

**BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA**

HEIDI SPROW)	
)	
Charging Party,)	Cause No. 9901008758
)	
VS.)	ORDER AFFIRMING
)	FINAL AGENCY
)	DECISION
CENTECH CORPORATION)	
)	
Respondents.)	

INTRODUCTION

The above-captioned matter came before the Montana Human Rights Commission (Commission) on November 17, 2003. James Kommers requested oral argument and appeared on behalf of Respondent, Centech Corporation. Geoff Angel appeared on behalf of Charging Party, Heidi Sprow.

PROCEDURAL HISTORY

The underlying facts of this case are fully set forth in our January 23, 2003 order.

A brief summary of the relevant facts follows: Heidi Sprow began working for Centech as a full-time employee in August 1998. In October 1998, she went to part-time status. In December 1998, Sprow filed a complaint with the Human Rights Bureau alleging she was receiving a lower-wage based on gender.

Following a contested case hearing, in March 2000, the Department of Labor and Industry's Hearings Bureau (Hearings Bureau) issued a Final Agency Decision (2000). The decision held Centech had been able to provide a legitimate non-discriminatory

reason for paying Sprow a lesser wage when she was a part-time employee. Then, in the 2000 decision, the hearings officer expressly amended the issue of full-time wage disparity into the pleadings in order to conform with evidence presented at the hearing. The 2000 decision concluded Centech did not provide a legitimate non-discriminatory reason for paying Sprow a lesser wage when she worked as a full-time employee. *Id.* The 2000 decision awarded judgment in favor of Sprow. *Id.* Centech appealed to the Human Rights Commission.

The Commission convened on November 22, 2002 and considered oral argument. During the course of this November hearing, the Commission initially voted to reverse the Final Agency Decision (2000) based on its concern that Centech had not been provided adequate notice that it would be asked to defend on the issue of full-time wage disparity. Prior to issuing the written order, with notice to both parties, the same panel of Commissioners reconvened on January 2003. At this hearing, the Commission determined that simply reversing the matter based on the procedural error, rather than on the merits, would interfere with both parties right to a fundamentally fair hearing.

In January 2003, the Commission issued an order remanding the case back to the Hearings Bureau for the "limited purpose" of providing Centech with an opportunity to present its legitimate non-discriminatory reason for paying its full-time women employees less than its full-time male employees.

After receiving the remand, the Hearings Bureau issued a "Notice Regarding the Appointment of Hearing Examiner for Limited Purpose Hearing." In this notice, the parties were advised the hearing examiner would weigh the evidence from the first

hearing held in 1999 against any live evidence Centech would present, and any live evidence Sprow would present on rebuttal.

Centech requested a substitution of the hearing examiner. Additionally, it argued the Commission's order did “not invite the comparison between the evidence from the first hearing against live evidence at a future hearing.” Centech asserted the issue of full-time wage disparity did not exist, and therefore, it would not present evidence of a legitimate non-discriminatory reason for paying Sprow a lesser wage.

The Hearings Bureau granted the request for substitution of hearing examiners. Centech submitted a “Motion to Dismiss.” This motion was denied. The parties were given time to complete additional discovery in preparation for the hearing. Centech again stated it would not present any additional evidence. It maintained its position that the issue of full-time wage disparity was not properly before the Human Rights Commission. Since neither party wished to present additional evidence, the hearings examiner vacated the hearing and deemed the matter submitted on the record. *Id.*

The Final Agency Decision (2003) again finds in favor of Charging Party Heidi Sprow and against Respondent Centech. The 2003 order awards affirmative relief and compensatory damages. Centech appealed the Final Agency Decision (2003) to the Commission.

ANALYSIS

Whether the 2003 Final Agency Decision is in error in its conclusion that the Respondent Centech illegally discriminated against Charging Party Heidi Sprow on the basis of sex when it paid her a lesser full-time wage than male co-workers?

On appeal to the Commission, Centech argues no allegation of a full-time employment discrimination practice exists in the pleadings. In the absence of an

amendment to the pleadings, it is Centech's position that this most recent Final Agency Decision (2003) must be stricken. Centech asserts the Commission struck down the express amendment of the full-time wage disparity issue in the previous Final Agency Decision (2000) and since the issue was never formally brought back into the pleadings, the issue no longer existed. Therefore, Centech feels it is under no obligation to present argument on remand.¹ The Commission disagrees.

Initially, it would be inconsistent for the Commission to "strike" down an issue and then remand the matter for the purpose of accepting Centech's defense on that same issue. The Commission's January 2003 order of remand concludes the hearings examiner's express amendment into the pleadings was in error, but the Commission predicates the error on the failure of the hearings examiner to provide Centech with an opportunity to defend its position. It is critical that Centech has never denied paying Sprow a lesser-full time wage than her male co-workers. This is the reason the Commission held that if a hearings examiner is using a "shifting burden analysis," the examiner must provide Respondent the opportunity to offer a legitimate non-discriminatory reason for the wage difference.² Accordingly, the Commission's order does not strike the hearing officer's amendment of the full-time wage disparity issue, rather the Commission found error in the corresponding failure to provide an opportunity to defend.

¹ In support of its argument, Centech has placed its reliance on an administrative rule regarding the amendment of complaints. *Admin. R. Mont. 24.9.323* However, the administrative rule cited by Centech applies only to complaints filed on or before July 1, 1997. *See Admin. R. Mont. 24.9.107*

² In an indirect evidence case of employment discrimination, the Montana Supreme Court has adopted a "shifting burden analysis" articulated in the 1973. *See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1973)*. Using this analysis, if a charging party sustains the burden of establishing a prima facie case of discrimination the burden of proof then shifts to the respondent to offer a legitimate, non-discriminatory reason for its action. *McDonnell, 411 at 802, 93 S.Ct. at 1824*

If Centech is attempting to argue the Commission did not have the authority to remand this matter, the Commission notes that in the administration of its duties the Commission must “prevent manifest prejudice to a party, assure a fair hearing, and afford substantial justice.” *Sprow v. Centech*, 2001 MT 298, 307 Mont. 481, 38 P.3d 812 In explaining the strengths of the administrative process, our courts have held that the agency is the specialist in the substantive matters. *Petition of Carruthers v. The Board of Racing*, 216 Mont. 184, 185 700 P.2d 179, 180 (1985) Therefore, if possible, the Commission will seek to develop the merits of the matter and then allow the parties all the due process rights that attach beyond the administrative forum. *See Schneeman v. State of Montana et al*, 257 Mont. 254, 848 P.2d 504 (1993)

Moreover, the amendment (express or otherwise) of the full-time wage disparity issue into the pleadings was not necessary. Looking first at Sprow’s original 1998 complaint, she states, “I believe respondent is paying me a lower wage than it pays male employees, based on my gender.” Then, in the Final Pre-Hearing Order (signed by Centech) the parties agreed the “issues of fact” included whether the corporation paid “lower wages to Sprow and other female employees than males” and “did [Centech] have a legitimate business reason for doing so.” *Final Pre-Hearing Order, VIII Issues of Fact, No. 3, pg. 2* Therefore, the pleadings set forth the issue of “wage disparity” in general terms and the issue is not restricted to either Charging Party’s full or part-time status.

Even if the Commission were to assume an amendment to the pleadings was necessary, under Rule 15(b), M.R.Civ.P., “issues not raised by the pleadings may be tried by the express or implied consent of the parties. If this occurs, the pleadings can be amended to conform to the issues actually litigated.” *Armbrust v. York*, 2003 MT 36, 314

Mont. 260, 65 P.3d 239 (citing Glacier National Back v. Challinor, 253 Mont. 412, 416 833 P.2d 1046, 1049) In this case, there was no objection to the evidence supporting the hearing examiner's finding of a full-time wage disparity, in fact, the evidence of a full-time wage disparity was submitted by Centech.

When reviewing an appeal of a final agency decision, the Commission may reject or modify the conclusions of law and interpretations of administrative rules in the final order but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Admin. R. Mont. 24.9.1717(2)

Consequently, after careful and due consideration, the Commission concludes that the issue of full-time wage disparity was properly before the Hearings Examiner and the express amendment of the full-time wage disparity issue was unnecessary. Given the opportunity, Centech chose not to articulate a legitimate non-discriminatory reason to the undisputed finding that it paid Sprow a lesser full-time wage than her male co-workers. In the absence of such a defense, the Commission finds no error in the decision of the Final Agency Decision on appeal, and, the Commission **HEREBY** affirms the Final Agency Decision (2003) and it is adopted and incorporated for the purposes of reference.

A party may appeal from this order by filing a petition for judicial review with the district court no later than 30 days from the service of this order. *Mont. Code Ann. § 2-4-*

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701 et. seq.

Dated this _____ day of February 2004

Mr. Gary Hindoien, Chair
Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersign employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on February____, 2004.

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