

**CITY OF LINCOLN, NEBRASKA  
COMMISSION ON HUMAN RIGHTS  
MINUTES**

OCTOBER 25, 2012  
**CITY COUNCIL CHAMBERS**  
**555 S. 10<sup>TH</sup> STREET**

The October 25, 2012, meeting of the Commission on Human Rights was called to order at 4:00 p.m. by Gene Crump, Chair.

**ROLL CALL:**

The roll call was called and documented as follows:

**MEMBERS PRESENT:**

Wendy Francis, Liz King, Mary Reece, Hazell Rodriguez (arrived at 4:02 p.m.), Bennie Shobe, Micheal Thompson, and Gene Crump (left at 4:55 p.m.)

**MEMBERS ABSENT:**

Sue Oldfield and Takako Olson.

**STAFF PRESENT:**

Kimberley Taylor-Riley, Angela Lemke, Margie Nichols, Loren Mestre-Roberts, Jocelyn Golden (City Attorney), Cindy Wallman (Mayor's Office), Senada Gusic (Intern), and Miles Fredrick (Volunteer).

**APPROVAL OF SEPTEMBER 27, 2012, MINUTES:**

A motion was made by Francis and seconded by Shobe to approve the minutes of the September, 2012, meeting as presented.

Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Francis, King, Reece, Shobe, Thompson, and Crump. Motion carried.

Rodriguez arrived at the meeting.

**APPROVAL OF OCTOBER 25, 2012, AGENDA:**

A motion was made by Francis and seconded by Reece to approve the October 25, 2012, meeting agenda as presented.

Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Francis, King, Reece, Shobe, Thompson, and Crump. Abstaining: Rodriguez. Motion carried.

#### **CASE DISPOSITIONS:**

##### **LCHR #12-0110-001-PA**

Rodriguez asked to be excused due to a conflict of interest. A motion for a finding of **No Reasonable Cause** was made by Francis and seconded by King.

Shobe asked if the age of either the Complainant or the Respondent's clerk was considered to which Investigator Lemke stated no. Thompson asked if there was any signage indicating the Respondent didn't accept \$100 bills. Investigator Lemke stated she was told there was sign on the door saying there was a limited amount of cash in the register. Francis stated it appeared there was some doubt as to whether the person the Complainant complained about was working at the time the situation allegedly happened. According to Lemke, the Complainant alleged the situation occurred at approximately 8:00 p.m.; however, the evidence shows that the clerk who allegedly treated him this way did not clock in until 11:59 p.m.

Rodriguez returned to the Chambers. Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Francis, King, Reece, Shobe, Thompson, and Crump. Abstaining was: Rodriguez. Motion carried.

##### **LCHR #12-0224-006-E-R**

A motion for a finding of **No Reasonable Cause** on all allegations was made by Francis. Hearing no second, the motion died. Reece moved that each allegation/issue be considered separately, which was seconded by King.

On the first issue, Crump stated the recommendation was for No Reasonable Cause. Crump asked Lemke if the investigation showed the team leader was treating the Complainant differently because of his race. It was asked, for clarification, if there was a motion for No Reasonable Cause, to which Lemke responded no.

A motion was made by Reece and seconded by Shobe for a finding of **Reasonable Cause** that the Complainant was subjected to unlawful harassment based on his race.

Crump asked Lemke if the investigation found that the team lead harassed the Complainant based on his race. Lemke responded that the evidence showed the team lead didn't treat anyone very well regardless of race, but said that approximately seven witnesses stated there was a perception that the racial minorities were relegated to the sanding room and their choice of working outside the sanding room was restricted compared to the white temporary employees. Lemke added there was some

inconsistencies in witness statements, including that some racial minorities did work outside the sanding room, and some racial minority temporary employees stated they didn't have issues with the team lead while others did. However, Lemke explained that the consensus was that the non-white temporary employees had their choices restricted when it came to working outside the sanding room and that sanding was the least desirable position in that area.

Rodriguez asked how many employees worked in the sanding room, and of those, what the number of minorities was. Lemke responded that it was difficult to determine because the neither the Respondent nor the temporary placement agency kept track of race. She added there was also a large turnover during the three to four months the Complainant was there, which added to the difficulty in ascertaining the race and percentage of the races in and out of that department. Lemke stated that according to witness testimony, it was racially diverse. Lemke also added that the number of individuals working in the sanding room typically was greater than individuals working outside of the sanding room.

Commissioners discussed witness statements as to how the team leader treated racial minority employees compared to white temporary employees, as well as Respondent employees compared to temporary employees. Lemke reminded the Commissioners of the legal requirements to show that the working conditions rose to the level of a hostile work environment, and explained that there was no change in pay for employees working outside or inside the sanding room.

A question was asked relating to the Complainant's request for welding training. Lemke explained that when a temporary employee expressed interest in welding, they were first given a 30-minute assessment, which they had to pass in order to complete the three to five day training. She said the Complainant did not pass the assessment so did not receive the training.

Commissioner Shobe asked about the verbal counseling the team lead received as a result of complaints received regarding how he treated employees. Lemke stated the team lead told her the counselor told him he needed to be a better people person. Commissioner Crump asked if he had any other written disciplinary actions in his personnel file to which Lemke responded no. Reece asked if race had been mentioned in those complaints. Lemke stated the only time the Respondent was made aware of the allegations of race discrimination was on the Complainant's last day of his assignment.

Commissioners discussed the Respondent's failure to investigate the Complainant's last complaint, and a discussion was held as to which employer, the Respondent or the temporary agency, had a duty to investigate.

Shobe asked about the difference between differential treatment, harassment, and hostile work environment. Lemke responded that hostile work environment is a form of harassment, and explained that for differential treatment to be unlawful, the Complainant would have had to suffer an adverse action.

Hearing no further discussion, Crump asked for the roll call. Voting “aye” was: King, Reece, Rodriguez, Thompson, and Crump. Voting “no” was: Francis and Shobe. Motion carried.

A motion was made by Crump and seconded by Francis for a finding of **No Reasonable Cause** that the Complainant was denied a transfer based on his race.

Hearing no discussion, Crump asked for the roll call. Voting “aye” was: Francis, King, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

A motion for a finding of **No Reasonable Cause** that the Complainant’s assignment was terminated based on his race was made by Francis and seconded by Shobe.

Hearing no discussion, Crump asked for the roll call. Voting “aye” was: Francis, King, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

A motion for a finding of **No Reasonable Cause** that the Complainant’s assignment was terminated in retaliation for engaging in a protected activity was made by Reece and seconded by Francis.

Hearing no discussion, Crump asked for the roll call. Voting “aye” was: Francis, King, Reece, Rodriguez, Shobe, and Thompson. Voting “no” was: Crump. Motion carried.

**LCHR #12-0224-007-E-R**

A motion was made by Shobe and seconded by Francis for a finding of **No Reasonable Cause** on all allegations.

Reece asked if the Respondent had a policy for when a temporary employee alleges discrimination, and if the Respondent follows up on it, or if they turn it over to the client company for investigation. Lemke stated the Respondent does have a policy that applies to all employees, temporary or not, and their policy indicates that they are to investigate the complaints. King asked if the Respondent explained why they didn’t follow up on the Complainant’s allegations. According to Lemke, Respondent believed the client company would handle the complaint. Lemke stated both entities have a duty to investigate complaints, and can both be liable for failing to do so.

Crump asked if the Respondent could be culpable for discrimination by a client company. Lemke responded that her research shows that both entities can be liable. Crump also asked, since reasonable cause was found on the first case, could the Commissioners also find reasonable cause that the Complainant’s assignment was terminated in retaliation for complaining about discrimination in the current case. Lemke responded the evidence was pretty clear that the Complainant’s assignment was terminated before he made the allegation to the Respondent. Crump asked if the third allegation of retaliation was talking about his assignment with the client company or with the Respondent. Lemke said it was the assignment with the client company, and the

Respondent had no input into the ending of the Complainant's assignment. Lemke also added that the Respondent placed the Complainant on other temporary assignments after his assignment with the client company ended. Crump clarified that the Complainant was not terminated by the Respondent, to which Lemke responded that was correct.

Commissioners discussed the Complainant's complaints, the last email when he alleged race was involved, and the fact that neither the Respondent nor the client company followed through with investigating the complaint. Thompson said it appeared the Respondent and the client company had a breakdown in communication, and asked if the client company had guidelines in place to use to investigate the complaint. Lemke said yes and reviewed the policy.

Reece asked if it could contribute to a hostile work environment if complaints were not followed up on. Lemke responded it could if the situation was not improving. Lemke said it might have factored into their decision not to investigate because it was the Complainant's last day and that he wouldn't be in the environment anymore, however, there were other employees still in that environment and the Respondent could conceivably continue to send employees there in the future.

The Commissioners discussed the current motion on the table and procedural issues.

Hearing no further discussion, Crump asked for the roll call. Voting "no" was: Francis, King, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion failed.

A motion for a finding of **Reasonable Cause** that the Complainant was subjected to unlawful harassment based on his race was made by Reece, and seconded by King.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: King, Reece, Rodriguez, Thompson, and Crump. Voting "no" was: Francis and Shobe. Motion carried.

A motion for a finding of **No Reasonable Cause** that the Complainant was denied a transfer based on his race was made by Francis and seconded by Shobe.

Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Francis, King, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

A motion for a find of **No Reasonable Cause** that the Complainant was terminated for engaging in a protected activity was made by Reece seconded by Francis.

Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Francis, King, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

A motion for a finding of **No Reasonable Cause** on all allegations was made by Francis and seconded by Crump.

Rodriguez asked about the Complainant and her initial acknowledgement that the baths were eventually given that same day for both residents, and if there was any evidence to support that. Nichols said it was correct the Complainant claimed she did give them baths later in the morning; however, she gave conflicting statements to the Respondent and to the investigator. Nichols explained the procedure was that if a bath is not given initially that employees are to make the charge nurse aware of it and note it on the logs, especially if a resident refuses to take a bath. The Respondent stated the Complainant told them she may have written that she had given a bath on the wrong log and didn't actually give at least one of the residents a bath. Nichols said the Complainant told her that both residents did receive a bath, but it was later in the morning for both residents (on two different days). Rodriguez asked if the residents were asked specifically if they received baths, to which Nichols responded yes, the Respondent spoke to both residents. Nichols explained that a Respondent employee was assisting one of the residents and that resident asked if the bath lady was coming. The employee asked if the resident hadn't seen the bath lady that day to which the resident responded she had not, and the employee had already left for the day. Nichols further explains that the second resident was asked and this resident also denied she was given a bath/shower. Nichols added that the Respondent employee verified with the resident what the month and day was to show that the resident was not confused.

Reece asked what information was entered on the log and if it was just an alleged falsification of time. Nichols reviewed the information included on the logs: date, time, water temperature, bath or shower or partial, weight, scale used, nail care, initials of the bath aid, if refused, and behavior, demeanor or other notes such as if a bath is refused.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Francis, King, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

Crump then excused himself due to another commitment and asked the Vice Chair, Rodriguez, to take over the meeting.

**LCHR #12-0326-013-E-R**

A motion for a finding of **No Reasonable Cause** on all allegations was made by Francis and seconded by Reece.

Rodriguez said she believed the suspension for the cell phone use was harsh and asked for the reasoning. Nichols stated the Respondent said that cell phone usage by nursing assistants while they were at work was a major problem, and they had used verbal and written disciplinary actions but it wasn't having any affect. Because of that, Nichols explained that the Respondent stated they needed to do something that would get the employees' attention. Rodriguez asked if there were no

exceptions in the policy. Nichols stated the Respondent pointed out, and the Complainant even acknowledged, there were options other than her getting the call on her cell phone such as having her paged, or if she had to use her cell phone to make sure the charge nurse knew and then excuse herself from being in the resident's room.

King asked about the comparables and if the employees were terminated for using their cell phones. Nichols responded, no, those were employees discharged due to inappropriate or lack of respectful behavior with residents, which was similar to the reasons why the Complainant was terminated.

Shobe asked about the phone call and if it was an emergency call. He also asked if there was a scale for determining respectful behavior and to determine what an emergency was. Nichols responded it was based on the behavior of the employee and that the cell phone call the Complainant received was not an emergency.

Reece asked about the Complainant and a co-worker leaving a resident alone, and if the co-worker was also disciplined for leaving the resident alone. Nichols responded that the employee was terminated, but not solely for that reason.

Hearing no further discussion, Rodriguez asked for the roll call. Voting "aye" was: Francis, King, Reece, Rodriguez, Shobe, and Thompson. Motion carried.

#### **LCHR #12-0521-024-E-R**

Commissioner Rodriguez excused herself due to a conflict of interest and asked Commissioner Francis to take over.

A motion for a finding of **No Reasonable Cause** on all allegations was made by Reece and seconded by King.

Shobe asked about the text messages, if the supervisor looked at them, and if it was just one message. Lemke said it was a series of messages which started earlier that month and included the Complainant also texting the male co-worker and his responding to her texts. Lemke said the messages were vague, and that the Respondent viewed them on the accused phone because the Complainant allegedly lost her phone shortly after she complained. Lemke also stated the Complainant had alleged that at least one of the messages was inappropriate regarding the male co-worker asking the Complainant if she had been kidnapped, her responding no, and the co-worker texting that he missed her. Lemke said the co-worker explained that he had more deliveries for the Complainant and was trying to get her to come back to the store without being rude. Shobe said he had expected more explicit text messages and asked if this was the only one the Complainant alleged to be inappropriate, to which Lemke responded yes.

King asked why the Complainant seemed to make inconsistent statements. Lemke said she tried to contact the Complainant to ask about the inconsistencies, but the Complainant's phone was no longer in service.

Hearing no further discussion, Rodriguez returned to the chambers. Francis asked for the roll call. Voting "aye" was: Francis, King, Reece, Shobe, and Thompson. Abstaining was: Rodriguez. Motion carried.

#### **LCHR #12-0604-011-H**

A motion for a finding of **No Reasonable Cause** on all allegations was made by Francis and seconded by Thompson.

Rodriguez stated there didn't appear to be a clear policy of how the Respondent dealt with people who were not paying the rent which could lead to problems and possible discrimination. However, she added, the evidence showed there had been people of different races who had been issued similar notices for non-payment of rent, and some who had not, including two other African-American tenants. Lemke stated that the Respondent understood that he needed to tighten up his policies when it came to issuing notices to tenants who were not timely in paying their rent.

Shobe asked about not having to give a 30-day notice unless it's spelled out in the lease. Lemke said that according to the Landlord Tenant Act, a landlord is required to give a 3-day notice and if the tenant fails to pay within the three days, then the lease is automatically terminated. Lemke added that landlords are not required to give a 30-day notice if it involves failure to pay rent.

Hearing no further discussion, Rodriguez asked for the roll call. Voting "aye" was: Francis, King, Reece, Rodriguez, Shobe, and Thompson. Motion carried.

#### **LCHR #12-0719-016-H**

A motion for a finding of **No Reasonable Cause** on all allegations was made by Francis and seconded by Shobe.

Reece asked about the lease, the increase in the rent, and if the Complainant stayed in the same apartment. Nichols clarified the dates and rate increases, and that yes, the Complainant lived in the same apartment the entire time. Reece asked if the Complainant being responsible for the window repairs was based on the new lease that had been signed and not from the original, which neither the Complainant nor Respondent had a copy of. Nichols stated that a review of other tenant leases showed the same language as was in the Complainant's lease agreement regarding the tenant being responsible for replacing broken windows.

Hearing no further discussion, Crump asked for the roll call. Hearing no discussion, Crump asked for the roll call. Voting “aye” was: Francis, King, Reece, Rodriguez, Shobe, and Thompson. Motion carried.

**PRE-DETERMINATION SETTLEMENT AGREEMENTS:**

**LCHR #12-0810-018-H**

A motion was made by Reece and seconded by Francis to accept the pre-determination settlement agreement as presented.

Hearing no discussion, Rodriguez asked for the roll call. Voting “aye” was: Francis, King, Reece, Rodriguez, Shobe, and Thompson. Motion carried.

**ADMINISTRATIVE CLOSURES:**

**Withdrawal:**

**LCHR #12-0628-012-H**

A motion was made by Francis and seconded by Reece to accept the administrative closure as presented.

Hearing no discussion, Rodriguez asked for the roll call. Voting “aye” was: Francis, King, Reece, Rodriguez, Shobe, and Thompson. Motion carried.

**OLD BUSINESS:**

Jocelyn Golden stated since Commissioner Crump had left he would not be commenting on the Department of Justice meeting held previously.

**NEW BUSINESS:**

Taylor-Riley discussed the Robert’s Rules of Orders and Bylaws provided to Commissioners in their packets. She asked them to review the Bylaws, which were being updated, and to let staff know if there were any suggested changes or updates they would like.

Taylor-Riley asked Commissioners if there was any interest in having a training session regarding Robert’s Rules of Order in November or later in the year. Taylor-Riley asked them to review the information and staff would be in touch regarding the training.

Commissioners discussed with Taylor-Riley regarding the use of abstention voting and when it is normally used. Reece stated that it was helpful to know that a vote of abstention is counted as a negative vote. Taylor-Riley and Commissioners also discussed making motions on cases and contacting investigators prior to meetings if there was additional information they wanted prior to making a determination.

Loren Roberts introduced herself to Commissioners as the new Outreach Coordinator. She talked about a focus group held on October 3, 2012, during Hispanic Heritage month targeting the Latino and Hispanic population. Roberts said 41 participants gathered information in three areas: education, employment and housing. Roberts stated that in housing, participants stated a desperate need in public disaster reaction information and there being a lack of shelters in some housing units, especially mobile home parks, and where residents should go in a disaster. Roberts stated they also expressed concerns about not understanding the leases and why they are not getting their deposits returned. For employment, Roberts said participants addressed issues of jobs not covering living or education expenses, being unemployed and looking for work, as well as furthering their education. Roberts also talked about the Differed Action for Childhood Arrivals (DACA) program and attorneys willing to provide legal advice. She stated all the information will be posted online. Francis asked about base lot rents and house payments for those living in mobile homes and working with the City of Lincoln to create more affordable housing. Roberts responded that a federal grant had been applied for to renovate mobile home parks and to create more affordable housing.

Lemke introduced Miles Fredrick to the Commissioners. She said Fredrick was volunteering at the Commission in order to complete community service hours required by his school.

Next Meeting:

The next meeting will be held on Thursday, December 13, 2012, at 4:00 p.m. in the City Council Chambers at the County City Building at 555 S. 10<sup>th</sup> Street.

**ADJOURNED:**

The meeting adjourned at 5:40 p.m.