



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

April 15, 1986

Laura Kerns
c/o Elmer Ames, Jr.
Rt. 1, Box 156
Spraggs, PA 15362

Regina Charon
Attorney at Law
160 Chancery Row
Morgantown, WV 26505

Jon A. Reed, Esquire
Assistant Attorney General
WV Board of Regents
P. O. Box 3368
Charleston, WV 25333

RE: Laura Kerns V WVU Cooperative Extension
Service/Docket Nos ES-372-79

Dear Above Parties:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Kerns V WVU Cooperative Extension Service.

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
(elms)

Howard D. Kenney
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

LAURA KERNS,

Complainant,

vs.

Docket No. ES-372-79
(Monongalia County)

WVU CO-OPERATIVE EXTENSION SERVICE,

Respondent.

O R D E R

On the 11th day of March, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Anne Charnock. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own, with the exceptions set forth below.

The Commission hereby amends the Findings of Fact and Conclusions of Law in paragraph 5, page 9, by adding after the figure "\$23,242.98" the phrase "with pre-judgment interest at the rate of ten percent (10%) per annum from September 15, 1978, to September 13, 1985, the date of this hearing;" and, in the same paragraph by deleting the figure "\$1,000.00" 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, as amended.

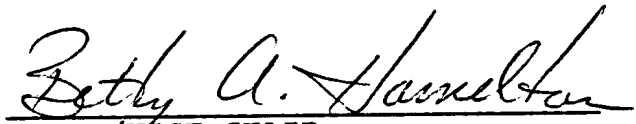
The respondent is hereby ORDERED to provide to the Commission proof of compliance with the Commission's Order within

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 21st day of March, 1986.

Respectfully Submitted,


Betty A. Hamilton
CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

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

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W.V. HUMAN RIGHTS COMM.

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On the Complaint of

LAURA KERNS,

Complainant

Case No. ES-372-79
(Monongalia County)

vs.

WVU CO-OPERATIVE EXTENSION SERVICE,

Respondent

RECOMMENDED DECISION

A. PRELIMINARY MATTERS

This matter was heard in public hearing in Morgantown, Monongalia County, West Virginia, on September 13, 1985, and October 11, 1985, the latter day which lasted past 9:00 p.m. By written stipulation of the parties, attached hereto, the presence of a hearing commissioner was waived. Counsel for both parties submitted post-hearing briefs which contained proposed findings of fact and conclusions of law, the same which were considered by the hearing examiner in the preparation of this recommended decision.

B. ISSUES - CONTENTIONS OF THE PARTIES

In an application dated May 30, 1978, Laura Ames Kerns, the complainant herein, filed an application for employment as an agricultural extension agent, associate extension agent, or 4-H extension agent, with the West Virginia University Center for Extension and Continuing Education (also known as the WVU Cooperative Extension Service). She specified on her application an interest in Wetzel and Ohio Counties.

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Thereafter, respondent posted position announcements for associate positions in each for these counties. Though interviewed, Ms. Kerns was not hired for either of these positions. By stipulation of the parties, the sole issue before the hearing examiner is whether the complainant was discriminated against in her non-hire on the basis of sex on or about December 8, 1978.

Respondent has essentially put forward three (3) defenses: first, that money damages cannot be awarded against the state or its agencies on the basis of sovereign immunity; second, that the West Virginia Board of Regents and West Virginia University do not hire the extension agents, but that this is done by local county committees; third, that each of the positions was filled by an applicant who was more qualified than the complainant.

C. FINDINGS OF FACT

Based upon a preponderance of the evidence, the hearing examiner finds the following facts:

1. Laura Kerns is a female who, on May 30, 1978, submitted a written application for employment with the WVU Cooperative Extension Service. She sought a position as an agricultural extension agent, associate extension agent, or 4-H extension agent and followed up on her application by submitting the necessary academic transcripts. At the time she sought such employment, Laura Kerns had received her B.S. degree in wildlife and fish management from West Virginia

University in 1973. She had completed earlier undergraduate course work at Ohio State University. She subsequently earned her masters degree in agriculture in 1977 from West Virginia University. Although her transcript reflects some specialization, it is clear that she had obtained, through her education, a breadth of knowledge in the general field of agriculture. In addition to her college education, Laura Kerns had been reared on a small farm where her family raised beef cattle, dairy cows, chickens, hogs, and various crops, including hay and fruit trees. She had also been employed as the manager of a plant care center where she advised the general public about weed and insect control measures, seed selection, and general gardening. In partial fulfillment of her masters degree requirements, Ms. Kerns had completed a research paper entitled "Major Factors Limiting the Efficiency of Beef Production".

When Ms. Kerns submitted her application for an extension agent position, she noted no preferences in location, but did note an interest in Wetzel and Ohio Counties.

2. The WVU Cooperative Extension Service is an agency of the West Virginia Board of Regents through its affiliation with West Virginia University. Its employment and hiring practices since 1977 have remained relatively consistent to date. Dr. Howard A. Shriver, who has been assistant dean for the Center for Extension at West Virginia University throughout this period, testified that the following steps are taken in

University in 1973. She had completed earlier undergraduate course work at Ohio State University. She subsequently earned her masters degree in agriculture in 1977 from West Virginia University. Although her transcript reflects some specialization, it is clear that she had obtained, through her education, a breadth of knowledge in the general field of agriculture. In addition to her college education, Laura Kerns had been reared on a small farm where her family raised beef cattle, dairy cows, chickens, hogs, and various crops, including hay and fruit trees. She had also been employed as the manager of a plant care center where she advised the general public about weed and insect control measures, seed selection, and general gardening. In partial fulfillment of her masters degree requirements, Ms. Kerns had completed a research paper entitled "Major Factors Limiting the Efficiency of Beef Production".

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the employment of extension agents:

First, one of the five (5) state division leaders notifies the dean and assistant dean that a vacancy exists. The assistant dean then requests permission to fill the position and the division leader submits a job description to the assistant dean. The assistant dean publicizes the job opening through position announcements and certain affirmative action persons at the University are notified to make sure that copies of these notices are sent to some predominantly black and female colleges. After the closing date for applications, a list of potential candidates is compiled and screened by area division leaders from among the applications most recently filed and from among those who had previously applied. The division leaders then interview some or all of the candidates personally, with additional interviews conducted on the West Virginia University campus by the assistant dean and his associates. Written "check sheets" are used by the interviewer to effectively grade the candidates. The division leader then requests permission of the dean to recommend employment of a selected individual to each county's "county extension service committee". These committees are established by state law and maintain the ultimate authority to approve the employment of agents. However, it is clear that these committees routinely, and almost without exception, accept the recommendation of the division leader. If the committee approves of the candidate the division leader then writes to the dean to recommend hiring.

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3. Subsequent to complainant's having submitted a written application, respondent posted position announcements for an associate extension agent opening in Ohio County and an extension agent opening in Wetzel County. The qualifications for both of these positions were listed as follows:

Master's degree preferred. Minimum of a Bachelor's degree from an accredited school or university and evidence of graduate school admissibility. Academic preparation in Agriculture is desirable. Preference will be given to applicants with professional experience and evidence of leadership ability.

Laura Kerns was interviewed, at her request, but on very short notice, for the Ohio County position by Joseph Morris, the division leader responsible for Ohio and Wetzel Counties. The entire interview lasted no more than twenty (20) minutes. Mr. Morris did not give complainant an opportunity to discuss the relevancy of her undergraduate and graduate course work, nor did he specifically state which type of course work was required for an extension agent in agriculture. After Mr. Morris conducted the interview, he completed a written evaluation indicating that he had considered complainant for the Ohio and Wetzel County positions. He indicated, for instance, that Ms. Kerns had "no formal training in animal science" and "little or no background in animal management, either formal or informal" and "no experience in working with rural people".

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4. By letter dated September 15, 1978, complainant was advised that a "more qualified person" had been selected to fill the position as extension agent in Wetzel County. She was notified of the same outcome with response to the Ohio County position by letter dated December 8, 1978. Thereafter, complainant filed a complaint with the Commission alleging discrimination in employment on the basis of sex. This complaint was later amended to include "a pattern and practice" allegation of sex discrimination in general by respondent.

5. The individual hired in 1978 to fill the Ohio County position was a male by the name of Barry Kiger, who had a B.S. degree in agriculture, but no graduate degree. His college transcript indicates no course work in herbicides or pesticides and only a general background in horticulture and agronomy. The Ohio County position subsequently became open again in 1979 and was filled the following year by a male with a B.S. degree in agronomy. This individual had had only one college course in animal science and no courses in horticulture. The Wetzel County position was filled in 1978 by a male, Dennis Bittinger, who held a B.S. degree in resource management. This individual had had only one college course in animal science. The record is not clear as to whether or not the division leader, Joseph Morris, ever really considered complainant for the Wetzel County position opening, although the letter of September 15, 1978, told her she had not been hired.

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7. In September of 1979, respondent filled an extension agent opening in Hancock County with a male who had a B.S. degree in animal science. This individual did not have a single horticulture course and had obtained no graduate degree. The position announcements for the Hancock County opening stated that a masters degree was preferred and that, among other things, preference would be given to applicants who had a background in dealing with small fruits and vegetables, and lawns and ornamentals.

8. In 1978, respondent employed fifty-three (53) males and one (1) female as agricultural extension agents. By 1985, these numbers had changed little: fifty (50) males and two (2) females were employed as agricultural extension agents throughout the state. By contrast, in 1978, forty-four (44) females and no males were employed as home economics extension agents throughout the state, and by 1985, forty-seven (47) females and no males were employed in this job capacity. It had apparently become an accepted practice for the extension service to place females in home economics positions where it was perceived that they would be dealing with "housewives," and to place males in the agricultural positions where it was perceived they would be dealing with "male farmers". The record is clear that throughout the time period in question, various qualified female applicants such as Josette Rocchio Hudak (B.S. degree in agriculture and B.S. degree in animal science from West Virginia University), Blanche Rybeck (B.S.

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degree in agronomy, University of Wisconsin), and Jeanne Nye (B.S. degree in agronomy from Virginia Polytechnic Institute and State University), were never seriously considered for any extension positions in agriculture, although they had applied for the same.

9. Any relevant applicant files for this time period were destroyed by respondent, albeit without any bad motive. However, the great weight of the evidence before the examiner indicates that the general hiring practices of respondent were clear: men were to be hired as agricultural extension agents and women were to be hired as home economics extension agents, regardless of the qualifications of any applicant.

D. CONCLUSIONS OF LAW

1. By a preponderance of the evidence, complainant has demonstrated that she (a) belongs to a class protected under the West Virginia Human Rights Act; (b) that she applied for and was qualified for a job for which the respondent-employer was seeking applicants; (c) despite her qualifications, complainant was not hired; and (d) that, after her rejection, the position remained open and was subsequently filled by a less qualified male applicant. See, McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). It has also been established that respondent is an "employer" within the meaning of the West Virginia Human Rights Act.

2. By a preponderance of the evidence, Laura Kerns has demonstrated that the reasons articulated by the respondent

for its failure to employ her as an associate extension agent in Ohio County or as an extension agent in Wetzel County in 1978 are pretextual.

3. By a preponderance of the evidence, Laura Kerns has established that the respondent has engaged in a pattern and practice of sex discrimination in the hiring of extension agents and associate extension from 1978 to present in agriculture.

4. By a preponderance of the evidence, complainant has shown that respondent, and not local county committees, is responsible for the actual hiring of extension agents, and that these local county committees do not serve to shield respondent from liability for its practices.

5. The parties have stipulated on the record that they could agree on the amount of back pay and additional education. At Pages 47-49 of her post trial brief, complainant has set forth with great specificity these damages and no written objection from respondent's counsel has been forthcoming. Therefore, by a preponderance of the evidence, Laura Kerns has established that she is entitled to damages as follows: back pay - \$23,242.98; costs of further education - \$1,740.50; humiliation, embarrassment, emotional and mental distress, and loss of personal dignity - \$1,000.00; and reasonable attorney fees and costs, in the amount of \$18,193.45, as established by an affidavit of complainant's counsel, per the request of the Hearing Examiner.

6. Sovereign immunity does not relieve the respondent of its obligation to pay damages to Laura Kerns, inasmuch as, in its dealings with Laura Kerns, respondent was not performing any traditional governmental function per se, but was functioning in a proprietary manner as an employer.

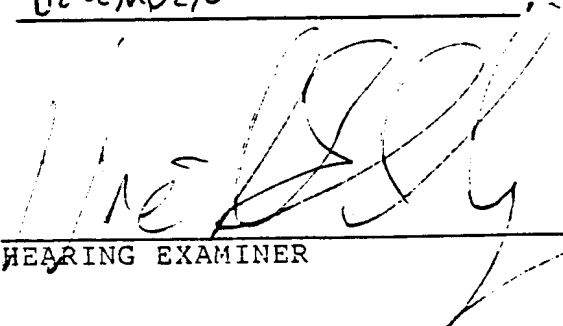
7. By a preponderance of the evidence, Laura Kerns has established the need for a cease and desist order directed at the respondent, requiring the respondent to replace its discriminatory evaluation process with a system based upon academic and other requirements which are more specific and applied uniformly to both male and female applicants.

E. DETERMINATION

It is the determination of the Hearing Examiner that Laura Kerns has been discriminated against in employment on the basis of sex by respondent.

ENTER this 9 day of DECEMBER

1985.


HEARING EXAMINER

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

On the Complaint of

LAURA KERNS,
Complainant

vs.

Case No. ES-372-79
(Monongalia County)


WVU CO-OPERATIVE EXTENSION SERVICE
Respondent.

STIPULATION

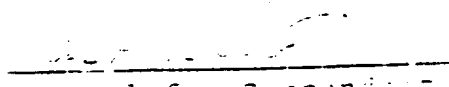
On behalf of the above-referenced Complainant and Respondent, counsel below hereby stipulates the waiver of the presence of a Hearing Commissioner from the Human Rights Commission at the public hearing to be held in this matter on the 13th day of SEPTEMBER (thirteenth), 1985. It is understood that this stipulation is being made only after the parties have been advised by the Hearing Examiner of their right to have a commission member present should they so desire and that they were so advised prior to the acceptance of this stipulation.

It is expressly stated that no litigant expressed any reservations about the absence of a commission member. The Hearing Examiner has advised the parties that this matter may be continued should they desire the presence of a hearing commissioner. This stipulation shall be made part of the record of this case.

WE AGREE TO THE ABOVE:



Attorney for Complainant



Attorney for Respondent