

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

MARCH 28, 2013  
**CITY COUNCIL CHAMBERS**  
**555 S. 10<sup>TH</sup> STREET**

The March 28, 2013, 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:**

Commissioners: Wendy Francis, Liz King, Micheal Thompson, Hazell Rodriguez, Takako Olson, Bennie Shobe, and Gene Crump. Quorum present.

**MEMBERS ABSENT:**

Commissioners: Sue Oldfield and Mary Reece.

**STAFF PRESENT:**

Kimberley Taylor-Riley, Angela Lemke, Margie Nichols, Loren Mestre-Roberts, Peg Dillon and Jocelyn Golden.

**APPROVAL OF FEBRUARY 28, 2013 MINUTES:**

A motion was made by Francis and seconded by Thompson to approve the minutes of the February 28, 2013, meeting as presented.

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

**APPROVAL OF MARCH 28, 2013, AGENDA:**

A motion was made by Francis and seconded by King to approve the March 28, 2013, meeting agenda. Crump asked for the roll call. Voting "aye" was: Francis, King, Olson, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

**CASE DISPOSITIONS:**

**LCHR #12-0801-030-E-R**

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

Commissioners began a discussion about the Respondent's treatment of Hispanic employees. Rodriguez stated that a large amount of the employees are Hispanic and also many of the supervisors are Hispanic. She questioned whether or not the core of the problems was racially motivated.

Lemke said she saw consistency across the employees with complaints of being yelled at, but found that the complaints on not being allowed to go the bathroom were not as consistent. Rodriguez asked whether there was case law that applied to a minority discriminating against a minority. Lemke said she tried to find case law that applied to this specific situation, but was unable to find any.

Shobe asked if it would it be fair to say that there was no substantial evidence of discrimination based on ethnicity? Lemke said she saw no clear evidence. Lemke replied that there were Hispanic employees that had no issue and also some non-Hispanic employees that felt they were discriminated against.

Lemke got a sense from interviews that there were a group of Hispanic employees who liked to gossip and "stir the pot" which created some issues on the production line. The assistant supervisor told Lemke that what she told them was that "we are all adults here and let's act like it".

Discussion ensued relating to Respondent policies and the fact that the supervisor lacked the appropriate skills to supervise employees.

Olson expressed concern about the supervisor also serving as an interpreter and felt that it was a conflict of interest. Lemke clarified that at times when the employees went to complain the company used a different interpreter from a different shift. Rodriguez questioned why the Complainant brought her daughter as an interpreter. Commissioners questioned if the Complainant wanted to be fired because of differences in unemployment benefits.

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

**LCHR #12-0807-032-E-R**

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

Rodriguez asked about the difference between this case and the one just heard. Lemke confirmed that this Complainant was not written up and was not interviewed in the prior investigation. She added that this Complainant felt that the work environment was hostile and that she had to quit, but Lemke pointed out that she had not complained about the treatment. Olson questioned if she could talk about the last case and this case together and asked if a letter could be written to the Respondent over concern for how they are treating employees. Commissioners agreed that it would be difficult to write a letter with the absence of any action being taken by the Commission. Lemke said that the Commission has, in the past, recommended that policies be put in place, but not just to tell them to treat employees better. Olson asked if the company realized that the employees are not happy. Taylor-Riley said that she wondered if we have the authority to write a letter with our concerns. Taylor-Riley stated that the Commission is charged with investigating specific complaints and does not have authority beyond that. She also felt that it would put the Commission in an advisory position which is not within the Commission's scope. A Commissioner asked if a follow-up letter from this meeting was sent to the Respondent and Lemke replied that letters are sent regarding case outcomes. Lemke said in the past she has sent separate letters with suggestions. Shobe commented that we might be heading outside of our purview. Lemke suggested emailing the Respondent's HR director the final minutes from the meeting. Ultimately, at the behest of the Chair, the Commission decided to leave it up to staff as to whether it is appropriate or not to make suggestions to the Respondent relating to the treatment of the employees.

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

#### **LCHR #12-0824-037-E-R**

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

Thompson asked what the Complainant's disability was. Nichols replied that under the ADA as Amended, someone who is a recovering alcoholic or recovering drug addict is considered to be disabled. She added that, however, the law is specific that if someone is actively using illegal drugs they lose that protection. Thompson questioned that he was considered disabled until he had the test and then he lost his disability status. Nichols replied that he denied having the disability, but that the case was investigated in the alternative, if the Complainant had a history of addiction or was regarded by the Respondent as being disabled based on that history.

Rodriguez asked about the urine analysis (UA) test and the definition of split test. Nichols replied that a split test is when the original sample can be split off and sent to a different lab for testing. Rodriguez stated that she has some experience looking at UAs and that there are two types of testing, field and laboratory. Nichols confirmed that this was a laboratory test. Nichols said that the Complainant alleges that they never offered him a split test, and his position was that he asked that he be allowed to submit a new sample. Commissioners asked about clarification on the time frame

of the testing on the Complainant's samples. Rodriguez asked about when the Complainant was sent home. Nichols replied that because of federal regulations, the Respondent could not take the chance of letting an employee remain at work if it believed that employee is under the influence of drugs or alcohol.

Francis asked if the Respondent said why they didn't make him take a UA when he showed up at work with alcohol on his breath. Nichols replied that at the time the Respondent did not have a supervisor working who knew the procedure. While co-workers knew something was going on with the Complainant, they did not know how to handle it. The co-worker did call a supervisor at home who told him to send the Complainant home for the day. Since then everyone has been trained in the protocol by the Respondent.

Rodriguez asked about the EAP and their recommendation. Nichols confirmed that the EAP made a determination that the Complainant had a problem with alcohol.

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

#### **LCHR #12-0830-040-E-R**

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

King asked about evaluations and the difference between one done at three months, the one done at six months, and that she felt that the change in supervisors caused the differences. Lemke replied that at the three month evaluation the Complainant was not rated by co-workers. She felt there were positive things on the three month evaluation and also commented that the format was different and not as detailed. Lemke mentioned the fact that she had a child at the center and that would relate to the code of conduct as well. Lemke said that she felt that the three months and six months evaluations were not that different. Rodriguez felt that both evaluations were positive.

Francis asked for a definition of the Complainant's "legitimate job" expectations. Lemke replied that the Respondent's standards are very high and staff evaluations concerned the Respondent because of the "agree somewhat" replies. Lemke said that the Respondent felt they did not have time to allow more than a month for a turn around on performance. Lemke felt the procedure was consistently followed by the Respondent, and that a Caucasian-American lead teacher was terminated in the same manner as the Complainant.

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

**LCHR #12-0926-046-E-R**

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

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

**LCHR #12-1130-028-H**

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

Francis stated there was no faster way to lose a security deposit than tearing out a piece of carpet and trying to patch it. Nichols stated that the Complainant did not deny that they patched the carpet. Thompson asked for clarification on the pet deposit of \$75 and why the extra \$175 that was charged. Nichols answered that the increase was because of a change to the contract. Rodriguez wondered if it wasn't just a monetary question and not really a racial issue. Shobe questioned if the Respondent treats all tenants alike in this type of incident. Nichols said it was hard to find comparables, but the evidence showed all tenants were treated the same. Rodriguez asked if the Complainant gave Nichols a reason for believing that this was national origin discrimination. Nichols replied that the Complainants believed it could be discrimination because they had only lived there for six months and had to pay for the carpet being replaced after such a short period of time. Commissioners discussed the depreciation calculation and whether or not that was appropriate and universally used.

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

**PRE-DETERMINATION SETTLEMENT AGREEMENTS:**

**LCHR #12-0814-034-E-R**

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

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

**OLD BUSINESS:**

Civil Rights Conference April 23-24, 2013 – Award Nominations and Voting

Roberts announced that 137 participants have registered for the Civil Rights Conference to be held on April 23 and 24<sup>th</sup>. She asked that everyone tell friends and co-workers about the conference. All speakers are confirmed except for one of them. The citizenship speaker, Seema Nanda is in question because of frozen funds. The Fair Housing and the Gerald Henderson Awards were voted on by the Commissioners. There was discussion about whether or not to continue having an award for Fair Housing, since every year we struggle to get nominations for the Fair Housing award. Rodriguez suggested that we should make more effort to advertise. Lemke said we do work hard to get nominations and perhaps there could be a way to combine both awards into one.

#### LB 485 Update

Taylor-Riley stated that she attended a judiciary meeting on LB 485, they merged all bills about sexual orientation and all were heard on the same afternoon. She heard testimony on multiple bills and also testified about the LB 485. Taylor-Riley was not sure if it had made it out of committee.

#### Meeting with HUD Omaha Field Office Director

Taylor-Riley discussed the meeting with Earl Redrick on March 5, 2013. One of the things discussed at the meeting was trying to secure the federal speaker for the Civil Rights Conference. Issues still remain about travel expenses due to sequester and budget concerns. Redrick will assist by being a speaker at next year's Civil Rights Conference. Taylor-Riley discussed the conflict of the Scotts Bluff conference occurring on the same day.

#### Award Selection

Kit Boesch will be awarded the Gerald Henderson Award and Colleen Floth was selected for the Fair Housing Award.

#### **NEW BUSINESS:**

Roberts announced the details of the Lunch and Learn at the Asian Community and Cultural Center on March 29<sup>th</sup> and April 24<sup>th</sup>.

#### Next Meeting:

The next meeting will be Thursday, April 11 2013, 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 was adjourned at 5:10 p.m.