

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

**Thursday, January 29, 2009
City Council Chambers**

CALL TO ORDER:

The January 29, 2009 meeting of the Commission on Human Rights was called to order at 4:03 P.M. by Chairperson Wendy Francis.

ROLL CALL:

The roll was called and documented as follows:

MEMBERS PRESENT:

Commissioners David Fikar, Wendy Francis, Sitaram Jaswal, Lori Lopez-Urdiales, Dick Noble, Hazell Rodriguez (arrival 4:09), Jose Quintero

MEMBERS ABSENT:

Commissioners Karla Cooper, Eugene Crump

STAFF PRESENT:

Director Larry Williams, Senior Civil Rights Investigator Angela Wortman, Civil Rights Investigator Margie Kniep, Outreach Coordinator Pippi Van Slooten, and Interim Senior Office Assistant Mary Reece.

APPROVAL OF DECEMBER 11, 2008 MINUTES:

A motion was made by Commissioner Fikar and seconded by Commissioner Jaswal to approve the minutes of the previous meeting.

Hearing no further discussion, Chairperson Francis asked for the roll call. Voting "aye" were: Commissioners Fikar, Jaswal, Lopez-Urdiales, Noble, and Francis. Abstaining was Commissioner Quintero. Motion carried 5-0-1.

APPROVAL OF JANUARY 29, 2009 AGENDA:

A motion was made by Commissioner Fikar and seconded by Commissioner Jaswal to approve the January 29, 2009 meeting agenda. Voting "aye" were Commissioners Fikar, Jaswal, Lopez-Urdiales, Noble, Quintero, and Francis. Motion carried 6-0.

CASE DISPOSITIONS:

LCHR No.: 07-0809-058-E-R

A motion was made by Commissioner Fikar and seconded by Commissioner Quintero to recommend a finding of **No Reasonable Cause**. Discussion ensued.

Investigator Williams restated why the case had been tabled and summarized the case as it had last been before the Commission in October 2008. He said there had been a concern about consistency regarding the Respondent's policy regarding "touching". There had been some discussion on the Respondent's policy of 'zero tolerance' and how it was applied to various staff. Further questioning by Investigator Williams revealed that the policy was actually considered such instances to be 'gross misconduct' which allowed for the different responses to similar instances. Investigator Williams continued that the comparable individual –which had triggered questions and discussions in the earlier hearing of this case – had been disciplined for his actions; he had been placed on indefinite probation.

Commissioner Noble asked where the notion of choking came from and Investigator Williams said that it had come from a third party. Commissioner Noble asked if the Complainant had been convicted of an assault for this incident and Investigator Williams confirmed this. Commissioner Rodriguez asked for clarification why the Complainant had been terminated whereas the employee involved in the comparable incident had been put on indefinite probation yet retained his job. Investigator Williams answered this was due to a feeling of safety in the workplace and that other employees did not feel safe around the Complainant. Commissioner Lopez-Urdiales asked if the Respondent's policy did not allow the Complainant the opportunity to correct his behavior. Investigator Williams said that there was but the bruising and the complaint filed with the police influenced the decision to terminate the Complainant. Investigator Williams continued that the Complainant felt he should have been given probation and there had been a rush to terminate him. Commissioner Lopez-Urdiales asked if there had been any disciplinary actions against the Complainant before this incident. Investigator Williams said there had been some, nothing like the current incident though. Disciplinary action had been taken mainly for failure to follow procedures.

Commissioner Jaswal returned to the issue of bruising and asked if Investigator Williams could say whether there was bruising on the Complainant's victim or not. Investigator Williams replied that although the Complainant alleges that the victim had made any mark or bruise worse in order to strengthen the case, the court did rule that an assault had taken place. Commissioner Jaswal then asked for more details regarding the professional and personal relationship of the Complainant and the victim; how long they had worked together or if they were friends. Investigator Williams answered that the Complainant had been the supervisor of the victim at one time and declined to comment on the personal relationship of the two saying it was not

relevant. Commissioner Rodriguez asked for clarification about two Hispanic women who had been fired for fighting on the premises and the two white males who had been disciplined for fighting. Investigator Williams clarified that there had only been one incident, two Hispanic women had been discharged for fighting.

Commissioner Noble asked if everyone agreed that the Complainant had 'touched' the victim and it was not a hit. Investigator Williams confirmed that it was a hit. Commissioner Quintero asked if there was a picture of the bruise and Investigator Williams said he was not sure and reiterated that the Complainant believed that the victim and a friend had 'enhanced' the bruise. Commissioner Quintero asked if the Complainant had been convicted of assault and Investigator Williams said yes and that the Complainant had paid a fine. Commissioner Fikar wanted to know if there were any witnesses to the assault and Investigator Williams said yes and they had been called in the assault trial. Commissioner Fikar wanted to know if the witnesses described the assault as a touch or a hit and it was described as a hit.

Commissioner Lopez-Urdiales asked if the victim had been disciplined for loudness before. Investigator Williams answered that the nature of the work itself is very noisy and when he visited the workplace, he was surprised at how loud it was. Commissioner Rodriguez stated that it was then not disputed that the victim was loud and Investigator Williams agreed. Commissioner Jaswal inquired what it meant when it said there was to be no future contact between the victim and the Complainant. Investigator Williams said the victim had indicated she felt unsafe around the Complainant and that she had a past history of domestic violence.

Hearing no further discussion, Chairperson Francis asked for the roll call. Voting "aye" were: Commissioners Fikar, Noble, Quintero, Rodriguez and Francis. Voting "nay" were Commissioners Jaswal and Lopez-Urdiales. Motion for a finding of **No Reasonable Cause** carried 5-2.

LCHR No.: 08-0324-021-E-R

A motion was made by Commissioner Jaswal and seconded by Commissioner Noble to recommend a finding of **No Reasonable Cause**. Discussion ensued.

Commissioner Rodriguez asked if there were any questions about the Complainant being placed on leave without pay and raised the question of why the Complainant was placed on leave without pay and then terminated. Investigator Kniep answered that the Complainant first received a voice mail informing him that he was placed on leave without pay and then received a letter informing him that he had been terminated. Commissioner Noble asked if the message had been left on an earlier day or the same day as the letter was received. Investigator Kniep explained that the voice mail had been left on an earlier date but the Complainant received the voice mail and the letter on same day, the day he was released from jail. Commissioner Rodriguez wanted to know if leave without pay was equivalent to dismissal. Investigator Kniep

explained that the Respondent had exact codes for each employee activity, including being absent. Commissioner Rodriguez commented that if the Respondent left a message saying the Complainant had been placed on leave without pay, then they should not be surprised when he does not come in to work. Investigator Kniep explained that the Respondent said it was because the Complainant did not request time off. Commissioner Rodriguez asked why the Complainant did not call his employer and Investigator Kniep said the Complainant had stated that it was too expensive to set up the phone calls while he was in jail and he didn't have the money for it. Commissioner Lopez wanted to know the exact day when the Complainant was arrested and Investigator Kniep said that it was on November 26, 2007. Commissioner Fikar then asked if there were any other 'no call / no show' terminations at the Respondent's. Investigator Kniep answered there had been a woman who had been a two day no-call / no-show and had been seen by a supervisor working out in a gym, and within a month terminated.

Commissioner Francis wanted to clarify that the Complainant's sister and his supervisor had spoken as friends about the Complainant's arrest but not in an official capacity. Commissioner Noble wanted to confirm that the sister did not report her brother as absent at work. Investigator Kniep affirmed both statements; the Complainant's sister and supervisor had spoken, but as friends on a personal basis and the Complainant's sister would not bail him.

Commissioner Jaswal asked when the Complainant received the voice mail and Investigator Kniep answered that it was on December 2nd, when the Complainant arrived home, the Complainant received both the letter and the voice mail on December 2.

Commissioner Francis asked if the Complainant had requested accommodation for his disability or spoken about it to his employer. Investigator Kniep answered no, the Complainant had not.

Hearing no further discussion, Chairperson Francis then asked for the roll call. Voting "aye" were: Commissioners Fikar, Jaswal, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis. Motion for a finding of **No Reasonable Cause** carried 7-0.

LCHR No.: 08-0415-029-E-R

A motion was made by Commissioner Francis and seconded by Commissioner Jaswal to recommend a finding of **No Reasonable Cause**. Discussion ensued.

Commissioner Rodriguez commented that the Complainant seemed to have good academics and experience and asked why the others had been hired, did they have better experience? Investigator Kniep answered there was no doubt that the Complainant was well-qualified but that 95% of the reviews commented negatively on dress, behavior or attitude. Commissioner Rodriguez asked why the Complainant had been kept on so many years if her behavior was inappropriate. Investigator Kniep answered that the Chair had addressed the issues every quarter and had reminded the Complainant of procedures but the Complainant would continue to violate rules. Investigator Kniep clarified that the Chair did not have much to do with the hiring. The hiring committee was a group under the Division Head. Commissioner Rodriguez asked if what the student reviews were like. Investigator Kniep said they were good and bad but she did not have any other teacher reviews to compare them with; she was unable to say whether they leaned heavily one way or the other. Commissioner Jaswal asked for confirmation that the teaching evaluations were not overwhelmingly negative. Investigator Kniep answered they were pretty balanced; she had collected reviews from both the Complainant and the Respondent and each side had omitted some reviews that the other included, so that in the end the whole picture was pretty balanced. Investigator Kniep added that some of the issues addressed by the students were also addressed by the hiring committee.

Commissioner Francis asked what was meant by ‘not student centered’ and Investigator Kniep replied that it meant the Complainant was more self-centered, more focused on what she got out of the class rather than the students’ success. Commissioner Rodriguez asked if the other candidates had PhDs. Investigator Kniep said no but a PhD was not required for the open position; the Complainant had more experience but her attitude was a factor as was the negative reviews from the hiring committee. In addition, both individuals hired were in the process of obtaining PhDs.

Commissioner Rodriguez asked about the legal analysis which stated that in order for a case to be made for discrimination the credentials had to be so superior that no reasonable person would chose another candidate. Commissioner Noble asked if ‘credentials’ included the ability to teach and Commissioner Rodriguez answered there were objective and subjective criteria included under ‘credentials’. Commissioner Francis asked how many were on the hiring committee and Investigator Kniep answered two different teams of four. Commissioner Francis asked whether the hiring committee was aware of the complaint and Investigator Kniep answered no. Commissioner Lopez-Urdiales asked about the composition of the committee and Investigator Kniep answered it was mixed gender and that the age range was not known. Commissioner Rodriguez wanted to know how the hiring committee was selected. Investigator Kniep said they were randomly chosen prior to any applications being received.

Commissioner Rodriguez asked if there was anything to support the Complainant's claim of age preference for training for on-line education. Investigator Kniep answered the Complainant's claim that the majority of the people receiving training was not the case. One individual had been hired who already been trained on the system, but there were not enough training spots for the demand and adjuncts were not given priority.

Commissioner Fikar asked if one became more protected the older one became. One entered a protected class at 40, was a 49-year old more protected than a 47-year old? Investigator Kniep said she took this into account when making comparisons to the Complainant, determining the averages of those ages 52 and older, which were closer to the Complainant's age. Commissioner Noble asked how long the Complainant had been an adjunct and Investigator Kniep answered since January 1994. Commissioner Noble wanted to know if the Complainant had applied for a full-time position prior to these two instances. Investigator Kniep answered no. Commissioner Lopez-Urdiales commented there had been four new hires in the fall of 2007 and asked the age group. Investigator Kniep answered they were 54, 37, 32 and 37.

Commissioner Rodriguez asked what the phrase 'limited ability to teach' in the Complainant's reviews meant. Investigator Kniep explained it was the Respondent's policy to hire as few adjuncts as possible and to use them to teach as many different courses as possible. The Complainant was only able to teach two different types of courses and this placed her at a disadvantage. Commissioner Rodriguez asked if there was evidence that others could teach a greater variety of classes and Investigator Kniep said yes. Commissioner Rodriguez wanted to know if the Complainant agreed that she had a limited range of courses to teach and Investigator Kniep answered no.

Commissioner Lopez-Urdiales asked who selected the interviewers and whether it was truly objective. Investigator Kniep explained they were selected randomly; one interviewer had sat in on one of the Complainant's classes and had given her a good review. Commissioner Noble asked if the interviewers were chosen before the candidates and Investigator Kniep said yes.

Commissioner Jaswal stated the EO rules restrict questions so the hiring committee should not have known the Complainant's age. Investigator Kniep said this was true, however, the Complainant's appearance probably indicated an age group.

Hearing no further discussion, Chairperson Francis then asked for the roll call. Voting "aye" were: Commissioners Fikar, Jaswal, Noble, Quintero, Rodriguez and Francis. Voting "nay" was Commissioner Lopez-Urdiales. Motion for a finding of **No Reasonable Cause** carried 6-1.

LCHR No.: 08-0513-036-E-R

A motion was made by Commissioner Jaswal and seconded by Commissioner Quintero to recommend a finding of **No Reasonable Cause**. Discussion ensued.

Commissioner Rodriguez started the discussion by stating the Complainant was told not to come back to the job because the Respondent did not have work for him to do that fell under the restrictions the doctor put upon the Complainant. So one could argue the Respondent regarded the Complainant as disabled, however, timing alone is not enough to make a case. Investigator Wortman replied that Complainant claims he could have cleaned up in the shop and that would have been a light duty task; while the Respondent stated they did not have enough light duty tasks for the length of time deemed necessary by the Complainant's doctor. She added that the Complainant had been given light duty for one day. Commissioner Rodriguez commented that it sounded suspicious to her. Commissioner Fikar asked if there had been other lay-offs during that time. Investigator Wortman said there had been some previously and some after the Complainant, but on that same day the Complainant was the only employee laid off. Commissioner Fikar asked how many employees there were and Investigator Wortman said 56-60, but work had slowed down and currently the Respondent employed 45. Investigator Wortman added it was undisputed that work was slowing down and that the Complainant's project was ending. Commissioner Francis wanted to know the basis for lay-offs. Investigator Wortman explained it was not last in first out but lay-offs were determined according to skill set and reliability. Commissioner Francis asked if it were correct that the Complainant had missed 25 days in 2007 and Commissioner Fikar asked if the Complainant had almost been fired for absenteeism. Investigator Wortman said this was correct and that he Complainant himself had volunteered this information. Commissioner Fikar asked whether the Complainant was taking any of the training courses offered and Investigator Wortman answered no, they interfered with the Complainant's second job.

Commissioner Rodriguez asked how many employees at the Respondent's were injured in 2007 and how it compared with the industry as the number seemed high to her. Investigator Wortman said there were 18 and she had no comparison with other companies, but that many of the industries were minor with no work missed or worker's compensation filed.

Commissioner Rodriguez asked about the Complainant's status and what 'subject to recall' meant. Investigator Wortman said she was not sure. The Complainant is eligible for call back; however, work is still slow at the Respondent's. Investigator Wortman stated she had asked directly if the Respondent simply laid off less desirable staff instead of dismissing them. The Respondent denied this. Commissioner Jaswal inquired if this meant the Complainant could still be called back for work. Investigator Wortman said she was not sure and agreed the timing was suspicious. However, she added, there were other employees at the Respondent's who had filed for workers compensation but not laid off. Investigator Wortman continued that she doubted a strained shoulder could be regarded as disabled.

Hearing no further discussion, Chairperson Francis then asked for the roll call. Voting “aye” were: Commissioners Fikar, Jaswal, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis. Motion for a finding of **No Reasonable Cause** carried 7-0.

LCHR No.: 08-0529-040-E-R

A motion was made by Commissioner Jaswal and seconded by Commissioner Lopez-Urdiales to recommend a finding of **Reasonable Cause**. Commissioner Fikar excused himself due to a conflict of interest.

Hearing no discussion, Chairperson Francis then asked for the roll call. Voting “aye” were: Commissioners Jaswal, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis. Abstaining was Commissioner Fikar. Motion for a finding of Reasonable Cause carried 6-0-1.

LCHR No.: 08-0530-042-E-R

A motion was made by Commissioner Jaswal and seconded by Commissioner Noble to recommend a finding of **No Reasonable Cause**.

Hearing no discussion, Chairperson Fikar then asked for the roll call. Voting “aye” were: Commissioners Fikar, Jaswal, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis. Motion for a finding of **No Reasonable Cause** carried 7-0.

LCHR No.: 08-1007-014-H

A motion was made by Commissioner Francis and seconded by Commissioner Jaswal to recommend a finding of **No Reasonable Cause**. Discussion ensued.

Commissioner Francis opened the discussion by asking for an overview of what restrictive covenants were versus the national origin issue. Investigator Wortman summarized by saying restrictive covenants gave guidelines for home building. All of the homes in this addition met the covenants except the new ones. Some homeowners noted the size of the new homes going up and were concerned that smaller homes, not in accordance with the covenants, would bring property values down. A legal action ensued and a judge ruled the Complainant could continue building. Commissioner Fikar then asked how the case got to LCHR? Investigator Wortman replied it concerned a home built for and purchased by an Afghani couple. It is undisputed that the couple was approached by a neighbor and told of trouble with water in the basement of several homes and they were advised to install a sump pump. Investigator Wortman continued it was not proven that the intent was to discourage the couple from buying the home and that complaints regarding the size of the house had already been lodged before this incident. Commissioner Fikar asked if the majority of the homes had sump pumps installed and Investigator Wortman answered yes. Commissioner Noble asked if all homes were now built and

Investigator Wortman said yes although some homes were still vacant. Commissioner Noble wanted to know where the Afghani couple was and Investigator Wortman told him they were currently living on the property. She continued there was no evidence that a board member or a homeowner's association member knew the nationality of the buyers but there was evidence that some homes had installed sump pumps.

Commissioner Lopez-Urdiales asked if there were other ethnic families in this sub-division and Investigator Wortman said there were foreign-sounding names in the whole area, but without going door-to-door, she could not be sure.

Commissioner Francis asked if there had been a discussion between the developer and the homeowner's association to change the covenants. Investigator Kniep answered that there had been, however, it was discovered the developer lacked the necessary majority to change covenants and so the attempt failed. Commissioner Rodriguez asked if constructing smaller homes was perhaps for financial reasons, that smaller homes were easier to sell. Investigator Wortman answered the developer believed they could more easily sell single family homes, she added that the neighbors feared their property values might decrease since there were more expensive homes next to smaller, less expensive homes.

Hearing no further discussion, Chairperson Fikar then asked for the roll call. Voting "aye" were: Commissioners Fikar, Jaswal, Noble, Quintero, Rodriguez and Francis. Abstaining was Commissioner Lopez-Urdiales. Motion for a finding of **No Reasonable Cause** carried 6-0-1.

LCHR No.: 08-1007-015-H

A motion was made by Commissioner Fikar and seconded by Commissioner Jaswal to recommend a finding of **No Reasonable Cause**.

Hearing no discussion, Chairperson Fikar then asked for the roll call. Voting "aye" were: Commissioners Fikar, Jaswal, Noble, Quintero, Rodriguez and Francis. Abstaining was Commissioner Lopez-Urdiales. Motion for a finding of **No Reasonable Cause** carried 6-0-1.

LCHR No.: 08-1008-016-H

A motion was made by Commissioner Fikar and seconded by Commissioner Francis to recommend a finding of **No Reasonable Cause**.

Hearing no discussion, Chairperson Fikar then asked for the roll call. Voting "aye" were: Commissioners Fikar, Jaswal, Noble, Quintero, Rodriguez and Francis. Abstaining was Commissioner Lopez-Urdiales. Motion for a finding of **No Reasonable Cause** carried 6-0-1.

PRE-DETERMINATION SETTLEMENT AGREEMENTS

1. LCHR No.: 08-0401-022-E-R

A motion was made by Commissioner Fikar and seconded by Commissioner Noble to accept the pre-determination settlement agreement.

Chairperson Francis then asked for the roll call. Voting "aye" were Commissioners Fikar, Jaswal, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis. Motion carried 7-0.

2. LCHR No.: 08-0620-046-E-R

A motion was made by Commissioner Fikar and seconded by Commissioner Jaswal to accept the pre-determination settlement agreement.

Chairperson Francis then asked for the roll call. Voting "aye" were Commissioners Fikar, Jaswal, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis. Motion carried 7-0.

ADMINISTRATIVE CLOSURES:

A motion was made by Commissioner Fikar and seconded by Commissioner Jaswal to accept the following Administrative Closure:

Successful Conciliation

LCHR No.: 07-0914-014-E-R

Chairperson Francis then asked for the roll call. Voting "aye" were Commissioners Fikar, Jaswal, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis. Motion carried 7-0.

OLD BUSINESS:

A. 2009 Fair Employment Conference Update

Director Williams said that it was questionable whether a Fair Employment Conference could be held this year due to the budget. It is still possible and tentatively scheduled for September or October.

B. 2009 Fair Housing Conference Update

The brochures for the Fair Housing Conference were being sent out within the next days. The Fair Housing Conference will take place April 21 and 22. Director Williams welcomed the Commissioners to attend and encouraged them to submit their registration. He regretted that the agency could not provide them with lunch during the conference due to the tight budget

C. 40th Anniversary Celebration

Director Williams stated that various events were planned for throughout the year in order to celebrate the 40th anniversary. The “OneLincoln” program being taped January 30th is one of those events and will feature surviving members or descendants of the Human Relations Council, which was the forerunner of the Commission on Human Rights.

NEW BUSINESS:

A. 2009-2010 Budget Update / Senior Office Assistant Position

Director Williams stated that this year’s budget cut was the largest seen (9%). He emphasized that the situation would not improve soon referring to the projected decrease in sales tax revenue. He continued that LCHR is fortunate because they receive federal funding from HUD and EEOC. He added that it was unlikely that the Senior Office Assistant position would be hired in the light of the budget but that he would know more towards the end of the month.

B. Possible Office Move to County-City Building

A move to the county-city building was one of the methods mentioned in order to save money; the public defender’s office area is free. However, it is questionable whether the rent there would be any less expensive than the current location.

C. Title 11 Revision

Director Williams said that this topic was on the back burner for the time being as City Attorney Tonya Skinner was back-logged.

PUBLIC COMMENTS:

None

ADJOURNMENT:

The meeting was adjourned at 5:50 P.M.

NEXT MEETING:

The next meeting will be held Thursday, February 26, 2009 in the City Council Chambers at 4:00 P.M.