

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

**Thursday, March 26, 2009  
City Council Chambers**

**CALL TO ORDER:**

The March 26, 2009 meeting of the Commission on Human Rights was called to order at 4:00 P.M. by Chairperson Wendy Francis.

**ROLL CALL:**

The roll was called and documented as follows:

**MEMBERS PRESENT:**

Commissioners Karla Cooper, David Fikar, Wendy Francis, Lori Lopez-Urdiales, Dick Noble, Jose Quintero, Hazell Rodriguez (arrival 4:10 p.m.).

**MEMBERS ABSENT:**

Commissioners Eugene Crump, Sitaram Jaswal.

**STAFF PRESENT:**

Director Larry Williams, Senior Civil Rights Investigator Angela Wortman, Civil Rights Investigator Margie Kniep, and Interim Senior Office Assistant Mary Reece.

**APPROVAL OF FEBRUARY 26, 2009 MINUTES:**

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

Hearing no discussion, Chairperson Francis asked for the roll call. Voting "aye" were: Commissioners Cooper, Fikar, Lopez-Urdiales, Noble, Quintero and Francis. Motion carried 6-0.

**APPROVAL OF MARCH 26, 2009 AGENDA:**

A motion was made by Chairperson Francis to approve the March 26, 2009 meeting agenda. Voting "aye" were Commissioners Cooper, Fikar, Noble, Quintero and Francis. Abstaining was Commissioner Lopez-Urdiales. Motion carried 5-0-1.

**CASE DISPOSITIONS:**

**LCHR No.: 08-0701-049-E-R**

Motion: A finding of **No Reasonable Cause**

By: *Commissioner Noble*

Second: *Commissioner Fikar*

Commissioner Fikar started the discussion by asking if the investigator had been shown the positive test for alcohol and Investigator Kniep said that she had seen the test results. Chairperson Francis then asked if it typically took so long to get test results back. Investigator Kniep answered no, there was a delay and it was not known why it took the company so long to return the results. However, she continued, the initial breath test taken was positive for alcohol in the bloodstream.

Hearing no further discussion, Chairperson Francis asked for the roll call.

Ayes: *Cooper, Fikar, Lopez-Urdiales, Noble, Quintero, and Francis*

Nays: *none*

Abstain: *none*

Motion: Finding of **No Reasonable Cause** carried 6-0.

**LCHR No.: 08-0716-050-E-R**

Motion: A finding of **No Reasonable Cause**

By: *Commissioner Fikar*

Second: *Commissioner Quintero*

Chairperson Francis opened by asking what the Respondent's policy on speaking Spanish was. Investigator Kniep replied that there was no policy; a person could not be prohibited from speaking his native language. Commissioner Fikar stated the whole incident was simply a misunderstanding. Investigator Kniep said she believed the supervisor felt a degree of frustration and thought forbidding the Complainant and others to speak Spanish would be a way of making them comply, not realizing she couldn't do so. Commissioner Fikar expressed regret that the Complainant did not give the Respondent a chance to remedy the situation. Investigator Kniep added even though no formal complaint was registered, the Respondent still tried to discuss the situation but was blocked by the Complainant.\* (see LCHR Case No.: 08-0912-060-E-R for further comments on this case)

Hearing no further discussion, Chairperson Francis then asked for the roll call.

Ayes: *Cooper, Fikar, Lopez-Urdiales, Noble, Quintero, Francis.*

Nays: *none*

Abstain: *none*

Motion: Finding of **No Reasonable Cause** carried 6-0.

**LCHR No.: 08-0801-054-E-R**

Motion: A finding of **No Reasonable Cause**

By: Commissioner Fikar

Second: Commissioner Lopez-Urdiales

[Commissioner Rodriguez arrived at 4:10 and Chairperson Francis excused herself due to a conflict of interest] Commissioner Fikar stated that on page 3 of the Investigator's Report the Respondent stated that others had been terminated for the same offense that the Complainant had been disciplined for and asked if this had been verified. Investigator Wortman said that it had. Commissioner Fikar then asked if the Complainant had known of the terminations and Investigator Wortman answered that the Complainant knew this at the time of the rebuttal but she did not know whether he knew it at the time of his demotion. Investigator Wortman continued that although the Complainant claimed that many others had done the same as he, he could offer no names. Commissioner Lopez-Urdiales asked what exactly the infraction was for which the Complainant had been disciplined. Investigator Wortman explained that the Complainant had given the master key to a female tenant who had locked herself out. She added the CP had not verified she was a tenant and did not accompany her to her apartment to open the door. Commissioner Lopez-Urdiales asked if the tenant was in view the whole time. Investigator Wortman answered no. Commissioner Lopez-Urdiales asked if it would have been appropriate for the Complainant to have walked with the tenant to her apartment and opened the door. Investigator Wortman said yes, or the Complainant could have given the tenant an extra key that was on file and only opened the tenant's door. Commissioner Noble stated in essence the tenant had been given access to all apartments while she had the master key. Investigator Wortman confirmed this and added that it created a high liability for the complex.

Commissioner Lopez-Urdiales asked if Investigator Wortman had gotten the feeling that the reason behind the demotion was to essentially push the Complainant out because they knew he wouldn't go along with it. Investigator Wortman answered no, she did not believe that and the Respondent maintains the Complainant could have earned more in the commission-based position. Commissioner Noble noted that if the Complainant had leased the same number of apartments, he wouldn't have made less money in the new position. He continued that the demotion was in effect an effort to work with the Complainant due to his long employment history with the Respondent.

Hearing no further discussion, Chairperson Francis then asked for the roll call.

Ayes: *Cooper, Fikar, Lopez-Urdiales, Noble, Quintero, Rodriguez*

Nays: *none*

Abstain: *Francis*

Motion: Finding of **No Reasonable Cause** carried 6-0-1.

**LCHR No.: 08-0912-060-E-R**

Motion: A finding of **No Reasonable Cause**

By: *Chairperson Francis*

Second: *Commissioner Fikar*

Before starting the discussion on this case, Commissioner Rodriguez apologized for being late explaining she had been in Family Court and requested to make a comment on the LCHR case 08-0701-049-E-R. Permission was granted by Chairperson Francis. Commissioner Lopez-Urdiales asked if the Complainant had been spoken to when she picked up her check and told that what the supervisor had said regarding speaking Spanish was wrong. Investigator Kniep explained the Respondent allegedly attempted to call the Complainant and was hung up on. She continued that according to the Respondent, they had attempted to speak with the Complainant again when she picked up her paycheck, however, the Complainant refused to speak with them. Commissioner Rodriguez asked if there had been any correspondence sent to the Complainant. Investigator Kniep answered no and added the Complainant herself had said she was in contact with the other staff members involved in the incident and was aware of the situation. Commissioner Rodriguez noted there were EEO policies posted throughout the workplace and asked if there were any changes in postings with regards to language and whether the Commission could make any recommendation to post language policy. Investigator Kniep answered to her knowledge there had been no changes in the policy postings and the Respondent could certainly be contacted and given that recommendation.

Starting discussion on LCHR case 08-0912-060-E-R, Commissioner Noble commented he did not see the connection between the dismissal and some other behavior. He continued when the Complainant told his supervisor about the contractor making racial comments, the Respondent told him to be the bigger person and let it go, which was a totally unacceptable response to a complaint of racial discrimination. Commissioner Lopez-Urdiales agreed absolutely with Commissioner Noble and added her comment that it did not seem to her that the employer took the complaint seriously. Commissioner Lopez-Urdiales also stated she was very troubled by what had gone on at the Respondent's. Commissioner Noble added it seemed endemic and troubling and while it had nothing to do with the actual dismissal, it needed to be addressed. Investigator Wortman agreed and stated she had no problem with the reason for termination but the hostile work environment allegation was a concern.

Commissioner Fikar asked whether the contractor who had made the racial comments was a customer of the Respondent or was working with them. Investigator Wortman answered the contractor was a customer and the Complainant delivered product to the job site. Investigator Wortman said the Respondent nevertheless had a duty to address the issue and she had informed the Respondent's attorney of this during the on-site interview.

Commissioner Cooper asked if even though the finding was for race: could it be split for the hostile work environment. Investigator Wortman answered it would have to be a hostile work environment based on racial harassment but the problem could be in proving that it was severe or pervasive, did it alter his job, was it unwelcome etc.. She added that she doubted that the incidents which the Complainant was able to *prove* would be severe or pervasive enough. Investigator Wortman explained she had researched and not found much information on whether or not an employer was required to stop harassment if it hasn't yet risen to the level of unlawful harassment. Commissioner Cooper stated that pervasive and unlawful were subjective. Investigator Wortman explained the law stated further 'severe or pervasion by a reasonable person's standards'. Commissioner Noble noted it was a documented reality of minorities 'going along in order to get along' and he saw much of that in this case.

Investigator Wortman said the Complainant was credible and she had more reason to disbelieve the Respondent's denial than the Complainant, nevertheless, even if everything had been said the question was still open as to whether the atmosphere was severe or pervasive enough to alter his working conditions. Commissioner Cooper commented that even hearing a racial comment once would be enough to poison the atmosphere and affect someone's work performance. She continued that even if the comment is only made one time the damage is done and in this manner it is pervasive and meant to do harm. Commissioner Noble wondered what the statement 'you don't act black' meant, whether it was meant as a compliment. He continued that the management/ownership seemed to have almost a locker-room mentality in the way they approached this issue and that the Complainant obviously had an anger issue but he would be curious to know what the Complainant's temper was like off the job or if the job contributed to that. Commissioner Rodriguez said the Complainant had contributed as well to a hostile work environment through some of his actions. She continued and asked if the Complainant admitted to the comments made about another black employee listed on page 3. Investigator Wortman said the Complainant denied using the 'n' word in referring to any other black employee. Investigator Wortman said the Complainant admitted referring to himself as 'Chocolate Thunder,' admitted he had been sent home once for anger but denied threatening his co-worker on his last day. She continued that the e-mail written by the colleague who was allegedly threatened spoke volumes and led her to believe the incident had taken place.

Commissioner Lopez-Urdiales asked for examples of severe. Investigator Wortman replied intimidating, physically threatening, and inappropriate touching and the pervasiveness would be if it happened more than an isolated instance. Commissioner Rodriguez stated it was undisputed that the racial comment involving the contractor had been made and asked if the employer knew that the other alleged comments were being made. Investigator Wortman answered some of the other alleged comments were made by supervisors. She believed the 'monkey comment' had taken place because of the testimony from the president of the company saying yes that might have happened.

Chairperson Francis asked where could the Complainant could go to report discriminatory behavior if the owners were the ones making the comments. Investigator Wortman answered it would have been possible for the Complainant to speak with his direct supervisor as he was not involved in any of the alleged incidents or to speak with the president of the company who also did not appear to have taken part in the comments. Investigator Wortman admitted it could have been difficult going to the president with a complaint about his son and continued that she felt the Complainant could have spoken to his direct supervisor about the situation. Commissioner Noble then pointed out that the supervisor would go to the owners with the complaint and the situation would essentially be the same.

Commissioner Rodriguez asked if the Complainant had been specific in how it affected him and his performance at work and without that she could not see the atmosphere as severe or pervasive. Commissioner Noble asked if it was required to quantify severe and pervasive and Commissioner Rodriguez answered yes, it had to be more than an isolated comment. Both Commissioners Cooper and Noble stated they felt one incident was quantity enough to violate the Complainant's sense of security. Commissioner Rodriguez said she did not dispute that but was simply stating what case law would support. Investigator Wortman said there had been some case law dealing with harassment over a period of time and deemed that it did not reach the level of severe or pervasive. Commissioner Fikar noted the standard of severe and pervasive was set pretty high in court.

Chairperson Francis asked if there was a record of the ethnic makeup of present and past employees. Investigator Wortman said she had attempted to contact some past African American employees but had had no luck in contacting them. Commissioner Fikar asked if it were true that the Complainant had been replaced by another African American man and Investigator Wortman confirmed this.

Commissioner Rodriguez said it appeared the Respondent was lax in enforcing policies whether they concerned harassment or the anger issues. Chairperson Francis asked if there were even policies in place and Investigator Wortman said, there was an employee handbook and an EEO policy. She continued that during her interviews she had the feeling everyone got along quite well, there was a lot of joking and she felt the alleged comments were not intended to be malicious, it was more a case of people not thinking and not understanding how discriminatory their comments were. Many Commissioners expressed surprise that this could still be the case in this day and age. Chairperson Francis asked if the policy was made known to the employees when hired. Investigator Wortman said it was but no signature was required as acknowledgement. Chairperson Francis wondered when the last time the co-owners had read their own policy as they were the ones accused of discriminatory behavior.

Commissioner Lopez-Urdiales posed a general question as to why the tolerance level of findings has changed. She commented that earlier there was a zero tolerance for any form of discrimination and today discrimination must occur repeatedly to be considered. Investigator

Wortman said she did not know what caused the change. Commissioner Noble noted that the current findings relied on how discrimination impacted job performance, whereas discrimination in the workplace could also seriously affect someone off the job. Investigator Wortman explained the law said 'severe or pervasive affecting the working conditions' looking at the environment. Director Williams added the change allowed an employer the chance to correct one time discriminatory behavior and that for an employer to be liable there must be unlawful harassment. Investigator Wortman commented that she doubted the one isolated comment from the contractor would be enough to count as unlawful harassment obliging the employer to act. Commissioner Noble asked if it were not the employer's obligation to protect an employee. Commissioner Fikar asked if the Complainant had been required to have further contact with the contractor in question and Investigator Wortman answered she was not sure, but believed so. Commissioner Cooper said she felt the Respondent's response to the Complainant's complaint about the contractor would discourage the Complainant from complaining further, he would feel that he would not be taken seriously. Commissioner Lopez-Urdiales speculated on whether the hostile work environment could have contributed to the Complainant's anger issues. Commissioner Fikar asked how the Complainant knew about LCHR and if he knew about the possibility to file a complaint here before he was terminated. Investigator Wortman answered she did not know but the Complainant certainly would have had a right to file a complaint when he was still working there.

Chairperson Francis asked if the Commission should consider this strictly as termination based on race. Investigator Wortman answered there were two issues: first hostile work environment based on race and then the termination. Commissioner Rodriguez stated it was a big leap from unacceptable comments contributing to the Complainant's inappropriate behavior and surmising that is why he was terminated. She added she was not ready to make that conclusion and that the Complainant also had responsibility for his behavior leading to his termination. Commissioner Noble added he agreed but would like to send a message to this employer that the current situation is unacceptable. Commissioner Cooper stated she could see finding for a hostile work environment based on the evidence given. Investigator Wortman stated in order to have separate findings for each issue (hostile work environment and unlawful termination) they would have to be stated and voted on individually and recommended against this, commenting that it was a similar situation to a case heard at the last Commission meeting. Chairperson Francis asked if there were any other discussion points for finding No Reasonable Cause for unlawful termination. Investigator Wortman amended that it was No Reasonable Cause for the case as a whole, and if it were to be split, the motion had to be made at that point.

Director Williams said that the finding could be amended to recommend training to the employer but that could not be enforced. Commissioner Rodriguez said she was legally not prepared to find Reasonable Cause for either claim but was very concerned by the employer's conduct and asked if there was some sort of reprimand which could be given to the employer. Investigator Wortman said that she could be directed to write a letter of concern to the Respondent indicating there was a tremendous amount of discussion about the atmosphere in this particular place of

employment and a concern about the failure of the employer to do something about the comments made by the contractor and offer educational services to the Respondent. Commissioner Noble clarified that the Commission could vote on the motion and add the letter as an amendment to the No Reasonable Cause finding. This suggestion found agreement among all Commissioners present and Commissioner Noble moved to amend the current motion of a finding of No Reasonable Cause with the addition of a letter to be sent to the Respondent along with a copy of the minutes detailing the discussion and concerns of the Commissioners. For consistency's sake Chairperson Francis made the motion as Commissioner Noble stated and it was seconded by Commissioner Fikar.

Hearing no further discussion, Chairperson Francis then asked for the roll call.  
Ayes: *Cooper, Fikar, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis.*  
Nays: *none*  
Abstain: *none*  
Motion: Finding of **No Reasonable Cause as amended** carried 7-0.

**LCHR No.: 08-1010-063-E**

Motion: A finding of **No Reasonable Cause**  
By: *Commissioner Fikar*  
Second: *Commissioner Rodriguez*

Chairperson Francis asked what the police had said and if there was a copy of the report. Investigator Wortman replied that the Respondent had called a friend of his on the force informally, so there was no report. Commissioner Rodriguez asked a question to the companion case regarding the key and Investigator Wortman requested to treat that question when the case was being discussed so as to not confuse the two cases.

Hearing no further discussion, Chairperson Francis then asked for the roll call.  
Ayes: *Cooper, Fikar, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis.*  
Nays: *none*  
Abstain: *none*  
Motion: Finding of **No Reasonable Cause** carried 7-0.

**LCHR No.: 08-1014-064-E**

Motion: A finding of **No Reasonable Cause**  
By: *Commissioner Fikar*  
Second: *Commissioner Lopez-Urdiales*

Commissioner Rodriguez referred back to her question regarding the incident with the key and asked for clarification why the Complainant was being requested to turn in his key. Investigator

Wortman reported the Complainant alleged the Respondent called him and asked him to bring in the key whereupon the Complainant told the Respondent if he was going to be fired it could be done over the phone. Investigator Wortman added that the Respondent denied calling the Complainant and alleged the Complainant stopped showing up for work, then came in two days later and asked why his friend had been fired and it was at this time that the Respondent alleged he asked the Complainant to return the key. Commissioner Rodriguez asked if the Complainant indicated why he had not come to work. Investigator Wortman explained there was a lot of Respondent says / Complainant says but nothing could be determined undisputedly. Commissioner Rodriguez asked if the Complainant had been scheduled to work in the days when he allegedly did not show up. Investigator Wortman could not remember, however the Investigator's Report stated that the Respondent had called staff together to see who was available to work in case the Complainant did not show up, indicating that he had indeed been scheduled.

Commissioner Noble asked where the statement that the Respondent wanted an all woman staff came from or whether it was simply hearsay. Investigator Wortman stated the Complainant never heard the Respondent say this, his friend had alleged that the Respondent had told him that when he was fired. Investigator Wortman felt the biggest contributing indicator in this case was the fact that the Respondent had hired another male to replace the Complainant prior to receiving notice of the filed complaint. However, Commissioner Rodriguez felt that it could be possible that when the first Complainant left and said he would file a complaint that the Respondent had taken that into consideration when hiring new staff.

Hearing no further discussion, Chairperson Francis then asked for the roll call.  
Ayes: *Cooper, Fikar, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis.*  
Nays: *none*  
Abstain: *none*  
Motion: Finding of **No Reasonable Cause** carried 7-0.

**LCHR No.: 08-1201-017-H**

Motion: A finding of **No Reasonable Cause**  
By: *Commissioner Cooper*  
Second: *Commissioner Rodriguez*

Hearing no discussion, Chairperson Francis then asked for the roll call.  
Ayes: *Cooper, Fikar, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis.*  
Nays: *none*  
Abstain: *none*  
Motion: Finding of **No Reasonable Cause** carried 7-0.

## **PRE-DETERMINATION SETTLEMENT AGREEMENTS**

### **1. LCHR No.: 08-1204-071-E**

Motion: To accept the **Pre-Determination Settlement Agreement**

By: *Commissioner Fikar*

Second: *Commissioner Noble*

Chairperson Francis then asked for the roll call.

Ayes: *Cooper, Fikar, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis.*

Nays: *none*

Abstain: *none*

Motion: To accept the **Pre-Determination Settlement Agreement** carried 7-0.

## **ADMINISTRATIVE CLOSURES:**

Motion: To accept the **Withdrawal with Settlement as an Administrative Closure**

By: *Commissioner Cooper*

Second: *Commissioner Fikar*

Withdrawal with Settlement

### **1. LCHR No.: 08-1106-066-E-R**

Chairperson Francis then asked for the roll call.

Ayes: *Cooper, Fikar, Lopez-Urdiales, Noble, Quintero, Rodriguez and Francis.*

Nays: *none*

Abstain: *none*

Motion: To accept the **Withdrawal with Settlement as an Administrative Closure** carried 7-0.

## **NEW BUSINESS:**

### **A. 2009 Fair Housing Award Nominations**

Upon review of the sole nomination for the 2009 Fair Housing Award Commissioner Noble moved for unanimous acceptance and Commissioner Cooper seconded the motion. Director Williams gave the current registration numbers; there were 112 registrations for the April 21 session and 100 for the April 22 session. He added there was certainly some overlap but overall he was pleased with the registration numbers. Director Williams recommended the Commissioners to register if they had not done so already and especially the April 21 session with John Relman.

B. Opening Internet Café

Commissioner Cooper announced the opening of an Internet café at the Jarena Lee Center next to Quinn Chapel A.M.E at 9<sup>th</sup> and C street on Saturday March 28. There will be a lending library, classes and many other resources available. The Internet café is open to the public.

C. Expression of Gratitude

Commissioner Noble announced his wife had received her PhD and wanted to extend a thank you to the Commission members and LCHR staff who had helped her on her dissertation.

**PUBLIC COMMENTS:**

None

**ADJOURNMENT:**

The meeting was adjourned at 4:55 P.M.

**NEXT MEETING:**

The next meeting will be held Thursday, May 14, 2009 in the City Council Chambers at 4:00 P.M.