

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

BARBARA E. FRANER

Complainant

and

LOFINO'S FOOD CENTER

Respondent

Complaint #8929

(DAY) 76111999 (14233) 010400

22A – A0 – 8912

HEARING EXAMINER'S FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND RECOMMENDATIONS

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INTRODUCTION AND PROCEDURAL HISTORY

Barbara E. Franer (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on January 4, 2000.

The Commission investigated and found probable cause that Lofino's Food Center (Respondent) engaged in unlawful discriminatory practices in violation of Revised Code (R.C.) 4112.02(A).

The Commission attempted, but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on December 7, 2000. The Complaint alleged that Respondent harassed and constructively discharged Complainant because of her sex.

Respondent filed a timely Answer to the complaint, admitting certain procedural allegations but denying that it engaged in any unlawful discriminatory practices. Respondent also pled affirmative defenses.

A public hearing was held on June 25-26, 2001 at the Commission's Regional Office in Dayton, Ohio.

The record consists of the previously described pleadings; the transcript consisting of 386 pages of testimony; exhibits admitted into evidence at the hearing; and the post-hearing briefs filed by the Commission on October 31, 2001, and by Respondent on December 14, 2001. The Commission filed a reply brief on January 8, 2002.

FINDINGS OF FACT

The following findings are based, in part, upon the Hearing Examiner's assessment of the credibility of the witnesses who testified before him in this matter. The Hearing Examiner has applied the tests of worthiness of belief used in current Ohio practice. For example, he considered each witness's appearance and demeanor while testifying. He considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. He further considered the opportunity each witness had to observe and know the things discussed; each

witness's strength of memory; frankness or the lack of frankness; and the bias, prejudice, and interest of each witness. Finally, the Hearing Examiner considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on January 4, 2000.

2. The Commission determined on October 26, 2000 that it was probable that Respondent engaged in unlawful discrimination in violation of R.C. 4112.02(A).

3. The Commission attempted to resolve this matter by informal methods of conciliation. The Commission issued the Complaint after conciliation failed.

4. Respondent is a corporation doing business in Ohio and an employer. Respondent owns and operates four retail grocery stores in the Dayton area.

5. Complainant is a female. She was employed at Respondent's corporate office in April 1996 as a general office worker. Shortly thereafter Respondent created a new position for her called Accounts Receivable Coordinator. Complainant's duties required her to interact with buyers, vendors, secretaries, the Accounting Manager, and the Accounts Payable Department.

6. Jim Winning, male, was one of those buyers. He had been employed by Respondent since January 1995. Winning had a rude and uncivil personality. When he was upset about something, he would raise his voice and use profanity. His propensity for temper tantrums was well known by his coworkers and supervisors.

7. In November 1997 Respondent moved their corporate office to Beavercreek, Ohio. Winning's relationship with Complainant began to deteriorate shortly after the move to the Beavercreek location. He began to make sarcastic remarks to her and ask her annoying questions about the size and location of her cubicle. These comments were made frequently. Complainant tried to ignore them. She also reported them to her immediate

supervisor and to the Director of Human Resources. They responded, “Jim’s being Jim,” or “That’s the way Jim is,” or “Jim’s overworked,” or offered other excuses for his behavior. (Tr. 73)

8. On other occasions Winning would come into Complainant’s cubicle looking for something in her files while she would be working. Instead of asking her to find it, he would open the files, start slamming file drawers, saying, “Now, I’m having to do the fucking accounting, I have to do everything around here, nobody does anything!” (Tr. 74)

9. Whenever Complainant had to interact with Winning, he would be rude to her. He never greeted her. He always addressed her rudely, saying something like, “What do *you* want?” or “What are *you* doing here?” (Tr. 80)

10. In the summer of 1998, Complainant did extra work for one of Respondent’s vendors. As a token of his appreciation, he gave her tickets to the Dayton Air Show. He had received the tickets from Respondent. The tickets were normally reserved for vendors and allowed them access to the air-conditioned pavilion and included catered meals and drinks. (Employees

received general admission tickets.) Complainant had a conflict and could not use the tickets. She asked the buyer who was in charge of the event if she could exchange them for another day. He was not sure he could exchange them. She gave him the tickets and told him that if she could not exchange the tickets, she would give them back to the vendor. (Tr. 74-75)

11. Fifteen or twenty minutes later Winning stuck his head over the partition of her cubicle and began screaming and cursing at her about the tickets. He insisted that she tell him who gave them to her. Complainant refused to tell him the person's name. Winning replied, "You're going to tell me or I'm going to find out!" Winning continued to demand that she disclose the vendor's name. When Complainant did not respond, he went back to his office and started calling vendors to find out who gave her the tickets. Complainant asked her supervisor to intervene. He did not respond. Winning told Complainant that she could not use the tickets. The incident upset Complainant, and it took her a while before she could get back to work. (Tr. 76-79)

12. About three months later Complainant approached Winning about a past-due account from one of his vendors. Complainant wanted to know if Winning had been successful in contacting the vendor to get payment or whether she should deduct what was owed from the bill that the vendor sent Respondent. Winning went into a tirade, yelled at her, and repeatedly stated, “Deduct it! No, don’t deduct it! Deduct it!! Don’t deduct it!” louder and louder each time. Finally, he said, “If you deduct it, I’m shoving my foot up your ass! No! I’m shoving both of my goddamn feet up your fucking ass!” – at which time Complainant walked back to her cubicle and reported the incident to her supervisor. (Tr. 80-81)

13. Complainant was visibly upset. Her face was red, her eyes were glassy, and she was shaking. The supervisor told her to take the day off. When Complainant told her husband what had happened, he made an appointment to meet with Complainant’s supervisor. He met with Complainant’s supervisor and Winning’s supervisor the next day. (Tr. 81-82)

14. When Complainant returned to work the following Monday, Winning apologized to her. Winning’s supervisor told Complainant that if she was not

comfortable working with Winning, then Winning would be terminated. Complainant told him she did not want Winning to lose his job. (Tr. 218) Winning was given a written reprimand over the incident.

15. Complainant followed up the incident by sending a letter to her supervisor where she proposed that she might get more respect from the buyers if her position was changed to a salaried/management position.

16. The next incident occurred in October 1999. Complainant was in the reception area having a conversation with the assistant buyer who worked for Winning. She was filling in for the receptionist. While they were talking, Winning came up to the reception area, waving his arms, screaming, and cursing. Complainant was afraid Winning was going to hit her. (Tr. 95) She moved behind the counter. The Human Resources Director came into the area and told Winning his behavior was not appropriate and that he should go back to his office. Winning cursed at him a couple of times and left the area escorted by the Human Resources Director. While he was walking back to his office, he kicked a box. (Tr. 95-96)

17. Complainant went to her supervisor and told him that he had to do something about the situation. He told her to take the rest of the day off. (Tr. 97) When Complainant returned to work, Winning glared at her every time he passed her office. (Tr. 98-99)

18. Another incident occurred on October 29, 1999. Complainant and Winning had a long-running controversy about answering the telephones. From the onset of her employment, Complainant had an agreement with her supervisor that she would not have to fill-in for the receptionist, which was customarily done by other persons in support positions, all of whom were females.

19. Complainant was scheduled to leave work early that day. Before she left, she found a back-up schedule for the receptionist's position in her tray with Winning's handwriting on it, "F.Y.I." Circles had been drawn around her name where Complainant had been scheduled to fill-in for the receptionist five hours a week. Complainant complained about this to her supervisor and to the Director of Human Resources. When the matter was not resolved, Complainant became physically ill and went to her doctor's office.

Subsequently, she was transferred to the hospital and had to take two weeks off from work.¹ (Tr. 100-104)

20. When Complainant returned to work on November 17, 1999, she gave her supervisor a letter where she repeated her request that her position be changed to a salaried/management position. The Director of Human Resources responded on November 18 advising her that Respondent could not grant her request. (Comm.Ex. 11, 12, Tr. 111-112)

21. Complainant resigned on November 19, 1999, because she could not continue to work in a hostile working environment. (Comm.Ex. 13, Tr. 115)

¹ Throughout her employment Complainant had to go home six or seven times because she was so upset about Winning's outbursts.

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.²

1. The Commission alleged that Respondent harassed and constructively discharged Complainant because of her sex.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

² Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

It shall be an unlawful discriminatory practice:

- (A) For any employer, because of the . . . sex, . . . of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(A) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

4. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 Ohio St.3d 569. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under Title VII of the Civil Rights Act of 1964 (Title VII).

5. Federal and state anti-discrimination law prohibits sex discrimination in the terms and conditions of employment or any matter related directly or indirectly to employment, including the creation of hostile or abusive work

environment. Even if the alleged harassment is non-sexual in nature, it violates the statute if it is gender-based.

[A]ctions that are simply abusive, with no sexual element, can support a claim for sexual harassment if they are directed at an employee because of his or her sex. Simply put, “[h]arassment alleged to be because of sex need not be explicitly sexual in nature.”

Hampel v. Food Ingredients Specialties, Inc., (2000) 89 Ohio St.3d 169, 179 (quoting *Carter v. Chrysler Corp.*, (8th Cir. 1999), 173 F.3d 693, 701.

See also *Bowman v. Shawnee State University* (6th Cir. 2000), 220 F.3d 456, 463 (“Non-sexual conduct may be illegally sex-based and properly considered in a hostile environment analysis where it can be shown that but for the employee’s sex, he would not have been the object of harassment.”); *Williams v. General Motors Corp.*, (6th Cir. 1999), 187 F.3d 553 at 565 (“Contrary to the dissent’s vehement assertion, the law recognizes that non-sexual conduct may be illegally sex-based where it evinces ‘anti-female animus, and therefore could be found to have contributed significantly to the hostile environment.’”).

6. Furthermore, the employer is liable even if the offending employee was abusive to both men and women when the offending employee’s

treatment of women is worse than his treatment of men. *Kopp v. Samaritan Health System, Inc.*, 13 F.3d 264, (8th Cir. 1993).

7. Based on the foregoing discussion, the primary issue is whether Winning's profane ranting and raving was directed at Complainant and other women because of their gender, or, as Respondent argues, because he perceived they (males and females alike) were not performing their jobs in a satisfactory manner.³ This is a close question and is complicated by evidence that there were occasions where Winning yelled at male coworkers, vendors, and even Complainant's supervisor.

8. However, when Complainant's testimony and the testimony from other females who observed Winning's behavior (and/or were subjected to Winning's tantrums) is added into the equation, the balance tips in favor of the conclusion that Wining treated the women worse than he treated the men. This evidence supports the inference that Winning's abuse of women was more severe because they were women.

³ Respondent's post-hearing brief was devoted almost exclusively to this issue. Therefore, I will discuss it first.

9. My conclusion is based on:

- Complainant's testimony regarding Winning's behavior toward her;
- the testimony of Beverly Johnson, a former employee, about his behavior toward her;
- the testimony of Marilyn Anderson, a former Manager of Accounting/Human Resources (still employed in another capacity by Respondent), about Winning's behavior and the general office atmosphere, including Winning's treatment of females more harshly than males (Tr. 170); and
- Rosetta Friedman's testimony.

10. Rosetta Friedman's testimony was particularly compelling. She worked directly for Winning for five and a half months in 1995-96. She testified about how Winning treated her. Ultimately, she resigned because of the stress and Respondent's refusal to do anything about Winning's conduct. He berated her almost daily. He saw her as a "lowly woman" and nothing she could do satisfied him. (Tr. 284-285) He also yelled at Deborah Collingsworth.⁴ (Tr. 118, 287)

⁴ Collingsworth testified Winning never yelled at her. I found Friedman's and Complainant's testimony on this point to be more credible. Collingsworth was still employed by Respondent and, thus, had an interest in minimizing Winning's proclivity to berate females.

11. Friedman also compared Winning's treatment of females with his treatment of males. She testified he was friendly with them and never yelled at them. (Tr. 289-290) I found her testimony credible.

12. Friedman's testimony about her working relationship with her previous supervisor was also revealing. It rebutted Respondent's evidence that Winning only subjected persons to his tirades if they were not performing satisfactorily. She testified that when she worked for a different buyer doing the same work, her work was never criticized.⁵ (Tr. 286-287) Her testimony was not disputed.

13. The Commission having proven that the harassment was based on sex, must also prove: (1) that the harassment was unwelcome; (2) that the harassing conduct was sufficiently severe or pervasive to affect the terms, conditions or privileges of employment; and (3) that the employer through its

⁵ Respondent objected to this testimony because it concerned events that occurred before Complainant was employed by Respondent. Respondent's objection was overruled. See *Scandinavian Health Spa v. Ohio Civ. Rights Comm.*, 64 Ohio App. 3d 480, 492 (Cuyahoga Cty. 1992) ("events taking place more than six months prior to the filing of a charge may be admitted to shed light on the true nature of matters occurring within the six-month period").

agents or supervisory personnel knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

Hampel, supra at 176-177.

14. There is no question that the conduct was unwelcome. Nor can there be any question that Respondent's supervisory personnel knew that Complainant was being harassed. Some of them witnessed the incidents. Complainant reported each of the major incidents to her supervisor.

15. Respondent never took any corrective action, other than the reprimand, which did not change the situation. Although Winning's supervisor told Complainant he would fire Winning if she was not comfortable working with him, this was not appropriate corrective action. It is not appropriate for Respondent to put the burden on the employee to decide the appropriate discipline for the harasser. Likewise, the employer does not have to select the remedy that the employee demands. *Saxton v. AT&T Company*, 10 F.3d 526 (7th Cir. 1993). However, an employer has to take "steps reasonably likely to stop the harassment." *Id.* at 536 (citations

omitted). In this case, Respondent rejected Complainant's proposed solution and did nothing to change Winning's pattern of abusive behavior.

16. This leaves the last element of proof, the requirement that the harassing conduct be sufficiently severe or pervasive to affect the terms, conditions or privileges of employment. This element has an objective and a subjective component. The victim must perceive the work environment to be hostile or abusive, and the work environment must be one that a reasonable person would find hostile or abusive. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21-22 (1993).

17. In examining the work environment from both subjective and objective viewpoints, the factfinder must examine "all the circumstances" including the employee's psychological harm and other relevant factors such as:

. . . the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.

Id., at 23.

18. When all of the facts and surrounding circumstances are considered, the Commission met its burden of proof on this element. The evidence showed that Complainant was subjected to different levels of hostility from Winning almost daily. Thus, the harassment was frequent. His behavior permeated the work place and affected other employees as well as Complainant. His behavior was humiliating. Winning's conduct definitely made it more difficult for Complainant to do her job. In fact, she missed work for weeks because of his conduct.

CONSTRUCTIVE DISCHARGE

19. Normally, employees who are subjected to unlawful discrimination must remain on the job while they seek legal redress. *Brooms v. Regal Tube Co.*, 50 FEP Cases 1499 (7th Cir. 1989). However, an employee may be compelled to resign when confronted with an "aggravated situation beyond ordinary discrimination." *Id.*, at 1506 (citation omitted); See also *Yates v. AVCO Corp.*, 43 FEP Cases 1595, 1600 (6th Cir. 1987) ("proof of discrimination alone is not a sufficient predicate for a finding of constructive discharge; there must be other aggravating factors") (citation

omitted).

20. This is known as a constructive discharge. When there is an allegation of constructive discharge, the factfinder must examine “the objective feelings of [the] employee and the intent of the employer.” *Wheeler v. Southland Corp.*, 50 FEP Cases 86, 88 (6th Cir. 1989), *quoting Yates, supra* at 1600. To meet the objective standard, the Commission must show that the “working conditions . . . [were] so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign.” *Yates, supra* at 1600, *quoting Held v. Gulf Oil Co.*, 29 FEP Cases 837, 841 (6th Cir. 1982). To meet the intent requirement, the Commission must show that a “reasonable employer would have foreseen that a reasonable employee (or this employee, if facts peculiar to her are known) would feel constructively discharged.” *Wheeler, supra* at 89. In other words, an employer “must necessarily be held to intend the reasonably foreseeable consequences of its actions.” *Hukkanen v. International Union of Operating Engineers*, 62 FEP Cases 1125 (8th Cir. 1993).

21. Based on the foregoing discussion, the evidence was overwhelming that Complainant considered herself to be in an untenable position.

Winning's behavior had caused her to be absent from work on numerous occasions. The last occasion caused her to become physically ill and miss work for two weeks. Respondent gave no indication that the situation would change.

22. Respondent argues that Complainant was merely using the situation to attempt to get herself a change in title and a raise in pay. However, Complainant's letter of resignation, as well as her testimony, which I found credible, makes it clear that it was the hostile working environment that led her resignation, not the reassignment of receptionist's duties or Respondent's refusal to make her a salaried employee. It was the cumulative effect of all of the prior incidents and other negative interaction with Winning that led her to the decision to resign. Thus, Complainant felt compelled to resign. *See Mauzy v. Kelly Services, Inc.*, 75 Ohio St.3d 578 (1996) (courts look to cumulative effect of employer's actions to determine if reasonable person would feel compelled to resign).

23. The Commission must also submit evidence that meets the objective standard. In this case there was evidence that if Complainant

returned to work, she would be subjected to the same environment she left. Winning would still be out of control, and Complainant would never know when she would be subjected to the next outburst. The anxiety that she was suffering would only get worse. Winning's behavior caused Complainant to suffer a tangible, psychological injury, which is more than the law requires for a constructive discharge.⁶ Under similar circumstances, a reasonable person would feel compelled to resign.

24. Respondent's rejection of Complainant's proposal without any alternative suggestion is evidence that Respondent knew or should have known that this would lead someone in Complainant's position to resign.

RELIEF

25. When the Commission makes a finding of unlawful discrimination, the victims of such behavior are entitled to relief. R.C. 4112.05(G)(1). Title VII standards apply in determining the appropriate relief under the statute. *Ohio Civ. Rights Comm. v. David Richard Ingram, D.C., Inc.* (1994), 69 Ohio St.3d 89.

26. Like Title VII, one of the purposes of R.C. Chapter 4112 is to make “persons whole for injuries suffered through past discrimination.” *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 421, 10 FEP Cases 1181, 1187 (1975).

The attainment of this objective requires that:

. . . persons aggrieved by the consequences and effects of the unlawful employment practice be, so far as possible, restored to a position where they would have been were it not for the unlawful discrimination.

Franks v. Bowman Transportation Co., 424 U.S. 747, 763, 12 FEP Cases 549, 555 (1976) (footnotes omitted).

27. In providing a “make whole” remedy, victims are “presumptively entitled to reinstatement.” *Ford v. Nicks*, 48 FEP Cases 1657, 1664 (6th Cir. 1989). There is also a strong presumption in favor of awarding back pay:

[G]iven a finding of unlawful discrimination, backpay should be only for reasons, which applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered for past discrimination.

Albemarle Paper Co., *supra* at 421, 10 FEP Cases at 1189.

10) ⁶ Complainant’s physician diagnosed her as suffering from depression. (Comm.Ex.

This presumption “can seldom be overcome.” *Los Angeles Dept. of Water and Power v. Manhart*, 435 U.S. 702, 719, 17 FEP Cases 395, 403 (1978). There must be “exceptional circumstances” to deny an award of back pay. *Rasimas v. Michigan Dept. of Mental Health*, 32 FEP Cases 688, 696 (6th Cir. 1983).

28. The difficulty in calculating back pay does not constitute an exceptional circumstance. The Commission should award back pay “even where the precise amount of the award cannot be determined.” *Id.*, at 698. The calculation of back pay does not require “unrealistic exactitude”; a reasonable calculation will suffice. *Salinas v. Roadway Express, Inc.*, 35 FEP Cases 533, 536 (5th Cir. 1984). The Commission should resolve any ambiguity in the amount of back pay against Respondent. *Rasimas, supra* at 698; *Ingram, supra* at 94.

29. To be eligible for back pay, victims must attempt to mitigate their damages by seeking substantially equivalent employment. *Rasimus, supra* at 694. A substantially equivalent position affords the victim “virtually identical promotional opportunities, compensation, job

responsibilities, working conditions, and status.” *Id.*, at 695. Victims forfeit their right to back pay if they refuse to accept a substantially equivalent position or fail to make reasonable and good faith efforts to maintain such a job once accepted. *Ford Motor Co. v. EEOC*, 458 U.S. 219, 29 FEP Cases 121 (1982); *Brady v. Thurston Motor Lines*, 36 FEP Cases 1805 (4th Cir. 1985).

30. The discriminating employer has the burden of proving that the victim failed to mitigate damages. To meet this burden, the discriminating employer must establish that: (1) there were substantially equivalent positions available, and (2) the victim failed to use reasonable diligence in seeking such positions. *Rasimus, supra* at 695.

31. The victim’s duty to use reasonable diligence is not burdensome. Victims are not required to be successful or go to “heroic lengths” to mitigate damages, only reasonable steps are required. *Nicks, supra* at 1664. The reasonableness of the victim’s effort to find substantially equivalent employment should be evaluated in light of the victim’s individual characteristics, such as educational background and work experience, and

the job market. *Rasimus, supra* at 695.

32. Besides proving lack of mitigation, the discriminating employer also has the burden of proving that the victim had interim earnings. The victim's interim earnings are deducted from the back pay award. R.C. 4112.05(G)(1).

33. The record in this case only showed that Complainant attempted to find work. Respondent did not cross-examine Complainant on her attempts. Respondent did not offer any evidence regarding the job market for persons with Complainant's experience. Nor did Respondent offer any evidence regarding Complainant's interim earnings, if any.

34. Therefore, based on the record before me, I will recommend that Complainant be awarded back pay. Back pay will be computed based upon what Complainant would have earned if she continued to work for Respondent, including any raises Complainant would have received, up until the issuance of the Commission's Final Order. Since a deduction of interim earnings is required by statute, I will also recommend that Complainant

provide an affidavit regarding her interim earnings, if any, so they can be deducted from the back pay award.

35. In addition to back pay, Complainant is also “presumptively entitled to reinstatement.” *Ford*, 48 FEP Cases at 1666. However, reinstatement is inappropriate here because Winning is still working for Respondent. See *Shore v. Federal Express Corp.*, 39 FEP Cases 809, 812 (6th Cir. 1985) (reinstatement was inappropriate because of the employer's hostility toward employee). Since reinstatement is inappropriate and an award of back pay does not fully redress Complainant’s economic loss, the Hearing Examiner recommends that Respondent pay Complainant front pay.

36. Front pay is compensation for the “post-judgment effects of past discrimination.” *Shore*, 39 FEP Cases at 811. Front pay is designed to make victims of discrimination whole for a reasonable future period required for them to re-establish their rightful place in the job market. See *Reeder-Baker v. Lincoln Natl. Corp.*, 42 FEP Cases 1567 (N.D. Ind. 1986) (court ordered front pay for two years, taking into account money plaintiff would earn at her new but lower-paying job). An award of front pay should be limited to

the amount required to place Complainant in the position she would have occupied absent unlawful discrimination. *Shore*, 39 FEP Cases at 812.

37. The Hearing Examiner will recommend two years of front pay. Of course, if Complainant has found substantially equivalent employment, she is not entitled to front pay. If Complainant has found employment that pays less than what she was earning while she was employed by Respondent, she is entitled to the difference for two years from the date of the Commission's Final Order.

RECOMMENDATIONS

For all the foregoing reasons, it is recommended in Complaint #8929 that:

1. The Commission order Respondent to cease and desist from all discriminatory practices in violation of Chapter 4112 of the Revised Code; and

2. Within ten days of receipt of the Commission's Final Order, Respondent shall submit to the Commission a certified check payable to Complainant for the amount Complainant would have earned had she been employed as an Accounts Receivable Coordinator on November 19, 1999 and been so employed up until two years from the date of the Commission's Final Order, including any raises Complainant would have received, less Complainant's interim earnings as set out in her affidavit, plus interest at the maximum rate allowed by law.

January 31, 2002

FRANKLIN A. MARTENS
CHIEF HEARING EXAMINER