



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

September 2, 1987

Lois Cook
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Flemington, WV 26347

North Central WV Community
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1101 Fairmont Ave.
Fairmont, WV 26554

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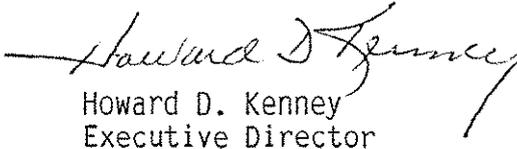
RE: Cook v. North Central WV Community Action Association, Inc.
ER-312-86

Dear Parties:

Herewith, please find the final order of the WV Human Rights Commission in the above-styled and numbered case.

Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective April 1, 1987, any party adversely affected by this final order may file a petition for review with the supreme court of appeals within 30 days of receipt of this final order.

Sincerely,


Howard D. Kenney
Executive Director

HDK/mst
Enclosures

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

AMENDED AND EFFECTIVE
AS OF APRIL 1, 1987

Enr. H. B. 2638]

3

116 this article.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the
8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases.

31 The appeal procedure contained in this subsection
32 shall be the exclusive means of review, notwithstanding
33 the provisions of chapter twenty-nine-a of this code:
34 *Provided*, That such exclusive means of review shall not
35 apply to any case wherein an appeal or a petition for
36 enforcement of a cease and desist order has been filed
37 with a circuit court of this state prior to the first day
38 of April, one thousand nine hundred eighty-seven.

39 (b) In the event that any person shall fail to obey a
40 final order of the commission within thirty days after
41 receipt of the same, or, if applicable, within thirty days
42 after a final order of the supreme court of appeals, a
43 party or the commission may seek an order from the
44 circuit court for its enforcement. Such proceeding shall
45 be initiated by the filing of a petition in said court, and
46 served upon the respondent in the manner provided by
47 law for the service of summons in civil actions; a hearing
48 shall be held on such petition within sixty days of the
49 date of service. The court may grant appropriate
50 temporary relief, and shall make and enter upon the
51 pleadings, testimony and proceedings such order as is
52 necessary to enforce the order of the commission or
53 supreme court of appeals.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

LOIS CCOK,

Complainant,

v.

DOCKET NO. ER-312-86

NORTH-CENTRAL WEST VIRGINIA
COMMUNITY ACTION ASSOCIATION, INC.,

Respondent.

FINAL ORDER

On the 12th day of August, 1987, the Commission reviewed the proposed order and decision of Hearing Examiner, James Gerl, in the above-captioned matter. After consideration of the aforementioned and exceptions thereto, the Commission does hereby adopt said proposed order and decision, encompassing findings of fact and conclusions of law as its own, with modifications and amendments set forth below.

In the subsection titled Findings of Fact, the language in paragraph enumerated as 5 is stricken. Substituted therefore, is the following:

"5. Alvaro, who is white, began supervising the complainant in April, 1982, 2½ years before problems developed between the two."

In the same subsection, the paragraph enumerated as 6, following the word "conflict," the word "perhaps" is added.

In the same subsection, paragraph enumerated as 7, the language in the first sentence is deleted. The language in the

second sentence is modified to read: "Complainant resented Alvaro's supervisory instruction and criticism."

In the same subsection, paragraph enumerated as 8, the language in the first sentence is deleted.

The paragraphs enumerated as 12, 13 and 18 of said subsection are deleted.

In the subsection titled Discussion, on page 5 referencing the second full paragraph, the word "for" is stricken and replaced by the word "with." In the same paragraph, the word "five" is stricken, and substituted therefore, are the words "two and one half." The remaining two sentences which begin, "During..." and "A person..." respectively, are deleted.

On page 5 of said subsection, referencing the third full paragraph following the words "personality conflict" contained in the last sentence, the words "or whatever" are added.

On page 6 of said subsection, the fourth sentence in the second full paragraph which reads "Alvaro testified that Sterling often made comparisons of the black subcultures in Houston and Fairmont," is stricken.

It is hereby **ORDERED** that the Hearing Examiner's proposed order and decision, encompassing findings of fact and conclusions of law, be attached hereto and made a part of this final order except as modified and amended by this final order.

It is finally **ORDERED** that this case be dismissed with prejudice.

By this final 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 final order and that they may seek judicial review.

Entered this 2nd day of September, 1987.

RESPECTFULLY SUBMITTED,

BY Betty A. Hamel
CHAIR/VICE CHAIR
WV HUMAN RIGHTS COMMISSION 

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

APR 13 1987
STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

LOIS COOK,

Complainant,

vs.

Docket No. ER-312-86

NORTH-CENTRAL WEST
VIRGINIA COMMUNITY
ACTION ASSOCIATION, INC.,

Respondent.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

A public hearing for this matter was convened on April 7-8, 1987 in Fairmont, West Virginia. Commissioner Iris Bressler served as Hearing Commissioner. The complaint was filed on December 23, 1985. The notice of hearing was issued on December 15, 1986. A telephone Status Conference was convened on February 13, 1987. Neither party complied with the direction of the Hearing Examiner to submit post hearing briefs and proposed findings of fact. To the extent that the testimony of various witnesses is not in accord with findings as stated herein, it is not credited.

CONTENTIONS OF THE PARTIES

Complainant contends that respondent subjected complainant's work to scrutiny and harrassed her because of her race. Respondent maintains that complainant was treated the same as other Area Supervisors and that all criticism of her work was justified.

FINDINGS OF FACT

Based upon the preponderance of the evidence, the Hearing

Examiner has made the following findings of fact:

1. Complainant is black.
2. Respondent operates programs for low-income persons in the following West Virginia counties: Monongalia, Marion, Preston, Taylor, Barbour, Tucker, Randolph, Pocahontas, and Harrison.
3. Complainant is employed by respondent as Area Supervisor of the Head Start program for Barbour and Randolph counties.
4. Complainant received several memos from Alvaro, her supervisor. One such memo, which was issued in September 1985 was critical of complainant's using a bus that was not in safe condition.
5. Complainant worked for Alvaro, who is white, for over five years before any problems developed between them.
6. After complainant raised an issue at a meeting regarding whether hourly employees who had to attend meetings should be paid. Thereafter, complainant and Alvaro developed what complainant described as a personality conflict.
7. Complainant is hypersensitive to criticism. Complainant resents supervisory instruction and constructive criticism.
8. Alvaro treats all Area Supervisors equally. All Area Supervisors received corrections and memos explaining policy and numerous other memos.
9. Alvaro is an impatient person, and when she is upset, her voice has harsh tones. She becomes impatient and speaks harshly to both black and white employees.
10. Alvaro gave complainant good ratings on her evaluations.
11. Alvaro never issued a written reprimand to complainant.

12. Respondent fired employee Shorter in part because he committed racial discrimination against co-employee Goines, who is black.

13. Complainant desired to fire an employee. Alvaro instructed complainant to be careful to have her facts right before having the employee fired. Complainant did not get the facts right, and the termination was reversed.

14. In February, 1985 complainant called Alvaro a "liar" at a meeting at work. Much of Alvaro's criticism of complainant's work occurred after this incident.

15. Complainant forgot to notify Alvaro before a deadline that she wanted to go to a seminar in another location. When Alvaro asked complainant why she wasn't going, complainant stated that she did in fact want to go to the seminar. Alvaro made arrangements for a roll away cot to be placed in the motel room with two other employees, and informed them that they were to decide who was going to use the cot.

16. It is a common practice when respondent sends three employees to a conference for two employees to sleep on the bed and the other on a roll away cot.

17. Alvaro did not make a statement that blacks have lower morals.

18. Sterling, a white employee of respondent, often made comparisons of the black subculture in Houston and the black subculture in Fairmont.

CONCLUSIONS OF THE LAW

1. Lois Cook is an individual claiming to be aggrieved by an alleged unlawful discriminatory practice and is a proper complainant for purposes of the Human Rights Act. West Virginia Code, §5-11-10.

2. North-Central West Virginia Community Action Association, Inc., is an employer as defined by West Virginia Code Section 5-11-3(d) and is subject to the provisions of the Human Rights Act.

3. Complainant has not established a prima facie case of race discrimination.

4. Respondent has articulated a legitimate non-discriminatory reason for Alvaro's supervision of complainant's work.

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

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

DISCUSSION

In fair employment, disparate treatment cases, the initial burden is upon the complainant to establish a prima facie case of discrimination. Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission 309 S.E.2d 342, 352-353 (WVa 1983); McDonnell-Douglas Corporation v. Green 411 U.S. 792 (1973). If the complainant makes out a prima facie case, respondent is required to offer or articulate a legitimate non-discriminatory reason for the action which it has taken with respect to complainant. Shepherdstown Volunteer Fire Dept., supra; McDonnell Douglas,

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

In the instant case, complainant has not established a prima facie case of race discrimination. Complainant has proven that she is black. Otherwise, complainant has not proven any facts which might give rise to an inference of discrimination. The gravamen of complainant's claim is that Alvaro, her white supervisor, was biased against complainant because complainant is black. In support of her claim, complainant states that Alvaro harshly criticized complainant's work and that Alvaro bombarded complainant with memoranda.

Complainant's contention, however, is undermined by the fact that complainant worked for Alvaro for five years before any problems occurred. During this timeframe, Alvaro acted as though complainant could do no wrong. A person who is free from racial bias for five years does not often suddenly acquire it thereafter.

Indeed, the problems between complainant and Alvaro began only after complainant spoke out at a meeting on behalf of pay for hourly employees who attend certain meetings. The problems intensified after February, 1985 when complainant called Alvaro a liar at a meeting. It is significant that complainant herself in a memorandum to Alvaro described the problems between them as a "personality conflict".

Even assuming arguendo that complainant had established a prima facie case, respondent has articulated a legitimate

non-discriminatory reason for its treatment of complainant. Respondent proved that Alvaro treats all Area Supervisors equally. Although Alvaro is an impatient person and her voice often sounds harsh, she does not single out blacks for impatience or harsh talk. Alvaro sends numerous memoranda to Area Supervisors. Complainant's feeling that she receives too many memos and that they contain unfair criticisms of complainant are not supported by the evidence. Alvaro gave complainant good ratings on her evaluations. Alvaro never issued a written reprimand to complainant.

Complainant has not demonstrated that the reason articulated by respondent for its treatment of complainant is pretextual. The only strands of evidence that would prove pretext if proven are the allegations raised by complainant that Alvaro made a statement that blacks have lower morals and that complainant was forced to sleep in a cot because she is black.

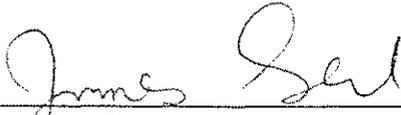
Complainant's witness Sterling testified that Alvaro made the statement that blacks have lower morals. Alvaro denies having made the statement. The other two persons who were present according to Sterling did not hear Alvaro make the statement. Alvaro testified that Sterling often made comparisons of the black subcultures in Houston and Fairmont. The record evidence reveals that Sterling is biased against Alvaro. The testimony by Alvaro is more credible than the testimony of Sterling.

Complainant's contention that she was forced to sleep on a cot because of her race lacks merit. It is a common practice when three employees of respondent travel to a seminar or conference

for two employees to sleep on the bed and for the third employee to sleep on a rollaway cot. In the instance raised by complainant the deadline passed with complainant failing to notify Alvaro that she was going. When Alvaro inquired as to why she was not going, complainant replied that she had forgotten to notify Alvaro but she did in fact want to attend the conference. Alvaro made arrangements for a rollaway cot to be placed in the room of two other employees attending the seminar and directed the employees to decide among themselves who would sleep on the rollaway. The evidence does not support the conclusion that complainant's race played any role in this incident.

PROPOSED ORDER

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



James Gerl
Hearing Examiner

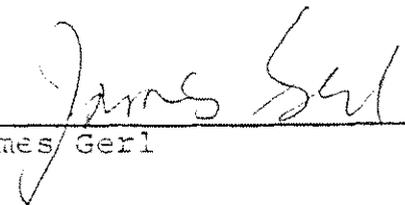
ENTERED: June 24, 1987

The undersigned hereby certifies that he has served
the foregoing Proposed Order and Decision
by placing true and correct copies thereof in the United States
Mail, postage prepaid, addressed to the following:

Gregory T. Hinton, Esq.
314 Deveny Building
Fairmont, WV 26554

Francis Warder, Esq.
P.O. Box 1206
Clarksburg, WV 26801

on this 24th day of June, 1967.


James Gerl