EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Chris Mitchell 3709 E. Karstens Drive, #D Madison, WI 53704 Complainant vs. Marge's Amoco 735 E. Washington Avenue Madison, WI 53703 Respondent	HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER Case No. 21935

This matter came on for a public hearing before Commission Hearing Examiner, Clifford E. Blackwell, III, on June 28, 1994 and July 8, 1994 and was held in Room GR-120 of the Madison Municipal Building, 215 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53710. The Complainant, Chris Mitchell, appeared in person and by his attorney, Charles Giesen. The Respondent, Marge's JKL, Inc, d/b/a Marge's Amoco, appeared by its Chief Executive Officer, Marjorie Powell, and by its attorneys, De Witt Porter S.C. by Monica Burkert-Brist. Based upon the record of these proceedings, the Hearing Examiner makes the following Findings of Fact, Conclusions of Law and Order:

RECOMMENDED FINDINGS OF FACT

1. The Complainant is a White male who was arrested on or about June 8, 1993, in Madison, Wisconsin for disorderly conduct. At all times relevant to this complaint, the Complainant lived at 3709 E. Karstens Dr., Apt. D, Madison, WI 53704.
2. The Respondent is a Wisconsin corporation doing business as Marge's Amoco with two locations within the City of Madison. One of these locations is 735 E. Washington Avenue. The Respondent employs several persons at this location on a weekly basis.
3. The Complainant submitted an application for employment with the Respondent on or about April 19, 1993. The Complainant was hired as a Clerk/Cashier on April 23, 1993 and his first day of work was April 25, 1993. He was hired to work the third or overnight shift which would normally begin at 10:00 p.m. or midnight and would end at approximately 6:00 a.m. the next day. He was scheduled to work between 32 and 40 hours per week. His starting pay was five dollars ($5.00) per hour. He was required to work weekends but would be relieved from hours on Monday and Tuesday evenings.
4. The Complainant has a young daughter and is subject to a court order to pay child support. The same order provides for a flexible visitation arrangement to be worked out by the Complainant and the mother of his daughter. During 1993, the Complainant's child support obligation was $100 every two weeks.
5. The Complainant in his first weeks of employment proved to be unreliable with respect to his willingness to work weekend hours and would often fail to perform all of his assigned tasks. The Complainant was warned about these problems.

6. The Complainant prepared a letter on or about June 3, 1993 addressed to Marge Powell or her assistant, Janice Buckingham, indicating that he would need to start having at least every other weekend off because of his custody obligations for his daughter. He also requested the weekend of July 3 and 4, 1993 off. The Complainant left this letter with his paperwork on the morning of June 4, 1993.
7. Buckingham found the Complainant's letter and contacted Powell for instructions about how to respond to the letter. Powell indicated that the "request" could not be granted and prepared a letter in response.
8. In addition to preparing a letter, Powell decided to fire the Complainant because of his past performance problems and his assumption that he could change his schedule. Powell apparently delivered this decision in the form of a letter to the Complainant during his shift on June 7, 1993. Powell's decision was made on June 4, 1993.
9. On June 4, 1993, Buckingham asked Robbie Bucemi, a clerk/cashier at the Washington Avenue station, if he could cover the Complainant's hours starting the following week because the Complainant had quit. Bucemi also had to fill in for the Complainant the night of June 4, 1993 because the Complainant called in sick. The Complainant was ill all day and did not leave his home once he returned there after his work. The Complainant shares housing with his mother, Nona Mitchell.
10. On June 8, 1993, the Complainant was arrested for disorderly conduct stemming from an incident involving the mother of his daughter. Before being taken into custody, the Complainant asked his mother to call Marge Powell to see if he could obtain an advance on his check. This was apparently to be his last check but the Complainant only asked his mother to see if he could get an advance on his next check. The Complainant's mother, Nona Mitchell, called the station and asked about the check. She was told that she would need to speak to Powell. Powell refused to return Nona Mitchell's call.
11. Powell was greatly offended by the idea that the Complainant would, in her view, ask her to pay his bail. If the Complainant's employment had not already been terminated, Powell would likely have terminated the Complainant for his request.
12. The Complainant made a show of calling the Respondent to see when he was next scheduled to work. He did not go directly to his work place on June 9, 1993, or shortly thereafter, to see why he was not being called back about his schedule.
13. The decision to terminate the Complainant's employment was made prior to the date upon which he was arrested.
14. The Respondent has employed other persons who were arrested during their employment. The Respondent did not terminate or in any other manner treat these employees adversely because of their arrests.
15. The Complainant's arrest record did not play any part in the decision to terminate his employment.

CONCLUSIONS OF LAW

16. The Complainant is a member of the protected class "arrest record" as that term is used in Sec. 3.23, Mad. Gen. Ord.
17. The Respondent is an employer within the meaning of Sec. 3.23, Mad. Gen. Ord.
18. The Respondent did not discriminate against the Complainant on the basis of his arrest record when it terminated his employment in June of 1993.

ORDER

19. The complaint is hereby dismissed without costs to either party.

MEMORANDUM DECISION

This case presents an unusually clear picture of the conflict inherent in cases brought all the way to hearing. One always expects the parties to have different views of facts and circumstances and these differences can often be harmonized to render an explanation that resembles what actually occurred. This case is different in that there is no way to harmonize the parties statements regarding a critical period. Essentially, it either comes down to one party is almost certainly lying and the other is telling the truth, or both parties are lying to some extent. Ultimately, the Hearing Examiner must decide whether the parties have carried their respective burdens of proof and presentation as established by case law. As part of this process, the Hearing Examiner must determine to the extent possible which witnesses are to be believed and which are not. Often this task is accomplished by examining the likely motivation for a witness' testimony and weighing that witness' testimony against common sense and experience. Given the testimony in this case, the Hearing Examiner must find that various witnesses on both sides are not credible and are likely lying. The reasons for this conduct can only be guessed. The effect of the proliferation of this untrustworthy testimony is to make more important the testimony of those witnesses whose testimony appears to be credible. Additionally, how the testimony of these witnesses fits with facts that are not in question inevitably leads the Hearing Examiner to his ultimate conclusions.

It is uncontested that the Complainant applied for a position with the Respondent on April 19, 1993. He was interviewed for the position and he was ultimately hired on or about April 23, 1993. He began work on April 25, 1993.

The Complainant's position was that of a Clerk/Cashier. He was generally scheduled to work Wednesday through Sunday with Mondays and Tuesdays off. The Complainant's shift was to begin at 10:00 p.m. on one day and end at 6 a.m. the next. While these days and times were the Complainant's usual schedule, he would from time to time work other days and hours as a replacement for other workers or would miss days or hours because of illness or for other reasons. The Complainant's starting wage was $5.00 per hour. At some time during his employment, his wage increased to $5.50. The reasons for this change in wage are disputed on this record.

During his employment with the Respondent, the Complainant had a child support obligation of $100 every two weeks. He and the mother of his child had joint custody of the child with visitation to be arranged between the parents.

It is undisputed that on June 8, 1993, the Complainant was arrested for disorderly conduct stemming from a dispute with the mother of his child. He spent the night in jail and the next morning sought, through his mother, the financial assistance of Marjorie Powell, the owner of the Respondent, in order to make bail and gain his release from jail. Powell refused. Clearly, the Respondent knew of the Complainant's arrest due to his telephone calls or those of his mother on June 9, 1993.

It is further undisputed that on June 3, 1993, the Complainant authored a note to the Respondent essentially demanding an alteration to his work schedule and requesting permission to take off time over the July 4 holiday. The note indicated the reason for the desired change related to his child visitation and custody obligations. Despite this stated reason, there had been no change to the Complainant's custody or visitation arrangements ordered by the court. This note was left for the Respondent at the end of the Complainant's work day early in the morning of June 4, 1993.

What is significantly in dispute is what happened and why it happened between the time that the Complainant left the June 3 note and some undefined date subsequent to June 9, 1993. It is the

Complainant's contention that the Respondent terminated his employment on June 9, 1993 after learning of his arrest. Presumably the termination resulted from his arrest. The Respondent asserts that it believed that the Complainant quit his employment effective June 7, 1993, on June 4, 1993, because the Respondent was unwilling to acquiesce in his demand for a new schedule and time off over the July 4 weekend.

The key focus of this dispute is the afternoon of June 4, 1993. The Respondent asserts that in response to the Complainant's note received earlier that morning, a meeting was held between the Complainant and Marge Powell with some participation of Janice Buckingham on June 4, 1993 to address the Complainant's note. The Respondent asserts that at this meeting, the Complainant indicated that he would terminate his employment because of the Respondent's refusal to alter his schedule. Further the Respondent states that it was mutually agreed that the Complainant's last day of work would be June 7, 1993.

The Complainant asserts that he was ill on June 4 and did not attend any meeting on June 4,1993. In fact, it is undisputed that the Complainant did not report to work on the evening of June 4, 1993.

If the Respondent and its witnesses are lying about a meeting on June 4, 1993, the Complainant's claim of discrimination becomes much more likely though is not necessarily proven. If the meeting occurred as the Respondent claims, the Complainant's complaint cannot be sustained. The record does not clearly support either party's position.

What the record does appear to support is that the Complainant's June 3, 1995 note triggered a response from the Respondent the next day. The testimony of Robbie Bucemi is central to the resolution of this case because it more credibly fixes the date upon which the Respondent reacted to the Complainant's note requiring a change in his schedule. Bucemi was one of only two witnesses testifying at the hearing who appeared to have little or no reason to "shade" his testimony. At the time of hearing, Bucemi primarily worked for a local copy shop and worked only limited part-time hours for the Respondent. Fear of losing these limited hours does not present a likely reason for Bucemi to lie about his recollections. It would seem likely that Bucemi could replace these hours fairly easily with another employer. Nothing in this record indicated that Bucemi had the type of close personal relationship with any of the other witnesses that might cause one to change or alter his or her testimony. Bucemi was not unusually nervous in presenting his testimony and he attempted to answer questions without obvious evasion. In general, the Hearing Examiner found Bucemi to be the most important and credible witness at the hearing.

Bucemi testified that Janice Buckingham came to him during his shift on June 4, 1993 to ask if he could change his schedule in order to pick up hours previously assigned to the Complainant. Bucemi is able to reliably fix the date because of several factors. He reviewed work records showing that he worked during the critical time period, he recalled his conversation with his co-worker, whose presence was corroborated by the work schedules and he had to come back in to work a double shift that date, a fact supported by the work schedules and the testimony of the Complainant. An important part of the Complainant's case rests on his allegation that he was not present on June 4, 1993 due to illness. He could not confirm that Bucemi covered his hours on June 4, 1993 but his testimony confirms that someone needed to cover his hours. Bucemi testified that the change of hours was necessitated by the Complainant's having given notice. While Bucemi stated that he had been told that the Complainant gave his two week notice, the Hearing Examiner is uncertain whether this phrase was used generically or specifically. It is the Hearing Examiner's experience that the words "two week notice" are sometimes used as a synonym for quitting rather than meaning actually two weeks must elapse from the giving of notice.

Exhibit 16, pp. 4 and 5 tend to support Bucemi's testimony. Page 4 is the work schedule prepared prior to the Complainant's letter of June 3, 1993. It shows the Complainant to have been scheduled for work on June 10, 11, 12, and 15 through 19. Page 5 is a work schedule covering the same period but with the Complainant's name removed on June 10 through 12 and June 15 through 19 and Bucemi's name instead. These documents memorialize the schedule changes referred to by Bucemi. Given the changes made in the schedule, it suggests that Bucemi's recollection of the day is accurate.

Bucemi did not testify that the Complainant was present for a meeting on June 4, 1993. He quite clearly testified that he had not seen the Complainant on June 4, 1993. This raises the question of whether the Complainant was present for a meeting that he denies being at without Bucemi having seen him, or the Respondent determined to fire the Complainant because of his June 3, 1993 request and then made up a story about the June 4, 1993 meeting.

From the perspective of the Hearing Examiner, answering this question is irrelevant once he has been satisfied that the Respondent determined to terminate the Complainant's employment on June 4, 1993 and took steps to carry that decision into action. The Hearing Examiner, based upon the testimony of Bucemi and the re-worked schedules, is so satisfied. Having found that the decision to terminate the Complainant was made on June 4, 1993, the Complainant is unable to make out a claim of discrimination based upon his arrest because his arrest had not occurred at the time of the decision to terminate the Complainant's employment.

The Hearing Examiner is puzzled about many aspects of this case. For instance, it is clear that the Respondent has engaged in a significant pattern of lying and record manipulation. At the same time, the testimony presented at the hearing was convincing that the Respondent has on prior occasions had employees who were arrested and that those arrests played no part in employment. The Hearing Examiner would have expected this to form the centerpiece of the Respondent's defense but it was presented almost as an afterthought.

Equally puzzling is why the Respondent went to the trouble of probably fabricating a story about a meeting when such a meeting was not necessary for her to have taken the action of terminating the Complainant's employment. It is possible that the Respondent did not know better and by the time it was obvious that such a tale was not required, she had gone too far to retract her prior statements. It is also possible that the Respondent is so comfortable with falsification of records and testimony that she was unable to resist the temptation to prepare the story.

The Complainant has left several puzzles for the Hearing Examiner also. For instance, he makes a great deal of his efforts to reach the Respondent on and after June 9, 1993 to see when he next appeared on the work schedule. This is despite the testimony by both sides that he worked a relatively fixed schedule. His name had already appeared on the work schedule submitted as Exhibit 16, p. 4. If the Complainant were so interested in finding out about the work schedule, why did he keep calling and not simply go down to the station to check the schedule, particularly on June 9, 1993? Assuming that the Complainant eventually did appear in person, he does not indicate how he attempted to find out what was going on.

Another puzzle surrounds the Complainant's note of June 3, 1993. The Complainant, in his testimony, describes it as a request. The Hearing Examiner finds that the note is stated more as an assumption of fact and not as a request. This is particularly true in light of the closing words of the note inviting the Respondent to contact the Complainant if there were any questions. The Complainant and his mother testified that he was willing to not make an issue of the note. This is contrary to the testimony of Dan Sloan. Sloan indicated that the Complainant had told him that if work conflicted with his

responsibilities to his daughter, then his daughter would have to come first. Sloan had no particular reason to change or shade his testimony. He was a part-time employee in employment that he could surely replace easily if necessary. He had little economic stake in not offending the Respondent. This is particularly true once he became aware that someone had intentionally shorted his hours by altering his "sign in/sign out" records. On the other hand, despite the fact that the Complainant's mother, Nona Mitchell, might lie to assist her son, the Hearing Examiner does not believe that she was lying. However, to the extent that her testimony relied upon information provided by the Complainant, it cannot be considered entirely reliable.

The record gives the Hearing Examiner little assistance in attempting to resolve these puzzles. The Hearing Examiner can draw inferences from the record. The strength of these inferences varies depending upon the conflicts in the record. What follows is the Hearing Examiner's best estimate of what happened in this case.

The Complainant began working for the Respondent in late April of 1993. He was hired for a specific schedule at a stated rate of pay. Despite having a relatively fixed schedule, his hours were somewhat flexible to the extent he was needed to fill in for other employees. In other words, the flexibility resided on the side of the Respondent to require additional work and not with the Complainant to not work certain hours.

While this arrangement initially suited the Complainant, it began to wear thin quickly. The Complainant was not a particularly reliable employee, most notably when it came to his weekend hours. In the next five or six weeks, the Complainant attempted to avoid working on a Friday or Saturday night several times. After considerable coaxing, on these occasions, the Complainant did work his assigned shift but often reported to work late. While at work, the Complainant did not always complete the tasks required of him. He was warned about his lack of performance.

After approximately 5 to 6 weeks on the job, the Complainant sought to unilaterally adjust his work schedule so that he would have "at least every other weekend off." At the same time, the Complainant indicated his desire to take off the Fourth of July weekend. The Complainant may have intended his note of June 3, 1993 as a request but he stated the note in terms more consistent with a demand.

The Assistant Manager, Janice Buckingham, received the note on the morning of June 4, 1993 at the beginning of her shift subsequent to the end of the Complainant's shift. She contacted Powell immediately to see what should be done about the Complainant's intention. The Respondent could not grant the Complainant's demand because it would create staffing problems trying to fill the hours that the Complainant asserted that he needed to have off. It would require the Complainant to be allowed to work an occasional part-time schedule and the hiring of an additional part-time employee to work the Complainant's hours when he would not.

Powell was greatly angered or offended by the Complainant's insistence on taking hours off that he had agreed to work. He had demonstrated himself to be a less than reliable or even good employee. Powell determined that since the Complainant had apparently decided that he needed to change his schedule, she could be as easily rid of him. She must have construed the Complainant's June 3, 1993 note as a form of ultimatum, i.e., "Give me the time off or I walk." The Respondent decided that it could live without the Complainant as well as or better than it could without him.

Whether Powell reached this decision on her own or after consultation with others is unclear. It would seem that Powell did not meet with the Complainant to arrange a termination date. Though the meeting on June 4, 1993 testified to by several witnesses probably did not occur, Powell and the

Complainant may have had subsequent discussions about fixing a final date of work. Even if Powell had decided simply to fire the Complainant as of June 8, 1993, and did not inform the Complainant until she terminated his employment, she could not have discriminated against the Complainant on the basis of his arrest because it had not occurred as of the date on which she made her decision. If the Complainant had been terminated at the end of his June 7 and 8 shift, anger about that termination may have contributed to the circumstances that resulted in his arrest later on June 8, 1993. The Complainant asked his mother, on June 9, 1993, to call the Respondent to ask for an advance on his check. While this could be evidence that the Complainant did not know that he had been fired or that he had indeed not been fired, it could equally evidence a request for the advance of his final paycheck. It could also simply be a reflection of a troubled or desperate person trying to find someone with money that might be able and willing to make bail.

Even if Powell had not already fired the Complainant, his request for her to pay his bail would have triggered his termination. This is not to say that Powell was upset about the Complainant's arrest. The fact that Powell had employed people in the past who had been arrested and suffered no employment consequence demonstrates that mere arrest was not likely to cause termination. It was the effrontery of the Complainant to ask to have his bail paid or at the least, to have his salary advanced so that he could pay his bail that would have triggered termination. The record demonstrates that Powell is the type of employer for whom the employment relationship is essentially one way. The employees work solely for her benefit and are to be accorded consideration when it works some additional benefit for her. The obvious alterations in the "sign in/sign out" sheets that only favor the employer demonstrate Powell's concern with her own bottom line. To be asked to extend herself for the benefit of a troublesome employee would likely trigger an extreme response from Powell.

In any event, the Complainant has failed to demonstrate that there was a discriminatory animus in his termination. While the Commission generally applies the burden shifting approach dictated by the McDonnell Douglas/Burdine paradigm McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981), St. Marys Honor Center v. Hicks, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993), there are circumstances in which the Commission may jump to the ultimate question of discrimination. United States Postal Service Board of Governors v. Aikens, 460 U.S. 711, 31 FEP 609 (1983). This case is appropriate for such treatment.

The two strengths to the Complainant's complaint are the alleged temporal nexus between his arrest and the alleged termination of employment and Powell's obvious falsification of documents and self-centered business operation. As indicated above, the temporal nexus argument is insufficient to establish discrimination. The record contains enough credible evidence to indicate that discrimination is only one of several inferences that might be drawn from the events surrounding the period June 3, 1993 through June 9, 1993. The fact that competing inferences may be drawn from the same evidence dictates that the Hearing Examiner may not draw one instead of another. Equally, the fact that Powell and several of her witnesses have virtually no credibility, does not mean that those two witnesses who do have credibility must be ignored. Bucemi and Sloan contradict the Complainant's claims on key points. There is not enough evidence in the record to allow the Hearing Examiner to believe the Complainant over Bucemi and Sloan.

Since resolution of this complaint depends so heavily on the credibility of the witnesses, the Hearing Examiner offers the following observations of the key witnesses:

1. Chris Mitchell--As a party, the Complainant's testimony is always viewed with some degree of suspicion. A party has the greatest to win or lose from the outcome of the proceeding. Beyond

this general consideration, the Complainant did not impress the Hearing Examiner as being entirely trustworthy. Under cross-examination, the Complainant was hostile and evasive. His demeanor was often surly and conveyed an impression that he might be attempting to put something over on someone.

2. Robert Mitchell--As the Complainant's brother, his testimony would be subject to a higher degree of scrutiny because of his relationship to the Complainant. Even without this fact, Robert Mitchell's testimony was flawed. His explanation of how and when he terminated his employment with the Respondent is not supported by other evidence in the record. It was his testimony that he had to leave the Respondent's employment because of scheduling conflicts with his other job. The record indicates that he was actually terminated for failing to appear for work and other similar misconduct. This casts doubt on his testimony as a whole. Unless his testimony is subject to external corroboration, the Hearing Examiner is not inclined to give much weight on disputed points.
3. Nona Mitchell--As with Robert Mitchell, the fact that Nona Mitchell is related to the Complainant (she is his mother), causes the trier of fact to be cautious of her credibility. However, unlike Robert Mitchell, other testimony does not directly contradict her testimony except on the issue of the Complainant's presence at a meeting on June 4, 1993. That testimony itself is subject to question and does not necessarily render Ms. Mitchell's testimony incredible. She answered questions directly and without obvious evasion. She impressed the Hearing Examiner as a trustworthy person with a high degree of loyalty to her sons.
4. Marjorie Powell--Powell's identity as the owner of the Respondent creates the same sense of wariness about her testimony as that for the Complainant. As with the Complainant, Powell's testimony and that of other witnesses creates a much stronger impression of unbelievability. The record testimony demonstrates that Powell cannot, in general, be trusted. Examples of this evidence include the obviously altered "sign in/sign out" sheets. All of the alterations work to the Respondent's benefit and Powell or one of her agents were in a likely position to make the alterations. Even if the alterations were not made by Powell or one of her agents, they were in a position to observe, investigate and make corrections to the practice. There is no indication that this was ever done. The record also includes letters from Powell whose self-serving nature and timing strongly indicate that they were fabricated. Powell's own testimony was confused and often evasive. In general, the Hearing Examiner is only willing to give credence to Powell's testimony where it is corroborated by another credible witness or other factor such as common sense or experience.
5. Janice Buckingham--As the Assistant Manager to Powell, her testimony must be viewed with some degree of suspicion. Her position is one of trust and presumably a high enough rate of pay and responsibility that it could create some hardship to lose her job if her testimony is unfavorable to the Respondent. Additionally, Buckingham has worked for Powell for a long enough period of time to have developed a personal relationship and sense of loyalty. This personal relationship is evidenced by Buckingham's treatment when she was arrested during her employment with the Respondent. Powell apparently gave Buckingham additional time off to comply with court orders and assisted Buckingham in making necessary appointments. Buckingham testified in a manner that was generally cooperative and did not appear evasive. The Hearing Examiner is inclined to consider her testimony trustworthy though corroborative evidence may dictate caution in specific cases.
6. Mick McGinley--McGinley is the affectional partner of Powell. As such, his testimony is as suspect as any family member. While his testimony was given in a straightforward manner, the Hearing Examiner was uncertain about how much weight to give his testimony. In general, it seems as if his testimony was couched in terms that intentionally limited his direct observation of events.

7. Kelly Middlestadt--Middlestadt is the Respondent's bookkeeper and is coincidentally the daughter of Powell. Her testimony was given in a confused and somewhat evasive manner. Coupling this less than convincing method of testimony with the familial relationship, Middlestadt's testimony should be given credibility only where it is corroborated by unquestionable documentation or testimony.
8. Robbie Bucemi--Bucemi's credibility has been discussed above. In general, he was one of the most believable witnesses presented by either party. The Complainant attempted to demonstrate some bias on the part of Bucemi by showing that Bucemi was uncooperative with the Complainant's investigator. There was no showing however, that the reason for Bucemi's lack of cooperation resulted from a prejudice in favor of the Respondent.
9. Dan Sloan--Sloan's credibility has been discussed above. As with Bucemi, the Hearing Examiner found Sloan to be one of the few credible witnesses testifying for either party.

While the Hearing Examiner is convinced that the Complainant's termination was not illegally discriminatory, this should not be seen as an approval of the Respondent or its business practices. It is obvious that Powell either intentionally manipulated business records or allowed their manipulation in manner that probably amounts to fraud in order to avoid wage liability for overtime. Letters prepared by Powell and submitted as evidence in this matter are self-serving and are likely fabricated. This conduct evidences a disregard for the rights and responsibilities of good corporate citizenship.

While Powell has done little to win the esteem of the Hearing Examiner, the Complainant has failed to demonstrate that he is of much higher virtue. His conduct at the hearing indicated that he was sullen and rude. On more than one occasion, the Hearing Examiner overheard the Complainant refer to the opposing attorney or witnesses in crude or vulgar language. These comments were always intended to be private but were audible to the Hearing Examiner. The Complainant left the Hearing Examiner with a decidedly unfavorable impression with respect to his character.

The Hearing Examiner hopes that both parties have learned something from this experience that will help them to better themselves in the future. The complaint is hereby dismissed.

Signed and dated this 15th day of December, 1995.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner