



**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 28, 1987

Lucy Croniser McCoy  
152 22nd St.  
Wellsburg, WV 26070

Eagle Manufacturing Co.  
General Office  
Charles St.  
Wellsburg, WV 26070

William Watson, Esq.  
Joyce D. Chernenko, Esq.  
800 Main St.  
Wellsburg, WV 26070

Mary C. Buchmelter  
Assistant Attorney General  
812 Quarrier St.  
Charleston, WV 25301

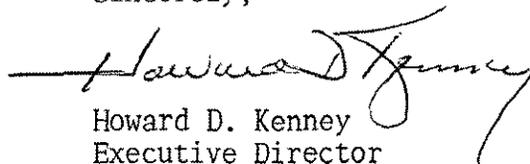
RE: (Croniser) McCoy v. Eagle Manufacturing Co.  
ES-280-79; EANC-281-79; EC-282-79

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  
Attachments

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

NOTICE

OF STATUTORY RIGHT TO JUDICIAL REVIEW  
AMENDED AND EFFECTIVE  
AS OF APRIL 1, 1987

Enr. H. B. 2628]

8

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

LUCY CRONISER MCCOY,

Complainant,

v.

DOCKET NOS. ES-280-79  
EANC-281-79  
EC-282-79

EAGLE MANUFACTURING CO.,

Respondent.

FINAL ORDER

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

In the subsection titled Findings of Fact, paragraphs enumerated as 12 and 13 are deleted.

In the subsection titled Conclusions of Law, referencing the paragraph enumerated as 3, the word "not" is stricken from the language contained therein.

In the subsection titled Discussion of Conclusions which begins on page 5, referencing the first full paragraph, the fourth sentence is modified as follows: the word "not" is stricken; the word "minimally" is added to precede the word "qualified"; and, following the word "hired" in the same sentence, the language "in 1978, that of general laborer" is added. The fifth

sentence in the same paragraph is deleted. The sixth sentence is modified as follows: the word "not" is stricken in each of its three usages in that sentence. In the final paragraph on page 5 of said subsection, the words in the first sentence "Even assuming arguendo that" are stricken.

Finally, the entire subsection titled Misconduct of William E. Watson, pages 6-8 inclusive, which addresses a matter not relevant to a determination on the merits of the above-captioned discrimination complaint, is not adopted by the commission as part of this final order.

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 amended and modified 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 28<sup>th</sup> day of September, 1987.

RESPECTFULLY SUBMITTED,

BY Betty G. Hamilton  
CHAIR/VICE CHAIR  
WV HUMAN RIGHTS COMMISSION 

**RECEIVED**

JUN 23 1987

STATE OF WEST VIRGINIA W.V. HUMAN RIGHTS COMM.  
HUMAN RIGHTS COMMISSION

LUCY CRONISER,

Complainant,

v.

Docket Nos. ES-280-79  
FANC-281-79  
EC-282-79

EAGLE MANUFACTURING COMPANY,

Respondent.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

A public hearing for this matter was convened on April 9, 1987 in Wellsburg, West Virginia. Commissioner George Rutherford served as Hearing Commissioner. The complaints were filed on December 4, 1978. The notice of hearing was issued on April 15, 1985. A telephone Status Conference was convened on December 1, 1986. Subsequent to the hearing, both parties filed written briefs and proposed findings of fact.

All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions, and arguments advanced by the parties are in accordance with the findings, conclusions and views as stated herein, they have been accepted, and to the

extent that they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. 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 failed to hire her because of her sex, ancestry, and color. Respondent maintains that a complainant was not hired by respondent because she did not have appropriate prior experience and because of a poor record with prior employers.

#### FINDINGS OF FACT

Based upon the parties stipulations of uncontested facts as set forth in the joint pre-hearing memorandum, the Hearing Examiner has made the following findings of fact:

1. Complainant applied for work with respondent.
2. Respondent did not hire complainant.
3. Respondent did hire other applicants.

Based upon the preponderance of the evidence, the Hearing Examiner has made the following findings of fact:

4. Complainant is a woman.
5. Complainant's mother was born in Spain.
6. Complainant's father was born in Mexico.
7. Complainant has dark skin.
8. Respondent is a manufacturing company that produces gasoline cans, safety cans, hand orders, and push bottom orders.

9. Complainant filed frequent applications for work at respondent, whose plant is within walking distance of complainant's home, since 1971.

10. Complainant had two pre-employment interviews at respondent. One in 1973 and one in 1982 or 1983.

11. Complainant had prior work experience at a grocery store, a snack bar, Mamouth Plastics, and in a hospital supply room.

12. Complainant had no prior experience in sales, drafting or computers.

13. Complainant was fired by Collier Steel for failing to report for work.

14. At Mamouth Plastics, complainant was suspended for 3 days for fighting with a black employee in an apparent racial incident. After her suspension, complainant failed to return to work.

15. When complainant was employed by Weirton General Hospital, she had an extended absence for a work related injury, and then never returned to work.

16. Of the eight employees hired by respondent in November 1978, four were female and one was black.

17. The total Hispanic population of the area in which respondent is located is 0.4 percent.

18. Respondent has employed an Hispanic employee, Telles, from March 9, 1977 to March 1, 1981.

## CONCLUSIONS OF LAW

1. Lucy Croniser 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. Eagle Manufacturing Company 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 sex, ancestry, or color discrimination.

4. Respondent has articulated a legitimate non-discriminatory reason for its failure to hire complainant.

5. Complainant has not demonstrated that the reason articulated by respondent for failing to hire her is pretextual.

6. Respondent has not discriminated against complainant on the basis of her sex, ancestry, or color by failing to hire her. West Virginia Code, Section 5-11-9(a).

## DISCUSSION OF CONCLUSIONS

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 McDonnell Douglas, supra.

In the instant case, complainant has not established a prima facie case of discrimination. Complainant has proven that she is female, Hispanic and has a dark skin color. The parties have stipulated that complainant applied for jobs at respondent, that she was not hired and that other applicants were hired. Complainant has not demonstrated that she was qualified for the positions in which the successful applicants were hired. The record evidence reveals that complainant did not have prior experience in sales, computers, and drafting necessary for those positions. Because complainant has not demonstrated that she was qualified by a preponderance of the evidence, the facts listed above are not sufficient to raise an inference of discrimination, and, therefore, a prima facie case has not been made. Furnco Construction Company v. Waters 438 U.S. 567, 577 (1978); Texas Department of Community Affairs v. Burdine 450 U.S. 248 (1981).

Even assuming arguendo that complainant had made out a prima facie case of discrimination, respondent has articulated a legitimate non-discriminatory reason for failing to hire complainant. In addition to the reason that complainant lacked the prior experience necessary to perform the jobs for which applicants were hired, respondent presented evidence that complainant's work record was full of problems. At one employer,

a reference check by respondent revealed that complainant was suspended for three days for a fight with a black employee that appears to have been racially motivated. At three of her places of employment, complainant simply stopped coming to work. Certainly complainant's prior work history could not be attractive to a potential employer.

Complainant has failed to prove by a preponderance of the evidence that the reasons articulated by respondent for failing to hire her are pretextual. Complainant did call a witness from Mamouth Plastics to testify that he does not recall the alleged checks of complainant's references. He does not deny the reference check; he just doesn't remember. The faulty recollection of this witness does not outweigh the evidence of respondent that the reference check was made. In addition, complainant's demeanor on cross examination was extremely evasive. To the extent that the testimony of complainant is inconsistent with the testimony of respondent's witnesses. Complainant's testimony is not credited.

#### MISCONDUCT OF WILLIAM E. WATSON

The Hearing Examiner recommends that the Commission formally request of William E. Watson, one of respondent's attorneys, that he not practice again before the Human Rights Commission until he issues a written apology to the Commission for his gross misconduct at the hearing of this matter.

At the hearing, William E. Watson engaged in a pattern of contumacious and obstreperous behavior that should not be tolerated. Indeed, the record is laden with such incidents of mis-

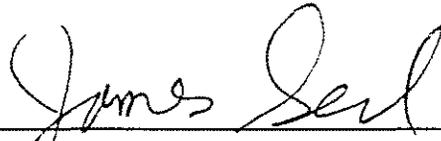
behavior. As a result, the hearing of this matter, which should have lasted no more than three-fourths of a day, stretched well beyond 5:00 until 6:30 p.m.

Examples of the outrageous behavior by Watson include the following: Watson attempted to grossly distort a ruling by the Hearing Examiner after throwing a temper tantrum during which he paced all over the courtroom, flung documents into the Hearing Examiner's face, and raised his voice to an extreme level (TR 81-86). He constantly treated his opposing counsel with the utmost disrespect. (TR 76, 146, 149, 150-151). To her credit, counsel for complainant behaved remarkably professionally in response to the childish misbehavior of Watson. Watson had to be cautioned several times not to interrupt opposing counsel or witnesses in order to make it possible for the court reporter to do her job. (TR 334). Watson misrepresented that prior Hearing Examiner Barone had issued either a written and an oral proposed order and decision to the Commission. (TR 332, 336-337, 375-376). Perhaps most importantly, Watson refused repeatedly to obey the order of the Hearing Examiner that he not burden the record by having witnesses read from documents already in evidence unless the document was ambiguous or otherwise required some explanation. (TR 321-340). The Commission simply cannot condone such behavior. If attorneys are permitted to vent their contempt for the Human Rights Commission by making a joke of its proceedings, it simply will not be possible to convene hearings in order to effectuate the statutory purposes underlying the Human Rights Act. The Commission must take action to prevent any repetition

of Watson's attacks upon the authority of the Commission.

PROPOSED ORDER

Based upon the foregoing, the Hearing Examiner hereby recommends that the Commission dismiss the complaints in this matter, with prejudice, and that the Commission formally request of William E. Watson that he not practice again before the Human Rights Commission until he issues a written apology to the Commission for his gross misconduct at the hearing of this matter.



James Gerl  
Hearing Examiner

ENTERED: June 18, 1987

CERTIFICATE OF SERVICE

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:

Mary Kay Buchmelter, Esq.  
Asst. Attorney General  
812 Quarrier Street  
Charleston WV 25301

Joyce D. Chernenko, Esq.  
William E. Watson, Esq.  
800 Main St.  
Wellsburg WV 26070

on this 22d day of June, 1987.

  
\_\_\_\_\_  
James Gerl