



**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

January 9, 1986

J. Franklin Long  
727½ Bland Street  
Bluefield, WV 24701

Harry Camper  
P.O. Drawer AE  
McDowell County Courthouse Annex  
Welch, WV 24801

RE: Cockran v McDowell County Sheriff's Department, ER-354-85

Dear Mr. Long and Mr. Camper:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Barbara L. Cochran v McDowell County Sheriff's Department, ER-354-85.

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,

A handwritten signature in black ink that reads "Howard D. Kenney".

Howard D. Kenney  
Executive Director

HDK/kpv  
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

**BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

BARBARA L. COCHRAN,  
Complainant,

vs.

Docket No.: ER-354-85

MCDOWELL COUNTY SHERIFF'S DEPARTMENT,  
Respondent.

**ORDER**


On the 11th day of December, 1985, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner, James Gerl. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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.

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 19 day of Dec., 1985.

Respectfully Submitted



CHAIR/VICE-CHAIR  
West Virginia Human  
Rights Commission

STATE OF WEST VIRGINIA  
HUMAN RIGHTS COMMISSION

BARBARA L. COCHRAN,  
Complainant,

vs.

DOCKET NO. ER-354-85

MCDOWELL COUNTY SHERIFF'S  
DEPARTMENT,

Respondent.

**RECEIVED**

OCT 24 1985

W.V. HUMAN RIGHTS COMM.

PROPOSED ORDER AND DECISION

A public hearing was convened for this matter on August 23, 1985, in Welch, West Virginia. The complaint was filed on January 22, 1985. The notice of hearing was served on April 17, 1985. A Status Conference was held on May 30, 1985. 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 as 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 the findings herein, it is not credited.

### CONTENTIONS OF THE PARTIES

Complainant contends that respondent discriminated against her on the basis of her race by discharging her. Respondent maintains that complainant was discharged for insubordination.

### FINDINGS OF FACT

Based upon the parties stipulations of uncontested fact as set forth on the record at the outset of the hearing, herein, the Hearing Examiner has made the following findings of fact:

1. Complainant is black.
2. Complainant was discharged by respondent on November 20, 1984.

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

3. Complainant was originally employed by the McDowell County Sheriff's Department about January 10, 1977, by then Sheriff Clark Belcher to collect taxes, keep jail records, issue license decals and perform such duties as were required of her.
4. In November, 1981, complainant became a records clerk at the McDowell County Jail and was reappointed or reemployed and retained as such employee of the McDowell County Sheriff's Department by current Sheriff Earl Yeager when he assumed the office on February 10, 1984, as her term of employment was continuous until her

termination complained of on November 20, 1984.

5. As a records clerk, Mrs. Cochran was required to maintain jail records pertaining to inmates, tabulate sentences and release dates, maintain a current calendar of all appointments for inmates, maintain monthly reports, such as crime reports, feed bills, etc., type daily log sheets, maintain teletype records, operate teletype and assist with dispatching when needed.

6. Complainant performed her duties as records clerk competently.

7. On November 20, 1984, about noon, Sheriff Yeager left his office at the Courthouse, went to his car on the parking lot which is adjacent to the Courthouse building and the jail, and started to drive off the lot. He had to pull aside to let a car which was entering the parking lot noticeably fast pass by. This car pulled into the Sheriff's parking place and parked. The Sheriff stopped his car and parked it in front of the gas pumps at the entrance to the parking lot opposite the end where the jail is, and about 150 feet away from his car. The Sheriff got out of his car to see what was going on. As the Sheriff walked back toward the car, the driver left his car and walked into the garage compartment of the jail where the public entrance to the jail is located.

8. As the Sheriff approached the jail garage compartment, the driver, came out, got in his car, backed out and left. Complainant

later identified the driver to the Sheriff as being her brother.

9. Complainant was still in the garage area. Sheriff Yeager asked complainant regarding the bag or covered plate in her hand and she said it was her lunch. Sheriff Yeager told complainant that everything that comes into the jail has to be searched. Complainant became upset and disobeyed Sheriff Yeager by refusing to let him inspect or search the items in her hand.

10. The conversation described in finding of fact No. 9 took place 3 to 4 feet away from the steel jail door leading to the hallway inside the jail. After refusing the search, complainant went inside and slammed the steel jail door.

11. Sheriff Yeager, standing next to the door, had to signal to the jailer to be admitted to the jail. Shortly thereafter Sheriff Yeager fired Complainant for insubordination. Complainant refused to clock out until Sheriff Yeager gave her a letter of discharge.

12. After both complainant and the Sheriff were in the control room complainant requested a writing from the Sheriff indicating that she had been fired, and refused to leave the jail premises until she received same. The Sheriff went to his office and prepared such a letter. He then returned to the jail and gave the letter to complainant, and she left.

13. Although white employees of respondent sometimes brought food into the jail that was not searched, Sheriff Yeager either had

no knowledge of these occurrences or else he had reason to believe that such items had been searched by the jailer.

14. For sometime, there had been a serious security problem at McDowell County Jail because dangerous items and other contraband were being smuggled into the jail.

15. Sheriff Yeager never referred to an individual as a "nigger".

16. While he has been Sheriff of McDowell County, Sheriff Yeager has employed at least ten black employees, including complainant, in the Sheriff's Department, as correctional officers, cooks, records clerk, secretary, and deputies. One of his two Chief Deputies, Frederick, is the first black Chief Deputy in the history of West Virginia; Martin, a black, is chief of one of the jail shifts; and, Sheriff Yeager's personal secretary, Wooley, is black.

17. At the time of complainant's discharge by respondent, her monthly salary was \$803.00 and the cost of her monthly fringe benefits were \$332.90.

#### CONCLUSIONS OF LAW

1. Barbara L. Cochran 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. McDowell County Sheriff's Department is an employer as defined by West Virginia Code, Section 5-11-3(d) and is subject to the provisions of the Human Rights Act.

3. Complainant has established a prima facie case of race discrimination.

4. Respondent has articulated a legitimate nondiscriminatory reason for the discharge of complainant.

5. Complainant has not demonstrated that the reason articulated by respondent for her discharge is pretextual.

6. Respondent has not discriminated against complainant on the basis of her race by discharging her. West Virginia Code, Section 5-11-9(a).

#### DETERMINATION

The complaint in this matter is not supported by a preponderance of the evidence.

#### DISCUSSION

In fair employment, disparate treatment cases, the initial burden is upon the complainant to establish a prima facie case of discrimination. Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission 309 S.E.2d 342, 352-353 (W. Va.



1983); McDonnell-Douglas Corporation v. Green 411 U.S. 792 (1973).

If the complainant makes out a prima facie case, respondent is required to offer or articulate a legitimate nondiscriminatory reason for the action which it has taken with respect to complainant.

Shepherdstown Volunteer Fire Dept., supra; McDonnell Douglas, supra.

If respondent articulates such a reason, complainant must show that such reason is pretextual. Shepherdstown Volunteer Fire Dept., supra; McDonnell Douglas, supra.

In the instant case, complainant has established a prima facie case of discrimination. The parties have stipulated that complainant is black and that complainant was terminated by respondent on November 20, 1984. Deputy Hicks testified on complainant's behalf that he heard Sheriff Yeager refer to a black suspect as a "nasty nigger". Such facts are sufficient to establish a prima facie case because, if otherwise unexplained, they raise an inference of discrimination. Furnce Construction Company v. Waters 438 U.S. 567, 577 (1978); Texas Department of Community Affairs v. Burdine 450 U.S. 248 (1981).

Respondent has articulated a legitimate nondiscriminatory reason for its discharge of complainant. Complainant's focus in her post hearing brief on whether or not good cause existed for her discharge is misplaced. The issue is whether respondent had a legitimate, nondiscriminatory reason for its termination of

complainant. In the instant case, respondent had such a reason. All of the witnesses at the hearing admitted that there was a serious security problem at the jail and that various items of contraband have been smuggled into the jail. Sheriff Yeager noticed a fast moving automobile come into the parking lot on November 20, 1984, and he observed the young driver getting out of the car with a package and bringing it into the jail. The sheriff then saw complainant holding the package and requested to inspect or search the package. Complainant refused and slammed the door. Complainant, in her testimony denied that she slammed the door to the jail. Complainant's testimony, however, was less credible than the testimony of Sheriff Yeager with regard to this point because of complainant's evasive demeanor during her testimony. Complainant's conduct on November 20, 1984, clearly amounted to insubordination.

Complainant has failed to demonstrate that the reason articulated by respondent for complainant's discharge is pretextual. Complainant did prove that white employees of respondent did occasionally bring food into the jail that was not inspected or searched. Complainant did not demonstrate, however, that Sheriff Yeager had knowledge of such food coming into the jail and not being inspected. Moreover, Sheriff Yeager may have assumed that the jailer had already inspected any food items in the jail before

the sheriff observed any such food items being present in the jail. Moreover, such white employees who may have had food present in the jail that was not inspected are not similarly-situated to complainant on November 20, 1984, because on that date Sheriff Yeager observed the fast moving vehicle come into the parking lot and saw the package entering the jail while the sheriff was in the parking lot. Therefore, the sheriff knew in this one instance that the package entering the jail had definitely not been inspected. Furthermore, part of the reason for complainant's discharge involved her slamming the steel door to the jail in Sheriff Yeager's face. The combination of the refusal to inspect plus the slamming of the door on the sheriff make complainant's insubordination all the more severe.

It is concluded that Sheriff Yeager did not refer to an individual as a "nasty nigger". Deputy Hicks testified that he heard the sheriff make this comment. Sheriff Yeager denied making such comment during his testimony at the hearing. Thus, complainant produced one witness who testified that the statement was made and respondent produced one witness who testified that the statement was not made. Complainant has not proven this fact by a preponderance of evidence. Moreover, the possibility that Sheriff Yeager would use this type of language is negated by

his very good record of hiring black employees in responsible positions in the sheriff's department. Deputy Hicks must have misunderstood what he heard Sheriff Yeager say with regard to this particular comment.

PROPOSED ORDER

Based upon the foregoing, the Hearing Examiner recommends that the Commission dismiss the complaint in this matter with prejudice.



\_\_\_\_\_  
James Gerl  
Hearing Examiner

ENTERED: October 23, 1985


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:

✓ J. Franklin Long  
727½ Bland Street  
Bluefield, West Virginia 24701

✓ Harry Camper  
P.O. Drawer AE  
McDowell County Courthouse Annex  
Welch, West Virginia 24801

on this 23d day of October, 1985.

  
\_\_\_\_\_  
James Gerl