

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

SEPTEMBER 27, 2012
CITY COUNCIL CHAMBERS
555 S. 10TH STREET

The September 27, 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:

Hazell Rodriguez (arrived at 4:08 p.m.), Mary Reece, Bennie Shobe, Takako Olson, Wendy Francis, Sue Oldfield, Liz King, Micheal Thompson, and Gene Crump.

MEMBERS ABSENT:

None.

STAFF PRESENT:

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

APPROVAL OF AUGUST 30, 2012, MINUTES:

A motion was made by Francis and seconded by Oldfield to approve the minutes of the August 30, 2012, meeting as presented.

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

APPROVAL OF SEPTEMBER 27, 2012, AGENDA:

A motion was made by Francis and seconded by Shobe to approve the September 27, 2012, meeting agenda as presented.

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

CASE DISPOSITIONS:

LCHR #12-0315-011-E-R

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

Discussion ensued. Francis commented on the Complainant's history of performance concerns evidenced by the Complainant's disciplinary actions, and asked why the Respondent allowed the issues to continue for so long. Lemke responded that over the course of the Complainant's employment, there were three Human Resource Directors, one of which was terminated for performance concerns. Lemke also discussed that the Complainant's supervisor discussed issues with the Complainant and did not see a sustained improvement. Oldfield asked about the marks on the Complainant's arms and the doctor's statement indicating that the marks were not contagious. She questioned why the Human Resource Manager wanted the Complainant to continue to bandage her arms. Lemke responded that the Human Resource Manager did not feel the cloth sleeve extenders created an adequate barrier and that at times the marks were characterized as "open and weeping wounds." Oldfield also asked for clarification on the doctor's statement that indicated bandages would tear the Complainant's thin skin. Lemke responded that there was no evidence that the doctor's statement indicating bandages would tear the Complainant's skin was provided to the Respondent. Reece asked for clarification on why there was a delay in the Complainant providing the doctor's statement. Lemke responded that the Complainant's doctor indicated that she did not have to provide the note to her employer, and it wasn't until the EAP counselor suggested the Complainant provide the note to her employer, did she decide to do so. Shobe asked if the Complainant's health conditions met the definition of disability. Lemke indicated that she analyzed the case under the "regarded as" prong of the definition and clarified that the impairment did not need to be "substantially limiting." Shobe also asked how often the Complainant's health conditions were discussed with her by the Respondent. According to the Human Resource Manager's notes, it appeared to be monthly during the last three months of her employment. Lemke recapped the written warnings and the reasons they were issued. Lemke also indicated that the Respondent took the position that the Complainant was terminated for consistent performance concerns, refusal to acknowledge these concerns, and leaving work without advanced approval or notice.

Rodriguez arrived at the meeting.

Rodriguez noted that it is clear the Respondent had concerns with the Complainant's health condition along with a variety of performance concerns. A discussion occurred about the Complainant's past drug addiction, the tremors and the marks on her arms, and the Complainant's feeling that this all contributed to the Respondent falsely believing that she was using drugs. Lemke talked to the Commissioners about the Respondent's drug testing policy and the fact that they chose

not to test the Complainant, and that this Human Resource Manager has not required drug testing of any employee. A discussion also occurred about the Human Resource Manager's notes reflecting physical observations of the Complainant, and Respondent's response that they did not know what was going on, but their focus was on improving her work performance.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Rodriguez, Olson, Francis, Oldfield, King, and Thompson. Voting "nay" was: Shobe. Abstaining was: Reece. Motion Carried, 6-1-1.

LCHR #12-0410-014-E-R

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

Reece expressed her belief that the evidence shows the Complainant was in violation of Respondent's time card policy, which led to her termination. Rodriguez asked about the Complainant's pregnancy and if there was an underlying medical condition that could have rose to the level of a disability. Nichols clarified that there was no evidence of an underlying medical condition, but there is evidence to show the Complainant had difficulty in her prior pregnancy.

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

LCHR #12-0502-021-E-R

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

Shobe commented about the Respondent having no real method of determining someone's starting wage. Nichols responded that it is the client company that determines the starting wage and felt Shobe's question was more pertinent to the following case.

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

LCHR #12-0502-022-E-R

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

Discussion ensued. Rodriguez asked if there was a method to the madness relating to how the starting wage is determined. Nichols said that the decision-maker for Respondent indicated that it depends on the employee's experience and their rate of pay at their previous employer. Nichols also explained that Respondent took the position that the comparable employee in this case had more recent experience than the Complainant and had more recent knowledge of the newest technology. A discussion occurred about the Complainant's work performance and his attitude relating to his rate of pay, as well as whether his lower wage was based on his national origin. A discussion occurred about the Complainant's increase in pay, whether he put in his two-week notice, and his title change compared to the comparable's title change and responsibilities. Olson made a suggestion that the Respondent put into effect a pay scale to help eliminate any concerns about pay disparities.

Discussion continued about whether the decision to pay the Complainant less was based on his national origin or was it based on the Respondent being able to pay someone less because of what they were making at their last employer. Rodriguez asked if there were any comments relating to the Complainant's national origin. Nichols said that there was one comment made by the third shift supervisor that he was "stoked" at the idea of having someone of Irish descent working with him because that was what his heritage was. Nichols said that there is no evidence that any derogatory comment was made about the Complainant's national origin. Nichols also responded to a question about Respondent taking advantage of temporary employees, that the comparable employee who was paid a higher rate, was also a temporary employee.

Olson then returns to her original request to contact the Respondent and suggest a more structured pay policy. Nichols said that she could relay that suggestion.

Reece made a motion to have all three issues presented in the case voted on separately. Francis amended her motion and this was seconded by Crump.

Crump asked for the roll on the **first issue of No Reasonable Cause** (that the Complainant was subjected to different terms and conditions of employment based on national origin). Voting "aye" was: Shobe, Olson, Francis, Oldfield, Thompson and Crump. Voting "nay" was: King. Abstaining was: Rodriguez and Reece. Motion Carried, 6-1-2.

Crump asked for the roll on the second issue **of No Reasonable Cause** (that the Complainant was terminated based on his national origin). Voting "aye" was: Reece, Shobe, Olson, Francis, Oldfield, Thompson, and Crump. Abstaining was: Rodriguez and King. Motion Carried, 7-0-2.

Crump asked for the roll on the third issue **of No Reasonable Cause** (that the Complainant was terminated in retaliation for complaining about discrimination). Voting "aye" was: Reece, Francis, Oldfield, and Crump. Voting "nay" was: Shobe, Olson, King, and Thompson. Abstaining was: Rodriguez.

[Discussion on this case resumed after the roll call on LCHR #12-0725-017-H and after New Business.]

Based on the tie vote with one abstention, it was believed that the motion of No Reasonable Cause on the third issue failed, leaving the third issue without a determination. Golden stated that there could be a motion to reconsider. Crump indicated his desire to entertain a motion for Reasonable Cause. Nichols clarified that the third issue the Commission voted on is the allegation that the Complainant was terminated in retaliation for complaining about discrimination. Nichols discussed the evidence relating to this issue, which showed that he was terminated prior to his complaint of discrimination.

Golden expresses her opinion that there is not a determination on the third issue. She said that another motion could be entertained, including a motion to reconsider from the prevailing side, which does not exist in this situation.

Francis then made a **motion to reconsider the last issue** and the motion was seconded by Shobe. Rodriguez asked if all three issues should be discussed and reconsidered since there may be confusion as to what issue the Commissioners were voting on. Francis indicated that her motion was only to reconsider the third issue.

Crump asked for the roll call. Voting “aye” was: Francis, Oldfield, Thompson, and Crump. Voting “nay” was: Rodriguez, Reece, Shobe, Olson, and King. Motion failed, 4-5-0.

A motion was made by Rodriguez and seconded by Reece to **reconsider all three of the issues**. Voting “aye” was: Rodriguez, Reece, Shobe, Olson, Oldfield, King, and Thompson. Voting “nay” was: Francis and Crump. Motion Carried, 7-2-0.

A motion of **No Reasonable Cause** was made by Francis and seconded by Oldfield on the first issue (that the Complainant was subjected to different terms and conditions of employment based on his national origin).

Discussion ensued relating to what happens after a reasonable cause finding. A question was asked as to how long the Complainant has been in the United States and Nichols responded that he arrived in the United States in 2009. A discussion also occurred relating to circumstantial evidence versus direct evidence, as well as comparable evidence.

Crump asked for the roll call. Voting “aye” was: Shobe, Francis, Oldfield, Thompson, and Crump. Voting “nay” was: Reece, Olson, and King. Abstaining was: Rodriguez. Motion Carried, 5-3-1.

A motion of **No Reasonable Cause** was made by Francis and seconded by Oldfield on the second issue (that the Complainant was terminated based on his race).

Rodriguez clarified the reasons given by the Respondent for terminating the Complainant.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Shobe, Olson, Francis, Oldfield, King, Thompson, and Crump. Abstaining was: Rodriguez and Reece. Motion Carried, 7-0-2.

A motion of **No Reasonable Cause** was made by Oldfield and seconded by Shobe on the third issue (that the Complainant was terminated in retaliation for complaining about discrimination).

Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Shobe, Francis, Oldfield, Thompson, and Crump. Abstaining was: Rodriguez, Reece, Olson and King. Motion Carried, 5-0-4.

PRE-DETERMINATION SETTLEMENT AGREEMENTS:

LCHR #12-0725-017-H

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

Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Reece, Shobe, Olson, Francis, Oldfield, King, Thompson, and Crump. Abstaining was: Rodriguez. Motion Carried, 8-0-1.

OLD BUSINESS:

None.

NEW BUSINESS:

A. Nichols gave a report on the HUD Contract which was for approximately \$68,000. She informed the Commissioners that for the current contract the LCHR has been paid for 22 housing cases, compared to being paid for 25 cases the previous year. Nichols discussed the payment structure depends on the age and type of the case. Crump asked if the amount paid covered the Commission's expenses, and Nichols states that this is not tracked in the office.

Reece asked about the outreach that was discussed at the last meeting. Lemke reported that efforts relating to this have been on hold, but will be pursued in the near future.

Lemke introduced a Lincoln Public School student intern Senada Gusic who will be volunteering her time with the Commission through December.

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Next Meeting:

The next meeting will be held on Thursday, October 25, 2012, at 4:00 p.m. in the City Council Chambers at the County City Building at 555 S. 10th Street.

ADJOURNED:

The meeting adjourned at 5:15 p.m.