

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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JON CRUSON,  
Charging Party,

HRB CASE NO.0131015756

-v-

FINAL AGENCY DECISION

MISSOULA ELECTRIC COOPERATIVE,  
INC.,  
Respondent.

\*\*\*\*\*

Charging Party, Jon Cruson, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in employment on the basis of age. Following an informal investigation, the Department determined that a preponderance of the evidence supported Cruson's allegations. The case went before the Office of Administrative Hearings of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA. The hearings officer issued a Decision on October 23, 2014. The hearings officer determined that the Joint Apprenticeship Training Committee (JATC) was not an agent of Respondent Missoula Electric Cooperative (MEC) and therefore that MEC could not be held responsible for JATC's actions. As a result, the hearings officer entered summary judgment in favor of the Respondent.

Cruson filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 20, 2015. David Berkoff, attorney, appeared and presented oral argument on behalf of Cruson. Dave Cotner, attorney, appeared and presented oral argument on behalf of Missoula Electric Cooperative, Inc..

## **STANDARD OF REVIEW**

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision 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. Rules of Mont. 24.9.123(4)*. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3<sup>rd</sup> 284, ¶ 39.

## **DISCUSSION**

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearings officer's Order Granting MEC's Motion for Summary Judgment; Order of Dismissal; Notice of Appeal Rights (Order) incorrectly applied the law. The Commission finds that the facts presented by the hearings officer in the Order do not support the legal conclusion that there is no agency relationship between Respondent MEC and the Joint Apprenticeship Training Program (JATC). This order should not be misinterpreted as holding that an agency relationship exists as a matter of law. Instead, the Commission finds that the facts presented simply do not support lack of agency between MEC and the JATC.

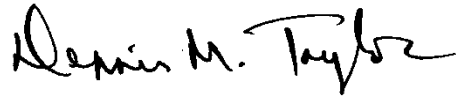
## **ORDER**

IT IS HEREBY ORDERED, that the appeal of Jon Cruson is sustained. The Commission rejects the Order of the hearings officer and remands the case to the Office of Administrative Hearings for further proceedings consistent with this order.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA*. This review must be requested within 30 days

of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. *Section 2-4-702(2), MCA.*

DATED this 30th day of March, 2015.

A handwritten signature in black ink that reads "Dennis M. Taylor". The signature is written in a cursive style with a horizontal line underneath it.

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Dennis M. Taylor, Chair  
Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 30th day of March, 2015.

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Annah Smith, Legal Secretary  
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