



COPY

**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

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CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

January 13, 1986

ARCH A. MOORE, JR.  
Governor

Silas B. Taylor, Esq.  
Assistant Attorney General  
Room 26-E  
State Capitol  
Charleston, WV 25305

Robert D. Fisher, Esq.  
Assistant Prosecuting Attorney  
Jackson County Courthouse  
Ripley, WV 25271

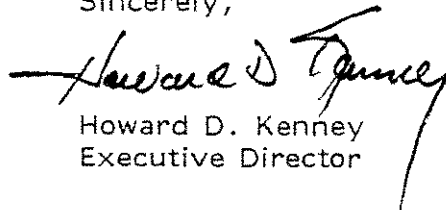
RE: ES-404-81  
Martin V Jackson County Sheriff's Dept.

Dear Mr. Taylor and Mr. Fisher:

Though a clerical error was made in attaching to the Commission's Order the Complainant's objections to Findings and Conclusions of the Hearing Examiner, it is a grievous one.

Enclosed you will find the Order of the West Virginia Human Rights Commission and the properly attached Recommended Findings by the Hearing Examiner. Your time within which to file Motions for Reconsideration or to Appeal will be considered to have run from the service of this Order and properly attached Hearing Examiner's Findings of Fact and Conclusions of Law.

Sincerely,



Howard D. Kenney  
Executive Director

HDK/kpv

Enclosures

CERTIFIED MAIL/RETURN RECEIPT REQUESTED.

RECEIVED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION DEC 17 1985

W.V. HUMAN RIGHTS COMM.

BONITA N. MARTIN,

Complainant,

vs.

Docket No.: ES-595-83

JACKSON 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 Victor A. Barone. 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

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

BONITA N. MARTIN,

Complainant,

v.

CASE NO. ES 404531

*Approved*  
*AKS*  
*11/12/85*  
**RECEIVED**

JACKSON COUNTY SHERIFF'S  
DEPARTMENT,

Respondent.

NOV 13 1985

W.V. HUMAN RIGHTS COMM.

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HEARING EXAMINER'S PROPOSED FINDINGS  
OF FACT, CONCLUSIONS, DECISION  
AND RECOMMENDED ORDER

PRELIMINARY MATTERS

A pre-hearing conference was held in this case on February 25, 1985. The public hearing commenced on June 14, 1985, and required two additional days of hearing on August 28 and September 5, 1985. All three days of the hearing were held at the Jackson County Courthouse in Ripley, West Virginia. The parties filed their briefs and proposed findings on October 21, 1985.

The complainant appeared in person and was represented by Silas B. Taylor, Assistant Attorney General. Respondent was represented by Robert D. Fisher, Assistant Prosecuting Attorney of Jackson County. A designated representative, Freda Wilson, was also present throughout the hearing on behalf of the respondent, without objection by complainant.

The presence of a hearing commissioner was waived by both parties on the record.

At the commencement of the hearing, respondent moved to dismiss the complaint on two grounds, and also moved that the Hearing Examiner recuse himself. These motions were denied and the parties then proceeded to present evidence.

Seven witnesses, including complainant, testified on her behalf. Six witnesses testified for the respondent.

### ISSUES

The complaint in this case alleged that complainant, Bonita Martin, had been discharged from her employment in December of 1980 because of her sex. Specifically, complainant alleged disparate treatment in that while she was purportedly discharged for not giving the Sheriff a doctor's excuse for an illness-related absence, a male deputy who had been hospitalized for back problems for two weeks was not required to furnish a doctor's statement and was not terminated due to illness. She also complained that she had in fact given prior notice and doctors statements regarding her absence, but was nevertheless scheduled by the department to report for work notwithstanding the Department's knowledge of her illness. Respondent denied any discriminatory motive for complainant's discharge.

PROPOSED FINDINGS OF FACT

1. The complainant, Bonita Martin, is a female and a "person" within the meaning of W.Va. Code § 5-11-3(a).

2. Respondent, Jackson County Sheriff's Department, though not a corporate entity, is an employer as that term is defined in W.Va. Code §5-11-3(d).

3. Complainant was hired by respondent on June 26, 1979, as a "relief cook" for the county jail. Although a part-time position, this was considered a permanent job and complainant's name was submitted to the County Commission for approval in that capacity (as required by West Virginia Code § 7-7-7). As the title implies, the relief cook is called upon when the full-time cook was scheduled to be off or was ill.

4. Complainant was originally hired as a CETA employee but shortly thereafter was transferred over to the county payroll. Soon after being hired as a relief cook, she was given additional duties as a fill-in or relief radio operator. This second position was again a part-time position in which she was called upon to serve when the regularly-scheduled, full-time operators were off. In this capacity, complainant operated the department radio, communicating with other law-enforcement agencies and acting as a dispatcher for department patrol cars, etc. Between

the two part-time jobs, complainant apparently reached the point where she was working a 5-day or 40-hour week with the department.

5. The Sheriff in office when complainant was hired (and terminated) was C. C. Coffman. Coffman had served a term as Sheriff in the early 1960's and served two consecutive terms from 1973 to 1980, the latter ending on December 31, 1980. By law, he was not permitted to run for a third consecutive term.

6. Sheriff Coffman interviewed complainant for her initial employment and made the decision to hire her. He also made the decision (apparently after a request by her and some discussion between them) to assign her the additional duties of radio operator. However, his testimony was that the fill-in radio operator duties were never intended to be permanent and that complainant's name was not submitted to the County Commission for hiring approval in that capacity.

7. All cooks at the jail during and since Sheriff Coffman's tenure, including full-time and part-time positions, have been females. All full-time radio operators before, during and since Sheriff Coffman's tenure have been females, as have apparently most of the fill-in operators. Occasionally there have been male fill-in radio operators.

8. The adequacy or quality of complainant's work was apparently never a point of contention during her employment, nor was it stated as a reason for her discharge. The Sheriff testified that he had some concerns about complainant's work during a period in the spring of 1980 after she had filed as a candidate (Democrat) for the office of magistrate and was campaigning during the primary election season. He apparently had received some reports that she might have been somewhat slighting her cooking duties in order to campaign. However, these concerns never reached the point where he felt compelled to speak to her about them. The Hearing Examiner finds that the performance of complainant in her two part-time jobs was at least satisfactory and perhaps was better than satisfactory. In any event, she was never reprimanded or criticized by the Sheriff or anyone else in a management position regarding her performance at work.

9. Setting aside for the moment complainant's illness and absence in November, 1980, which in turn led to her discharge, the Hearing Examiner finds that her record of reporting to work was at least satisfactory and indeed was better than average. During her employment from June 26, 1979 until November of 1980, complainant took no sick leave days. She did take a two-week vacation early in 1980, but with the approval of the Sheriff.

10. During the period of complainant's employment the Sheriff's Department did not have written, formal policies for annual and sick leave or for "reporting off." The custom and practice of Sheriff Coffman was that employees could take 10 days of vacation after having been employed for a year. However, employees who had been employed less than a year, including complainant as an example, were sometimes allowed 10 days of vacation. As for sick leave, the Sheriff tried to carry any employee on the payroll for the length of the illness. There was no strict requirement that physician's statements be furnished to corroborate claims of illness; however, witness Lois Nuckles, a deputy sheriff in the law enforcement division of the Sheriff's office, testified that it was an "unwritten rule" to provide them; that "we were expected to" if an absence due to illness lasted longer than two days. Nuckles testified that most of the employees did bring doctor's statements, and although these were not kept in the files, she could remember herself, Debbie Pitts and Birtie White furnishing them. The latter two employees are both female full-time radio operators. Complainant's Exhibit No. 1 is a compilation of sick-leave days taken by employees during the 5-year period from January 1, 1977 to December 31, 1982. This exhibit reflects that Debbie Pitts had five separate illnesses resulting in a total of 45 days absent; Lois Nuckles had three illnesses totaling 48 days absent, and Birtie White had one illness resulting in 9 days off. One



male employee (Eugene Fisher) had 4 illnesses during this period, missing a total of 31 days of work. Another male employee (Jerry Walters) had illnesses for a total of 29 days, plus one work-related injury which caused an absence of more than a month.

11. As noted above, complainant ran for the office of magistrate in the 1980 primary election. At that time she was also a member of the Jackson County Democratic Executive Committee. A number of other employees of the Sheriff's office participated as candidates in the 1980 primary. Homer Fisher (Sheriff Coffman's Chief Deputy) was a candidate for the Democratic nomination for sheriff. Eugene Fisher and Raymond Boggess were both deputies and also candidates for sheriff in the primary. Homer and Eugene Fisher are cousins. Another deputy, Roy Guthrie, ran for magistrate. Finally, Freda Wilson, Chief Deputy in the Sheriff's Tax Division, ran for the nomination for county clerk. All of these individuals apparently were Democrats. The only successful candidate in this group was Homer Fisher, who won the primary and eventually the November election. He took office as the new sheriff on January 1, 1981.

12. In addition to her own candidacy, complainant also participated in the primary by actively supporting Eugene Fisher. She admitted being aware that this support might

cause friction for her because, she says, almost everyone at the courthouse (including Lois Nuckles) was supporting Homer Fisher for sheriff. She testified that because of this possible friction she waited until later in the campaign to begin, but she did start passing out cards for Eugene about a month before the election. She also had his poster on her car a week prior to the election. She testified that Sheriff Coffman was much more of a social and political friend of Homer Fisher than of Eugene Fisher, her choice for sheriff. As previously noted, Homer was Sheriff Coffman's Chief Deputy.

13. One of the primary theories of complainant's case, if not the principal basis for her claim of disparate treatment, is that she persisted in what for females would presumably be "non-traditional" activity and which in the end led to her discharge. She says, without contradiction, that she was the first female to run for magistrate in Jackson County. She presented evidence that male employees of the Sheriff's office who ran for office suffered no repercussions. She says that the Sheriff and Lois Nuckles visibly changed their attitudes toward her after she filed for magistrate; i.e., they seemed "cool", less friendly or sociable. (The Sheriff and Nuckles both deny that they treated complainant any differently). However, as noted above, complainant also admitted that Lois Nuckles was supporting Homer Fisher and that Sheriff Coffman was a

political ally of Homer Fisher whereas she, complainant, openly supported Eugene Fisher. She agreed under cross-examination that the reason for the perceived change of attitude or coolness toward her could have been her political support of Eugene Fisher. One of complainant's witnesses, Brooks Smith, testified that complainant told him she feared being fired because of her political support of Eugene Fisher -- not because she had run for magistrate.

14. Complainant also cites as an example of non-traditional activity (for females) the fact that she and another female employee, Birtie White, voluntarily and at their own expense improved themselves by attending a law enforcement training class at a local vo-tech center. Sheriff Coffman did not prohibit them from attending the class, but, according to complainant, he remarked in their presence that the idea was "foolish." Sheriff Coffman denies making such a statement and Birtie White did not recall it.

15. Freda Wilson, who ran for the office of county clerk in 1980 while an employee of the Sheriff's office, suffered no penalty or repercussions as a result of her candidacy. She remained employed there until she retired at the end of 1984. Birtie White, who attended the law enforcement class with complainant in 1980, suffered no

penalty or repercussions for that activity. She is still employed as a radio operator at the Sheriff's office.

16. Both the complainant and Sheriff Coffman testified that in early or mid-November of 1980, the Sheriff advised complainant that beginning December, 1980, the complainant would no longer be serving as a relief radio operator. There is a dispute as to what the Sheriff gave as a reason for this action. The complainant's recollection is that the Sheriff merely said that there was not sufficient work or need for her as a radio operator. The Sheriff says that in her radio operator capacity she was being paid out of "extra help" money appropriated by the County Commission and that the cutback was necessary in order to assure that the extra help money lasted through the fiscal year. In any event, there is no dispute that complainant was informed her radio work would be eliminated, which in effect would leave her with only two days per week as relief cook. It is also undisputed that in the same conversation or shortly before or after it, the Sheriff told complainant that there would be "no place" for her in January (1981). Complainant testified that after this conversation, she was upset and worried. At this same time she was going through a divorce, was having financial difficulties and could ill afford a cut-back in her work and income.

17. Complainant testified that after the general election in November 1980, she was told by Homer Fisher, the sheriff-elect, that he would not have a job for her in January, 1981, when he took office. She quotes Fisher as saying, "'It still goes what Coffman told you'", and says Fisher also said "there was no place in the budget for me."

18. Freda Wilson, one of respondent's witnesses, testified that during a conversation in the jail kitchen in November, 1980, complainant told her that Sheriff Coffman was going to eliminate her radio work; that she, complainant, had some time off coming and would take it "one way or another." Complainant denies this statement.

19. Complainant's testimony is that in early or mid-November, 1980, shortly after the Sheriff had informed her that her relief radio work would be eliminated, she told the Sheriff that she was going to need surgery and would require some time off. She says she told the Sheriff when the surgery was scheduled (November 26th); that she would need some time off before the surgery, and that she might or might not be able to resume work on November 27th but that she would try to let him know. She says the Sheriff readily agreed to give her the time off and to have another employee ready on a stand-by basis if complainant could not return to work on the 27th. The Sheriff says the complainant did not give him any specifics, that she only said she was going to

have surgery but did not say when, where, or how long she would be off. He says as far as he was concerned, he expected her to report for work for the next scheduled work day, but that he never saw her at work again nor did he hear from her.

20. Complainant in fact did have her surgery on the afternoon of November 26th, 1980, at a hospital in Charleston and was released that day to return to her home. She says that immediately upon her return home in the evening, she called the Sheriff's office, spoke to Sheriff Coffman, and informed him that she would not be able to report to work the next day and in fact would not be able to work for the entire month of December. She says that the Sheriff said the office "had been looking for her", that they could not find her at the Jackson General Hospital; she says that he became hostile and loud; and that he told her that he didn't need her any more, which she understandably took to mean that she was fired. The Sheriff denies that this conversation took place. He says that on the evening of November 26th (the day before Thanksgiving) he was visiting at his mother's home in Parkersburg. (Lois Nuckles also testified that it was not likely the Sheriff would have been at the office in the evening hours). In any event, complainant testified that she became quite upset emotionally as a result of this conversation both because of the Sheriff's tone of voice and the fact that she now had no

job. She testified extensively as to her emotional state during the ensuing weeks.

21. As complainant points out in her suggested decision, there is a conflict in the respondent's own evidence as to what was happening at the Sheriff's office on November 26 and 27 and the period before and after those days; specifically, some of respondent's witnesses contradicted Sheriff Coffman's denial that complainant had asked for specific time off or that he had agreed to arrange for a stand-by. Also, the Sheriff testified that he personally had to help prepare meals for the inmates on Thanksgiving Day when complainant failed to show; but other respondent's witnesses said complainant was not even scheduled as a cook that day but rather was to have relieved on the radio.

22. Earlier in the fall of 1980, complainant had commenced working at a service station in Ripley on her off-duty hours. This "moonlighting", as it was called during the hearing, was not extensive; it usually involved an 8-hour shift at the station once or twice a week as a substitute for regular employees. The station owner testified that complainant did not work there after November 8, 1980. However, complainant's daughter did commence working at the same service station in late November and continued to work there in December, 1980. The complainant,

meanwhile, was not restricted to bed or home-bound after her surgery, and she frequently visited her daughter at the service station apparently to "keep her company." Complainant testified that there was a danger of robberies occurring at the station and she did not want her daughter to be alone there during the night hours. In any event, it is undisputed that complainant was at the service station during the week or ten days immediately following her surgery. On two occasions during this period, employees of the Sheriff's office saw her there and assumed she was working at the station. One of these employees, Birtie White, went into the service station and purchased a package of cigarettes from complainant, who apparently was behind the counter and ostensibly in charge of the cash register. The other employee, a deputy, saw complainant at the service station in the morning, after Thanksgiving Day, again while she seemed to be handling a transaction at the cash register. This deputy told Sheriff Coffman that same day that he had seen complainant working at the station. (Birtie White apparently did not tell the Sheriff that she had seen complainant but did tell others in the office).

23. Complainant admitted that she sold Birtie White the cigarettes, but explains that her daughter was in the bathroom at the time; that the station owner was temporarily away from the station on an errand and had asked complainant to watch the cash register while he was gone because



complainant's daughter did not have enough experience to handle the cash register by herself. Since she was sitting at the counter by the cash register, complainant says, it was a simple matter to hand Birtie the cigarettes, take her money, and put it in the cash register. Complainant, however, also testified that when the station owner returned from his errand she told him that she had sold cigarettes to an employee of the Sheriff's office and that she probably would "be in trouble" for doing so. Apparently she did not tell Birtie White that she was only visiting her daughter and that she was only watching the cash register as a favor.

24. On or about December 5, 1980, Sheriff Coffman dictated a letter to be sent to complainant, advising her that: "Since you were aware of the new schedule, beginning December 1, that I would need you only two days a week, as part-time cook; and since you have not given me a doctor's report or any other reason for not reporting to work, I am terminating your employment as of December 1, 1980". This letter was dictated to Freda Wilson who had it typed and mailed to complainant. The letter also said: "You failed to come to work on your regular scheduled day, November 27".

25. In her capacity as relief cook, complainant was replaced by Pearl Coen, a female. It is not clear that any one person or new employee assumed her relief radio operator duties. Lois Nuckles testified that existing employees

filled in on the radio and that the first new employee hired under the new sheriff in 1981 was a male, Royal "Rick" Casto, who was hired through the CETA program in March 1981, primarily as a civil process server. In April of 1981, Casto began to fill in as a radio operator. As a CETA employee, Casto's salary did not come from county funds but was subsidized by the federal government. Casto remained a CETA employee until August or September of 1981, which would have been in a new fiscal year. It does not appear that the Sheriff's office sought out Casto for employment. He testified, without contradiction, that he was sent to the sheriff's office by the CETA program for an interview because he was "next on the list." Casto left the Sheriff's office in August of 1982 because his work had dwindled to only 4 days a month. He later returned to the office as a correctional officer under civil service and now has nothing to do with radio operation or serving process.

26. Lois Nuckles testified that no attention was paid to gender in filling radio operator positions; that "we took anyone we could get" because it was hard to find trained people. However, all of the full-time operators and most of the fill-in operators have been women.

27. All witnesses agreed that Sheriff Coffman was a fair, mild-mannered man who seldom if ever raised his voice or criticized employees. Respondent's witnesses deny seeing

any discriminatory treatment by him and even complainant admits that up until the events of November, 1980, she was treated the same as any other employee, male or female. She is unaware of any other female employee being fired by Sheriff Coffman.

28. After her termination from the Sheriff's office, complainant did not find a new job until March 18, 1981, when she became employed by the Jackson County Board of Education as a service employee. She has been employed there ever since, at a salary as high or higher than she would have earned at the Sheriff's office. She does not seek reinstatement in this proceeding other than a "paper" reinstatement to cover the period between December 1, 1980 and March 18, 1981, when she commenced her new job. She seeks back pay for that same 3½-month period. However, complainant's own evidence indicates that she could not have worked in December, 1980, due to her medical condition. Complainant's Exhibit No. 8 includes a doctor's statement that she was unable to work from November 17, 1980 to December 31, 1980. Further, complainant testified that when she called the Sheriff on November 26, 1980, she told him she would have to be off for the entire month of December. In any event, the amount of back pay claimed, with interest, is \$3,359.00.

29. Complainant seeks incidental damages of \$10,000.00 for emotional and mental distress and the other effects of the claimed discrimination. She also seeks an award of attorney fees and a directive that respondent expunge all reference to this unlawful discharge from its records.

#### PROPOSED CONCLUSIONS OF LAW

As should be apparent from the findings of fact, there are inconsistencies and question marks within the evidence presented by each side, as well as conflicts between the two. Some of the conflicts are baffling. For instance, the complainant says she called Sheriff Coffman at the courthouse on the evening of November 26th after her surgery. The Sheriff denies ever talking to her and says he was not even in Ripley that evening. Moreover, even complainant's description of the Sheriff as loud and hostile during that telephone conversation does not square with other evidence, including her own, indicating that the Sheriff was a mild-mannered man, not likely to raise his voice. Complainant says she was extremely upset after that conversation because she had, in effect, just lost her job. Yet, according to her own evidence and testimony, she knew prior to that conversation that she would have no job at the Sheriff's office come January, 1981. The sheriff-elect, Homer Fisher, had already told her as much. Further, she says she was calling Sheriff Coffman that evening to tell him, among other things, that she could not work in December

anyway, and in any event, she had been told earlier in the month that even if she did work in December it would only be two days a week as a cook. Therefore, even assuming that complainant did speak with the Sheriff that evening, it does not stand to reason that that single conversation would provoke an emotional reaction, when she already knew that, under any circumstances, she would not be working at the Sheriff's office again.

The complainant has alleged sex discrimination. She had the burden of proving all elements of her claim by a preponderance of the evidence. The Hearing Examiner is unable to conclude that she has met that burden.

In deliberating toward a decision, the Hearing Examiner has given the complainant the benefit of every doubt as to conflicts in testimony concerning the November absence and the attendant circumstances. Even having done so, however, the facts do not point to sex discrimination as the only explanation -- or even the most plausible explanation -- for her termination. Complainant argues that she was engaging in conduct considered "non-traditional" for a woman: running for office, taking a training course, and moonlighting, to be specific. Even accepting the premise that these are "non-traditional activities", the evidence is that other female employees ran for office and took the same course without adverse consequences. As for moonlighting, the evidence does not even hint that complainant was fired or treated differently because of her outside job at the

service station, per se. What we do know is that while she was on sick leave, she was seen at the service station by other employees who understandably assumed she was working there; she apparently made no attempt to explain that she was not in fact working there, and these employees carried back to the office the reports that she was working somewhere else at the same time she was supposed to be unable to work due to illness. It is uncontradicted that these reports reached the Sheriff. Complainant argues that the Sheriff should have investigated the situation further rather than jumping to conclusions. Perhaps, but the human rights laws do not prohibit jumping to conclusions or making erroneous management decisions. Complainant has alleged sex discrimination based on a disparate treatment theory. She has not produced evidence that male employees who were seen working at outside jobs while on sick leave were not fired. She has also made out no case of disparate treatment regarding sick leave itself or the requirement of doctor's excuses. The evidence is that all employees, male and female, were treated liberally regarding sick leave. Her own evidence shows that several female employees had substantial absences due to illness but were not fired. She complains that she was the only employee who was required to provide a doctor's excuse. Even if true, this does not mean that she was singled out because of her sex. Just as plausible an explanation is that since she was seen apparently working at an outside job, some verification of

illness was required that otherwise would not have been. Respondent's evidence is that all employees knew they were expected to provide doctor's excuses if an illness lasted more than a few days. Since complainant was a relatively new employee and had never had occasion to take sick leave until the November surgery, she may well not have known of the informal policy. Respondent's witness, Lois Nuckles, testified that she and other employees who had worked at the Sheriff's office for longer periods knew of the policy and did bring doctor's excuses.

If this episode was indeed a misunderstanding caused by lack of communication, it was a situation to which complainant contributed. For example, when complainant sold the package of cigarettes to Birtie White, she could easily have explained to Birtie that although she was on sick leave she was ambulatory, not restricted to bed or home, and was just watching the cash register temporarily. Or she could have gone directly to the Sheriff's office for a brief visit and explained the same thing. She says she did not do that because she had been told by the Sheriff in the telephone conversation of November 26th that she no longer had a job. Yet there is her puzzling comment to the station owner a few days later that she would be "in trouble" because she had just sold cigarettes to an employee of the Sheriff's office. It is also puzzling that the Sheriff would send her a letter on December 5th informing her that she was terminated

effective December 1st, if she had already been fired on November 26th.

As already pointed out, however, all of these evidentiary questions can be resolved in complainant's favor and she still has not met the burden of proving sex discrimination. If anything, she has suggested a case of political discrimination. Her own testimony and other evidence showed that she anticipated "friction" because of her support of Eugene Fisher when everyone else at the "courthouse" was supporting Homer Fisher for sheriff. Her own witness, Brooks Smith, testified that she told him she might be fired because of her support of Eugene Fisher. The sheriff-elect, Homer Fisher, who she opposed in the primary, told her she would not have a job under him in January. Indeed, "politics" is a far more plausible explanation for her termination than sex discrimination.


Under the 1976 United States Supreme Court decision in the case of Elrod v. Burns, 427 U.S. 347, 49 L.Ed.2d 547, 96 S.Ct. 2673, it is illegal to deprive public employees of their jobs because of their political affiliations or choices. Unfortunately for complainant, political discrimination is not within the purview of the Human Rights Commission. If complainant had a cause of action for political discrimination, the proper remedy would have been a civil rights action in a state or federal court, not a Human Rights complaint.



The Hearing Examiner recommends the following conclusions and order:

1. Complainant has failed to prove by a preponderance of the evidence that she was fired because her sex.
2. The complaint should be dismissed.

Dated this \_\_\_\_\_ day of November, 1985.

  
\_\_\_\_\_  
Victor A. Barone  
Hearing Examiner