



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**WV HUMAN RIGHTS COMMISSION
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**Quewanncoi C. Stephens
Executive Director**

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

August 22, 1991

Carolyn Martin
PO Box 153
Clear Fork, WV 24882

Wyoming County Commission
Wyoming County Courthouse
Pineville, WV 25979

Paul R. Sheridan
Asst. Attorney General
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David G. Thompson, Esq.
PO Box 1100
Pineville, WV 24874

Re: Martin v. Wyoming County Commission
ES-145-87

Dear Parties:

Enclosed, please find the final decision of Hearing Examiner Anne B. Charnock, in the above-referenced matter. Rule 77-2-10, of the recently promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective July 1, 1990, sets forth the appeal procedure governing a final decision as follows:

"§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the hearing examiner's final decision, any party aggrieved shall file with the executive director of the commission, and serve upon all parties or their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the examiner, the

relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the commission from the hearing examiner shall not operate as a stay of the decision of the hearing examiner unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the hearing examiner, or an order remanding the matter for further proceedings before a hearing examiner, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before a hearing examiner, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the examiner on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the hearing examiner's decision is:

10.8.1. In conformity with the Constitution and laws of the state and the United States;

10.8.2. Within the commission's statutory jurisdiction or authority;

10.8.3. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

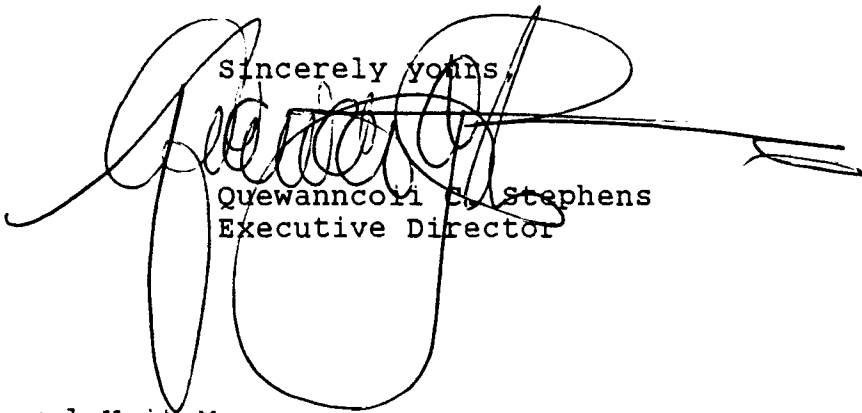
10.8.4. Supported by substantial evidence on the whole record; or

10.8.5. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from a hearing examiner's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the examiner's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, please feel free to contact me at the above address.

Sincerely yours,



Quewanncoli S. Stephens
Executive Director

QCS/GSG/mst

Enclosure

cc: Glenda S. Gooden, Legal Unit Manager
Mary C. Buchmelter, Deputy Attorney General

BEFORE THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

CAROLYN MARTIN,

Complainant,

Vs.

Docket No. ES-145-87

WYOMING COUNTY COMMISSION,

Respondent.

On the 17th day of April, 1991, a public hearing on the above referenced matter was held in the Wyoming County Courthouse, Pineville, West Virginia. Those present included: Anne B. Charnock, Hearing Examiner, Complainant, Carolyn Martin, Paul R. Sheridan, Assistant Attorney General appearing for the West Virginia Human Rights Commission, G. W. Ford, member of the Wyoming County Commission, David G. Thompson, Assistant Prosecuting Attorney for Wyoming County and Paul Miller, an employee of the Attorney General's office.

Following a review of the proposals submitted by counsel, the transcript and exhibits, the Hearing Examiner makes the following findings of fact, conclusions of law and recommendations.

FINDINGS OF FACT

1. That Complainant, Carolyn Martin, (aka Kay Martin and Carolyn Kay Martin) is a female (Tr.p.52)
2. That the Respondent, Wyoming County Commission, is an employer. (Tr.p. 32) The Commission is composed of three (3) Commissioners.

3. That Complainant was hired on August 18, 1977, and laid off effective June 30, 1986. (Tr.p.32) At this time she was a secretary for the West Virginia University Extension Service.

4. That while preparing the fiscal year 1986-87 budget the Respondent realized that budget cuts, including layoffs, would be needed to prepare a balanced budget.

5. That at least eight (8) employees were notified that they would be laid off effective June 30, 1986, (Joint exhibits 1-A through 1-H) Complainant was one of the eight. (Jt Exh 1-H).

6. That subsequently two (2) layoffs were rescinded; namely Kathy Stewart and Rick Ramsey. (Tr.p.112-113).

7. That Kathy Stewart was hired by Respondent prior to Complainant and thus had more seniority. (Tr.p.43) In the spring of 1986 she was a secretary for the Health Department.

8. That Rick Ramsey was hired on August 5, 1982, and thus had less seniority than Complainant. (Tr.p.106) At this time he drove the vehicle which transported persons who were required to collect trash alongside county roads in return for receiving public assistance. (Tr.p.41)

9. That Complainant was second only to Kathy Stewart in seniority of the eight (8) affected employees. (Tr.p.43)

10. That no specific qualifications existed for the job held by Rick Ramsey with the exception of having an operator's license. (Tr.p.122)

11. That Complainant was not offered a transfer to this position, nor was the money used to fund the Ramsey job transferred to fund Complainant's job.

12. That when inquiry was made of the Respondent as to why Complainant was not transferred the response of one Commissioner was that the job was a dirty job and the men who were supervised cursed. (Tr.p.42) Further another Commissioner said a woman could not do this job (Tr.p.15)

13. That the money was not transferred to fund Complainant's job because a Commissioner advocated retaining the cleanup program. (Tr.p.143)

14. That Complainant contacted an attorney, Robert S. Barker, who conducted a preliminary investigation into this matter. (Tr.p.11) As a result of Mr. Barker's investigation Respondent knew Complainant had contacted an attorney.

15. That in August 1986 Commissioner Ford contacted Complainant by telephone and by letter with an "offer" of a position at the not yet completed compactor station. (Exhibit R-3 and R-4)

16. That Complainant did not accept this job offer.

17. That on September 12, 1986 another person, Eugene McMillion (not one of the laid off employees) was hired at the rate of \$5.64 an hour and worked a 40 hour week. He had health insurance provided as of October 1986.

18. That at the time of her layoff Complainant earned approximate \$500.00 a month and received health insurance as a benefit.

19. That Eugene McMillion earned \$3236.16 through December 31, 1986. (Ex.R-7) No further payroll records were provided for Mr McMillion.

20. That Complainant claims back pay and benefits in the amount of \$3,699.60 per quarter from July 1986 through June 30, 1991. As a set off she takes credit for earning \$16,576.88 during this period. The total sum she is seeking is \$75,952.41

21. That Complainant's claim for damages should be set off by the sum of \$3,236.16 compounded, which she could have earned by accepting the trash compactor position.

I S S U E S

1. Is Complainant a member of a protected class covered by the West Virginia Human Right Act?

2. If so, was Complainant the victim of unlawful discrimination conducted by Respondent?

3. If so, to what relief is Complainant entitled?

CONCLUSIONS OF LAW

1. That Complainant, Carolyn Martin (aka Kay Martin and Carolyn Kay Martin) is a female and a person or individual within the meaning of the West Virginia Human Rights Act (The Act) (WVa Code §5-11-3(a)).

2. That Respondent, Wyoming County Commission, is a political subdivision of the State of West Virginia and is the governing body of Wyoming County, West Virginia. further Respondent is an "employer" within the meaning of the Act. (WVa Code §5-11-3(d)).

3. That the Complaint which serves as the basis of this matter was filed within 180 days of the alleged discriminatory act (WVa code 5-11-10).

4. That on the basis of conclusions 1 through 3 the West Virginia Human Rights Commission has jurisdiction in this matter.

5. That in an unlawful sexual discrimination suit a three (3) part test is used:

a. The Complainant must prove by a preponderance of the evidence a prima facie case of discrimination.

b. If this is done the Respondent must offer some legitimate and nondiscriminatory reason for the rejection.

c. If this is done the Complainant must prove by a preponderance of the evidence that the reasons offered by Respondent were merely a pretext for unlawful discrimination. Shepherdstown VFD v. West Virginia Human Rights Commission, 309 S.E. 2d 342 (1983).

6. That Complainant has made a prima facie case of **sexual discrimination** as follows:

a. Complainant is a woman and thus a member of a protected group,

b. Complainant was qualified to drive and supervise the persons collecting trash,

c. Complainant was not retained in either of two (2) jobs, her own position as secretary or the job driving trash collectors, although she was second in seniority of the eight (8) employees scheduled to be laid off.

d. Respondent retained a male in the second position with less seniority than Complainant,

7. That Respondent's reasons for not retaining Complainant are as follows:

a. That a woman could not perform the job;
b. That the job was a dirty job and that the men to be supervised would curse and in general be difficult to supervise;

8. That Respondent fails to offer a legitimate and nondiscriminatory reason for refusing to retain Complainant.

9. That Complainant was a victim of unlawful sexual discrimination.

10. That Complainant is entitled to back pay, benefits and interest totalling \$75,952.41 less the \$3,236.16 compounded which she would have earned at the compactor station. This amount is calculated as of June 30, 1991.

11. That Complainant be awarded incidental damages in the amount of \$2,500.00 to compensate Complainant for her frustration and anger over Respondent's overtly discriminatory acts.


12. That Respondent be ordered to cease and desist from using illegal sexual discriminatory hiring and firing practices.

Accordingly it is the recommendation of the hearing examiner that judgment be entered in favor of the Complainant and that the following relief be granted:

1. Back pay be awarded to the Complainant in an amount to be calculated as follows: \$75,952.41 (Complainant's calculations) less \$3,236.16 compounded in the same manner Complainant calculated her damages.

2. That the Complainant be awarded incidental damages in the amount of \$2,500.00

3. That a cease and desist order issue directing Respondent to cease from using illegal discriminatory hiring and firing practices.



ANNE B. CHARNOCK
Hearing Examiner