COMMONWEALTH OF PENNSYLVANIA

GOVERNER'S OFFICE

PENSYLVANIA HUMAN RELATIONS COMMISSION

JAMES A. CRESSMAN,	:	
	:	
Complainant	:	
	:	
v.	:	**PHRC Case No. 200027235**
	:	
ASSOCIATED RUBBER, INC.,	:	
	:	
Respondent	:	

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT *

1. The Complainant is James E. Cressman (hereinafter, "Cressman"). (C.E. 1)

2. The Respondent is Associated Rubber, Inc. (hereinafter, "Associated"). (C.E.1)

3. Cressman was born on August 13, 1927. (N.T. 36; C.E. 1)

4. Associated manufactures and sells approximately 1,000 different rubber parts to over 200 customers throughout the U.S. and Canada. (N.T. 36, 108, 134)

5. Associated's hourly employees are union members. (N.T. 39)

6. On December 28, 1948, Associated hired Cressman as a General Helper. (N.T. 36)

7. In March 1971, Associated promoted Cressman to supervise its finishing department. (N.T. 37)

8. Associated is made up of four departments: The preparation department where rubber is mixed; the press line department where rubber is molded into various customer specific parts; the finishing department where parts are readied for shipment and ultimately shipped; and a maintenance department. (N.T. 33, 34, 37)

9. Associated's plant has two floors. (N.T. 48)

10. Finishing is located mainly on the second floor; production activity and Associated's office are on the first floor. (N.T. 48)

11. Associated operates two work shifts between 7 a.m. and midnight, five days a week. (N.T. 139)
12. In the finishing department, Cressman supervised the work of approximately 12 Union employees. (N.T. 39)

13. Most employees of the finishing department use various tools to trim excess rubber from the inside and outside of molded parts. (N.T. 38, 53)

* To the extent that the Opinion that follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
C.E. Complainant's Exhibit
R.E. Respondent's Exhibit

14. Under terms of an applicable collective bargaining agreement, as foreman, Cressman supervised the union workers, but could not himself perform production functions. (N.T. 53)

15. When a new employee was hired for the finishing department, an experienced trimmer would be assigned to instruct the new employee how to finish the parts. (N.T. 50)

16. One finishing department employee was assigned to perform functions associated with shipping finished parts. (N.T. 38)

17. In 1985, Brian Henderson (hereinafter, "Henderson") became the President of Associated. (N.T. 45)

18. Between 1985 and 1998, Cressman reported both to Lloyd Painter, Associated's Plant Manager, and Henderson. (N.T. 45)

19. In 1998, Gary Scott, Jr. (hereinafter, "Scott") became Associated's Plant Manager. (N.T. 23)

20. Scott was also named as Vice President of Associated. (N.T. 24)

21. In 1995, Henderson's stepson, John Oldt (hereinafter, "Oldt"), graduated from college and began working at Associated. (N.T. 91, 109, 132, 162, 167)

22. Associated's employees were not informed why Oldt was there, as Oldt began working a week in each department. (N.T. 110, 133)

23. Beginning in 1998, Henderson began to progressively work less and less and to progressively shift his responsibilities to Scott and Oldt. (N.T. 134, 135)

24. By the end of 1999, it was apparent to Cressman that Oldt had the authority to control Associated's day-to-day operations. (N.T. 95-96)

25. Through 1999 and after, Cressman reported to Scott and Oldt. (N.T. 41, 157)

26. On December 31, 2000, Henderson retired. (C.E. 1, 12)

27. Although no written announcement was made to Associated's employees, Oldt became Associated's President. (N.T. 167, 169)

28. Prior to becoming President, Oldt did not have a job title. (N.T. 167-168)

29. When Henderson retired and Oldt became President, Scott began reporting to Oldt. (N.T. 25)

30. Before becoming President, Oldt formally met with Cressman on two occasions: August 31, 2000 and September 6, 2000. (N.T. 180-181, 192, 210, 215, 221, 222)

31. At the August 31, 2000 meeting were Cressman, Oldt and John Kirschner, Associated's Treasurer (hereinafter, "Kirschner"). (N.T. 180-181, 221; C.E. 17)

32. Oldt invited Kirschner to the meeting to serve as a witness. Before the meeting, Kirschner was unaware of the purpose of the meeting. (N.T. 221)

33. The August 31, 2000 meeting appears to have principally dealt with issues surrounding a finishing department employee with whom Cressman was having problems. Oldt advised Cressman of the need to document "unsatisfactory" behavior before terminating the employee. (C.E. 17)

34. Oldt also noted that he discussed with Cressman a training issue and production time being lost when Cressman engaged in personal discussions with employees (C.E.)

35. At the September 6, 2000 meeting, once again in attendance were Cressman, Oldt and Kirschner. (R.E. 1)

36. At this meeting, Oldt first noted that he was giving Cressman a "first verbal warning" for having purportedly discussed Company business with the Union President. (R.E. 1)

37. Oldt noted that Cressman indicated that he would not "help" Oldt. Oldt further noted that he "mentioned" that Cressman had "not trained recently hired employees nor helped them to perform their jobs..." (R.E. 1)

38. Finally, Oldt made note of again reminding Cressman not to discuss one employee's situation with another. (R.E. 1)

39. Associated practices do not include preparing performance evaluations of its employees. (N.T. 200-201)

40. Customarily, if Associated had done well financially the previous year, management employees were given a bonus and their salaries were increased. (N.T. 158)

41. Prior to 2001, each year, with the exception of 1999, on or about March 15th, bonuses were distributed to each manager. (N.T. 57-58, 59, 93, 224-225)

42. 2001 was the first year that Oldt made the decision who would get a bonus and who would receive a salary increase. (N.T. 158)

43. In March 2001, all managers except Cressman received a bonus. (N.T. 112-113)

44. On March 15, 2001, Oldt, Cressman and Kirschner met regarding Cressman not receiving a bonus. (N.T. 47, 59)

45. During the March 15, 2001 meeting, Oldt discussed Cressman's wife's illness and, in effect, told Cressman he had vacation time available, and maybe he should spend time at home with his sick wife. (N.T. 101)

46. Subsequently on two occasions, Oldt asked Cressman if he had given any thought to using vacation time to be with his wife. (N.T. 101)

47. Salary increases are announced between April 1st and the 15th of each year. (N.T. 114)

48. Only Cressman did not receive a salary increase in April 2001. (N.T. 112-113)

49. Oldt had discussed with Scott the possibility of Cressman retiring. (N.T. 27)

50. Cressman had never formally indicated a desire to retire. (N.T. 28)

51. During March and April of 2001, Cressman was 73 years old. (N.T. 35, 36)

52. At some point, Oldt said to Cressman: "Look, you're 74, you ought to consider retiring." (199, 240, 242)

53. On either April 25 or April 26, 2001, Oldt decided to terminate Cressman. (N.T. 111, 142, 177)

54. Oldt never discussed Cressman's performance or the possibility of terminating Cressman with anyone prior to deciding to terminate him. (N.T. 222)

55. On April 26, 2001, Kirschner called Cressman and instructed him to come to the main office. (N.T. 42)

56. Only Oldt and Kirschner were there when Cressman arrived. (N.T. 42)

57. Kirschner did not know the purpose of the meeting. (N.T. 222)

58. The meeting began with Oldt telling Cressman that things were not going the way he would like them to go and that this was Cressman's last day at Associated. (N.T. 42)

59. When Cressman asked to have a witness, he was told no one was available. (N.T. 42)

60. Cressman then requested a separation notice. (N.T. 42)

61. Oldt responded, "What do you want that for?" (N.T. 42)

62. Cressman replied, "I think I'm entitled to a separation notice." (N.T. 42-43)

63. Oldt left the meeting and returned a few minutes later and presented Cressman with a separation notice that read, "employee discharged for incompetence." (N.T. 43; C.E. 2)

64. Oldt asked Cressman for his keys and told him to go upstairs and pack-up his belongings. (N.T. 43)

65. Oldt also told Cressman, "I just want you to leave Associated Rubber and I never want you to return on the property." (N.T. 44, 206)

66. As Cressman went to the finishing department to get his personal belongings, Oldt instructed Kirschner and Scott to follow Cressman. (N.T. 44, 206)

67. Neither Robert McElroy, who was President for 25 years prior to Henderson, nor Henderson ever told Cressman that he was incompetent or that his job was in jeopardy because of poor job performance. (N.T. 46)

68. Cressman had always been told he did a very good job. (N.T. 63)

69. Beyond playing no role in the decision to terminate Cressman, Scott testified that he could not recall ever telling Cressman that his performance was unsatisfactory, or that improvements were needed in the finishing department. (N.T. 26-27)

70. Similarly, Kirschner took no part in the decision to terminate Cressman. Kirschner never told Cressman that his work was unsatisfactory, that his job was in jeopardy because of poor performance, or that he did not know how to trim, train, or ship. (N.T. 55, 220)

71. Oldt testified that the only thing to indicate he was dissatisfied with Cressman was not giving Cressman a bonus. (N.T. 205)

72. Prior to April 26, 2001, Oldt had not informed Cressman that his job performance was unsatisfactory or that he was incompetent. (N.T. 49, 105)

73. Oldt never informed Cressman that he was not satisfied with the operation of the finishing department or that the shipping function was not being handled properly. (N.T. 52, 203-205)

74. Oldt never told Cressman that unless he changed the way he trained new employees he would be fired. (N.T. 54, 204)

75. At the time of his discharge, Cressman had been an employee of Associated for over 50 years and had been a foreman for over 30 of those years.

76. When he terminated Cressman, Oldt was 25 years old. (C.E. 1)

77. At the time of his discharge, Cressman earned $4,025.00 per month. (N.T. 67; C.E. 3)

78. As a management employee, Cressman participated in both a Profit Sharing Trust Fund and a Salaried Pension Plan, both of which were funded by associated. (N.T. 77-78, C.E. 8-9)

79. Since Cressman's termination, Associated has continued to offer both of these benefits to its managers. (N.T. 225-228)

80. Associated's contribution to the Profit Sharing Trust Fund is 15% of a manager's annual salary, and the contribution to the Salaried Pension Plan is 10% of a manager's annual salary.

81. While an employee of Associated, Cressman paid $45 per month to receive medical coverage through Associated. (N.T. 67, 82)

82. After his termination, Cressman had to pay $1,132.00 quarterly for medical coverage. (N.T. 84; C.E. 11)

83. Cressman also paid $2465.17 in COBRA payments after he was terminated. (N.T. 86)

84. Cressman made 6 trips to the PHRC Philadelphia Regional Office, traveling approximately 55 miles one way. (N.T. 88)

85. Cressman also paid approximately $5.00 to park on each of 6 trips and spent approximately $10 for a meal on each trip. (N.T. 88-89)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter, "PHRC") has jurisdiction over the parties and subject matter of this case.
2. The parties have fully complied with the procedural prerequisites to a public hearing in this case.
3. Cressman is an individual within the meaning of the Pennsylvania Human Relations Act (hereinafter, "PHRA").
4. Associated is an employer within the meaning of the PHRA.
5. Section 5(a) of the PHRA prohibits employers from unlawfully discriminating against employees because of their age (with respect to employees who are forty years of age or older) regarding discharge and the terms, conditions or privileges of employment.
6. When a Complainant alleges age-based disparate treatment, liability depends on whether the protected trait of age actually motivated the Employer's decision. See Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000).
7. Demonstrations of weakness, implausibility, inconsistencies, or contradictions in an Employer's explanation for its actions may form the basis to rationally find that such explanations are unworthy of credence. See Tumolo v. Triangle Pacific Corp.Tumolo v. Triangle Pacific Corp., 80 FEP 574 (E.D. Pa. 1999) citing Brewer v. Quaker State Oil Refining Corp., 72 F.3d 326, 331 (3rd Cir. 1995).

8. A belated reliance on purported criticisms tends to show pretext. See Levin v. Analysis & Technology, Inc., 960 F.2d 314 (2nd Cir. 1992).

9. Cressman has established by a preponderance of the evidence that Associated unlawfully discriminated against him because of his age, seventy-three, in violation of Section 5(a) of the Act with respect to various terms, conditions and privileges of his employment and by discharging him.

10. Whenever the Commission concludes that a Respondent has engaged in an unlawful practice, the Commission must issue a cease and desist order and it may order such affirmative action as in its judgment will effectuate the purposes of the Act.

OPINION

This case arises on a complaint filed on or about May 17, 2001 by James A. Cressman (hereinafter, "Cressman") against Associated Rubber, Inc. (hereinafter, "Associated"), with the Pennsylvania Human Relations Commission (hereinafter, "PHRC"). On or about August 1, 2003, Cressman filed an amended complaint. Cressman's original complaint alleged that he was terminated because of his age, 73, harassed because of his age, and subjected to different terms and conditions of employment. In his amended complaint, Cressman added that, in 2001, he was denied a bonus and a raise because of his age. Each of these age-based allegations allege violations of Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. (hereinafter, "PHRA").

PHRC staff investigated the allegations and at the investigation's conclusion, informed Associated that probable cause existed to credit Cressman's allegations. Thereafter, the PHRC attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion, but such efforts proved unsuccessful. Subsequently, the PHRC notified Associated that it had approved a Public Hearing.

The Public Hearing was held on November 21, 2003, in Quakertown, PA, before Permanent Hearing Examiner Carl H. Summerson. PHRC staff attorney Michael Hardiman presented the case on behalf of the complainant. Christopher T. Moyer, Esquire, appeared on behalf of Associated. Following the Public Hearing,

the parties were afforded the right to file post-hearing briefs. Associated's post-hearing brief was received on March 30, 2004, and the PHRC Philadelphia regional office's post-hearing brief was received on March 15, 2004.

Section 5(a) of the PHRA states in pertinent part:

> It shall be an unlawful discriminatory practice...[f]or any employer because of the...age...of any individual...to discharge from employment such individual...or to otherwise discriminate against such individual...with respect to compensation,...terms, conditions or privileges of employment...

In this case of alleged disparate treatment, the PHRC regional office's brief suggests that the evidence presented should be viewed through the lens of the oft repeated McDonnell Douglas three part allocation of proof formula, which requires an initial *prima facie* showing by the Complainant, and if a *prima facie* case can be established, a burden of production shifts to a Respondent to articulate a legitimate non-discriminatory reason for its actions. Finally, a burden of persuasion shifts back to a Complainant to prove by a preponderance of evidence that the reasons offered by a Respondent for its actions are a pretext, and that actual discriminatory reasons motivated the Respondent.

First, in the Respondent's post-hearing brief it concedes that Cressman established a *prima facie* showing. More importantly, however, as the U.S. Supreme Court instructed in the case of U.S. Postal Service Board of Governors v. Aikens, 31 FEP 609 (1983), once a Respondent offers evidence for its reason for its action, the fact finder must then decide if the action was discriminatory. Where a Respondent has done everything that would be required if a Complainant had made a *prima facie* case, whether a Complainant really did so is no longer relevant. Id.

What is relevant is the ultimate question of which party's explanation of the employer's motivation the fact finder believes. Id. This evidentiary approach has been approved for use in an alleged age-based termination case. See Jardien v. Winston Network, 52 FEP 1379 (7th Cir. 1989).

In this case, Associated has offered legitimate non-discriminatory reasons for not awarding Cressman either a bonus or a pay raise in 2001, and for terminating him on April 26, 2001. In essence, Associated's reason for all that happened to Cressman can be summed up by Associated's contention that Cressman's poor job performance was the cause of his problems.

According to Oldt, between 1999 and 2001, his opinion of Cressman went from thinking Cressman knew everything in the finishing department to forming the opinion that Cressman didn't know what to do. (N.T. 150) Oldt says this dramatic change occurred because when he asked Cressman to do something, it would not get done. (N.T. 150) Oldt testified that, over and over, he had informally asked Cressman to make small improvements in the operation of the finishing department, but eventually he had to meet officially with Cressman to instruct Cressman to do what he wanted done. (N.T. 155, 209)

Oldt testified that a major issue involved his repeated instructions to Cressman to clear out the "work in progress," which cluttered the floor to the point that one could not move around in the finishing area. This " work in progress" consisted of manufactured parts from the preparation department and press line, which needed to be trimmed by the finishing department. Oldt testified that

Cressman failed to follow his instructions, and the parts remained on the floor (N.T. 143, 144-145).

Another problem articulated by Oldt as a reason for not giving Cressman either a bonus or a raise, and finally terminating him, was that Cressman did not know how to operate the finishing department's computerized shipping system (N.T. 147, 177). In 1998 or 1999, Associated installed a computerized shipping system in the finishing department and Oldt testified that because Cressman could not operate the new system, Oldt had to take time to train new shippers (N.T. 148).

Oldt also stated that Cressman did not know how to trim parts or to train new employees (N.T. 149, 178). Oldt testified that an older, retired employee had to be brought back to train a new employee (N.T. 179). Oldt further submitted that Cressman wouldn't train new workers (N.T. 211).

Oldt testified that Cressman would not review the finishing department in order to find deficiencies in its operations, and did not encourage employees of the finishing department to look for more efficient ways to process their work. Oldt said that other foremen did so and made recommendations for improvements, while Cressman did not (N.T. 152, 212).

Finally, Oldt testified that on two occasions, Cressman told him, "I'm not going to help you. You're going to have to fire me" (N.T. 154-155, 211).

Taken collectively, these reasons must now be weighed against the evidence presented by Cressman to determine whether Associated was truly motivated by the reasons articulated by Oldt or whether Associated's actions were really motivated by Cressman's age.

The PHRC regional office's post-hearing brief does an excellent job of weaving together the various threads, resulting in a fabric whose design clearly reveals that Oldt's motivation for denying Cressman's bonuses and salary increases, and for ultimately terminating him was Cressman's age and not job performance deficiencies. The evidence presented clearly reflects more than the existence of differences of opinions between Oldt and Cressman. Taken as a whole, the evidence makes a substantial showing that the reasons articulated by Oldt for the actions taken against Cressman were neither honestly believed nor genuine, and that a protected trait actually motivated Oldt to take action against him.

The aggregate of evidence that supports this showing is demonstrated by evidence that shows weaknesses, implausibilities, inconsistencies and contradictions in Associated's proffered non-discriminatory reasons for its actions. While no piece of evidence standing alone is sufficient to prove discrimination here, when taken as a whole, the evidence strongly supports Cressman while casting considerable doubt on the credibility of Oldt. First, a degree of doubt is cast on Oldt's motives by the simple fact that Cressman was an Associated employee for over 50 years, the last 30 of which Cressman held the same management position. Although Associated did not prepare formal written performance evaluations of management level employees, it is clear that throughout Cressman's 30 years as a manager, until 2001, whenever Associated awarded its managers bonuses and pay raises, Cressman was consistently among those who received those bonuses and pay raises. Clearly, until Oldt became Associated's President, Cressman enjoyed a

strong record. In early 2001, Oldt was 28-years old and Cressman was 73, a substantial difference.

Clearly the major impact of Cressman's difficulties at Associated coincides with Oldt's replacement of his stepfather as President. Before then, Cressman appears to have been consistently viewed as an integral part of Associated. Cressman testified, without contradiction, that he had always been told he did a very good job (N.T. 63).

Looking at similar scenarios of long standing employees who never failed to get raises and bonuses, Courts have concluded that some evidence exists that such employees' job performance was adequate based solely on the duration of the employees' employment. See McLarry v. Duff & Phelps, (N.D. Ill. 1988), and Nakai v. Wicks Lumber Co., 71 FEP 13 (D.C. Maine, 1995).

The next factor that weighs against Associated deals with Oldt's discussions regarding Cressman retiring. On at least two separate instances, Oldt discussed this issue. First, Scott testified that Oldt had discussed with him the possibility of Cressman retiring (N.T. 27). Clearly, Cressman had not expressed an interest in doing so. Standing alone, this bare evidence does not necessarily show an age-related animus. See Barnhast v. Pickrel, Schaffer & Ebeling Co., 12 F.3d 1382 (6th Cir. 1993). There can be a multitude of reasons why a company president would discuss the possibility of the retirement of one of its foreman. However, to be of evidentiary significance, the context of the conversation between Oldt and Scott must be known.

The second instance of Oldt's mention of Cressman's retirement bears a more ominous significance when it is placed within the totality of the evidence. See Danzer v. Norden Sys., Inc., 151 F.3d 50 (2nd Cir. 1998).

At some point, Oldt told Cressman, "Look, you're 74, you ought to consider retiring." (N.T. 199, 244, 251). Oldt testified that he made this comment to Cressman before 1998 in casual conversation among co-workers (N.T. 163). However, at the time when Oldt suggests he made the inquiry, Cressman would have been either 69 or 70, not 74 years old.

It is interesting to note that Oldt specifically mentioned the age, 74, when he told Cressman he should consider retiring. Cressman's 74th birthday was not until August 2001. If Oldt had perused Cressman's file and seen the year of his birth as simply 1927, a quick calculation would have resulted in thinking Cressman was 74 in 2001. Because Oldt admitted saying, "you're 74...," his testimony, which attempted to chronologically distance himself, is not credible.

A factor that is related to telling Cressman he should retire is Oldt, at a meeting with Cressman on March 15, 2001, telling Cressman that he has vacation time and that maybe he wants to stay home with his sick wife (N.T. 92, 100, 161). Add to this the fact that on two subsequent occasions, Oldt asked Cressman if he had given any thought to staying home with his wife (N.T. 56, 101). What is interesting to note is Oldt's testimony that he did not know specifically what physical problems Cressman's wife had (N.T. 161-162).

A simple inquiry about an employee's retirement plans does not necessarily show animosity towards age, but a coercive inquiry does. See: Wilson v. Firestone

Tire & Rubber Co., 932 F.2d 510 (6th Cir. 1991) and Kaniff v. Allstate Ins. Co., 121 F.3d 258 (7th Cir. 1997). Here, the March 15, 2001 meeting's principal purpose was to advise Cressman that he was not getting a bonus. When, in that same meeting, Oldt suggests that Cressman leave and spend time with his wife, the specter of an improper discriminatory motive grows.

We next turn to several performance issues raised by Associated. Oldt testified that one of Cressman's performance deficiencies was that Cressman allowed the floor of the finishing department to remain cluttered with work in progress. While Cressman admitted that Oldt had asked him to move boxes of products from the floor, there is strong evidence that Oldt both knew why the finishing department had excess products on the floor and why Cressman allowed those boxes to accumulate.

It appears that excess products were forwarded to the finishing department by the preparation and press departments. The example cited by Oldt was that Associated would receive an order for parts that would require the mixing of 100 pounds of rubber, whereupon the preparation department would mix 150 pounds (N.T. 153). Next, the press department would mold 50% extra of the product being manufactured. Upon arrival in the finishing department, all 150 pounds of parts required finishing, but only 100 pounds needed to be trimmed and readied for shipment in order to complete the order. Understandably, the excess production had lower priority to complete than did work necessary to fill orders that Associated's sales staff had promised to customers by a certain date (N.T. 104). At times, the extra production could be used later to fill another order, but at other times, an

overrun product was not re-ordered. Cressman testified that, when time was available, his department did work on product overruns, but his first priority was filling current orders (N.T. 98).

Oldt was clearly aware that overruns by the production department were "wasteful" (N.T. 153). Oldt testified that he had to instruct the preparation department foreman to stop routinely mixing extra rubber. In other words, Oldt was fully aware that production department overruns and customer priority caused the build-up of excess products in the finishing department. It seems clear that Cressman was properly doing his job as foreman when he set appropriate priorities and instructed his crew to fill customer's orders first.

Under the circumstances, Oldt was not simply laboring under a mistaken impression that led to a bad decision. Instead, Oldt knew all along that the production department was the root cause of the accumulation of extra products in the finishing department. Neither Oldt nor anyone else ever gave Cressman any indication that his job was in jeopardy because overrun parts were being stored in the finishing department. Further, the foreman who was actually responsible for the excess production received a bonus and salary increase in 2001.

As does Oldt's version of the excess products in the finishing department, Oldt's testimony regarding Associated's computerized shipping system also lacks credibility. We again fundamentally acknowledge that Cressman was never told his job was in jeopardy if he did not learn the new system.

Even more significant than this simple point is the timing of events in Oldt's testimony. Oldt testified that prior to becoming President, it was not a problem for

him to train new shippers (N.T. 148). Oldt acknowledged that he was simply an "extra employee" before becoming President (N.T. 148). Oldt testified that he said to Cressman, "...you know, I don't have time to [train shippers] anymore. Now I'm President, I need you to do it." (N.T. 148-149).

Under cross-examination, Oldt identified two individuals that he said he had to train. Mustapha Afellah and Dave Brooks. We begin by pinpointing when Oldt became President. While he would have us believe that he became President in January 2000, the Record reveals that he became President in January 2001 (C.E. 1 and C.E. 12). Afellah was hired on May 11, 1999, and left on October 19, 2001 (C.E. 12). We see that Afellah was trained as a shipper over 19 months before Oldt became President, and that Brooks was not hired until approximately 6 months after Cressman was terminated. When Oldt suggests that Cressman's failure to train new shippers was an important reason why Cressman was terminated, there is not a shred of credibility in Oldt's testimony.

Oldt next offered that Cressman's inability to train new employees, combined with his lack of knowledge of how to trim parts, contributed to Cressman's discharge. Once again, the record considered as a whole reveals that Oldt lacks credibility. As we found with the timing of training new shippers, a significant timing problem severely contradicts Oldt's testimony regarding the training of other finishing department employees.

Oldt identified Joyce Hockman and Eva Marie Deutsch as the two employees Cressman failed to train. New employees at Associated principally get on-the-job training (N.T. 50). In the finishing department, experienced employees were

assigned to train new employees, with Cressman monitoring their progress. If Cressman found that, in his estimation, a new employee was not being shown how to trim properly, Cressman brought both the new employee and the instructor over to show them both how a task was to be done. (N.T. 50).

Oldt testified that a retired finishing worker had to be brought back to train Hockman (N.T. 149). Oldt submitted that he based his conclusion in this regard on his brief observation of the previously retired employee, Marion Gehman, standing over Hockman and showing her how to trim parts (N.T. 179). Inconceivably, Oldt did not even know who rehired Gehman or why, and that he was never told that Gehman was brought back to train Hockman. All that Oldt really knew was that he once saw Gehman near Hockman's work area.

From this highly questionable observation, Oldt would have us believe that he also concluded that Cressman also failed to train Deutsch. Incredibly, Oldt admitted that he went on to infer that Cressman must have also failed to train Deutsch based solely on his observation of Gehman with Hockman (N.T. 180). Oldt's version flies in the face of the credible testimony offered by Cressman about how new employees were trained.

Additionally, and much more telling, is the timing issue. The evidence reveals that Deutsch was hired November 13, 1998, and Hockman was hired January 5, 1999. Deutsch's training began almost 30 months before Cressman's termination and Hockman's training began over 27 months earlier.

As for Oldt's testimony that Cressman lacked knowledge of how to trim parts, that testimony stands in stark contrast to the evidence that Cressman successfully

supervised the finishing department for over 30 years. No evidence was presented that any supervisor prior to Oldt had ever commented unfavorably about Cressman's ability. In fact, Cressman offered just the opposite without rebuttal. Over thirty years, Cressman routinely received bonuses and pay increases. If he did not even know how to perform the principal functions of his department, he simply could not have successfully held the supervisory position. Oldt's testimony not only lacks credibility, it simply defies logic and common sense.

Yet another conspicuous irregularity assists Cressman to demonstrate that Oldt's decision to terminate him was far more than a bad decision. Assisting in this showing are the two memos to file that Oldt created after meeting with Cressman on August 31, 2000 and again, only six days later, on September 6, 2000 (C.E. 17 and R.E. 1).

In the August 31st memo Oldt notes that he discussed a purported problem employee with Cressman and told Cressman that past unsatisfactory behavior had to be documented and discussed before the employee could be terminated. Clearly, Oldt knew the importance of documenting poor performance. Yet with Cressman, Oldt seems to rely on an argument that because Associated does not complete written performance evaluations, the sparseness of written evidence of Cressman's alleged poor performance is unremarkable. On the contrary, Oldt's instructions to Cressman point to a significant inconsistency in Oldt's handling of supposedly underperforming employees.

When Cressman was called in on August 31, 2000, Oldt utilized Kirschner as a witness. Kirschner witnessed Oldt telling Cressman that before an employee is

fired, there must be documentation of his problematic behavior and discussion of those problems.

The August 31, 2000 memo to file also indicates that Oldt discussed with Cressman his "past actions," consisting of his purported failure to train and the loss of production time because of engaging in personal conversations with his workers.

We note that Oldt did not call in the production foreman to discuss such things as the wasteful practice of parts overruns in his department. In addition, Kirschner testified that he was never asked to witness a meeting between Oldt and any other employee, aside from Cressman.

The meeting held six days later, on September 6, 2000, again with Kirschner as witness, addressed Cressman's purported failure to train "recently hired employees." As previously noted, over a year and a half had passed since anyone was hired in the finishing department, leaving one to conclude that Oldt was attempting to concoct a written record critical of Cressman when in fact Cressman simply did not have performance problems sufficient to result in termination.

Here, the lack of full documentation of Cressman's purported shortcomings casts doubt on the integrity of their existence. The extent to which Oldt's two memos should be given consideration is minimized by the weakness of Oldt's effort to document a purported performance issue.

Next we turn to another exceptionally strong indicator that Oldt was motivated by an impermissible criteria when he elected to terminate Cressman. There was Cressman, after an unblemished 53-year career with Associated, summarily terminated. The meeting where he was told of his termination consisted of Oldt

telling Cressman, in effect, that things are not going the way he would like them to go, so this is your last day (N.T. 42). There was no meaningful explanation of anything. "It would be an ordinary business practice to review alternatives for retaining a long-term employee with an adequate record, rather than discarding him like an obsolete computer system." Morse v. Southern Union Co., 76 FEP 538, 539 (W.D. Mo. 1998). While arbitrary action by employers is within their prerogatives, such action invites a closer look for likely prohibited motivation. Senseless inhumanity in personal decisions is not to be ordinarily expected. See Furnco Construction Corp. v. Waters, 438 U.S. 567, 580 (1978).

Here, when Cressman asked for a witness, he was told no one was available. When he then requested a separation notice, Oldt asked, "What do you want that for?" (N.T. 42). When Cressman told Oldt that he thought he was entitled to a separation notice, Oldt hurriedly prepared one on which he wrote, "Employee was discharged for incompetence." (C.E. 2). Scott and Kirschner were then instructed to follow Cressman while he went to retrieve his personal items. Before leaving, however, Oldt told Cressman, "I just want you to leave Associated Rubber and I never want you to return on the property." (N.T. 44, 206).

As the Court in Morse announced, the fact finder is "entitled to conclude that a harshly handled termination of a longtime management employee, without making a good faith effort to relocate a person whose general ability is unquestioned and who apparently has transferable skills, is so remarkable that, with other evidence of age consciousness...it probably was because of... age." Morse at 540.

Considering all the evidence presented in this case, Cressman has proven by sufficiently more than a preponderance of the evidence that Oldt's actions demonstrate far more than poor business judgment. Cressman has demonstrated that Oldt did not honestly hold the views he expressed as his motivations. In this case, Cressman's age was the only motivation for his discharge. Accordingly, we move to consideration of an appropriate remedy.

The PHRC has broad equitable power to fashion relief. Section 9 of the Pennsylvania Human Relations Act (hereinafter, "PHRC") states in pertinent part:

> (f)(1) If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint, hiring, reinstatement or upgrading of employees; with or without back pay,...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice,...as, in the judgment of the Commission, will effectuate the purposes of this act,....

43 P.S. § 959(f)(1).

In Murphy v. Cmwlth., PA Human Relations Commission, 506 Pa. 549, 486 A.2d 388 (1985) the Pennsylvania Supreme Court commented on the extent of the Commission's power by stating: "We have consistently held that the Commissioners, when fashioning an award, have broad discretion and their actions are entitled to deference by a reviewing court." Murphy, at 486 A.2d 393. The expertise of the Commission in fashioning a remedy is not to be lightly regarded. The only limitation upon the Commission's authority is that its award may not seek to achieve ends other than the stated purposes of the Act. Consolidated Rail Corp. v.

Pennsylvania Human Relations Commission, 136 Pa. Commonwealth Ct. 147,152, A.2d 702 708 (1990).

The purpose of the remedy awarded under the PHRA is twofold. First, the remedy must insure that the Commonwealth's interest in eradicating the unlawful discriminatory practice found to exist is vindicated. Vindication of this interest is non-discretionary. It necessitates entry of an order, injunctive in nature, which requires the Respondent to cease and desist from engaging in unlawful discriminatory practices.

The second purpose of any remedy focuses on entitlement to individual relief. Its purpose is not only to restore the injured party to his pre-injury status and make him whole, but also to discourage future discrimination. Williamsburg Community School District v. Pennsylvania Human Relations Commission, 99 Pa. Commonwealth Ct. 206, 512 A.2d 1339 (1986).

With respect to entitlement to individual relief, several other matters must be addressed. First is the fact that where a complainant demonstrates that economic loss has occurred, back pay should be awarded absent special circumstances. See: Walker v. Ford Motor Co., Inc., 684 F.2d 1355 (11th Cir. 1982). In fact, once liability is established, the burden shifts to the employer to demonstrate that monetary relief is not proper. U.S. v. International Brotherhood of Teamsters, 431 U.S. 324, 97 S. Ct. 1843, 52 L. Ed.2d 396 (1977); Franks v. Bowman Transportation Co., 424 U.S. 474, 96 S. Ct. 1251, 47 L. Ed.2d 444 (1976). It is axiomatic that the calculation of the back pay award need not be exact. It is only necessary that the method used be reasonable. Uncertainties, in general, should be resolved against a discriminating

employer. Pettway v. American Cast Iron Pipe Co., 494 F.2d 211 (5th Cir. 1974). The question of mitigation of damages is a matter that lies within the sound discretion of the Commission. Consolidated Rail Corporation, cited *infra*, 582 A2d at 708. Moreover, the burden is on the employer to demonstrate any alleged failure to mitigate. Cardin v. Westinghouse Electric Corp., 850 F.2d 996, 1005 (3rd Cir. 1988). See generally, State Public School Building Authority v. M.M. Anderson Co., 410 A 2d 1329 (Pa. Cmwlth. 1980) (Party who has caused the loss has the burden of showing that the losses could have been avoided through the reasonable efforts of the damaged party).

In the case at hand, it is certainly possible to calculate the appropriate remedy owed to Cressman by use of a method that is reasonable. First, as expressly provided in the PHRA, an offer of reinstatement is appropriate. 43 P.S. §959 (f)(1). Second, payment of back wages, salary and bonus increments and associated benefits, as well as other expenses caused by the unlawful conduct, are appropriate. Id. Significantly, in calculating these payments, it is important to note that the necessary calculations are based almost entirely on evidence provided by Associated, either directly to Cressman during the course of his employment or provided to the Commission subsequent to the filing of the complaint in this case. (C.E. #3 through #16).

As noted above, apart from the offer of reinstatement, the evidence at the hearing demonstrates that the award should include the following: (a) back pay and associated salary increases; (b) management bonuses; (c) profit sharing benefits; (d) pension plan benefits; (e) medical expense reimbursement; (f) out-of-pocket

expense incurred in connection with the complaint; and (g) an appropriate interest award.

Cressman was earning $4.025.00 per month at the time of his discharge. (C.E. #3). However, we find that, but for age-based discrimination, beginning April 2001, Cressman's salary should have increased along with all the other managers. The PHRC regional office brief offers the calculation of 3.94% as the amount of increase the Complainant should have received in 2001. We accept this calculation as a reasonable measure of yearly salary increases since Cressman's termination. Accordingly, since his termination, Cressman lost the following salary:

A. April 26, 2001 through March 31, 2002:

$4,025.00 X .0394 = $159.59

$4,025.00 + $158.59 per month = $4,183.59

(Since Cressman was paid $4,025.00 for April 2001, he lost only $158.59 for that month).

11 X $4,183.59 = $46,019.49 + $158.59 = $ 46,178.08

B. April 1, 2002 through March 31, 2003:

$4,183.59 X .0394 = $164.83

$4,183.59 + $164.83 = $4,348.42

12 months @ $4,348.42 per month = $ 52,181.04

C. April 1, 2003 through March 31, 2004:

$4,348.42 X .0394 = $171.33

$4,348.42 + $171.33 = $4,519.75

12 months @ $4,519.75 = $ 54,237.00

D. April 1, 2004 through the present:

$4,519.75 X .0394 = $178.08	
$4,519.75 + $178.08 = $4,697.83	
5 months @ $4,697.83 =	$ 23,489.15
Total Wages Lost:	$176,085.27

In addition to salary lost, Cressman also lost the following bonuses:

A.	March 15, 2001:	$ 4,025.00
B.	March 15, 2002:	$ 4,183.00
C.	March 15, 2003:	$ 4,348.42
D.	March 15, 2004:	$ 4,519.75
	Total Bonuses Lost:	$ 17,076.76

Returning to the question of lost wages, two components of this issue remain. First, Cressman seeks reinstatement and such an order is proper. Second, Cressman seeks front pay until such a time as Associated offers Cressman reinstatement and Cressman either returns to his position or refuses Associated's offer.

Regarding the question of front pay, Associated offered no evidence that an award of front pay is inappropriate. Additionally, Associated offered no evidence that Cressman failed to mitigate his damages. Of course, Respondents have the burden of demonstrating that a Complainant failed to mitigate damages. See Kaplan v. I.A.T.S.E., 525 F.2d 1354 (9th Cir. 1975); Sprogis v. United Air Lines, 517 F.2d 387 (7th Cir. 1975); Jackson v. Wheatly School Dist., 464 F.2d 411 (8th Cir. 1972); and Sparks v. Griffin, 460 F.2d 433 (5th Cir. 1972). Here, Associated offered no evidence in this regard.

The only evidence on this issue was that during the period of 58 weeks after Cressman's termination, he was receiving unemployment compensation benefits and remained available for employment. However, the Bureau of Employment Security never contacted him about a possible job.

The PHRC regional office brief cites the case of Consolidated Rail Corp. v. PHRC, 582 A.2d 702 (Pa Commonwealth Ct. 1990) for general principles associated with mitigation issues in an age discrimination case. In Consolidated Rail, a 61-year-old employee was discharged and, at a PHRC Public Hearing, admitted that after his discharge he did not seek other employment. The PHRC determined that the Complainant was entitled to a full back pay award and this determination was affirmed on appeal. The Commonwealth Court agreed with the PHRC that in light of the Complainant's age, his years of experience with the Respondent, and his unique expertise, the Complainant's best hope for reemployment was reinstatement. Here, Cressman is now 76.

As a general rule, Older Complainants need not exert as much effort as younger Complainants. See Rasimas v. Mich. Dept. of Mental Health, 32 FEP 688 (6th Cir. 1983), citing Falls Stamping & Welding Co. v. International Union of Automobile, Aircraft and Agricultural Workers of America, 667 F.2d 1026 (6th Cir. 1981), cert. denied 455 U.S. 1019 (1982).

Given Cressman's age, the fact that he worked for Associated for over 50 years, and had unique expertise in finishing rubber parts, he is entitled to a full back pay award.

Evidence produced at Public Hearing also establishes that Associated's management employees were participants, at no cost to them, in both a Profit Sharing Trust Plan and a Salaried Pension Plan. (N.T. 77-81; C.E. 8, 9). Subsequent to Cressman's termination, Associated has continued to provide its management employees with these benefits. Additionally, Associated has issued annual statements to the management participants. (C.E. 15, 16). These statements include a beginning balance, the yearly amount contributed by Associated, the yearly earnings, the yearly amount of change in market value of the investment, and the ending balances.

Using the annual statements of the remaining managers as a guide, an approximate amount owed to Cressman can be derived. Two calculations must be made. First, for each year after Cressman's termination, the amount Associated would have contributed to the two plans must be determined. Associated's Treasurer testified that Associated makes yearly contributions equal to 15% of a manager's annual salary to the Profit Sharing Plan and 10% of a manager's annual salary to the Salaried Pension Plan. (N.T. 225, 227; C.E. 8, 9). Had Cressman not been terminated, Associated would have made the following contributions:

PROFIT SHARING PLAN

A. Jan. – March 2001: $4,025.00 X 3 = $12,075.00

April – Dec. 2001: $4,183.59 X 9 = $37,652.31

Total: $49,727.31

$49,727.31 X 15% = $ 7,459.10

B. Jan. – March 2002: $4,183.59 X 3 = $12,550.77

April – Dec. 2002: $4,348.42 X 9 = $39,135.78

Total: $51,686.55

$51,686.55 X 15% = $ 7,752.98

C. Jan. – March 2003: $4,348.42 X 3 = $31,048.26

April – Dec. 2003: $4,519.75 X 9 = $40,677.85

Total: $53,726.01

$53,726.01 X 15% = $ 8,058.90

Total Associated Contribution : $23,270.98

SALARIED PENSION PLAN

A. 2001: $49,727.31 X 10% = $ 4,972.73

B. 2002: $51,686.55 X 10% = $ 5,168.66

C. 2003: $53,726.01 X 10% = $ 5,372.60

Total Associated Contribution: $15,513.99

The second calculation that must be made looks to the balance histories of the remaining managers to determine an average percentage of change for a given year. The PHRC regional office post-hearing brief at appendix B-1 through B-3 provides these percentage calculations with respect to the Profit Sharing Trust Fund. The post-hearing brief at appendix B-1A through B-3A provides the percentage calculations with respect to the Salaried Pension Plan. We have reviewed those calculations and accept the resulting percentages as appropriate to use in the calculation of Cressman's benefit increases or decreases.

PROFIT SHARING TRUST FUND

A. April 1, 2001 through March 31, 2002: Estimated increase 25%

	Cressman's beginning balance (C.E. 8):	$904,465.00
	Associated's contribution:	$ 7,459.10
	Total:	$911,924.10
	$911,924.00 X .25 =	$227,981.02

B. April 1, 2002 through March 31, 2003: Estimated decrease 6%

C.	Beginning balance:	$1,139,905.12
	Associated's contribution	$ 7,752.98
	Total:	$1,147,658.10
	$1,147,658.10 X .06 =	—$ 68,859.49
	Final balance:	$1,078,798.51

Total increase in plan from April 1, 2001 through March 31, 2003 that was lost by Cressman: $159,121.53

SALARIED PENSION PLAN

A. April 1, 2001 through March 31, 2002: Estimated increase 26%

Cressman's beginning balance (C.E. 9):	$232,643.00
Associated's contribution:	$ 4,972.73
Total:	$237,615.73
$237.615.73 X .26 =	$ 61,780.09

B. April 1, 2002 through March 31, 2003: Estimated decrease 2.6%

Beginning balance:	$299,395.82
Associated' contribution:	$ 5,168.66
Total:	$304,564.48
$304,564.48 X .026 =	— $ 791.87

Final Balance: $303,772.61

Total increase in plan from April 1, 2001 through March 31, 2003 that was lost by Cressman: $ 60,988.22

SUMMARY OF BENEFIT AMOUNTS LOST BY CRESSMAN:

A. Associated's contributions to Profit Sharing Plan: $ 23,270.98

B. Associated's contributions to Salaried Pension Plan: $ 15,513.90

C. Increase in Profit Sharing Plan: $159,121.53

D. Increase in Salaried Pension Plan: $ 60,988.22

Total benefits lost: $258,894.72

The next item of damage to be considered addresses lost medical benefits. While an Associated employee, Cressman received medical benefits for which he contributed $45.00 per month. When he was terminated, the cost to Cressman for medical coverage increased substantially. From May 2001 through November 2001, Cressman made COBRA payments totaling $2,968.94. Beginning December 2001, Cressman made quarterly payments of $1002.30. In December 2002, the quarterly payments increased to $1,134.84. The following calculations determine the additional medical insurance costs incurred by Cressman through August 2004:

A. COBRA from May 2001 through December 2001: $ 2,968.94

4 quarterly payments, Dec. 2001 through Nov. 2002: $ 4,009.20

7 quarterly payments, Dec. 2002 through Aug. 2004: $ 7,943.88

Total payments: $ 14,922.02

B. Cressman's cost at Associated would have been:

40 months X $45 per month = — $ 1,800.00

Cressman's additional costs for medical coverage: $ 13,122.02

As the PHRC regional office post-hearing brief observes, each month Cressman continues to spend an extra $238.71 for substitute medical coverage. Until Cressman is reinstated or he refuses an offer of reinstatement, Associated should pay for the extra cost of his medical insurance.

Cressman also seeks reimbursement of certifiable travel expenses. The evidence in this regard reveals that Cressman traveled six times to the PHRC regional office. The round trip distance was said to be between 100 and 110 miles. On each trip, Cressman testified that he had to pay approximately $5.00 to park and had a meal expense of $10.00 per trip. The following travel expense calculations are made:

A.	Mileage: 105 miles X 6 trips X $.375 per mile =	$ 236.25
B.	Parking: $5.00 X 6 =	$ 30.00
C.	Meals: $10.00 X 6 =	$ 60.00
D.	Total travel expenses:	$ 325.25

An appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNER'S OFFICE

PENSYLVANIA HUMAN RELATIONS COMMISSION

JAMES A. CRESSMAN,	:	
Complainant	:	
v.	:	**PHRC Case No. 200027235**
ASSOCIATED RUBBER, INC.,	:	
Respondent	:	

RECOMMENDATION OF PERMANANT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Cressman has proven discrimination in violation of Sections 5(a) of the PHRA. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

August 17, 2004
Date

Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNER'S OFFICE

PENSYLVANIA HUMAN RELATIONS COMMISSION

JAMES A. CRESSMAN,	:	
Complainant	:	
v.	:	**PHRC Case No. 200027235**
ASSOCIATED RUBBER, INC.,	:	
Respondent	:	

FINAL ORDER

AND NOW, this 31st day of August, 2004, after review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law and Opinion as its own finding in this matter and incorporates the Findings of Fact, Conclusions of Law and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

ORDERS

1. Associated shall cease and desist from discrimination on the basis of age.

2. Associated shall immediately offer to reinstate Cressman to the position of foreman of the Finishing Department at a salary and with all appropriate benefits, including but not limited to salary increments, bonuses, constructive seniority and all other benefits, that he otherwise would have received had he remained employed by Associated at all times subsequent to April 26, 2001.

3. Associated shall pay Cressman $176,085.27 back pay for the time period April 26, 2001 through August 5, 2004 and shall pay Cressman an additional $4,697.83 in salary until such time as he either returns to work or refuses the offer.

4. Associated shall pay Cressman interest at the rate of 9% per annum from April 26, 2001 on the back pay award through the date of payment.

5. Associated shall pay Cressman $17,076.76, which represents the amount Cressman would have received in bonus payments in the years 2001 through 2004.

6. Associated shall pay Cressman $258,894.72, which represents the amounts that Cressman would have received through March 31, 2004 as a member of the Profit Sharing Trust Fund and Salaried Pension Plan.

7. Should Cressman accept Associated's offer of reinstatement as foreman of the Finishing Department, Associated shall

immediately offer to reinstate Cressman as a member of the Profit Sharing Trust Fund and the Salaried Pension Plan under such terms and conditions as would have been in place had Cressman remained employed at all times after April 26, 2001. Should Cressman accept the offer of re-employment but decline the offer of reinstatement into the Profit Sharing Trust Fund and/or the Salaried Pension Plan, Associated shall pay Cressman, on an annual basis, the same percentage amount that it contributes to each fund for each year for each other management employee (currently 15% of annual salary for the Profit Sharing Trust Fund and 10% of annual salary for the Salaried Pension Plan).

8. Associated shall pay Cressman an amount equal to $13,122.02, which represents the post-discharge medical benefit coverage expense differential incurred by Cressman during the period May 1, 2001 through August 2004.

9. Associated shall also pay Cressman $238.71 per month medical benefit coverage expense as the differential that he is paying, continuing until such time as Associated offers reinstatement to Cressman and Cressman either returns to work or refuses the offer.

10. Associated shall pay Cressman interest on the medical benefit coverage award at the rate of 9% per annum from April 26, 2001 through the date of payment.

11. Associated shall reimburse Cressman $325.25, which represents the certifiable travel expenses incurred by Cressman in matters involving the complaint.

12. Associated shall report the means by which it will comply with the Order, in writing, to Michael Hardiman, Assistant Chief Counsel, within thirty days of the date of this Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Stephen A. Glassman /ss

Stephen A. Glassman, Chairperson
Pennsylvania Human Relations Commission

ATTEST:

Sylvia A. Waters /ss

Sylvia A. Waters, Secretary
Pennsylvania Human Relations Commission