



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301**

ARCH A. MOORE, JR.
Governor

TELEPHONE: 304-348-2616

October 30, 1985

Charla L. Rhodes
163 Klondike Road
Ripley, WV 25271

Robert K. Parsons, Esq.
1250 Greenbrier Street
Charleston, WV 25311

Town of Ripley Police Dept.
113 South Church Street
Ripley, WV 25271

Kennad L. Skeen, Esq.
216 Main Street
Ripley, WV 25271

RE: Chara Lynn Rhodes V Town of Ripley/Docket No.: ES-403-81

Gentlemen:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Chara Lynn Rhodes V Town of Ripley Police Chief, & Kennad L. Skeen.

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 cursive script 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

CHARA LYNN RHODES
COMPLAINANT,

V

DOCKET NO: ES-403-81

TOWN OF RIPLEY
RESPONDENT.

AMENDED ORDER
INTRODUCTION

The Commission is amending its previous Order in this case which was served October 10, 1985. The amendments do not change the content or intent of its previous Order.

A public hearing was held in this case on April 12, 1985, at the Jackson County Courthouse in Ripley, West Virginia, pursuant to due notice.

Complainant appeared in person and was represented by counsel, Robert K. Parsons, Assistant Attorney General. The Respondent was represented by Ronald Whiting, Mayor of the Town of Ripley, and Kennad L. Skeen, attorney for Respondent.

The complaint in this case was filed in February of 1981. Complainant alleged she had been discriminated against because of her sex, in that the Respondent failed to hire her for a position available in the Ripley Police Department even though she was qualified. Complainant further alleged that a male was appointed to fill the position and that the Respondent had ignored her as a qualified candidate for the police department.

A member of the Human Rights Commission, Iris Bressler, attended and was present throughout the hearing.

As preliminary matters prior to the testimony, Respondent orally reiterated a motion to dismiss previously filed in response to the complaint. Complainant reiterated her motion to amend her complaint in order to add the Mayor and common council of Ripley as parties. (The original complaint had named the "Town of Ripley Police Department" as Respondent.)

For reasons set forth on the record, the Hearing Examiner granted Complainant's motion to add the Mayor and council as parties. The Respondent's motion to dismiss was taken under advisement.

In its written motion and the oral argument of its counsel prior to the taking of testimony, Respondent raised two jurisdictional grounds. One essentially is that the involvement of the Supreme Court in this administrative proceeding is unconstitutional and creates a conflict of interest. The second ground is that the Human Rights Commission lost jurisdiction of this case when 180 days elapsed without a public hearing after the complaint had been filed.

The Commission finds neither ground meritorious. Regarding the Respondent's objections to the Supreme Court's involvement in the proceeding, the Commission would simply point out that in Allen v. State of West Virginia Human Rights Commission, 324 S.E.2d 99 (W.Va. 1984), the Supreme Court has mandated the procedure now being followed to eliminate the Commission's case backlog. As to the Respondent's argument that the lapse of 180 days deprived the Commission of jurisdiction, W.Va. Code §5-11-13 does not support that theory. That section provides that the lapse of 180 days without a public hearing merely gives the Complainant a right to proceed to court; it does not deprive the Commission of jurisdiction in the event Complainant elects to continue to pursue the claim administratively.

Accordingly, the Respondent's motion to dismiss is denied. The West Virginia Human Rights Commission makes the following findings of fact; and conclusions of law:

1. Complainant is a White female. She attended Parkersburg Community College and now has a degree in criminal justice from that institution. At the time of her application for the employment in question (1981), she was attending the college and taking courses in criminal justice but had not then received her degree. She has been employed by Heck's as a clerk since 1977.

2. Complainant also served as an unpaid volunteer auxiliary police officer for the Town of Ripley for several years commencing in 1978. Auxiliary police were not official police officers and were not permitted to carry weapons; they did, however, assist and supplement the regular force in such matters as traffic regulation for special events and riding with regular officers on patrol. They were not permitted to function alone but only in concert with a regular police officer. Ripley no longer has an auxiliary police force. No member of the auxiliary force was hired for the regular force.

3. Females on the volunteer auxiliary force had special rules or restrictions which applied to them and not to male members of the volunteer auxiliary force.

4. There is no dispute that in 1981 (and now), Complainant had the basic qualifications for service as a regular police officer for the Town of Ripley. However, she has not passed a state mandated training course for police officers (which is held at the State Police Academy); and thus, she is not certified as now legally required by state law. At the time of her application in 1981, such certification was not a legal

requirement. Although applicants for local police departments can still be hired without such certification (passage of the training course or its equivalent), they must obtain it in order to remain employed. (See W.Va. Code §30-29-1, et seq.).

5. Complainant is not a veteran of the armed services and was never employed under the CETA program by Respondent.

6. Complainant first applied for a position as a regular police officer in 1979 at which time there was no vacancy in the department. In the same year, the Town of Ripley availed itself of an opportunity to hire a person as a temporary, or "trainee", regular police officer under the federal government's CETA program. The person hired was a male, Kenneth Winter. While employed under the CETA program, this officer's salary was paid by the federal government. Winter's employment under this program was for 18 months. Winter also had served in the United States Navy prior to becoming employed under the CETA program. Winter is still employed as a permanent regular police officer by Respondent and is now certified. Mayor Whiting testified that if not for the CETA funding in 1979, the city would not have hired a regular officer in that year either as a temporary or permanent employee.

7. In or about February of 1981, it became generally known in the Ripley Police Department and the auxiliary force that a vacancy would soon need to be filled on the regular force. Complainant filled out an application for the position and took it to the mayor's office. She encountered Mayor Whiting near his office and handed him the application, at which time he advised her that the position had already been filled; that Winter, the CETA employee, would be hired for the position. Winter was in fact hired.

8. Complainant was not interviewed for the position at that time. The position was not formally advertised by newspaper or any other means. In 1981, the Respondent did not have uniform, minimum qualifying standards for eligibility for police officers. The town was a recipient of federal funds in 1981 and still is.

9. A handbook published by the Governor's office in 1978 makes it clear that the placement of CETA trainees in permanent employment was a request, a goal, but not an absolute mandate.

10. To the knowledge of any of the witnesses at the hearing, including Mayor Whiting, the town has never had a female regular police officer. It did employ one or two females as meter maids some years ago.

11. Complainant was more than qualified to perform the duties of a regular patrol officer.

12. Since the hiring of Winter as a regular officer in 1981, the Respondent has hired 4 more police officers, all males. Three of these 4 were certified when hired, meaning that they had already passed the State Police training course or its equivalent (one had been trained in Ohio). One of these 3 had 15 years experience, and another had 4 years. The one who was not certified when hired was a veteran, 50% of whose salary after being hired was subsidized under a federal veteran's program while undergoing training at the State Police Academy. The federal program also paid for that training course except for the officer's weekend expenses.

13. Mayor Whiting testified that the cost of the town for sending an officer through the training course is approximately \$6,500.00, not including possible costs for overtime due to the remaining officers on the

force having to make up for the trainee's absence. Purely from an economic standpoint, the town would prefer that new police officers already possess state certification when they apply; or, if they do not, that the costs of their certification training can be subsidized such as by a federal veteran's program. These economic factors are considered by the town in making its hiring decisions. The town also gives preferences to veterans in hiring. No statutory or regulatory authority required this veterans preference.

14. While the 4 male officers previously referred to were hired since 1981, Complainant's application remained on file during that period. Mayor Whiting testified that presently there are 5 applications on file from females for positions with the police force. All 5 possess the basic qualification for membership on the force but none of the 5, including Complainant, are state-certified. Mayor Whiting further testified that when the last two males were hired, which was during his tenure in office, the pending applications of the female applicants were reviewed, but he indicated that their lack of certification was a major factor in excluding them from further consideration.

15. The Complainant's personnel file contains three applications for permanent employment with the police force, the most recent being the one dated February 13, 1981, when she applied for the position that was given to Winter. It is noted that this application says that at that time she needed only one more class to obtain the degree in criminology. It also indicates that while employed at Heck's, she has served as a captain of the "security team".

16. Winter's application indicates that he served in the United States Navy for four years (1975-79); that during this service he

received training or schooling in fire fighting and rescue work, and that he served as a "ship's master at arms", which he describes as "similar" to law enforcement.

17. Complainant is a member of a protected class. She was qualified for the position at the time of her application and she was not considered for it. The vacancy in question was not advertised but rather was apparently made known by word of mouth.

18. The Respondent did not have objective hiring standards; on the contrary, the hiring procedure allowed for considerable subjectivity by the Mayor and Police Chief.

19. The Respondent violated the West Virginia Human Rights Act, Sec. 5-11-9 by failing to hire the Complainant, a qualified female applicant as a police officer. officers.

THE FOLLOWING RELIEF IS HEREBY ORDERED

1. The Respondent shall pay the Complainant six thousand five hundred twenty four dollars (\$6,524.00) which represents the difference between what the Complainant would have earned as a police officer and what she did earn.
2. The Respondent shall hire the Complainant as a police officer when the next position becomes available.
3. Until Complainant is hired by Respondent as a police officer, the Complainant is to be paid the salary of a police officer from which amount shall be deducted what the Complainant does earn in mitigation.

4. The Respondent shall pay the Complainant five thousand dollars (\$5,000.00) for embarrassment and humiliation.

Entered this 28 day of October 1985

RESPECTFULLY SUBMITTED,

Betty A. Hamilton

CHAIR/VICE-CHAIR
WV HUMAN RIGHTS COMMISSION



case
COPY

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION
215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

TELEPHONE 304-348-2616

October 10, 1985

Charla L. Rhodes
163 Klondike Road
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Howard D. Kenney
Howard D. Kenney
Executive Director

HDK/kpv

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complaint. Complainant reiterated her motion to amend her complaint in order to add the Mayor and common council of Ripley as parties. (The original complaint had named the "Town of Ripley Police Department" as Respondent.)

For reasons set forth on the record, the Hearing Examiner granted Complainant's motion to add the Mayor and council as parties. The Respondent's motion to dismiss was taken under advisement. The Hearing Examiner will now set forth his ruling on that motion.

In its written motion and the oral argument of its counsel prior to the taking of testimony, Respondent raised two jurisdictional grounds. One essentially is that the involvement of the Supreme Court in this administrative proceeding is unconstitutional and creates a conflict of interest. The second ground is that the Human Rights Commission lost jurisdiction of this case when 180 days elapsed without a public hearing after the complaint had been filed.

The Hearing Examiner finds neither ground meritorious. Regarding the Respondent's objections to the Supreme Court's involvement in the proceeding, the Hearing Examiner would simply point out that in Allen v. State of West Virginia Human Rights Commission, 324 S.E.2d 99 (W.Va. 1984), the Supreme Court has mandated the procedure now being followed to eliminate the Commission's case backlog. As to the Respondent's argument that the lapse of 180 days deprived the Commission of jurisdiction, W.Va. Code §5-11-13 does not support that theory. That section provides that the lapse of 180 days without a public hearing merely gives the Complainant a right to proceed to court; it does not deprive the Commission of jurisdiction in the event Complainant elects to continue to pursue the claim administratively.

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4. The Respondent shall pay the Complainant five thousand dollars (\$5,000.00) for embarrassment and humiliation.

Entered this 18th day of October 1985

RESPECTFULLY SUBMITTED,



CHAIR/VICE-CHAIR
WV HUMAN RIGHTS COMMISSION