

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

DR. HASSAN ZAVEREEI,

Complainant,

vs.

Docket No. ENO-350-85

WEST VIRGINIA INSTITUTE
OF TECHNOLOGY,

Respondent.

O R D E R

On the 7th day of May, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Theodore R. Dues, Jr. and the exceptions thereto filed by the complainant and the respondent. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own, with the exceptions and amendments set forth below.

The Commission hereby amends the Findings of Fact and Conclusions of Law, paragraphs 3(B) and 3(C) by deleting therefrom the word "whites" and substituting therefore the phrase "Americans of non-Iranian origin"; and in paragraph 5 by deleting the phrase "white professors" and substituting therefor the phrase "professors of non-Iranian origin."

The Commission further amends the said Conclusions of Law at paragraph 7 by deleting therefrom the phrase "at the statutory amount" and substituting therefor the phrase "at the rate of ten percent (10%) per annum from January, 1975, the date of the

hiring of Mr. Bell, until September 27, 1985, the date of the hearing in this matter."

The Commission further amends the said Findings in the Section entitled Proposed Order, paragraph A., by adding thereto the phrase "with prejudgment interest at the rate of ten percent (10%) per annum from January 1, 1975, until September 27, 1985."

The Commission further amends the said Findings in the section entitled Proposed Order, paragraph B., by deleting therefrom the figure "\$10,000.00;" and substituting therefor the figure "\$5,000.00;."

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 that counsel for Complainant shall submit to the Commission a detailed voucher setting forth the hours expended on this case and his requested fee, to be considered by the Commission in making a further Order as to the amount of attorney's fees to be awarded in this matter.

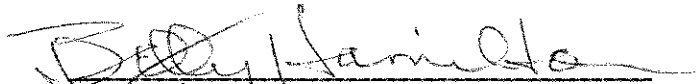
The respondent is hereby ORDERED to provide to the Commission proof of compliance with the Commission's Order within thirty-five (35) days of service of said Order by copies of cancelled checks, affidavit or other means calculated to provide such proof.

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 23 day of May, 1986.

Respectfully Submitted,



CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION



COPY

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

June 2, 1986

Lee Adler, Attorney
303 1/2 Prince Street
Beckley, WV 25801

Ann Gordon, Esquire
950 Kanawha Boulevard, E.
Charleston, WV 25301

Ann Ewart, Esquire
1204 Kanawha Boulevard, E.
Charleston, WV 25301

RE: Dr. Hassan Zavereei V
West Virginia Institute of Technology
ENO-350-85

Dear Mr. Adler, Ms. Gordon and Ms. Ewart:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Dr. Hassan Zavereei V West Virginia Institute of Technology/ENO-350-85.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,

Howard D. Kenney
10/2/86

Howard D. Kenney
Executive Director

HDK/kpv

RECEIVED

JAN 29 1985

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

DR. HASSAN ZAVAREEI,
Complainant,

VS: DOCKET NO. ENO-350-85

WEST VIRGINIA INSTITUTE OF TECHNOLOGY,
Respondent.

EXCEPTIONS TO THE RECOMMENDED FINDINGS
OF FACT AND CONCLUSIONS OF
LAW OF HEARING EXAMINER

Now comes the Complainant, Dr. Hassan Zavareei, by his counsel, and respectfully notes his exception to Paragraph A under the proposed Order filed by the Hearing Examiner in this case on December 13, 1985.

That aforementioned paragraph states that the complaining party herein, Dr. Hassan Zavareei, shall be awarded backpay in the sum of \$7,029.00, as a result of contrasting Dr. Zavareei's salary to that of a Professor Thomas Bell.

However, the Complainant states that he was always more qualified than Professor Thomas Bell, and it would be incorrect, in order to rectify the discrimination in this case, to simply make the Complainant "whole" by making him financially equivalent to Professor Bell.

Rather, Complainant contended in his closing remarks to the Hearing Examiner in this case that the appropriate bench-

mark for comparison purposes should be that of Dr. Mostafa Shaaban. Like Dr. Zavareei, Dr. Shaaban has the rank of full professor of economics, and has earned a doctorate in that discipline. Dr. Shaaban started his teaching career in 1968 at West Virginia Institute of Technology, thereby having approximately six years of teaching experience at the time that Dr. Zavareei arrived in West Virginia Institute of Technology. Dr. Zavareei, by 1974, had seven years of full-time college-level teaching experience.

Dr. Shaaban and Dr. Zavareei's salaries compare as follows:

	<u>Dr. Shaaban</u>	<u>Dr. Zavareei</u>
1974-75	\$14,490	\$10,629
1975-76	14,490	11,754
1976-77	15,507	12,762
1977-78	16,209	13,905
1978-79	17,910	15,606
1979-80	19,170	16,704
1980-81	20,538	17,874
1981-82	23,616	20,112
1982-83	23,616	20,112
1983-84	26,400	21,641

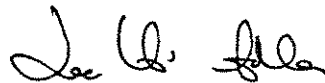
Once one compares the total amounts of salary during the appropriate time periods of Shaaban to Complainant, we discover that the Complainant's salary is really short \$30,847.00

It is this precise amount that the Complainant prays for and excepts to the amount that is expressed in Paragraph A of the Hearing Examiner's Proposed Order, or \$7,029.

It will be further noted that when the appropriate mathematical computations are applied to Dr. Shaaban's 1984-85 salary, we discover his 1985-86 salary to be \$29,598. Complainant Zavareei states that he should be entitled to that specific amount of salary as of this date.

WHEREFORE, the Complainant prays that the appropriate body will review these exceptions that are filed herein, and alter just that part of the Hearing Examiner's Proposed Order which relates to backpay, and award unto the Complainant the sum of \$30,847.00, as a proper form of redress for the discrimination suffered by the Complainant over the course of the last ten (10) years at the hands of the Respondent.

Respectfully submitted by:



LEE H. ADLER, ESQ.
Attorney at Law
P. O. Box 964
Beckley, WV 25802-0964

CERTIFICATE OF SERVICE

I, Lee H. Adler, do hereby certify that I caused a true copy of the foregoing EXCEPTIONS TO THE RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF HEARING EXAMINER to be served upon Bruce Walker, Esq., by depositing the same in the U.S. Mail, postage prepaid, first-class, addressed to him care of the Office of the Attorney General, State Capitol Complex, Charleston, WV 25301, this the 28th day of January, 1986.



LEE H. ADLER, ESQ.
Attorney at Law
P. O. Box 964
Beckley, WV 25802-0964

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W.V. HUMAN RIGHTS COMM.

HASSAN ZAVAREETI,

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Claim No. ENO-350-85

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Respondent.

RESPONDENT'S EXCEPTIONS
TO HEARING EXAMINER'S
RECOMMENDED FINDINGS

Now comes the respondent, through its undersigned counsel, and takes exception to the hearing examiner's recommended findings of fact and conclusions of law, attached hereto. The hearing examiner here erred in failing to dismiss this action for lack of jurisdiction and further erred in recommending that the Commission order the respondent to pay damages to the complainant in the form of backpay, incidental damages, attorneys fees, and costs. The Commission has no jurisdiction to bring this suit against the respondent or to order the respondent to pay any monetary damages.

The respondent WVIT is an arm of the West Virginia Board of Regents and acts solely through the Board of Regents. The Board of Regents is an agency of the State of West Virginia and under the West Virginia Constitution may not be sued or assessed for damages. The legislature may not abrogate this constitutional immunity.

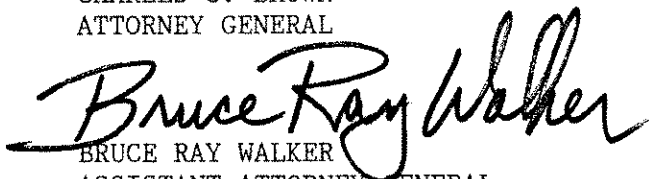
Attached is the original "Memorandum in Support of Motion to Dismiss" filed by the respondent in this case. Said memorandum clearly sets out the issue here and the Commission's duty to dismiss this matter.

Furthermore, the respondent takes exception to the hearing examiner's recommended findings regarding the facts in this case. The respondent articulated a legitimate and non-discriminatory reasons for its actions. The hearing examiner so ruled. However, there is no evidence that this rebuttal of the complainant's charges were pretextual. The hearing examiner failed to cite anything that would support a finding of pretext. Positive evidence of pretext must be shown to rebut a legitimate and non-discriminatory reason--not speculation.

Thus, the respondent asks that this Commission issue an order dismissing this complaint for the reasons set out in the attached Memorandum and Proposed Findings filed by respondents' counsel in this action.

WEST VIRGINIA
INSTITUTE OF
TECHNOLOGY,
Respondent
By Counsel

CHARLES G. BROWN
ATTORNEY GENERAL

A handwritten signature in black ink that reads "Bruce Ray Walker". The signature is written in a cursive, flowing style with a large initial "B".

BRUCE RAY WALKER
ASSISTANT ATTORNEY GENERAL
WV Board of Regents
P. O. Box 3368
Charleston, WV 25333
Counsel for respondent

CERTIFICATE OF SERVICE

I, Bruce Ray Walker, Attorney for the West Virginia Institute of Technology, do hereby certify that I have served the foregoing RESPONDENT'S EXCEPTIONS TO HEARING EXAMINER'S RECOMMENDED FINDINGS by personal delivery to:

Nathanial Jackson
Human Rights Commission
1036 Quarrier Street
Charleston, WV 25301

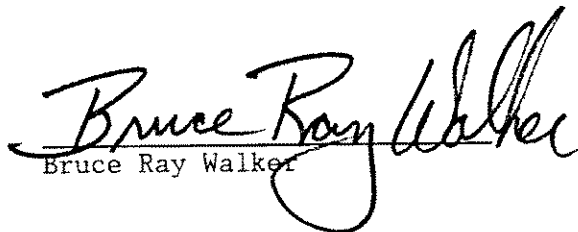
Howard Kenney
Human Rights Commission
1036 Quarrier Street
Charleston, WV 25301

Roxanne Rogers
Human Rights Commission
1036 Quarrier Street
Charleston, WV 25301

and to:

Lee Adler
303 1/2 Prince Street
Beckley, WV 25801

by depositing in the U.S. Mail, Postage Prepaid, this 31st
day of January, 1986.


Bruce Ray Walker

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

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W.V. HUMAN RIGHTS COMM.

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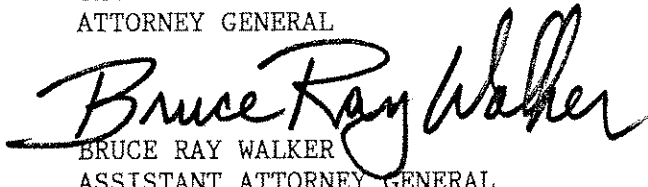
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WEST VIRGINIA
INSTITUTE OF
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Respondent
By Counsel

CHARLES G. BROWN
ATTORNEY GENERAL

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BRUCE RAY WALKER
ASSISTANT ATTORNEY GENERAL
WV Board of Regents
P. O. Box 3368
Charleston, WV 25333
Counsel for respondent