



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE 304-348-2616

ARCH A. MOORE, JR.
Governor

August 3, 1988

Peggy Ross
P.O. Box 57
Alum Creek, WV 25003

International Union of
Operating Engineers
606 Tennessee Ave.
Charleston, WV 25302

Dick Griffin, Esq.
1125 17th St. NW 7th Floor
Washington, DC 20036

Sharon Mullens
Senior Asst. Attorney General
812 Quarrier St.
L & S Bldg. - 4th Floor
Charleston, WV 25301

RE: Ross v. International Union of Operating Engineers
ES-1-87

Dear Parties:

Herewith, please find the final order of the WV Human Rights Commission in the above-styled and numbered case.

Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective April 1, 1987, any party adversely affected by this final order may file a petition for review with the supreme court of appeals within 30 days of receipt of this final order.

Sincerely,

A handwritten signature in cursive script that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/mst
Attachments

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

NOTICE
OF STATUTORY RIGHT TO JUDICIAL REVIEW
AMENDED AND EFFECTIVE
AS OF APRIL 1, 1987

Enr. H. B. 2638]

8

116 this article.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the
8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases.

31 The appeal procedure contained in this subsection
32 shall be the exclusive means of review, notwithstanding
33 the provisions of chapter twenty-nine-a of this code:
34 *Provided*, That such exclusive means of review shall not
35 apply to any case wherein an appeal or a petition for
36 enforcement of a cease and desist order has been filed
37 with a circuit court of this state prior to the first day
38 of April, one thousand nine hundred eighty-seven.

39 (b) In the event that any person shall fail to obey a
40 final order of the commission within thirty days after
41 receipt of the same. or, if applicable, within thirty days
42 after a final order of the supreme court of appeals, a
43 party or the commission may seek an order from the
44 circuit court for its enforcement. Such proceeding shall
45 be initiated by the filing of a petition in said court, and
46 served upon the respondent in the manner provided by
47 law for the service of summons in civil actions; a hearing
48 shall be held on such petition within sixty days of the
49 date of service. The court may grant appropriate
50 temporary relief, and shall make and enter upon the
51 pleadings, testimony and proceedings such order as is
52 necessary to enforce the order of the commission or
53 supreme court of appeals.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

PEGGY ROSS,

Complainant,

vs.

Docket No. ES-1-87

INTERNATIONAL UNION OF
OPERATING ENGINEERS,

Respondent.

O R D E R

On the 8th day of June, 1988, the West Virginia Human Rights Commission reviewed the proposed order and decision of Hearing Examiner, James Gerl, in the above-captioned matter. After consideration of the aforementioned the commission does hereby adopt said proposed order and decision, encompassing proposed findings of fact and conclusions of law, 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 final order except as amended by this final order.

By this final 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

final order and that they may seek judicial review.

ENTERED this 10th day of Aug, 1988.

Respectfully submitted,


~~CHAIR/VICE CHAIR~~
WV HUMAN RIGHTS COMMISSION

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

RECEIVED

MAY 17 1988

W.V. HUMAN RIGHTS COMM.

PEGGY ROSS,

COMPLAINANT,

V.

DOCKET NO. ES-1-87

INTERNATIONAL UNION OF
OPERATING ENGINEERS,

RESPONDENT.

PROPOSED ORDER AND DECISION

This matter is before me upon the failure of complainant to diligently prosecute her complaint.

FINDINGS OF FACT

1. Complainant filed the instant complaint on August 5, 1986. At or about the same date, complainant filed a complaint against Mashuda Corporation, Docket No. ES-2-87.

2. On May 11, 1987, complainant filed a request for withdrawal of charge of discrimination with respect to the complaint which she had filed against Mashuda Corporation.

3. On September 9, 1987, counsel for the complainant, Mary Catherine Buchmelter, wrote to complainant advising her to contact counsel immediately.

4. On December 29, 1987, counsel for complainant again wrote to complainant requesting that she contact counsel if she were interested in pursuing her case.

5. On January 29, 1988, counsel for complainant wrote to complainant advising her that if she did not contact counsel within three days, counsel would request dismissal of the case. Said letter was sent by certified mail, return receipt requested, and and it was received by complainant.

6. Counsel for complainant has attempted on numerous occasions to reach complainant by telephone regarding the status of this case.

7. On February 5, 1988, counsel for complainant advised the Hearing Examiner by letter that counsel had unsuccessfully attempted to obtain the cooperation of complainant.

CONCLUSION OF LAW

1. Complainant has failed to diligently prosecute his complaint and said complaint should be dismissed.

DISCUSSION

Complainant has failed to diligently prosecute his complaint. Complainant has failed to respond to the diligent efforts of her counsel to obtain complainant's cooperation. Under the circumstances, dismissal of the complaint is appropriate. See, Rules and Regulations Pertaining to Practice and Procedure Before the West Virginia Human Rights Commission §3.10(b)(3). The resources of the Commission should be reserved for those parties who wish to pursue their claims or defenses.

PROPOSED ORDER

In view of the foregoing, the Hearing Examiner hereby recommends that the Commission dismiss the complaint in this matter, with prejudice.



James Gerl
Hearing Examiner

ENTERED:

May 16, 1988

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:

Mary Catherine Buchmelter, Esq.
Assistant Attorney General
Civil Rights Division
1204 Kanawha Blvd.
Charleston, WV 25301

International Union of Operating
Engineers
606 Tennessee Ave.
Charleston, WV 25302

on this 16th day of May, 1988.


James Gerl