



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**215 PROFESSIONAL BUILDING
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CHARLESTON, WEST VIRGINIA 25301**

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January 9, 1986

ARCH A. MOORE, JR.
Governor

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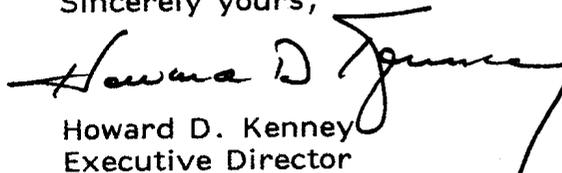
RE: Nelson v Allegheny Lumber Co., REP-22-82

Dear Ms. Spieler and Mr. Rice:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Loretta Nelson v Allegheny Lumber Company, REP-22-82.

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 (30) days, the Order is deemed final.

Sincerely yours,


Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

LORETTA NELSON
COMPLAINANT,

V.

DOCKET NO.: REP-22-82

ALLEGHENY LUMBER COMPANY
RESPONDENT.

FINAL ORDER

On the 13th day of November, 1985, the Commission reviewed Hearing Examiner, William F. Byrne's "DECISION". After consideration of the aforementioned, the Complainant's Exceptions to the Decision, and the Respondent's Exceptions to the Hearing Examiner's Decision, the Commission does hereby adopt the "DECISION" as its own except for the following:

1. Paragraph (13) on page 19 of the Decision is ORDERED deleted.
2. On page 20 on the third line from the top, it is ORDERED that "and punitive" be deleted.
3. It is hereby ORDERED that paragraph (4) on page 20 be deleted.

It is hereby ORDERED that the Hearing Examiner's "Decision" be attached hereto and be made a part of this order.

Further, it is hereby ORDERED (1) the Respondents are permanently ordered to cease and desist from engaging in any practices that violate West Virginia Code Section 5-11-9 (i) (3).

(2) Elkins Industries, Inc. shall post a copy of this order on all bulletin boards in its plants on Baxter Street, in Elkins, West Virginia.

(3) Elkins Industries, Inc. is ordered, within sixty (60) days of issuance of this Order, to pay to the Complainant the sum of (Four

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

LORETTA NELSON,

Complainant,

vs.

ALLEGHENY LUMBER COMPANY,
A DIVISION OF ELKINS INDUSTRIES, AND
ELKINS INDUSTRIES, INC.,

Respondents.

Docket No. REP-22-82

RECEIVED

SEP 19 1985

W.V. HUMAN RIGHTS COMM.

DECISION

I. Proceedings

This case came on for public hearing before Hearing Examiner, William F. Byrne, on June 24, 1985, in the Randolph County Commission Courtroom in Elkins, West Virginia. The Complainant appeared in person and was represented by Deputy Attorney General Emily A. Spieler. Respondents appeared by Roger McMahon, Vice Presidents of both Respondents, and by their counsel, Lacy I. Rice. The parties agreed by written Stipulation to waive the presence of a Hearing Commissioner, the original of which having been filed and made a part of the record.

On July 16, 1981, the Complainant, Loretta Nelson, filed a verified Complaint alleging that Allegheny Lumber Company terminated her on May 29, 1981, in violation of the West Virginia Human Rights Act. On May 21, 1982, the Human Rights Commission issued a letter of determination finding probable cause to believe that the Human Rights Act (hereinafter Act) had been

violated. Thereafter, the Complaint lay dormant until April 26, 1985, when, following the issuance of a Writ of Mandamus against the Human Rights Commission (hereinafter Commission) in Allen et al. vs. West Virginia Human Rights Commission, _____ W.Va. _____, 324 S.E.2d 99 (1984), a Notice of Public Hearing was signed by Human Rights Commission Chairman Russell Van Cleve, pursuant to W.Va. Code § 5-11-10 and served upon all parties.

Thereafter, the Complainant moved to amend the Complaint to name the proper party Respondents, Allegheny Lumber Company, a Division of Elkins Industries and Elkins Industries, Inc. After careful consideration and reconsideration of the corporate status of the Respondents, the interrelationship of these two corporate entities, and the argument of the parties, the Motion to Amend was granted on June 24, 1985. Attorney Lacy I. Rice appeared for both named Respondents in all subsequent proceedings.

Thereupon, the evidence in the form of testimony and exhibits was taken, transcribed stenographically, and made a part of the official record of the proceedings. Complainant entered Exhibits 1-5, 7 and 8; Respondent entered Exhibits 1-3.

The parties orally stipulated that:

(1) At the time of her termination, on May 29, 1981, Complainant generally worked 40 hours per week at \$4.00 per hour.

(2) Had Complainant not been terminated on May 29, 1981, she would have received a \$0.15 per hour wage increase

on June 28, 1981, and a \$0.25 per hour wage increase on December 28, 1981.

(3) On April 16, 1982, a fire destroyed Plant No. 2, including Complainant's work area.

(4) Complainant's employment with Respondent would have terminated on April 16, 1982; and she does not expect back pay or any kind of damages beyond that date.

(5) Between May 29, 1981, and April 16, 1982, Complainant would have worked 35 hours per week, except for two 40-hour vacation weeks, for which she would have received pay, one in July of 1981, and one in November or December of 1981.

The parties stipulated as to the authenticity of Exhibits 1-5, 7 and 8.

II. Issues

(1) Did Respondent discharge Complainant for misconduct on the job, or in retaliation for her previous filing of the charge of discrimination with this Commission, in violation of West Virginia Code § 5-11-9(i)(3).

(2) If the Respondents did engage in illegal retaliatory acts against the Complainant, what is the appropriate remedy?

III. Findings of Fact

(1) Complainant, Loretta Nelson, a woman, was hired

by Allegheny Lumber Company in November, 1977.

(2) In 1978, Respondent distributed copies of the Employee Handbook to all employees.

(3) Complainant worked as a splicer and cutter in the face department. Her job was highly skilled and she performed her work well at all times during her employment with Respondent.

(4) On or about March 19, 1980, Complainant was terminated by Respondent.

(5) On April 22, 1980, Complainant filed a Complaint with the Human Rights Commission alleging that her termination represented illegal discrimination based upon **sex**.

(6) The parties settled the dispute prior to a Commission determination on the merits of Complainant's charge, and Complainant was reinstated on September 15, 1980, in the same position she had held before discharge.

(7) As of June 1, 1976, Allegheny Lumber Company and Elkins Industries, Inc. merged.

(8) In 1980 and 1981, Roger McMahon was Vice President and General Manager of both Allegheny Lumber Company and Elkins Industries and was responsible for personnel management for both.

(9) Elkins Industries, Inc. operated two plants on Baxter Street in Elkins, West Virginia.

(10) The veneer or face department in Plant No. 2 was operated by Allegheny Lumber Company.

(11) There were approximately 60 employees in Plant No. 2. Less than 20 of these worked in the face department.

(12) All veneer produced in the veneer department was used in the production of veneered plywood in Plant No. 2.

(13) In 1980 and until March of 1981, Harry Simmons was plant superintendent in Plant No. 2 and was responsible for the direction of the entire plant. Harry Simmons was paid by Elkins Industries.

(14) The Employee Handbook for Elkins Industries applied to employees of Allegheny Lumber Company.

(15) Bill Gray was Plant Manager of Plant No. 2 in 1980 and until March, 1981. Wallace White replaced Gray as Manager of Plant No. 2 on March 16, 1981. White thereafter demoted Simmons and assumed his title as well. White was paid by Allegheny Lumber Company.

(16) On several occasions, after Complainant's reinstatement in September, 1980, Roger McMahon and Bill Gray told Harry Simmons that they intended to terminate the Complainant, after treating her with "kid gloves" for an intervening time period.

(17) Loretta Nelson never received any written or verbal warning or reprimand regarding her work performance or conduct at work.

(18) Nelson's Foreman, Robert Paul Hedrick, and her former Plant Superintendent, Harry Simmons, both considered her

a good worker and had no problem with her as an employee.

(19) Work hours for Allegheny Lumber Company employees were 7:00 a.m. to 3:30 p.m.

(20) Although there are no established written policies regarding progressive discipline, in general Respondent's employees received at least one warning prior to being terminated.

(21) On May 29, 1981, Wallace White terminated the Complainant for the stated reason of violation of work rules. He did not consult Robert Paul Hedrick, the Complainant's Foreman, in making the decision to terminate her. This was the only time he directly terminated an employee without the involvement of the immediate Foreman.

(22) In general, employees' Foremen were consulted before an employee was terminated.

(23) On May 29, 1981, at approximately 6:45 a.m., the Complainant presented a statement regarding Junior Stewart, to two other employees, Cora and Jack Shiflet, and asked them to sign it before a Notary Public. She then punched the time clock at or before 7:00 a.m., went to her work area, and commenced work. The evidence does not establish that the Complainant left her work area during the work time, except to go to the restroom.

(24) At approximately 8:00 a.m., during work time, Cora Shiflet (sometimes referred to herein as Cora Shiflet White, her present name) left her work area in the sanding department, went

to Complainant's area in the face department, and told her she would not sign the statement. The Complainant then indicated that the Shiflets would receive a Subpoena.

(25) Complainant discussed the statement with Clara Shiflet White during work hours. However, such discussion was at the initiation of Clara Shiflet White.

(26) The aforesaid conversation was friendly. The Complainant did not threaten Shiflet. Cora Shiflet was upset by the Complainant's request, and further upset by her conversation with her Foreman, from which she inferred that cooperation with the Complainant might jeopardize her job.

(27) Cora Shiflet again left her work assignment to discuss the aforesaid statement with her mother, an employee in Plant No. 1.

(28) Respondent asserts that Complainant violated work rules contained in the Employee Handbook, in particular, Rules 3(A) "Place of Work", Rule 5(c) "Attention to Work", Rules 7(A)(C)(F) "Conduct" and Rule 8(A) "Soliciting".

(29) On May 29, 1981, work at the Respondent's plant was disrupted by the reaction of Cora Shiflet White to the Complainant's request, prior to work, to sign a statement and the Complainant's statement during work that the Shiflets would be subpoenaed. The Complainant did not threaten other employees.

(30) At approximately 3:30 p.m., on May 29, 1981, Hedrick, Complainant's Foreman, told her that White wanted to

Speak with her.

(31) White was brought in as Plant Manager to solve problems in the plant. He was apprised of pending matters relating to labor-management relations.

(32) When Complainant met with White on May 29, 1981, he told her that she was terminated for creating a disturbance, disruption, and violation of other work rules. White did not mention poor work performance as a reason for her termination.

(33) White had discussed the events of May 29, 1981, involving the Complainant with Roger McMahon prior to meeting with the Complainant.

(34) McMahon was involved in the settlement of the Complainant's 1980 Complaint. He knew about the prior Complaint and he expressed an intention to fire the Complainant again after a period of time had passed.

(35) McMahon was involved in the personnel decision to terminate the Complainant and Wallace White did not act independently in discharging the Complainant.

(36) Respondent did not terminate the Complainant because of poor work performance. Her work performance was good according to her direct Supervisors. Neither White, on May 29, 1981, nor McMahon in his later memoranda, mentioned poor work performance.

(37) But for the fact that the Complainant participated in Commission proceedings in 1980, she would not have been

terminated on May 29, 1981.

(38) Complainant's last day of employment with Allegheny Lumber Company was May 29, 1981.

(39) Complainant filed a verified Complaint alleging that her termination represented illegal retaliation on July 16, 1981.

(40) Between May 30, 1981, and April 6, 1982, the Complainant did not make all reasonable efforts to mitigate her damages. During the approximately seven (7) months she spent volunteering her services as cook, waitress and bar maid at Sonny's Bar and Grill, the Complainant did not reasonably mitigate damages.

(41) Her total interim earnings for the period of time for which she would be due back pay were Two Thousand Thirty Seven Dollars and Ninety Cents (\$2,037.90).

(42) Complainant's loss of gross pay for the period May 30, 1981, to April 16, 1982, was Seven Thousand Four Hundred Seventy Two Dollars (\$7,472.00). Complainant's total loss of wages (gross back pay, less interim earnings) for the period May 30, 1981, to April 16, 1982, was Five Thousand Four Hundred Thirty Four Dollars and Ten Cents (\$5,434.10).

(43) The Complainant was never terminated from a job, except by Respondent. She became upset over her discharges by the Respondent.

(44) Respondent intentionally and willfully violated

the Human Rights Act in terminating the Complainant on May 29, 1981.

IV. Discussion and Conclusions of Law

The Complainant worked at Respondent's Allegheny Lumber Company. The work involved the making of veneer facing for furniture. The Complainant worked on splicing, gluing, clipping and cut-off saw machines.

In this case, the Complainant charges that the Respondent retaliated against her for a previous filing of a Complaint with the West Virginia Human Rights Commission. The case must therefore be analyzed under the provisions of West Virginia § 5-11-9(i)(3), which prohibits an employer from retaliating against an employee who participates in Human Rights Commission proceedings. The employer claims it terminated the Complainant for legitimate work-related reasons.

The Complainant's burden is set forth in the cases of McDonnell-Douglas Corporation vs. Green, 411 U.S. 792, 93 S.Ct. 1917 (1973) and Texas Department of Community Affairs vs. Burdine 450 U.S. 248, 101 S.Ct. 1089 (1981). Retaliation cases follow the burdens established by the above-referenced cases and the elements of this burden are as follows:

(1) The Complainant engaged in statutorily protected activity.

(2) An adverse employment action was taken against

the Complainant.

(3) There was a causal linkage between the protected activity and the employment action.

Hamm vs. Members of Board of Regents of State of Florida, 708 F.2d 647 (11th Cir. 1983); Schlei and Grossman, Employment Discrimination Law, 2nd Ed. (1983), page 557 et seq.

The protected activity in this case was the filing of a Human Rights Commission Complaint by the Complainant in April of 1980. The adverse employment action was her termination on May 29, 1981. The factual issue in this case is whether the Respondent terminated the Complainant for violating work rules and poor performance, or in retaliation for filing a Human Rights Commission Complaint in 1980.

Based upon all the evidence and taking into consideration my observations of the witnesses' credibility, I find that there is a causal link between the protected activity and the adverse employment action. I find that the Respondent, through Mr. McMahon, made remarks about an intention to terminate the Complainant after a period of time elapsed when an appropriate opportunity presented itself. The disinterested testimony of Harry Simmons in this regard was credible and Mr. McMahon's denial is self-serving. But for the Complainant's filing of a Human Rights Commission Complaint in April of 1980, I do not believe the Respondent would have fired her on May 29, 1981.

The Complainant did not clearly violate any work rules.

WILLIAM F. BYRNE
ATTORNEY AT LAW
221 WILLEY STREET
MORGANTOWN, WV 26505

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The Respondent's claim that the Complainant violated the following rules which are found in the Employee Handbook of Elkins Industries, Inc., Respondent's Exhibit No. 1:

3. PLACE OF WORK

(A) You should remain in your working area during working hours, visiting other employees in different work areas is prohibited.

5. ATTENTION TO WORK

(C) You must make your productive time count - stay at your job. Loafing and wasting time during working hours is prohibited.

7. CONDUCT

A. All employees are expected to conduct themselves in a manner consistent with proper business and personal ethics. Any person that does not follow this practice will be terminated immediately.

C. You must not either threaten, intimidate or engage in fighting on Company property.

F. The home standard rule is applicable: "Conduct yourself on the job as you do at home".

8. SOLICITING

A. All forms of solicitation and distribution of literature and other similar material during working hours are prohibited, unless prior approval has been granted from the General Manager.

The Complainant testified she gave a statement to Cora Shiflet White before work on May 29, 1981. The Respondent's witness, Cora Shiflet White, confirms this. (Tr. 115, 120)

The Complainant testified that she did not leave the work station,

but that Cora Shiflet White came to the Complainant and said she would not sign the paper. The employer's witness, Cora Shiflet White, is unsure on this point. (Tr. 117) Cora Shiflet White did not indicate that the Complainant threatened her and affirmatively stated that the Complainant was friendly during conversations regarding these matters. (Tr. 120, 121) Cora Shiflet White certainly became upset over the matter; however, the Complainant cannot reasonably be held responsible for the reactions of Cora Shiflet White when the Complainant's behavior and actions were reasonable and friendly.

Furthermore, the Complainant's work performance was at least adequate. There was testimony that the Complainant was a "good worker". (Tr. 92) There was other testimony that her work was "excellent". (Tr. 56) Other testimony offered by the Respondent was to the effect that although the Complainant was a good worker, she made mistakes various times in the cutting of expensive veneer (Tr. 82); and Complainant was told about these problems two or three times. This testimony came from Mr. Wallace White who testified that he obtained this information from the Complainant's Foreman, Mr. Hedrick. Mr. Hedrick was called as a witness for the Complainant and did not testify that the Complainant made such mistakes or that he told Mr. White that she did so. Counsel for the Respondent did not cross-examine this witness on his allegedly inconsistent statements. The Respondent offered the explanation through the testimony

of Mr. White that Mr. Hedrick was almost senile and therefore his testimony was not reliable. (Tr. 105) The Hearing Examiner observed Mr. Hedrick as he testified and although he had retired from his job at Allegheny Lumber in 1982, he certainly did not appear to be senile.

The evidence simply does not establish that the quality of the Complainant's work was sufficient grounds for discharge of the Complainant, nor does her behavior on May 29, 1981, constitute sufficient grounds for discharge. Furthermore, the fact that in most other situations progressive discipline is used, that the Complainant had no record of being disciplined in the past, and that this was the only time an employee was fired without the involvement of the Foreman, lead me to the conclusion that but for the Complainant's protected activities, she would not have been fired on May 29, 1981.

Two other issues merit discussion. First, with respect to the question of proximity of time between the protected activity and the adverse employment action, it is noted that the 8-month period between Complainant's rehiring and her subsequent firing, is consistent with the testimony of Harry Simmons that the Respondent was biding its time so it could eventually terminate the Complainant again. (Tr. 54) Second, with respect to whether Mr. White knew of the Complainant's protected activity, the testimony that Mr. McMahon and Mr. White talked by telephone prior to the Complainant's discharge and the fact

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that Mr. McMahon told White "that if he had problems in that plant, straighten it out" (Tr. 156) indicates that this conversation provided ample opportunity for McMahon to advise White of the Complainant's prior protected activity. The circumstantial evidence is compelling that if White did not know of the Complainant's protected activity by May 29, 1981, he did after his talk with McMahon. Testimony by McMahon and White to the contrary are not credible. Furthermore, it is not credible that White, upon coming to the Allegheny Lumber/Elkins Industries plant to straighten things out and to oversee the work of fewer than sixty (60) persons (Tr. 152), that White would not have a clear employment history profile of the Complainant who had been fired and re-hired after the filing of a Human Rights Commission Complaint. It is simply common sense that a personnel man would know of such a fact in a work force of sixty (60) people.¹ White's testimony that he reported directly to Mr. Leon Eisenberg in New York (Tr. 94) and not to Mr. McMahon, the Vice President, does not persuade the Hearing Examiner that Mr. White was

Footnote No. 1: Actually the Allegheny Lumber portion of the work force of which the Complainant was a member, numbered only 10-14. (Tr. 91) This, of course, would make it that much more likely that White would know of the employment situation of the Complainant.

ignorant of the Loretta Nelson situation. Eisenberg is the absentee owner who is removed from the day-to-day operations directed by Mr. McMahon. Mr. McMahon was at Elkins Industries/ Allegheny Lumber before Mr. White and it is simply a matter of common sense that White and McMahon shared information.

Therefore, I conclude as a matter of Law:

(1) At all times referred to herein, Respondents, Allegheny Lumber Company, a Division of Elkins Industries, and Elkins Industries, Inc., are and have been an employer within the meaning of Section 3(d), Article 11, Chapter 5, of the Code of West Virginia.

(2) At all times referred to herein, the Complainant, Loretta Nelson, was a citizen and resident of the State of West Virginia and is a person within the meaning of Section 3(a), Article 11, Chapter 5, of the Code of West Virginia.

(3) On July 16, 1981, the Complainant filed a verified Complaint alleging that the Respondent, Allegheny Lumber Company, had engaged in one or more illegal practices against her, in violation of W.Va. Code § 5-11-9.

(4) The Complaint in this matter was timely filed within ninety (90) days of an alleged act of discrimination.

(5) On June 24, 1985, Elkins Industries, Inc., was joined as a party Respondent to this Complaint. Elkins Industries, Inc. and Allegheny Lumber Company share common ownership, common management and control of personnel. Elkins

Industries, Inc. is a proper Respondent to this action. Baker vs. Stewart Broadcasting, 560 F.2d 389 (8th Cir. 1977).

(6) Elkins Industries, Inc. had actual notice of the filing of this Complaint on or about July 16, 1981. The Complaint was, therefore, timely filed against all Respondents.

(7) The West Virginia Human Rights Commission has jurisdiction over the parties and subject matter of this action, pursuant to Sections, 8, 9 and 10, Article 11, Chapter 5, of the Code of West Virginia.

(8) To prevail, the Complainant must prove that but for prior participation in proceedings before the Commission she would not have been terminated on May 29, 1981.

(9) The Complainant met her initial prima facie burden by showing, through competent evidence, that she had participated in protected activity under the Act in 1980; that adverse action was taken against her in 1981; that her employer knew of her prior participation in protected activity; and that there was a causal link between the 1980 and 1981 events, such that but for her protected activity she would not have been terminated on May 29, 1981.

(10) The Respondents rebutted by articulating a legitimate non-retaliatory reason for Complainant's termination. In particular, Respondents maintain that the Complainant was terminated for poor work performance and violation of plant rules by a Plant Manager who was unaware of her prior

participation in protected activity.

(11) The Complainant has demonstrated by the overall weight of the evidence that her termination constituted illegal retaliation under Code § 5-11-9(i)(3). In particular, Complainant introduced credible direct evidence of an intent of Respondent to retaliate; Respondents' claim that her dismissal was for cause is not substantiated by the evidence; and circumstantial evidence indicates that her termination was handled in a substantially different manner from the usual. In particular, her Foreman was neither consulted nor informed of the termination prior to its occurring, and she received no warnings or progressive discipline prior to being terminated. Respondents offer no explanation for this deviation from standard practice.

(12) The Complainant is entitled to an award of back pay which must be reduced by interim earnings and a penalty for failure to properly mitigate during the time she volunteered services at Sonny's Bar and Grill. Back pay, offset by interim earnings, totals Five Thousand Four Hundred Thirty Four Dollars and Ten Cents (\$5,434.10). This figure is offset in an amount of One Thousand Dollars (\$1,000.00) for failure to fully mitigate. Therefore, the Complainant is entitled to Four Thousand Four Thirty Four Dollars (\$4,434.00) back pay, compensatory damages for humiliation, emotional distress and annoyance and inconvenience in an amount of Two Thousand Dollars

(\$2,000.00) and punitive damages are awarded in the amount of Three Thousand Dollars (\$3,000.00). Pre-judgment interest shall be calculated at the rate of six per cent (6%) per annum, compounded annually for all monies owing as of June 6, 1981, and at the rate of ten per cent (10%) per annum thereafter.

(13) Reasonable Attorney's fees and costs are hereby awarded to the Office of the Attorney General for the legal services provided by Deputy Attorney General Emily A. Spieler on behalf of the Complainant. The recommended fee, based upon the fee Affidavit of Emily A. Spieler, which the Hearing Examiner finds to be reasonable and appropriate, is Two Thousand Four Hundred Forty Four Dollars (\$2,444.00). - This ff Disapproved (294 P. 20) also
A.G. 9/17/85

V. Proposed Order

Therefore, pursuant to the above Findings of Fact and Conclusions of Law, it is hereby ORDERED:

(1) The Respondents are permanently ORDERED to cease and desist from engaging in any practices that violate West Virginia Code § 5-11-9(i)(3).

(2) Elkins Industries, Inc. shall post a copy of this Order on all bulletin boards in its plants on Baxter Street in Elkins, West Virginia.

(3) Elkins Industries, Inc. is ORDERED, within sixty (60) days of issuance of this Order, to pay to the Complainant the sum of Four Thousand Four Hundred Thirty Four Dollars and

Ten Cents (\$4,434.10) for back pay offset by interim earnings and penalty for failure to mitigate from May 29, 1981, to April 16, 1982; compensatory and punitive damages in the amount of Five Thousand Dollars (\$5,000.00) and pre-judgment interest thereon, calculated from the date of termination and compounded annually.

(4) Elkins Industries, Inc. shall compensate the State of West Virginia for reasonable Attorney's fees and costs incurred in this litigation in the amount of Two Thousand Four Hundred Forty Four Dollars (\$2,444.00). *- This Paragraph, and Para. 13, p. 19 are disapproved. P.A.S. 9/17/85*

ENTER this 23rd day of August, 1985.


WILLIAM F. BYRNE
Hearing Examiner

WILLIAM F. BYRNE
ATTORNEY AT LAW
221 WILLEY STREET
MORGANTOWN, WV 26505
(304) 296-2577

CERTIFICATE OF SERVICE

I, WILLIAM F. BYRNE, Hearing Examiner, do hereby certify that the foregoing DECISION was served upon

copy: ✓ Emily Spieler, Esquire
Deputy Attorney General
W.VA. ATTORNEY GENERAL'S OFFICE
1204 Kanawha Boulevard, 2nd floor
Charleston, West Virginia 25301

copy: ✓ Lacy I. Rice, Jr., Esquire
RICE, HANNIS & DOUGLAS
P.O. Box 808
The Old National Bank Building
Martinsburg, West Virginia 25401

original: Harry C. Taylor, II, Esquire
Assistant to Chief Administrative Law Judge
Sam Harshbarger
WEST VIRGINIA SUPREME COURT OF APPEALS
STATE CAPITOL, Room E-312
Charleston, West Virginia 25305

by mailing a true form thereof by regular United States mail, postage prepaid, this 23rd day of August, 1985.



WILLIAM F. BYRNE
Hearing Examiner

WILLIAM F. BYRNE
ATTORNEY AT LAW
221 WILLEY STREET
MORGANTOWN, WV 26505
(304) 296-2577