



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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ARCHA MOORE, JR.
Governor

November 3, 1986

Theresa G. Cooper
5318 B Kentucky St.
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Kanawha Co. Sheriff's Dept.
Corrections Division
407 Virginia St. E.
Charleston, WV 25301

Sharon Mullens
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1204 Kanawha Blvd. E.
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Kanawha County Courthouse
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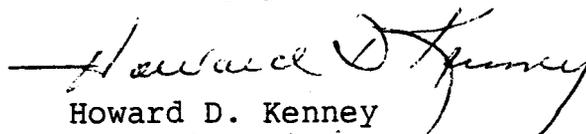
RE: Cooper v. Kanawha County Sheriff's Dept./
Corrections Division ES-375-85

Dear Parties:

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

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 thirty (30) days, the Order is deemed final.

Sincerely yours,


Howard D. Kenney
Executive Director

HDK/mst
Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RECEIVED

OCT 14 1986

W.V. HUMAN RIGHTS COMM.

THERESA G. COOPER,

Complainant,

vs.

Docket No. ES-375-85

KANAWHA COUNTY SHERIFF'S
DEPARTMENT/CORRECTIONS DIVISION,

Respondent.

O R D E R

On the 9th day of October, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Theodore R. Dues, Jr. 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 22nd day of Oct, 1986.

Respectfully Submitted,

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

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

THERESA G. COOPER and
WILLIAM H. PORTERFIELD,

Complainants,

v.

Case No. ES-375-85

KANAWHA COUNTY SHERIFF'S DEPARTMENT
CORRECTIONS DIVISION,

Respondent.

EXAMINER'S RECOMMENDED FINDINGS OF
FACT AND CONCLUSIONS OF LAW

This matter matured for public hearing initially on March 15, 1986. The evidence continued to be taken on March 20, 1986; April 1, 1986; April 16, 1986; and April 23, 1986. The hearing panel consisted on each occasion of Theodore R. Dues, Jr.; with the exception of April 16 and April 23 when the Honorable Sid Allen, Commissioner, for the West Virginia Human Rights Commission also served on the hearing panel.

The parties were represented by counsel on each occasion. The Complainant was represented by Sharon Mullens and the Respondent by Shelly Rusen. The Complainant appeared in person on each day that evidence was received and the Respondent appeared by its representative, Sheriff Danny Jones.

Each party submitted proposed findings of fact and conclusions of law on May 27, 1986.

ISSUES

1. Was the Complainant subjected to acts of sexual harrassment?

2. If acts of sexual harrassment occurred, did the Respondent take action reasonably calculated to remedy the same.

FINDINGS OF FACT

1. The Complainant Theresa G. Cooper was employed by the Respondent as a corrections officer in the Kanawha County Jail on November 1, 1982.

2. At that time the Sheriff was Carl Withrow.

3. At the time of Complainant Cooper's hiring, the Kanawha County Jail's chief officer in command was Chief Jailer Ralph Porterfield and second command was Lt. Dave Parks.

4. This chain of command remained in effect until December 31, 1984.

5. Chief Porterfield was the father of William Porterfield; also a corrections officer at the Kanawha County Jail.

6. In December, 1982, Complainant and William Porterfield began dating. Their relationship developed to the point where they began living together.

7. This relationship continued throughout their employment at the Kanawha County Jail.

8. At the time the Complainant went to work at the Kanawha County Jail, there were five other females working in the jail, all holding the rank of corporal. They were: Corporal Roberta Mazella (now holding the rank of Sergeant); Corporal Mary

Balcom (now holding the rank of Sergeant); Corporal Janice Susan Batman-Atkinson; Corporal Ruth Carter; and Corporal Dorothy Singleton.

9. The Complainant was the only female corrections officer working in the jail who did not hold the rank of corporal until Sarah Bilheimer was hired as a corrections officer in July, 1984.

10. In the Kanawha County Jail, corrections officers were assigned to work various shifts, including; the day shift (from 8 a.m. to 4 p.m.); the afternoon shift (from 4 p.m. to 12 midnight); the midnight shift (from 12 midnight to 8 a.m.); and a relief shift which included the various shifts indicated but worked on a rotating, weekly basis.

11. On each shift, a corrections officer was designated as a shift supervisor to act as the responsible person in directing the activities on that shift.

12. The chain of command within the jail was from the corrections officer to a corporal to Lt. Parks to Chief Jailer Ralph Porterfield to Sheriff Withrow.

13. Initially, upon the employment of the Complainant, the shift supervisor assignments were made on the basis of seniority to the effect that the five female corporals previously referred to herein acted in a supervisory capacity.

14. During 1983, the shift supervision was changed by Chief Jailer Ralph Porterfield so that male correctional officers of a rank lower than corporal supervised the female corporals and other on the shift.

15. Complainant did not act as a shift supervisor during her employment due to her position on the seniority list.

16. The duties of the female corrections officers included processing paperwork associated with the booking of prisoners, frisking female prisoners, making security checks in the rear of the jail, working the control booth and performing duties in the rear of the jail associated with both the male and female population of the jail as the existing circumstances warranted.

17. During the first few months of Complainant's employment, she was assigned to work the rear of the jail. Sometime thereafter, she was told by Chief Porterfield that she was not to work the rear of the jail.

18. No other female officer in the jail received such an order. All other female officers continued to perform duties in the rear of the jail when necessary with the exception of Sarah Bilheimer who was never trained in the procedures used in the rear of the jail.

19. On one occasion in March, 1983, the Complainant insisted on going to the rear of the jail despite Corporal Balcom's order not to do so.

20. The Complainant was instructed by Chief Jailer Ralph Porterfield that she should come directly to him with any problems she had rather than going through the usual chain of command.

21. Shortly after the Complainant began working in the Kanawha County Jail, in early 1983, she was the subject of

approximately thirty-eight (38) complaints and disciplinary write-ups by several superior officers including Corporal Batman-Atkinson, Corporal Mazella, and Corporal Carter.

22. These write-ups involved infractions of various jail policies and procedures and dealt with the Complainant's resistance to the authority of superior officers within the jail.

23. The affected officers, along with other officers, confronted Sheriff Withrow about their problems with the Complainant.

24. Although Sheriff Withrow promised to deal with these matters, no disciplinary action was taken, nor was the Complainant ever counseled about her conduct.

25. After taking these complaints concerning the Complainant to Sheriff Withrow, the officers noticed a change in the attitude of Chief Jailer Porterfield towards them.

26. Corporal Roberta Mazella became the subject of an investigation by Chief Jailer Porterfield after she refused to speak to the Complainant. As the result of this investigation in which Chief Porterfield recommended that she be demoted to the rank of corrections officer, Corporal Mazella received the first reprimand of her fifteen year career with the Kanawha County Sheriff's Department.

27. Corporal Mazella who had worked her entire career in the jail, ultimately requested a transfer to the law enforcement division where she worked as a secretary for several months in early 1984.

28. Also, shortly after speaking to Sheriff Withrow

about the Complainant, Corporal Mazella was changed from the day shift to evening shift, and Corporal Batman-Atkinson was changed from day shift to relief shift; against the desires of both officers.

29. Both officers perceived that these shift changes were the result of Chief Jailer Porterfield's displeasure over their complaints to Sheriff Withrow concerning the Complainant.

30. Corporal Batman-Atkinson, who had been promoted to corporal upon the recommendation of Chief Jailer Porterfield, requested a transfer from the jail in early 1983 after working there over nine years though she did not want to leave.

31. Corporal Batman-Atkinson became the focus of a disciplinary write-up by Chief Jailer Porterfield who recommended that she be fired.

32. Further, Corporal Ruth Carter received numerous critical write-ups from Chief Jailer Porterfield after she participated in the visit to Sheriff Withrow.

33. Prior to Chief Jailer Porterfield's tenure, Corporal Carter had never been the subject of any discipline.

34. On one occasion, in the presence of Deputy Jim Mangus, Chief Jailer Porterfield refused to accept a medical excuse from Corporal Carter to relieve her from participating in a shooting qualification. Chief Jailer Porterfield then wrote a report to Sheriff Withrow concerning Corporal Carter's poor performance.

35. After seventeen years of working in the Kanawha County Jail, Corporal Carter applied for and received a transfer

from the jail in October, 1983 due to what she perceived as harrassment from Chief Jailor Porterfield.

36. Others leaving the jail due to Chief Jailer Porterfield's treatment of them were Jim Mangus, Jess Johnson, and Corporal Dorothy Singleton.

37. Many of the officers in the jail perceived that the Complainant's relationship with William Porterfield resulted in the Complainant receiving preferential treatment in the jail from Chief Jailer Porterfield.

38. During this period, the scheduling of work shifts within the jail was done by either Lt. Dave Parks with the approval of Chief Jailer Porterfield or by Chief Jailer Porterfield himself.

39. On October 23, 1983, the Complainant and William Porterfield, at their request were scheduled to work the relief shift together.

40. This assignment continued for both of them until December 8, 1984.

41. During this period of time, the Complainants were the only two correctional officers whose work assignments remained unchanged.

42. Throughtout their assignment on the relief shift the Complainant and William Porterfield were scheduled to work on exactly the same days at exactly the same times; they were also scheduled off duty on exactly the same days. William Porterfield acted as shift supervisor to Complainant on relief shift.

43. In August, 1983 and in August, 1984, the Complainant

and William Porterfield were permitted to take vacation time together; by being scheduled off at the same time.

44. The work schedules from October 23, 1983 through December 7, 1984 reflect that the Complainant did not work the same shift with Tim Clark with the exception of three occasions.

45. Because of the resentment towards the Complainant due to the perceived preferential treatment she was receiving from Chief Jailer Porterfield, the Complainant had difficulty in her relationships with most of the officers in the jail.

46. The Complainant herself believed that no one in the jail liked her.

47. There was a great deal of joking, horseplay and pranks among the officers working in the jail.

48. Much of the joking was sexual in nature.

49. Profanity was commonly used by many officers with the exception of officers such as Corporal Carter and Corporal Singleton who were offended by such matters and let others in the jail know that they were so offended.

50. The officers in the jail including Tim Clark, were careful to avoid using profanity in the presence of Corporals Singleton and Carter. The Complainant was not one of those officers in the jail who was known to be easily offended.

51. Indeed, the Complainant initiated discussions about her sexual encounters with Complainant Porterfield.

52. The Complainant and William Porterfield were observed on one occasion laughing about matters portrayed in a pornographic magazine seized from a prisoner.

53. The Complainant once permitted a pornographic film to be shown in the jail.

54. In early 1984, during the incarceration of inmate Sharon Wolfgram, an incident involving Corrections Officer Tim Clark and William Porterfield occurred in the female section of the jail wherein Tim Clark inquired of William Porterfield whether or not a rumor circulating in the jail about certain sexual activity of him and the Complainant was true.

55. William Porterfield later directed Tim Clark to repeat the query to the Complainant. Tim Clark did so.

56. The Complainant laughed and made a retort to this question to Tim Clark during subsequent encounter.

57. At the time of this comment, Tim Clark was not the supervisor of either Complainant.

58. The Complainant reported this comment to Chief Jailer Ralph Porterfield.

59. Chief Jailer Ralph Porterfield spoke to Tim Clark about this matter and received no further complaints from the Complainant concerning comments made by Tim Clark.

60. None of these comments were ever reported to Lt. Parks or Captain Briles.

61. Such comments were made to no other female officer in the jail by Tim Clark or anyone else.

62. The Complainant alleges that she received certain items while working within the Kanawha County Jail which included a card which referred to her as a "bitch" which was signed by the Kanawha County Sheriff's Department and which made her feel as

though no one liked her, a paper bag found in the bathroom lobby of the jail which stated that "The Lovebirds are in charge, How's about a date TC, Bill", a rule book bearing the handwritten statement "TC sucks" found among a pile of such books located in the control booth, and a pornographic book entitled Seducing Her Neighbors, found in a file cabinet in the control booth.

63. All of these items were shown to Chief Jailer Ralph Porterfield.

64. Writing on the walls of the jail was common at the time of the Complainant's employment in the Kanawha County Jail.

65. These writings included remarks about various members of the staff including Janice Batman-Atkinson, Roberta Mazella, Joan Bias, Glen Bays, Austin Burke, Ron Crowder, Eric Holmes, Brooks Thompson, Tim Clark, the Complainant and William Porterfield. There was not way to distinguish who was doing these writings.

66. The Complainant also brought the writings concerning her and William Porterfield to the attention of Chief Jailer Porterfield.

67. Chief Jailer Ralph Porterfield conducted two meetings in which the defacement of jail property was discussed. Chief Jailer Porterfield also circulated a memorandum which warned of possible disciplinary action should any officer by caught defacing jail property.

68. Because of the anonymous nature of these matters, the Chief Jailer could do very little but he did everything that he felt was possible to do in dealing with theses matters. The

Complainant and William Porterfield were satisfied with Chief Jailer Porterfield's attempt to deal with these matter.

69. On December 7, 1984, after the firing of three corrections officers Sheriff Withrow took over the scheduling of shifts within the jail.

70. A memorandum stating that no person could trade shifts without his express permission was circulated.

71. William Porterfield was moved to the midnight shift and the Complainant remained on the relief shift; her shift supervisor was Tim Clark.

72. Numerous other corrections officers had their shifts changed at this time by Sheriff Withrow.

73. Sheriff Jones indicated that he would not permit Complainant and William Porterfield to work on the same shift within the jail during his administration because of the security risk he perceived such an arrangement to be.

74. On December 16, 1984, a disagreement between the Complainant and Tim Clark occurred when Tim Clark refused to allow the Complainant to use an inmate to clean the control booth.

75. The Complainant questioned the property of Tim Clark's instruction, and directed Tim Clark to speak to Chief Jailer Porterfield about the matter.

76. On December 20, 1984, the Complainant again used inmate Fugate to clean the control booth; Tim Clark told her that pursuant to Sheriff Withrow's orders, inmates were not to be used to clean the control booth because of the obvious security risk

posed by such practice. On this occasion, the Complainant permitted and directed inmate Fugate to operate the control booth mechanisms which opened security doors in the jail.

77. No other corrections officers used inmates to clean the control booth.

78. Inmates are not used to clean the control booth under the Jones Administration due to the security risk posed by such practice.

79. On December 27, 1984, the Complainant was working the midnight shift with Tim Clark when Tim Clark directed the Complainant to go to the rear of the jail while he instructed a new corrections officer, Tony Parog, about the procedures in the control booth. The Complainant remained in the rear of the jail with another officer for an hour and a half, at which time she returned to the booth, reported that she was ill and left.

80. During December, 1984, Sheriff Withrow directed and ordered Lt. Dave Parks to complete evaluations on all members of the jail staff for the years 1983 and 1984. Sheriff Withrow directed Lt. Parks to redo several evaluations completed by Chief Jailer Ralph Porterfield for the year 1984 including evaluations completed on the Complainant and William Porterfield.

81. Lt. Parks complied with this order and evaluated all members of the jail staff.

82. This proved to be difficult inasmuch as these evaluations had to be done in a very short period of time and inasmuch as the evaluations were to have been done every six months rather than for an entire year period at once.

83. On December 30, 1984 the Complainant requested to see evaluations.

84. She refused thereafter to sign the evaluations because she felt the evaluations were unfair.

85. The evaluations performed by Chief Jailer Ralph Porterfield on the Complainant differed very little from the evaluations performed by Lt. Dave Parks. The Complainant was satisfied with the evaluations completed by Chief Jailer Porterfield.

86. The evaluations performed by Lt. Parks concerning the Complainant consisted of numerical ratings of various areas of performance and of comments made by Lt. Parks. The comments are not considered for purposes of promotions; only the numerical ratings are important in this regard.

87. On December 31, 1984 Corrections Officer Gravely phoned Lt. Parks and requested that she be permitted to switch shifts with the Complainant.

88. Officer Gravely was scheduled on that day to work the midnight shift with William Porterfield.

89. After conferring with Sheriff Withrow, Lt. Parks denied this request.

90. On December 31, 1984 while on duty, the Complainant phoned Lt. Parks at his home to complain about the refusal to permit her to trade shifts on that day. The Complainant indicated that she felt she was being harassed by Lt. Parks because of the evaluation and that she felt that Tim Clark was harrassing her because of the way he was treating her on the

shift. The Complainant mentioned the possibility of taking legal action against Lt. Parks.

91. On January 1, 1985, Danny Jones assumed the position of Sheriff of Kanawha County.

92. As part of his duties, Sheriff Jones manages the Kanawha County Jail. Sheriff Jones did not retain the services of Chief Jailer Ralph Porterfield, but instead appointed Captain Dawnevyn Briles as Chief Jailer.

93. On January 4, 1985, the Complainant hand-delivered a letter of complaint to Lt. Dave Parks.

94. Lt. Parks did not want to discuss these letters with the complainant and William Porterfield without a third party present because of the threats of legal action made against him by Complainant.

95. Lt. Parks presented these letters to his superior officer, Captain Briles.

96. After assuming the position as Chief Jailer on January 1, 1985 Captain Briles found the morale of the jail staff to be very low. He attempted to interview each employee to discuss the problems and possible solutions to those problems.

97. Captain Briles received many complainants from the officers about the Complainant and William Porterfield.

98. Captain Briles interviewed the Complainant who related to him the incident where Tim Clark had sent her to the rear of the jail. The Complainant indicated to Captain Briles that she felt she was being harrassed, but did not go into the specifics of the statements she alleged had been made to her during the Withrow administration by Tim Clark.

99. Captain Briles had another conversation with the Complainant on January 21, 1985 when he contacted her phone to determine when she would be returning to work after the Complainant missed a number of days. The Complainant indicated that she would be returning to work on January 22, 1985.

100. On January 23, 1985, Captain Briles arranged a meeting with the Complainant, Lt. Parks and himself to discuss the issues raised by the Complainant during his discussions with her. At the meeting, the Complainant's evaluation was discussed.

101. At no time during this meeting did the Complainant offer to produce the items she claimed to have received as previously described in paragraph 62 herein. Nor did she specify the comments co-employee, Tim Clark, allegedly made to her during the Withrow administration.

102. This meeting appeared to Captain Briles and Lt. Parks to conclude to the satisfaction of the Complainant.

103. On January 28, 1985, Captain Briles met with the Complainant to discuss her sick leave. The Complainant became very upset and irrational during this meeting.

104. With respect to complaints made by the Complainant concerning Tim Clark's sending her to the rear of the jail, Captain Briles spoke with Tim Clark about this matter and concluded that his actions in this regard were not improper inasmuch as working the rear of the jail was part of the duties of the Complainant as a corrections officer.

105. Because Complainant had made it clear that she did not care for Officer Clark, Captain Briles moved the Complainant

from Tim Clark's shift to the afternoon shift as of January 19, 1985.

106. This change in shift went into effect less than three weeks after Captain Briles assumed command of the jail and after the Complainant had worked only thirteen (13) shifts with Tim Clark.

107. Throughout her employment at the Kanawha County Jail, the Complainant missed work frequently due to reporting off for illness. In 1983, the Complainant reported off 15 1/2 days due to illness. In 1984, Complainant's sick leave days increased to 23. During the month of January, 1985, Complainant used eight (8) sick days and worked only eleven (11) of the twenty (20) days she was scheduled to work.

108. In August, 1983, the Complainant received a written reprimand from Chief Jailer Porterfield concerning the excessive amount of sick leave she was taking. This written reprimand threatened further disciplinary action if the situation did not improve; no further disciplinary action was taken by Chief Jailer Porterfield despite the fact that Complainant's sick leave increased in 1984.

109. On January 31, 1985, the Complainant made a written request to Sheriff Danny Jones that she be permitted to take one month's medical leave. This request was accompanied by a letter dated January 28, 1985 from Dr. Ward Harshbarger which stated that the Complainant needed this leave due to her "anxiety tension state". This request was granted by Sheriff Jones.

110. On February 12, 1985 the Complainant made a written

request to Sheriff Jones for information concerning the procedure for her return to work.

111. On February 19, 1985 Sheriff Danny Jones made a written response to the Complainant's letter of February 12, 1985 and requested more information as to the meaning of "anxiety tension state".

112. The Complainant responded to this request by letter dated February 28, 1985. This response was accompanied by a copy of the Sheriff's letter of February 19 with comments written on the bottom signed by Dr. Ward Harshbarger.

113. Sheriff Jones responded to this information by letter dated March 2, 1985 to the Complainant in which he asked for her permission to contact Dr. Harshbarger directly since Sheriff Jones had been unable to read the comments written by Dr. Harshbarger at the bottom of the February 19 letter.

114. By letter of March 7, 1985, the Complainant gave Sheriff Jones her permission to directly contact Dr. Harshbarger.

115. Sheriff Jones contacted Dr. Harshbarger by letter of March 16, 1985 and requested a clarification of "anxiety tension state". Sheriff Jones also inquired of Dr. Harshbarger whether he would join in Sheriff Jones' recommendation that the Complainant be evaluated by a specialist to determine whether any kind of mental or emotional disorder existed which would hamper the Complainant the performance of her duties. A copy of this letter was provided to the Complainant by Sheriff Jones with an accompanying letter of March 21, 1985.

116. Dr. Harshbarger responded to Sheriff Jones' request

by letter dated March 22, 1985 in which Dr. Harshbarger "strongly recommended" that the Complainant be evaluated by a psychological specialist. A copy of Dr. Harshbarger's response was provided to the Complainant along with a letter of March 27, 1985 from Sheriff Jones instructing the Complainant to contact him for making arrangements for such an evaluation.

117. By letter dated May 20, 1985, the Complainant informed Sheriff Jones that she would not submit to such an evaluation.

118. Complainant chose not to undergo the psychological evaluation requested by Sheriff Jones because she "felt that Sheriff Jones was out of place in asking for one".

119. Sheriff Jones responded to the May 20, 1985 correspondence by letter dated May 23, 1985 in which he reiterated this request for a psychological evaluation. The Complainant had never undergone this evaluation and has not returned to work at the Kanawha County Jail despite Sheriff Jones' assurance that the Complainant could return to work whenever she chose to submit to this evaluation.

120. Sheriff Jones requested that the Complainant undergo a psychological evaluation in order to determine the safety of placing her back to work in the hostile and dangerous atmosphere which exists in the Kanawha County Jail.

121. Since January 25, 1985 the Complainant has not resumed her duties as a corrections officer in the Kanawha County Jail despite the fact that Sheriff Jones has kept her position open.

122. None of the acts cited as sexual harrassment by the Complainant occurred during the administration of Sheriff Danny Jones, nor did Sheriff Jones have any notice of these matters prior to assuming office on January 1, 1985.

123. All Complaints asserted by the Complainant were reported directly to Chief Jailer Porterfield who handled these matters as best he could and to the apparent satisfaction of the Complainant.

124. No information appears in the record as to the salary of the Complainant during her employment at the Kanawha County Jail.

125. The Complainant failed to reasonably mitigate her damages since January 31, 1985.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the parties and subject matter in this action.

2. The Complainant has failed to establish that the receipt of a card, receipt of a paper bag, discovery of a rule book, work evaluation, work assignment by Officer Tim Clark, or writings on the walls of the jail concerning her are matters of a sexual nature which might be considered as acts of sexual harassment for which the Respondent can be held liable. Rabidue v. Osceola Refining Co., 36 FEP 183 (E.D.Mich. 1984)

3. The Respondent has established that the Complainant's allegations of sexual harassment are unfounded. The Respondent has shown that the conduct complained of by the Complainant was

not due to the fact that she is female. Rabidue v. Osceola Refining Co., 36 FEP 183, (E.D.Mich. 1984)

4. The Respondent has raised a genuine issue of fact as to why the Complainant was subjected to the conduct complained of while employed by the Kanawha County Sheriff's Department. Shepherdstown V.F.F. vs. W.Va. Human Rights Commission, 309 S.E.2d 342, (W.Va. 1983).

5. The Complainant has failed to discredit the Respondent's proof that the conduct complained of was the result of the resentment felt towards her because of her relationship with the Chief Jailer and his son, thus her case must fail as not establishing one of sexual discrimination. State ex rel. State of West Virginia Human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc., 329 S.E.2d 77 (W.Va. 1985).

6. The Respondent has established that the Kanawha County Jail is an employment environment in which profanity, sexual joking and pranks among the officers were common and that the Complainant was a participant in such conduct. The Complainant's reasonable expectation as to the type of conduct which constitutes sexual harrasment has not been shown to have been violated by the evidence in this proceeding. Rabidue v. Osceola Refining Co., 36 FEP 183 (E.D.Mich. 1984).

7. The Respondent has shown that all matters reported to Chief Jailer Porterfield were acted upon in a manner reasonably calculated to end the sexual harrasment alleged by the Complainant. Thus, no liability may now be imposed. Katz v. Dole, 709 F.2d 251 (4th Cir. 1983).

8. The Complainant has failed to establish any sexual discrimination with respect to allegations concerning her work evaluation and her work assignment by Tim Clark. Howard University v. Best, 36 FEP 482 (D.C. Cir. 1984).

9. The Complainant has failed to establish a case of sexual harassment. Katz v. Dole, 709 F.2d 251 (4th Cir. 1984).

10. The Respondent has successfully rebutted all allegations concerning sexual discrimination against Complainant, thus Complaint Number Es-375-85 should be dismissed. McDonnell Douglas v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

11. The request for the psychological examination of Complainant was made for a legitimate business purpose and was not an unreasonable request.

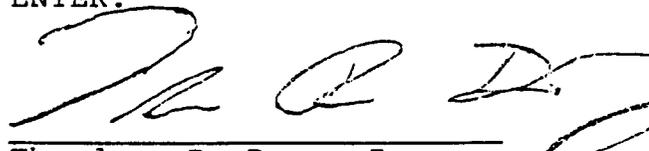
12. The Complainant is not entitled to collect damages for psychic injury since the Respondent had established that any such injury suffered by the Complainant is not due to Respondent's actions is failing to provide a working environment free of sexual harassment.

PROPOSED ORDER

Judgment for Respondent.

DATED: July 2, 1986

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner

DISCUSSIONS

The overwhelming evidence in this case that the Complainant's preferential treatment by Chief Porterfield as a result of her relationship with his son, William, were the roots of her problems with her co-workers and their manifested acts of harrassment toward her.

CERTIFICATE OF SERVICE

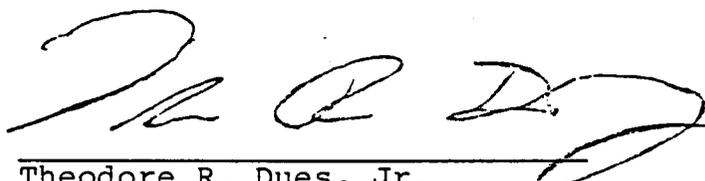
I, Theodore R. Dues, Jr., Hearing Examiner, hereby swear and say that I have served a true and exact copy of the foregoing EXAMINER'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW upon the following:

Sharon Mullens, Esq.
Assistant Attorney General
1204 Kanawha Boulevard, E.
Charleston, WV 25301

and

Cheryl Fuller/Michelle Rusen
Assistant Prosecuting Attorneys
Kanawha County Courthouse
Charleston, WV 25305

by mailing the same by United States Mail on this 2nd day of July, 1986.


Theodore R. Dues, Jr.
Hearing Examiner