

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KATHY CARSON,)
CHARGING PARTY,)
vs.)
CITY OF BILLINGS,)
RESPONDENT.)

CASE NO. 9801008365

**ORDER AFFIRMING FINAL AGENCY
DECISION AND CLARIFYING THE
RELIEF ORDERED**

The above-captioned matter came before the Montana Human Rights Commission (Commission) on January 24, 2000. The matter was before the Commission for consideration of respondent's appeal from the final agency decision and charging party's cross-appeal of the hearing officer's remedies. Appearing before the Commission were Alan Hall, attorney for the respondent, and Timothy Kelly, attorney for the charging party.

The Commission first considered the preliminary matter of charging party's objection to the form and certification of the transcript, overruling those objections. The Commission then considered the entire record and the arguments of the parties and determined that the Hearing Officer did not err in concluding that the charging party was subjected to employment discrimination on account of sex, marital status and her association with disabled persons. At all times pertinent to this case, charging party was a single woman with disabled parents who are well-known to respondent. The Commission also concludes that the hearing officer correctly found that charging party's complaint was timely and the respondent's conduct toward charging party equitably estopped it from claiming that charging party should have filed her complaint earlier.

The Hearing Officer found that respondent, acting through its agents, unlawfully discriminated against charging party when it decided not to hire her, offering positions to applicants with lesser or substantially similar qualifications during the period October, 1996 through October, 1997. Respondent's discrimination against charging party prevented her from working as a law enforcement officer in the Billings area and caused her to seek less desirable employment at lower wages in the Billings area in order to be near her parents. The Hearing Officer ordered respondent to pay charging party lost wages through September, 1997 in the amount of \$9,779.70 plus interest of \$4.44 per day until respondent hires charging party, and pre-judgment interest in the amount of \$1807.01. The Hearing Officer also ordered respondent to pay charging party \$3,500 for emotional distress, to hire charging party, subject to certain stipulations, as the next new hire, and to pay charging party \$50,000 if respondent fails to hire her within twelve months of September 27, 1999. Affirmative relief enjoining respondent from further discriminatory acts was also ordered.

The Commission agrees with the Hearing Officer's conclusions and with the relief ordered. However, it also believes that it is appropriate to clarify the relief ordered to ensure that respondent hires charging party, particularly since there is the possibility that respondent will not hire charging party, but opt to pay her the \$50,000 ordered instead, thereby subjecting her to further emotional distress. Further, the relief ordered needs to be clarified in order to ensure that respondent's obligation to hire charging party with seniority, rank, grade and wage retroactive to November 12, 1996, includes the obligation to make the requisite mandatory contributions to the police retirement fund on behalf of charging party, from November 1996 to the date of hire, less amounts, if any, paid by others on her behalf to the fund during that period.

IT IS HEREBY ORDERED, that the final agency decision finding that respondent unlawfully discriminated against charging party is affirmed in favor of charging party. It is further ordered that the relief ordered in the final agency decision is clarified to indicate that in addition to all other relief contained in the final agency decision, respondent shall pay to charging party the sum of \$10,000 for emotional distress on account of the continuing uncertainty she must endure until she is hired as a police officer . Further, respondent shall pay charging party \$50,000 if respondent does not hire charging party as a police officer within twelve months after September 27, 1999, and an additional \$50,000 if respondent does not hire charging party as a police officer within the twelve months next succeeding the first twelve month period. The final decision is also clarified to indicate that respondent's obligation to hire charging party as a police officer includes the obligation to make the requisite mandatory contributions to the police retirement fund on behalf of charging party, from November 1996, to the date of hire, less amounts, if any, paid by others on her behalf to the fund during that period. Finally, the final decision shall be clarified by striking the last sentence of paragraph 4 of page 37.

A party may appeal from this order by filing a petition for judicial review with the district court no later than thirty (30) days from the service of this order pursuant to Section 2-4-701, et seq., MCA.

Dated this ___ day of March, 2000.

Gloria "Patt" Etchart, Chair, Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the foregoing **Order Affirming Final Agency Decision and Clarifying the Relief Ordered** was served on the following persons by U. S. Mail, postage prepaid on the _____ day of March, 2000.

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