

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

GERALDINE MURRAY  
Complainant

VS. DOCKET NO. ES-181-78

JEFFERSON COUNTY  
BOARD OF EDUCATION  
Respondent

FINDINGS OF FACT &  
CONCLUSIONS OF LAW &  
ORDER

I.

PROCEEDINGS

This cause came on for hearing the 9th day of December, 1980, at the Jefferson County Memorial Library in Charles Town, West Virginia, and was concluded on December 10, 1980.

The Complainant, Geraldine Murray, appeared in person and by her counsel, Eunice L. Green, Assistant Attorney General for the State of West Virginia. And the Respondent, the Jefferson County Board of Education, appeared by counsel, Robert Skinner, Prosecuting Attorney for Jefferson County, West Virginia.

This hearing was presided over by the Honorable Jeffrey McGeary, Commissioner of the West Virginia Human Rights Commission and Arthur A. King, Hearing Examiner for the West Virginia Human Rights Commission.

The West Virginia Human Rights Commission upon due consideration of the entire record, testimony and evidence in this matter, the arguments of counsel, and the recommendations of the hearing examiner adopts the Hearing Examiner find in part and makes the following findings of fact and conclusions of law.

II.

FINDINGS OF FACT

1. The Complainant, Geraldine Murray, is a white female, residing in Jefferson County, West Virginia. The Complainant filed her complaint on the 9th day of November, 1977, charging the Respondent, Jefferson County Board of Education, with an unlawful practice within the meaning of §5-11-9(c) of the West Virginia Code, as amended.
2. Following investigation, a ruling of probable cause to credit the allegations of the Complainant was made by the Investigating Commissioner.
3. The parties attempted to facilitate the matter of the case but this attempt failed. Subsequently, the West Virginia Human Rights Commission approved the case for public hearing.
4. The Respondent, Jefferson County Board of Education, is a corporation, provided for by the statutes of the West Virginia Code, located in Charles Town, West Virginia.
5. The Complainant applied for a position as a janitor with the Jefferson County Board of Education in July of 1976 and again in October of 1977.
6. The Complainant was hired as a full-time janitor in July of 1978.
7. Evidence was introduced by the Respondent which indicated that the Complainant was not hired because she was a female. However, subsequently, the Complainant was asked by Respondent's witness, Mr. Fleming, to substitute for her husband.
8. Mrs. Murray did substitute and worked at Blue Ridge Elementary School for six (6) months. Further, she was asked to fill in for a male employee after this. It wasn't until July 1978 that she began full-time.

9. Evidence further was indicated that there was no personnel file relating back to the time that the Complainant made application.

It was further indicated in the testimony that the personnel records were destroyed.

10. Complainant's husband, Mr. Chester Murray, was hired July 9, 1976, at a pay rate of Four Hundred and Eighty Dollars (\$480.00) to Five Hundred and Eighty Dollars (\$580.00) per month. Her husband was under contract during that time.

11. Further evidence by the Respondent indicated by Respondent's witness, Mr. Fleming, that Mrs. Murray was hired as a substitute.

12. The Complainant asked for a full-time position after January 1, 1977. This was denied by Respondent. It was not until July 3, 1978, that the Complainant became a full time employee. The Complainant presented evidence relating to the time that she was employed as a full-time employees.

13. The Complainant is presently a full-time employee for the Respondent.

### III.

#### CONCLUSIONS OF LAW

In accordance with the foregoing findings of fact, the issues presented, the arguments of counsel and the proposals submitted, the following conclusions of law are established:

1. That complaint ER 181-78 and the Answer were properly and regularly filed by Geraldine Murray in accordance with the procedure required by the West Virginia Human Rights Act, West Virginia Code 5-7-10. 2. At all times pertinent hereto, the Complainant, Geraldine Murray, was a

citizen and resident of the State of West Virginia, within the meaning of West Virginia Code, §5-11-2.

3. At all times pertinent hereto, the Respondent Jefferson County Board of Education, was an employer within the meaning of West Virginia Code §5-11-2.

4. The West Virginia Human Rights Commission has jurisdiction over the parties that are the subject matter of this action.

5. The Complainant has made a prima facie case of sexual discrimination herein.

6. The Complainant is entitled to damages for monetary loss and for her humiliation and suffering.

7. The basis consistent issue presented in the evidence is the treatment of the Complainant as it refers to her treatment which constitutes sexual discrimination. Courts have determined that sex discrimination in employment is prohibited by a number of both present and proposed federal and state constitutional provisions, statutes, regulations and orders. Title VII of the Civil Rights Act in 1964, as amended by the Equal Employment Opportunity Act of 1972, describes sex discrimination and under West Virginia Code 5-11-9-C, it is further prohibited by law in the State of West Virginia.

The prima facie case of sex discrimination may be established by showing that the Complainant was a female, that the conduct for which she was not hired did not justify such actions and that the employer hired other employees with same or similar qualifications or disqualifications but they were male.

The Complainant has established a prima facie case of sex discrimination. She is a female. Her husband was hired. The facts surrounding the hiring of her husband do not appear to warrant her not being hired.

Furthermore, the record reflects that a standard of performance required for Complainant was only that she must be male, which the requirements did not so indicate. The United States Supreme Court, the Courts in other jurisdictions and the Civil Rights Act of 1964 prohibit discrimination on the basis of sex.

Thus, on the basis of the dispariment treatment by the Respondent of Mrs. Murray indicates that the Respondent did practice illegal sex discrimination.

b. Interest on back pay shall be computed at a rate of six percent (6%) per annum, compounded annually beginning January 1, 1977, and continuing until the date that such back pay is actually paid to the Complainant.

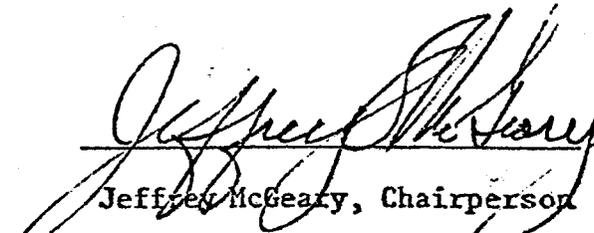
4. It is further ordered that One Thousand Dollars (\$1,000) be awarded to the Complainant for incidental damages, as compensation for humiliation, embarrassment, emotional and mental stress, and loss of personal dignity. Payment of said amount is to be made to the Complainant by sending a check to the West Virginia Human Rights Commission made payable to the order of Geraldine Murray for the aforesaid amount. The Commission shall then forward the check to the Complainant.
5. As set forth in Chapter 5, Article 11, Section 17, W.Va. Code, the Respondent shall post and maintain in all its offices, units or detachments, in a prominent place where it is clearly visible, the poster of the West Virginia Human Rights Act.
6. All future advertising by the Respondent, through whatever medium, shall contain the phrase, "Equal Opportunity Employer".
7. It is further ORDERED that within ninety (90) days of the effective date of this ORDER, and thereafter within one hundred twenty (120) day intervals for a period of three (3) years, the Superintendent or other responsible officer or representative of the Respondent shall file with the Commission a sworn statement affirming that Respondent has fully and completely complied with this ORDER.

ORDER

THEREFORE, pursuant to the above findings of fact, conclusions of law, it is thereby ORDERED as follows:

1. The Respondent, Jefferson County Board of Education it's officers, agents, employees, members, assessors, assigns and all persons and organization who acted concert or participation with them are hereby permanently ordered to cease and desist at all places of business or operations of Respondent located in Jefferson County, from engaging in any actions which deny full and equal membership rights to any individual or otherwise to discriminate against such individuals on the basis of race, sex, religion, color, national origin or blindness with respect to hiring, tenure, terms and conditions of employment or any other matter directly or indirectly related to employment.
2. It is further ordered that Respondent shall forthwith adopt and implement an affirmative action program to eliminate the effects of any discriminatory practices.
3. More specifically, it is ordered that Respondent shall pay to the Complainant back pay representing compensation for loss of wages suffered by Complainant as a result of Respondent's unlawful discriminatory practices. The total amount of back pay due the Complainant shall be computed as follows:
  - a. Loss of back pay from January 1, 1977, to July 3, 1978, total of Two Thousand Seven Hundred and One Dollars and Seventy-Five Cents (\$2,701.75).

It is so ORDERED Entered this 25<sup>th</sup> Day  
of August 1982.

  
Jeffrey McGeary, Chairperson  
West Virginia Human Rights  
Commission