BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

HELEN R. BRYAN,

Complainant,

vs. Docket Nos. ES-61-86, EB-62-86 & EA-63-86

WV SOCIETY FOR THE BLIND/WV DEPT. OF VOCATIONAL REHABILITATION,

Respondent,

AND

EFFIE M. McCLANAHAN,

Complainant,

vs. Docket Nos. ES-38-86, EA-39-86 & EB-40-86

WV SOCIETY FOR THE BLIND/WV DEPT. OF VOCATIONAL REHABILITATION,

Respondent.

O R D E R

On the 10th day of September, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner John M. Richardson. 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 Recommended Decision in paragraph 12 of the Conclusions of Law, page 19, by deleting

the word "complainants" and substituting therefor the word "Respondent."

The Commission further amends the Recommended Decision by deleting paragraph 15 of the Conclusions of Law, page 19, and paragraph 6 of the Recommneded Order, page 21, which paragraphs contain the same language, and substituting for both paragraphs the following paragraphs:

"That the complainants are entitled to an award of back pay in the amount of $1,080.33 per month beginning May 1, 1985, and continuing through the date of this Order, with pre-judgment interest at the rate of 10% per annum on the back pay award, and that they shall be offered the next/first available comparable positions as managers and shall be paid as front pay the sum of $1,080.33 per month until such time as they have been offered such positions.

The Commission further amends the Recommended Decision by deleting from paragraphs 16 and 17 of the Conclusions of Law, page 20, and from paragraphs 7 and 8 of the Recommended Order, pages 21-22, the figure $2,500.00 and substituting therefor in each instance 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.

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 9th day of October, 1986.

Respectfully Submitted,

CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

OFFICE OF THE HEARING EXAMINER

HELEN R. BRYAN,
Complainant,

v. DOCKET NOS. ES-61-86
EB-62-86
EA-63-86

WV SOCIETY FOR THE
BLIND/WV DEPT. OF VOCATIONAL
REHABILITATION
Respondent.

AND CONSOLIDATED FOR PUBLIC HEARING

EFFIE M. MCCLANAHAN,
Complainant

v. DOCKET NOS. ES-38-86
EA-39-86
EB-40-86

WV SOCIETY FOR THE
BLIND/WV DEPT. OF VOCATIONAL
REHABILITATION,
Respondent.

RECOMMENDED DECISION

I.
Preliminary Matters

[NOTE: The above-styled cases were consolidated for public hearing and for the purposes of this decision where reference is made to the Complainants, in a plural context, such reference applies to both Complainants, namely, Helen R. Bryan and Effie M. McClanahan, but where reference is made only to one Complainant, then, it will apply only to that Complainant who is named in conjuction therewith.]

On July 26, 1985, Complainant, Helen Bryan, filed a verified complaint, and, thereafter, probable cause was found. By notice issued on October 25, 1985, John M. Richardson was assigned as Hearing Examiner.

On August 29, 1985, Complainant, Effie McClanahan, filed a verified complaint, and, thereafter, probable cause was found. By notice issued on October 23, 1985, this matter was assigned to John M. Richardson, Hearing Examiner.

On November 8, 1985, the Complainants, by their counsel, Mary C. Buchmelter, Assistant Attorney General, and the Respondent by its counsel, Larry Kopelman, filed a joint motion to consolidate the above-styled cases for public hearing. The Hearing Examiner after considering the motion and determining that the interest of all of the parties and the Commission would best be served by granting the motion, did, grant said motion and consolidate the complaints for public hearing.

The public hearing was convened on January 13, 1986 and concluded on January 14, 1986. The Hearing Panel consisted of John M. Richardson, Hearing Examiner and Betty Hamilton, Hearing Commissioner. The Complainants appeared in person and were represented by Assistant Attorney General, Mary C. Buchmelter. Respondent appeared by its Administrator, Richard Collett, and by its counsel, Larry Kopelman and Joseph Cometti.

Immediately following the convening of the public hearing, the Respondent, by its counsel, renewed its earlier motions made during the pre-hearing conference held on January 9, 1986. In very brief summary, those motions were directed to violations of due process relating to the Respondent's inability to discover the content of the Commission's file with the same freedom as was permitted the Complainants' counsel and the impropriety of an Assistant Attorney General representing both the Commission and the individual Complainants.

The Hearing Examiner ruled that the Respondent would be permitted discovery of the Commission's to the extent provided for by the rules and upheld the Commission's on-going policy of permitting the Attorney General to provide representation to the Commission and the Complaint simultaneously. To the extent that these rulings adversely affected each counsels' position, their objection and exception was noted, and, to the extent necessary for particular purposes, the pre-hearing conference transcript is referenced for the purpose of providing the particulars.

Thereafter, the Complainants presented their evidence and rested. Whereupon, the Respondent moved for a directed verdict alleging that the Complainants had failed to prove a prima facie case of age or sex discrimination. A ruling was reserved until after the Respondent presented its evidence.

At the close of the hearing, the parties were directed to submit their proposed findings of fact and conclusions of

law and to pay particular attention to the motion, earlier made, concerning the directing of a verdict.

For the purposes of this decision, the Hearing Examiner has considered all of the pleadings, testimony, exhibits and to the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions, and views stated herein, they have been accepted, and to the extent that they are inconsistent, 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 various witnesses' testimony is not in accord with the findings, herein, it is not credited, and to the extent that the findings are conclusionary, they are so acknowledged.

II.

Issues

1. Did the Respondent unlawfully discriminate against the Complainants on the basis of their sex.

2. Did the Respondent unlawfully discriminate against the Complainants on the basis of their age.

3. Did the Respondent, by revising the "Colorado Test" create a test that unlawfully discriminated against the Complainants.

III.

Findings of Fact

At the pre-hearing conference held on January 9, 1986, the parties, by counsel, agreed and stipulated as fact the following:

(a) Complainant, Helen Bryan, is a women, age 51.
(b) Complainant, Effie McClanahan, is a women, age 55.
(c) Complainant, Helen Bryan, applied to operate stand 55 in the Medical Arts Building. Ms. Bryan was not selected.
(d) Stand 55 was awarded to Larry Kirby. Mr. Kirby is a white male, age 30.
(e) Complainant, Effie McClanahan, applied for the position of manager of Stand 46. Ms. McClanahan was not selected.
(f) Stand 46 was awarded to Joe Gordan. Mr. Gordan is a white male, age 44.

The Hearing Examiner makes the following findings of fact:

1. Helen Bryan and Effie McClanahan are legally blind as the same is defined in the Randolph-Shepherd Act and by WV Code 5-15-3 & WV Code 5-11-3(s).

2. Helen Bryan has only slight peripheral perception in her right eye; her left eye is blank.

3. Helen Bryan has been employed by the WV Society for the Blind for 21 years.

4. Larry Kirby, a legally blind, white male, 30 years of age, had less seniority than Helen Bryan.

5. Helen Bryan and Larry Kirby competed for the position of manager of stand 55 and as a result of a higher

test score, Larry Kirby was awarded the position beginning May 1, 1985.

6. Larry Kirby's visual acuity was 20/400.

7. Effie McClanahan had 20 years of seniority. Joe Gordan had 9 years seniority.

8. Effie McClanahan's visual acuity was 5% light perception. Joe Gordan's visual acuity was 20/200 with peripheral vision in the right eye of 15° and in the left eye of 10°.

9. Effie McClanahan and Joe Gordan competed for the manager's position of stand 46 which was awarded to Joe Gordan as a result of a higher test score beginning May 1, 1985.

10. Joe Gordan is legally blind.

11. The Respondent, the WV Society for the Blind, is a State Agency and part of the WV Dept. of Vocational Rehabilitation. The WV Society for the Blind administers the federal Randolph-Shepherd Act. The Blind Vendors Association is governed by the WV Society for the Blind. The WV Society for the Blind is administered by a State Officer entitled Administrator and in the present case, the Administrator was Richard Collett.

12. The Blind Vendors Association is comprised of legally blind persons who have been referred, by the WV Dept. of Vocational Rehabilitation, as being qualified to participate in the Blind Vendors Program.

13. The Blind Vendors Association elects a Blind Vendors Committee comprised of three members who in turn assist and advise the Administrator of the WV Society for the Blind.

14. The "Colorado System" is essentially a test given to blind vendors for the purpose of determining which vendor should be awarded a vendor stand or location. The winner of the competition will manage the stand for his or her own profit or be paid a salary.

15. The "Colorado System" was revised by the Blind Vendors Committee and was thereafter adopted by the WV Society for the Blind and the WV Dept. of Vocational Rehabilitation.

16. The revision of the "Colorado System" removed the reliance upon seniority as an objective criteria for determining the competitive winner (highest score on test), except in cases of an exact numerical tie in test scores.

17. The revised test as adopted by the Respondent relied primarily upon the highest score resulting from a subjective test given in six categories, namely, Management Ability, Health and Sanitation, Public Relations, Participation and Cooperation, Supervision and Vending Machine Operations.

18. The revised test given to the Complainants by the Respondent, was administered by Richard Collett, Administrator, and the Blind Vendors Committee which was then comprised of two of its three members.

19. Each member of the three member Blind Vendors Committee is elected for a two year term by the membership of the Blind Vendors Association.

20. Questions to be asked the competitors by the scorers were agreed upon by and between them before the test began. A score of between 1 and 25 points was assigned by each scorer at the completion of questioning in each of the four categories. Two of the categories were not used, namely, "Health and Sanitation" and "Supervision."

21. At the end of the test, the scores in each of the categories were added together and totaled for each of the Committee members and Mr. Collett. The overall totals for each scorer were then added and divided by three, thereby obtaining an average score.

22. Questions were asked in only four categories, namely, Management Ability, Public Relations, Participation and Cooperation and Vending Machine Operations.

23. Only two Committee members and Richard Collett were present and acted as scorers.

24. The highest average score was then used to determine the winner.

25. The unrevised "Colorado System" required the average score be placed in a category of:

a. Outstanding (81-100 pts)
b. Very Good (61-80 pts)
c. Average (41-60 pts)
d. Below Average (21-40 pts)
e. Unsatisfactory (1-20 pts)

26. Effie McClanahan's average score was 61. Joe Gordan's average score was 79. Helen Bryan's average score was 64. Larry Kirby's average score was 73.

27. By using the unrevised "Colorado System" all 4 contestants would have been in the "Very Good" category and the winner would have been selected by seniority, namely, Effie McClanahan and Helen Bryan, who each had the greater seniority.

28. Because the "Colorado System" was revised by the WV Society for the Blind, Stand 46 was awarded to Joe Gordan and Stand 55 was awarded to Larry Kirby. Joe Gordan and Larry Kirby had higher average scores than Effie McClanahan or Helen Bryan.

29. Blind persons having greater visual acuity generally do better on scored tests than do blind persons having less visual acuity.

30. The "Colorado System" was designed to allow qualified blind persons with the greatest seniority the opportunity to be selected. Almost every state uses some variation of this system.

31. By revising the "Colorado System" the reliance upon the objective criteria of seniority was removed, except in cases of an exact tie in numerical score. Exact ties, in numberical scores rarely, if ever, occur.

32. A numerical score was given to each contestant based only on subjective criteria, namely, how well each scorer believed the contestants answered each question.

33. Stand 46 is a stand for which the operator or manager is paid a salary of $13,000.00 per annum.

34. Stand 55 is a stand whose operator or manager is paid on a commission basis.

35. Prior to Stand 55 being awarded to Larry Kirby, it was managed by Ron Custer.

36. Ron Custer earned a profit of approximately $16,000.00 per year, however, Larry Kirby is not doing as well in making a profit as did Ron Custer.

37. Larry Kirby will earn approximately $13,000.00 this year.

38. Had Helen Bryan been awarded Stand 55 she would have earned approximately the same as Larry Kirby or $13,000.00 per year.

IV.

Discussion

It appears from the evidence that the WV Society for the Blind was a vehicle established to administer the Randolph-Shepherd Act. This Act provided federal assistance to legally blind persons (as defined in the Act) by providing training and employment opportunities. The WV Society for the Blind is administered by its director, Richard Collett. The WV Dept. for Vocational Rehabilitation, of which the WV Society for the Blind was a part, certified to the WV Society for the Blind those

persons who were qualified to participate in the programs offered by the WV Society for the Blind. The central program administered by the WV Society for the Blind appears to be the vendors program which included training blind individuals to manage and operate vending stands throughout the State. The stands were identified by number and were either stands for which the operators were paid a salary or were stands whose operators received a commission based upon sales.

The Blind Vendors Association was comprised of those blind persons who were qualified to participate in the programs offered by the WV Society for the Blind. They elected a committee of three members to represent them in matters in which they were permitted to participate under the administration of Mr. Collett.

For the purposes of this discussion the first two issues involving allegations of unlawfull discrimination based on sex and age are hereinafter dealt with together. The third issue will be treated independently as it provides some new insight to law with regard to blindness.

A. Did the Respondent unlawfully discriminate against the Complainants on the basis of their sex or age?

The evidence is amptly clear that the Complainants were members of the protected classes of age and sex. Based upon the test devised in the McDonnel Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed. 2d 668 (1973); and

somewhat defined by in Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed. 2d 207 (1981); which were approved by the West Virginia Supreme Court of Appeals in the case of State ex rel. Logan-Mingo Area Mental Health Agency, Inc., ___WV___ 329 SE2d 77 (1985).

In the above-cited cases the test referred to requires that the Complainant establish a prima facie case, and thereafter the employer is required to articulate a legitimate non-discriminatory reason for its actions. Thereafter, the Complainant is required to prove that those proffered were pretextual. In the instant case, the Complainants proved that they were members of the protected classes, i.e. over 40 years of age and female and that they were qualified for and applied for jobs which were subsequently awarded to men. By establishing this the Complainants proved a prima facie case, and thereafter, the Respondent explained that those positions were awarded to the men, Joe Gordan and Larry Kirby, because they obtained higher test scores on the revised "Colorado System."

Thus, it became the burden of the Complainants to prove that the reason offered by the Respondent was pretextual. There was no evidence offered by the Complainants that the reason offered by the Respondent was pretextual, in fact, the Complainants agreed that the very reason they were denied the positions was because of the scores they received and applied to the "Colorado System." Inasmuch as there is no contest with regard to the reason offered by the

Respondent, the allegations regarding unlawful discrimination and sex should be dismissed as being unproven.

B. Issue: Did the Respondent, by revising the "Colorado System" create a test that unlawfully discriminated against the Complainants?

This issue revolves around two factors, namely, visual acuity and adverse impact. It can be readily ascertained from the record that the visual acuity of both Helen Bryan and Effie McClanahan was less than that of their male counterparts who were awarded the positions competed for. (See findings of fact #2, #6 and #8).

The adverse impact came as a result of the revision of the "Colorado System" which eliminated the seniority criteria and the basic objective thrust of the test and thereby placed the weight of the decision upon the oral, unwritten and subjective questions and answers proposed to the competitors by the scorers.

The evidence reveals that the administration of the WV Society for the Blind proffered to the Committee for the Blind Vendors Association a proposed change in the "Colorado System." This change permitted the Committee (three members) together with the Administrator (Richard Collett) to ask questions and give scores on each answer to the questions and thereafter arrive at an average test score for each competitor. The highest test score would be declared

the winner, and in cases of a tie, the competitor having the greatest seniority in the Blind Vendors Association would be declared the winner. [While this all appears to be quite proper and neutral on its face, it contains a very serious problem in application.]

The problem referred to above, is that as a general rule, persons having greater visual acuity do better on scored tests than do those blind persons having less visual acuity. It was to this point that Mr. James Gashel testified. In his testimony he was careful to point out that, throughout society and in blind programs, it was a common occurrence for those persons having greater visual acuity being given preference over those having less visual acuity. Mr. Gashel used the destinction as being between those who were partially sighted (although legally blind) and those who were totally blind. Unequal test scores resulted from the physical fact that the partially blind could more readily overcome obstacles and therefore create the impression on those who made selective decisions that they were more capable. This "attitude problem" results in the less blind being selected in lieu of the totally blind person when the totally blind person was perfectly capable of performing the task but might require some technique or apparatus to overcome the obstacles in the job being sought.

This Hearing Examiner believes that although the courts have not addressed the specific issue of discrimination within the protected class of blindness, there is ample case

law espoused by the courts to support the analogy that where there is discrimination within a protected class such as age that it would be applicable in the instant circumstances. [See Goldstein v. Manhattan Industries, Inc., 758 F2d 1435 (11th Cir. 1985); McCorstein v. U.S. Steel Corp., 621 F2d 249 (5th Cir. 1980); Hashell v. Kaman Corp., 743 F2d 113, (2nd Cir. 1984); Maxfield v. Sinclair International, 766 L.2d 788, 38 FEP cases 442 (1985).]

In the above-cited cases, the courts generally held that the Complainant may establish the fourth element of the McDonell-Douglas Test for a prima facie case by showing that she/he was replaced by a younger person thereby permitting an inference of age discrimination. An examination of the definition of blindness as set forth in WV Code 5-11-3(s) reveals how blindness can also be interpreted by the degree of visual acuity. That definition is:

> "For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is occasioned by a limitation in field vision such that the widest diameter of the visual field subtends an angle no greater than 20°."

Thus, under the statute, a person may be legally blind but still have 20/200 vision. Such was the case with Joe Gordan while Effie McClanahan had only five percent light perception. Further, the same distinction visual acuity can

be observed when noting that Larry Kirby's visual acuity was 20/400 while Helen Bryan was totally blind in her left eye and had only slight peripheral light perception in her right eye.

The questions propounded to the competitors in the instant case were subjective in nature and could have been given any score, but it is important to note that, had the "Colorado System" not been revised, then the scores of each of the competitors would have been placed in the very good category, and, under those circumstances the Complainants would each have been awarded the stands rather than their male counterparts. This means that the only objective criteria (seniority) was not utilized and this Hearing Examiner is concerned as the courts are that subjective criteria should be very closely scrutinized. (See Furnco Construction Corp. v. Waters, 438 U.S. 567, 17 FEP 1062 (1978); Roe v. General Motors Corp., 457 F.2d 348, 4 FEP 445 (5th Cir. 1972); U.S. v. Chesapeake and Ohio Railway Co. 471, F.2d 582, 5 FEP 308, (4th Cir. 1972); Parham v. Southwestern Bell Telephone Co. 433 F.2d 421, 2 FEP 1017 (8th Cir. 1970); U.S. v. City of Chicago, 549 F.2d 415, (7th Cir. 1977); EEOC v. Detroit Edison Co. 515 F.2d 301 (6th Cir. 1975); EEOC v. Sandea Savings and Loan Association, 27 FEP 583 (DNM 1980); Reynolds v. Sheet Metal Workers Local 102 498 F. Sup. 952 (D.D.C. 1980).

James Gashel, an expert on blindness and blind programs, testified that the purpose for the seniority

criteria in the "Colorado System" was to eliminate the degree of visual acuity (blindness) as a factor in determining the outcome of competition between two similarly qualified individuals. This would prevent, as Mr. Gashel testified, "the situation where in the world of the blind the one-eyed man is king."

It will therefore be this Hearing Examiner's recommendation that the Commission find the Respondent guilty of unlawful discrimination in its application of the revised "Colorado System" because the revision removed for all practical purposes any objective criteria and that its use and application resulted in an adverse impact upon the Complainants and will continue to have an adverse impact upon those competitors within the Blind Vendors Association who compete for stands in the future.

V.

Conclusions of Law

1. The Commission has jurisdiction over the parties and the subject matter as set forth in the complaints.

2. That the Consolidation of these cases for public hearing was proper within the procedural rules and afforded both parties substantive and procedural due process as required by law.

3. The Complainants proved a prima facie case of unlawful sex discrimination in that the Complainants proved

they were qualified females who were passed over in the selection process and that males were selected having similar qualifications.

4. The Respondent articulated a legal, non-sexually discriminatory reason for their selection of male candidates in that the Respondent relied solely upon the test scores as a selection device to which the Complainants, thereafter, failed to prove was a pretextual reason.

5. Because the Complainants failed to prove the Respondent's non-discriminatory reason was pretextual, the Complainants have failed to carry their burden of proof and therefore this Hearing Examiner has no alternative but to conclude that the Respondent did no unlawfully discriminate against the Complainants on the basis of their sex.

6. The Complainants proved a prima facie case of unlawfull age discrimination, in that, the Complainants proved that they were over the age of 50 years and that they were passed over in the selection process in favor of persons with comparable qualifications but who were younger.

7. The Respondent articulated a legitimate, non-discriminatory reason by showing that it relied solely upon the test scores as the selection device. Thereafter, the Complainants failed to prove that this reason was pretextual.

8. The Respondent did not unlawfully discriminate against the Complainants on the basis of their age.

9. That the complaints of Helen R. Bryan, Docket Nos. ES-62-86 and EA-63-86 be dismissed with prejudice.

10. That the complaints of Effie M. McClanahan, Docket Nos. ES-38-86 and EA-39-86 be dismissed with prejudice.

11. The Complainants proved a prima facie case of unlawful discrimination against the Respondent in that the Complainants proved that the "Colorado System" as revised by the Respondent, disparately impacted on persons having less visual acuity than blind persons having greater visual acuity.

12. The Complainants failed (by application of the Greggs-Albemarle Paper Co.) to prove that there was demonstrable relationship between the scores on the test, as revised, and, the successfull performance of the job of managing or operating a stand.

13. The Complainants proved that the unrevised "Colorado System" which relied more on seniority, had a comparable business utility and less adverse impact.

14. The Respondent, by utilizing its revised version of the "Colorado System," unlawfully discriminated against the Complainants because of their blindness in violation of WV Code 5-11-9(a).

15. That the Complainants be made whole by awarding to them those stands which should have been awarded to them, namely, Helen R. Bryan be awarded Stand 55 and Effie McClanahan be awarded Stand 46 together with backpay in the

amount of $1,080.33/month beginning May 1, 1985* and each month thereafter till they are installed as managers or in the alternative that the Complainants be awarded backpay of $1,080.33 per month beginning May 1, 1985 and the next/first available comparable positions as managers and frontpay of $1,080.33/month* until the same become available.

16. That incidental damages be awarded to Effie McClanahan in the sum of $2,500.00 for the embarrassment and humiliation she has suffered.

17. That the sum of $2,500.00 be awarded be to Helen Bryan for the embarrassment and humiliation she has suffered.

18. That the Attorney General whose assistant, Mary K. Buchmelter, provided the legal services to the Commission and Complainant herein as required by statute not be awarded attorneys fees.

*NOTE: This figure is based upon annual earnings of $13,000.00/year.

VI.

Recommended Order

As its recommended order, the Hearing Examiner recommends that the WV Human Rights Commission act in the following manner:

1. The Commission adopts as its own the recommended decision and its contents of the Hearing Examiner.

2. That the complaints of Helen R. Bryan, Docket Nos. ES-61-86 and EA-63-86 be dismissed with prejudice.

3. That the complaints of Effie M. McClanahan, Docket Nos. ES-38-86 and EA-39-86 be dismissed with prejudice.

4. That the Respondent, WV Society for the Blind/WV Dept. of Vocational Rehabilitation, be found guilty of unlawful discrimination against Helen R. Bryan on the basis of her complaint, Docket No. EB-62-86.

5. That the Respondent, WV Society for the Blind/WV Dept. of Vocational Rehabilitation, be found guilty of unlawful discrimination against Effie M. McClanahan on the basis of her complaint, Docket No. EB-40-86.

6. That the Complainants be made whole by awarding to them those stands which should have been awarded to them, namely, Helen R. Bryan be awarded Stand 55 and Effie McClanahan be awarded Stand 46 together with backpay in the amount of $1,080.33/month beginning May 1, 1985 and each month thereafter till they are installed as managers or in the alternative that the Complainants be awarded backpay of $1,080.33 per month beginning May 1, 1985 and the next/first available comparable positions as managers and frontpay of $1,080.33/month until the same become available.

7. That incidental damages be awarded to Effie McClanahan in the sum of $2,500.00 for the embarassment and humiliation she has suffered.

8. That the sum of $2,500.00 be awarded to Helen Bryan for the embarrassment and humiliation she has suffered.

9. That the Attorney General whose assistant, Mary C. Buchmelter, provided the legal services to the Commission and Complainant herein as required by statute not be awarded attorneys fees.

10. That the Respondent be enjoined from further use of the "Colorado System" as it presently has been revised by the Respondent.

Entered this 10th day of June, 1986.

RESPECTFULLY SUBMITTED,

BY _____
JOHN M. RICHARDSON
HEARING EXAMINER