



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.
Governor

February 10, 1987

George A. Strange
P.O. Box 1047, Rt. 1
Oak Hill, WV 25901

Thomas Broadcasting/
WOAY-TV
Hill Top Rd.
Oak Hill, WV 25901

Larry Blalock, Esq.
Jackson, Kelly, Holt &
O'Farrell
P.O. Box 553
Charleston, WV 25322

Sharon Mullens
Heidi Kossuth
Assistant Attorneys General
1204 Kanawha Blvd. E.
Charleston, WV 25301

RE: Strange v. Thomas Broadcasting/WOAY-TV
EA-416-86

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)

George A. Strange
February 10, 1987
Page Two

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
(edw)

Howard D. Kenney
Executive Director

HDK/mst

Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

RECEIVED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JAN 21 1987

W.V. HUMAN RIGHTS COMM.

GEORGE A. STRANGE,

Complainant,

vs.

Docket No. EA-416-86

THOMAS BROADCASTING
WOAY-TV,

Respondent.

O R D E R

On the 14th day of January, 1987, 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 26th day of Jan, 1987.

Respectfully Submitted,

Betty A. Hamilton

CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

GEORGE A. STRANGE,

Complainant,

v.

Docket No. EA-416-86

THOMAS BROADCASTING-
WOAY-TV,

Respondent.

EXAMINER'S RECOMMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This matter matured for public hearing on November 3, 1986 and was continued on November 10, 1986. The hearing was held in Fayette County Commission Courthouse, Main Floor, Fayetteville, West Virginia. The hearing panel on each day consisted of Theodore R. Dues, Jr., Hearing Examiner and Russell Van Cleve, Hearing Commissioner.

The Complainant appeared in person and by his counsel, Sharon Mullens and Heidi A. Kossuth. The Respondent appeared by its representative, Curtis Butler and by its counsel, Larry Blalock.

ISSUES

1. Whether the Complainant's age was a determining factor in his being replaced as news director.

2. Whether the Respondent's implementation of a co-anchor format effected the Complainant's being placed in a subordinate role in part due to his age.

PROPOSED FINDINGS OF FACT

1. The Complainant was employed by the Respondent on or about February 12, 1979 as news director.
2. Until January of 1986 the Complainant served as News Director and anchor for the evening news at a salary of \$31,353 plus the use of a company car.
3. When the Complainant was initially hired he was hired to "set up a news department."
4. To produce the final product of a news show that was viewed by the TV audience the engineering, production and news departments were required to work hand-in-hand.
5. The engineering and production department was supervised by persons other than the Complainant.
6. In 1981 Charles Ryan Associates was retained to conduct a survey of the Respondent's target market to determine the preferences of its viewers.
7. A survey of the targeted viewing audience of Respondent's newscasts reflected that the Complainant's popularity amongst that audience was second only to that of a Bluefield station anchor.
8. Subsequently thereto, the Respondent retained the services of a consultant to upgrade its efficiency and news product.
9. Prior to the Complainant's being relieved of the news director responsibilities. he had approached the consultant hired by management and advised them he felt the news director and anchor positions were incompatible to the effect that he could

not do both of them.

10. The Complainant testified that the format implemented by the Respondent in February of 1986 was represented to be a co-anchor format however, he did not perceive the format as a co-anchor inasmuch as he read only a story or two. The viewing of the news video introduced in evidence, as well as, the testimony introduced at the hearing supported the proposition that a co-anchor set was used and that the Complainant read seven of the eleven stories being reported on that newscast.

11. Speculative testimony was introduced by the expert of the Complainant, Dr. McCain, to the effect that the Complainant read more stories on the newscast but had less "units", that is minutes, on the air. However, on cross examination Dr. McCain conceded that he had not measured the units and accordingly could not specify with certainty that the Complainant had less units than did the other co-anchor, a female who is younger than the Complainant.

12. The record is absolutely void of any information reflecting the qualifications of the news director that replaced the Complainant. Notwithstanding the testimony of Dr. McCain to the effect that he doubted anyone could match the qualifications of the Complainant, the record is silent on the issue of whether the Complainant is as qualified or more qualified than the news director that replaced him in that position.

13. There was considerable testimony by Dr. McCain reflecting that the Complainant was "poorly lighted", badly dressed and sitting in a stool adjusted at a lower level than

the other anchor on the set. However, cross examination made it unequivocally clear that the conclusions drawn by Dr. McCain were based upon many presumptions and not upon any observations made by him as to the practical abilities of the lighting equipment or crew, who chose the dress for the anchor persons, who's responsibility it was to adjust the stool upon which the Complainant sat during the newscast, and the procedures and equipment utilized to produce the final news product seen by the Respondent's viewers.

14. Without such on hand experience, and having only viewed three of approximately five hundred newscasts that were shown that year, Dr. McCain's testimony became practically useless and very little weight could be applied.

15. Moreover, Dr. McCain, himself, testified that it is impossible to perceive why a news director would attempt to undermine his show by intentionally causing the technical problems that were noticable in the newscast accepted as an Exhibit and shown during the proceedings herein.

16. Additionally, Dr. McCain conceded that he had no practical experience in TV production since 1960 and that the process as well as the equipment utilized in producing television shows, such as the newscast produced and shown by the Respondent, had changed dramatically since that time.

17. Dr. McCain also conceded that considerable progress and improvement has been made since the viewing of the 1985 video tape (one of the three video tapes which he viewed in reaching his conclusions and made during the time that the Complainant was

serving in the dual capacity of news director and anchor).

18. Dr. McCain further conceded that poor lighting existed on the newscast received in evidence for both the weatherman and the sports caster. These persons were directly across from the Complainant on the news set. These persons are also younger than the Complainant.

19. It was further conceded by Dr. McCain that he did not compare the Respondent's newscast with similar size newscasts in the market.

20. The record reflects that the reduced salary the Complainant earns is at the median salary for the stations in the Respondent's audience market. Further, the Complainant's salary amount is supported in this regard by the highly recognized industry publication issued by the National Association of Broadcasters.

21. The evidence indicates that no other person received a cut in the news room. However, there was no evidence that anyone else had been significantly reduced in job responsibilities as had the Complainant.

22. Further, the evidence reflects that the Complainant is higher paid than any of the other persons broadcasting the news, including his co-anchor.

23. The entire record is void of any testimony that the perceived treatment of the Complainant was a result of, or in part determined by, his age.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has

jurisdiction over the parties and the subject matter herein.

2. As in all cases, the Complainant has the burden of proving a prima facie showing that his age was a determining factor in his salary reduction and/or his lesser role in the implemented co-anchor format. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

3. The Complainant introduced no competent evidence to indicate that his salary was reduced or that his level of participation in the co-anchor format was in any way a product of his age.

4. Having viewed the evidence as a whole, and in a most favorably light to the Complainant, there are no reasonable inferences that can be drawn to conclude other than that the Complainant's salary was reduced as a result of a legitimate job related decision, in part, motivated by the Complainant's representation that he could no longer perform the dual function of news director and co-anchor. The fact that the Respondent knew from surveys that the Complainant was the second most popular news anchor personality in the target audience area supports the decision to retain him as a co-anchor as opposed to news director.

5. The technical problems with the set and the Complainant's perceptual image to the viewing audience were in no way established to have been motivated, even in part, by the Complainant's age. In fact, the same witness that introduced such evidence was the witness that conceded the technical problems on the set were duplicated on persons younger than the

Complainant that were sharing the set with him during the newscast.

6. Accordingly, the motion for directed verdict by the Respondent is granted.

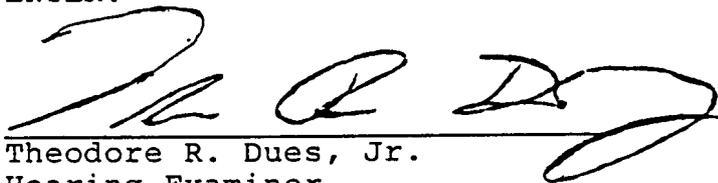
PROPOSED ORDER

It is the recommendation of this Hearing Examiner that the Commission issue the following final Order:

1. Judgment for the Respondent.

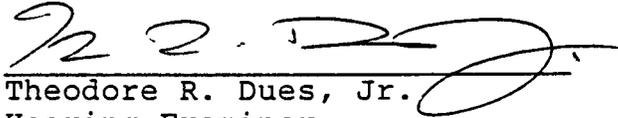
DATED: November 21, 1986

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner

CERTIFICATE OF SERVICE

I, Theodore R. Dues, Jr., Hearing Examiner, do hereby certify that I have served a true and exact copy of the foregoing EXAMINER'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW upon Sharon Mullens, Esq and Heidi A. Kossuth, Esq., Assistant Attorney General, 1204 Kanawha Boulevard, E., Charleston, West Virginia, 25301, and Larry Blalock, Esq., Jackson, Kelly, Holt & O'Farrell, P.O. Box 553, Charleston, West Virginia, 25322, by mailing a copy of the same in a properly addressed envelope on this the 21st day of November, 1986.


Theodore R. Dues, Jr.
Hearing Examiner