

**CITY OF LINCOLN, NEBRASKA
COMMISSION ON HUMAN RIGHTS
MINUTES
Thursday, March 25, 2010**

SWEARING IN OF NEW COMMISSIONERS

City Clerk Joan Ross administered the Oath of Office to newly appointed Commissioners Mary Reece, Takako Olson and Anitra Warrior. New Commissioners took their seats at the dais.

CALL TO ORDER/ROLL CALL

The March 25, 2010 meeting of the Commission on Human Rights was called to order at 4:05 p.m. by Chairperson Wendy Francis.

Roll Call was documented as follows:

MEMBERS PRESENT

Commissioners Karla Cooper, Gene Crump, Takako Olson, Mary Reece, Hazell Rodriguez, Jose Quintero, Anitra Warrior, Wendy Francis. Quorum present.

MEMBERS ABSENT

Commissioner Dick Noble

STAFF PRESENT

Director Larry Williams, Investigators Angela Wortman, Margie Nichols and Connie Guillaume.

APPROVAL OF FEBRUARY 25, 2010 MINUTES

A motion was made by Commissioner Crump and seconded by Commissioner Rodriguez to approve the minutes of the February 25, 2010 meeting. Chair Francis requested roll call.

Voting Aye: Commissioners Crump, Rodriguez, Quintero, Francis.

Commissioner Cooper's name was inadvertently missed during roll call, so vote not counted.

Abstaining: Commissioners Olson, Reece, Warrior.

Motion to approve the February 25, 2010 minutes carried 4-3-0.

APPROVAL OF MARCH 25, 2010 AGENDA

A motion was made by Commissioner Cooper and seconded by Commissioner Crump to approve the March 25, 2010 meeting agenda.

Voting Aye: Commissioners Rodriguez, Quintero, Cooper, Crump, Francis.

Abstaining: Commissioners Reece, Olson, Warrior.

Motion to approve the March 25, 2010 Agenda carried 5-3-0.

CASE DISPOSITIONS

1. LCHR No.: 09-0901-045-E-R

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

Commissioner Rodriguez asked if there was a video recording of the Complainant giving away food or writing on the box. Investigator Wortman said the Respondent's store manager said there was a videotape of the Complainant allegedly giving away food. However, shortly after the incident but prior to the Complainant's termination, the tape was automatically recorded over and the manager was unsuccessful in retrieving the footage for the record. Investigator Wortman confirmed she was not able to see the recording.

Investigator Wortman's investigation noted that the Complainant said that there should be a tape recording of whomever wrote on the box. The Respondent replied that the storage room where the (vandalized) box was discovered wasn't covered by surveillance cameras, so there would be no footage or recording of whoever wrote on the box. Respondent denies Complainant saying (while during suspension pending termination) that he brought it up, telling them to 'check the tape.' Wortman did not verify whether or not there was a tape recorder in the storage area. Commissioner Rodriguez asked if there was any way to determine if the box was anywhere else but the storage room. Investigator Wortman said it was her impression it was a new delivery from that morning; transferred directly from the truck to the storage area.

Investigator Wortman reported that the Complainant was now employed by a store owned by Corporate. He was terminated by a franchise which are two separate entities. Rules, regulations, menus are the same; but each make their own personnel decisions. Commissioner Francis asked about the ownership change between two of the termination comparables. Investigator Wortman noted the new ownership took over in 2008. The owner makes the decision to terminate with input from the store manager. This store manager started in January, 2009. She was consistent with the white male comparator; same owner, same store manager. The only inconsistency is that this white male was written up four times during his short employment, but by different supervisors. The store manager wrote him up the last time; terminating him two days later after consulting with the owner.

Commissioner Francis then asked if the termination process would have been longer if this Complainant had had three-four different supervisors (as with the comparable). Investigator Wortman said she was unable to answer that question. She followed that prior to the current management, the Complainant had three disciplinary actions in his file, none related to abusive language or giving away free food. They were for not performing his duties and one for an unexcused absence.

Commissioner Francis asked how promotional items are determined; what was the difference between promotional items and giving away free food. Investigator Wortman replied that the policy is that only a store manager can ring up promotional items. A promotional item can include a free meal if a customer is unhappy with a meal; some items are identified as promotional at certain times of the month. In this case, Investigator Wortman reported, the Respondent's business is located in a retail store. Employees of that business frequently patronize the Respondent's business during their breaks.

The evidence presented was that the Complainant's supervisor alleged seeing the Complainant giving items to employees (of the other business). When asked, the Complainant admitted giving away iced coffee 'which was almost gone.' She then said she instructed the Complainant to 'promo those items' in order to account for them and she would advise the store manager. Complainant denies this, saying he was only giving away cups with hot water; that he was instructed to 'promo some items' so he did. However, Complainant could not explain why, if he was just giving away cups of hot water, he would promo cookies, iced coffee and cappuccinos.

Commissioner Rodriguez noted on the legal analysis of the case there was no comparative when it came to the food issue. Investigator Wortman replied the only instances she found was an employee who had made a malt for himself, did not pay for it and was written up. Another employee rang up a specialty glass as another item, was required to pay back the difference in price and also written up. All cases were written up, none were terminated. The Complainant was initially written up, allegedly made another infraction with the writing on the box. The decision was then made to terminate.

Hearing no further discussion, Chair Francis asked the roll be called.

Voting Aye: Commissioners Cooper, Crump, Rodriguez.

Voting No: Commissioners: Quintero, Francis.

Abstaining: Commissioners Reece, Olson, Warrior.

Motion for a finding of **No Reasonable Cause** carried 3-2-3.

2. LCHR No.: 09-0923-049-E-R

A motion for a finding of No Reasonable Cause was made by Commissioner Rodriguez and seconded by Commissioner Cooper.

Hearing no discussion, Chair Francis requested roll be called.

Voting Aye: Commissioners Crump, Rodriguez, Quintero, Cooper, Francis.

Abstaining: Commissioners Olson, Reece, Warrior.

Motion for a finding of **No Reasonable Cause** carried 5-3-0.

3. LCHR No.: 09-0923-050-E-R

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

Commissioner Francis noted this case was tied to the previous case. Hearing no discussion, Chair Francis requested the roll be called.

Voting Aye: Commissioners Rodriguez, Quintero, Cooper, Crump, Francis.

Abstaining: Commissioners Olson, Reece, Warrior.

Motion for a finding of **No Reasonable Cause** carried 5-3-0.

4. LCHR No.: 09-1012-053-E-R

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

Commissioner Rodriguez questioned why the Respondent had to move to a different shift to receive his training. Investigator Wortman explained that the primary trainer was the assistant manager who worked that shift. Respondent felt it would benefit the Complainant more to move to second shift. It was busier with more employees working and the chance that more alarms would alert was higher, thus giving the Complainant more training opportunities. She continued that daily logs show the Manager trained the Complainant at least one time on third shift, maybe more. Investigator Wortman said she could not tell from the daily logs if Complainant received fire alarm panel training during orientation. However, evidence from daily logs confirmed that, on at least three different occasions, he was shown the alarm panel.

Investigator Wortman continued that the Complainant confirmed during his interview with the Respondent, that his English wasn't the greatest and computers weren't a strong point. When asked, he had also said he had experience on fire alarms from a previous company. She noted Complainant said the systems were different and this alarm was more complex, but she did not verify this. Discussion ensued about the Complainant choosing not to move to second shift; wanting to work only on third shift and availability of training on second shift. Investigator Wortman indicated the Complainant could handle most of the alarms however, was uncomfortable putting the fire alarm on test mode, or implementing the truck gate.

Hearing no further discussion Chair Francis requested the roll be called.

Voting Aye: Commissioners Rodriguez Quintero, Cooper, Crump, Francis.

Abstaining: Commissioners Reece, Olson, Warrior.

Motion for a finding of **No Reasonable Cause** carried 5-3-0.

5. LCHR No.: 10-0108-001-H

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

Commissioner Rodriguez asked and received confirmation from Investigator Nichols that the policy on late rent is applied consistently. All tenants with late rent receive a three-day notice, and if rent still not paid in that three days, served with an eviction notice. Discussion continued about the pattern of three-day notices and payment of rent. Also discussed was tenant ethnicity. Investigator Nichols reported there was no evidence of discrimination based on race.

Hearing no further discussion, Chair Francis requested roll be called.

Voting Aye: Commissioners Rodriguez, Quintero, Cooper, Crump, Francis.

Abstaining: Commissioners: Warrior, Olson, Reece

Motion for a finding of **No Reasonable Cause** carried 5-3-0.

6. LCHR No.: 10-0113-002-H

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

Commissioner Rodriguez noted that the issue seemed to be based on payment of a deposit. Discussion followed on whether Complainant was aware of the policy/procedures on moving to a different apartment in the same complex, payment of deposits, 30 day notice requirements and her ability to pay.

Investigator Nichols stated that evidence showed the policy is that a current tenant moving to another apartment in the complex must go through the application process, pay the deposit (\$250 in this case), give 30-day notice and move out. Deductions, such as carpet cleaning (\$75), are taken from the current deposit and the remaining dollars credited to their new apartment's rent. Respondent's records indicate this has occurred with other tenants. Investigator Nichols said the Complainant alleges that payment of the \$250 deposit was not discussed; while the Respondent said it was. The Complainant did say she asked the Respondent if she would have to pay the \$75 (carpet cleaning). There was general discussion on her ability to pay since she was on a fixed income. Complainant had also indicated she wanted a handicap parking stall closer to her apartment. Commissioner Rodriguez noted there was only a nine foot difference when comparing the distance from the old apartment and its stall versus the new apartment and its stall.

Commissioner Francis asked if the Respondent's records indicated if any other tenant paid the deposit in increments. Investigator Nichols said she had looked specifically for this, but found none in the records. Commissioner Rodriguez asked if there was a policy for being listed on the waiting list. Investigator Nichols stated when an apartment that a tenant had requested becomes available, the Respondent contacts the tenant, then reviews the policy with the tenant. Commissioner Rodriguez recommended that Respondent have a more structured policy on notification to tenants, and a method for tenants to reply whether or not they wanted the available apartment.

Hearing no further discussion Chair Francis requested roll be called.

Voting Aye: Commissioners Quintero, Cooper, Crump, Rodriguez, Francis.

Abstaining: Commissioners Warrior, Olson, Reece.

Motion for a finding of **No Reasonable Cause** carried 5-3-0.

PRE-DETERMINATION SETTLEMENT AGREEMENTS

Chair Francis indicated that items 7 and 8 be heard as a collective vote.

7. LCHR No.: 09-0731-040-E-R

8. LCHR No.: 10-0201-002-E-R

A motion was made by Commissioner Crump and seconded by Commissioner Cooper to accept the pre-determination settlement agreements as written.

Hearing no discussion, Chair Francis requested roll be called.

Voting Aye: Commissioners Cooper, Crump, Rodriguez, Quintero, Francis.

Abstaining: Commissioners Warrior, Olson, Reece.

Motion to accept the **Pre-Determination Settlements** carried 5-3-0.

ADMINISTRATIVE CLOSURES

9. LCHR No.: 08-0408-023-E-R

10. LCHR No.: 08-0409-025-E-R

Chair Francis indicated that items 9 and 10 be heard as a collective vote.

A motion to accept the Administrative Closures was made by Commissioner Cooper and seconded by Commissioner Crump.

Hearing no discussion, Chair Francis requested roll be called.

Voting Aye: Commissioners Cooper, Crump, Rodriguez, Quintero, Francis.

Abstaining: Commissioners Olson, Reece, Warrior.

Motion to accept the **Administrative Closures** carried 5-3-0.

A. LACK OF JURISDICTION

11. LCHR No.: 09-1125-061-E

A motion to accept the Administrative Closure for Lack of Jurisdiction was made by Commissioner Cooper and seconded by Commissioner Rodriguez.

Commissioner Crump noted that the allegation appeared to have merit, but the employer did not qualify for jurisdiction. He asked if there was any recommendation given to Respondent. Investigator Wortman replied that investigators have no authority to give any recommendation in cases not under our jurisdiction.

Hearing no discussion, Chair Francis requested roll be called.

Voting Aye: Commissioners Crump, Rodriguez, Quintero, Cooper, Francis.

Abstaining: Commissioners Olson, Reece, Warrior.

Motion to accept the finding of **Administrative Closure Due to Lack of Jurisdiction** carried 5-3-0.

OLD BUSINESS

Director Williams updated the Commissioners on the upcoming 2010 Civil Rights Conference. He introduced each new Commissioner (Takako Olson, Anitra Warrior and Mary Reece) who then gave a brief highlight of their involvement in the community and work history.

NEW BUSINESS (None)

PUBLIC COMMENTS (None)

ADJOURNMENT Meeting adjourned at 4:55 p.m.

NEXT MEETING

The next meeting is scheduled for **4 p.m, Thursday, May 13, 2010** in the Council Chambers.