

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

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

The February 28, 2013, meeting of the Commission on Human Rights was called to order at 4:05 p.m. by Gene Crump, Chair.

**ROLL CALL:**

The roll call was called and documented as follows:

**MEMBERS PRESENT:**

Wendy Francis, Liz King, Micheal Thompson, Sue Oldfield, Mary Reece, Hazell Rodriguez, Bennie Shobe, and Gene Crump.

**MEMBERS ABSENT:**

Takako Olson

**STAFF PRESENT:**

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

**APPROVAL OF JANUARY 31, 2013 MINUTES:**

A motion was made by Francis and seconded by Shobe to approve the minutes of the January 31, 2013, meeting as presented.

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

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

A motion was made by Crump and seconded by Francis to approve the amended February 28, 2013, meeting agenda. The agenda was changed by moving case LCHR #:12-0716-015-H from **Reasonable Cause / No Reasonable Cause** section to the top of the **Pre-Determination Settlement** section of the agenda.

Crump asked for the roll call. Voting "aye" was: Francis, King, Oldfield, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

## **CASE DISPOSITIONS:**

### **LCHR #12-0703-028-E-R**

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

Rodriguez questioned the Respondent's policy stating that Managers could not share their account numbers to allow override of pricing and also that any employee could not use the account number of another person. She questioned why the Manager was reprimanded and terminated but the Non-Manager was not.

Lemke said that Management is always held to a higher standard and should be, and there was a Management employee and non-Management employee involved in this incident. Rodriguez believes both violated the policy and both should be reprimanded.

Lemke did not ask for the Non-Management employee's proof of receiving the policy, but was told that Non-Managers do not receive copies of the policy. Rodriguez believed that the Non-Manager should have received a reprimand also. Lemke stated they did tell her he received a verbal warning with no documentation of that. She said that did concern her also.

Lemke stated that the account being used by someone else happened on two different occasions that Management was aware of. The first time Complainant was allegedly given a verbal warning which the Complainant denied, but he did not deny that others had previously used his account number to change prices.

Rodriguez questioned that if the Complainant changed his password, how was the Non-Manager able to change pricing? Lemke stated that he did change his password when he was told to change it and then it was changed back, after 30 days, to the previous password. Francis brought up that the incident happened on a date when the Complainant was not at work. Lemke stated that management received an email informing them of the price change and they questioned his approving the price change, and discovered the Complainant was not at work that day.

The Commissioners questioned the culture of price overrides happening because employees don't have time to follow the proper procedure, and discussion ensued relating to management's knowledge of this practice.

Rodriguez questioned, what to do with cases where there seemed to be a mixed motive. She noted there was justifiable reason to terminate, but there was also the Complainant's history of a work related injury.

The mixed motive analysis was discussed. Rodriguez questioned the timeframe between requesting time off for an upcoming surgery and the firing that occurred the day before the scheduled surgery.

Lemke stated it was unclear if the ultimate decision maker was aware that the Complainant had requested the medical leave. He knew that there was an upcoming surgery but it is not clear if he knew it was the next day.

Lemke stated that another piece of important evidence was that there did not appear to be a pattern of the Respondent firing workers after they filed worker's compensation claims. Rodriguez requested the issues be voted on individually.

Crump asked for a motion to rule on each charge separately. A motion for a finding of **No Reasonable Cause** on the first charge of unlawful harassment on the basis of disability was made by Rodriguez and seconded by Reece. Crump asked for the roll call. Voting "aye" was: Francis, King, Oldfield, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

A motion for a finding of **No Reasonable Cause** on the second charge of unlawful harassment based on race was made by Reece and seconded by Francis. Crump asked for the roll call. Voting "aye" was: Francis, King, Oldfield, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

A motion for a finding of **Reasonable Cause** on the third charge of unlawful termination based on disability was made by Rodriguez and seconded by King. Crump asked for the roll call. Voting "aye" was: King, Reece, Rodriguez, and Thompson. Voting no was Francis, Oldfield, Shobe, and Crump. Motion Tied.

A motion for a finding of **No Reasonable Cause** on the fourth charge of unlawful termination based on race was made by Francis seconded by Oldfield. Crump asked for the roll call. Voting "aye" was: Francis, King, Oldfield, Reece, Rodriguez, Shobe, Thompson, and Crump. Motion carried.

A motion for a finding of **No Reasonable Cause** on the third charge of unlawful termination based on disability was made by Francis seconded by Shobe. Additional discussion ensued.

Rodriguez questioned what the standards should be on deciding this case. Commissioners responded that it is no reasonable cause, because there had been other people injured that have not been terminated. Rodriguez commented that just because there is no pattern of termination due to disability does not necessarily imply or determine that there was no discrimination in this case. Lemke believed it factored into whether or not it was a motivating factor.

Golden added that a determination of reasonable cause is a determination that more likely than not the Complainant was discriminated against because of the basis of statutes enforced by the EEOC; the more likely than not standard must be based on a preponderance of the evidence and credibility of the witnesses. She added that the more likely than not standard must be litigation worthy. Lemke added that the Complainant first denied sharing his account number and later admitted that he did give out his account number and that the non-management employee had the number for seven months.

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

**LCHR #12-0813-033-E-R**

A motion for a finding of **No Reasonable Cause** on the charge of failure to provide a reasonable accommodation was made by Reece and seconded by King.

Rodriguez had issues with the Respondent's actions and whether or not Complainant was in a protected class. The discussion focused on the Complainant's desire to do things correctly and how that involved bringing other peoples' errors to the attention of management. Lemke said the ultimate decision maker on this case believed that the Complainant should not have been going to other interviewers to discuss these complaints about another interviewer's poor quality work.

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

A motion for a finding of **Reasonable Cause** on the second charge of unlawful termination based on disability was made by Francis and seconded by King.

Reece asked why one employee that threatened to bring a gun to work was only reprimanded and yet the Complainant was the one that was terminated? Rodriguez felt that it was difficult to tie the termination to a disability cause. She felt that the Respondent went to great lengths to accommodate her disability. Lemke discussed struggling with the multiple reasons given for her termination. Another reason given in the written response was that she was bad-mouthing a supervisor. Lemke said she found little evidence to support this. Rodriguez believed that there was evidence based on documentation that the Complainant did complain about the supervisor addressing other employees in a rude manner.

Lemke and Rodriguez agreed that the Commission did not have the job of second guessing the employer's decision. However, Lemke said she still struggled with the reason for the termination being that the Complainant reported another interviewer's bad performance to management. Lemke added that the Complainant was struggling with memory issues up to the time she was terminated.

Reece said that one of the red flags for her was that the Complainant was a good performer and yet was terminated.

Lemke questioned the employer about the incidence of the other employee threatening to bring a gun to work and was told that the employee changed his demeanor during a disciplinary meeting, and yet the Complainant did not have a chance to do so because she did not receive a written warning or an opportunity to find out how serious her situation was.

Reece asked about the Respondent's written policy on disciplinary actions. Lemke said she asked the Respondent for a copy of the policy, and wasn't sure if it didn't exist or if they just felt it didn't apply to this situation. Lemke commented that the Commission was asked to make a decision without any written policy to refer to. She also added that the Complainant could have been terminated for missing the census statement, but was given other chances.

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

**LCHR #12-0827-038-E-R**

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

Rodriguez asked about the standard that should be followed when the Respondent received discrimination allegations. Nichols replied that the Respondent felt that they had followed their policy, and that even though the Complainant came into the office within three days of the phone call, he still failed to make a written complaint. Nichols stated the Respondent's policy stated that complaints have to be written. When the Complainant alleged discrimination over the phone, he did not provide specific details, which the Respondent needed in order to investigate his allegations.

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

**LCHR #12-0827-039-E-R**

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

King asked about the cartoon and the statement that it was inappropriate, but Nichols replied that it appeared it was not displayed with racial animas or with any intent to harass Complainant. King said she disagreed with that. Nichols replied that there was no actual evidence that the Complainant saw the cartoon.

Nichols said management made the employee remove the cartoon from his phone and was verbally warned about it. King felt that the disciplinary procedures in this company only occurred as a reactionary response.

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

At 5:00 p.m., Crump left the meeting, and Vice Chair Rodriguez took over for the remainder of the meeting.

**PRE-DETERMINATION SETTLEMENT AGREEMENTS:**

**LCHR #12-0716-015-H**

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

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

**LCHR #12-1023-024-H**

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

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

**LCHR #12-1108-026-H**

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

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

**LCHR #12-1116-027-H**

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

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

**ADMINISTRATIVE CLOSURES:**

*Lack of Jurisdiction:*

**LCHR #12-0927-048-E-R**

A motion was made by Francis and seconded by Thompson to accept the administrative closure as presented.

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

**OLD BUSINESS:**

Civil Rights Conference April 23-24, 2013

Taylor-Riley provided an update on the conference planning. The color brochure was printed and being mailed out soon. She asked that Commissioners attend the award ceremony if possible and they could attend the entire conference at no charge. She said there might be some challenges due to some of the speakers not being able to travel. Taylor-Riley stated the deadline for registrations as April 12, 2013.

LB 485 Update

Taylor-Riley stated she was on the Legislative Review Team for LB 485. No hearing had yet been scheduled and the City has not taken a position at this time. She believed the hearing would be near the end of March. A test vote was taken and there was discussion about what this meant.

**NEW BUSINESS:**

The Senior Office Assistant position was filled by Peg Dillon.

Taylor-Riley informed Commissioners that on March 5, 2013, new HUD Omaha Field Office Direction Earl Redrick would be meeting with the staff. Taylor-Riley will present an update at the next Commission meeting. She also added that he would not be able to attend the Civil Rights Conference.

Commission on Human Rights  
February 28, 2013  
Page 8

Next Meeting:

The next meeting will be Thursday, March 28, 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 adjourned at 5:11 p.m.