BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0091013795:

CHRISTIE JOLLY,	)	Case No. 1228-2010
	)	
Charging Party,	)	
	)	
vs.	)	HEARING OFFICER DECISION
	)	AND NOTICE OF ISSUANCE OF
COLUMBIA FALLS ALUMINUM	)	ADMINISTRATIVE DECISION
COMPANY, LLC,	)	
	)	
Respondent.	)	

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I. Procedure and Preliminary Matters

Christie Jolly filed a complaint with the Department of Labor and Industry on June 15, 2009. She alleged that Columbia Falls Aluminum Company, LLC, (CFAC) discriminated against her because of gender and age when it converted her to a part-time position and retained a younger male employee with less experience, seniority and capability as a full-time employee. On January 28, 2010, the department gave notice Jolly's complaint would proceed to a contested case hearing, and appointed Terry Spear as hearing officer.

The contested case hearing convened on February 11, 2011. Despite the best efforts of counsel for both parties, the hearing was not completed that day, and the hearing resumed on March 10, 2011, concluding that same day. Exhibits 2, 4, 6, 8, 14, 103 through 110 (the last page of Exhibit 109 was removed), and 113-119 (the last two pages of Exhibit 114 were removed) were admitted into evidence. Christie Jolly, Connie Fisher, Joy Tarpley, Charles (Chuck) Reali, Robert (Rob) Vixie and Steve Wright testified. The evidentiary record closed at the conclusion of hearing. The parties timely filed their proposed decisions and all post hearing briefs and the case was submitted for decision.

Jolly offered evidence of a 2006 training exercise that she contended was relevant to whether Vixie, her supervisor, was biased against women. Having deferred ruling upon CFAC's motion in limine to exclude such evidence, the Hearing Officer admitted the evidence subject to a motion to strike. The Hearing Officer now denies the motion to strike and admits the evidence. Whether the evidence ultimately supports the allegations of discriminatory animus toward women or not,

Jolly is entitled to present it, as part of her case in chief, so that the Hearing Officer can consider its content and determine what it tends to make more likely the existence or the absence of such an animus. In short, the evidence is admitted for what it may be worth, either way, because it is not clearly unrelated to the issues in this case, nor clearly too remote to have any weight.

II. Issues

The issue in this case is whether CFAC illegally discriminated against Jolly because of age and sex, as alleged in her complaint. A full statement of the issues appears in the final prehearing order.

III. Findings of Fact

1. Columbia Falls Aluminum Company, LLC, (CFAC), owns and formerly operated an aluminum smelting plant in Columbia Falls, Montana. The plant currently is not in operation/production. Production ceased indefinitely on October 31, 2009, due to adverse market conditions and economic factors.

2. Christie Jolly was hired to work in accounting at the plant in 1995. CFAC acquired ownership of the plant in 1999. As a result, CFAC became the employer of the then current employees of its predecessor in interest at the plant, including Jolly.

3. Jolly had a bachelor's degree in accounting and is a certified public accountant (CPA). During her tenure with CFAC, she worked as an accounts payable clerk, accountant, assistant controller and controller. She was the Financial Controller of CFAC until she stepped down from that position in 2002.

4. Effective October 1, 2003, Robert Vixie, hired by CFAC to join the Accounting Department, became the Financial Controller of CFAC. Vixie's previous position was as Assistant Controller at the Vanalco Aluminum Plant in Vancouver, Washington. Jolly became Accountant/Assistant Controller, under Vixie's supervision, in May 2004. The third full-time permanent employee in the Accounting Department was Joy Tarpley. She was the Accounts Payable and Payroll Administrator. All three Accounting Department employees had large workloads. Due to difficult economic times the number of employees was kept as low as possible throughout CFAC, and for the Accounting Department, as low as possible meant that there were fewer workers than could complete the requisite work within their authorized hours.

5. Vixie had significantly more exacting standards for Accounting Department work than the standards in place when he arrived at CFAC. Both Jolly and Tarpley found him a difficult supervisor. There is no evidence that Vixie's standards were "better" in any absolute sense, but the evidence is clear that he expected rigorous

attention to detail, faster completion of assigned projects and reports and greater attention to details (which slowed completion of work) than previous management within the department.

6. In 2006, Jolly complained to CFAC's Human Resources Leader, Allen Whitehead, about Vixie's evaluation of her. Whitehead started to investigate, and eventually interviewed all three full-time Accounting Department employees. He recommended the Accounting Department staff conduct weekly staff meetings, with a required part of each weekly meeting to be devoted to discussion of "work group concerns," with each of the three "work group members" (Vixie, Jolly and Tarpley) responsible for "identifying, discussing and taking action to improve the work group business environment." Whitehead included a number of specifics for the participation of all three employees in this plan to improve the "work group business relationship."

7. Included in the documentation of Whitehead's intervention into the Accounting Department's work group business relationship (Exhibit 4) were Whitehead's summaries of what he perceived the three to be saying about the problems they were having. Also included was a single questionnaire, not identified as either Tarpley's or Jolly's, ranking Vixie on 24 particular kinds of coaching his subordinates could or did receive in their work. The possible rankings ranged from a high of 5 ("usually does this") to a low of 1 ("rarely does this"). The highest rankings Vixie received were 2's ("occasionally does this"), with 20 of the 24 rankings being 1's. His overall average score was 1.167, which would be virtually a "rarely does this" across the entire range of coaching behaviors in the questionnaire.

8. Eventually, the improvement plan was ended, but the evidence does not establish that there was any genuine agreement by the participants about its efficacy. Since both Tarpley and Jolly denied that the improvement plan was successful and subsequently both filed discrimination complaints against CFAC based upon Vixie's treatment of them, it does not appear that the improvement plan was successful in improving the work group business relationship among the members of the Accounting Department. Nonetheless, there is no evidence that either Jolly or Tarpley complained to CFAC about Vixie discriminating against them because of age or sex (or any other reason) at any time before or while the improvement plan was in place.

9. Throughout Vixie's tenure at CFAC, the Accounting Department continued to have more work than its current employees could reasonably complete in their allotted hours. CFAC was in continual financial difficulty, and to cut costs consistently kept the number of employees, probably throughout the business and certainly in the Accounting Department, below the number necessary to complete the

work in available hours. Part of the problem between Vixie and Jolly and Tarpley more likely than not resulted from constant pressure to get too much work done in too little time.

10. In early 2007, Vixie got authority to hire another employee for the work necessary in the Accounting Department. At that time, another CFAC employee, Marilyn Timmons, was working half-time in the Accounting Department, so there were 3.5 full-time equivalents (FTEs) employed in the department. Vixie asked for authority to hire another full-time employee, to expand the department to 4.5 FTEs. All current employees engaged in documenting how they spent their time, to provide Vixie with data to support his request.

11. Vixie received authorization to expand the department to 4.0 FTEs, so Vixie began the process of filling a half-time position. That CFAC authorized an increase in the number of Accounting Department employees despite the current financial problems speaks volumes about how short-staffed the department actually was. Whitehead implemented and directed the hiring process.

12. While the hiring process was moving forward, Timmons obtained full-time rather than part-time work in her other position with CFAC. Her departure from the Accounting Department left open 1.0 FTE. The hiring process was not restarted from the beginning. The applicants for the half-time opening were then considered for the full-time opening. It is more likely than not that this decision to fill the now full-time position through the hiring process already commenced was made without any discriminatory animus toward Jolly on any basis, including sex or age.

13. Whitehead, all three full-time members of the Accounting Department, and some other CFAC employees participated in the interviewing process. There was also independent testing of the applicants. Two applicants emerged as qualified and preferable. Of the two, Vixie preferred Josh Holloway, a male who was younger than Jolly and Tarpley. After consultation with Vixie, Whitehead offered Holloway the full-time position, denominated as an "Accountant" position, which Holloway accepted in August 2007.

14. Although he was one of the two best candidates and had good computer skills, Holloway's undergraduate degree was actually in music, with only a minor in accounting and business, and some experience in bookkeeping and accounting. In terms of salary as well as ability to perform the work of the department, Holloway and Tarpley were the "junior" department members, and Vixie and Jolly the "senior" department members.

15. In November 2007, Charles (Chuck) Reali came to CFAC as Vice President and General Manager of CFAC. He was in charge of all aspects of CFAC's

operations, and responsible for its relationship with the company that owned it, Glencore. He was the ultimate CFAC decision-maker for all its administrative and operational activities. He presided over the downturn and eventual cessation of operations by CFAC, because the smelter was not making enough money to meet its costs of operation.

16. Over the time they were all employed at CFAC, Vixie used Holloway rather than Jolly, a "junior" rather than the other "senior" member of the department, to assist him on more responsible work. Vixie did this because Holloway was hired to assist him as well as Tarpley, and had better computer skills than Jolly. This preference for Holloway was justifiable within the business plan in hiring Holloway and did not evidence a discriminatory animus toward Jolly on any basis, including sex or age.

17. Vixie also spent more time training Holloway than training either Jolly or Tarpley. Vixie did this because Holloway needed more accounting training, due to his education and relative lack of experience compared particularly to Jolly but also to Tarpley. The disproportion in training time did not evidence a discriminatory animus toward Jolly on any basis, including sex or age.

18. Holloway displayed a preference for working with Vixie rather than Tarpley. Vixie did not insist that Holloway spend more time assisting Tarpley, and approved of Holloway's prioritizing tasks with Vixie over tasks with Tarpley. Holloway's preference for working with his supervisor, on more responsible tasks, rather than assisting the other "junior" member of the department, was not manifestly due to any discriminatory animus on anyone's part.

19. Vixie did not assure that Holloway assisted Tarpley half-time, which was consistent with the complaints the two women made about Vixie's supervisory style in 2006, which was never identified as discriminatory, but was inconsiderate. There is no evidence that Vixie's failure to assure that Tarpley got all of the assistance she was entitled to from Holloway was out of discriminatory animus on any basis, including sex or age, rather than lack of consideration for Tarpley's need for that assistance.

20. If Vixie permitted Holloway to use comp time in ways he did not make available to either Jolly or Tarpley, there was no business justification for this difference, which would appear to show favoritism toward Holloway. The evidence is equivocal about whether this occurred. Exhibit 113 (cited by CFAC as rebutting Jolly's testimony) shows nothing about "comp time," and shows that Holloway received pay for 106.67 hours of vacation time in 2009 (which may have been the amount of such time he had accrued). Tarpley, according to the same exhibit,

received pay for 224 hours of vacation time in 2009, which may have been the total amount she had accrued, since 200 hours of that vacation time was paid at the end of her employment, in March 2009.

21. On December 23, 2008, CFAC announced that it was going shut down all production. In January 2009, CFAC backed up slightly, while negotiating with Bonneville Power Administration for a discount rate for power, and continued largely curtailed operations. The remaining employees were repeatedly given notices of the impending cessation of operations, after which cessation was postponed beyond each shutdown date.

22. In December 2008, with CFAC operating at 25% of its as-built capacity, Reali consulted with Vixie and CFAC's operations manager about appropriate reductions in the workforce, given that at least an even deeper reduction in operations (if not a complete shut down) would be coming in early 2009. Reali asked his two managers to recommend the most cost-efficient staffing of the plant at a 10% of as-built capacity level. Vixie recommended keeping at least two positions in accounting – essentially one junior position and one senior position – as the best way to staff accounting while preparing to shut down the plant. This 50 percent cut in a staff that already had more work than it could reasonably accomplish in the hours worked would inevitably lead to more work to do for the persons remaining. Similar cuts across the plant would reduce the total amount of work necessary in the Accounting Department, but not by one-half.

23. Vixie recommended keeping Holloway rather than Tarpley, because of his more versatile skill set, to fill the one junior position in the two-position bare minimum Accounting Department. Reali accepted that recommendation.

24. Vixie recommended keeping both Jolly and him as two "halves" of the senior position, because they possessed different knowledge and skill sets and would together offer a wider range of capabilities for preparing for and shutting down operations. Reali accepted this recommendation as well.

25. More likely than not, Reali would have accepted any recommendations that Vixie made about retention of employees to fill the bare minimum accounting positions. Vixie could have recommended that he fill the senior position and that Jolly be laid off, and he would have had a full-time position in 2009. He was under no obligation to recommend retention of Jolly on a half-time basis, but he did. This recommendation is inconsistent with allegations that Vixie harbored any kind of discriminatory animus toward Jolly at any time in or before December 2008.

26. During the remainder of the time that Jolly and Vixie worked for CFAC, until they were both laid off in February 2010, Jolly worked slightly more than half-

time hours. Additional hours that were required, above slightly more than half-time for both Jolly and Vixie, were worked by Vixie. More likely than not at least twice, Vixie asked Jolly if she wanted more hours and she either expressly declined or did not respond.

27. There is no evidence that Vixie had any obligation to assure or made any commitment that the working hours for the one senior accounting position in 2009 would be allocated exactly equally between Jolly and him.

28. The evidence does not establish that CFAC maintained a schedule in 2009, under which Vixie and Jolly each worked alternating weeks full-time. Such a plan would not have effectively utilized the differing skill sets of the two senior accounting employees, since the tasks each had mastered would not be required only every other week. Vixie's recommendation that CFAC keep both Jolly and him as two "halves" of the senior position could be interpreted as meaning the two would work alternating weeks. However Vixie phrased it and whatever CFAC may have understood, having each of the two strictly work every other week proved not to be practicable.

29. The evidence does not establish that, beginning in January 2009, Vixie continued to work full-time but Jolly's hours were in fact reduced to slightly more than half-time. Vixie worked considerably more than half-time hours during that period, and Jolly worked slightly more than half-time, but the circumstances proved in this hearing make it more likely than not that the precise allocation of extra hours (more than half-time for either Jolly or Vixie) was done by Vixie on an ad hoc basis as the need arose.

30. There is no evidence that Vixie allocated himself more hours than Jolly out of illegal discriminatory animus on any basis, including sex or age.

31. After January 2009, the functions of the accounting department could not be adequately performed within the hours authorized for 2 FTEs. After January 2009 as well as before January 2009, Jolly had to work more hours than she was authorized and paid for in order to complete her duties. There is no evidence that this reality was caused by Vixie harboring any discriminatory animus toward Jolly, on any basis, including sex or age.

32. There is no evidence of record that Jolly or Tarpley made any complaints to Whitehead or anyone else at CFAC at any time, other than through their Human Rights Act complaints, about any discriminatory action against them by Vixie on any basis, including sex or age.

33. The substantial and credible evidence of record does not establish that Vixie had a reputation among "virtually all the women working at the plant" as a chauvinist.

34. There is no evidence that, after CFAC and Vixie discovered that Jolly had filed her Human Rights Act complaint, any significant adverse action was taken against Jolly because of her complaint, although Vixie did make some inappropriate angry remarks to her in December 2009.

35. Jolly alleged that but for illegal discrimination she would have been offered a part-time contractor position after CFAC ceased operations. Her proof of this offer consisted of Vixie asking her, at some time in mid-2009, if she would be interested in such a position, then asking her to prepare a budget for costs of maintenance of the plant after the shutdown, using her salary to budget the accounting function.

36. Those two pieces of evidence do not establish that CFAC considered offering her such a contractor position, and then decided not to offer it to her because Vixie, out of discriminatory animus toward Jolly (on any basis, including sex or age) influenced the decision. Indeed, on the substantial and credible evidence of record, it is more likely than not that CFAC ultimately stayed with its plan to train the single remaining employee to do the accounting, which was its original and simplest plan for handling the accounting after the shutdown. It is more likely than not that this decision to stay with the original plan was made without any impetus by Vixie, whether out of discriminatory animus toward Jolly or otherwise.

IV. Opinion[1]

Montana law prohibits discrimination in employment because of sex or age. Mont. Code Ann. §§49-2-303(1)(a). Where there is no direct evidence of discrimination, Montana courts have adopted the three-tier standard of proof articulated in McDonnell Douglas.[2] See, e.g., Hearing Aid Institute v. Rasmussen, 258 Mont. 367, 852 P.2d 628, 632 (1993); Crockett v. City of Billings, 234 Mont. 87; 761 P.2d 813, 816 (1988); Johnson v. Bozeman School District, 226 Mont. 134, 734 P.2d 209 (1987); European Health Spa v. H.R.C., 212 Mont. 319, 687 P.2d 1029 (1984); Martinez v. Yellowstone Co. Welf. Dept., 192 Mont. 42, 626 P.2d 242, 246 (1981).

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[1] Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. Coffman v. Niece (1940), 110 Mont. 541, 105 P.2d 661.

[2] McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

The only conceivable "direct evidence" in this case consists of Jolly's testimony that Vixie made angry comments to her after he learned of her Human Rights Act complaint in December 2009. However, Jolly did not present substantial and credible evidence of any significant adverse action against Jolly after Vixie's comments. The grueling assignment of doing more work than her authorized hours allowed was unchanged. Her continued employment remained essentially unchanged until she and Vixie were laid off in February 2010. There is simply no evidence of any adverse action taken after Vixie's angry comments, even if they were exactly as Jolly remembered them (which CFAC disputes). The flimsy evidence offered to prove that Jolly would have been offered a contractor position but for Vixie's alleged discriminatory and/or now retaliatory animus was not enough to establish a direct evidence case. Thus, McDonnell Douglas is the appropriate standard by which to measure whether any illegal discrimination has been proven.

The first tier of McDonnell Douglas required Jolly initially to establish a prima facie case of discrimination by proving the following four elements by a preponderance of the evidence:

> "(I) that he belongs to a [protected class] . . .; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications."
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> McDonnell Douglas, 411 U.S. at 802.

This standard of proof is flexible as these precise four elements may not necessarily apply to every disparate treatment claim. In Martinez, 626 P.2d at 246, the Montana Supreme Court recognized that the fourth element in McDonnell Douglas could be satisfied simply by showing that a job vacancy is filled by an applicant who is not a member of the particular protected group. Thus, for the present case, in which keeping a job rather than getting hired for a job is the primary issue, Jolly had to prove that she (I) was a member of a protected class; (ii) was qualified for and successfully performing her present job; (iii) was subjected to significant adverse employment action and (iv) that someone else whose suitability for the job was not greater than hers was selected for the rest of her hours and to replace her.

At the first tier of McDonnell Douglas, Jolly established her prima facie case. She was a member of two protected classes (female and older than Vixie); she was qualified for and successfully performing her present job; her hours were reduced and

then she was laid off; Vixie worked many more hours than Jolly in last 14 months before they both were laid off and a male took over the accounting functions thereafter[3]; and both she and Vixie were senior members of the Accounting Department and the sole remaining (male) employee was far less qualified than she to do accounting functions.

By establishing her prima facie case under McDonnell Douglas, Jolly raised an inference of discrimination at law. The burden then shifted to CFAC to establish a legitimate, nondiscriminatory reason for its act or actions. McDonnell Douglas, 411 U.S. at 802. CFAC's burden was to produce a legitimate nondiscriminatory reason, for two reasons:

> "[It] meet[s] the plaintiff's prima facie case by presenting a legitimate reason for the action and . . . frame[s] the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext."

Texas Dept. of Community Affairs v. Burdine (1981), 450 U.S. 248, 255-56. CFAC had clearly and specifically to articulate a legitimate reason for the action or actions targeted by Jolly's prima facie case. Johnson, 734 P.2d at 212.

CFAC actually established several legitimate and nondiscriminatory reasons for its actions.

With regard to reducing Jolly's hours in 2009, CFAC was in the process of first preparing to close and then closing its operations, for financial reasons. Reducing the costs of the accounting functions, as well as the costs of every other phase of the operation, was vital to staying open as long as possible and then closing down with minimum additional financial losses.

In addition to presenting legitimate business reasons for its actions, CFAC also rebutted elements of Jolly's prima facie case. With regard to Jolly working a little more than half-time from January 2009 into February 2010 when the closure process ended, Vixie could have recommended that she be laid off and he be the entire senior half of the two person skeleton crew left to do the accounting work. He did not. Thus, far from a being a significant adverse action, retaining Jolly for at least half-time work was a positive action, that kept her employed for another 14 months.

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[3] The Hearing Officer has included the issue of Vixie's alleged hostile remarks in this decision, because Jolly did not thereby establish a discrimination charge upon which she would be entitled to recover. Had the evidence arisen to that level, the issue of whether Jolly could possibly recover on a retaliation charge she had never pleaded would have arisen.

With regard to Vixie having more hours than Jolly, CFAC established that at least twice Jolly did not affirm that she wanted more hours when asked, since she either did not respond to Vixie's inquiries or refused them. In addition, CFAC showed that the plan for the two person Accounting Department that was established in January 2009 was not for the two people working in the senior position to work exactly equal hours, but for them to each work at least half-time, which they did do.

With regard to an allegedly retaliatory refusal to hire Jolly as a contractor, to do accounting functions after February 2010, CFAC showed that its original plan (to use the one remaining employee to do accounting functions) was eventually actually implemented, and that in assigning Jolly some work projecting accounting costs based upon her salary, Vixie was not offering her a job after February 2010, and certainly not guaranteeing that she would have any such job.

Also, with regard to the eventual lay off of Jolly, Vixie was not treated more favorably, since he also was laid off.

Since CFAC produced legitimate reasons for all of its actions, Vixie's hostile comments to Jolly in December 2009 (the contents of which were disputed by testimony) were no longer tied to subsequent adverse actions.

Once CFAC produced its legitimate reasons in support of its decisions about Jolly's employment, the burden shifted back to Jolly to show CFAC's reasons were pretextual. McDonnell Douglas, 411 U.S. at 802; Martinez, 626 P.2d at 246. This is the third and last tier of proof McDonnell Douglas. Proof of the pretextual nature of CFAC's proffered reasons may be either direct or indirect:

> "She may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence."

Burdine, 450 U.S. at 256.

Ultimately, Jolly always had the burden of persuading the finder of fact, by a preponderance of the evidence, that CFAC had discriminated against her. See, e.g., Montana Rail Link v. Byard, (1993), 260 Mont. 331, 860 P.2d 121, 129:

> The burden of persuasion remains with the complainant throughout the analysis. The employer need only set forth some legitimate reason for rejecting the employee, it does not have to prove this reason was the motivation to reject the complainant. However, if it can set forth a reason, the complainant's prima facie case is considered rebutted. [citing McDonnell Douglas at 802-803].

> The third step in the analysis provides for an opportunity for the complainant to prove that the legitimate reasons given for the employer's failure to hire are a pretext for discrimination. "This burden now merges with the ultimate burden of persuading the court that [plaintiff] has been the victim of intentional discrimination." Johnson v. Bozeman S.D. (1987), 226 Mont. 134, 734 P.2d 209, 213, citing Texas Dept. of Com. Affairs v. Burdine (1981), 450 U.S. 248, 256.

With all the evidence adduced, Jolly did not carry her burden of persuasion. It is not credible that Vixie harbored an illegal discriminatory animus against Jolly when he proposed that she remain employed half-time in 2009. The evidence, such as it is, of any illegal discriminatory animus before that process, in December 2008, is entirely rebutted by the evidence that Vixie then recommended keeping Jolly at work in 2009.

After December 2008, the evidence that Vixie worked many more hours than Jolly is not enough to persuade the fact finder that discrimination occurred. Whether Jolly was actually willing to work those hours remains in question. If she was willing, at least some of the time, the substantial and credible evidence of record does not establish whether Vixie knew or should have known of any such willingness. Ultimately, there is no evidence that if Vixie knew or should have known of Jolly's alleged willingness, his reason for not sharing those extra hours with her was discriminatory animus.

CFAC's original plan was to saddle its one remaining employee with performance of the accounting functions necessary after complete closure of the plant, after training that lone employee. Ultimately that was exactly what CFAC did. The evidence about Vixie's questions to Jolly about her interest in such a limited contractor position and about his assignment to her of budget projections of the cost of such accounting (using her salary to particularize the cost) simply did not persuade the Hearing Officer that CFAC seriously considered departing from the original plan to include another contractor to cover the accounting functions, even though it was possible to assign those functions to the one remaining employee.

Throughout this case, the difficulties Jolly and Tarpley had working for Vixie were presented as proof of his hostility toward women. Inadequate reputation evidence was offered to try to paint him as a known chauvinist in the plant. What appeared to be exaggerated testimony about his "outburst" about the discrimination case in December 2009 was added to the mix. Ultimately, the evidence, taken as a whole, simply was unpersuasive.

Obviously, it was difficult to work for Vixie. Nonetheless, the substantial and credible evidence of record fell short of establishing that such difficulties resulted from him holding any illegal discriminatory animus on any basis, including sex or age, instead of resulting from him interposing more exacting standards for the accounting work and perhaps also suffering from an inability to let his subordinates do their work without over-managing them.

V. Conclusions of Law

1. The Department has jurisdiction. Mont. Code Ann. §49-2-512(1).

2. Columbia Falls Aluminum Company, LLC, did not illegally discriminate against Christie Jolly in her employment, because of her membership in any protected class, including sex and age.

VI. Order

1. Judgment is found for Columbia Falls Aluminum Company, LLC, and against Christie Jolly on the charges that it illegally discriminated against her in employment because of her membership in any protected class, including sex and age.

2. Christie Jolly's discrimination complaint is dismissed.

Dated: November 22, 2011.

/s/ TERRY SPEAR
Terry Spear, Hearing Officer
Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Darrell Worm, Ogle & Worm Law Offices, counsel for Christie Jolly and Stanley T. Kaleczyc and Christy S. McCann, Browning Kaleczyc Berry & Hoven P.C., counsel for Columbia Falls Aluminum Company, L.L.C.:

The Hearing Officer's decision herein issued today. Unless there is a timely appeal to the Human Rights Commission, the Hearing Officer's decision becomes final and cannot be appealable to district court. Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission c/o Kathy Helland
Human Rights Bureau, Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must ALSO serve your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions DO NOT apply. The statute provides for an aggrieved party's appeal to the Human Rights Commission. Mont. Code Ann. § 49-2-505(4), which precludes extending the appeal time for motions seeking relief from the Hearings Bureau, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The appealing party or parties must then arrange for the preparation of the transcript of the hearing at their expense. Contact Tamara Newby, (406) 444-3870 immediately to arrange for transcription of the record.

Jolly.HOD.tsp