehicle to patrol the City of Keystone.

14. Other than a night stick and general orders by the mayor that he call the mayor, other town official, or the state police from a pay

telephone, the Complainant was provided with no protection or authorization in the exercise of duty to ensure the public peace and to prevent crime.

15. In spite of Complainant's repeated request that he be given protection, the Complainant was not issued keys to the jail or handcuffs nor was a petition ever filed on his behalf by the city so that he was bonded and issued a permit to carry a gun.

16. In April or May of 1975, two months before the Complainant was accepted and assigned as a night watchman, the City of Keystone, by mayor Purdue, accepted two white males, Isom Bailey and Noah Horn, both CETA workers, for positions with the City of Keystone as police officers.

17. Bailey and Horn also wore City of Keystone police uniforms, and therefore, were perceived by the public as police officers subject to risks and benefits of that perception.

18. Unlike the Complainant, Bailey and Horn were provided with a police cruiser, and each were provided with handcuffs, keys to the jail and were bonded and issued permits to carry firearms.

19. Unlike the Complainant, Bailey and Horn were authorized to make arrest by the City of Keystone. The duties of the white CETA officers included: patrolling the city as a deterrent to crime; and generally ensuring the public peace and order in the City of Keystone.

20. According to the Respondent, one of the two white CETA officers, Bailey, had previous police experience. However, Respondent could not recall whether the other white officer, Horn, had prior police experience.

21. The two white CETA officers worked together as a team on the day shift which provided additional protection to their individual persons.

22. The Complainant was subjected to unnecessary risk because he was required to work alone and because he was not provided with the equipment or authority to effectively ensure the public peace and public order.

23. The Complainant substantially performed the same duties as those duties performed by white CETA officers.

24. The Complainant was as qualified as either Bailey or Horn by virtue of work performed to hold the title of police officer, and like his peers, should have been provided with the title and essential equipment to effectively and non-hazardly accomplish law enforcement ends, to wit: a police cruiser; team backup; handcuffs; jail keys; a permit to carry a firearm; bonding; and authorization to make arrest.

25. The Complainant was the only black CETA employee of the City of Keystone in an enforcement capacity during this period.

26. According to the Respondent, the reasons the Complainant was not assigned as a police officer nor given equipment or authority of a police officer, was because he lacked prior police experience in doing police work; and because the Complainant had made a statement to mayor Purdue, at the time he was accepted as a CETA employee for the City of Keystone that he intended to shoot some black people.

27. Bailey and Horn were terminated in November of 1975.

28. The Respondent asserted that the reason the Complainant was not subsequently appointed or assigned as police officer was because of his poor performance as a night watchman.

29. According to Respondent, the poor performance was manifest by his frequently being absent from work.

30. Documentary evidence introduced at hearing, reflects that the Complainant was not frequently absent.

31. The Complainant, Bailey and Horn received the same rate of pay per week.

32. The Complainant was terminated on October 15, 1976, when his CETA contract expired.

33. As a result of Respondent's failure to recognize the Complainant as police officer and to provide him with equipment and authority to effectively and non-hazardly perform the duties of a police officer and to accomplish law enforcement ends with minimal risk to his person, Complainant suffered mental anguish, embarrassment and humiliation and loss of personal dignity.

IV

Conclusions of Law

1. William Ford is an individual claiming to be aggrieved by an alleged unlawful discriminatory practice and is a proper complaint for purposes of the Human Rights Act, WV Code Section 5-11-10.

2. City of Keystone is an employer as defined by WV Code 5-11-3(g) and subject to the provisions of the WV Human Rights Act.

3. Complainant has established a prima facie case of race discrimination in terms and conditions of employment.

4. The Complainant has demonstrated that the reasons articulated by Respondent for failing to provide equal terms and conditions of employment as those granted to similarly situated fellow white CETA employees as pretextual.

5. Respondent discriminated against Complainant on the basis of his race in violation of WV Code 5-11-9(a) by failing to provide to the Complainant the same terms and conditions of employment as were provided to similarly situated white persons.

V.

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 Dept. v. WV Human Rights Commission, 309 SE2d 342 (WV 1983); State of West Virginia ex rel. State Human Rights Commission and Rose Bradsher v. Logan-Mingo Area Mental Health Agency, Inc., 329 SE2d 77 (WV 1985). If the complainant makes that a prima facie case, the respondent is required to offer articulate legitimate, non-discriminatory reason for the action which it has taken with respect to complainant. Shepherdstown, supra; Bradsher, supra. If respondent articulates such a reason, complainant must show that such reason is pretextual, Shepherdstown, supra; Bradsher, supra. In the instant case, complainant has established a prima facie case of race discrimination in terms and conditions of employment.

The preponderance of the evidence reveals that the complainant, a black male CETA worker designated by the City of Keystone as a "night watchman," was required by the Respondent to perform duties substantially similar to those performed by Noah Horn and Isom Bailey, two white CETA workers, designated as police officers. The record clearly reflects, that although the Complainant and the similarly situated white

CETA workers all patrolled the city; all ensured the public peace; and all were required to wear City of Keystone police uniforms subject to risk of that perception; that racial disparity existed as evidenced by the difference in treatment afforded the two white CETA workers and the black CETA worker by the City of Keystone. Specifically, the white CETA workers were provided with firearms, bonding, handcuffs, keys to the jail, team protection, a police cruiser, a more desirable shift and the authority to make arrest. The Complainant, on the other hand, was provided with a night stick by the City of Keystone as his sole means of protection; the Complainant was required to work alone on his evening shift; the Complainant was not allowed to use a police cruiser; nor was he given authority to make arrest. And finally, the Complainant was not bonded or given a permit to carry a firearm, and was, thereby, subject to unnecessary risk. Such facts are sufficient to establish a prima facie case of discrimination because if otherwise unexplained, they raise an inference of discrimination, Furco Construction Co. v. Waters, 438 U.S. 567 (1978) and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).

Respondent's articulation of its reasons for the difference of treatment between the white CETA officers and the Complainant was simply that the Complainant was not hired as a police officer, but rather as a night watchman; and that this decision was based on his lack of experience in doing police work coupled with exculpatory statements made by the Complainant at the time he was hired, that if he had a gun he intended to shoot two black people.

Complainant has established, by a preponderance of the evidence, that the reasons articulated by the Respondent for its failure to afford the

Complainant terms and conditions of employment similar to those afforded the white employees as pretextual. First, the Complainant although designated a black night watchman substantially performed the same duties as the white employees designated police officers. Secondly, the record reflects the Complainant was not asked about his prior experience at the time he was hired in order that Respondent could assess his qualifications. And, even *arguendo* had Complainant been asked about his prior experience, there was no evidence introduced, susceptible to objective proof, that at least one of the two white CETA workers accepted as a police officer had any prior experience in performing police work. Thirdly, Complainant has demonstrated pretextuality relating to the justification by the Respondent that Complainant was not offered a position as police officer because of his manifestation that he wanted to injure two black citizens, if given a gun. The Commission finds this reason not credible because, if in fact the Complainant had manifest such an intent, it would seem reasonable and prudent that the mayor as chief officer of the City of Keystone would not have hired him in any capacity.

VI.

Order

Accordingly, it is hereby ORDERED that:

1. That respondent shall, within 30 days, pay complainant the sum of five hundred dollars \$500.00 as incidental damage for humiliation, embarrassment and loss of personhood and dignity suffered by Complainant as a result of respondent's racially motivated discriminatory conduct.

2. Respondent shall immediately cease and desist from discriminating against individuals on the basis of their race in making employment decisions.

3. That respondent shall report to the Commission within 35 days from the entry of the Commission's order the steps that it has taken to comply with this Order.

Entered this 9th day of October, 1986.

BY 
CHAIR/VICE CHAIR
WV HUMAN RIGHTS COMMISSION

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

WILLIAM FORD,

COMPLAINANT,

VS.

CASE NO. ER-121-77

CITY OF KEYSTONE,

RESPONDENT.

Approved
M.F.
3/14/86

RECOMMENDED DECISION

I. PROCEDURAL HISTORY

A complaint was filed before the West Virginia Human Rights Commission on the 30th day of September, 1976, alleging respondent discriminated against the complainant in regards to his race. A pre-hearing was held on April 16, 1985.

A hearing was held on June 12, 1985. The complainant, William Ford, appeared in person and by counsel, F. Winston Polly. The respondent, City of Keystone, appeared by counsel, Grover Goode. The testimony of five (5) witnesses was heard. On behalf of the complainant, William Ford: William Ford. The following witnesses appeared on behalf of the respondent, City of Keystone: Masel Perdue, Sonny Daniels, Kenneth Whitenack.

The Proposed Findings of Fact were ordered to be submitted by counsel for both parties; however, neither party submitted although ample opportunity was given.

II. ISSUE

Whether there was in fact a pattern and practice of discrimination and whether the complainant was a victim of same.

III. FINDINGS OF FACT

1. William Ford was a CETA Employee who was paid by CETA and worked for the City of Keystone for approximately fifteen (15) months as a night watchman, from June, 1975, to October, 1976.
2. Complainant was a black male.
3. Complainant does not carry a gun.
4. Complainant is not bonded, has no use of a car, no keys to the jail, and no handcuffs.
5. Complainant failed to adequately perform his job assignment without considering the assault and battery arrest.

IV. CONCLUSIONS OF LAW

A complainant in a disparate treatment, discriminatory discharge case brought under the West Virginia Human Rights Act Code, 5-11-1, et seq., may meet the initial prima facie burden by proving, by a preponderance of the evidence (1) that the complainant is a member of a group protected by the Act; (2) that the complainant was discharged, or forced to resign, from employment; and (3) that a nonmember of the protected group was not disciplined or was disciplined less severely, than the complainant, though both engaged in similar conduct. State Ex Rel. State of W. Va. Human Rights Commission and Rose Bradsher v. Logan-Mingo Area

Mental Health Agency, Inc., 329 S.E. 2d 77 at page 79 (WV 1985).

In an action to redress unlawful discriminatory practices in employment under the West Virginia Human Rights Act, as amended in W. Va. Code 5-11-1, et seq., the burden is upon the complainant to prove by a preponderance of the evidence a prima facie case of discrimination. The burden of proof then shifts to the respondent to offer some legitimate and nondiscriminatory reason for the rejections. This examiner is of the opinion that the respondent has met its burden of proof in rebuttal to complainant's prima facie case.

It is the finding of this examiner that there was no racial bias which motivated the dismissal of William Ford as a CETA night watchman trainee. The complainant himself testified that he did not detect a racial motivation or racial barrier between him and the respondent's mayor (TR 33).

This examiner finds that the complainant's job performance was so unsatisfactory that action of dismissing him was appropriate. The complainant's arrest on the assault and battery charge was not a factor in this examiner's determination.

V. DETERMINATION

It is the recommendation of this examiner that the Complainant take nothing upon his complaint.



JULIET WALKER-RUNDLE
HEARING EXAMINER
P. O. BOX 469
PINEVILLE, WV 24874-0469
304-732-6411

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Recommended Decision was served upon F. Winston Polly, III, 106½ S. Fayette St., Beckley, West Virginia 25801, and Grover Goode, Box 548, Welch, WV 24801, by depositing true and correct copies of same in the United States Mail, postage prepaid, this 2nd day of May, 1986.

John W. Rundle

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

WILLIAM FORD,

COMPLAINANT,

VS.

CASE NO. ER-121-77

CITY OF KEYSTONE,

RESPONDENT.

JUDGMENT ORDER

The Human Rights Commission hereby finds:

1. That no racial discrimination was found;
 2. That nothing be awarded to the Complainant.
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WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

WILLIAM FORD,

MS
12/30/85
COMPLAINANT,

VS.

CASE NO. ER-121-77

CITY OF KEYSTONE,

RESPONDENT.

RECOMMENDED DECISION

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A hearing was held on June 12, 1985. The Complainant, William Ford, appeared in person and by counsel, F. Winston Polly. The Respondent, City of Keystone, appeared by counsel, Grover Goode. The testimony of Five (5) witnesses was heard. On behalf of the complainant, William Ford: William Ford. The Following witnesses appeared on behalf of the Respondent, City of Keystone: Masel Perdue, Sonny Daniels, Kenneth Whitenack and Joseph Peake.

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II. ISSUE

Whether there was in fact a pattern and practice of discrimination and whether the Complainant was a victim of same.

III. FINDINGS OF FACT

1. William Ford was a CETA Employee who was paid by CETA and worked for the City of Keystone for approximately fifteen (15) years as a night watchman.
2. Complainant was a black male.
3. That since June, 1975, Complainant has worked for the City of Keystone, West Virginia, through the Comprehensive Employment and Training Act as a night watchman.
4. Complainant does not carry a gun.
5. Complainant wears a City of Keystone Police Uniform rather than a Security Uniform.
6. Complainant is not bonded, has no use of a car, no keys to the jail, and no handcuffs.
7. Complainant uses his personal car in order to keep his job.
8. Complainant was terminated prior to September 23, 1976.
9. Complainant did not receive his last pay check even though he was told he would get it.
10. Complainant had no reprimands or suspensions.

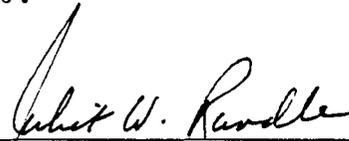
IV. CONCLUSIONS OF LAW

It is concluded that the Respondent is not legally responsible for the termination of the CETA program in the City of Keystone,

West Virginia,; that the Complainant has failed to meet the burden of justified findings of illegal discrimination under the laws of the State of West Virginia.

V. DETERMINATION

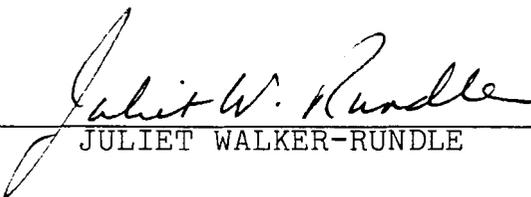
It is the recommendation of this examiner that the Complainant take nothing upon his complaint.



JULIET WALKER-RUNDLE
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P. O. BOX 469
PINEVILLE, WV 24874
(304) 732-6411

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Recommended Decision was served upon F. Winston Polly, III, 106½ S. Fayette Street, Beckley, West Virginia 25801, and Grover Goode, Box 548, Welch, West Virginia 24801, by depositing true and correct copies of same in the United States Mail, postage prepaid, this 30th day of December, 1985.



JULIET WALKER-RUNDLE