

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

ROBERT E. SWANSON, Complainant

VS.

**LEE DAHL MOTORS,
Respondent.**

CP # 04-85-12879

COURSE OF PROCEEDINGS

This matter came before the Iowa Civil Rights Commission on the Complaint filed by Robert E. Swanson against the Respondent Lee Dahl Motors alleging discrimination on the basis of age in employment.

Mr. Swanson alleges that the Respondent ran a newspaper advertisement specifying age as a qualification for employment and subsequently failed to interview or hire him for the position of salesperson because of his age. These are the sole allegations of discrimination in his complaint.

A public hearing on this complaint was held on June 7, 1989 before the Honorable Donald W. Bohlken, Administrative Law Judge, at the Community Center at 512 Tenth Street in De Witt, Iowa. The Complainant, Robert E. Swanson, was represented by Kary Love, Attorney at Law. The Respondent was represented by Daniel J. Condon, Attorney at Law. The Iowa Civil Rights Commission was represented by Rick Autry, Assistant Attorney General.

The findings of fact and conclusions of law are incorporated in this contested case decision in accordance with Iowa Code SS 17A.16(1) (1989). The findings of fact are required to be based solely on evidence in the record and on matters officially noticed in the record. Id. at 17A.12(8). Each conclusion of law must be supported by legal authority or reasoned opinion. Id. at 1 7A.16(1).

The Iowa Civil Rights Act requires that the existence of age discrimination be determined in light of the record as a whole. See Iowa Code S 601A.15(8) (1989). Therefore, all evidence in the record and matters officially noticed have been carefully reviewed. The use of supporting transcript and exhibit references should not be interpreted to mean that contrary evidence has been overlooked or ignored.

In considering witness credibility, the Administrative Law Judge has carefully scrutinized all testimony, the circumstances under which it was given, and the evidence bolstering or detracting from the believability of each witness. Due consideration has been given to the state of mind and demeanor of each witness while testifying, his or her opportunity to observe and accurately relate the matters discussed, the basis for any opinions given by the witness, whether the testimony has in any meaningful or significant way been supported or contradicted by other

testimony or documentary evidence, any bias or prejudice of each witness toward the case, and the manner in which each witness will be affected by a particular decision in the case.

FINDINGS OF FACT

Jurisdictional Facts:

1. The Complainant filed a verified complaint CP # 04-85- 12879 with the Iowa Civil Rights Commission, on April 9, 1985, alleging violation of Iowa Code section 601A.6 which prohibits discrimination in employment on the basis of age. The dates of incidents of alleged discrimination are stated in the text of the complaint as November 15, 1984, November 17, 1984 and February 6, 1985. Official notice is taken of the fact that there are one hundred forty-five calendar days between November 15, 1984 and April 9, 1985. Fairness to the parties does not require that they be given an opportunity to contest this fact.

2. The complaint was investigated. After probable cause was found, conciliation was attempted and failed. (C. Ex. B; Notice of Hearing). Notice of Hearing was issued on February 2, 1988. An order providing for a continuance until a new Administrative Law Judge was assigned to hear the case was issued on September 7, 1988. The final hearing date was set by an order dated February 1, 1989.

The Advertisement:

3. In November of 1984, Complainant Robert Swanson, who was then forty-four years old, saw a newspaper advertisement placed by the Respondent Lee Dahl Motors for a full time "sales representative opening". Jr. at 10, 70; C. Ex. A, D). The advertisement stated, in part:

We require certain qualifications:

1. Sales experience - beneficial (sic)
2. Age 21-35
3. Must be aggressive and want to work
4. Neat appearance

(C. Ex. A)(italics added).

4. This advertisement was drafted by Lee Dahl, president of Lee Dahl Motors Company. (Tr. at 69-70). Lee Dahl had the final authority to hire sales representatives. (Tr. at 90-91). The advertisement was reviewed by him after publication and he made no changes. (Tr. at 77). The Respondent paid for this advertisement. (Tr. at 70). It was published in the classified section of the Clinton Herald nine times during the period of November 9-19, 1984. (C. Ex. C; Tr. at 82). It was also published approximately four times in the DeWitt Observer over a ten day period in November of 1984. (Tr. at 81-82).

5. The Respondent's age requirement was implemented because "Respondent preferred someone of a younger age to balance its salespersons work force. . ." (C. Ex. C- interrogatory answer

submitted by Lee Dahl). This opening was originally intended to be for a new position, it was not an opening which resulted from a sales representative leaving and creating a vacancy. (R. Ex. 2; Tr. at 85). The reasons for the age requirement listed in this advertisement were described in greater detail in Lee Dahl's testimony:

[A]t that time, in 1984, we had four salesmen, and three of the salesmen were middle-aged, 50 and older.

Q. Yes

A. And the other salesman was a younger man, age 30, and we were looking for a younger man who could blend in with our business and, hopefully, have a longevity with our business. We also, along the lines of wanting a young man We're in a small town, in De Witt, Iowa. We all have our own social contacts. The olders have the social contact with their age group. Our idea was that we wanted a younger man that would have the younger social contacts, and that was our thinking on that.

...

I wanted him to blend in with my two sons.

Q. Okay. How old were your two sons back in November of 1984?

A. Dan was probably 28, and Tim was 27, thereabouts.

...

[I]f you have social contacts, eventually people will come to see you. Furthermore, when you have a younger person, they can communicate better at their age level than an older person communicating with a younger person.

(Tr. at 72-73, 74, 76).

6. In its Response to Charge of Discrimination, Respondent Lee Dahl Motors stated that "Reference to age inserted in said ad was by inadvertence." (C. Ex. D). Lee Dahl later explained this comment as meaning "A particular age was not to be a mandatory requirement." (C. Ex. C). Both of these statements are false and utterly unsupported by credible evidence.

7. The insertion of the reference to age in the advertisement by Lee Dahl Motors was deliberate and not inadvertent. See Findings of Fact Nos. 3-5. The reference to age was, according to the advertisement's own terms, a requirement for consideration for the position. See Finding of Fact No. 3. The only "qualification" listed in the advertisement which had any indication of being optional was the one for "sales experience" which had a notation implying that such experience would be beneficial, but not required. See Finding of Fact No. 3. Sales experience, in fact, was

not a mandatory requirement for the position advertised. (Tr. at 72). Respondent Lee Dahl Motors has hired sales representatives with no experience. (Tr. at 111).

7A. With the exception of age, Complainant Swanson met all the required qualifications stated in the advertisement. His aggressiveness and willingness to work are demonstrated both by his applying for the position despite the age restriction given in the advertisement, and by his repeated efforts to contact Lee Dahl to ascertain the status of his application. (R. Ex. 4; Tr. at 15, 18, 20). He wanted the job. (Tr. at 33). His neatness of appearance, which exceeded that required by Lee Dahl, was demonstrated by his wearing a sport coat, tie, and shirt when he met with Dan Dahl. (Tr. at 24, 168). Although not required, he did have some sales experience selling airplanes. (R. Ex. 4; Tr. at 149).

Overview of the Application And Hiring Process:

8. Complainant Swanson applied for the position on or about November 12, 1984. (R. Ex. 4; Tr. at 15, 18). He went to the Respondent's place of business on that date and requested and received an application from Dan Dahl, General Manager of Lee Dahl Motors. (Tr. at 11, 18, 120-21, 168). Dan Dahl handled direct contact with the applicants. (Tr. at 77). Complainant Swanson took the application home, completed it, and returned it to Dan Dahl at Lee Dahl Motors on either November 12th or 13th, 1984. (Tr. at 15-17, 120- 21). Although the contrary is asserted by the Respondent, at no time did Complainant Swanson verbally discuss the age requirement with Dan Dahl or other Lee Dahl Motors personnel. Jr. at 18, 168).

9. Beginning approximately two days after he applied, Complainant Swanson repeatedly contacted the Respondent in order to ascertain the status of his application. (Tr. at 20, 29, 31, 122). He tried, unsuccessfully, to talk to Lee Dahl, but did talk to Dan Dahl. (Tr. at 20, 122). He was initially informed by Dan Dahl either that the Respondent was still taking applications or that the applications had not yet been reviewed. (Tr. at 122).

10. At some time before December 3, 1984, the Respondent decided to place the application process on "hold" due to adverse economic news concerning layoffs and plant closings in the Respondent's market area. (R. Ex. 2; Tr. at 85-86). The Complainant was first informed of this decision during one of his telephone contacts with the Respondent. (Tr. at 29, 31). He and all other applicants were sent a letter on December 3, 1984, indicating that "Due to the climate of our business, we are putting all applicants on hold and we will re-appraise your application at a later date." (R. Ex. 2; Tr. at 29, 88).

11. James C. Triplett, age 33, was subsequently hired as a sales representative on January 18, 1985 by Lee Dahl. (C. Ex. C-Triplett application, D-admissions; Tr. at 91). Mr. Triplett's employment began effective January 25, 1985. (R. Ex. 6). Complainant Swanson was neither interviewed nor hired for the position. (C. Ex. D; Tr. at 13, 17, 23). He learned that Lee Dahl Motors had hired a new sales representative younger than himself through an advertisement showing Mr. Triplett. (Tr. at 23).

Respondent's Position on Factual Issues Relating to the Hiring Process:

12. In its Response to Charge of Discrimination, Respondent Lee Dahl Motors denied that age was a factor in the Complainant's not being interviewed or hired. (C. Ex. D). There are several additional factual contentions concerning the application and hiring process which are raised as "affirmative allegations" by the Respondent in this Response, (C. Ex. D), and discussed on brief. These contentions may be summarized as follows:

- a. Respondent invited the Complainant to submit an application and advised him that age would not be a factor in the selection.
- b. The advertised sales representative position was to be a newly created position and did not fill a present vacancy.
- c. No one was hired for the advertised position after it was put on hold due to adverse economic conditions.
- d. A different sales representative position became open when, late in December 1984, D.V. Wieck, who had been employed as a sales representative since 1971, informed the Respondent that he would retire in April of 1985.
- e. Once the new position was open, auto sales experience became a desired qualification because an experienced employee was being replaced. The Respondent contacted and interviewed only James Triplett because of his auto sales experience and personality.
- f. The Complainant was not seriously considered for this sales representative position because of his lack of auto sales experience and because he had written annoying and threatening letters to the Respondent.

Contentions "a" and "b" have already been considered. See Findings of Fact Nos. 8 & 10.

Age - A Motivating Factor in the Decision to Not Interview or Hire the Complainant:

13. The greater weight of the evidence, both direct and circumstantial, demonstrates that age was a motivating factor in the decisions to not interview or hire Complainant Swanson for the sales representative position. This evidence, including repeated admissions in the testimony of Lee Dahl and Dan Dahl, demonstrates that the Respondent had determined from the outset of the hiring process that only persons between the ages of 21 to 35 inclusive would be considered for sales representative positions. See Findings of Fact Nos. 3-7. (C. Ex. A, C; Tr. at 72-74, 76-77, 96, 124, 135- 36). The denials of age discrimination by Lee Dahl and Dan Dahl are simply not believable in light of the evidence to the contrary, including their own contradictory testimony. (Tr. at 77, 103, 124).

14. Complainant Swanson was too old to be within the preferred age category, while preferred candidate Triplett's age fell within the required range of ages. See Findings of Fact Nos. 3, 11. Their applications listed their birth dates as, respectively, 10/8/40" for Complainant Swanson and 9/14/51" for James Triplett in the upper left portion of the first page of the Respondent's application form immediately below the applicant's name and address. (C. Ex. C; R. Ex. 4).

Before Lee Dahl ever met Mr. Triplett, he was aware of his age from his application materials. (Tr. at 111).

15. Any contention that age was not a factor in the rejection of the Complainant for the position filled by James Triplett must be rejected in light of the Respondent's admitted desire to "balance" its sales force. (Tr. at 103). See Finding of Fact No. 5. If Triplett actually filled a vacancy in the four man sales force created by the retirement of Wieck, the composition of the sales force would change from three sales representatives of over 50 and one in his 30s to two sales representatives over 50 and two in their 30s, an evenly balanced sales force. See Finding of Fact No. 5. If there actually was no vacancy created by the retirement of Wieck, but Triplett filled a new position, then the balance would be exactly as desired by Lee Dahl at the time the advertisement was placed, i.e. three salesmen over 50 and two in their 30s. See Finding of Fact No. 5. Even as late as May of 1986, when Respondent Lee Dahl Motors hired Richard Cheney, age 32, the Respondent was still hiring younger sales representatives in order to balance the age distribution of the sales work force. (R. Ex. 6; Tr. at 96).

Retaliation - A Motivating Factor in the Decision to Not Interview or Hire the Complainant:

16. Complainant Swanson sent two typed letters, dated December 3, 1984 and December 6, 1984, respectively, to Lee Dahl at Lee Dahl Motors. The letter of December 3rd accuses Lee Dahl of violating the Complainant's civil rights through the age limits in the advertisements for the sales representative position. (R. Ex. 1). It states that Complainant Swanson is prepared to go to court or initiate administrative proceedings if necessary. (R. Ex. 1). It closes by stating:

What I need is a job and since the legal precedants (sic) are quite clear in my favor and the physical evidence, the ads, is also conclusive, I would suggest to you that it would be in your best interest if you hired me for the job. I ask that you hire me for the position you advertised. In addition, I ask that you place in escrow an amount of money Equal to Six Months Earnings for this position, in order to prevent a retaliatory discharge after I am hired.

Be assured that it will cost you a lot more than this if we have to go to court.

(R. Ex. 1).

17. The letter of December 6th indicates strong disagreement with the Respondent's letter of December 3rd informing Complainant Swanson that the position was on hold for economic reasons. (R. Ex. 3). The Complainant's letter states "You have shown what a triky, (sic) underhanded person you are by not admitting your guilt." It indicates that the Complainant has sent for complaint forms from various employment law agencies including this Commission and that he intends to file a lawsuit. It closes by stating:

The best wishes you extented (sic) for the holiday season are rather hollow considering my family will not be having much of a Christmas. (sic) WE cant (sic) even afford to buy any presents for our Daughter. I hate having to do what I must do, but I am tired of not being hired because of my age, and if you think that

by waiting a while (sic) I will just go a way (sic) or forget about this you are sadly mistaken. I will be watching your dealership and certainly recommend to my freinds (sic) that they not buy any cars fom (sic) you. Of course they are (sic) all over 40.

(R. Ex. 3).

18. Respondent Lee Dahl Motors admits that these letters, which it describes as "annoying and threatening correspondence," were part of the reason for its not hiring or interviewing Complainant Swanson. (C. Ex. C, D; Tr. at 88-90, 97, 101-02). On brief, Respondent described the letter of December 3rd as one which "borders on blackmail" because the Complainant indicated he would sue unless he received the remedies of being hired for the position and for six months salary to be placed in escrow as a protection against retaliatory discharge. Respondent's Brief at 7. Lee Dahl summarized the Respondent's position by testifying that he could not hire the complainant and have an employer-employee relationship under these conditions, i.e. that he would be forced to hire the Complainant because he had violated his civil rights. (Tr. at 97).

19. Complainant Swanson wrote these letters based on the reasonable and correct beliefs that (a) the advertisement was itself in violation of the Iowa Civil Rights Act; and (b) the advertisement indicated that he would not be hired because of his age, which was also a violation of the Iowa Civil Rights Act. (R. Ex. 1, 3). See Conclusions of Law No. 2, Complainant Swanson wrote these letters in order to oppose these discriminatory practices and in order to receive the remedies he reasonably thought were due him for violation of his civil rights under this Act. (Tr. at 32, 160-61). Although his letters were strongly worded, it was not unreasonable for him to indicate he would use the legal process provided by the Act in order to remedy overt discrimination against him on the basis of age. (R. Ex. 1, 3).

20. At the conclusion of the hearing, the Complainant made a motion to amend the complaint in order to include the allegation that the Respondent retaliated against the Complainant for engaging in the protected activities of reporting or complaining about a perceived or actual civil rights violation in Complainant Swanson's letters dated December 3, 1984 and December 6, 1984, respectively. (Tr. at 170-72). The Respondent objected to this motion on the grounds that such amendment was untimely and that the resolution of this issue would require the filing of another complaint. (Tr. at 172-73). The following findings of fact are important to the resolution of this motion.

21. The issue of whether the Complainant's correspondence to the Respondent constituted part of the reason for failure to hire the Complainant was originally raised by the Respondent in its Response to Charge of Discrimination sent in response to the Notice of Hearing and filed with the Commission on February 24, 1988. (C. Ex. D). Respondent made no objection as to the relevancy or materiality of questioning of any witness about these letters. It is clear that the Respondent stipulated to the admission of these letters as exhibits because it felt the content of these letters constituted a legitimate, nondiscriminatory reason for rejection of the Complainant. (C. Ex. D; Tr. at 27-28; Respondent's Brief at 7). It therefore knew or should have known that the asserted lawfulness and non-discriminatory nature of these letters could be an issue at the hearing. (C. Ex. D; Respondent's Brief at 7).

Credibility Findings:

22. The testimony of both Lee Dahl and Dan Dahl was highly unreliable and, with few exceptions, is cited in support of a finding of fact only when it constituted an admission against the interest of the Respondent or when supported by credible evidence or other indicia of reliability. Both Lee Dahl and Dan Dahl gave testimony that was inconsistent and contradictory. Each of them willfully testified falsely in regard to certain aspects, stated in detail below, of the question of whether age was a factor in the consideration of applicants, including the Complainant, for sales representative positions.

23. In his sworn answer to written interrogatories, Lee Dahl stated that "A particular age was not to be a mandatory requirement." (C. Ex. C). This answer has already been found to be false in light of the language of the advertisement, which was drafted, reviewed and approved by Lee Dahl, and of his statement of reasons for wanting a sales representative whose age was between 21 and 35 inclusive. See Findings of Fact Nos. 6 & 7. Shortly after admitting drafting and approving the advertisement with the explicit age requirement, and describing in detail why he wanted a young candidate for the sales representative position, Lee Dahl testified that "age was no variable really." (Tr. at 70-74, 76-77). That statement is also false. (The Administrative Law Judge's notes indicate he stated "barrier", not "variable." In either case, the statement is false.)

24. Lee Dahl testified that he did not inform Dan Dahl of the age requirement for the sales representative position. (Tr. at 77). Dan Dahl's familiarity with the advertisement's age requirement and, especially, with the reasons for the requirement, demonstrates that this statement is also false. (Tr. at 118, 123-24, 135-36). Also, given Dan Dahl's involvement in the hiring process, it is highly unlikely that he would have been kept in the dark about the Respondent's requirements for a new sales representative. (Tr. at 77).

25. While testifying that he was not aware, in November of 1984, that age discrimination in employment was against the law, Lee Dahl also stated that, at that time, he had been an equal opportunity employer. (Tr. at 92). When asked what "equal opportunity employer" meant to him in November of 1984, he responded "It means the same then as it does today. I'm an equal opportunity employer irregardless of age, race, color." (Tr. at 92). These two statements, taken together, constitute an assertion that, in November of 1984, Lee Dahl Motors was an equal opportunity employer regardless of age. (Tr. at 92). That assertion is false. See Findings of Fact Nos. 3-7, 13-15).

26. When asked if the Complainant's letters to him of December 3rd and December 6th were part of the reason for his failure to consider the Complainant for the position filled by James Triplett, Lee Dahl testified at some points that they were not part of the reason for his decision and at other points that he would not hire the Complainant under any circumstances because of the letters. (Tr. at 97- 102). On his sworn answers to interrogatories, Lee Dahl indicated that the Complainant did not meet the qualifications for the job because of this correspondence. (C. Ex. C).

27. Dan Dahl testified that, at the time Complainant Swanson requested an application for the sales representative position he inquired about the age requirement and was informed by Dan Dahl that "age would not have any bearing on who we hired." (Tr. at 119). This testimony is shown to be false by the testimony of Complainant Swanson, a far more credible witness, who denied that such a discussion had taken place. (Tr. at 18, 168). It should be noted that, even if it were to be believed that Dan Dahl had made this statement, it would simply constitute an admission that he had lied to Complainant Swanson at the time he requested an application, for Dan Dahl was then well aware of the age requirement and the reasons for it. (Tr. at 118, 123-24, 135-36). This admission would hardly bolster Dan Dahl's credibility.

28. Dan Dahl also testified that the Respondent's interest in obtaining an applicant in the 21 to 35 age range was only a "preference" and not a requirement. (Tr. at 124, 135-36). Given his familiarity with the advertisement, and the reasons for its age restriction, it is clear that this statement is false. (Tr. at 118, 136).

29. One of the qualifications required for the sales representative position was neatness in appearance. (C. Ex. A). Before being called to testify, Dan Dahl heard the Complainant testify that he had worn a suit and tie when he received the application form. (Tr. at 13). When asked about Complainant Swanson's appearance at the time he obtained an application, Dan Dahl initially testified that the Complainant wore black soled shoes, a pair of slacks and an open shirt, but not any coat or tie. (Tr. at 120). On cross-examination, it was brought out that Lee Dahl, in his answer to an interrogatory, had indicated that Dan Dahl did not remember what Complainant Swanson wore. (C. Ex. C; Tr. at 139-140). In the course of further cross-examination, Dan Dahl testified that he only remembered the shoes, had earlier testified that the Complainant wore slacks and an open shirt because most people do, and that the Complainant must not have worn something "outstanding," like a suit and tie, or he would have remembered it. (Tr. at 140- 41). This testimony indicated a willingness by Dan Dahl to state "facts" which were not based on his actual knowledge or memory of events, but which were simply plausible responses to the questions and were perceived by him as being beneficial to the Respondent's defense.

30. Complainant Swanson was a credible witness. His testimony is consistent and reflects none of the contradictions which typify Lee Dahl's and Dan Dahl's testimony. His testimony reflects a willingness to admit adverse facts with candor, without attempting to paper them over with subsequent denials or modifications. For example, one issue raised at trial was whether the Respondent's letter dated December 3, 1984, indicating that the applicants were to be placed on hold while the economic climate was assessed, was sent to Complainant Swanson after Lee Dahl Motors received his letter dated December 3, 1984, the first correspondence from the Complainant accusing the Respondent of age discrimination. (R. Ex. 1, 2). If that had been the case, the Complainant might have argued that the Respondent's December 3, 1984 letter was simply a subterfuge for failing to hire him. (R. Ex. 3). Nonetheless, Complainant Swanson not only testified that these letters may have crossed in the mail, but also admitted that he had been informed by Respondent Lee Dahl Motors, prior to December 3, 1984, that the applications were being placed on hold. (Tr. at 29-31).

31. Although demeanor of the witnesses has been considered, it was not very helpful in resolving credibility issues in this case. Lee Dahl gave much of his testimony with his arms and legs

crossed, behavior that could signify discomfort or tension, but which gives no clue to the underlying reason for the tension. Complainant Swanson was nervous at times, but this was the result of the natural tension of being a witness in a trial and did not indicate anything concerning his credibility. Jr. at 10, 39). Dan Dahl's behavior while a witness provided no clues one way or another as to his credibility.

32. Both Complainant Swanson and the Dahls have obvious economic self-interests which must be weighed in assessing their credibility, i.e. the Complainant's interest in receiving back pay and the Dahls' interest in avoiding it. If there had been contradiction or falsehood in Complainant Swanson's testimony, his self-interest might have served to explain it. The economic self-interest of the Dahls does provide an explanation for the falsehood and contradiction present in their testimony and has been taken into account in weighing their credibility.

The Opening Filled By James Triplett:

33. Although it is undisputed that James Triplett was hired to fill a sales representative position, several of the contentions of the Respondent concerning the filling of this position have not been established by the greater weight of the evidence. First, the contentions that (1) the sales position filled by Mr. Triplett was a new position, which resulted from the retirement plans of D.V. Wieck; (2) the retirement of D.V. Wieck resulted in a greater emphasis on auto sales experience because the new employee would be replacing an experienced salesperson; and (3) the advertised position was not filled after being placed on hold, all rely entirely on the testimony of Lee Dahl and Dan Dahl. (Tr. at 87, 103, 109- 10, 129). Due to their lack of credibility, and the absence of any supporting credible evidence or other indicia of reliability, their testimony is entitled to no weight.

34. Furthermore, the Respondent's December 3, 1984 letter states it is "putting all applicants on hold" and that it "intends to create another sales representative position." (R. Ex. 2 (italics added)). These statements indicate a temporary hiatus in the hiring process, and not a permanent decision to not fill this sales representative position. The position was filled within three weeks of the Respondent's December 3rd letter. See Finding of Fact No. 11. In filling this position, the Respondent relied on the same applications it had received in response to the advertisement. (Tr. at 103). Therefore, these contentions are rejected because they are not supported by the greater weight of the evidence.

35. The Respondent also contended that particular qualifications controlled its employment decisions, i.e. first, that it relied on Complainant Swanson's lack of automobile sales experience when it rejected him, and, second that the automobile sales experience and personality of Mr. Triplett resulted in his being hired. (C. Ex. D). Underlying the first contention is the premise that the Respondent considered the Complainant's sales experience in addition to his age and his opposition to the Respondent's discriminatory practices at the time it considered him for the sales representative position. The only evidence indicating that the Respondent did so are the statements of Lee Dahl and Dan Dahl, which are so lacking in credibility as to be entitled to no weight. Therefore, the first contention is not supported by the greater weight of the evidence.

36. Given that Mr. Triplett fell within the preferred age range, his sales experience and personality undoubtedly did play a part in the Respondent's decision to hire him. In addition to his age, Mr. Triplett's application indicated that he had been a car sales representative since April of 1982, a total of two and one-half years. (C. Ex. C). His cover letter indicated that he had ranked 5th out of 15 salespersons in unit sales in 1983, had been named "Salesman of the Month" twice since his employment, and had won three sales competitions, two at the dealership level, and one at the district level. (C. Ex. C).

37. After the December 3rd letter was sent out, Lee Dahl had met James Triplett at an open house for car dealers sponsored by Clinton Federal Savings and Loan. (Tr. at 86). Lee Dahl found him to be personable, intelligent, and neat appearing. (Tr. at 87).

38. The Complainant's application indicated that his sales experience consisted of selling aircraft while employed as a commercial pilot between April of 1972 and February of 1975. (R. Ex. 4). Lee Dahl never met the complainant and had no opportunity to judge his personality. (Cp. Ex. C; Tr. at 11, 17).

39. Although a comparison of qualifications demonstrates that the Respondent would have been justified in selecting James Triplett over the Complainant, there is no credible evidence to show that, at the time Complainant Swanson was rejected, the Respondent did, in fact, either rely on his sales experience or a comparison of his sales experience to that of James Triplett in making its decision to reject him.

Compensation:

40. The only evidence introduced concerning the dollar value of compensation provided to sales representatives was evidence of the compensation provided to the preferred candidate, James Triplett, during his employment with the Respondent from January 25, 1985 to October 1, 1986. (R. Ex. 6, C. Ex. C; Tr. at 92). During his employment he received a total of forty-seven thousand two hundred ninety-three dollars and ninety-two cents (\$47,293.92) in the form of "all monies paid to him by Respondent for wages or commissions from date of hire to date of termination ... together with the dollar value of all employer paid for or provided benefits including but not limited to health insurance, retirement benefits, automobiles, bonuses and profit sharing." (C. Ex. C; Tr. at 92). The Complainant, on brief, has conceded that this amount would constitute a full remedy for those items of compensation. (Complainant's "Closing Argument" at 5).

41. There is no evidence in the record to indicate that Complainant Swanson received any earnings from employment or unemployment compensation from January 25, 1985 to October 1, 1986.

Emotional Distress:

42. Complainant Swanson applied, on November 12, 1984, knowing that he would probably be rejected due to his age. (C. Ex. A; R. Ex. 4). It may reasonably be inferred that the knowledge that one is probably subjecting oneself to "the humiliation of explicit and certain rejection" will,

in itself, result in some emotional distress. Teamsters v. United States, 431 U.S. 324, 365, 97 S. Ct. 1843, 52 L. Ed. 2d 396, 434 (1977). At the time he wrote his letter of December 3, 1984, Complainant Swanson was upset and angry because he believed, correctly, based on the advertisement, that he would not be hired or even seriously considered for the sales representative position due to his age. (C. Ex. A; R. Ex. 1; Tr. at 31). His letter of December 6th also indicates such distress. (R. Ex. 3). After he learned, through an advertisement, that Mr. Triplett had been hired for the position, he became "quite despondent" because of the age discrimination he had experienced. (Tr. at 23-24). This would have occurred sometime after Mr. Triplett began his employment on January 25, 1989. (R. Ex. 6). There is no evidence in the record showing how long Complainant Swanson's despondency continued after he learned of his rejection.

43. From the above facts, it may be reasonably concluded that Complainant Swanson suffered mild to moderate emotional distress for a period of at least three months. Given the severity and duration of the emotional distress shown by the record, the Commission concludes that an award of two thousand five hundred dollars (\$2,500.00) is full, reasonable, and appropriate compensation for his loss.

CONCLUSIONS OF LAW

Jurisdiction:

1. Robert Swanson's complaint was timely filed within one hundred eighty days of the alleged discriminatory practice. Iowa Code S 601A.15(11) (1983). See Finding of Fact No. 1. All the statutory prerequisites for hearing have been met, i.e. investigation, finding of probable cause, attempted conciliation, and issuance of Notice of Hearing. Iowa Code S 601A.15 (1989). See Finding of Fact No. 2.

2. Mr. Swanson's complaint is also within the subject matter jurisdiction of the Commission as the allegations that the Respondent ran a newspaper advertisement specifying age as a qualification for employment, and subsequently failed to interview or hire him for the position of sales representative because of his age fall within the statutory prohibition against unfair employment practices. Iowa Code S 601A.6 (1983). "It shall be a . . . discriminatory practice for any employer . . . to directly or indirectly advertise ... that individuals of any particular age . . . are unwelcome, objectionable, not acceptable, or not solicited for employment ... unless based on the nature of the occupation. Id." "It shall be a ... discriminatory practice for any person to refuse to hire ... or to otherwise discriminate in employment against any applicant . . . or employee because of the ... sex ... of such applicant or employee." Id.

Motion To Amend Complaint to Include Retaliation:

3. The Commission's moved to amend the complaint to include the allegation that the Respondent retaliated against the Complainant for opposing the Respondent's discriminatory practices by failing to hire him because of his letters dated December 4, 1984 and December 6, 1984. This motion should be granted. The amendment of the complaint is timely under the Commission's administrative rules which permit amendment after commencement of the hearing

"at the discretion of the hearing officer." 161 Iowa Admin. Code 3.7(1). Such amendment is also timely under analogous Federal case law under which "for time-limit purposes, an amendment is treated as if it were filed at the time the charge was filed." 45A AM. JUR. 2D Job Discrimination 1273 (1986).

4. The filing of a new complaint is not required under Commission rules, as the complaint may be amended to include additional material allegations in order to „prevent unnecessary litigation or duplication." 161 Iowa Admin. Code 3.7(1). "The complaint's main function is to trigger Commission investigation." Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 766 (Iowa 1971). To the extent that Respondent's objection to amendment may be characterized as a concern about inadequate notice, the rule is well-settled that "the individual is given actual notice of the new issues when evidence on them is introduced at hearing." Schwartz, Administrative Law 285 (1984). In this case, Respondent was well aware prior to the hearing that evidence on these issues would be introduced and, indeed, stipulated to such the admission of such evidence. See Finding of Fact No. 21. The Respondent also then knew or should have known that the issue of the legitimacy of these reasons for not hiring the Complainant would be litigated. See Finding of Fact No. 21.

Order and Allocation of Proof:

5. The burden of proof or "burden of persuasion" in any proceeding is on the party which has the burden of persuading the finder of fact that the elements of his case have been proven. BLACK'S LAW DICTIONARY 178 (5th ed. 1979). The burden of proof in this proceeding is on the complainant to persuade the finder of fact that the Respondent violated the Acts prohibition against age discriminatory advertising in employment and that the Complainant was neither interviewed nor hired into the sales representative position because of his age. Linn Co-operative Oil Company v. Mary Quigley, 305 N.W.2d 728, 733 (Iowa 1981).

6. Although Federal court decisions applying Federal anti- discrimination laws are not controlling in cases under the Iowa Civil Rights Act, Franklin Manufacturing Co. v. Iowa Civil Rights Commission, 270 N.W.2d 829,831 (Iowa 1978), they are often relied on as persuasive authority in these cases. Iowa State Fairgrounds Security v. Iowa Civil Rights Commission, 322 N.W.2d 293, 296 (Iowa 1982). Opinions of the Supreme Court of the United States are entitled to particular deference. Quaker Oats Company v. Cedar Rapids Human Rights Commission, 268 N.W.2d 862, 866 (Iowa 1978).

7. The proper analytical approach in a case with direct evidence of discrimination is, first, to note the presence of such evidence; second, to make the finding, if the evidence is sufficiently probative, that the challenged practice discriminates against the complainant because of the prohibited basis; third, to consider any affirmative defenses of the respondent; and, fourth, to then conclude whether or not illegal discrimination has occurred. See Trans World Airlines v. Thurston, 469 U.S. 111, 121-22, 124-25, 105 S. Ct. 613, 83 L.Ed. 2d 523, 533, 535 (1985)(Age Discrimination in Employment Act). With the presence of such direct evidence, the analytical framework, involving shifting burdens of production, which was originally set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed. 2d 207 (1973), and subsequently adopted by the Iowa Supreme Court, e.g. Iowa State Fairgrounds Security v.

Iowa Civil Rights Commission, 322 N.W.2d 293 (Iowa 1982), is inapplicable. Price-Waterhouse v. Hopkins, U.S., 57 L.W. 4469, 4481 (1989)(O'Connor, J. concurring); Trans World Airlines v. Thurston, 469 U.S. 111, 121, 124-25, 105 S. Ct. 613, 83 L.Ed. 2d 523, 533 (1985).

Discriminatory Advertising:

8. In this case, there is uncontroverted direct evidence in the record of the Respondent's age discriminatory advertisement. See Findings of Fact No. 3, 4. The inquiry, however, does not end there, for the defenses of the respondent must be examined. Trans World Airlines v. Thurston, 469 U.S. 111, 121, 124-25, 105 S. Ct. 613, 83 L.Ed. 2d 523, 533 (1985). The one defense offered, inadvertence, has been found to be utterly unsupported by the evidence. See Findings of Fact Nos. 6, 7. Respondent has violated the Act's prohibition against discriminatory advertising on the basis of age. Iowa Code 601 A. 6(c) (11983).

Discriminatory Failure to Interview or Hire on the Basis of Age:

9. In this case, the credible direct and circumstantial evidence in the record shows that the Complainant's age was a motivating factor in the decisions to not interview or hire him. See Findings of Fact Nos. 13-15. Respondent asserted that no one was hired for the advertised position because it was never filled after being placed on hold. Respondent has also offered the Complainant's lack of automobile sales experience and a comparison of his sales experience to the preferred candidate's experience as reasons which were actually considered when the decisions were made to not interview or hire him. There was no credible evidence to support these contentions of the Respondent. See Findings of Fact Nos. 33-39.

10. It is important to understand that this is not a case involving the actual presence of both illegal and legitimate motives for the failure to interview or hire the Complainant at the time these decisions were made, i.e. it is not a "mixed motives" case. Price-Waterhouse v. Hopkins, U.S. , 57 L.W. 4469, 4473 (1989). When such a legitimate factor is present, the employer may offer the defense that "even if (they) had not taken [age] into account, (they) would have come to the same decision regarding a particular person." Id. However, "[t]he very premise of a mixed motives case is that a legitimate reason was present." Id. at 4476. None was here. See Findings of Fact Nos. 33-39.

11 . Even if this were properly characterized as a mixed-motives case, the Respondent would not prevail, for:

proving "that the same decision would have been justified ... is not the same as proving that the same decision would have been made." . . . An employer may not, in other words prevail in a mixed- motives case by offering a legitimate and sufficient reason for its decision if that reason did not motivate it at the time of the decision.

Price-Waterhouse v. Hopkins, U.S. . 57 L.W. 4469, 4476 (1 989)(italics added).

12. Respondent Lee Dahl Motors has violated the Act's prohibition against failing to hire or otherwise discriminating against a person in employment on the basis of age by failing to interview or hire the Complainant on that basis. Iowa Code 601 A.6(11)(a) (1983).

Discriminatory Failure to Interview or Hire on the Basis of Lawful Opposition to Discriminatory Practices:

13. Respondent has been found to admit that the Complainant's letters of December 3rd and 6th were part of its reason for not hiring him. See Finding of Fact No. 18. The Respondent's position seems to be that Complainant's activities are not entitled to protection as lawful opposition because he threatened to sue the Respondent and requested the remedies of a job and six months pay in escrow as a protection against retaliation. See Finding of Fact No. 18.

14. In Title VII cases, the courts have noted that Congress provided no definitive standards concerning what does and does not fall within the category of protected activity. E.g. Hochstadt v. Worcester Foundation, 545 F.2d 222 (1976)(interpreting 42 U.S.C. 2000e3(a)). The same would appear to be true under the Iowa Civil Rights Act. See Iowa Code 601 A.1 1 (2) (1983). In Title VII cases one suggested test has been to "balance the purpose of the Act to protect persons engaging reasonably in activities opposing . . . discrimination, against Congress equally manifest desire not to tie the hands of employers in the objective selection and control of personnel." Hochstadt v. Worcester Foundation, 545 F.2d 222 (1976).

15. Complainant's activities were reasonable. See Finding of Fact No. 19. They were not directed toward and did not impinge on any objective selection process of Respondent Lee Dahl Motors. See Findings of Fact Nos. 16-19. Certainly, if the actual filing of a complaint, and thereby seeking remedies through the complaint process, is statutorily protected, as it is, Iowa Code 601A.1 1(2), then the threat of filing a complaint or lawsuit coupled with a request for remedies is in accordance with the intent to protect persons who engage in reasonable lawful opposition to discrimination. Complainant's activities, as reasonable, lawful opposition to discrimination, are protected by the act.

16. Respondent Lee Dahl Motors has violated the Act's prohibition against retaliation by failing to interview or hire Complainant Swanson because of his lawful opposition to discrimination in employment. Iowa Code 601 A.1 1(2) (1983).

Credibility and Testimony:

17. Credibility findings have played an important role in the determination of this case. In addition to the factors mentioned in the section entitled "Course of Proceedings" and in the findings on credibility in the Findings of Fact, the Administrative Law Judge has been guided by the following two principles: First, "[w]hen the trier of fact . . . finds that any witness has willfully testified falsely to any material matter, it should take that fact into consideration in determining what credit, if any, is to be given to the rest of his testimony." Arthur Elevator Company v. Grove, 236 N.W.2d 383, 388 (Iowa 1975). Second, "[t]he trier of facts may not totally disregard evidence but it has the duty to weigh the evidence and determine the credibility of witnesses. Stated otherwise, the trier of facts . . . is not bound to accept testimony as true because it is not contradicted. In Re Boyd, 200 N.W.2d 845, 851-52 (Iowa 1972).

Remedies:

18. Violation of Iowa Code sections 601A.6 and 601A.11 having been established, and no affirmative defense having been shown, the Commission has the duty to issue a cease and desist order and to carry out other necessary remedial action. Iowa Code S 601A.15(8) (1989). In formulating these measures, the Commission does not merely provide a remedy for this specific dispute, but corrects broader patterns of behavior which constitute the practice of discrimination. Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 770 (Iowa 1971). "An appropriate remedial order should close off 'untraveled roads' to the illicit end and not 'only the worn one.'" Id. at 771.

Compensation:

19. The Commission has the authority to make awards of backpay. Iowa Code 601 A. 1 5(8)(a)(1) (1989). In making such awards, interim earnings and unemployment compensation received during the backpay period are to be deducted. Id. The Complainant bears the burden of proof in establishing her damages. Diane Humburd, CP # 03-85- 12695, slip op. at 32-33, (Iowa Civil Rights Comm'n Sept. 28, 1989). The Complainant may meet that burden of proof by establishing the gross backpay due him for the period for which backpay is sought. Id. at 37. This the Complainant has done. See Finding of Fact No. 40. The burden of proof for establishing interim earnings of the Complainant rests with the Respondent. Id. at 35-37. There was no evidence of interim earnings during the backpay period in the record. See Finding of Fact No. 41.

20. The award of backpay in employment discrimination cases serves two purposes. First, "the reasonably certain prospect of a backpay award ... provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate [employment discrimination]." Albemarle Paper Company v. Moody, 422 U.S. 405, 418-19, 95 S.Ct. 2362, 2371-72, 45 L. Ed. 2d 280 (1975). Second, backpay serves to "make persons whole for injuries suffered on account of unlawful employment discrimination." Id. 422 U.S. at 419, 95 S.Ct. at 2372. Both of these purposes would be served by an award of backpay in the present case.

Damages for Emotional Distress:

21. In accordance with the statutory authority to award actual damages, the Iowa Civil Rights Commission has the power to award damages for emotional distress. Chauffeurs Local Union 238 v. Iowa Civil Rights Commission, 394 N.W.2d 375, 383 (Iowa 1986)(interpreting Iowa Code S 601A.15(8)). The following principles were applied in determining whether an award of damages for emotional distress should be made and the amount of such award.

22. In this context, where emotional distress is "an item of damage," damages for emotional distress are treated as a component of actual damages. Dickerson v. Young, 332 N.W.2d 93, 98-99 (Iowa 1983); See Blessum v. Howard County Board, 245 N.W.2d 836, 844-45 (Iowa 1980). Therefore, the requirements for proof of damages for emotional distress here should not be confused with proof of the elements of the cause of action for intentional infliction of emotional distress, e.g. outrageous conduct, distress must be severe. Niblo v. Parr Manufacturing, Inc., No.

88-1531, slip op. at 14-15 (Iowa August 16, 1989); Dickerson v. Young, 332 N.W.2d 93, 98-99 (Iowa 1983).

23. In discrimination cases, an award of damages for emotional distress can be made in the absence of "evidence of economic or financial loss, or medical evidence of mental or emotional impairment." Seaton v. Sky Realty, 491 F.2d 634, 636 (7th Cir. 1974)(housing discrimination case). "Humiliation can be inferred from the circumstances as well as established by the testimony." *Id.* (quoted with approval in Blessum v. Howard County Board, 245 N.W.2d 836,845 (Iowa 1980)). Even slight testimony of emotional distress, when combined with evidence of circumstances which would be expected to result in emotional distress, can be sufficient to show the existence of distress. Dickerson v. Young, 332 N.W.2d 93,98-99 (Iowa 1983). While these cases did not arise under the Iowa Civil Rights Act, it would be anomalous to mandate more stringent requirements for proof of emotional distress in cases under the Act than is required in the usual case where emotional distress is an item of damage. Also, such stringent requirements would violate the legislative command that the Act "be construed broadly to effectuate its purposes." Iowa Code S 601A.18 (1989).

24. When the evidence demonstrates that the complainant has suffered emotional distress proximately caused by discrimination, an award of damages to compensate for this distress is appropriate. Marian Hale, 6 Iowa Civil Rights Commission Case Reports 27, 29 (1984)(citing Nichols, Iowa's Law Prohibiting Disability Discrimination in Employment: An Overview, 32 Drake L. Rev. 273, 301 (1982- 83)). The Complainant did suffer some compensable emotional distress. See Findings of Fact Nos. 42-43.

25. Because compensatory damage awards for mental distress are designed to compensate a victim of discrimination for an intangible injury, determining the amount to be awarded for that injury is a difficult task. As one court has suggested, "compensation for damages on account of injuries of this nature is, of course, incapable of yardstick measurement. It is impossible to lay down any definite rule for measuring such damages."

... Computing the dollar amount to be awarded is a function of the finder of fact. Juries and judges have been making such decisions for years without minimums or maximums, based on the facts of the case [and] the evidence presented on the issue of mental distress.

2 Kentucky Commission on Human Rights, Damages for Embarrassment and Humiliation in Discrimination Cases 24- 29 (1982)(quoting Randall v. Cowlitz Amusements, 76 P.2d 1017 (Wash. 1938)).

26. The amount of damages for emotional distress will depend on the facts and circumstances of each individual case. Marian Hale, 6 Iowa Civil Rights Commission Case Reports 27, 29 (1984). Past Commission decisions have referred to the consideration of various factors in awarding damages for emotional distress. *Id.* Upon examination of the Commission's cases, and the authorities cited therein, it is clear that the two primary determinants of the amount awarded for damages of emotional distress are the severity of the distress and the duration of the distress. See Cheri Dacy, 7 Iowa Civil Rights Commission Case Reports 17, 24- 25 (1985); Marian Hale,

6 Iowa Civil Rights Commission Case Reports 27, 29 (1984). Even mild emotional distress can and should be compensated. See Niblo v. Parr Manufacturing, Inc., No. 88-1531, slip op. at 14 (Iowa August 16, 1989).

Interest:

27. Interest begins to run on an award of damages from the date of the commencement of the action at the rate of ten percent per annum. Iowa Code S 535.3 (1989). In this case, interest should be paid on damages from the time of the filing of the complaint on April 9, 1985.

Attorneys Fees:

28. The Complainant having prevailed, he is entitled to an award of reasonable attorney's fees. Iowa Code S 601 A.1 5(8)(1989). If the parties cannot stipulate to the amount of these fees, they should be determined at a separate hearing. Ayala v. Center Line, Inc., 415 N.W.2d 603, 606 (Iowa 1987). The Commission must expressly retain jurisdiction of the case in order to determine the actual amount of attorney's fees to which Complainant Swanson is entitled to under this order and to enter a subsequent order awarding these fees. City of Des Moines Police Department v. Iowa Civil Rights Commission, 343 N.W.2d 836, 839 (Iowa 1984).

PROPOSED DECISION AND ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that:

A. The Complainant, Robert Swanson, is entitled to judgment because he has established that the refusal by the Respondent Lee Dahl Motors to interview or hire him and its discriminatory advertising were in violation of Iowa Code Sections 601A.6(1)(a)(c) and 601A.11 (1983).

B. Complainant Robert Swanson is entitled to a judgment of forty-seven thousand two hundred ninety-three dollars and ninety-two cents (\$47,293.92) in compensation for the loss resulting from the denial of the sales representative position.

C. Complainant Robert Swanson is entitled to a judgment of two thousand five hundred dollars (\$2,500.00) in compensatory damages against Respondent Lee Dahl Motors for the emotional distress he suffered as a result of the age discrimination and retaliation practiced against him by the Respondent.

D. Interest shall be paid by the Respondents to Complainant Robert Swanson on the above awards of compensatory damages at the rate of ten percent per annum commencing on April 9, 1985 and continuing until date of payment.

E. Within 45 calendar days of the date of this order, provided that agreement can be reached between the parties on this issue, the parties shall submit a written stipulation stating the amount of attorney's fees to be awarded Complainant Swanson's attorney. If any of the parties cannot agree on a full stipulation to the fees, they shall so notify the Administrative Law Judge in writing and an evidentiary hearing on the record shall be held by the Administrative Law Judge

for the purpose of the determining the proper amount of fees to be awarded. If no written notice is received by the expiration of 45 calendar days from the date of this order, the Administrative Law Judge shall schedule a conference in order to determine the status of the attorneys fees issue and to determine whether an evidentiary hearing should be scheduled or other appropriate action taken. Once the full stipulation is submitted or the hearing is completed, the Administrative Law Judge shall submit for the Commission's consideration a Supplemental Proposed Decision and Order setting forth a determination of attorney's fees.

F. The Commission retains jurisdiction of this case in order to determine the actual amount of attorneys fees to which Complainant Swanson is entitled to under this order and to enter a subsequent order awarding these fees. This order is final in all respects except for the determination of the amount of the attorney's fees.

G. Respondent Lee Dahl Motors is hereby ordered to cease and desist from any further practices of age discrimination or retaliation in hiring for sales representative positions.

H. Respondent Lee Dahl Motors shall post, within 60 days of the date of this order, in a conspicuous place at its locations at DeWitt, Iowa, in areas readily accessible to and frequented by employees, the notice, entitled "Equal Employment Opportunity is the Law" which is available from the Commission.

I. Respondent Lee Dahl Motors shall develop, and revise as necessary, written job descriptions for all sales representative and other positions whose duties include the sale of merchandise, setting forth in detail the job title, duties, responsibilities, and the qualifications, both subjective and objective, which are required for the positions. Age shall not be a qualification. The qualifications stated shall be the ones utilized for filling vacancies. Any revision shall be made prior to the start of a selection process which is undertaken to fill a vacancy. These job descriptions shall be completed within 180 days of the date of this order.

J. All of Respondent Lee Dahl Motors' future job advertising, for a two year period commencing with the date of this order, shall state "An Equal Opportunity Employer" in type no smaller than the largest type in the advertisement. There shall be no age requirement in the advertisements.

K. Respondent Lee Dahl Motors shall establish and adhere to written procedures for filling sales positions. These procedures shall incorporate the procedures set forth in this order. These procedures shall be completed within 180 days of the date of this order.

L. Respondent Lee Dahl Motors shall provide for the next two years, commencing one year from the date of this order, an annual written report to the Commission, indicating the name, age, address, telephone number and position of each employee hired, whether his duties included sales duties, and the date of hire. For each person hired, the report shall indicate the name, age, address and telephone number of each other applicant for the job, and whether an offer was extended to such person. The Respondent shall maintain all applications considered or received over this two year period until January 1, 1993, and shall make these and all other application materials available to the Commission's representatives for inspection and copying upon request until January 1, 1993.

M. Respondent Lee Dahl Motors shall file a report with the Commission within 210 calendar days of the date of this order detailing what steps it has taken to comply with paragraphs H through K inclusive of this order.

Signed this the 26th day of December, 1989.

DONALD W. BOHLKEN
Administrative Law Judge
Iowa Civil Rights Commission
211 E. Maple
Des Moines, Iowa 50319
515-281-4480

FINAL DECISION AND ORDER

On December 26, 1989, a Proposed Decision and Order was issued in this case. The Proposed Decision implicitly shows, and was intended to expressly state, that the Complainant's motion to amend the complaint to include the charge of retaliation is granted. Through an oversight, no express ruling was made on the motion in the Decision and Order. The implication that the motion is to be granted is evident from a reading of Conclusion of Law No. 3. Also, the references to retaliation made in the Conclusions of Law and the Decision and Order would obviously not be there if the proposed decision did not grant the motion to amend.

Therefore, the Decision and Order is corrected to reflect the granting of the motion by adding the following paragraph at page 40:

N. The Complainant's motion to amend the complaint, to include the allegation that the Respondent retaliated against the Complainant for engaging in the protected activities of reporting or complaining about a perceived or actual civil rights violation in Complainant's letters of December 3 and 6, 1984, is granted. Signed this the 27th day of December 1989.

DONALD W. BOHLKEN
Administrative Law Judge

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