

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

**THURSDAY, JANUARY 26, 2012
CITY COUNCIL CHAMBERS
555 S. 10TH STREET**

The January 26, 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:

Bennie Shobe, Jose Quintero, Sue Oldfield, Mary Reece, and Gene Crump, Chair.

MEMBERS ABSENT:

Wendy Francis, Hazell Rodriguez, and Takako Olson.

STAFF PRESENT:

Angela Lemke, Margie Nichols, Rod Confer, Kris Armatys (Volunteer), Nichole Hope-Bauman, and Cindy Wallman.

APPROVAL OF DECEMBER 15, 2011 MINUTES:

A motion was made by Bennie Shobe and seconded by Mary Reece to approve the minutes of the December 15, 2011 meeting.

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

APPROVAL OF JANUARY 26, 2012, AGENDA:

A motion was made by Oldfield and seconded by Reece to approve the January 26, 2012 meeting agenda as presented.

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

CASE DISPOSITIONS:

LCHR #10-1110-055-E-R

A motion was made by Crump and seconded by Reece for a finding of **Reasonable Cause** that the Complainant was terminated based on sex.

Commissioner Reece questioned whether any action was taken by Respondent relating to the Complainant's concerns about being able to take lactation breaks. Lemke stated that the Respondent's Campus President at the time denied the Complainant came to her with concerns about her ability to take lactation breaks. Lemke also noted that emails relating to this issue were requested from the Respondent, but were not provided. Shobe questioned the reasonable cause motion and whether there was evidence of gender discrimination. Lemke expressed concern whether the Respondent's legitimate, nondiscriminatory reason of eliminating the full-time Director of Library Services position was a pretext for pregnancy discrimination considering the Assistant Librarian was offered full-time hours almost immediately following the Complainant's termination. Lemke added that the person who Respondent indicated was to be in charge of the Lincoln campus indicated that she had no prior knowledge, prior to the Complainant's termination, that she was to be remotely in charge of the Lincoln campus. Shobe adds that the Complainant was replaced by a female so that is where he is having trouble seeing the discrimination. Lemke discussed the EEOC's guidance on care giving responsibility and the fact that the Complainant had recently given birth.

Reece questioned the Complainant's allegations relating to retaliation. Lemke discussed the requirements for the Complainant to prove retaliation, which includes a showing that the Complainant engaged in a protected activity.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Shobe, Quintero, Oldfield, Reece, and Crump. Motion carried.

A motion was made by Crump and seconded by Reece for a **No Reasonable Cause** finding that the Complainant was subjected to a hostile work environment based on marital status and sex, and that she was terminated based on marital status and sex. Voting "aye" was: Shobe, Quintero, Oldfield, Reece, and Crump. Motion carried.

A motion was made by Crump and seconded by Quintero for **No Reasonable Cause** finding that the Complainant was retaliated against for engaging in a protected activity.

Shobe expressed his opinion that he felt the reasonable cause finding is more appropriate relating to this issue. Lemke stated that it was a difficult issue, and she elaborated further on engaging in a protected activity of breastfeeding and the fact that the ability to breastfeed is gender specific so could it be a protected activity for the purposes of Title VII of the Civil Rights Act. She also

talked about the Complainant's allegation of complaining about the hostility caused by co-workers.

Hearing no further discussion, Crump asked for the roll call. Voting "yes" was: Quintero, Oldfield, and Crump. Voting "nay" was: Shobe, and Reece. Motion passed 3 to 2.

LCHR CASE #11-0523-023-E-R

A motion was made by Reece and seconded by Oldfield for a **No Reasonable Cause** finding. Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Shobe, Reece, Oldfield, Quintero, and Crump. Motion carried.

LCHR CASE #11-0701-003-PA

A motion was made by Reece and seconded by Shobe for a **No Reasonable Cause** finding.

Oldfield questioned whether the couple was asked to move to another table or if they chose to. Lemke clarified that they chose to move tables. A discussion ensued relating to the law and the requirement for the Complainant to show refusal of service rather than simply poor service. There was a discussion about the confusion between the waitresses and who brought them the food.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Reece, Shobe, Quintero, Oldfield, and Crump. Motion carried.

LCHR CASE #11-0701-004-PA

A motion was made by Oldfield and seconded by Quintero for a **No Reasonable Cause** finding.

A short discussion was held about the similarities of this case and the previous case. Shobe talked about the behavior of the waitress when she followed the Complainant outside of the establishment. Shobe asked if the waitress was reprimanded for her behavior and Lemke responded that the owner talked to the waitress about her behavior.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: Shobe, Reece, Oldfield, Quintero, and Crump. Motion carried.

LCHR CASE #11-1006-015-H

A motion was made by Crump and seconded by Oldfield for a finding of **No Reasonable Cause**. Hearing no discussion, Crump asked for the roll call. Voting "aye" was: Oldfield, Reece, Shobe, Quintero, and Crump. Motion Carried.

PRE-DETERMINATION SETTLEMENT AGREEMENTS:

A motion was made by Crump and seconded by Reece to accept the following pre-determination settlement agreements as presented.

LCHR # 11-0715-012-H

LCHR #11-1116-020-H

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

ADMINISTRATIVE CLOSURES:

LCHR #11-0314-001-PA

LCHR #11-0929-005-PA

A motion was made by Reece and seconded by Oldfield to accept the Administrative Closures for Lack of Jurisdiction as presented.

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

OLD BUSINESS:

Director Position

Rod Confer from the City Attorney's office announced that the new Director will be Kimberley Taylor-Riley, a private practice attorney. She will start the first or second week of February 2012.

NEW BUSINESS:

Commission-Initiated Complaint

Lemke recapped the memo sent to the Commissioners about a large housing provider who initially had a fair housing complaint filed against them for allegations of discrimination on the basis of disability. Ultimately, the complaint was settled which included a provision requiring the managers to attend fair housing training. Subsequently, an organization tested this housing provider on two different occasions, and on both occasions the test results showed evidence of discrimination on the basis of disability. Specifically, the housing provider appears to be charging pet rent and a pet deposit for individuals who have the need for service/companion

animals. Therefore, the issue is now being presented to the Commission for a decision whether a fair housing complaint should be initiated based on this testing evidence.

A motion is made by Reece and seconded by Shobe to allow for the Commission-Initiated Complaint. Hearing no further discussion, Crump asked for the roll. Voting "aye" was: Oldfield, Reece, Shobe, Quintero, and Crump. Motion carried.

Service/Companion Animal

Nichols briefed the Commissioners on the Americans with Disabilities Act as Amended when it relates to the definition of service animal. The ADA has clearly defined service animal as a dog individually trained to perform a specific act for an individual with a disability. This would apply to businesses open to the public.

Legislative Bill 912

Confer notified the Commissioners of a proposed Legislative Bill that deals with Civil Rights.

Parking

Confer notified the Commissioners that the Public Building Commission approved the request to allow the Commissioners to park in the North employee lot, which allows for parking underneath the public parking lot. Passes will be provided to the Commissioners.

ADJOURNED:

The meeting adjourned at 5:05 p.m.